

FREEDOM OF ASSOCIATION

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

Third edition

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have been published as follows

Report	Publication
<u>Reports of the International Labour Organisation to the United Nations (Geneva, ILO)</u>	
1-3	Sixth Report (1952), Appendix V
4-6	Seventh Report (1953), Appendix V
7-12	Eighth Report (1954), Appendix II

<u>Official Bulletin</u>			
	Volume	Year	Number ¹
13-14	XXXVII	1954	4
15-16	XXXVIII	1955	1
17-18	XXXIX	1956	1
19-24	XXXIX	1956	4
25-26	XL	1957	2
27-28	XLI	1958	3
29-45	XLIII	1960	3
46-57	XLIV	1961	3
58	XLV	1962	1 S
59-60	XLV	1962	2 SI
61-65	XLV	1962	3 SII
66	XLVI	1963	1 S
67-68	XLVI	1963	2 SI
69-71	XLVI	1963	3 SII
72	XLVII	1964	1 S
73-77	XLVII	1964	3 SII
78	XLVIII	1965	1 S
79-81	XLVIII	1965	2 S
82-84	XLVIII	1965	3 SII
85	XLIX	1966	1 S
86-88	XLIX	1966	2 S
89-92	XLIX	1966	3 SII
93	L	1967	1 S

¹ The letter S, followed as appropriate by a roman numeral, indicates a supplement.

Report	Publication		
	Volume	Year	Number
94-95	L	1967	2 S
96-100	L	1967	3 SII
101	LI	1968	1 S
102-103	LI	1968	2 S
104-106	LI	1968	4 S
107-108	LII	1969	1 S
109-110	LII	1969	2 S
111-112	LII	1969	4 S
113-116	LIII	1970	2 S
117-119	LIII	1970	4 S
120-122	LIV	1971	2 S
123-125	LIV	1971	4 S
126-133	LV	1972	S
134-138	LVI	1973	S
139-145	LVII	1974	S
146-148	LVIII	1975	Series B, Nos. 1-2
149-152	LVIII	1975	" No. 3
153-155	LIX	1976	" No. 1
156-157	LIX	1976	" No. 2
158-159	LIX	1976	" No. 3
160-163	LX	1977	" No. 1
164-167	LX	1977	" No. 2
168-171	LX	1977	" No. 3
172-176	LXI	1978	" No. 1
177-186	LXI	1978	" No. 2
187-189	LXI	1978	" No. 3
190-193	LXII	1979	" No. 1
194-196	LXII	1979	" No. 2
197-198	LXII	1979	" No. 3
199-201	LXIII	1980	" No. 1
202-203	LXIII	1980	" No. 2
204-206	LXIII	1980	" No. 3
207	LXIV	1981	" No. 1
208-210	LXIV	1981	" No. 2
211-213	LXIV	1981	" No. 3
214-216	LXV	1982	" No. 1
217	LXV	1982	" No. 2
218-221	LXV	1982	" No. 3
222-225	LXVI	1983	" No. 1
226-229	LXVI	1983	" No. 2
230-232	LXVI	1983	" No. 3
233	LXVII	1984	" No. 1
234-235	LXVII	1984	" No. 2
236-237	LXVII	1984	" No. 3

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), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Rural Workers' Organisations Convention, 1975 (No. 141) and the Labour Relations (Public Service) Convention, 1978 (No. 151). At 31 December 1984, these Conventions had been ratified, respectively, by 97, 113, 25 and 16 member 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, five such cases have thus been dealt with.

The Committee on Freedom of Association was set up by the Governing Body to carry out a preliminary examination of complaints of violations of trade union rights. The procedural rules followed by this body are described in the first chapter of this edition in a more detailed manner than they were in the 1976 edition.

Once in possession of all necessary information, the Committee, in private sittings, makes its recommendations in a report which it presents to the Governing Body for approval.

In its examination of cases referred to it the Committee may recommend the Governing Body to refer a complaint to the Fact-Finding and Conciliation Commission. The Committee may also recommend to the

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

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 and established a number of principles 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 that have been approved by the Conference and embodied in the Conventions on freedom of association, which afford a basis for comparison when particular allegations are being examined.

The Committee, having dealt with more than 1,300 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 had been expressed that a digest of these decisions be compiled for easy reference.

Accordingly, 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. The third edition of the digest covers the work of the Committee on Freedom of Association up to and including its 237th Report (adopted by the Governing Body in November 1984).

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.

¹ ILO: Resolutions adopted by the International Labour Conference at its 54th Session (Geneva, 1970), Resolution VIII, para. 11.

Introduction

A list of the ILO publications in which the reports of the Committee on Freedom of Association are reproduced appears after the table of contents.

In order to ensure greater clarity when reading the text, the decisions have been placed on the right-hand page with the corresponding references on the left-hand page. By referring to the chronological index of the cases, which appears as an appendix, the reader will be able to identify the country or countries involved in each decision; the references mention the report in which the case was examined, the number of the case and the paragraph in which the principle appears.

It should also be noted that the decisions in this digest are, in a number of cases, formulated in such a manner as to take account of various cases, involving different circumstances, in which the same principles have been applied.

The paragraph numbers marked with an asterisk indicate decisions concerning the Committee's competence.

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CHAPTER I

PROCEDURE FOR THE EXAMINATION OF COMPLAINTS ALLEGING INFRINGEMENTS OF TRADE UNION RIGHTS

The outline given below of the existing procedure for the examination of complaints alleging infringements of trade union rights is based on the provisions adopted by common consent by the Governing Body of the International Labour Office and the Economic and Social Council of the United Nations in January and February 1950, and also on the decisions taken by the Governing Body at its 117th Session (November 1951), its 123rd Session (November 1953), its 132nd Session (June 1956), its 140th Session (November 1958), its 144th Session (March 1960), its 175th Session (May 1969), its 184th Session (November 1971), its 202nd Session (March 1977) and its 209th Session (May-June 1979) with respect to its internal procedure for the preliminary examination of complaints, and lastly on certain decisions taken by the Committee on Freedom of Association itself.

*
* *

Background

1. In January 1950 the Governing Body, following negotiations with the Economic and Social Council of the United Nations, decided to set up a Fact-Finding and Conciliation Commission on Freedom of Association and defined the terms of reference of the Commission, the general lines of its procedure and criteria for its composition. It also decided to communicate to the Economic and Social Council a certain number of suggestions with a view to formulating a procedure for making the services of the Commission available to the United Nations.

2. The Economic and Social Council, at its Tenth Session, on 17 February 1950, noted the decision of the Governing Body and adopted a resolution in which it formally approved this decision, considering that it corresponded to the intent of the Council's resolution of 2 August 1949 and that it was likely to prove a most effective way of safeguarding trade union rights. It decided to accept, on behalf of the United Nations, the services of the ILO and the Fact-Finding and Conciliation Commission and laid down a procedure, which was supplemented in 1953, under which it would refer to the ILO complaints received by the United Nations concerning Members of the United Nations which are also Members of the ILO.

5. 66th Report, Case No. 156, paras. 64 and 65.

Forwarding of complaints

3. All allegations regarding infringements of trade union rights received by the United Nations from governments or trade union or employers' organisations against ILO member States will be forwarded by the Economic and Social Council to the Governing Body of the International Labour Office, which will consider the question of their referral to the Fact-Finding and Conciliation Commission.¹

4. Similar allegations received by the United Nations regarding any Member of the United Nations which is not a Member of the ILO will be transmitted to the Commission through the Governing Body of the ILO when the Secretary-General of the United Nations, acting on behalf of the Economic and Social Council, has received the consent of the government concerned, and if the Economic and Social Council considers these allegations suitable for transmission. If the government's consent is not forthcoming, the Economic and Social Council will give consideration to the position created by such refusal, with a view to taking any appropriate alternative action calculated to safeguard the rights relating to freedom of association involved in the case. If the Governing Body has before it allegations regarding infringements of trade union rights that are brought against a Member of the United Nations which is not a Member of the ILO, it will refer such allegations in the first instance to the Economic and Social Council.

5. 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. 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.

¹ The procedural rules set out in this chapter will be found in the following documents under the heading "Questions of Procedure": First Report of the Committee (paras. 6 to 32) in Sixth Report of the International Labour Organisation to the United Nations (Geneva, ILO, 1952), Appendix V; Sixth Report, in Seventh Report of the International Labour Organisation to the United Nations (Geneva, ILO, 1953), Appendix V, paras. 14 to 21; Ninth Report, in Eighth Report of the International Labour Organisation to the United Nations (Geneva, ILO, 1954), Appendix II, paras. 2 to 40; and 29th and 43rd Reports in Official Bulletin, Vol. XLIII, 1960, No. 3; 111th Report, *ibid.*, Vol. LII, 1969, No. 4; 127th Report, *ibid.*, Vol. LV, 1972, Supplement, paras. 9 to 28; 164th Report, *ibid.*, Vol. LX, 1977, No. 2, paras. 19 to 28; 193rd Report, *ibid.*, Vol. LXII, 1979, No. 1.

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Procedure for the examination of complaints

6. The Committee, when examining allegations concerning the infringement of trade union rights by one government, indicated that there existed a link of continuity between successive governments of the same State and, while a government cannot be held responsible for events which took place under a former government, it is clearly responsible for any continuing consequences which these events may have had since its accession to power.

7. Where a change of regime 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 though those events took place under its predecessor.

8. In accordance with a decision originally taken by the Governing Body, complaints against member States of the ILO were submitted in the first instance to the Officers of the Governing Body for preliminary examination. Following discussions at its 116th and 117th Sessions, the Governing Body decided to set up a Committee on Freedom of Association to carry out this preliminary examination.

9. At the present time, therefore, there are three bodies which are competent to hear complaints alleging infringements of trade union rights that are lodged with the ILO, viz. the Committee on Freedom of Association set up by the Governing Body, the Governing Body itself, and the Fact-Finding and Conciliation Commission on Freedom of Association. Given the purpose of this digest, it is the rules followed by the Committee on the subject that will be described here.

Composition and functioning of the Committee

10. This body is a Governing Body organ reflecting the ILO's own tripartite character. Since its creation in 1951, it has been composed of nine regular members representing in equal proportion the government, employer and worker groups of the Governing Body; each member participates in a personal capacity. Substitute members, also appointed by the Governing Body, were originally called upon to participate in the meetings only if, for one reason or another, regular members were not present, so as to maintain the initial composition.

11. While following this rule, the present practice - adopted by the Committee in February 1958 - allows substitute members who have so requested to participate in the discussion of the cases before the Committee whether or not all the regular members are present, if the chairman so agrees. They must respect the same rules as regular members.

12. No representative or national of the State against which a complaint has been made, or person occupying an official position in the national organisation of employers or workers which has made the

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13. Decision taken by the Committee at its 19th Session (February 1958).

complaint may participate in the Committee's deliberations or even be present during the hearing of the complaint in question.

13. The Committee always endeavours to reach unanimous decisions. In the event of a vote, substitutes do not vote with the regular members. In the event of a regular Government member being absent or disqualified in respect of a particular case under consideration (see paragraph 12 above), the Government member appointed by the Governing Body as the particular substitute for that regular member replaces him. The right to record an abstention is exercised on the same conditions as the right to record an affirmative or negative vote.

14. If both a regular Government member and his appointed substitute are not available when the Committee is considering a particular case, the Committee calls upon one of the remaining substitute members to complete the quorum of three; in selecting such substitute member, the Committee has regard to seniority and also to the rule referred to in paragraph 12 above.

Mandate and responsibility of the Committee

15. The responsibility of the Committee is essentially to consider, with a view to making a recommendation to the Governing Body, whether cases are worthy of examination by the Governing Body.

16. The Committee (after a preliminary examination, and taking account of any observations made by the governments concerned, if received within a reasonable period of time) reports to the next session of the Governing Body that a case does not call for further examination if it finds, for example, that the alleged facts, if proved, would not constitute an infringement of the exercise of trade union rights, or that the allegations made are so purely political in character that it is undesirable to pursue the matter further, or that the allegations made are too vague to permit a consideration of the case on its merits, or that the complainant has not offered sufficient evidence to justify reference of the matter to the Fact-Finding and Conciliation Commission.

17. The Committee may recommend the Governing Body to communicate the conclusions of the Committee to the governments concerned, drawing their attention to the anomalies which it has observed and inviting them to take appropriate measures to remedy the situation.

18. In all cases where it suggests that the Governing Body should make recommendations to a government, the Committee adds to its conclusions on such cases a paragraph proposing that the government concerned be invited to state, after a reasonable period has elapsed and taking account of the circumstances of the case, what action it has been able to take on the recommendations made to it.

23. 234th Report, Introduction, para. 27.

19. A distinction is made between countries which have ratified one or more Conventions on freedom of association and those which have not.

20. In the first case (ratified Conventions) examination of the action taken on the recommendations of the Governing Body is normally entrusted to the Committee of Experts on the Application of Conventions and Recommendations, whose attention is specifically drawn in the concluding paragraph of the Committee's reports to discrepancies between national laws and practice and the terms of the Conventions, or to the incompatibility of a given situation with the provisions of these instruments. Clearly, this possibility is not such as to hinder the Committee from examining, through the procedure outlined below, the effect given to certain recommendations made by it; this can be of use taking into account the nature or urgency of certain questions.

21. In the second case (non-ratified Conventions), if there is no reply, or if the reply given is partly or entirely unsatisfactory, the matter may be followed up periodically, the Committee instructing the Director-General at suitable intervals, according to the nature of each case, to remind the government concerned of the matter and to request it to supply information as to the action taken on the recommendations approved by the Governing Body. The Committee itself, from time to time, reports on the situation.

22. The Committee may recommend the Governing Body to attempt to secure the consent of the government concerned to the reference of the case to the Fact-Finding and Conciliation Commission. The Committee submits to each session of the Governing Body a progress report on all cases which the Governing Body has determined warrant further examination. In every case in which the government against which the complaint is made has refused to consent to referral to the Fact-Finding and Conciliation Commission or has not within four months replied to a request for such consent, the Committee may include in its report to the Governing Body recommendations as to the "appropriate alternative action" which, in the opinion of the Committee, the Governing Body might take. In certain cases, the Governing Body itself has discussed the measures to be taken where a government has not consented to a referral to the Fact-Finding and Conciliation Commission.

23. The Committee has emphasised that the function of the International Labour Organisation in regard to trade union rights is to contribute to the effectiveness of the general principle of freedom of association and to protect individuals as one of the primary safeguards of peace and social justice. Its function is to secure and promote the right of association of workers and employers. It does not level charges at, or condemn, governments. In fulfilling its task the Committee takes the utmost care, through the procedures it has developed over many years, to avoid dealing with matters which do not fall within its specific competence.

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24. 1st Report, para. 30. Report of the Fact-Finding and Conciliation Committee, United States (Puerto Rico), para. 79.

26. 214th Report, Case No. 1027, para. 53; 218th Report, Case No. 1113, para. 715.

27. 230th Report, Case No. 1146, para. 506.

28. 142nd Report, Case No. 694, para. 57; 157th Report, Case No. 831, para. 24; 181st Report, Case No. 873, para. 178.

30. 14th Report, Case No. 105, para. 136; 15th Report, Case No. 102, para. 162; Case No. 103, para. 210; 130th Report, Case No. 655, para. 25; 158th Report, Case No. 818, para. 213.

24. With a view to avoiding the possibility of misunderstanding or misinterpretation the Committee considers it necessary to make it clear that its task is limited to examining the allegations submitted to it. Its function is not to formulate general conclusions concerning the trade union situation in particular countries on the basis of vague general statements, but simply to evaluate specific allegations.

25. The usual practice of the Committee has been not to make any distinction between allegations levelled against governments and those levelled against persons accused of infringing freedom of association, but to consider whether or not, in each particular case, a government has ensured within its territory the free exercise of trade union rights.

The Committee's competence to examine complaints

(See also those paragraphs denoted by an asterisk.)

26. The Committee has considered that it is not within its competence to reach a decision on violations of ILO Conventions on working conditions since such allegations do not concern freedom of association.

27. The Committee has recalled that questions concerning social security legislation fall outside its competence.

28. The questions raised related to landownership and tenure governed by specific national legislation have nothing to do with the problems of the exercise of trade union rights.

29. In a number of cases the Committee has recalled that it has formulated, in its First Report,¹ certain principles for the examination of complaints where the government concerned considers that the questions raised are purely political in character. It 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.

30. When the Committee has had to deal with precise and detailed allegations regarding draft legislation, it has taken the view that the fact that such allegations relate to a text that does not have the force of law should not in itself prevent the Committee from expressing its opinion on the merits of the allegations made. The Committee has considered it desirable that, in such cases, the government and the complainant should be made aware of the Committee's

¹ See First Report, paragraph 29.

31. 14th Report, Case No. 88, para. 30; 27th Report, Case No. 163, para. 1; 77th Report, Case No. 382, para. 46; 60th Report, Case No. 234, para. 89; 30th Report, Case No. 171, para. 42; Case No. 174, para. 226; 33rd Report, Case No. 189, para. 37; 78th Report, Case No. 294, para. 136; 123rd Report, Case No. 633, para. 47; 153rd Report, Case No. 695, para. 77; 168th Report, Case No. 866, para. 78.

32. 12th Report, Case No. 69, para. 446; Case No. 61, para. 479; 14th Report, Case No. 88, para. 27; 153rd Report, Case No. 695, para. 77.

33. 60th Report, Case No. 234, para. 89; 77th Report, Case No. 382, para. 46; 78th Report, Case No. 294, para. 136; 123rd Report, Case No. 633, para. 47; 168th Report, Case No. 866, para. 78; 190th Report, Cases Nos. 871 and 907, para. 262; 211th Report, Cases Nos. 1035 and 1050, para. 114; 234th Report, Case No. 1212, para. 565; Case No. 1248, para. 637.

34. See for example 222nd Report, Case No. 1154, para. 31.

35. 6th Report, Case No. 55, para. 903; 142nd Report, Case No. 694, para. 56; 172nd Report, Case No. 854, para. 282;

point of view with regard to the proposed bill before it is enacted, since it is open to the government, on whose initiative such a matter depends, to make any amendments thereto.

31. Where national legislation provides for appeal procedures before the courts or independent tribunals, and these procedures have not been used for the matters on which the complaint is based, the Committee has considered that it should take this into account when examining the complaint.

32. When a case is being examined by an independent national jurisdiction whose procedures offer appropriate guarantees, and the Committee considers that the decision to be taken could provide additional information, it will suspend its examination of the case for a reasonable time to await this decision, provided that the delay thus encountered does not risk prejudicing the party whose rights have allegedly been infringed.

33. Although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures.

Receivability of complaints

34. Complaints lodged with the ILO, either directly or through the United Nations, must come either from organisations of workers or employers or from governments. Allegations are receivable only if they are submitted by a national organisation directly interested in the matter, by international organisations of employers or workers having consultative status with the ILO, or other international organisations of employers or workers where the allegations relate to matters directly affecting their affiliated organisations. Such complaints may be presented whether or not the country concerned has ratified the freedom of association Conventions. The Committee has full freedom to decide whether an organisation may be deemed to be an employers' or workers' organisation within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term. Furthermore, it does not consider as irreceivable complaints emanating from trade union organisations in exile or from organisations which have been dissolved.

- Receivability as regards the complainant organisation

35. At its first meeting in January 1952 (First Report, General observations, para. 28), the Committee adopted the principle that it

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194th Report, Cases Nos. 901 and 914, para. 269; 211th Report, Case No. 1020, para. 242.

36. 211th Report, Case No. 1043, para. 584.

37. 6th Report, Case No. 55, para. 903; 142nd Report, Case No. 694, para. 56; 172nd Report, Case No. 854, para. 282; 194th Report, Cases Nos. 901 and 914, para. 269; 211th Report, Case No. 1020, para. 242.

38. 172nd Report, Case No. 854, para. 282; 194th Report, Cases Nos. 901 and 914, para. 269.

39. 19th Report, para. 11.

40. Decision taken by the Committee at its 19th Session (February 1958).

42. 6th Report, Case No. 43, para. 590; 30th Report, Case No. 176, para. 12; 35th Report, Case No. 156, para. 7; 93rd Report, Case No. 420, para. 160; 108th Report, Case No. 530, para. 34; 116th Report, Case No. 571, para. 297; 158th Report, Case No. 655,

has full freedom to decide whether an organisation may be deemed to be an employers' or workers' organisation within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term.

36. The Committee has not regarded any complaint as being irreceivable simply because the government in question had dissolved, or proposed to dissolve the organisation on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge abroad.

37. The fact that a trade union has not deposited its by-laws, as may be required by national laws, is not sufficient to make its complaint irreceivable since the principles of freedom of association provide precisely that the workers shall be able, without previous authorisation, to establish organisations of their own choosing.

38. The fact that an organisation has not been officially recognised does not justify the rejection of allegations when it is clear from the complaints that this organisation has at least a de facto existence.

39. In cases in which the Committee is called upon to examine complaints presented by an organisation concerning which no precise information is available, the Director-General is authorised to request the organisation to furnish information on the size of its membership, its statutes, its national or international affiliations and, in general, any other information calculated, in any examination of the receivability of the complaint, to lead to a better appreciation of the precise nature of the complainant organisation.

40. The Committee will only take cognizance of complaints presented by persons who, through fear of reprisals, request that their names or the origin of the complaints should not be disclosed, if the Director-General, after examining the complaint in question, informs the Committee that it contains allegations of some degree of gravity which have not previously been examined by the Committee. The Committee can then decide what action, if any, should be taken with regard to such complaints.

- Repetitive nature of complaints

41. In any case in which a complaint concerns exactly the same infringements as those on which the Committee has already given a decision, the Director-General may, in the first instance, refer the complaint to the Committee which will decide whether it is appropriate to take action on it.

42. In a number of cases the Committee has taken the view that it could only reopen a case which it had already examined in substance and in which it had submitted final recommendations to the Governing Body if new evidence was adduced and brought to its notice.

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para. 64; 190th Report, Case No. 911, para. 421; 194th Report, Case No. 890, para. 32.

45. 19th Report, para. 13.

- Form of the complaint

43. Complaints must be presented in writing, duly signed by a representative of a body entitled to present them and they must be as fully supported as possible by evidence of specific infringements of trade union rights.

44. When the Committee receives, either directly or through the United Nations, mere copies of communications sent by organisations to third parties, it has hitherto taken the view that such communications did not constitute formal complaints and did not call for action on its part.

45. Complaints originating from assemblies or gatherings which are not bodies having a permanent existence or even bodies organised as definite entities and with which it is impossible to correspond, either because they have only a temporary existence or because the complaints do not contain any addresses of the complainants, are not receivable.

Rules concerning relations with complainants

46. Complaints which do not relate to specific infringements of trade union rights are referred by the Director-General to the Committee on Freedom of Association for opinion, and the Committee decides whether or not any action should be taken on them. In cases of this kind, the Director-General is not bound to wait until the Committee meets, but may contact the complainant organisation directly to inform it that the Committee's mandate only permits it to deal with questions concerning freedom of association and to ask it to specify, in this connection, the particular points that it wishes to have examined by the Committee.

47. The Director-General, on receiving a new complaint concerning specific cases of infringement of freedom of association, either directly from the complainant organisation or through the United Nations, informs the complainant that any information he may wish to furnish in substantiation of the complaint should be communicated to him within a period of one month. In the event that supporting information is sent to the ILO after the expiry of the one-month period provided for in the procedure, it will be for the Committee to determine whether this information constitutes new evidence which the complainant would not have been in a position to adduce within the appointed period; in the event that the Committee considers that this is not the case, the information in question is regarded as irreceivable. On the other hand, if the complainant does not furnish the necessary information in substantiation of a complaint (where it does not appear to be sufficiently substantiated) within a period of one month from the date of the Director-General's acknowledgement of receipt of the complaint, it is for the Committee to decide whether any further action in the matter is appropriate.

48. 19th Report, para. 12.

48. In cases in which a considerable number of copies of an identical complaint are received from separate organisations, the Director-General is not required to request each separate complainant to furnish further information; it is normally sufficient for the Director-General to address the request to the central organisation in the country to which the bodies presenting the copies of the identical complaint belong or, where the circumstances make this impracticable, to the authors of the first copy received, it being understood that this does not preclude the Director-General from communicating with more than one of the said bodies if this appears to be warranted by any special circumstances of the particular case. The Director-General will transmit to the government concerned the first copy received, but will also inform the government of the names of the other complainants presenting the copies of the identical complaints.

49. When a complaint has been communicated to the government concerned (see paras. 53 to 65 below) and the latter has presented its observations thereon, and when the statements contained in the complaint and the government's observations merely cancel one another out but do not contain any valid evidence, thereby making it impossible for the Committee to reach an informed opinion, the Committee is authorised to seek further information in writing from the complainant in regard to questions concerning the terms of the complaint requiring further elucidation. In such cases, it has been understood that, on the one hand, the government concerned, as defendant, would have an opportunity to reply in its turn to any additional comments the complainants may make, and, on the other hand, that this method would not be followed automatically in all cases but only in cases where it appears that such a request to the complainants would be helpful in establishing the facts.

50. Subject to the two conditions mentioned in the preceding paragraph, the Committee may, moreover, inform the complainants, in appropriate cases, of the substance of the government's observations and invite them to submit their comments thereon within a given period of time. In addition, the Director-General may ascertain whether, in the light of the observations sent by the government concerned, further information or comments from the complainants are necessary on matters relating to the complaint and, if so, may write directly to the complainants, in the name of the Committee and without waiting for its next session, requesting the desired information or the comments on the government's observations by a given date, the government's right to reply being respected as is pointed out in the preceding paragraph.

51. In order to keep the complainant regularly informed of the principal stages in the procedure, the complainant is notified, after each session of the Committee, that the complaint has been put before the Committee and, if the Committee has not reached a conclusion appearing in its report, that - as appropriate - examination of the case has been adjourned in the absence of a reply from the government, or the Committee has asked the government for certain additional information.

52. 12th Report, Case No. 66, para. 157; 34th Report, Case No. 130, para. 24; 120th Report, Case No. 597, para. 63; 121st Report, Case No. 618, para. 11; 127th Report, Case No. 644, para. 254; 130th Report, Case No. 674, para. 33; 137th Report, Case No. 724, para. 48; 157th Report, Case No. 804, para. 58; 177th Report, Case No. 816, paras. 37-39; 197th Report, Case No. 936, paras. 99-101; 202nd Report, Case No. 908, paras. 34-35; 204th Report, Case No. 795, para. 25; 217th Report, Case No. 1080, para. 78.

53. 218th Report, Cases Nos. 1126, 1136 and 1137, para. 212; Case No. 1043, para. 499.

54. See for example 234th Report, Case No. 1265, para. 16.

Withdrawal of complaints

52. When the Committee has been confronted with a request submitted to it for the withdrawal of a complaint, it has always considered that the desire expressed by an organisation which has submitted a complaint to withdraw this complaint constitutes an element of which full account should be taken, but it is not sufficient in itself for the Committee to automatically cease to proceed further with the case. In such cases, the Committee has decided that it alone is competent to evaluate in full freedom the reasons put forward to explain the withdrawal of a complaint and to endeavour to establish whether these appear to be sufficiently plausible so that it may be concluded that the withdrawal is being made in full independence. In this connection, the Committee has noted that there might be cases in which the withdrawal of a complaint by the organisation presenting it was the result not of the fact that the complaint had become without purpose but of pressure exercised by the government against the complainants, the latter being threatened with an aggravation of the situation if they did not consent to this withdrawal.

Rules for relations with the governments concerned

53. By membership of the International Labour Organisation, each member State is bound to respect a certain number of principles, including the principles of freedom of association which have become customary rules above the Conventions.¹ As the Committee on Freedom of Association indicated in its First Report, paragraph 32, in connection with trade union rights, "the function of the International Labour Organisation in regard to trade union rights is to contribute to the effectiveness of the general principle of freedom of association as one of the primary safeguards of peace and social justice". The Committee further indicated that, in fulfilling its responsibility in the matter, it must not hesitate to discuss in an international form cases which are of such a character as to affect substantially the attainment of the aims and purposes of the ILO as set forth in the Constitution of the Organisation, the Declaration of Philadelphia and the various Conventions concerning freedom of association.

54. If the original complaint or any further information received in response to the acknowledgement of the complaint is sufficiently substantiated, the complaint and any such further information are communicated by the Director-General to the government concerned as quickly as possible; at the same time the government is

¹ Report of the Fact-Finding and Conciliation Commission on Freedom of Association on the trade union situation in Chile, 1975, para. 466.

59. 1st Report, Case No. 4, para. 47; 199th Report, Case No. 899, para. 73; 208th Report, Case No. 957, para. 284; 217th Report, Case No. 940, para. 112; Case No. 963, para. 535; Case

requested to forward to the Director-General, before a given date, fixed in advance with due regard to the date of the next meeting of the Committee, any observations which it may care to make. When communicating allegations to governments, the Director-General draws their attention to the importance which the Governing Body attaches to receiving the governments' replies within the specified period, in order that the Committee may be in a position to examine cases as soon as possible after the occurrence of the events to which the allegations relate. If the Director-General has any difficulty in deciding whether a particular complaint can be regarded as sufficiently substantiated to justify him in communicating it to the government concerned for its observations, it is open to him to consult the Committee before taking a decision on the matter (see para. 46 above).

55. A distinction is drawn between urgent and less urgent cases. Matters involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, and cases arising out of a continuing state of emergency and cases involving the dissolution of an organisation are treated as cases of urgency. Priority of treatment is also given to cases on which a report has already been submitted to the Governing Body.

56. In the past, the committee's report on urgent cases was immediately submitted to the Governing Body and the reports on less urgent cases were held over until the following session of the Governing Body. Since 1977 all cases examined - whether in the "urgent" or "non-urgent" category - are included in the Committee's report which is immediately submitted to the Governing Body. This procedure was adopted because the majority of cases were of an urgent nature and, in the Committee's opinion, the examination of the small number of non-urgent cases which used to be postponed would not impede the Governing Body in immediately examining the urgent cases before it.

57. In all cases, if the first reply from the government in question is of too general a character, the Committee requests the Director-General to obtain all necessary additional information from the government, on as many occasions as it judges appropriate.

58. The Director-General is further empowered to ascertain - without, however, making any appreciation of the substance of a case - whether the observations of governments, the subject-matter of a complaint or governments' replies to requests for further information are sufficient to permit the Committee to examine the complaint and, if not, to write directly to the government concerned, in the name of the Committee and without waiting for its next session, to inform it that it would be desirable if it were to furnish more precise information on the points raised by the Committee or the complainant.

59. The purpose of the whole procedure set up in the ILO for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. If the

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No. 1066, para. 592; 218th Report, Case No. 1088, para. 137; Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 377; 225th Report, Case No. 1097, para. 51; 233rd Report, Case No. 1066, para. 378; Case No. 1212, para. 538; 234th Report, Introduction, para. 26.

procedure protects governments against unreasonable accusations, governments on their side should recognise the importance for their own reputation of formulating, so as to allow objective examination, detailed replies to the allegations brought against them. The Committee wishes to stress that, in all the cases presented to it since it was first set up, it has always considered that the replies from governments against whom complaints are made should not be limited to general observations (see First Report of the Committee, para. 31).

60. In cases where governments delay in forwarding their observations on the complaints communicated to them, or the further information requested of them, the Committee mentions these governments in a special introductory paragraph to its reports after the lapse of a reasonable time, which varies according to the nature of the case and the degree of urgency of the questions involved. This paragraph contains an urgent appeal to the governments concerned and, as soon as possible afterwards, special communications are sent to these governments by the Director-General on behalf of the Committee.

61. Once the procedure established in the preceding paragraphs has been exhausted, cases in respect of which governments continue in their failure to supply, within a reasonable time, the information or observations requested of them, are mentioned in a special paragraph of the introduction to the report established by the Committee at its session in May. The governments concerned are then immediately informed that the chairman of the Committee will, on behalf of the Committee, make contact with their representatives attending the session of the International Labour Conference, during the latter part of the Conference, in order to draw their attention to the particular cases involved and to discuss with them the reasons for the delay in transmitting the observations requested by the Committee. The chairman then reports to the Committee on the results of such contacts.

62. At a subsequent stage, if certain governments still fail to reply, they are warned, in a special introductory paragraph to the Committee's reports - and by an express communication from the Director-General - that at its following session the Committee may submit a report on the substance of the matter, even if the information awaited from the governments in question has still not been received.

63. In appropriate cases, where replies are not forthcoming, ILO external offices may approach governments in order to elicit the information requested of them, either during the examination of the case or in connection with the action to be taken on the Committee's recommendations, approved by the Governing Body. With this end in view the ILO external offices are sent detailed information with regard to complaints concerning their particular area and are requested to approach governments which delay in transmitting their replies, in order to draw their attention to the importance of supplying the observations or information requested of them.

64. In cases where the governments implicated are obviously unwilling to co-operate, the Committee may recommend, as an exceptional measure, that wider publicity be given to the allegations, to the recommendations of the Governing Body and to the negative attitude of the governments concerned.

65. At various stages in the procedure, recourse may be had to the "direct contact" method whereby an ILO representative is sent to the country concerned with a view to seeking a solution to the difficulties encountered, either during the examination of the case or at the stage of the action to be taken on the recommendations of the Governing Body. Such contacts, however, can only be established at the invitation of the governments concerned or at least with their consent. In addition, upon the receipt of a complaint containing allegations of a particularly serious nature, and after having received the prior approval of the chairman of the Committee, the Director-General may appoint a representative whose mandate would be to carry out preliminary contacts for the following purposes, viz: to transmit to the competent authorities in the country the concern to which the events described in the complaint have given rise; to explain to these authorities the principles of freedom of association involved; to obtain from the authorities their initial reaction, as well as any comments and information with regard to the matters raised in the complaint; to explain to the authorities the special procedure in cases of alleged infringements of trade union rights, and in particular, the direct contacts method which may subsequently be requested by the government in order to facilitate a full appraisal of the situation by the Committee and the Governing Body; to request and encourage the authorities to communicate as soon as possible a detailed reply containing the observations of the government on the complaint. The report of the representative of the Director-General is submitted to the Committee at its next meeting for consideration together with all the other information made available. The ILO representative can be an ILO official or an independent person appointed by the Director-General. It goes without saying, however, that the mission of the ILO representative is above all to ascertain the facts and to seek possible solutions on the spot. The Committee and the Governing Body remain fully competent to appraise the situation at the outcome of these direct contacts.

Hearing of the parties

66. The Committee will decide, in the appropriate instances and taking into account all the circumstances of the case, whether it should hear the parties, or one of them, during its sessions so as to obtain more complete information on the matter. It may do this especially (a) in appropriate cases where the complainants and the governments have submitted contradictory statements on the substance of the matters at issue, and where the Committee might consider it useful for the representatives of the parties to furnish orally more detailed information as requested by the Committee; (b) in cases in which the Committee might consider it useful to have an exchange of

67. 25th Report, Case No. 138, para. 46; 160th Report, Case No. 833, para. 298; 218th Report, Case No. 1113, para. 716.

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views with the governments in question, on the one hand, and with the complainants, on the other, on certain important matters in order to appreciate more fully the factual situation and the eventual developments in the situation which might lead to a solution of the problems involved, and to seek to conciliate on the basis of the principles of freedom of association; (c) in other cases where particular difficulties have arisen in the examination of the questions involved or in the implementation of its recommendations, and where the Committee might consider it appropriate to discuss the matters with the representative of the government concerned.

Prescription

67. The Committee considers that, while no formal rules fixing any particular period of prescription are embodied in the procedure for the examination of complaints, it may be difficult - if not impossible - for a government to reply in detail to allegations regarding matters which occurred a long time ago.

68. 6th Report, Case No. 2, para. 1012; 7th Report, Case No. 56, para. 68; 160th Report, Case No. 844, para. 461; 207th Report, Cases Nos. 997 and 999, para. 303; 208th Report, Case No. 957, para. 287, Case No. 1029, para. 429; 211th Report, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 430; 213th Report, Cases Nos. 954, 957, 975, 978 and 1026, para. 55; 215th Report, Cases Nos. 954, 957, 975, 978 and 1026, para. 12; 230th Report, Case No. 1195, para. 697; 233rd Report, Case No. 1239, para. 212, Case No. 1110, para. 460, Case No. 1233, para. 682; 234th Report, Case No. 1155, para. 270, Case No. 1252, para. 282, Case No. 1268, para. 381, Case No. 953, para. 391, Case No. 1168, para. 415, Case No. 1216, para. 583; 236th Report, Case No. 1110, para. 399, Cases Nos. 1176, 1195 and 1215, para. 424, Case No. 1269, para. 537.

69. 230th Report, Case No. 1160, para. 543.

70. 234th Report, Case No. 1237, para. 213.

71. 56th Report, Case No. 235, para. 202; 62nd Report, Case No. 192, para. 71; 123rd Report, Case No. 666, para. 248; 129th Report, Case No. 385, para. 71.

72. 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 69; 211th Report, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 430.

73. 12th Report, Case No. 65, para. 128; 36th Report, Case No. 190, para. 211.

CHAPTER II

TRADE UNION RIGHTS AND CIVIL LIBERTIES

General principles

68. A genuinely free and independent trade union movement can only develop where fundamental human rights are fully respected and guaranteed.

69. In the view of the Committee, a system of democracy is fundamental for the free exercise of trade union rights.

70. Trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists; it is for governments to ensure that this principle is respected.

71. 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 and the International Covenant on Civil and Political Rights, considering that their infringement can adversely affect the free exercise of trade union rights.

72. As stated in the resolution concerning trade union rights and their relation to civil liberties adopted by the International Labour Conference in 1970, the absence of civil liberties removes all meaning from the concept of trade union rights, and the rights conferred upon workers' and employers' organisations must be based on respect for those civil liberties.

73. 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, the Committee has nevertheless expressed the opinion that a free trade union movement can develop only under a regime 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

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74. 134th Report, Case No. 714, para. 47; 204th Report, Case No. 962, para. 257; 234th Report, Case No. 1192, para. 541.

75. 197th Report, Case No. 924, para. 493; 205th Report, Case No. 983, para. 33.

76. 160th Report, Case No. 844, para. 464; 176th Report, Case No. 823, para. 64; 194th Report, Case No. 895, para. 132; 199th Report, Cases Nos. 901 and 914, para. 95; 202nd Report, Case No. 924, para. 152; 204th Report, Case No. 985, para. 306; 217th Report, Case No. 1117, para. 493; 236th Report, Case No. 1243, para. 85, Cases Nos. 1157 and 1192, para. 299.

77. 233rd Report, Case No. 1200, para. 67.

78. 2nd Report, Case No. 31, para. 80; 4th Report, Case No. 26, para. 124; 15th Report, Case No. 110, para. 236; 28th Report, Cases Nos. 141, 153 and 154, para. 213; 122nd Report, Case No. 632, para. 140; 157th Report, Case No. 807, para. 68; 160th Report, Case No. 789, para. 217, Case No. 844, para. 462; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 119; 177th Report, Case No. 889, para. 329; 181st Report, Case No. 833, para. 55; 187th Report, Case No. 889, para. 506; 194th Report, Cases Nos. 901 and 914, para. 278, Case No. 919, para. 349, Case No. 924, para. 370; 197th Report, Case No. 916, para. 532; 199th Report, Case No. 943, para. 170; 202nd Report, Case No. 916, para. 65; 204th Report, Case No. 962, para. 260, Case No. 971, para. 300, Case No. 953, para. 346; 207th Report, Case No. 980, para. 141, Cases Nos. 997 and 999, para. 304; 208th Report, Case No. 967, para. 172, Case No. 1007, para. 387; 211th Report, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 433; 213th Report, Cases Nos. 954, 957, 975, 978 and 1026, para. 56; 214th Report, Case No. 983, para. 479, Case No. 1069, para. 536, Case No. 1054, para. 672; 218th Report, Case No. 1100, para. 685; 222nd Report, Case No. 1155, para. 273; 230th Report, Case No. 1191, para. 445, Case No. 1160, para. 545, Case No. 1212,

and the right of detained trade unionists to enjoy the guarantees of normal judicial procedure at the earliest possible moment.

74. The International Labour Conference has pointed out that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media constitute civil liberties which are essential for the normal exercise of trade union rights. (Resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session, 1970.)

1. Right to security of the person

Physical assaults against persons

75. A genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty.

76. A climate of violence such as that surrounding the murder or disappearance of trade union leaders constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities.

77. Although the holder of trade union office does not, by virtue of his position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities.

78. The Committee has stressed that, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry by the government concerned is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions.

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para. 650; 233rd Report, Case No. 1054, para. 332, Case No. 1233, para. 683; 234th Report, Case No. 1252, para. 281, Case No. 1216, para. 581; 236th Report, Cases Nos. 1277 and 1288, para. 681.

79. 22nd Report, Case No. 148, paras. 102 and 103; 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; 135th Report, Case No. 637, para. 175; 147th Report, Case No. 756, para. 162; 158th Report, Case No. 815, para. 170; 160th Report, Case No. 838, para. 323; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 119; 177th Report, Case No. 884, para. 302; 202nd Report, Case No. 916, para. 65; 204th Report, Case No. 962, para. 260, Case No. 953, para. 345; 208th Report, Case No. 967, para. 170.

80. 139th Report, Case No. 721, para. 510; 204th Report, Case No. 985, para. 306, Case No. 861, para. 317; 207th Report, Case No. 861, para. 33.

81. 131st Report, Case No. 677, para. 165; 147th Report, Case No. 766, para. 363.

82. 30th Report, Case No. 142, para. 148; 62nd Report, Case No. 192, para. 71; 127th Report, Case No. 660, para. 298; 137th Report, Case No. 706, para. 40; 202nd Report, Case No. 854, para. 82.

83. 160th Report, Case No. 849, para. 480; 168th Report, Cases Nos. 825 and 849, para. 146; 170th Report, Case No. 763, para. 22; 172nd Report, Case No. 824, para. 57; 190th Report, Case No. 899, para. 359; 202nd Report, Case No. 854, para. 83; 218th Report, Case No. 1111, para. 698.

84. 153rd Report, Cases Nos. 763 and 801, para. 212; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 121; 164th Report, Case No. 848, para. 85; 168th Report, Case No. 848, para. 168; 172nd Report, Case No. 824, para. 57; 194th Report, Case No. 919, para. 355; 198th Report, Case No. 899, para. 359; 208th Report, Case No. 1025, para. 417; 234th Report, Case No. 1192, para. 540.

85. 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 121; 164th Report, Case No. 848, para. 85; 234th Report, Case No. 1192, para. 540; 236th Report, Case No. 963, para. 78.

86. 211th Report, Cases Nos. 997, 999 and 1029, para. 486.

79. 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 or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities.

80. Situations involving murder and other acts of violence, where trade unionists are involved, are sufficiently serious to warrant severe measures being taken by the authorities to restore a normal situation.

81. The Committee has requested the governments concerned to supply the text of sentences, together with the grounds therefor, following the execution of trade unionists.

82. As regards allegations relating to the ill-treatment or any other punitive measures said to have been taken against workers who took part in strikes, the Committee has 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 and in the International Covenant on Civil and Political Rights.

83. The Committee has considered that detained trade unionists, like all other persons, should enjoy the guarantees enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

84. The Committee has considered that the governments should give precise instructions and apply effective sanctions where cases of ill-treatment are found so as to ensure that no detainee is subjected to such treatment.

85. Governments should carry out inquiries into complaints alleging ill-treatment of detainees so that appropriate measures, including compensation for damages suffered, may be taken.

86. The Committee has emphasised the importance that should be attached to the principle laid down in the Universal Declaration of

Freedom of Association

87. 218th Report, Case No. 1129, para. 477; 230th Report, Case No. 1166, para. 112; 233rd Report, Case No. 1007, para. 233, Case No. 1169, para. 292.

88. 214th Report, Case No. 1097, para. 747; 230th Report, Case No. 1191, para. 444, Case No. 1200, para. 610, Case No. 1212, para. 644; 233rd Report, Case No. 1211, para. 589; 234th Report, Case No. 1040, para. 479, Case No. 1236, para. 620; 236th Report, Case No. 1204, para. 441, Case No. 1258, para. 521.

89. 211th Report, Case No. 1031, para. 548; 217th Report, Case No. 1031, para. 120.

90. 233rd Report, Case No. 1211, para. 589.

91. 214th Report, Case No. 1093, para. 388; 217th Report, Case No. 823, para. 509; 236th Report, Case No. 1066, para. 121.

92. 211th Report, Case No. 1046, para. 323; 236th Report, Case No. 1066, para. 121.

93. 207th Report, Case No. 905, para. 129.

94. 147th Report, Case No. 751, para. 302; 190th Report, Case No. 858, para. 94; 202nd Report, Case No. 854, para. 82; 233rd Report, Case No. 1211, para. 589.

95. 70th Report, Case No. 325, para. 20; 187th Report, Case No. 892, para. 289; 236th Report, Cases Nos. 1157 and 1192, para. 298, Case No. 1266, para. 570.

Human Rights and in the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

Arrest and detention of trade unionists

- General principles

87. The detention of trade union leaders for activities connected with the exercise of their trade union rights is contrary to the principles of freedom of association.

88. The arrest - even if only briefly - of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association.

89. The arrest of trade union leaders against whom no criminal charges are laid involves restrictions on the exercise of trade union rights.

90. While persons engaged in trade union activities, or holding trade union office, cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists.

91. The Committee has stressed that the detention and sentencing of workers' representatives in connection with activities related to the protection of the workers' interests endanger the free exercise of trade union rights.

92. The arrest of trade unionists may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities.

93. All the necessary safeguards should be provided to prevent measures of internment from being taken as sanctions or as means of pressure against persons who wish to establish a new organisation independent of the existing trade union structure.

94. The arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards.

95. Because of the fact that 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 governments to bring detainees to trial in all cases,

96. 111th Report, Case No. 564, para. 46; 161st Report, Case No. 823, para. 63; 165th Report, Case No. 842, para. 134; 168th Report, Case No. 842, para. 208; 172nd Report, Case No. 824, para. 57; 177th Report, Case No. 889, para. 330; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 74; 187th Report, Case No. 840, para. 34, Case No. 861, para. 464, Case No. 889, para. 510; 190th Report, Case No. 899, para. 359; 197th Report, Case No. 933, para. 308; 200th Report, Case No. 763, para. 29; 201st Report, Case No. 842, para. 18; 234th Report, Case No. 1187, para. 497.

97. 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; 121st Report, Case No. 603, para. 71; 129th Report, Case No. 681, para. 57; 131st Report, Cases Nos. 606 and 663, para. 103; 142nd Report, Case No. 770, para. 66; 144th Report, Case No. 723, para. 58; 147th Report, Case No. 777, para. 214, Case No. 753, para. 345; 153rd Report, Case No. 695, para. 96, Case No. 721, para. 117; 157th Report, Cases Nos. 763, 786 and 801, para. 158, Case No. 823, para. 200; 158th Report, Case No. 820, para. 42; 160th Report, Case No. 827, para. 274, Case No. 842, para. 438, Case No. 849, para. 480; 161st Report, Case No. 823, para. 62; 164th Report, Case No. 848, para. 84; 166th Report, Cases Nos. 685, 781, 806 and 814, para. 47; 168th Report, Cases Nos. 825 and 849, para. 142, Case No. 861, para. 230; 172nd Report, Case No. 854, para. 285, Case No. 868, para. 303; 175th Report, Case No. 842, para. 24; 177th Report, Case No. 839, para. 71; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 74; 190th Report, Cases Nos. 871 and 907, para. 241; 194th Report, Case No. 896, para. 235; 197th Report, Case No. 894, para. 47; 202nd Report, Case No. 871, para. 92; 204th Report, Case No. 983, para. 36; 207th Report, Case No. 963, para. 229; 211th Report, Case No. 1025, para. 272, Case No. 1046, para. 323, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 434, Case No. 1031, para. 548; 213th Report, Cases Nos. 954, 957, 975, 978 and 1026, para. 58; 217th Report, Case No. 1031, para. 120; 234th Report, Case No. 1135, para. 237; 236th Report, Case No. 1259, para. 68, Cases Nos. 1277 and 1288, para. 682.

98. 108th Report, Case No. 554, para. 321; 149th Report, Case No. 709, para. 100; 160th Report, Case No. 842, para. 439; 181st Report, Case No. 899, para. 244; 202nd Report, Case No. 928, para. 189; 214th Report, Case No. 1054, para. 674.

irrespective of the reasons put forward by governments for prolonging the detention.

96. 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 exercise of trade union rights.

97. The arrest by the 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 which arrest for trade union activities implies.

98. Anyone who is arrested should be informed, at the time of his arrest, of the reasons for his arrest and should be promptly notified of any charges brought against him.

99. 38th Report, Case No. 156, para. 20; 189th Report, Case No. 842, para. 45; 201st Report, Case No. 842, para. 18.

100. 4th Report, Case No. 5, para. 45; 6th 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; 127th Report, Case No. 664, para. 91; 194th Report, Case No. 887, para. 87; 204th Report, Case No. 955, para. 54; 207th Report, Case No. 963, para. 229; 208th Report, Case No. 1025, para. 417; 214th Report, Case No. 1067, para. 210, Case No. 1093, para. 388, Case No. 1065, para. 417; 217th Report, Cases Nos. 1112 and 1128, para. 633; 218th Report, Cases Nos. 1098 and 1132, para. 646; 222nd Report, Case No. 1135, para. 263.

101. 27th Report, Case No. 143, para. 183; 208th Report, Case No. 1029, para. 426; 217th Report, Case No. 1065, para. 557, Case No. 1076, para. 620.

102. (1) 214th Report, Case No. 1032, para. 161, Case No. 1049, para. 638;

(2) 208th Report, Case No. 919, para. 260; 216th Report, Case No. 1084, para. 38; 217th Report, Cases Nos. 1112 and 1128, para. 634.

103. 218th Report, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 385; 223rd Report, Case No. 842, para. 31; 234th Report, Case No. 1168, para. 416.

104. 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; 87th Report, Case No. 453, para. 292; 91st Report, Case No. 472, para. 9; 108th Report, Case No. 554, para. 320; 124th Report, Case No. 569, para. 32; 129th Report, Case No. 681, para. 57;

99. The detention of trade unionists after their acquittal by the competent court, or after they have served their sentences, 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.

- Preventive detention

100. 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.

101. The preventive detention of trade unionists on the ground that breaches of the law may take place in the course of a strike involves a serious danger of infringement of trade union rights.

102. Preventive detention should be accompanied by safeguards and limitations

- (1) to ensure, in particular, that it is not extended beyond the time absolutely necessary and that it is not accompanied by measures of intimidation,
- (2) to prevent it being used for purposes other than those for which it is designed and, in particular, to exclude ill-treatment.

103. Preventive detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry.

104. In all cases in which trade union leaders are preventively detained, this can 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.

131st Report, Case No. 677, para. 166; 135th Report, Case No. 667, para. 185, Case No. 718, para. 219; 147th Report, Case No. 773, para. 115; 149th Report, Case No. 709, para. 100; 155th Report, Case No. 815, para. 20; 157th Report, Case No. 815, para. 166; 197th Report, Case No. 933, para. 308; 202nd Report, Case No. 928, para. 189; 204th Report, Case No. 955, para. 54, Cases Nos. 929 and 938, para. 229; 214th Report, Case No. 1065, para. 417, Cases Nos. 988 and 1003, para. 508; 217th Report, Case No. 1065, para. 556; 230th Report, Case No. 1186, para. 589; 234th Report, Case No. 1169, para. 440.

105. 158th Report, Case No. 774, para. 268; 174th Report, Case No. 763, para. 29; 177th Report, Case No. 823, para. 202; 187th Report, Case No. 854, para. 444; 197th Report, Case No. 909, para. 555; 205th Report, Case No. 983, para. 36; 237th Report, Cases Nos. 997, 999 and 1029, para. 28.

106. 27th Report, Case No. 136, para. 399; 204th Report, Cases Nos. 929 and 938, para. 229; 218th Report, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 385.

107. 85th Report, Cases Nos. 300, 311 and 321, para. 110.

108. 4th Report, Case No. 5, para. 51; 6th 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; 116th Report, Case No. 571, para. 284; 131st Report, Case No. 672, para. 118; 137th Report, Case No. 706, para. 40; 139th Report, Case No. 763, para. 547; 142nd Report, Case No. 685, para. 103; 144th Report, Case No. 784, para. 155; 202nd Report, Case No. 823, para. 333; 211th Report, Cases Nos. 844,

105. Although the exercise of trade union activity or the holding of trade union office does not provide immunity as regards the application of ordinary criminal law, the continued detention of trade unionists without bringing them to trial may constitute a serious impediment to the exercise of trade union rights.

106. The prolonged detention of persons without bringing them to trial because of the difficulty of securing evidence under the normal procedure is a practice which involves an inherent danger of abuse; for this reason it is subject to criticism.

107. Legislation which permits the Minister in his discretion to hold trade union leaders in solitary confinement for a 90-day period, which can be renewed, without trial or without even being charged, is incompatible with the right to perform trade union activities or functions and the right to a fair trial at the earliest possible moment.

- Guarantees of due process of law

108. It should be the policy of every government to ensure observance of human rights and especially of the right of all detained or accused persons to receive a fair trial at the earliest possible moment.

873, 904, 953, 973, 987, 1000 and 1016, para. 434; 213th Report, Cases Nos. 954, 957, 975, 978 and 1026, para. 58; 236th Report, Case No. 963, para. 78.

109. 131st Report, Case No. 571, para. 92, Cases Nos. 606 and 663, para. 103; 160th Report, Case No. 842, para. 439; 161st Report, Case No. 823, para. 63; 165th Report, Case No. 842, para. 134; 172nd Report, Case No. 885, para. 387; 177th Report, Case No. 889, para. 330; 187th Report, Case No. 840, para. 34, Case No. 861, para. 464; 194th Report, Case No. 919, para. 354; 200th Report, Case No. 763, para. 29; 201st Report, Case No. 842, para. 18; 203rd Report, Case No. 842, para. 13; 208th Report, Case No. 1029, para. 427; 211th Report, Cases Nos. 844, 904, 953, 973, 1000 and 1016, para. 434.

110. 181st Report, Case No. 899, para. 244; 211th Report, Cases Nos. 997, 999 and 1029, para. 487; 214th Report, Cases Nos. 997, 999 and 1029, para. 565, Case No. 1054, para. 674; 217th Report, Case No. 963, para. 536.

111. 177th Report, Case No. 823, para. 202; 205th Report, Case No. 983, para. 36.

112. 83rd Report, Cases Nos. 283, 329 and 425, para. 140; 137th Report, Case No. 706, para. 40; 139th Report, Case No. 763, para. 547.

113. 24th Report, Case No. 125, para. 216, Case No. 131, para. 185; 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. 168, para. 153, 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,

109. The Committee has stressed the importance which should be attached to the principle that all arrested persons should be subject to normal judicial procedure in accordance with the principles enshrined in the Universal Declaration of Human Rights, and in accordance with the principle that it is a fundamental right 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, the American Declaration of the Rights and Duties of Man, and the American Convention of Human Rights.

110. Detained trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular, the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority.

111. The absence of guarantees of due process of law may lead to abuses and result in trade union officials being penalised by decisions that are groundless. It may also create a climate of insecurity and fear which may affect the exercise of trade union rights.

112. The safeguards of normal judicial procedure should not only be embodied in the law, but also applied in practice.

113. 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.

Case No. 608, para. 233; 124th Report, Case No. 569, para. 32, Cases Nos. 451, 456 and 526, para. 68; 126th Report, Case No. 638, para. 27; 127th Report, Case No. 591, para. 187, Case No. 660, para. 295; 131st Report, Case No. 683, para. 189; 133rd Report, Case No. 699, para. 190; 137th Report, Case No. 706, para. 40; 139th Report, Case No. 683, para. 89, Case No. 704, para. 383, Case No. 749, para. 477, Case No. 721, para. 508, Case No. 751, para. 529, Case No. 763, para. 547, Case No. 765, para. 568; 142nd Report, Case No. 770, para. 66, Case No. 678, para. 187; 144th Report, Case No. 784, para. 155; 147th Report, Cases Nos. 698 and 749, para. 85, Case No. 766, para. 361, Case No. 774, para. 372; 155th Report, Case No. 815, para. 20; 158th Report, Case No. 824, para. 296; 162nd Report, Cases Nos. 685, 781, 805, 814, para. 39; 163rd Report, Case No. 763, para. 54; 165th Report, Case No. 837, para. 108, Case No. 839, para. 115; 168th Report, Cases Nos. 825 and 849, para. 142, Case No. 861, para. 230; 172nd Report, Cases Nos. 821, 859 and 875, para. 219, Case No. 858, para. 293; 177th Report, Case No. 840, para. 231; 187th Report, Case No. 892, para. 289; 190th Report, Case No. 896, para. 298; 208th Report, Case No. 940, para. 271, Cases Nos. 997 and 999, para. 318, Case No. 1029, para. 427; 211th Report, Case No. 1043, para. 585; 214th Report, Case No. 1049, para. 638, Case No. 1054, para. 674; 217th Report, Case No. 940, para. 113, Case No. 963, para. 536; 220th Report, Cases Nos. 997, 999 and 1029, para. 89; 222nd Report, Case No. 1157, para. 284; 230th Report, Case No. 1214, para. 349, Case No. 1160, para. 543; 234th Report, Case No. 1192, para. 539.

114. 166th Report, Cases Nos. 685, 781, 806 and 814, para. 26; 168th Report, Cases Nos. 825 and 849, para. 142; 172nd Report, Case No. 868, para. 303.

115. 6th 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, Case No. 68, paras. 167-169; 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. 291, para. 160, Case No. 364, para. 342; 78th Report, Case No. 383, para. 253, Cases Nos. 397 and 400, para. 303; 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;

114. If a government has sufficient grounds for believing that the persons arrested have been involved in subversive activity, these persons should be rapidly tried by the courts with all the safeguards of a normal judicial procedure.

115. 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.

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; 114th Report, Cases Nos. 574, 588 and 593, para. 223; 127th Report, Case No. 632, para. 223; 129th Report, Case No. 666, para. 246, Case No. 685, para. 295; 131st Report, Case No. 677, para. 163; 137th Report, Case No. 704, para. 119, Case No. 730, para. 137; 139th Report, Case No. 698, para. 465; 142nd Report, Cases Nos. 606 and 663, para. 73; 144th Report, Case No. 784, para. 156; 147th Report, Case No. 766, para. 361; 158th Report, Case No. 774, para. 267; 168th Report, Case No. 861, para. 231; 202nd Report, Case No. 854, para. 82, Case No. 823, para. 332, Case No. 930, para. 370; 218th Report, Case No. 1113, para. 717.

116. 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. 169, 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. 455, para. 338, Case No. 560, para. 357; 112th Report, Case No. 569, para. 189; 124th Report, Cases Nos. 451, 456 and 526, para. 69; 127th Report, Case No. 591, para. 188, Case No. 632, para. 224, Case No. 660, para. 306; 129th Report, Case No. 666, para. 265; 131st Report, Case No. 652, para. 155; 135th Report, Case No. 678, para. 194, Case No. 718, para. 217; 137th Report, Cases Nos. 679, 684 and 704, para. 121; 139th Report, Case No. 704, para. 384, Case No. 736, para. 410, Case No. 750, para. 421, Case No. 749, para. 481, Case No. 701, para. 489, Case No. 751, para. 531; 144th Report, Case No. 760, para. 135, Case No. 762, para. 143; 147th Report, Case No. 679, para. 239, Case No. 697, para. 246, Case No. 750, para. 285, Case No. 766, para. 363; 149th Report, Cases Nos. 678 and 803, para. 88, Case No. 810, para. 146; 153rd Report, Case No. 769, para. 282; 158th Report, Case No. 824, para. 296; 165th Report, Case No. 839, para. 117; 168th Report, Case No. 861, para. 232, Case No. 871, para. 243; 172nd Report, Case No. 873, para. 351; 181st Report, Case No. 899, para. 247; 194th Report, Cases Nos. 901 and 914, para. 276, Case No. 919, para. 352; 195th Report, Case No. 763, para. 29; 214th Report, Cases Nos. 988 and 1003, para. 508, Case No. 1041, para. 616; 226th Report, Case No. 1016, para. 109, Case No. 1150, para. 121, Case No. 1168, para. 130; 233rd Report, Case No. 1007, para. 232, Case No. 1110, para. 458; 234th Report, Case No. 1041, para. 201, Case No. 1237, para. 212, Case No. 1146, para. 252.

117. 74th Report, Case No. 298, para. 51.

116. In a number of cases the Committee has asked the governments concerned to communicate the texts of any judgements that have been delivered together with the grounds adduced therefor.

117. The Committee has emphasised that when it requests a government to furnish judgements in judicial proceedings, such a

118. 28th Report, Case No. 147, para. 237; 44th Report, Case No. 200, para. 162; 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; 83rd Report, Case No. 303, para. 230; 85th Report, Cases Nos. 282 and 401, para. 317, Case No. 422, para. 535; 87th Report, Case No. 385, para. 223; 101st Report, Case No. 419, para. 196; 110th Report, Case No. 537, para. 155; 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; 127th Report, Case No. 591, para. 187, Case No. 660, para. 235; 129th Report, Case No. 666, para. 246; 133rd Report, Case No. 629, para. 212; 139th Report, Case No. 749, para. 477, Case No. 721, para. 508, Case No. 751, para. 529, Case No. 763, para. 548; 147th Report, Cases Nos. 698 and 749, para. 85; 160th Report, Case No. 766, para. 55; 165th Report, Case No. 837, para. 108, Case No. 839, para. 115; 172nd Report, Case No. 830, para. 247; 177th Report, Case No. 839, para. 69; 181st Report, Case No. 899, para. 247.

119. 2nd Report, Case No. 31, para. 79; 3rd Report, Case No. 6, para. 36; 6th 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; 131st Report, Cases Nos. 606 and 663, para. 103, Case No. 672, para. 118; 133rd Report, Case No. 685, para. 322; 139th Report, Case No. 763, para. 548; 144th Report, Case No. 751, para. 119; 147th Report, Case No. 774, para. 372; 155th Report, Case

request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known.

*118. The Committee has pointed out that, where persons have been sentenced on grounds that have no relation to trade union rights, the matter falls outside its competence. It has, however, emphasised that whether a matter is one that relates to the criminal law or to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned. This is a question to be determined by the Committee after examining all the available information and, in particular, the text of the judgement.

*119. If in certain cases the Committee has reached the conclusion that allegations relating to measures taken against trade unionists did not warrant 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 that were either prejudicial to public order or political in nature.

No. 815, para. 21; 160th Report, Case No. 849, para. 481; 177th Report, Case No. 840, para. 230; 191st Report, Case No. 763, para. 33.

120. 93rd Report, Case No. 486, paras. 325-326; 95th Report, Cases Nos. 470 and 481, para. 33; 98th Report, Case No. 358, para. 60, Case No. 453, para. 76; 127th Report, Case No. 591, para. 187, Case No. 660, para. 295; 129th Report, Case No. 666, para. 246; 139th Report, Case No. 749, para. 477, Case No. 721, para. 508, Case No. 751, para. 529; 147th Report, Cases Nos. 698 and 749, para. 85; 158th Report, Case No. 774, para. 267; 165th Report, Case No. 839, para. 115; 168th Report, Case No. 774, para. 102; 177th Report, Case No. 839, para. 69.

121. 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; 127th Report, Case No. 632, para. 223; 129th Report, Case No. 666, para. 246; 139th Report, Case No. 698, para. 465, Case No. 763, para. 548; 147th Report, Case No. 773, para. 115.

122. 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; 131st Report, Case No. 672, para. 118, Case No. 677, para. 164; 133rd Report, Case No. 685, para. 322; 139th Report, Case No. 698, para. 465, Case No. 763, para. 548; 147th Report, Case No. 766, para. 362; 149th Report, Case No. 709, para. 101; 155th Report, Case No. 815, para. 21; 172nd Report, Case No. 769, para. 23; 177th Report, Case No. 840, para. 230; 191st Report, Case No. 763, para. 33; 208th Report, Cases Nos. 997 and 999, para. 358, Case No. 1029, para. 428; 214th Report, Case No. 1054, para. 676; 234th Report, Case No. 1246, para. 71; 237th Report, Cases Nos. 997, 999, 1029, para. 28.

123. 181st Report, Case No. 899, para. 244.

124. 129th Report, Case No. 666, para. 248.

125. 105th Report, Case No. 528, paras. 261 and 265.

126. 197th Report, Case No. 909, para. 555.

*120. When it appeared from the information available, that the persons concerned had been judged by the competent judicial authorities, with the safeguards of normal procedure, and sentenced on account of actions which were not connected with normal trade union activities or which went beyond the scope of such activities, the Committee has considered that the case called for no further examination.

121. In cases of allegations relating to the prosecution and sentencing of trade union leaders, the only question to be determined is the real reason for taking such measures. Only if these measures have been taken by reason of legitimate trade union activities can there be any infringement of freedom of association.

122. 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.

123. Any trade unionist who is arrested should be presumed innocent until he has been proved guilty after a public trial during which he has enjoyed all the guarantees necessary for his defence.

124. The Committee has recalled that the International Covenant on Civil and Political Rights, in article 14, states that everyone charged with a criminal offence shall have the right to adequate time and the necessary facilities for the preparation of his defence and to communicate with counsel of his own choosing.

*125. The Committee is not required to express an opinion on the question of the granting of permission for a foreign lawyer to plead.

126. Any sentences passed on trade unionists on the basis of the ordinary criminal law should not cause the authorities to adopt a negative attitude towards the organisation of which these persons and others are members.

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127. 24th Report, Case No. 142, para. 134; 28th Report, Case No. 147, para. 239.

128. 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; 126th Report, Case No. 638, para. 27; 127th Report, Case No. 680, para. 98; 129th Report, Case No. 669, para. 46; 147th Report, Cases Nos. 668 and 730, para. 73; 151st Report, Case No. 809, para. 199.

129. 4th Report, Case No. 30, para. 160; 234th Report, Case No. 1168, para. 416.

130. 25th Report, Case No. 140, para. 266; 114th Report, Cases Nos. 574, 588 and 593, para. 201; 116th Report, Cases Nos. 572, 581, 586, 596 and 610, para. 326; 157th Report, Case No. 809, para. 104.

131. 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.

132. 114th Report, Cases Nos. 574, 588 and 593, para. 186.

133. 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; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 39; 172nd Report, Case No. 870, para. 324.

Non-retroactive nature of the criminal law

127. Due process of law should include the non-retroactive application of the criminal law.

Detentions during a state of emergency

128. The Committee, while refraining from expressing an opinion on the political aspects of a state of emergency, has always emphasised that measures involving 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.

129. Where circumstances approximate to a situation of civil war importance is attached to all detained persons receiving a fair trial at the earliest possible moment.

130. Due process would not appear to be ensured if, under the national law, the effect of a state of siege is that a court cannot examine, and does not examine the merits of the case.

Special bodies and summary procedures

131. In all cases where trade unionists have been the subject of measures or decisions emanating from bodies of a special nature, the Committee has emphasised the importance which it attaches to the guarantees of a normal judicial procedure.

132. The Committee has considered that, when trade unionists have been sentenced under summary procedures, they have not enjoyed all the safeguards of a normal procedure. Accordingly, the Committee has suggested that it should be possible to review cases of trade unionists sentenced under such procedures so as to ensure that no one is deprived of his liberty without the benefit of a normal procedure before an impartial and independent judicial authority.

Freedom of movement

133. As regards the exile, banishment or the placing under house arrest of trade unionists, the Committee, while recognising that this procedure may be occasioned by a crisis in a country, has drawn attention to the appropriateness of this procedure being accompanied 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.

Freedom of Association

134. 165th Report, Case No. 823, para. 62; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 75; 187th Report, Case No. 870, para. 53; 214th Report, Case No. 983, para. 480; 217th Report, Case No. 1104, para. 316, Case No. 963, para. 537, Cases Nos. 1112 and 1128, para. 636.

135. 233rd Report, Cases Nos. 1183 and 1205, para. 510; 236th Report, Case No. 963, para. 78.

136. 25th Report, Case No. 140, para. 266; 78th Report, Case No. 360, para. 175; 157th Report, Case No. 809, para. 104, Case No. 823, para. 200; 205th Report, Case No. 983, para. 37.

137. 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, para. 189 and 190.

138. 205th Report, Case No. 983, para. 37; 217th Report, Case No. 1096, para. 298; 230th Report, Case No. 1191, para. 444, Case No. 1212, para. 643; 236th Report, Case No. 1280, para. 284.

139. 150th Report, Case No. 787, para. 54.

134. The exile of trade unionists, which is in violation of human rights, is particularly grave since it deprives the persons concerned of the possibility of working in their country and of maintaining contacts with their families. It is also a violation of freedom of association since it undermines the trade union organisations by depriving them of their leaders.

135. The expulsion of trade union leaders from their country for activities connected with the exercise of their functions is not only contrary to human rights but is, furthermore, an interference in the activities of the organisation to which they belong.

136. The granting of freedom to a trade unionist on condition that he leave the country is not compatible with the free exercise of trade union rights.

137. 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.

138. The imposition of sanctions, such as house arrest or banishment for trade union reasons constitutes a violation of the principles of freedom of association. The Committee has considered it unacceptable that sanctions of this nature should be imposed by administrative action.

Miscellaneous

139. In one case where it was alleged that the military police had sent out a questionnaire to undertakings in which it was asked whether there were any natural leaders among the employees, strike instigators, trade union delegates or workers' organisations in the undertaking, the Committee considered that such an inquiry could involve a risk of being put to improper use by the military authorities or the police in the event of a labour dispute. For example, workers might be taken into custody simply because they were on a list of persons thus established, even though they had not committed any offence. The Committee also considered that, because of the atmosphere of mistrust that it created, such a procedure was hardly favourable for the development of harmonious industrial relations.

140. 2nd Report, Case No. 21, para. 23; 7th 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; 126th Report, Case No. 638, para. 24; 127th Report, Case No. 660, para. 284; 139th Report, Case No. 698, para. 459; 160th Report, Case No. 849, para. 480; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 81; 190th Report, Case No. 858, para. 93; 217th Report, Case No. 1119, para. 334; 218th Report, Case No. 1088, para. 143.

141. 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; 125th Report, Case No. 654, para. 91; 127th Report, Case No. 439, para. 105, Cases Nos. 520 and 540, para. 125, Case No. 660, para. 284; 129th Report, Case No. 654, para. 168, Case No. 666, para. 253; 139th Report, Case No. 698, para. 459; 160th Report, Case No. 849, para. 480; 190th Report, Case No. 858, para. 93; 208th Report, Case No. 1011, para. 235; 211th Report, Case No. 1014, para. 512; 217th Report, Case No. 1119, para. 334; 218th Report, Case No. 1088, para. 143.

142. 7th Report, Case No. 56, para. 67; 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; 131st Report, Cases Nos. 626 and 659, para. 113; 143rd Report, Case No. 734, para. 59; 187th Report, Case No. 857, para. 261; 214th Report, Case No. 1060, para. 188; 218th Report, Cases Nos. 1098 and 1132, para. 645; 233rd Report, Cases Nos. 1126, 1136 and 1137, para. 109; 236th Report, Cases Nos. 1207 and 1209, para. 168.

143. 234th Report, Case No. 1221, para. 114.

2. Examples of trade union activity

A. Right of assembly

Trade union meetings and intervention
by the authorities

140. Freedom of assembly for trade union purposes constitutes a fundamental aspect of trade union rights.

141. Freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential aspect of trade union rights, and the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof on condition that the exercise of these rights does not disturb public order or cause a serious and imminent threat thereto.

142. The right of trade unions to hold meetings freely in their own premises for the discussion of trade union matters, without the need for previous authorisation and without interference by the public authorities, is a fundamental aspect of freedom of association.

143. Workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including the right of access to workplaces.

Freedom of Association

144. 1st Report, Case No. 8, para. 68.

145. 4th Report, Case No. 38, para. 180.

146. 12th Report, Case No. 61, paras. 489 and 491.

147. 27th Report, Case No. 159, para. 373.

148. 66th Report, Case No. 298, para. 536; 107th Report, Cases Nos. 251 and 414, para. 39.

149. 40th Report, Case No. 161, para. 13; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 81.

150. 112th Report, Case No. 385, paras. 72 and 73.

151. 127th Report, Case No. 439, para. 105.

152. 70th Report, Case No. 298, para. 354; 236th Report, Cases Nos. 1207 and 1209, para. 168.

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

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

146. In one case where a national trade union congress was banned by the authorities because they believed, on the basis of evidence in their possession, that the meeting might deviate from trade union purposes and be used for political ends, the Committee emphasised that a trade union movement should be given the greatest possible freedom of action in the occupational sphere that is compatible with the maintenance of public order. It also considered that it would be desirable for the parties concerned to be guided by the principles contained in the resolution on the independence of the trade union movement adopted by the International Labour Conference in 1952.

147. In one case in which a trade union meeting held in trade union premises was the object of police and military control, the Committee did not accept that this intervention was justified by the mere possibility that illegal acts might be committed. Police and military interference with a trade union meeting is an infringement of freedom of association.

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

149. An obligation on occupational organisations to accept the presence of a representative of the authorities at their meetings constitutes a restriction on the free activity of such organisations.

150. A provision whereby a representative of the public authorities can attend trade union meetings may influence the deliberations and the decisions taken (especially if this representative is entitled to participate in the proceedings), even if this is not the object of such a provision. Hence, it may constitute an act of interference incompatible with the principle of freedom to hold trade union meetings.

151. Where prior permission is required for the holding of a trade union meeting, the police are present and the organisers are required to furnish copies of the minutes of such meetings, this would clearly be incompatible with the principle that governments should refrain from interfering in the holding and proceedings of trade union meetings.

152. Where meetings of a central trade union and its general council meetings require the permission by the authorities, the furnishing of the names of the speakers and the agenda, and the

153. 160th Report, Case No. 849, para. 480.

154. 1st Report, Case No. 24, para. 85; 3rd Report, Case No. 17, para. 51; 6th Report, Case No. 40, para. 487; 12th Report, Case No. 16, para. 403; 22nd Report, Case No. 148, para. 102; 127th Report, Case No. 660, para. 289.

155. 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; 134th Report, Case No. 700, para. 26; 160th Report, Case No. 789, para. 215; 176th Report, Case No. 823, para. 70; 194th Report, Case No. 823, para. 174; 197th Report, Case No. 930, para. 589; 202nd Report, Case No. 823, para. 334; 204th Report, Case No. 962, para. 253; 233rd Report, Case No. 1054, para. 333.

156. 177th Report, Case No. 823, para. 210; 185th Report, Case No. 823, para. 109; 194th Report, Case No. 895, para. 131; 211th Report, Case No. 1046, para. 321.

157. 143rd Report, Case No. 734, para. 59.

158. 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, Cases Nos. 451, 456 and 526, para. 141; 204th Report, Case No. 941, para. 281; 217th Report, Case No. 1090, para. 104, Case No. 1125, para. 347.

159. 160th Report, Case No. 789, para. 215.

allowing of tape recorders to be placed in these meetings, this is incompatible with the right of trade unions to hold meetings in freedom.

153. The arrest of trade union leaders with the aim of preventing the holding of a trade union meeting may constitute a serious violation of the exercise of trade union rights.

Public meetings and demonstrations

154. The right to organise public meetings constitutes an important aspect of 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.

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

156. The holding of public meetings and the voicing of demands of a social and economic nature on the occasion of May Day are traditional forms of trade union action. Trade unions should have the right to organise freely whatever meetings they wish to celebrate on May Day, provided that they respect the measures taken by the authorities to ensure public order.

157. Permission to hold public meetings and demonstrations - which is an important trade union right - should not be arbitrarily refused.

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

159. Trade unions must conform to the general provisions applicable to all public meetings and must respect the reasonable limits which may be fixed by the authorities to avoid disturbances in public places.

160. 67th Report, Case No. 277, para. 61.

161. 78th Report, Case No. 388, para. 277; 108th Report, Case No. 530, para. 47, Case No. 553, para. 72, Case No. 562, para. 81; 114th Report, Cases Nos. 574, 588 and 593, para. 191; 134th Report, Case No. 700, para. 26; 139th Report, Case No. 698, para. 460; 143rd Report, Case No. 734, para. 59; 204th Report, Case No. 962, para. 254.

162. 133rd Report, Case No. 654, para. 249.

163. 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; 127th Report, Case No. 660, para. 291.

164. 139th Report, Case No. 660, para. 60; 197th Report, Case No. 950, para. 589; 204th Report, Case No. 962, para. 255; 230th Report, Case No. 1200, para. 611; 236th Report, Cases Nos. 1277 and 1288, para. 683.

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

166. 160th Report, Case No. 789, para. 216.

167. 233rd Report, Case No. 1199, para. 576.

168. 214th Report, Case No. 1067, para. 210.

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

161. It is for the government, which is responsible for the maintenance of public order, to decide, in the exercise of its powers in the field of security, whether meetings, including trade union meetings, may, in particular circumstances, endanger public order and security, and to take any necessary preventive measures.

162. Trade unions should respect legal provisions which are intended to ensure the maintenance of public order; the public authorities should, for their part, refrain from any interference which would restrict the right of trade unions to organise the holding and proceedings of their meetings in full freedom.

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

164. If, in order to avoid disturbances, the authorities decide to prohibit a meeting planned to take place on some part of the public highway, they should strive to reach agreement with the organisers of the meeting to enable it to be held in some other place where there would be no fear of disturbances.

165. The enactment of emergency regulations which empower the government to place restrictions on the organisation of public meetings and which are applicable not only to public trade union meetings but also to all public meetings and which are 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.

166. The obligation on a procession to follow a predetermined itinerary does not constitute a violation of trade union rights.

167. In general, the use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity.

168. The police authorities should be given precise instructions, in cases where public order is not seriously threatened, so that people are not arrested simply for having organised or participated in a demonstration.

169. 2nd 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.

170. 96th Report, Case No. 484, para. 44.

171. 108th Report, Case No. 530, paras. 53 and 54; 137th Report, Case No. 687, para. 95.

172. 2nd 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,

Meetings and labour disputes

169. The right to strike and to organise union meetings are essential aspects 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.

Right to be represented by a trade union

170. The right of a worker to be represented by an official of his union in any proceedings involving his working conditions, in accordance with procedures prescribed by laws or regulations, is a right that is generally recognised in a large number of countries. It is particularly important that this right should be respected when workers, whose level of education does not enable them to defend themselves adequately without the assistance of a more experienced person, are not permitted to be represented by a lawyer and so can rely only on their union officers for assistance.

International trade union meetings

171. Trade union meetings of an international character may give rise to special problems, not only because of the nationality of the participants, but also because of the international policy and commitments of the country in which these meetings are to take place. As a result of such commitments 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 security and public order. Otherwise, the right of assembly, the exercise of which by international organisations should also be recognised, would be seriously restricted.

B. Freedom of opinion and expression

General principles

172. The right to express opinions through the press or otherwise is an essential aspect of trade union rights.

Freedom of Association

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; 126th Report, Case No. 638, para. 24; 141st Report, Case No. 729, para. 17; 214th Report, Case No. 1021, para. 124; 218th Report, Case No. 1150, para. 397; 236th Report, Case No. 963, para. 78.

173. 12th Report, Case No. 75, para. 290; 141st Report, Case No. 729, para. 16; 147th Report, Cases Nos. 698 and 749, para. 88; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 63; 197th Report, Case No. 920, para. 136.

174. 60th Report, Case No. 274, para. 240.

175. 116th Report, Cases Nos. 520 and 540, para. 261; 127th Report, Cases Nos. 520 and 540, para. 125; 217th Report, Case No. 963, para. 538.

176. 17th Report, Case No. 104, para. 194; 108th Report, Cases Nos. 451, 456 and 526, para. 149.

177. 33rd Report, Case No. 178, para. 57.

178. 85th Report, Cases Nos. 300, 311 and 321, para. 119.

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

174. While the Committee has been especially concerned with cases in which the freedom of the trade union press is involved, 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 - should be distinguished from the right to express opinions in purely trade union newspapers.

175. 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.

Authorisation and censorship of publications

176. 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 granted or refused.

177. In one case, more than 12 months had elapsed before a licence which had been requested by a union was granted for the publication of a trade union journal. The deprivation for such a period of the right of a central national organisation of workers to publish a trade union journal implies some interference with the right of the organisation to organise its activities and formulate its programmes. In cases in which the issue of a trade union publication is subject to a licence being granted, any application for such a licence should be considered and dealt with through an expeditious procedure.

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

179. 62nd Report, Case No. 224, para. 97.

180. 6th Report, Case No. 49, para. 806; 108th Report, Cases Nos. 451, 456 and 526, para. 149; 131st Report, Case No. 683, para. 201; 218th Report, Case No. 1007, para. 462.

181. 85th Report, Case No. 291, para. 365.

182. 25th Report, Case No. 152, para. 225.

183. 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.

184. 14th Report, Case No. 101, para. 74.

185. 112th Report, Case No. 528, paras. 112-115; 141st Report, Case No. 729, para. 16; 147th Report, Cases Nos. 698 and 749, para. 88; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 62; 166th Report, Cases Nos. 685, 781, 806 and 814, para. 19; 218th Report, Case No. 1102, para. 159.

condition as to be incompatible with the exercise of the right of trade unions to express their opinions through the press.

179. The fear of the authorities of seeing a trade union newspaper serve political ends unrelated to trade union activities or which, at least, lie far outside their normal scope, is not a sufficient reason to refuse to allow such a newspaper to appear.

180. 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 designed to control publication and means of information may involve 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.

181. The discretionary power of the public authorities to revoke the licence granted to a trade union newspaper, without it being possible to appeal against such decisions to a court of law, is not compatible with the provisions of Convention No. 87 which provides that workers' organisations have the right to organise their activities without interference on the part of the public authorities.

182. While the imposition of a general censorship is primarily a matter that relates to civil liberties rather than to trade union rights, the censorship of the press 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 surrounding the dispute to become known.

Publications of a political character

183. When issuing their publications, trade union organisations 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 of the freedom and independence of the trade union movement and the safeguarding of its fundamental task which is to ensure the social and economic well-being of all workers.

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

185. 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 of language. The primary role of publications of this type should be to deal with

186. 12th Report, Case No. 75, para. 291.

187. 204th Report, Case No. 962, para. 257; 218th Report, Cases Nos. 844, 904, 953, 973, 987, 1000 and 1016, para. 388.

188. 112th Report, Case No. 528, para. 116.

189. 108th Report, Case No. 560, para. 348, 349, 354 and 357; 112th Report, Case No. 560, paras. 124, 126 and 127. See also Resolution concerning Freedom of Speech of Non-Governmental Delegates to ILO Meetings, adopted by the International Labour Conference at its 54th Session (1970).

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 strictly trade union in character. It pointed out that these two notions overlap, and it is inevitable and sometimes normal for trade union publications to take a stand on questions having political aspects as well as on strictly economic or social questions.

186. In one case where the distribution of all the publications of a trade union organisation was prohibited 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 programme is formulated, and so as to distinguish between those publications 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.

Seizure of publications

187. The confiscation of May Day propaganda material or other trade union publications may constitute a serious interference by the authorities in trade union activities.

188. 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 aspects of trade union rights.

Freedom of speech at the International Labour Conference

189. The Committee has pointed out 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. The functioning of the Conference would risk being considerably hampered and the freedom of speech of the workers' and employers' delegates being paralysed if they were to be threatened with prosecution 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 right of delegates to the Conference to express freely their point of view on questions within the competence of the Organisation implies that 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 jeopardise freedom

190. 129th Report, Case No. 666, para. 245.

191. 25th Report, Case No. 140, para. 273.

192. 233rd Report, Case No. 1113, para. 470.

193. 3rd Report, Case No. 1, para. 19; 4th Report, Case No. 30, para. 149; 6th 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; 165th Report, Case No. 837, para. 107.

194. 56th Report, Case No. 216, para. 157; 90th Report, Cases Nos. 282 and 401, para. 93.

195. 120th Report, Cases Nos. 572, 581, 586, 596, 610 and 620, para. 43; 131st Report, Cases Nos. 626 and 659, para. 113.

196. 235th and 238th Reports, Cases Nos. 997, 999 and 1029, paras. 33 and 36.

of speech for delegates as well as the immunities they should enjoy in this regard.

Miscellaneous

190. If a government takes reprisals, directly or indirectly, against trade unionists or the leaders of workers' or employers' organisations for the simple reason that they protest against the appointment of workers' or employers' delegates to a national or international meeting, this constitutes an infringement of trade union rights.

191. Where restrictions imposed by a revolutionary government on certain publications during a period of emergency appeared mainly to have been imposed for reasons of a general political character, the Committee, while taking account of the exceptional nature of these measures, drew the attention of the government to the importance of ensuring respect for the freedom of trade union publications.

3. State of emergency

192. Emergency legislation aimed at anti-social disruptive elements should not be applied against workers for exercising their legitimate trade union rights.

*193. As regards countries which are in a state of political crisis or have just undergone grave disturbances (civil war, revolution, etc.), the Committee has considered it necessary, when examining the various measures taken by the governments, including some against trade union organisations, to take account of such exceptional circumstances when examining the merits of the allegations.

194. Where a state of siege exists, it is desirable that the government, in its relations with occupational organisations and their representatives, should rely, as far as possible, on the ordinary law rather than on emergency measures which are liable, by their very nature, to involve certain restrictions on fundamental rights.

195. Measures taken by the authorities in a state of emergency may constitute serious interference 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 subject to appropriate procedures for judicial review that may be invoked without delay.

196. The Committee has stressed that martial law is incompatible with the full exercise of trade union rights.

Freedom of Association

197. 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; 129th Report, Case No. 385, para. 69; 208th Report, Case No. 1025, para. 417.

198. 174th Report, Case No. 763, para. 26; 194th Report, Case No. 887, para. 85.

199. 151st Report, Case No. 718, para. 78.

200. 173rd Report, Cases Nos. 685, 781, 806 and 814, para. 25.

201. 58th Report, Case No. 253, para. 644; 131st Report, Case No. 683, para. 197.

202. 120th Report, Case No. 620, para. 43; 204th Report, Case No. 962, para. 257; 208th Report, Case No. 1025, para. 418; 218th Report, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 388.

203. 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; 131st Report, Case No. 672, para. 118; 153rd Report, Cases Nos. 763, 786 and 801, para. 225; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 84; 202nd Report,

4. Questions of a political character

*197. Measures which, although of a political nature and not intended to restrict trade union rights as such, may, nevertheless, be applied in such a manner as to affect the exercise of such rights.

198. As stated by the International Labour Conference in 1970, although respect for freedom of association is closely bound up with respect for civil liberties in general, it is nevertheless important, to distinguish between the recognition of freedom of association and questions relating to a country's political evolution.

*199. The Committee is not competent to consider purely political allegations; it can, however, consider measures of a political character taken by governments in so far as these may affect the exercise of trade union rights.

200. It is important to distinguish between the evolution of a country's political institutions and matters relating to the exercise of freedom of association. If, as was emphasised by the International Labour Conference in 1970, respect for freedom of association is closely bound up with respect for civil liberties in general, workers' and employers' organisations nevertheless have their own specific functions to perform, irrespective of the country's political system.

*201. Political matters which do not impair the exercise of freedom of association are outside the competence of the Committee. The Committee is not competent to deal with a complaint that is based on subversive acts, and it is likewise incompetent to deal with political matters that may be referred to in a government's reply.

5. Protection of trade union premises

202. The occupation of trade union premises may constitute a serious interference by the authorities in trade union activities.

203. An indispensable corollary of the inviolability of trade union premises is that the public authorities may not insist on entering premises without a judicial warrant authorising them to do so.

Freedom of Association

Case No. 931, para. 214; 204th Report, Case No. 856, para. 117; 211th Report, Case No. 965, para. 201, Case No. 940, para. 569; 218th Report, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 388; 230th Report, Case No. 1166, para. 112, Case No. 1200, para. 610; 236th Report, Case No. 1273, para. 203, Cases Nos. 1277 and 1288, para. 684.

204. 131st Report, Case No. 672, para. 118; 144th Report, Case No. 723, para. 59; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 84; 204th Report, Case No. 856, para. 117; 208th Report, Case No. 1012, para. 161, Case No. 990, para. 201, Cases Nos. 988 and 1003, para. 338, Case No. 1025, para. 418; 214th Report, Cases Nos. 997, 999 and 1029, para. 572; 217th Report, Case No. 1095, para. 284; 218th Report, Case No. 1086, para. 145, Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016, para. 388; 230th Report, Case No. 1160, para. 548.

205. 153rd Report, Cases Nos. 763, 786 and 801, para. 225; 236th Report, Case No. 1269, para. 536.

206. 6th Report, Case No. 40, para. 536; 58th Report, Case No. 179, para. 230.

207. 27th Report, Case No. 156, para. 284.

204. With regard to searches of trade union premises, it is stated in the resolution on trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session (1970), that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights.

205. Searches of trade union premises should be made only following the issue of a warrant by the ordinary judicial authority where that authority is satisfied that there are reasonable grounds for supposing that evidence exists on the premises material to a prosecution for a penal offence and on condition that the search be restricted to the purpose in respect of which the warrant was issued.

206. If trade union premises are used as a refuge by persons who have committed serious crimes, or as a meeting place for a political organisation, the trade unions concerned cannot claim any immunity against the entry of the authorities into these premises.

*207. Where large-scale military operations are being undertaken, and where requisitions made by the army are not limited to trade union premises, trade union rights may not necessarily be infringed.

208. 70th Report, Case No. 202, para. 133.

209. 234th Report, Case No. 1261, para. 363.

210. 110th Report, Case No. 519, para. 78; 177th Report, Case No. 853, para. 83; 181st Report, Case No. 885, para. 205; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 76; 199th Report, Case No. 861, para. 203; 211th Report, Case No. 965, para. 197.

211. 15th Report, Case No. 102, para. 141.

CHAPTER III

ESTABLISHMENT OF WORKERS' AND EMPLOYERS' ORGANISATIONS (Article 2 of Convention No. 87)

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

General principles

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

209. Convention No. 151, which was intended to complement the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) by laying down certain provisions concerning, in particular, protection against anti-union discrimination and the determination of terms and conditions of employment for the public service as a whole, does not in any way contradict or dilute the basic right of association guaranteed to all workers by virtue of Convention No. 87.

210. Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and the words "without distinction whatsoever" used in this Article mean that freedom of association should be guaranteed without discrimination of any kind based on 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 public service employees in general.

Race

211. A law which prohibits African workers from establishing trade unions which can be registered and participate in industrial councils set up for the purpose of negotiating agreements and settling disputes constitutes a form of discrimination which is inconsistent with the principle accepted in the majority of countries, and embodied in Convention No. 87, 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. It is also inconsistent with the principle that all workers' organisations should enjoy the right of collective bargaining.

212. 126th Report, Case No. 638, para. 25; 187th Report, Case No. 857, para. 268.

213. 181st Report, Case No. 885, para. 205; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 76; 199th Report, Case No. 861, para. 203.

214. 218th Report, Cases Nos. 1126, 1136 and 1137, para. 215.

215. 4th 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; 85th Report, Case No. 335, para. 452; 208th Report, Case No. 1015, para. 244.

216. 48th Report, Case No. 193, para. 52.

217. 48th Report, Case No. 193, para. 54.

Political opinions

212. Workers should have the right, without distinction whatsoever - in particular without discrimination of any kind on the basis of political opinion - to join the organisation of their own choosing.

Occupational categories

- The public service

213. The standards contained in Convention No. 87 apply to all workers "without distinction whatsoever", and are therefore applicable to employees of the State. It was indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organise for the defence of their interests.

214. Public employees should, like workers in the private sector, be able to establish organisations of their own choosing to further and defend the interests of their members, and these organisations should be entitled to organise their activities and, in particular, to hold meetings without interference by the public authorities.

215. In view of the importance of the right of employees of the State and local authorities 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, should have the right to establish organisations of their own choosing without previous authorisation.

216. The denial of the right of workers in the public sector to set up trade unions, where this right is enjoyed by workers in the private sector, with the result that their "associations" do not enjoy the same advantages and privileges as "trade unions", involves discrimination as regards government-employed workers and their organisations, as compared with private sector 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.

217. In one case where the port employees of a country were, by custom and agreement, classified as government officials and were, therefore, outside the coverage of the Trade Unions Act, and the government had considered that Convention No. 87 (ratified by the country concerned) did not apply to them, the Committee pointed out that the government had assumed an international obligation to apply

218. 139th Report, Case No. 737, para. 171.

219. 24th Report, Case No. 144, para. 237.

220. 4th 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.

221. 145th Report, Case No. 778, paras. 19 and 20; 207th Report, Case No. 971, para. 52.

the Convention to "workers without distinction whatsoever" and that, in these circumstances, the provisions of the Convention could not be modified as regards particular categories of workers because of any private or national agreement, custom or other arrangement between such categories of workers and the government.

218. Local public service employees should be able effectively to establish organisations which they consider appropriate, and these organisations should enjoy the full right to further and defend the interests of the workers whom they represent.

- Agricultural workers

219. Legislation 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 that workers, without distinction whatsoever, shall 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.

- Plantation workers

220. The Committee has recognised that plantations are private property on which the workers not only work but also live. It is, therefore, only by having access to plantations that trade union officials can carry out normal trade union activities among the workers. For this reason it is of special importance that the entry of trade union officials into plantations for the purpose of carrying out 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 being taken for the protection of the property. In this connection, the Committee has also drawn attention to the resolution adopted by the Plantations Committee at its First Session in 1950 which provides 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 they 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.

- Armed forces and police

221. The fact that Article 9(1) of Convention No. 87 stipulates that the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws and regulations cannot warrant the assumption that any

222. 6th Report, Case No. 3, para. 1024; 157th Report, Case No. 815, para. 175, Case No. 827, para. 216.

223. 36th Report, Case No. 190, para. 203; 127th Report, Case No. 660, para. 269; 160th Report, Case No. 841, para. 387.

224. 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; 127th Report, Case No. 660, paras. 270 and 271; 129th Report, Case No. 668, para. 278; 135th Report, Case No. 677, para. 155; 147th Report, Cases Nos. 668 and 730, para. 63; 149th Report, Case No. 732, para. 37; 157th Report, Case No. 815, para. 175; 172nd Report, Case No. 878, para. 109.

limitations or exclusions imposed by the legislation of a State as regards the trade union rights of the armed forces and the police are contrary to the Convention; this is a matter which has been left to the discretion of the States Members of the ILO.

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

General principle

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

Single trade unions

223. 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; it did not pronounce, however, as to whether, in the interests of workers and employers, a unified trade union movement is preferable to trade union pluralism. The Conference recognised thereby the right of any group of workers (or employers) to form organisations in addition to the existing organisation if they think this desirable to safeguard their material or moral interests.

224. 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

225. 68th Report, Case No. 313, para. 56; 83rd Report, Case No. 393, para. 63; 105th Report, Case No. 531, para. 283; 158th Report, Case No. 824, para. 293.

226. 65th Report, Case No. 266, para. 61; 83rd Report, Case No. 303, para. 191; 127th Report, Case No. 660, para. 272; 131st Report, Case No. 677, para. 172; 204th Report, Case No. 956, para. 177.

227. 65th Report, Case No. 266, paras. 61 and 62.

228. 85th Report, Case No. 335, paras. 438 and 439.

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.

225. 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.

226. 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 area 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 the workers voluntarily form a single organisation.

227. The power to impose an obligation on all the workers in the category concerned to pay contributions to the single national trade union, the establishment of which is permitted by branch of industry and by region, 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.

228. Where the legislation provided that a trade union should consist of more than 50 per cent of the workers, if it is a workers' union, more than 50 per cent of the salaried employees, if it is a

229. 15th Report, Case No. 103, para. 212; 93rd Report, Case No. 303, para. 100.

230. 230th Report, Case No. 1198, para. 724.

231. 95th Report, Case No. 448, paras. 124 and 125; 147th Report, Case No. 775, para. 198; 149th Report, Case No. 709, para. 107; 157th Report, Case No. 709, para. 116.

232. 83rd Report, Case No. 393, paras. 64 and 65.

233. 60th Report, Case No. 143, para. 62; 95th Report, Case No. 497, para. 317; 116th Report, Cases Nos. 520 and 540, para. 261; 127th Report, Cases Nos. 520 and 540, para. 130; 135th Report, Case No. 612, para. 170.

salaries employees' union, and more than 50 per cent of both categories if it is a mixed union, the Committee recalled that such a provision is not in conformity with Article 2 of Convention No. 87, and that it placed a major obstacle in the way of the establishment of trade unions capable of "furthering and defending the interests" of their members; moreover, the provision had the indirect result of prohibiting the establishment of a new trade union whenever a trade union already existed in the undertaking or establishment concerned.

229. The Committee has suggested that a State should amend its legislation so as to make it clear that when a trade union already exists for the same employees as those whom a new union seeking registration is organising or is proposing to organise, or the fact that the existing union holds a bargaining certificate in respect of such class of employees, this cannot give rise to objections of sufficient substance to justify the registrar in refusing to register the new union.

230. The Committee has endorsed the position of the Committee of Experts in taking exception to legislation designed to set up and maintain a single trade union system by expressly mentioning the national trade union confederation. The Committee of Experts has considered that this constitutes an obstacle to the creation of another confederation if the workers so wish.

231. A provision authorising the refusal of an application for registration if another union, already registered, is sufficiently representative of the interests which the union seeking registration proposes to defend, means that, in certain cases, workers may be denied the right to join the organisation of their choice, contrary to the principles of freedom of association.

232. Where 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 maintained only through such legislation.

233. Measures taken against workers because they attempt to constitute organisations or to reconstitute organisations of workers 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.

234. 6th Report, Case No. 11, para. 95.

235. 58th Report, Case No. 231, paras. 551 and 552; 202nd Report, Case No. 949, para. 277; 208th Report, Case No. 981, para. 112; 211th Report, Cases Nos. 1035 and 1050, para. 115; 234th Report, Case No. 1226, para. 63.

236. 36th Report, Case No. 190, para. 193; 58th Report, Case No. 220, paras. 37 and 38, Case No. 231, para. 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; 118th Report, Case No. 559, para. 128; 132nd Report, Case No. 682, para. 17; 197th Report, Case No. 918, paras. 157 and 158; 207th Report, Case No. 1001, para. 78; 208th Report, Case No. 981, para. 113; 217th Report, Case No. 1061, para. 133; 218th Report, Case No. 1113, para. 718.

Most representative unions

234. 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 their occupational interests, of which only they are in a position to take effective advantage, the granting of such privileges should not be made subject to such conditions as to bring into question the fundamental guarantees of freedom of association.

235. Considering the limited functions which, in one case, were by law, open to certain categories of trade unions, the Committee felt that the distinction made between trade unions under 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 would thereby constitute 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. The freedom of the parties to choose is a right expressly laid down in Convention No. 87.

236. 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 that is 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. Such a distinction, however, should not result in the most representative organisation being granted privileges extending beyond that 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 that are not recognised as being among the most representative of the essential means for defending the occupational interests of their members, for

237. 67th Report, Case No. 303, para. 292; 73rd Report, Case No. 316, para. 94; 109th Report, Case No. 533, para. 101; 118th Report, Case No. 559, para. 129; 121st Report, Case No. 624, para. 56; 187th Report, Case No. 796, para. 173; 222nd Report, Case No. 1163, para. 313.

238. 92nd Report, Case No. 376, para. 31; 143rd Report, Case No. 655, para. 40; 158th Report, Case No. 655, para. 57; 197th Report, Case No. 958, para. 158.

239. 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; 160th Report, Case No. 841, para. 387; 197th Report, Case No. 918, para. 159; 234th Report, Case No. 1192, para. 542.

240. 36th Report, Case No. 190, para. 205.

241. 109th Report, Case No. 533, para. 101; 132nd Report, Case No. 690, para. 95; 138th Report, Case No. 728, para. 52; 147th Report, Case No. 756, para. 164; 177th Report, Case No. 879, para. 111.

organising their administration and activities and formulating their programmes, as provided for in Convention No. 87.

237. 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. This is the case, however, only if a number of safeguards are provided. 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 12 months, has elapsed since the previous election.

238. 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 it has taken the view that the intervention of the public authorities as regards such 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.

239. 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.

240. 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'."

241. 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 it should be possible to review the factual bases on which that right or power is granted. In the absence of such a possibility, a majority of the workers concerned might be represented by a union

Freedom of Association

242. 138th Report, Case No. 728, para. 53; 153rd Report, Case No. 790, para. 46; 199th Report, Cases Nos. 860 and 882, para. 58; 204th Report, Case No. 922, para. 217.

243. 121st Report, Case No. 624, para. 55; 132nd Report, Case No. 690, para. 100; 168th Report, Case No. 867, para. 88; 187th Report, Case No. 796, para. 173.

244. 147th Report, Case No. 756, para. 165.

245. 143rd Report, Case No. 655, para. 43.

246. 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; 181st Report, Case No. 857, para. 100; 187th Report, Case No. 857, para. 239; 204th Report, Case No. 902, para. 146; 214th Report, Case No. 988, para. 509.

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.

242. The competent authorities should, in all cases, be able to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible.

243. Where the authorities have the power to hold polls for determining the majority union which is to represent the workers for the purposes of collective bargaining, such polls should always be held where there are doubts as to which union the workers wish to represent them.

244. In order to encourage the harmonious development of collective bargaining and to avoid disputes, it should always be the practice to follow, where they exist, the procedures laid down for the designation of the most representative unions for collective bargaining purposes when it is not clear by which unions the workers wish to be represented. In the absence of such procedures, the authorities, where appropriate, should examine the possibility of laying down objective rules in this respect.

245. In one case a Bill concerning negotiating committees for the public service provided for a count to be taken of the paid-up membership of the trade unions in order to determine their representative character, and for a verification of such representative character to be carried out by a board presided over by a magistrate (every six years or at any time at the request of a union). The Committee considered that although, in general, a vote might be a desirable means of ascertaining how representative trade unions are, the inquiries provided for in the Bill seemed to offer strong guarantees of secrecy and impartiality which are indispensable in such an operation.

Union security clauses

246. 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 agreements 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

247. 85th Report, Case No. 335, paras. 425 and 427.

248. 65th Report, Case No. 266, para. 60; 83rd Report, Case No. 303, paras. 190 and 193; 181st Report, Case No. 857, para. 100; 187th Report, Case No. 857, para. 239.

249. 15th Report, Case No. 114, para. 62.

250. 187th Report, Case No. 796, para. 242.

251. 170th Report, Case No. 763, para. 14.

252.(1) 93rd Report, Case No. 494, para. 333; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 57;

such clauses would not be placed in the position of being unable to ratify the Convention.

247. Basing its reasoning on the declaration made, in 1949, by the Committee on Industrial Relations of the International Labour Conference, the Committee has considered that legislation which provides that no one shall be compelled to join or not to join a trade union, does not in itself infringe Conventions Nos. 87 and 98.

248. 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. The Committee has considered that the position is quite different when the law imposes union security - either where it makes union membership compulsory or where it makes union contributions payable in such circumstances as to amount to the same thing. The Committee has pointed out that, when a worker can legally join another union, but is still obliged by law to join a particular union 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.

249. Where union security arrangements exist requiring membership of a given organisation as a condition of employment, there might be a discrimination if unreasonable conditions were to be imposed upon persons seeking such membership.

250. Where the bargaining agent legally enjoys the right of exclusive representation of all the workers in a unit, the compulsory payment to the bargaining agent of a fixed sum of money by non-members of the bargaining agent in return for the benefits enjoyed by them under the collective agreement would not appear to be incompatible with the principles of freedom of association. However, the sum fixed by law should not be so low as to encourage withdrawal from membership of the bargaining agent or so high as to place an excessive financial burden on workers who pay contributions to another union of their choice.

251. Both the government authorities and the employers should refrain from any discrimination between trade union organisations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities.

Government pressure or favouritism

252. On more than one occasion the Committee has examined cases in which allegations were made that the public authorities had, by their attitude, favoured or discriminated against one or more trade union organisations:

- (1) pressure exerted on workers by means of public statements made by the authorities;

- (2) 57th Report, Case No. 248, para. 28; 79th Report, Case No. 361, para. 98; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 57.
- (3) 170th Report, Case No. 763, para. 14; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 57.

253. 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; 170th Report, Case No. 763, para. 14; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 57; 197th Report, Case No. 913, para. 323; 211th Report, Cases Nos. 1035 and 1050, para. 115.

254. 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; 170th Report, Case No. 763, para. 14; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 57; 197th Report, Case No. 913, para. 323; 211th Report, Cases Nos. 1035 and 1050, para. 115.

255. 24th Report, Case No. 145, para. 209.

256. 48th Report, Case No. 191, para. 72; 143rd Report, Case No. 771, para. 110; 197th Report, Case No. 823, para. 379.

- (2) unequal distribution of subsidies among unions or the granting to one union, rather than to the others, of premises for holding its meetings or carrying on its activities;
- (3) refusal to recognise the leaders of certain organisations in the performance of their legitimate activities.

Discrimination by such methods, or by others, may be an informal way of influencing the trade union membership of workers. They are, therefore, sometimes difficult to prove. The fact, nevertheless, remains that any discrimination of this kind jeopardises the right of workers to establish and join organisations of their own choosing.

253. Generally, the fact that a government is able to offer the use of premises to a particular organisation, or to evict a given organisation from premises which it has been occupying in order to offer 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 thereby constitute an act of discrimination.

254. 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 intend to join. In addition, a government which deliberately acts in this manner violates 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 shall it be so applied as to impair, the guarantees provided for in the Convention. It would seem desirable that, if a government wishes to make certain facilities available to trade union organisations, these organisations should enjoy equal treatment in this respect.

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

255. 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.

256. 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 union must have at least 50 founder members.

257. 90th Report, Case No. 335, para. 194.
258. 54th Report, Case No. 179, para. 156.
259. 79th Report, Case No. 393, para. 145.
260. 66th Report, Case No. 179, para. 351.
261. 138th Report, Case No. 631, para. 32.
262. 1st Report, Case No. 4, para. 47; 129th Report, Case No. 514, para. 112; 138th Report, Case No. 696, para. 13; 143rd Report, Case No. 734, para. 51; 197th Report, Case No. 823, para. 381; 199th Report, Case No. 891, para. 74.

257. The legal requirement that there be a minimum number of 20 members to form a union does not seem excessive and, therefore, does not in itself constitute an obstacle to the formation of a trade union.

258. Where, under a local public service law negotiation requires to take place at the regional level and the negotiating organisation must exist 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.

259. To establish a limited list of occupations with a view to recognising the right to associate would be contrary to the principle that workers, without distinction whatsoever, should have the right to establish and to join organisations of their own choosing.

260. 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.

Miscellaneous

261. In one case where any member of a trade union who wished to resign from his union could only do so in the presence of a notary who had to verify the identity of the person concerned and attest his signature, the Committee considered that this requirement in itself did not constitute an infringement of trade union rights provided that this was a formality which, in practice, could be carried out easily and without delay. However, if such a requirement could, in certain circumstances, present practical difficulties for workers wishing to withdraw from a union, it might restrict the free exercise of their right to join organisations of their own choosing. In order to avoid such a situation, the Committee considered that the government should examine the possibility of introducing an alternative method of resigning from a union which would involve no practical or financial difficulties for the workers concerned.

3. Right to establish organisations "without previous authorisation"

Legal formalities and approval of by-laws

262. 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 occupational 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

263. 84th Report, Case No. 423, para. 72; 85th Report, Case No. 335, para. 447; 114th Report, Case No. 350, para. 42; 143rd Report, Case No. 734, para. 55; 172nd Report, Case No. 869, para. 43; 181st Report, Case No. 891, para. 217; 199th Report, Case No. 891, para. 74; 204th Report, Case No. 956, para. 178; 218th Report, Case No. 1133, para. 109.

264. 4th Report, Case No. 20, para. 110.

265. 65th Report, Case No. 266, para. 29; 129th Report, Case No. 514, para. 112; 168th Report, Cases Nos. 825 and 849, para. 147; 187th Report, Case No. 796, para. 178; 197th Report, Case No. 823, para. 381.

266. 58th Report, Case No. 168, para. 78; 67th Report, Case No. 303, para. 276; 105th Report, Cases Nos. 473 and 477, para. 64.

267. 65th Report, Case No. 266, para. 34; 113th Report, Case No. 266, para. 54.

course, that the provisions in such regulations do not impair the guarantees laid down in Convention No. 87.

263. The principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorisation to enable them to establish an organisation. Such authorisation could concern the formation of the trade union organisation itself, the 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. This does not mean that the founders of an organisation are freed from the duty of observing formalities concerning 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 but where 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 is not very different from cases in which previous authorisation is required.

264. A law providing that the right of association is subject to authorisation granted by a government department purely in its discretion is incompatible with the principle of freedom of association.

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

266. 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 shall have the right to draw up their constitutions and rules in full freedom.

267. Where 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 the authorities shall at the same time be satisfied, in their own discretion, that the proposed organisation is in the economic and social interests of the community, this is not compatible with the generally accepted principle that workers shall have the right to establish organisations "without previous authorisation".

268. 201st Report, Case No. 842, para. 43.

269. 53rd Report, Case No. 232, paras. 54 and 55.

270. 128th Report, Case No. 675, para. 20; 129th Report, Case No. 514, para. 116; 147th Report, Case No. 514, para. 25; 156th Report, Case No. 813, para. 13; 177th Report, Case No. 889, para. 332; 199th Report, Case No. 891, para. 75; 202nd Report, Case No. 911, para. 137.

271. 177th Report, Case No. 889, para. 332.

272. 129th Report, Case No. 514, para. 115.

273. 25th Report, Case No. 152, para. 238.

274. 74th Report, Case No. 298, para. 45; 107th Report, Cases Nos. 251 and 414, para. 39.

275. 20th Report, Cases Nos. 72 and 122, para. 67; 102nd Report, Case No. 516, para. 33.

268. The existence of a right to appeal to the courts in connection with the approval of by-laws does not in itself constitute a sufficient guarantee. This would not change the nature of the powers conferred on the administrative authorities and the courts would only be able to ensure that the legislation had been correctly applied. The courts should, therefore, be entitled to re-examine the substance of the case as well as the grounds on which an administrative decision is based.

269. A legal provision which authorises the government, after consulting the appropriate ministries, to object 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 that employers and workers should have the right to establish organisations of their own choosing without prior authorisation.

270. If it is true that the founders of a trade union should comply with the formalities prescribed by legislation, these formalities should not be of such a nature as to impair the free establishment of organisations.

271. The formalities prescribed by law for the establishment of a union should not be applied in such a way as to delay or prevent the setting up of occupational organisations.

272. If there is grave suspicion that trade union leaders have committed acts which are punishable by law, they should be subject to normal judicial proceedings in order to determine their responsibilities, and their detention should not in itself constitute an obstacle to the granting of legal personality to the organisation concerned.

Registration

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

274. While recognising that, in certain circumstances, it may be legitimate for registration 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 normally involve discrimination of such a character as to render non-registered organisations subject to special measures of police supervision in such a way as to restrict the exercise of freedom of association.

275. If the conditions for the granting of registration are tantamount to obtaining prior permission from the public authorities for the establishment or functioning of a trade union this would

276. 47th Report, Case No. 194, para. 111; 58th Report, Case No. 251, para. 611; 168th Report, Cases Nos. 825 and 849, para. 148; 187th Report, Case No. 796, para. 178.

277. 66th Report, Case No. 251, paras. 428 and 446; 70th Report, Case No. 194, para. 118; 74th Report, Case No. 308, para. 87, Case No. 363, para. 224; 84th Report, Case No. 415, paras. 58 and 59; 147th Report, Case No. 775, para. 199.

278. 74th Report, Case No. 308, para. 87, Case No. 363, para. 224; 187th Report, Case No. 796, para. 178.

279. 68th Report, Case No. 239, paras. 31 and 32; 129th Report, Case No. 514, para. 115.

280. 149th Report, Case No. 709, para. 106; 160th Report, Cases Nos. 834 and 851, para. 199; 172nd Report, Case No. 885, para. 384; 177th Report, Case No. 889, para. 326; 181st Report, Case No. 899, para. 242; 187th Report, Case No. 874, para. 477, Case No. 889, para. 493.

undeniably constitute an infringement of the Convention. This, however, would not seem to be the case when the registration of trade unions consists solely of a formality and where the conditions are not such as to impair the guarantees laid down by the Convention.

276. An appeal should lie to the courts against any administrative decision concerning the registration of a trade union. Such a right of appeal constitutes a necessary safeguard against unlawful or ill-founded decisions by the authorities responsible for registration.

277. Where a registrar has to form his own judgement 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 considered that 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 has 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 on the basis of which the registrar may refuse or cancel registration, and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not.

278. Judges should be 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.

279. 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 unconnected with trade union activities would not appear to constitute a 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 refusal to register a union because the authorities, in advance and in their own judgement, consider that this would be politically undesirable, would be tantamount to submitting the compulsory registration of trade union to previous authorisation on the part of the authorities, which is not compatible with the provisions of Convention No. 87.

280. A provision whereby registration of a trade union may be refused if the union "is about to engage" in activities likely to cause a serious threat to public safety or public order could give rise to abuse, and it should therefore be applied with the greatest caution. The refusal to register should only take place under the

281. 202nd Report, Case No. 911, para. 138.

282. 113th Report, Case No. 266, para. 87; 125th Report, annex, Case No. 266, para. 37; 204th Report, Case No. 968, para. 358.

283. 234th Report, Case No. 1241, para. 340.

supervision of the competent judicial authorities where serious acts have been committed, and have been duly proved.

281. Although registration procedure very often consists in a mere formality, there are a number of countries in which the law confers on the relevant authorities more or less discretionary powers in deciding whether or not an organisation meets all the conditions required for registration, thus creating a situation which is similar to that in which previous authorisation is required. Similar situations can arise where a complicated and lengthy registration procedure exists, or where the competent administrative authorities may exercise their powers with great latitude; these factors are such as to create a serious obstacle for the establishment of a trade union and lead to a denial of the right to organise without previous authorisation.

282. A decision to prohibit the registration of a trade union which has received legal recognition should not become effective until the statutory period for lodging an appeal against this decision has expired without an appeal having been lodged, or until it has been confirmed by the courts following an appeal.

283. In a legal system where registration of a workers' organisation is optional, the act of registration may confer on an organisation a number of important advantages such as special immunities, tax exemption, the right to obtain recognition as exclusive bargaining agent, etc. [see General Survey of Committee of Experts, Report III (Part IVB), ILC, 1983, para. 111]. In order to obtain such recognition an organisation may be required to fulfil certain formalities which do not amount to previous authorisation and which do not normally pose any problem as regards the requirements of Convention No. 87.

284. 127th Report, Case No. 644, para. 250.

285. 168th Report, Cases Nos. 825 and 849, para. 148.

286. 158th Report, Case No. 818, para. 223.

287. 65th Report, Case No. 266, paras. 35-37.

288. 58th Report, Case No. 179, para. 386; 79th Report, Case No. 408, para. 181; 87th Report, Case No. 408, para. 256; 197th Report, Case No. 823, para. 382.

289. 27th Report, Case No. 159, paras. 360-362; 143rd Report, Case No. 771, para. 117; 197th Report, Case No. 823, para. 383; 202nd Report, Case No. 927, para. 174.

CHAPTER IV

FREE FUNCTIONING OF ORGANISATIONS (Article 3 of Convention No. 87)

I. Recognition of trade union rights

1. Right to draw up constitution and rules

General principles

284. The Committee has taken the view that a government's refusal to recognise the constitution adopted by the congress of a union is at variance with the principle that workers' and employers' organisations shall have the right to draw up their constitutions and rules without interference by the public authorities (Article 3 of Convention No. 87).

285. The listing in the legislation of the particulars that must be contained in a union's constitution is not in itself an infringement of the right of workers' organisations to draw up their internal rules in full freedom.

286. Amendments to the constitution of a trade union should be debated and adopted by the union members themselves.

Compulsory clauses

287. Provisions which appear to imply a degree of subordination of trade unions to the economic policy of the government are not compatible with the principles of freedom of association.

288. In some countries the law requires that the majority of the members of a trade union - at least at a first vote - decide on certain questions which affect the very existence or structure of the organisation (adoption and amendments of the constitution, dissolution, etc.). In such cases involving basic matters relating to the existence and structure of a union or the fundamental rights of its members, the regulation by law of majority votes for the adoption of the decisions involved does not imply interference contrary to the Convention, provided that this regulation is not such as to seriously impede the running of a trade union and where the adoption of such decisions would be practically impossible in the prevailing circumstances, and provided that the purpose is to guarantee the members' right to participate democratically in the organisation.

289. Legislation which minutely regulates the internal election procedures of a trade union and the composition of its executive committees, fixes the days on which meetings will take place, the precise date for the annual general assembly and the date on which the

290. 103rd Report, Cases Nos. 422, 473 and 477, paras. 160-163.

291. 6th Report, Case No. 11, paras. 107 and 108; 66th Report, Case No. 298, paras. 516 and 518; 168th Report, Cases Nos. 825 and 849, para. 147.

292. 24th Report, Case No. 145, para. 209.

293. 155th Report, Case No. 815, para. 23; 236th Report, Case No. 1253, para. 218.

294. 22nd Report, Case No. 148, para. 94.

mandates of trade union officers shall expire, is incompatible with the rights afforded to trade unions by Convention No. 87.

290. The insertion in the constitution 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. - and where failure to do so within a prescribed period will result in the union being considered as having ceased to exist - is incompatible with the principles of freedom of association.

Model constitutions

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

Racial discrimination

292. Laws providing for 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' and employers' organisations shall have the right to draw up their constitutions and rules and to organise their administration and activities.

2. Right freely to elect representatives

General principles

293. Freedom of association implies the right of workers and employers to elect their representatives in full freedom.

294. Workers and their organisations should have the right to elect their representatives in full freedom and the latter should have the right to put forward claims on their behalf.

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295. 83rd Report, Case No. 418, para. 347; 165th Report, Case No. 843, para. 44; 190th Report, Case No. 823, para. 189; 202nd Report, Case No. 944, para. 228; 217th Report, Case No. 1086, para. 93; 230th Report, Case No. 1193, para. 317; 236th Report, Cases Nos. 1207 and 1209, para. 169, Case No. 1238, para. 248.

296. 143rd Report, Case No. 771, para. 117; 202nd Report, Case No. 944, para. 227; 236th Report, Case No. 1238, para. 248.

297. 27th Report, Case No. 159, para. 361; 143rd Report, Case No. 771, para. 117; 202nd Report, Case No. 944, para. 227; 236th Report, Case No. 1238, para. 252.

298. 190th Report, Case No. 823, para. 193.

299. 164th Report, Case No. 846, para. 57.

300. 58th Report, Case No. 179, para. 388; 143rd Report, Case No. 771, para. 117.

301. 85th Report, Cases Nos. 294, 383, 397 and 400, para. 373.

302. 24th Report, Case No. 145, para. 209.

303. 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,

Free functioning of organisations

295. The right of workers' organisations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining conditions of eligibility of leaders or in the conduct of the elections themselves.

296. Any control of trade union elections should rest with the judicial authorities.

297. If a government regulates trade union elections too closely, this may be considered as a limitation of the right of trade unions to elect their own representatives freely. However, in general, laws governing the frequency of elections and fixing a maximum period for the terms of office of executive bodies do not affect the principles of freedom of association.

298. The number of leaders of an organisation should be a matter for decision by the trade union organisations themselves.

299. Provisions requiring registered organisations to elect their officers by postal vote do not appear to infringe the freedom to elect trade union leaders.

300. It should be left to the workers' organisations themselves to make provision, in their constitutions or rules, as to the majority of votes required for the election of trade union leaders.

301. Since the creation of works' councils and councils of employers can constitute a preliminary step towards the setting up of independent and freely established workers' and employers' organisations, the Committee has suggested that all official positions in such councils should, without exception, be occupied by persons who are freely elected by the workers or employers concerned.

Racial discrimination

302. 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' and employers' organisations shall have the right to elect their representatives in full freedom.

Leaders employed in the profession or undertaking

303. If the national legislation provides 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

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para. 521; 143rd Report, Case No. 771, para. 113; 185th Report, Case No. 823, para. 99; 197th Report, Case No. 823, para. 384; 202nd Report, Case No. 911, para. 140.

304. 129th Report, Case No. 514, para. 113; 143rd Report, Case No. 711, para. 113; 160th Report, Cases Nos. 834 and 851, para. 195; 191st Report, Case No. 763, para. 25; 197th Report, Case No. 823, para. 384.

305. 233rd Report, Cases Nos. 1183 and 1205, para. 517.

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306. 143rd Report, Case No. 771, para. 114.

307. 160th Report, Case No. 851, para. 195.

308. 233rd Report, Cases Nos. 1183 and 1205, para. 504.

309. 202nd Report, Case No. 911, para. 139.

Convention No. 87 may be jeopardised. In fact, in such cases the laying off 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.

304. Provisions which require that trade union leaders shall, at the time of their election, have been engaged in the occupation or trade for more than a year are not in harmony with the Convention.

305. Given that workers' organisations are entitled to elect their representatives in full freedom, the dismissal of a trade union leader, or simply the fact that he leaves the work which he was carrying out in a given undertaking should not affect his trade union status or functions unless stipulated otherwise by the constitution of the trade union in question.

306. A requirement that a trade union leader shall continue to carry out his employment during the term of his office prevents the existence of full-time officers. Such a provision may be highly detrimental to the interests of trade unions, in particular those whose size or geographical extent require the contribution of a considerable amount of time by the officers. Such a provision impedes the free functioning of trade unions and is not in conformity with the requirements of Article 3 of the Convention.

Trade union affiliation

307. A provision laying down as one of the eligibility requirements for trade union office that the candidate must have belonged to the organisation for at least one year could be interpreted as meaning that all trade union leaders must belong to the occupation or work in the undertaking in which the trade union represents the workers. In this event, if the requirement were applied to all office-holders in trade union organisations, it would be incompatible with the principles of freedom of association.

308. A provision requiring any trade union leader to have been a member of the trade union for not less than six months implies an important restriction on the right of workers' organisations to elect their representatives in full freedom.

Political opinions or activities

309. Legislation which disqualifies persons from trade union office because of their political beliefs or affiliations is not in conformity with the right of trade unionists to elect their representatives in full freedom.

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310. 24th Report, Case No. 126, para. 94.

311. 24th Report, Case No. 146, para. 273.

312. 85th Report, Cases Nos. 300, 311 and 321, paras. 107 and 109.

313. 86th Report, Case No. 451, para. 143; 143rd Report, Case No. 771, para. 117.

314. 201st Report, Case No. 842, para. 51.

315. 6th Report, Case No. 40, para. 513; 86th Report, Case No. 451, para. 141.

310. 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 considered by a government to be capable of participating in conciliation proceedings. Where the law of the land provides that the government may only deal with 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 based on the political opinions of those concerned in such a way as to eliminate, even indirectly, the leaders of the organisation that is the most representative of the category 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 representatives freely.

311. Legislation 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 such activities may involve a violation of the principle laid down in Convention No. 87, which states that workers' and employers' organisations shall 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".

312. The Committee has taken 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.

Re-election

313. A ban on the re-election of trade union officials is not compatible with Convention No. 87. Such a ban, moreover, may have serious repercussions on the normal development of a trade union movement which does not have a sufficient number of persons capable of adequately carrying out the functions of trade union office.

314. Legislation which fixes the maximum length of the terms of trade union officers and which at the same time limits their right of re-election violates the right of organisations to elect their representatives freely.

Criminal record

315. As regards legislation which provides that a sentence by any court whatsoever, except for political offences, to a term of imprisonment of one month or more, constitutes grounds that are incompatible with, or which disqualify from the holding of executive or administrative posts in a trade union, the Committee has taken the

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316. 133rd Report, Case No. 668, para. 298; 158th Report, Case No. 818, para. 226; 197th Report, Case No. 823, para. 384; 199th Report, Case No. 899, para. 225; 201st Report, Case No. 842, para. 51; 211th Report, Case No. 1043, para. 588.

317. 129th Report, Case No. 385, para. 71.

318. 143rd Report, Case No. 771, para. 117; 191st Report, Case No. 763, para. 29.

319. 155th Report, Case No. 815, para. 23.

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 involving the exercise of trade union rights, such as a violation of the laws governing the press, thereby restricting unduly the right of trade unionists to elect their representatives freely.

316. A conviction for an act which is not, by its nature, such as to constitute a real risk for the proper exercise of trade union functions should not constitute grounds for disqualification for trade union office, and any legislation providing for such disqualification for any type of criminal offence may be regarded as inconsistent with the principles of freedom of association.

317. In one case, where the legislation provided that, following a decision taken at the discretion of the executive power, a person could be deprived of his political rights, and thereby of his right to hold trade union office, the Committee emphasised the importance which should be attached to the fundamental principles enunciated in the Universal Declaration of Human Rights and, in particular, to that enunciated in article 7 thereof according to which "All are equal before the law and are entitled without any discrimination to equal protection of the law", and to the principle stated in article 10 that, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". The Committee also recalled that, when the International Labour Conference adopted, in 1970, its resolution concerning trade union rights and their relation to civil liberties, it placed special emphasis on the right to a fair trial by an independent and impartial tribunal as being one of the civil liberties which are essential for the normal exercise of trade union rights.

Miscellaneous

318. A law which imposes fines on workers who do not participate in trade union elections is not in harmony with the provisions of Convention No. 87.

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

General principle

319. Freedom of association implies the right of workers and employers to organise their administration and activities without any interference by the public authorities.

320. 1st Report, Case No. 8, para. 66; 23rd Report, Case No. 111, para. 164.

321. 90th Report, Case No. 335, para. 201.

322. 143rd Report, Case No. 771, para. 114.

323. 6th Report, Case No. 50, paras. 850 and 851; 65th Report, Case No. 266, para. 31.

324. 138th Report, Case No. 719, para. 34.

325. 181st Report, Case No. 857, para. 100; 187th Report, Case No. 857, para. 239; 197th Report, Case No. 935, para. 287; 204th Report, Case No. 902, para. 146.

Administration of organisations

Internal acts of organisations

320. 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 establishes their programme, the prohibition of such congresses would seem to constitute an infringement of trade union rights.

321. When legislation is applied in such a manner as to prevent trade union organisations from using the services of experts who are not necessarily elected officers, such as industrial advisers, lawyers or agents able to represent them in judicial or administrative proceedings, 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.

322. A provision prohibiting a trade union leader from receiving remuneration of any kind is not in conformity with the requirements of Article 3 of Convention No. 87.

Financial administration
of trade unions

- Union dues

323. A legal restriction on the amount which a federation may receive from the unions affiliated to it would appear to be contrary to the generally accepted principle that workers' organisations shall have the right to organise their administration and activities and those of the federations which they form.

324. In one case where the legislation provided for the collection, by means of a check-off system, of a solidarity contribution from workers who were non-members of the organisation which was a party to a collective agreement but who wished to avail themselves of the agreement (this solidarity contribution being fixed at not more than two-thirds of the trade union contributions paid by the workers of the same category who belonged to the organisation), the Committee considered that such a system, while not covered by international labour standards, did not in itself seem to be incompatible with the principles of freedom of association.

325. The withdrawal of the check-off facility, which could lead to financial difficulties for trade union organisations, is not conducive to the development of harmonious industrial relations and should therefore be avoided.

326. 211th Report, Cases Nos. 1035 and 1050, para. 118.
327. 48th Report, Case No. 191, para. 77.
328. 1st Report, para. 35.
329. 204th Report, Case No. 962, para. 257; 208th Report, Case No. 1025, para. 418.
330. 52nd Report, Case No. 181, para. 120.
331. 79th Report, Case No. 393, paras. 153 and 154.
332. 83rd Report, Case No. 399, para. 285; 128th Report, Case No. 662, para. 41; 168th Report, Case No. 862, para. 190.

326. The Committee has drawn attention to ILO Recommendation No. 143 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971, which provides that, in the absence of other arrangements for the collection of trade union dues, workers' representatives authorised to do so by the trade union should be permitted to collect such dues regularly on the premises of the undertaking.

- Protection and control of
trade union funds

327. Provisions which give the authorities the right to restrict the freedom of a trade union to administer and utilise its funds as it wishes for normal and lawful trade union purposes are incompatible with the principles on freedom of association.

328. Measures for the protection of trade union funds against misuse may be particularly necessary in the early stages of the development of a trade union movement, but they are always liable to be applied in a manner that involves serious consequences as regards application of the principle of freedom of association.

329. The freezing of union bank accounts may constitute a serious interference by the authorities in trade union activities.

330. While the legislation in many countries requires that trade union accounts 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 an auditor shall possess the required professional qualifications and be an independent person. A provision which reserves to the government the right to audit trade union funds is, therefore, 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.

331. Legislation obliging a trade union to have its books of account stamped and the pages numbered by the Ministry of Labour before they are opened for use appears only to be aimed at preventing fraud. The Committee has taken the view that such a requirement does not constitute a breach of trade union rights.

332. 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 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. 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

333. 197th Report, Case No. 823, para. 386.

334. 83rd Report, Case No. 399, para. 287; 138th Report, Case No. 719, para. 67.

335. 197th Report, Case No. 823, para. 386; 201st Report, Case No. 842, para. 48.

336. 233rd Report, Case No. 1219, para. 656.

337. 234th Report, Case No. 1135, para. 235.

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, however, that, to some extent, a guarantee exists 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.

333. The control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. Inspection and furnishing of information whenever required by the authorities at their discretion entail a danger of interference in the internal administration of trade unions.

334. As regards certain measures of administrative control over the management, such as financial audits and investigations, the Committee has considered that these 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), in order 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.

335. The general principle that there should be judicial control of the internal management of an occupational organisation in order to ensure an impartial and objective procedure is particularly important in regard to the administration of trade union property and finances.

336. An investigation into the financial situation of a trade union should be restricted to exceptional cases, that is to say, when it is justified by special circumstances such as presumed irregularities that are apparent from annual financial statements or when complaints are made by members of the trade union.

337. Where the bank accounts of trade union leaders accused of embezzlement of trade union funds are frozen, the Committee has pointed out that, if, following investigation, no evidence of misappropriation of trade union funds has been found, it would be unreasonable for the accounts of the trade unionists, whether or not they have remained in the country, to remain frozen.

338. 97th Report, Case No. 519, para. 18.

339. 176th Report, Case No. 823, para. 64; 194th Report, Case No. 895, para. 132.

340. 25th Report, Case No. 152, para. 242.

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

342. 103rd Report, Case No. 385, para. 140.

343. 19th Report, Case No. 121, para. 180; 75th Report, Case No. 341, para. 101.

344. 24th Report, Case No. 121, para. 74; 75th Report, Case No. 341, para. 106; 127th Report, Case No. 644, para. 252.

- Protection of trade union property

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

339. A climate of violence, in which attacks are made against trade union premises and property may constitute serious interference with the exercise of trade union rights; such situations call for severe measures being taken by the authorities, and in particular, the arraignment of those presumed to be responsible before an independent judicial authority.

- Financial independence

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

341. A system in which workers are bound to pay contributions to a public organisation which, in turn, finances trade union organisations, constitutes a serious threat to the independence of these organisations.

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

343. 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, by virtue of statutory provisions, or at 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 questions of fact which must be examined in the light of the circumstances of each case.

344. The right of workers to set up the organisations of their own choice and of the freedom of such organisations to draft their own constitutions and internal rules and organise their own management and activities presuppose financial independence. Such 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.

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345. 6th Report, Case No. 12, para. 205; 131st Report, Cases Nos. 626 and 659, para. 113; 211th Report, Case No. 965, para. 200.

346. 48th Report, Case No. 191, para. 77.

347. 197th Report, Case No. 823, para. 409; 217th Report, Case No. 1109, para. 480.

348. 21st Report, Case No. 19, para. 36; 22nd Report, Case No. 58, para. 52.

349. 23rd Report, Case No. 111, para. 134.

350. 85th Report, Cases Nos. 300, 311 and 321, paras. 123 and 124.

Activities and programmes

General principles

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

346. Any provision which gives 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 would be incompatible with the principles of freedom of association.

347. Denial of the right to strike and the right to collective bargaining to federations and confederations can seriously hinder the development of industrial relations, particularly in the case of small unions which, on account of their limited strength and untrained leadership, may not be able by themselves to further and defend the interests of their members in an effective manner.

348. 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.

*349. The Committee has 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 exercise 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.

350. 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.

351. 6th Report, Case No. 2, para. 1012; 187th Report, Case No. 857, para. 266; 194th Report, Case No. 909, para. 311.

352. 6th Report, Case No. 40, para. 563; 12th Report, Case No. 61, para. 483; 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; 127th Report, Case No. 660, para. 279; 149th Report, Case No. 709, para. 98; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 33; 168th Report, Cases Nos. 825 and 849, para. 144; 170th Report, Case No. 763, para. 13; 187th Report, Case No. 796, para. 185, Case No. 857, para. 266; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 58; 197th Report, Case No. 823, para. 387; 201st Report, Case No. 842, para. 40; 230th Report, Case No. 1194, para. 291.

353. 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; 127th Report, Case No. 660, para. 280; 158th Report, Case No. 824, para. 294; 187th Report, Case No. 857, para. 266, Case No. 861, para. 463; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 58; 197th Report, Case No. 823, para. 387.

354. 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; 143rd Report, Case No. 748, para. 98, Case No. 771, para. 121; 149th Report, Case No. 709, para. 98; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 33; 187th Report, Case No. 796, para. 185; 191st Report, Case No. 763, para. 27; 201st Report, Case No. 842, para. 40; 211th Report, Case No. 965, para. 200; 220th Report, Cases Nos. 997, 999 and 1029, para. 104.

355. 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 33.

356. 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 33; 201st Report, Case No. 842, para. 40.

Political activities

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

352. In the interests of the normal development of the trade union movement, it would be desirable to have regard 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.

353. 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.

354. 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 may, in practice, change at any moment and considerably restrict the possibility of action of the organisations. It would, therefore, seem that States, without prohibiting in general terms political activities of occupational organisations, should be able to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations which have lost sight of the fact that their fundamental objective should be the economic and social advancement of their members.

355. Trade union organisations should not over-indulge in political activities and go beyond their true functions by promoting essentially political interests.

356. A general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice. Trade union organisations may wish, for example, to

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357. 174th Report, Case No. 763, para. 26; 194th Report, Case No. 887, para. 85.

358. 183rd Report, Case No. 763, para. 35.

359. 147th Report, Cases Nos. 698 and 749, para. 88; 197th Report, Case No. 920, para. 136.

360. 30th Report, Case No. 177, para. 76; 41st Report, Case No. 143, para. 91; 58th Report, Case No. 221, para. 109; 60th Report, Case No. 191, para. 155; 67th Report, Case No. 299, para. 98; 71st Report, Case No. 273, para. 67; 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; 122nd Report, Case No. 636, para. 41; 123rd Report, Case No. 614, para. 32; 125th Report, Case No. 642, para. 38; 127th Report, Case No. 627, para. 56; 128th Report, Case No. 662, para. 38; 133rd Report, Case No. 699, para. 188, Case No. 629, para. 219; 134th Report, Case No. 693, para. 15, Case No. 702, para. 36; 138th Report, Case No. 719, para. 71; 139th Report, Cases Nos. 741 and 742, para. 137, Case No. 722, para. 393; 142nd Report, Case No. 573, para. 149, Case No. 678, para. 189; 143rd Report, Case No. 757, para. 153; 150th Report, Cases Nos. 758 and 783, para. 41; 153rd Report, Case No. 769, para. 279; 233rd Report, Case No. 1224, para. 129.

express publicly their opinion regarding the government's economic and social policy.

357. There should be no confusion between trade unions' performance of their specific functions, i.e. the defence and promotion of the occupational interests of workers, and the possible pursuit by certain of their members of other activities that are unconnected with trade union functions. The penal responsibility which such persons may incur as a result of such acts should in no way lead to measures being taken to deprive the unions themselves or their leaders of their means of action.

358. A law obliging leaders of occupational associations to make a declaration "to uphold democracy" could lead to abuses since such a provision does not include any precise criteria on which a judicial decision could be based were a trade union leader to be accused of not having made the declaration.

359. 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 in their activities. On the other hand, it is difficult to draw a clear distinction between what is political and what is, properly speaking, trade union in character. 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 and social questions.

Right to strike

- General principles

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

361. 160th Report, Case No. 851, paras. 199 and 200.

362. 4th 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; 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; 122nd Report, Case No. 636, para. 41; 123rd Report, Case No. 614, para. 32; 125th Report, Case No. 642, para. 38; 139th Report, Cases Nos. 737-744, paras. 122 and 137, Case No. 725, para. 330; 142nd Report, Cases Nos. 745, 753 and 755, paras. 125 and 149, Case No. 678, para. 189; 149th Report, Case No. 793, para. 133; 151st Report, Case No. 804, para. 174; 153rd Report, Case No. 793, para. 55; 165th Report, Case No. 857, para. 177; 199th Report, Case No. 942, para. 42, Case No. 934, para. 134; 202nd Report, Case No. 931, para. 210, Case No. 949, para. 276; 204th Report, Case No. 952, para. 159, Case No. 962, para. 260; 211th Report, Case No. 1074, para. 365, Case No. 1024, para. 537; 214th Report, Case No. 1068, para. 364; 217th Report, Case No. 1091, para. 443, Case No. 1099, para. 467; 233rd Report, Case No. 1113, para. 470.

363. 2nd 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; 130th Report, Case No. 641, para. 14; 138th Report, Case No. 713, para. 71; 139th Report, Case No. 722, para. 393; 147th Report, Case No. 756, para. 167; 149th Report, Case No. 709, para. 111; 158th Report, Case No. 818, para. 229; 160th Report, Case No. 851, para. 199; 168th Report, Case No. 874, para. 262; 181st Report, Case No. 899, para. 242; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 85; 187th Report, Case No. 874, para. 477; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 68, Case No. 913, para. 450; 194th Report, Case No. 893, para. 114, Case No. 908, para. 289; 196th Report, Case No. 842, para. 45; 197th Report, Case No. 917, para. 221, Case No. 935, para. 285, Case No. 927, para. 353; 199th Report, Case No. 943, para. 170; 202nd Report, Case No. 871, para. 104; 204th Report, Case No. 953, para. 346; 207th Report, Case No. 956, para. 213; 211th Report, Case No. 965, para. 199, Case No. 1025, para. 273; 214th Report, Cases Nos. 992 and 1018, para. 91, Case No. 1081, para. 261, Case No. 1093, para. 387, Case No. 1097, para. 748; 217th Report, Case No. 1089, para. 239, Case No. 1077, para. 426, Case No. 1065, para. 557; 236th Report, Case No. 1066, para. 122; Case

361. It does not appear that making a right to call a strike the sole preserve of trade union organisations is incompatible with the standards of Convention No. 87. Workers, and especially their leaders in undertakings, should, however, be protected against any discrimination which might be exercised because of a strike called with the object of promoting and defending their occupational interests, and they should be able to form trade unions without being exposed to anti-union discrimination.

362. The Committee has always recognised the right to strike by workers and their organisations as a legitimate means of defending their economic and social interests.

363. The right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests.

No. 1253, para. 215, Case No. 1266, para. 574, Cases Nos. 1277 and 1288, para. 682.

364. 27th Report, Case No. 156, para. 287; 172nd Report, Case No. 885, para. 384; 214th Report, Case No. 1067, para. 208.

365. 6th Report, Case No. 55, para. 919; 127th Report, Case No. 660, para. 303; 128th Report, Case No. 662, para. 38; 133rd Report, Case No. 699, para. 194; 139th Report, Case No. 737, para. 180, Case No. 746, para. 367; 143rd Report, Case No. 757, para. 152; 172nd Report, Case No. 870, para. 328; 181st Report, Cases Nos. 821, 859 and 875, para. 135, Case No. 885, para. 206; 187th Report, Case No. 792, para. 135, Case No. 902, para. 344, Case No. 893, para. 534; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 76; 194th Report, Case No. 893, para. 96.

366. 92nd Report, Case No. 454, para. 193; 129th Report, Case No. 514, para. 113; 172nd Report, Case No. 885, para. 385; 197th Report, Case No. 823, para. 409.

367. 214th Report, Case No. 1081, para. 262; 217th Report, Case No. 1089, para. 240.

368. 214th Report, Case No. 1081, para. 262; 217th Report, Case No. 1089, para. 239.

369. 15th Report, Case No. 102, para. 154; 36th Report, Case No. 183, para. 131.

370. 54th Report, Case No. 179, para. 61; 151st Report, Case No. 804, para. 176.

371. 7th 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; 149th Report, Case No. 709, para. 99.

364. 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.

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

366. The prohibition against the calling of strikes by federations and confederations is not compatible with Article 6 of the Convention, which refers to Article 3 of the Convention with respect to the functioning of federations and confederations.

367. Regarding various types of strike action denied to workers (tools-down, go-slow, work-to-rule, and sit-down strikes), the Committee considers that these restrictions may be justified only if the strike ceases to be peaceful.

368. The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.

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

370. It is essential that all members of bodies exercising conciliation or mediation functions shall not only be impartial but shall also be considered as such by the parties concerned if they are to secure and maintain their confidence, for it is on that confidence that the success of these procedures really depends.

371. The Committee has expressed the hope that governments, wishing to see labour relations develop in an atmosphere of mutual confidence, will, when dealing with situations resulting from strikes and lockouts, have recourse 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.

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372. 139th Report, Cases Nos. 737-744, para. 124; 153rd Report, Cases Nos. 763, 786 and 801, para. 177; 160th Report, Case No. 851, para. 199; 172nd Report, Case No. 885, para. 384; 177th Report, Case No. 884, para. 301; 190th Report, Case No. 913, para. 450

373. 58th Report, Case No. 221, para. 109.

374. 119th Report, Case No. 611, paras. 97 and 98.

375. 73rd Report, Case No. 264, paras. 62 and 63.

376. 87th Report, Case No. 408, para. 253.

377. 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; 137th Report, Case No. 688, para. 28; 139th Report, Case No. 722, para. 393; 158th Report, Case No. 818, para. 229; 164th Report, Case No. 845, para. 42; 197th Report, Case No. 927, para. 353; 207th Report, Case No. 980, para. 140, Case No. 958, para. 214; 214th Report, Case No. 1081, para. 266; 217th Report, Case No. 1065, para. 557, Case No. 1076, para. 620; 233rd Report, Case No. 1224, para. 130.

*372. Strikes of a purely political nature and strikes decided systematically long before negotiations take place do not fall within the scope of the principles of freedom of association.

373. 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.

374. The solution to a legal conflict as a result of a difference in interpretation of a legal text should be left to the competent courts. The prohibition of strikes in such a situation does not constitute a breach of freedom of association.

375. In one case where the government had consulted the workers in order to determine whether they wished the strike to continue or be called off, and where the organisation of the ballot had been entrusted to a permanent, independent body, with the workers enjoying the safeguard of a secret ballot, the Committee emphasised the desirability of consulting the 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.

376. 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 these circumstances the prohibition of boycotts by law does not necessarily appear to involve an interference with trade union rights.

- Prerequisites

377. The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organisations.

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378. 4th Report, Case No. 5, para. 27; 6th 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; 92nd Report, Case No. 454, para. 185; 128th Report, Case No. 662, para. 39; 134th Report, Case No. 702, para. 36; 139th Report, Case No. 722, para. 393; 187th Report, Case No. 892, para. 288; 197th Report, Case No. 917, para. 22; 207th Report, Case No. 958, para. 214.

379. 79th Report, Case No. 408, para. 182; 92nd Report, Case No. 454, para. 188; 187th Report, Case No. 874, para. 478.

380. 197th Report, Case No. 823, para. 414; 221st Report, Case No. 1097, para. 83; 233rd Report, Case No. 1224, para. 132.

381. 160th Report, Case No. 851, para. 197; 197th Report, Case No. 927, para. 355.

382. 160th Report, Case No. 851, para. 197; 197th Report, Case No. 927, para. 355.

383. 197th Report, Case No. 927, para. 355.

384. 214th Report, Case No. 1081, para. 266.

385. 233rd Report, Case No. 1224, para. 133.

378. Legislation imposing recourse to compulsory conciliation and arbitration procedures in industrial disputes before calling a strike cannot be regarded as an infringement of freedom of association.

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

380. The requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult especially in the case of unions which group together a larger number of members. A provision requiring an absolute majority may, therefore, involve the risk of seriously limiting the right to strike.

381. The obligation to give prior notice to the employer before calling a strike may be considered acceptable.

382. The obligation to observe a certain quorum and to take strike decisions by secret ballot may be considered acceptable.

383. The observance of a quorum of two-thirds of the members may be difficult to reach, in particular where trade unions have large numbers of members covering a large area.

384. A provision requiring the agreement of the majority of the members of federations and confederations, or the approval by the absolute majority of the workers of the undertaking concerned for the calling of a strike, may constitute a serious limitation on the activities of trade union organisations.

385. The Committee has considered to be in conformity with the principles of freedom of association a situation where the decision to call a strike in the local branches of a trade union organisation may be taken by the general assembly of the local branches when the reason for the strike is of a local nature and where in the higher level trade union organisations the decision to call a strike may be taken by the executive committee of these organisations by an absolute majority of all the members of the committee.

386. 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; 123rd Report, Case No. 614, para. 34; 125th Report, annexe, Case No. 266, para. 51; 133rd Report, Case No. 629, para. 219; 153rd Report, Case No. 769, para. 279; 208th Report, Case No. 958, para. 305.

387. 236th Report, Case No. 1140, para. 144.

388. 172nd Report, Case No. 885, para. 385; 181st Report, Case No. 899, para. 242; 190th Report, Case No. 913, para. 450; 214th Report, Case No. 1067, para. 208; 236th Report, Cases Nos. 1277 and 1288, para. 682.

389. 217th Report, Case No. 1089, para. 241.

390. 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; 122nd Report, Case No. 636, para. 41; 123rd Report, Case No. 614, para. 37; 147th Report, Case No. 756, para. 167.

391. 214th Report, Cases Nos. 997, 999 and 1029, para. 571.

392. 4th Report, Case No. 5, para. 27; 15th Report, Case No. 102, para. 180; 25th Report, Case No. 152, para. 217; 147th Report, Case No. 756, para. 167; 158th Report, Case No. 818, para. 229.

- Restrictions

(a) General

386. Referring to its recommendation that restrictions on the right to strike would be acceptable if accompanied by conciliation and arbitration procedures, the Committee has made it clear that this recommendation does not refer to the absolute prohibition of the right to strike but to the restriction of that right in essential services or in the public service, in relation to which adequate guarantees should be provided to safeguard the workers' interests.

387. The substitution by legislative means of compulsory arbitration for the right to strike as a means of resolving labour disputes can only be justified in respect of essential services in the strict sense of the term (i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population).

388. The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organisations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.

389. The exclusion from the right to strike of wage earners in the private sector who are on probation is incompatible with the principles of freedom of association.

(b) Temporary

390. The Committee has emphasised that, although a strike may be temporarily restricted by law until all procedures available for negotiation, conciliation and arbitration have been exhausted, such a restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage.

391. Measures suspending right to strike should be limited in time and scope to the immediate period of emergency.

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

393. 142nd Report, Case No. 753, para. 151; 149th Report, Case No. 793, para. 133; 151st Report, Case No. 804, para. 174; 172nd Report, Case No. 870, para. 328; 187th Report, Case No. 892, para. 288, Case No. 902, para. 344, Case No. 874, para. 479; 194th Report, Case No. 893, para. 114, Case No. 908, para. 289; 197th Report, Case No. 917, para. 222, Case No. 935, para. 285, Case No. 823, para. 411; 202nd Report, Case No. 871, para. 104, Case No. 931, para. 210; 204th Report, Case No. 961, para. 67, Case No. 952, para. 159; 211th Report, Case No. 1025, para. 273, Case No. 1024, para. 537; 217th Report, Case No. 1019, para. 374.

394. 118th Report, Cases Nos. 589 and 594, para. 89; 199th Report, Case No. 942, para. 42; 202nd Report, Case No. 949, para. 276; 204th Report, Case No. 893, para. 130; 207th Report, Case No. 991, para. 261; 208th Report, Cases Nos. 988 and 1003, para. 336; 211th Report, Case No. 965, para. 199; Case No. 1074, para. 365; 214th Report, Case No. 1070, para. 232, Case No. 1071, para. 247, Case No. 1081, para. 263; 217th Report, Case No. 1091, para. 443, Case No. 1099, para. 467, Case No. 1065, para. 557; 230th Report, Case No. 1173, para. 577; 233rd Report, Cases Nos. 1183 and 1205, para. 484, Case No. 1225, para. 668; 234th Report, Case No. 1255, para. 190; 236th Report, Case No. 1140, para. 144.

395. 54th Report, Case No. 179, para. 55; 60th Report, Case No. 274, para. 271; 108th Report, Case No. 523, para. 28; 118th Report, Cases Nos. 589 and 594, para. 90; 139th Report, Cases Nos. 741 and 742, para. 198; 142nd Report, Case No. 753, para. 150.

396. 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; 139th Report, Case No. 720, para. 33, Cases Nos. 741 and 742, para. 197; 142nd Report, Case No. 753, para. 149.

397. 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; 149th Report, Case No. 793, para. 136; 236th Report, Case No. 1263, para. 270.

(c) Essential services, the civil service and certain other undertakings

393. The Committee has acknowledged that the right to strike can be restricted or even prohibited in the civil service or in essential services in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees.

394. The right to strike may be restricted or even prohibited in the civil service - civil servants being those who act on behalf of the public authorities - or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

395. The Committee has pointed out that it would not appear to be appropriate for all state-owned undertakings to be treated on the same basis in respect of limitations of the right to strike, without distinguishing in the relevant legislation between those which are genuinely essential and those which are not.

396. 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.

397. As regards the nature of appropriate guarantees in cases where the right to strike in essential services and the civil service is restricted, the Committee considered that allegations relating to the denial of the right to strike did not call for further examination after it 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 provisions of joint arbitration machinery. As regards the nature of the system in question, the Committee pointed out that restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.

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398. 54th Report, Case No. 179, para. 60; 133rd Report, Case No. 686, para. 139; 139th Report, Case No. 725, para. 281.

399. 54th Report, Case No. 179, para. 61.

400. 74th Report, Case No. 363, para. 230; 138th Report, Case No. 719, para. 72; 145th Report, Case No. 776, para. 43; 165th Report, Case No. 652, para. 30; 187th Report, Case No. 874, para. 479; 197th Report, Case No. 917, para. 222, Case No. 935, para. 285, Case No. 823, para. 411; 204th Report, Case No. 952, para. 159; 214th Report, Case No. 1068, para. 364.

401. 133rd Report, Case No. 686, para. 138.

402. 118th Report, Cases Nos. 589 and 594, paras. 90-92; 197th Report, Case No. 823, para. 411; 208th Report, Cases Nos. 988 and 1003, para. 336; 211th Report, Case No. 965, para. 199.

403. 139th Report, Cases Nos. 741 and 742, para. 199.

398. The reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of awards handed down by the compulsory arbitration tribunal. Any departure from this practice would detract from the effective application of the principle that, where strikes by workers in essential services are prohibited, such prohibition should be accompanied by the existence of conciliation procedures and of impartial arbitration machinery the awards of which are binding on both parties.

399. In mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned.

. Determination of essential services

400. The principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

401. The Committee has recalled that the Fact-Finding and Conciliation Commission on Freedom of Association has expressed the view that, even in areas in which a given utility serves the public interest to such an extent as to warrant the prohibition of strikes, this is not to say that all other types of concerted action by the workers ought to be forbidden.

402. 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 as, for example, in normal circumstances, general dock work, aircraft repairs and all transport services, banking, agricultural activities, the metal and petrol industries, teaching, the supply and distribution of foodstuffs - and where the government can also extend this list, the Committee has suggested the possibility of considering an amendment to such legislative provisions so that strikes may only be prohibited in certain services which are essential in the strict sense of the term.

403. The Committee considered that it was not established in a satisfactory way that the Mint, the government printing service and the state alcohol, salt and tobacco monopolies constituted genuinely essential services in the strict sense of the term.

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404. 221st Report, Case No. 1097, para. 84; 226th Report, Case No. 1164, para. 343; 230th Report, Case No. 1173, para. 577.

405. 234th Report, Case No. 1255, para. 190.

406. 208th Report, Case No. 958, para. 305; 217th Report, Case No. 1065, para. 557.

407. 199th Report, Case No. 943, para. 172; 234th Report, Case No. 1201, para. 551.

408. 233rd Report, Case No. 1225, para. 668.

409. 199th Report, Case No. 910, para. 117; 202nd Report, Case No. 949, para. 276; 208th Report, Cases Nos. 988 and 1003, para. 336; 211th Report, Case No. 965, para. 199, Case No. 1074, para. 365; 217th Report, Case No. 1091, para. 443, Case No. 1099, para. 467.

410. 234th Report, Case No. 1179, para. 295.

411. 133rd Report, Case No. 699, para. 196.

412. 211th Report, Case No. 1074, para. 365; 214th Report, Case No. 1021, para. 121; 217th Report, Case No. 1091, para. 443.

413. 12th Report, Case No. 60, para. 81; 82nd Report, Case No. 343, para. 45.

414. 69th Report, Case No. 307, paras. 97 and 99; 160th Report, Case No. 851, para. 197.

404. The Committee has considered that teachers do not fall within the definition of essential services or public servants acting on behalf of the public authorities.

405. The withdrawal of services by workers in petrol-producing installations, while possibly leading to a close-down in production and serious consequences in the long term for the national economy, would not endanger the life, personal safety or health of the whole or part of the population.

406. The metal and mining sectors are not essential services in which the right of workers to promote and defend their interests by means of strike action may be prohibited.

407. The Committee has considered that transport does not generally fall within the category of essential services.

408. Workers in metropolitan transport undertakings are not public officials in the sense set forth in the Convention, nor do they perform an essential service in the strict sense of the term.

409. The Committee has considered that the hospital sector is an essential service.

410. The Committee has recognised that services for the supply of water constitute an essential service in the strict sense of the term

. The public service

411. Action taken by a government to obtain a court injunction to put a temporary end to a strike in the public sector does not constitute an infringement of trade union rights.

412. The withdrawal of services by air traffic controllers may endanger the life and safety of large numbers of passengers and crew. The exclusion of this particular category of public employees from the right to strike does not, therefore, constitute a violation of the principles of freedom of association.

(d) Restrictions designed to ensure safety,
creation of a minimum service

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

414. In one case the legislation provided that occupational organisations in all branches of activity were obliged to ensure that

415. 204th Report, Case No. 952, para. 162; 211th Report, Case No. 1024, para. 538; 214th Report, Case No. 1021, para. 123; 234th Report, Case No. 1244, paras. 153 and 154.

416. 149th Report, Cases Nos. 676 and 803, para. 79, Case No. 709, para. 111; 164th Report, Case No. 845, para. 42; 165th Report, Case No. 857, para. 177; 194th Report, Case No. 908, para. 289; 207th Report, Cases Nos. 997 and 999, para. 314; 217th Report, Case No. 1089, para. 235; 218th Report, Case No. 1115, para. 295; 233rd Report, Case No. 1219, para. 653.

417. 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; 130th Report, Case No. 641, para. 14; 142nd Report, Case No. 678, para. 189; 149th Report, Cases Nos. 678 and 803, para. 79, Case No. 709, para. 111; 187th Report, Case No. 796, para. 183.

418. 149th Report, Case No. 709, para. 111; 165th Report, Case No. 857, para. 177; 181st Report, Case No. 857, para. 69.

419. 130th Report, Case No. 641, para. 14; 165th Report, Case No. 857, para. 117; 181st Report, Case No. 857, para. 69.

420. 99th Report, Case No. 490, para. 41; 112th Report, Case No. 385, para. 76; 123rd Report, Case No. 614, para. 35.

the staff necessary for the safety of machinery and equipment and the prevention accidents and destruction continued to work, and that disagreements as to the definition of "necessary staff" would be settled by an administrative arbitration tribunal. These restrictions on the right to strike were considered to be acceptable.

415. It would appear legitimate that a minimum service be maintained in the event of a strike the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life, personal safety or health of the whole or part of the population; in addition, workers' organisations should be able to participate in defining such a service in the same way as employers and the public authorities.

- General prohibition of strikes

416. A general prohibition of strikes seriously limits the means available to trade unions to further and defend the interests of their members (Article 10 of Convention No. 87) and the right to organise their activities (Article 3).

417. Where legislation directly or indirectly places an absolute prohibition on strikes the Committee has endorsed the opinion of the Committee of Experts on the Application of Conventions and Recommendations 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.

418. The right to strike is affected where a minister is permitted by law, whenever he thinks fit, to submit a labour dispute to compulsory arbitration, thus preventing recourse to a strike.

419. The right to strike would be affected if a legal provision were to permit employers to submit in every case for compulsory arbitral decision disputes resulting from the failure to reach agreement during collective bargaining, thereby preventing recourse to strike action.

420. The Committee considers that where a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, forms part of the general procedure applicable to collective disputes, this can result in a considerable restriction of the right of workers' organisations to organise their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association.

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421. 17th Report, Case No. 73, para. 72; 25th Report, Case No. 136, para. 177.

422. 17th Report, Case No. 73, para. 72.

423. 78th Report, Case No. 364, para. 84; 160th Report, Case No. 842, para. 443; 177th Report, Case No. 884, para. 300; 190th Report, Cases Nos. 884 and 906, para. 101; 207th Report, Cases Nos. 997 and 999, para. 314; 214th Report, Case No. 1081, para. 264; 218th Report, Case No. 1133, para. 106.

424. 30th Report, Case No. 172, para. 207; 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; 158th Report, Case No. 835, para. 255; 160th Report, Cases Nos. 834 and 851, para. 201; 172nd Report, Case No. 876, para. 366; 194th Report, Case No. 90, para. 290; 197th Report, Case No. 935, para. 286, Case No. 823, para. 410; 204th Report, Case No. 952, para. 161, Case No. 976, para. 202; 214th Report, Case No. 1021, para. 123; 234th Report, Case No. 1201, para. 550.

425. 236th Report, Case No. 1270, para. 620.

426. 2nd Report, Case No. 33, para. 113; 93rd Report, Cases Nos. 470 and 481, paras. 274 and 275.

427. 13th Report, Case No. 82, para. 112; 30th Report, Case No. 177, para. 83; 71st Report, Case No. 273, para. 73.

- War, state of national emergency
and requisitioning measures

421. Under the wartime legislation of a country engaged in hostilities it may be necessary for trade unions, like other collectivities or individuals, to accept additional restrictions on their freedom of action apart from those that normally affect them in peacetime.

422. It would be desirable that, as soon as practicable after the conclusion of hostilities, wartime legislation should be replaced by legislation which allows a greater measure of freedom to trade unions.

423. A general prohibition of strikes can only be justified in the event of an acute national emergency and for a limited period of time.

424. The Committee has drawn attention to the possibility of abuse involved in the mobilisation or requisitioning of workers in industrial disputes and has emphasised that it is undesirable to have recourse to such measures except for the purpose of maintaining essential services in circumstances of the utmost gravity during an acute national emergency.

425. The requisitioning of workers in the case of strikes, the threats of dismissal of strike pickets, the recruitment of underpaid workers and a ban on the joining of a trade union in order to break up lawful and peaceful strikes in services which are not essential in the strict sense of the term are not in accordance with freedom of association.

426. 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 could cause a state of acute national emergency. The Committee has, therefore, considered that measures taken to mobilise workers at the time of disputes in services of this kind are such as to restrict the workers' right to strike as a means of defending their occupational and economic interests.

427. Where an essential public service such as the telephone service is interrupted by an unlawful strike, a government may have to assume the responsibility of ensuring its functioning in the interests

428. 199th Report, Case No. 902, para. 255.

429. 67th Report, Case No. 299, para. 98; 71st Report, Case No. 273, para. 73; 197th Report, Case No. 823, para. 426, Case No. 915, para. 473; 202nd Report, Case No. 949, para. 279; 214th Report, Cases Nos. 992 and 1018, para. 91, Case No. 1017, para. 104; 217th Report, Case No. 1089, para. 242.

430. 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; 149th Report, Case No. 793, para. 138; 151st Report, Case No. 804, para. 171; 186th Report, Cases Nos. 676, 768, 802, 819, 822 and 847, para. 85; 197th Report, Case No. 915, para. 473; 204th Report, Case No. 953, para. 346; 208th Report, Case No. 967, para. 169; 214th Report, Cases Nos. 992 and 1018, para. 90; 218th Report, Case No. 958, para. 411; 230th Report, Case No. 1187, para. 674; 234th Report, Case No. 1227, para. 312.

431. 211th Report, Case No. 1046, para. 324.

432. 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; 204th Report, Case No. 941, para. 283; 211th Report, Case No. 965, para. 205; 214th Report, Case No. 1017, para. 102; 217th Report, Case No. 1076, para. 620.

of the community and, for this purpose, may consider it expedient to call in the armed forces or other persons to perform the duties which have been suspended and to take the necessary steps to enable such persons to be installed in the premises where such duties are performed.

428. In one case, the Committee stated that it was fully aware that work stoppages lasting for more than five weeks in the telecommunications sector could seriously prejudice the national community, and that a government may, in such circumstances, be forced to take certain measures.

429. The employment of the armed forces or of another group of persons to perform duties which have been suspended as a result of a labour dispute can - if the strike is lawful - be justified only by the need to ensure the operation of services or industries whose suspension would lead to an acute crisis. The utilisation by the government of labour drawn from outside the undertaking, with a view to replacing striking workers, entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights.

- The course of the strike

(a) Police intervention

430. The Committee has recommended the dismissal of allegations of intervention by the police when the facts showed that such intervention was limited to the maintenance of public order and did not restrict the legitimate exercise of the right to strike; at the same time, the Committee implied that it would have regarded the use of police for strike-breaking purposes as an infringement of trade union rights.

431. In cases of strike movements the authorities should resort to the use of force only in serious situations where law and order is seriously threatened.

(b) Pickets

432. The action of pickets organised in accordance with the law should not be subject to interference by the public authorities.

433. 217th Report, Case No. 1089, para. 240.

434. 17th Report, Case No. 73, paras. 62-65; 111th Report, Case No. 546, para. 79; 197th Report, Case No. 955, para. 473; 211th Report, Case No. 965, para. 205; 214th Report, Case No. 1017, para. 102.

435. 197th Report, Case No. 923, para. 58.

436. 4th Report, Case No. 5, para. 26.

437. 139th Report, Case No. 737, para. 124; 187th Report, Case No. 902, para. 347; 199th Report, Case No. 902, para. 235.

438. 85th Report, Case No. 411, para. 229.

439. 116th Report, Case No. 385, para. 168.

440. 132nd Report, Case No. 686, para. 82; 138th Report, Case No. 725, para. 170; 164th Report, Case No. 863, para. 76; 172nd Report, Case No. 870, para. 329; 177th Report, Case No. 884, para. 307; 187th Report, Case No. 902, para. 347, Case No. 889, para. 507; 190th Report, Cases Nos. 871 and 907, para. 248; 197th Report, Case No. 921, para. 244; 199th Report, Case No. 934, para. 134; 202nd Report, Case No. 871, para. 105, Case No. 927, para. 171, Case No. 931, para. 212, Case No. 948, para. 254, Case No. 950, para. 286; 204th Report, Case No. 961, para. 69, Case No. 976, para. 202, Case No. 960, para. 291; 207th Report, Case No. 958, para. 217; 208th Report, Case No. 958, para. 306;

433. The prohibition of strike pickets is justified only if the strike ceases to be peaceful.

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

435. Taking part in picketing, and firmly but peaceably inciting other workers to keep away from their workplace, cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries.

(c) Penal and other sanctions

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

437. The imposition of sanctions on public servants on account of their participation in a strike is not conducive to the development of harmonious industrial relations.

438. The restrictive nature of legislation governing strikes and the possible consequence of the procedure to be followed before a strike could be declared appeared, in one case, to make it possible for strikers to be liable in all cases to penal sanctions. This, in the opinion of the Committee, implied 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.

439. Assuming that a penal or other law applies, 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 principle of the right to strike.

440. The development of harmonious labour relations could be impaired by an inflexible attitude being adopted in the application of severe sanctions especially penal sanctions to workers who participate in strike action.

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211th Report, Case No. 1020, para. 249, Case No. 1074, para. 369; 214th Report, Cases Nos. 988 and 1003, para. 507; 217th Report, Case No. 1019, para. 377, Case No. 1034, para. 412; 218th Report, Case No. 1100, para. 687.

441. 199th Report, Case No. 792, para. 14; 211th Report, Case No. 1020, para. 249.

442. 149th Report, Case No. 793, para. 138; 151st Report, Case No. 804, para. 171; 158th Report, Case No. 835, para. 255; 187th Report, Case No. 889, para. 507; 197th Report, Case No. 923, para. 56; 211th Report, Case No. 1024, para. 539; 217th Report, Case No. 1034, para. 412.

443. 214th Report, Cases Nos. 988 and 1003, para. 507; 217th Report, Case No. 823, para. 510; 236th Report, Case No. 1066; para. 122.

444. 149th Report, Case No. 793, para. 138; 177th Report, Case No. 884, para. 303; 190th Report, Cases Nos. 884 and 906, para. 108, Cases Nos. 871 and 907, para. 248; 199th Report, Case No. 934, para. 136; 202nd Report, Case No. 871, para. 105, Case No. 927, para. 171, Case No. 948, para. 254, Case No. 950, para. 286; 204th Report, Case No. 960, para. 291, Case No. 982, para. 369; 218th Report, Case No. 1100, para. 687; 230th Report, Cases Nos. 988 and 1003, para. 369; 234th Report, Case No. 1179, para. 297.

445. 153rd Report, Case No. 719, para. 154; 177th Report, Case No. 889, para. 331; 202nd Report, Case No. 948, para. 254; 204th Report, Case No. 960, para. 291, Case No. 982, para. 369.

446. 26th Report, Cases Nos. 134 and 141, paras. 77 and 78.

447. 230th Report, Case No. 1184, para. 282; 233rd Report, Case No. 1213, para. 625; 236th Report, Case No. 1213; para. 46.

448. 218th Report, Case No. 1148, para. 123.

441. Penalties for strike action should, in every instance, be proportionate to the offence committed.

442. Arrests and dismissals of strikers on a large scale involve a serious risk of abuse, and place freedom of association in grave jeopardy; the competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve.

. Dismissals

443. When trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against contrary to Article 1 of Convention No. 98.

444. The use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association.

445. Industrial relations troubled by the collective dismissal for participation in strike action can be greatly improved if the employers concerned give serious consideration to the possibility of reinstating the persons thus sanctioned.

. Imprisonment

446. 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.

447. Generally, the authorities should not have recourse to measures of imprisonment for the mere fact of organising or participating in a peaceful strike.

448. The arrest of a trade union leader for instigating what is considered to be an illegal strike should be accompanied by adequate judicial safeguards applied without delay.

449. 233rd Report, Case No. 1185, para. 305.

450. 95th Report, Case No. 448, paras. 143 and 145;
202nd Report, Case No. 927, para. 174.

451. 112th Report, Case No. 554, para. 138; 158th Report, Case
No. 818, para. 218.

452. 211th Report, Case No. 1057, para. 174.

453. 73rd Report, Case No. 348, para. 114; 83rd 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; 125th Report, Case No. 654, para. 77;
127th Report, Case No. 633, para. 148; 128th Report, Case No. 662,
para. 41, Case No. 651, para. 57; 129th Report, Case No. 666,
para. 262; 138th Report, Case No. 719, para. 70; 143rd Report, Case
No. 748, para. 99, Case No. 771, para. 117; 158th Report, Case
No. 800, para. 125, Case No. 818, para. 217; 162nd Report, Cases
Nos. 685, 781, 806 and 814, para. 34; 190th Report, Case No. 911,
para. 428; 192nd Report, Case No. 842, para. 55; 197th Report, Case
No. 917, para. 195, Case No. 927, para. 359; 201st Report, Case
No. 842, para. 47; 202nd Report, Case No. 947, para. 240.

454. 118th Report, Case No. 559, paras. 178 and 179.

II. Non-interference by the public authorities

1. Control over the internal activities of trade unions

449. Freedom of association implies the right of workers' and employers' organisations to resolve any disputes by themselves and without interference by the authorities; it is for the government to create an atmosphere conducive to the resolution of such disputes.

450. Legislation which accords to the Minister the discretionary right 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.

451. Events of an exceptional nature may warrant direct intervention by a government in internal trade union matters in order to re-establish a situation in which trade union rights are fully respected.

452. 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, it is important that control over the internal acts of a trade union and the power to take measures for its suspension or dissolution should be exercised by the judicial authorities, not only to ensure the right of defence (which normal judicial procedure alone can guarantee), but also to avoid the risk that measures taken by the administrative authorities may appear to be arbitrary.

453. The only limitations on the rights set out in Article 3 of Convention No. 87 which might possibly be acceptable should aim solely at ensuring respect for democratic rules within the trade union movement.

454. There should be outside control only in exceptional cases, when there are serious circumstances justifying such action, 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

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455. 164th Report, Case No. 846, para. 56.

456. 143rd Report, Case No. 771, para. 117; 172nd Report, Case No. 878, para. 107; 202nd Report, Case No. 944, para. 227, Case No. 947, para. 240; 203rd Report, Case No. 842, para. 20.

457. 23rd Report, Case No. 111, para. 160; 144th Report, Case No. 732, para. 74.

458. 158th Report, Case No. 824, para. 298.

459. 73rd Report, Case No. 348, para. 112.

460. 116th Report, Case No. 385, para. 188.

461. 26th Report, Cases Nos. 134 and 141, para. 103.

the public authorities which would restrict this right or impede its lawful exercise. The Committee has considered that a law which confers the power to intervene on an official of the judiciary against whose decisions an appeal may be made to the Supreme Court, and which lays down that a request for intervention must be supported by a substantial number of those in the occupational category in question, does not violate these principles.

2. Intervention by the authorities
in trade union elections

455. Any intervention by the public authorities in trade union elections runs the risk of appearing to be arbitrary and thus constituting interference in the functioning of workers' organisations, which is incompatible with their right to elect their representatives in full freedom.

456. Measures taken by the administrative authorities when election results are challenged run the risk of being arbitrary. Hence, and in order to ensure an impartial and objective procedure, matters of this kind should be examined by the judicial authorities.

457. Any interference by the authorities and the political party in power concerning the presidency of the central trade union organisation in a country is incompatible with the principle that organisations shall have the right to elect their representatives in full freedom.

458. The nomination by the authorities of members of executive committees of trade unions constitutes direct interference in the internal affairs of trade unions and is incompatible with Convention No. 87.

459. When the authorities intervene during the election proceedings of a union, expressing their opinion of the candidates and the consequences of the election, this seriously challenges the principle that trade union organisations have the right to elect their representatives in full freedom.

460. Where trade union leaders were removed from office, not by the decision of members of the trade unions concerned but by the administrative authority, and not because of infringement of specific provisions of the trade union constitution or of the law, but because the administrative authorities considered these trade union leaders incapable of maintaining "discipline" in their unions, the Committee was of the view that such measures were obviously incompatible with the principle that trade union organisations have the right to elect their representatives freely and to organise their administration and activities.

461. Legislation which requires candidates for trade union office to have obtained the approval of the Provincial Governor, which

462. 86th Report, Case No. 451, paras. 135 and 136; 147th Report, Cases Nos. 668 and 730, para. 61.

463. 50th Report, Case No. 240, para. 40; 52nd Report, Case No. 239, para. 192.

464. 65th Report, Case No. 266, paras. 45 and 47; 86th Report, Case No. 451, para. 135.

465. 113th Report, Case No. 266, para. 75.

466. 160th Report, Case No. 851, para. 196; 211th Report, Case No. 1057, para. 174.

is given on the basis of a report from the police, is incompatible with the principle that employers' and workers' organisations should have the right to elect their representatives in full freedom.

462. 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 in advance to the Ministry of Labour, together with personal particulars, the presence of a representative of the Ministry of Labour or the civil or military authorities at the elections, and the approval of the elections by ministerial decision, without which they are invalid.

463. 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 that workers' organisations shall 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.

464. The Committee has observed that, in a number of countries, legal provisions exist 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 a complaint is made or if there are reasonable grounds for supposing that irregularities have taken place in a trade union election, contrary to the constitution of the organisation concerned. The situation, however, is different 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.

465. In order to avoid the danger of serious limitations on the right of workers to elect their representatives in full freedom, complaints 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.

466. A legislative provision which limits to one-tenth of the total number of votes the number of votes attributable to occupational associations when they vote in the general assemblies and congresses of their federations goes beyond a simple guarantee of democratic procedure and is incompatible with Articles 6 and 3 of Convention No. 87.

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467. 25th Report, Case No. 140, para. 269; 65th Report, Case No. 266, para. 49; 158th Report, Case No. 818, para. 216.

468. 172nd Report, Case No. 878, para. 109.

469. 65th Report, Case No. 266, paras. 49 and 50; 129th Report, Case No. 666, para. 264.

470. 127th Report, Case No. 644, para. 249.

471. 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; 158th Report, Case No. 818, para. 216; 207th Report, Case No. 958, para. 216; 211th Report, Case No. 1028, para. 289.

472. 81st Report, Case No. 385, para. 141; 143rd Report, Case No. 748, para. 101; 158th Report, Case No. 800, para. 124; 165th Report, Case No. 842, para. 146; 197th Report, Case No. 927, para. 358.

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

467. 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 seem to be incompatible with freedom of association in a normal period.

468. In a case where an administrator of trade union affairs had been appointed by the government so as to ensure, on behalf of the trade unions, the functions normally carried out by a central workers' organisation, the Committee considered that any reorganisation of the trade union movement should be left to the trade union organisations themselves and that the administrator should confine himself to co-ordinating the efforts made by the unions to bring this about. The prerogatives conferred on the administrator should not be such as to restrict the rights guaranteed by Article 3, paragraph 1, of Convention No. 87.

469. Legislation which confers on the public authorities the power to remove the management committee of a union whenever, in their discretion, they consider that they have "serious and justified reasons", and which empowers the government to appoint management committees to replace the elected committees of trade unions, is not compatible with the principles of freedom of association. Such 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.

470. The setting up by the government, following a change of regime, of a provisional consultative committee of a trade union confederation and the refusal to recognise the executive committee which has been elected at the congress of that organisation constitutes a breach of 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.

471. With regard to the placing of certain unions under control, the Committee has drawn attention 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.

472. The placing of trade union organisations under control involves a serious danger of restricting the rights of workers' organisations to elect their representatives in full freedom and to organise their administration and activities.

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473. 112th Report, Case No. 554, para. 138; 143rd Report, Case No. 748, para. 102; 147th Report, Cases Nos. 668 and 730, para. 62; 158th Report, Case No. 818, para. 222; 160th Report, Case No. 842, para. 440; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 36; 218th Report, Case No. 1121, para. 312; 219th Report, Case No. 842, para. 23.

474. 127th Report, Case No. 633, para. 148; 201st Report, Case No. 842, para. 47.

475. 114th Report, Cases Nos. 574, 588 and 593, para. 232.

476. 21st Report, Case No. 19, para. 33; 211th Report, Case No. 965, para. 198.

477. 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.

478. 73rd Report, Case No. 348, para. 114; 116th Report, Case No. 558, para. 151; 211th Report, Case No. 965, para. 196.

479. 128th Report, Case No. 651, para. 56; 129th Report, Case No. 666, para. 264; 143rd Report, Case No. 748, para. 102; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 36.

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

474. Measures taken by the administrative authorities, such as the placing of organisations under control, are liable to appear arbitrary, even if they are temporary and may be challenged before the courts.

475. 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 constitutions, elect their representatives, organise their administration and formulate their programmes.

4. Removal or suspension of trade union leaders

476. The Committee has pointed out that the removal by the government of trade union leaders from office is a serious infringement of the free exercise of trade union rights, and it 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.

477. Where powers are given to the administrative authorities to remove trade union executive committees and to deprive (or suspend) trade union leaders of their trade union functions, because of their political activities, or where irregularities in the finances or elections of trade unions have been detected, etc., this 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.

478. Since the effect of the suspension of the results of elections may be the same as suspending the organisation itself, the Committee has pointed out that measures of suspension taken by an administrative authority involve the risk of appearing to be arbitrary, even when they are provisional and temporary and are followed by court action.

479. In cases where there have been infringements of the law or of the internal rules, the removal from trade union office of trade union leaders, as well as the appointment of temporary administrators, should be effected through the courts.

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480. 114th Report, Case No. 510, para. 62; 158th Report, Case No. 818, para. 217; 185th Report, Case No. 823, para. 104; 211th Report, Case No. 965, para. 198, Case No. 1028, para. 289.

481. 172nd Report, Case No. 878, para. 110.

482. 113th Report, Case No. 266, para. 75.

483. 125th Report, Case No. 654, para. 78.

484. 133rd Report, Case No. 654, para. 236.

485. 194th Report, Case No. 823, para. 158.

480. It is essential that measures for the dismissal, suspension or disqualification of trade union officials as a penalty provided by law should not become applicable except on the basis of a sentence pronounced by 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.

481. The prohibition of trade union activities in the case of trade union leaders is a particularly serious action and should be decided by the courts in order to ensure all rights of defence.

482. The Committee has 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 must 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.

483. Legislation should contain provisions which lay down sufficiently precise criteria to enable the judicial authority to determine whether a trade union officer has been guilty of such acts as would justify his suspension or dismissal from office.

484. A provision which permits the suspension from office of trade union officials by a judge whose statutory obligation extends no further than ensuring that an administrative inquiry has been carried out by the competent services prior to the request for suspension being made by the national labour authority does not provide adequate judicial control to ensure an impartial and objective procedure. The Committee has considered that such a provision offers the trade union officials concerned no opportunity during the suspension procedure to lodge a counter-plea on the substance of the petition or to contest the facts and circumstances alleged in the report of the inspectorate.

485. It is essential that a decision on measures for the removal of a trade union official from office should be taken by the organisation itself, in accordance with its constitution, and that measures for disqualification on legal grounds should not become applicable except on the basis of judicial procedures guaranteeing the right of defence and an impartial examination of the matter enabling due account to be taken of the right of organisations to elect their representatives in full freedom.

486. 153rd Report, Cases Nos. 763, 786 and 801, para. 219.

487. 208th Report, Cases Nos. 997 and 999, para. 368.

488. 6th Report, Case No. 3, para. 1025; 14th Report, Case No. 108, 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; 131st Report, Case No. 683, para. 200; 139th Report, Case No. 749, para. 479, Case No. 763, para. 551, Case No. 765, para. 568; 144th Report, Case No. 732, para. 73; 149th Report, Case No. 709, para. 103; 155th Report, Case No. 815, para. 23; 172nd Report, Case No. 870, para. 339; 187th Report, Case No. 892, para. 298, Case No. 889, para. 508; 201st Report, Case No. 842, para. 61; 202nd Report, Case No. 928, para. 190; 205th Report, Case No. 983, para. 39; 208th Report, Case No. 984, para. 318; 211th Report, Case No. 965, para. 196; 217th Report, Case No. 1034, para. 408; 222nd Report, Case No. 1037, para. 176; 230th Report, Case No. 1194, para. 291.

489. 230th Report, Case No. 1189, para. 686.

490. 6th Report, Case No. 2, para. 1012; 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;

CHAPTER V

DISSOLUTION AND SUSPENSION OF ORGANISATIONS (Article 4 of Convention No. 87)

General principle

486. In view of the serious consequences which dissolution of a union involves for the occupational representation of workers, the Committee has considered that it would appear preferable, in the interest of labour relations, if such action were to be taken only as the last resort, and after exhausting other possibilities with less serious effects for the organisation as a whole.

1. By legislative or administrative measures

487. The suspension of trade union organisations by administrative authority constitutes a serious restriction of the right of workers' organisations to elect their leaders in full freedom and to organise their administration and activities.

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

489. The Committee has emphasised that the cancellation of registration of an organisation by the registrar of trade unions is tantamount to the suspension or dissolution of that organisation by administrative authority.

490. Dissolution by the executive branch of the government pursuant to a law conferring full powers, or acting in the exercise of legislative functions, like dissolution by virtue of administrative

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84th Report, Case No. 403, para. 39; 105th Report, Case No. 537, para. 296; 131st Report, Case No. 677, para. 170; 139th Report, Case No. 749, para. 479; 142nd Report, Case No. 763, para. 219; 149th Report, Case No. 709, para. 103; 158th Report, Case No. 818, para. 216; 162nd Report, Cases Nos. 685, 781, 806 and 814, para. 34; 172nd Report, Case No. 870, para. 339; 181st Report, Case No. 885, para. 207; 190th Report, Cases Nos. 871 and 907, para. 252; 201st Report, Case No. 842, para. 61; 202nd Report, Case No. 924, para. 153; 207th Report, Case No. 823, para. 175; 217th Report, Case No. 1034, para. 408; 233rd Report, Case No. 1219, para. 657.

491. 87th Report, Case No. 408, para. 262; 124th Report, Case No. 664, para. 112; 138th Report, Case No. 719, para. 69; 143rd Report, Case No. 764, para. 86; 168th Report, Case No. 871, para. 254; 177th Report, Case No. 889, para. 332; 214th Report, Case No. 1075, para. 691.

492. 151st Report, Case No. 809, para. 195.

493. 95th Report, Case No. 448, paras. 143 and 145; 202nd Report, Case No. 928, para. 190.

494. 214th Report, Case No. 1097, para. 745.

495. 170th Report, Case No. 763, para. 13.

496. 214th Report, Cases Nos. 1083 and 1085, para. 449.

powers, does not ensure the right of defence which normal judicial procedure alone can guarantee and which the Committee considers essential.

491. Suspension by the Ministry of Labour of the legal personality of a union - legal personality being one of the conditions enabling the union to function legally - is contrary to the generally accepted principle that unions should not be liable to be suspended by administrative authority.

492. In a case where trade union status was withdrawn from a trade union organisation, mainly because of irregularities in the financial management of the organisation, the Committee considered that, if the authorities found irregularities which might be detrimental to the union's social funds, they should have taken legal action based on these irregularities against the persons responsible rather than adopt measures depriving the union of all possibility of action.

493. Legislation which accords to the Minister the complete discretionary power to order the cancellation of the registration of a trade union, without any right of appeal to the courts, is contrary to the principles of freedom of association.

494. The Committee is deeply convinced that in no case does the solution to the economic and social problems besetting a country lie in isolating trade union organisations and suspending their activities. On the contrary, only through the development of free and independent trade union organisations and negotiations with these organisations can a government tackle such problems and solve them in the best interests of the workers and the nation.

495. Development needs should not justify maintaining the entire trade union movement of a country in an irregular legal situation, thereby preventing the workers from exercising their trade union rights as well as preventing organisations from carrying out their normal activities. A balanced economic and social development requires the existence of strong and independent organisations which can participate in this process.

2. Intervention by the judicial authorities

496. The suspension of the legal personality of trade union organisations represents a serious restriction on trade union rights

497. 131st Report, Case No. 683, para. 200; 220th Report, Cases Nos. 997, 999 and 1029, para. 86.

498. 133rd Report, Case No. 710, para. 56; 177th Report, Case No. 853, para. 84.

499. 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; 125th Report, annexe, Case No. 266, para. 37; 168th Report, Case No. 862, para. 193; 187th Report, Case No. 892, para. 298, Case No. 889, para. 508; 190th Report, Cases Nos. 871 and 907, para. 255; 197th Report, Case No. 924, para. 495; 204th Report, Case No. 968, para. 358; 214th Report, Cases Nos. 1083 and 1085, para. 448; 230th Report, Case No. 1194, para. 291.

500. 83rd Report, Cases Nos. 283, 329 and 425, para. 156; 105th Report, Case No. 537, para. 296; 187th Report, Case No. 892, para. 298, Case No. 889, para. 508; 214th Report, Cases Nos. 1083 and 1085, para. 448.

501. 73rd Report, Case No. 338, para. 42.

502. 20th Report, Cases Nos. 72 and 122, para. 68.

and in matters of this nature the rights of defence can only be fully guaranteed through due process of law.

497. Any measures of suspension or dissolution by administrative authority, when taken during an emergency situation, should be accompanied by normal judicial safeguards, including the right of appeal to the courts against such dissolution or suspension.

498. Even if they may be justified in certain circumstances, measures taken to withdraw the legal personality of a trade union and the blocking of trade union funds should be taken through judicial and not administrative action.

499. If the principle that an occupational organisation 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 a right of appeal against such administrative decisions; such decisions should not take effect until the expiry of the statutory period for lodging an appeal, without an appeal having been entered, or until the confirmation of such decisions by a judicial authority.

500. Judges should be 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 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 arise in the event of the suspension or dissolution of an occupational organisation.

3. Voluntary dissolution

501. Where the decision to dissolve a trade union organisation was freely taken by 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 an infringement of trade union rights.

4. Dissolution on account of insufficient membership

502. A legal provision which obliges a trade union to dissolve if its membership falls below 20 or 40, depending on whether it is a works 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

503. 133rd Report, Case No. 665, paras. 42-43.

504. 24th Report, Case No. 144, para. 256; 45th Report, Case No. 211, para. 108; 110th Report, Case No. 519, para. 82; 194th Report, Case No. 900, para. 258; 202nd Report, Case No. 823, para. 305; 207th Report, Case No. 823, para. 175; 209th Report, Case No. 763, para. 78; 220th Report, Case No. 1097, para. 87; 230th Report, Case No. 1189, para. 687; 237th Report, Cases Nos. 997, 999 and 1029, para. 31.

505. 25th Report, Case No. 152, para. 244.

possibility of an abusive interpretation of the provision; in other words the right of appeal to a court of law.

503. In one case where the legislation required that there be at least 20 persons in order to found a union, and where a court had ordered the dissolution of a union of homeopathy workers because of the insufficient number of persons legally qualified to practise this profession, the Committee considered that the dissolution did not appear to constitute a measure which could be considered an infringement of freedom of association.

5. Liquidation of trade union
funds and assets

504. 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. By this is meant the organisation or organisations which pursue the aims for which the dissolved union was established, and which pursue them in the same spirit.

505. The fact that the registrar, on dissolution of a union, acts as an official liquidator, is not in itself a matter for criticism.

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506. 83rd Report, Case No. 393, para. 73; 128th Report, Case No. 662, para. 40.

507. 103rd Report, Case No. 514, para. 224.

508. 133rd Report, Case No. 668, para. 297.

509. 60th Report, Case No. 191, para. 150.

510. 85th Report, Case No. 335, para. 460; 197th Report, Case No. 823, para. 389.

511. 83rd Report, Case No. 303, para. 180; 85th Report, Case No. 274, para. 286.

512. 108th Report, Case No. 506, para. 225.

CHAPTER VI

RIGHT OF WORKERS' AND EMPLOYERS' ORGANISATIONS TO ESTABLISH FEDERATIONS AND CONFEDERATIONS AND TO AFFILIATE WITH INTERNATIONAL ORGANISATIONS OF EMPLOYERS AND WORKERS (Article 5 of Convention No. 87)

1. Establishment of federations and confederations

506. The principle, laid down in Article 2 of Convention No. 87, that workers shall have the right to establish and join organisations of their own choosing implies for the organisations themselves the right to establish and join federations and confederations of their own choosing.

507. 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.

508. A provision whereby a Minister may, at his discretion, approve or reject an application for the creation of a general confederation is not in conformity with the principles of freedom of association.

509. 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 their organisations themselves after their right to form them has been legally recognised.

510. Legislation which requires a minimum number of trade unions or federations for the establishment of organisations of higher level, and which 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 Article 5 of Convention No. 87.

511. 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 as well as such new unions as might be registered with the consent of the Minister might form, this is incompatible with Article 5 of Convention No. 87.

512. 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

513. 128th Report, Case No. 662, para. 40.

514. 116th Report, Case No. 558, para. 142.

515. 138th Report, Case No. 631, para. 30.

516. 201st Report, Case No. 842, para. 55.

517. 108th Report, Case No. 506, para. 226.

518. 105th Report, Case No. 503, para. 212; 153rd Report, Case No. 788, para. 129; 187th Report, Case No. 796, para. 179; 190th Report, Cases Nos. 884 and 906, para. 125; 211th Report, Case No. 1004, para. 220.

519. 181st Report, Case No. 880, para. 113.

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".

513. A provision prohibiting the establishment of federations by unions in different departments constitutes a restriction of the right of workers' organisations to establish federations and confederations, recognised by Article 5 of Convention No. 87.

514. 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.

515. Any restriction, either direct or indirect, on the right of unions to establish and join associations of unions belonging to the same or different trades, on a regional basis, would not be in conformity with the principles of freedom of association.

516. The preferential rights granted to the most representative organisations should not give them the exclusive right to set up federations and affiliate with them.

517. 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.

2. Affiliation with international organisations of employers and workers

General principles

518. 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 that any organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

519. Article 5 of the Convention - as is clear from the preparatory work on the instrument - merely gives expression to the fact that workers or employers are united by a solidarity of interests, a solidarity which is not limited either to one specific

520. 6th Report, Case No. 3, para. 1026; 211th Report, Case No. 965, para. 202, Case No. 1004, para. 220.

521. 172nd Report, Case No. 869, para. 43.

522. 24th Report, Case No. 155, para. 13.

523. 6th Report, Case No. 50, para. 854; 60th Report, Case No. 274, para. 280; 65th Report, Case No. 266, para. 42; 187th Report, Case No. 796, para. 179; 211th Report, Case No. 965, para. 202; 214th Report, Case No. 984, para. 288.

524. 28th Report, Case No. 169, para. 303.

525. 101st Report, Case No. 506, paras. 414 and 423.

undertaking or even to a particular industry, or even to the national economy, but extends to the whole international economy. Furthermore, the right to organise corresponds to the practice followed by the United Nations and the International Labour Organisation, both of which have formally recognised international organisations of workers and employers by associating them directly with their own activities.

520. 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.

521. A workers' organisation should have the right to join the federation and confederation of its own choosing, subject to the rules of the organisations concerned, and without any previous authorisation. It is for the federations and confederations themselves to decide whether or not to accept the affiliation of a trade union, in accordance with their own constitutions and rules.

522. 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.

Intervention by the public authorities

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

524. When a national organisation seeks to affiliate with an international organisation of workers the conditions which 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 matters 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.

Consequences of international affiliation

525. Legislation which provides for the banning of any organisation where there is evidence that it is under the influence or direction of any outside source, and also for the banning of any organisation where there is evidence that it receives financial assistance or other benefits from any outside source, unless such financial assistance or other benefits be approved by and channelled

526. 153rd Report, Case No. 788, para. 129; 190th Report, Case No. 906, para. 125.

527. 148th Report, Case No. 794, para. 22; 233rd Report, Cases Nos. 1183 and 1205, para. 485.

528. 6th Report, Case No. 40, para. 529; 12th Report, Case No. 75, para. 288; 14th Report, Case No. 101, para. 72; 233rd Report, Case No. 1228, para. 184.

529. 6th Report, Case No. 40, para. 562; 12th Report, Case No. 64, para. 94, Case No. 65, para. 119, Case No. 74, para. 180, Case No. 77, para. 196; 60th Report, Case No. 274, para. 261; 78th Report, Cases Nos. 397 and 400, para. 313; 79th Report, Case No. 389, para. 120; 85th Report, Case No. 274, para. 290; 95th Report, Case No. 497, para. 317; 101st Report, Case No. 506, paras. 420 and 421; 111th Report, Case No. 563, para. 58; 125th Report, Case No. 649, para. 58; 139th Report, Case No. 698, para. 464; 148th Report, Case No. 794, para. 21; 153rd Report, Case No. 788, para. 130; 181st Report, Case No. 880, para. 114; 201st Report, Case No. 842, para. 58; 202nd Report, Case No. 946, para. 72; 204th Report, Case No. 966, para. 82; 211th Report, Case No. 1044, para. 602; 217th Report, Case No. 1106, para. 325; 233rd Report, Case No. 1219, para. 656.

530. 12th Report, Case No. 77, para. 198; 89th Report, Case No. 437, para. 86; 181st Report, Case No. 880, para. 114.

531. 153rd Report, Case No. 788, para. 131.

532. 211th Report, Case No. 1044, para. 602; 217th Report, Case No. 1106, para. 325; 233rd Report, Case No. 1197, para. 43.

through government, is incompatible with the principles set out in Article 5 of Convention No. 87 in so far as these provisions apply to the right of trade unions to affiliate with international workers' organisations.

526. The granting of advantages resulting from the international affiliation of a trade union organisation must not conflict with the law, it being understood that the law should not be such as to render any such affiliation meaningless.

527. Legislation prohibiting the acceptance by a national trade union of financial assistance from an international organisation of workers to which it is affiliated brings into question the principles concerning the right to affiliate with international organisations of workers.

528. 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.

529. The right to affiliate with international organisations of workers implies the right, for the representatives of national trade unions, to maintain contact with the international trade union organisations with which they are affiliated, to participate in the activities of these organisations and to benefit from the services and advantages which their membership offers.

530. The right of national trade unions to send representatives to international trade union congresses is a normal corollary of the right of those national organisations to join international workers' organisations.

531. Visits to affiliated national trade union organisations and participation in their congresses are normal activities for international workers' organisations, subject to the provisions of national legislation with regard to the admission of foreigners.

532. The corollary of the above principle is that the formalities to which trade unionists and trade union leaders are subject in seeking entry to the territory of a State, or in attending to trade union business there, should be based on objective criteria and be free of anti-union discrimination.

Freedom of Association

533. 1st Report, Case No. 38, para. 110; 6th 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; 105th Report, Case No. 530, para. 48; 181st Report, Case No. 880, para. 115; 204th Report, Case No. 966, para. 83; 211th Report, Case No. 1044, para. 602; 217th Report, Case No. 1106, para. 325.

534. 89th Report, Case No. 437, para. 87; 181st Report, Case No. 880, para. 115; 202nd Report, Case No. 946, para. 72.

535. 6th Report, Case No. 40, para. 523.

536. 19th Report, Case No. 133, para. 123.

537. 111th Report, Case No. 563, paras. 62 and 63; 125th Report, Case No. 649, paras. 58 and 59; 153rd Report, Case No. 788, para. 129.

533. The Committee has recognised that the refusal to grant a passport (or visa) to foreigners, or more generally the right to exclude persons from national territory, are matters which concern the sovereignty of a State.

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

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

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

537. In all cases governments have the right to take the necessary measures to guarantee public order and national security. This 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 verify 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.

538. 6th Report, Case No. 47, para. 728; 126th Report, Case No. 638, para. 26; 165th Report, Case No. 857, para. 173; 181st Report, Case No. 857, para. 93; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 77; 233rd Report, Cases Nos. 1183 and 1205, para. 500; 236th Report, Case No. 1140, para. 143, Case No. 1290, para. 389.

539. 11th Report, Case No. 59, para. 63; 14th Report, Case No. 105, para. 137.

540. 14th Report, Case No. 105, para. 137; 76th Report, Case No. 364, para. 348.

541. 84th Report, Case No. 415, para. 60; 153rd Report, Cases No. 763, 786 and 801, para. 241.

542. 157th Report, Cases Nos. 827, para. 216; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 77; 236th Report, Case No. 1254, para. 377.

543. 234th Report, Case No. 1242, para. 139.

544. 211th Report, Case No. 1020, para. 250; 214th Report, Case No. 1021, para. 125.

545. 133rd Report, Case No. 603, para. 81; 147th Report, Case No. 747, para. 146; 160th Report, Case No. 851, para. 194.

CHAPTER VII

PROTECTION AGAINST ANTI-UNION DISCRIMINATION (Article 1 of Convention No. 98)

General principles

538. No person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities.

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

540. This protection should apply more particularly in respect of acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside the workplace or, with the employer's consent, during working hours.

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

542. Governments should, where necessary, take measures to ensure that workers are protected against acts, including dismissal, which are likely to provoke, or have as their object, anti-union discrimination in respect of employment of workers.

543. Legislation should lay down explicitly remedies and penalties against acts of anti-union discrimination by employers against workers' organisations in order to ensure the effective application of Article 1 of Convention No. 98.

544. Protection against acts of anti-union discrimination should cover not only hiring and dismissal but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker.

545. Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of the workers in

546. 132nd Report, Case No. 686, para. 81.

547. 78th Report, Case No. 364, para. 73; 119th Report, Case No. 611, para. 104 and 105; 153rd Report, Cases Nos. 763, 786 and 801, para. 240; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 77; 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 51; 211th Report, Case No. 1053, para. 163.

548. 127th Report, Cases Nos. 520 and 540, para. 114.

549. 207th Report, Case No. 823, para. 181; 217th Report, Case No. 1083, para. 150, Case No. 1094, para. 271; 234th Report, Case No. 1173, para. 82.

550. 6th Report, Case No. 47, para. 728; 126th Report, Case No. 638, para. 26; 187th Report, Case No. 857, para. 229.

551. 235th Report, Cases Nos. 997, 999 and 1029, para. 38; 236th Report, Cases Nos. 1207 and 1209, para. 173.

552. 230th Report, Case No. 1130, para. 472.

an undertaking, additional measures should be taken to ensure fuller protection for leaders of all organisations, and delegates and members of trade unions, against any discriminatory acts.

546. While stressing the importance of an effective and speedy machinery for the examination of complaints of anti-union discrimination in employment as a means to implement the provisions of Convention No. 98, the Committee has considered that, in the case of national public enterprises, the national authorities have an additional responsibility in preventing any acts of this nature and should take appropriate measures to this effect, such as a clear policy statement accompanied by specific instructions to be implemented at all levels of management.

547. It would not appear that sufficient protection against acts 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.

548. In one case, the Committee expressed its concern at the fact that workers could lose their employment on account of absence from their jobs as a result of their having been arrested or sentenced because they were presumed or proved to have been engaging in activities which, under the national legislation, were deemed to be offences but which, according to generally recognised principles, should be considered as normal and lawful trade union activities. Not only did the workers lack protection against acts of anti-union discrimination in respect of their employment, but the law of the land itself impaired the essential guarantees in respect of freedom of association.

549. Acts of anti-trade union discrimination should not be authorised under the pretext of dismissals based on economic necessity.

1. Acts of discrimination

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

551. No worker should be subjected, at the time of his employment, to discrimination on the grounds of his trade union membership or activity, whether past or present.

552. No person should be prejudiced in his employment by reason of his membership of a trade union, even if that trade union is not

553. 234th Report, Case No. 1248, para. 634; 236th Report, Cases Nos. 1240 and 1248, para. 339.

554. 89th Report, Case No. 444, para. 101; 197th Report, Cases Nos. 821, 859 and 875, para. 180.

555. 95th Report, Case No. 494, para. 301.

556. 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; 128th Report, Case No. 651, para. 58; 135th Report, Case No. 646, para. 135; 142nd Report, Case No. 673, para. 36; 144th Report, Case No. 762, para. 144; 147th Report, Case No. 717, para. 260; 153rd Report, Cases Nos. 763, 786 and 801, para. 241; 158th Report, Case No. 834, para. 246; 160th Report, Case No. 826, para. 66, Case No. 855, para. 100 and Case No. 851, para. 194; 168th Report, Case No. 866, para. 75; 172nd Report, Cases Nos. 821, 859 and 875, para. 216, Case No. 876, para. 369; 186th Report, Cases Nos. 672, 768, 802, 819, 822 and 847, para. 78; 197th Report, Case No. 920, para. 132, Cases Nos. 821, 859 and 875, para. 180, Case No. 913, para. 317, Case No. 823, para. 422; 199th Report, Case No. 891, para. 76, Case No. 939, para. 157, Case No. 922, para. 279; 202nd Report, Case No. 949, para. 277, Case No. 932, para. 393; 204th Report, Case No. 876, para. 38, Case No. 922, para. 216, Case No. 941, para. 282; 208th Report, Case No. 1011, para. 234, Cases Nos. 1035 and 1050, para. 113; 211th Report, Cases Nos. 1035 and 1050, para. 113, Case No. 1053, para. 163, Case No. 1020, para. 250, Case No. 1033, para. 303 and Case No. 1063, para. 616; 214th Report, Cases Nos. 992 and 1018, para. 89, Case No. 1058, para. 144, Case No. 1045, para. 172, Case No. 1065, para. 421; 233rd Report, Case No. 1207, para. 421; 236th Report, Case No. 1113, para. 130, Case No. 1272, para. 637.

557. 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;

recognised by the employer as representing the majority of workers concerned.

553. Where public servants are employed under conditions of free appointment and removal from service, the exercise of the right to freely remove public employees from their posts should in no instance be motivated by the trade union functions or activities of the persons who could be affected by such measures.

554. The dismissal of trade unionists for absence from work without the employer's permission, for example, to attend a workers' education course, does not appear in itself to constitute an infringement of freedom of association.

555. 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 service records, ordered the dismissal not only of a number of strikers but also of the seven members of their union committee.

2. Trade union leaders and representatives

556. 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. 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 should have a 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 shall have the right to elect their representatives in full freedom.

557. 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.

Freedom of Association

89th Report, Case No. 407, para. 30; 147th Report, Case No. 677, para. 222; 199th Report, Case No. 939, para. 157; 202nd Report, Case No. 932, para. 393; 214th Report, Case No. 1056, para. 144; 217th Report, Case No. 1063, para. 151.

558. 14th Report, Case No. 105, para. 134; 137th Report, Case No. 688, para. 28; 142nd Report, Case No. 673, para. 36, Case No. 745, para. 133; 144th Report, Case No. 762, para. 144; 145th Report, Case No. 754, para. 30; 153rd Report, Cases Nos. 763, 786 and 801, para. 242; 160th Report, Case No. 855, para. 100; 197th Report, Cases Nos. 821, 859 and 875, para. 180; 199th Report, Case No. 939, para. 158; 204th Report, Case No. 876, para. 38; 214th Report, Case No. 1075, para. 693.

559. 49th Report, Case No. 213, para. 79.

560. 142nd Report, Case No. 745, para. 133; 197th Report, Case No. 920, para. 132; 208th Report, Case No. 1011, para. 234; 211th Report, Case No. 1020, para. 250.

561. 145th Report, Case No. 754, para. 30.

562. 147th Report, Case No. 677, para. 222.

563. 135th Report, Case No. 646, para. 135; 160th Report, Case No. 851, para. 194; 208th Report, Case No. 1017, para. 399.

558. The principle that a worker or trade union official should 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.

559. 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 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.

560. A deliberate policy of frequent transfers of persons holding trade union office may seriously harm the efficiency of trade union activities.

561. With regard to the reasons for dismissal, the activities of trade union officials should be considered in the context of particular situations which may be especially strained and difficult in cases of labour disputes and strike action.

562. The dismissal of a worker who is a trade union leader may, by reason of the fact that dismissal causes him to lose his status as a trade union officer, infringe the freedom of action of his organisation and its right to elect its representatives in full freedom, and may even leave the way open for acts of interference by the employer.

563. The Committee has drawn attention to Convention No. 135 and Recommendation No. 143 concerning the protection and facilities to be afforded to workers' representatives in the undertaking, adopted by the International Labour Conference in 1971, in which it is expressly established that workers' representatives in the undertaking should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as workers' representatives or on union membership, or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

Freedom of Association

564. 177th Report, Case No. 844, para. 276.

565. 158th Report, Case No. 834, para. 248.

566. 130th Report, Case No. 673, para. 65; 211th Report, Cases Nos. 1035 and 1050, para. 114.

567. 73rd Report, Case No. 264, para. 75; 111th Report, Case No. 546, para. 77; 147th Report, Case No. 759, para. 183; 168th Report, Case No. 866, para. 76; 177th Report, Case No. 844, para. 276 (for the first phase only); 181st Report, Cases Nos. 821, 859 and 875, para. 127; 199th Report, Case No. 891, para. 76; 208th Report, Case No. 1017, para. 401; 218th Report, Cases Nos. 1047 and 1123, para. 82.

568. 93rd Report, Case No. 420, para. 160; 124th Report, Case No. 398, paras. 54 and 60; 130th Report, Case No. 673, para. 65; 145th Report, Case No. 754, para. 31; 147th Report, Case No. 759, para. 184; 159th Report, Case No. 765, para. 49; 160th Report, Case No. 832, para. 152, Case No. 841, para. 392; 165th Report, Case No. 652, para. 32; 168th Report, Case No. 866, para. 76; 172nd Report, Cases Nos. 821, 859 and 875, para. 216; 181st Report, Cases Nos. 821, 859 and 875, para. 128, Case No. 881, para. 193; 194th Report, Case No. 890, para. 34; 197th Report, Case No. 920, para. 133, Case No. 913, para. 318; 204th Report, Case No. 959, para. 186; 211th Report, Case No. 1033, para. 302; 214th Report, Cases Nos. 988 and 1003, para. 507; 230th Report, Case No. 1163, para. 400.

569. 214th Report, Case No. 1058, para. 147; 217th Report, Case No. 1063, para. 151, Case No. 1077, para. 428.

564. All practices involving the "blacklisting" of trade union officials constitute a serious threat to the free exercise of trade union rights, and, in general, governments should take stringent measures to combat such practices.

565. In a case involving a large number of dismissals of trade union leaders and other trade unionists, the Committee considered that it would be particularly desirable for the government to carry out an inquiry in order to establish the true reasons for the measures taken.

566. The Committee has drawn attention to the Workers' Representatives Recommendation, 1971 (No. 143), which recommends, as one of the measures that should be taken to ensure the effective protection of workers' representatives, the adoption of provisions for laying on the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was in fact justified.

3. Machinery and procedures for ensuring protection

567. The existence of basic legislative 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, 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.

568. 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 has drawn attention to the desirability of settling grievances wherever possible by discussion without treating the process of determining grievances as a form of litigation, but, the Commission has concluded, in cases where honest differences of opinion or viewpoint exist, resort should be had to impartial tribunals or individuals as the final step in the grievance procedure.

569. Besides preventive machinery to forestall anti-union dismissals (such as, for example, a request for the prior authorisation of the labour inspectorate before carrying out a dismissal), a further means of ensuring effective protection could be to make it compulsory for each employer to prove that the motive for

570. 93rd Report, Case No. 420, para. 159; 139th Report, Cases Nos. 737, 738, 740 and 743, para. 1155, Case No. 725, para. 307; 142nd Report, Case No. 745, para. 135; 160th Report, Case No. 832, para. 152; 165th Report, Case No. 652, para. 31; 168th Report, Case No. 866, para. 79; 177th Report, Case No. 844, para. 276; 181st Report, Case No. 857, para. 103; 187th Report, Case No. 857, para. 256.

571. 150th Report, Case No. 785, para. 16; 160th Report, Case No. 851, para. 193.

572. 27th Report, Case No. 143, para. 175; 103rd Report, Case No. 490, para. 55; 236th Report, Case No. 1206, para. 497.

573. 13th Report, Case No. 62, para. 69.

574. 90th Report, Case No. 309, para. 20.

575. 24th Report, Case No. 121, para. 69.

his intention to dismiss a worker has no connection with the worker's union activities.

570. Complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being speedy, should not only be impartial but also be seen to be such by the parties concerned, who should participate in the procedure in an appropriate and constructive manner.

571. As long as protection against anti-union discrimination is in fact ensured, methods adopted to safeguard workers against such practices may vary from one State to another; but if there is discrimination, the government concerned should take all necessary steps to eliminate it, irrespective of the methods normally used.

4. Miscellaneous

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

573. 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 to mean 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 a complainant had not furnished proof that either the regulations as a whole, or the procedure followed with respect to dismissal of officials, infringed the exercise of trade union rights.

574. With regard to 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 were to be engaged or retained in service, the Committee recalled the desirability of ensuring that the special committees in question should not be used in such a manner as to give rise to anti-union discrimination.

575. Noting in one case that conditions approaching civil war prevailed, the Committee considered that special 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.

576. 66th Report, Case No. 239, para. 115; 197th Report, Cases Nos. 821, 859 and 875, para. 167; 218th Report, Case No. 1102, para. 158.

577. 197th Report, Case No. 821, 859 and 875, para. 170; 234th Report, Case No. 1242, para. 139.

578. 4th Report, Case No. 5, para. 48.

579. 54th Report, Case No. 179, para. 32 and 33.

580. 84th Report, Case No. 415, para. 62.

CHAPTER VIII

PROTECTION AGAINST ACTS OF INTERFERENCE (Article 2 of Convention No. 98)

576. Where legislation does not contain specific provisions for the protection of workers' organisations from acts of interference by employers and their organisations (and provides 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 are not contrary to the laws of the country, and in accordance with Convention No. 98, by virtue of its ratification), it would be 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.

577. It is necessary for the legislation to lay down explicitly remedies and penalties against acts of interference by employers in workers' organisations in order to ensure the effective application of Article 2 of Convention No. 98.

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

579. 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, which is contrary 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 in their establishment, functioning or administration.

580. The fact that one of the members of a 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.

581. 11th Report, Case No. 51, para. 55; 13th Report, Case No. 62, para. 83; 27th Report, Case No. 156, para. 261; 114th Report, Cases Nos. 503 and 576, para. 102; 218th Report, Case No. 1144, para. 231; 236th Report, Case No. 1206, para. 491.

582. 233rd Report, Case No. 1209, para. 443.

583. 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; 172nd Report, Case No. 877, para. 92.

584. 233rd Report, Case No. 1209, para. 443.

585. 233rd Report, Case No. 1209, para. 443.

586. 172nd Report, Case No. 877, para. 95; 236th Report, Case No. 1206, para. 509.

587. 133rd Report, Case No. 654, para. 244.

CHAPTER IX

NEGOTIATION AND COLLECTIVE AGREEMENTS (Article 4 of Convention No. 98)

General principles

581. 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. The independence of the parties in collective bargaining is also important.

582. Federations and confederations should be able to conclude collective agreements.

583. 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. 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 to organise their activities and to formulate their programmes.

584. The possibility for staff delegates who represent 10 per cent of the workers to conclude collective agreements with an employer even where one or more organisations of workers already exist is not conducive to the development of collective bargaining in the sense of Article 4 of Convention No. 98; in addition, in view of the small percentage required, this possibility could undermine the position of the workers' organisations contrary to Article 3, paragraph 2, of Convention No. 154.

585. In so far as the persons who conclude collective agreements are trade union representatives, the requirement that they be approved by an absolute majority of the workers involved may constitute an obstacle to collective bargaining which is incompatible with the provisions of Article 4 of the Convention.

586. The bodies appointed for the settlement of disputes between parties to collective bargaining should be independent, and recourse to these bodies should be on a voluntary basis. In addition, the interpretation of collective agreements should, at the national level, be a matter for bodies independent of the parties.

587. In one case where the legislation contained a provision whereby a time-limit of up to 105 days was fixed within which employers had to reply to proposals by the workers, and a time-limit

588. 58th Report, Case No. 179, para. 298; 217th Report, Case No. 1022, para. 387.

589. 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; 139th Report, Case No. 725, para. 279.

590. 139th Report, Case No. 725, para. 279; 214th Report, Case No. 1053, para. 348; 236th Report, Case No. 1275, para. 457, Case No. 1206, para. 493, Case No. 1291, para. 695.

591. 23rd Report, Case No. 111, para. 187; 27th Report, Case No. 143, para. 169; 208th Report, Case No. 1005, para. 137.

592. 105th Report, Case No. 266, para. 128 and 129.

593. 211th Report, Case No. 1052, para. 155; 230th Report, Case No. 1173, para. 573; 234th Report, Case No. 1163, para. 87.

594. 116th Report, Case No. 541, para. 71 and 72.

of six months fixed within which collective agreements had to be concluded (which could be prolonged, once, for a further six months), the Committee expressed the view that it would be desirable to reduce these periods in order to encourage and promote the development of voluntary negotiation, particularly in view of the fact that the workers in the country in question were unable to take strike action.

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

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

590. The Committee has recalled the importance which it attaches to the principle that both employers and trade unions should bargain in good faith and make every effort to come to an agreement, particularly when unions in the public service or in essential services are not allowed to have recourse to strike action. The Fact-Finding and Conciliation Commission has emphasised that satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence.

*591. 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 a system may impair the right of trade unions to assume freely the defence of the workers.

592. The 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.

593. The principle of the autonomy of the parties to the collective bargaining process has been generally recognised in the preparatory discussions which led to the adoption by the International Labour Conference in 1981 of the Collective Bargaining Convention, 1981 (No. 154). It follows from this principle that the public authorities should not, as a rule, intervene in order to modify the contents of collective agreements which have been freely concluded. Such intervention would only be justified for cogent reasons of social justice and the general interest.

594. The use of collective bargaining to settle problems of rationalisation in undertakings and improve 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 imposes bargaining on the trade union organisations on those aspects determined by the labour authority and stipulates that the period of negotiation shall not exceed a specified time; and failing agreement between the parties, the points at issue shall be submitted to arbitration by the said authority, such a

595. 130th Report, Case No. 641, para. 15; 143rd Report, Case No. 734, para. 64.

596. 160th Report, Case No. 829, para. 89; 197th Report, Case No. 937, para. 34.

597. 141st Report, Case No. 729, para. 15; 197th Report, Case No. 917, para. 224; 211th Report, Case No. 965, para. 206; 236th Report, Case No. 1267, para. 596.

598. 116th Report, Case No. 598, para. 377; 121st Report, Case No. 635, para. 81; 143rd Report, Case No. 764, para. 87; 208th Report, Cases Nos. 988 and 1003, para. 340; 211th Report, Case No. 965, para. 206; 234th Report, Case No. 1173, para. 83; 236th Report, Case No. 1267, para. 596.

599. 143rd Report, Case No. 764, para. 87.

600. 104th Report, Case No. 534, para. 65; 139th Report, Case No. 725, para. 278; 202nd Report, Case No. 871, para. 99.

601. 118th Report, Case No. 573, para. 194; 202nd Report, Case No. 871, para. 99.

statutory system does not conform to the principle of voluntary negotiation which is the guiding principle of Article 4 of Convention No. 98.

595. The opportunity which employers might have, according to the legislation, of presenting proposals for the purposes of collective bargaining - provided these proposals are merely to serve as a basis for voluntary negotiation to which Convention No. 98 refers - cannot be considered as a violation of the principles applicable in this matter.

596. Disputes between two workers' organisations regarding the methods of negotiation and the structure of any agreement or agreements to be concluded should be dealt with by negotiation or mediation.

1. Civil servants and other public employees

597. Convention No. 98, and in particular Article 4 thereof concerning the encouragement and promotion of collective bargaining, applies both to the private sector and to nationalised undertakings and public bodies, it being possible to exclude from such application public servants engaged in the administration of the State.

598. Convention No. 98 permits (Article 6) the exclusion of "public servants engaged in the administration of the State". In this connection, the Committee of Experts on the Application of Conventions and Recommendations has pointed out that, while the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of persons employed by the State or in the public sector, who do not act as agents of the public authority (even though they may be granted a status identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. The distinction to be drawn, according to the Committee, would appear to be basically between civil servants employed in various capacities in government ministries or comparable bodies and other persons employed by the government, by public undertakings or by independent public corporations.

599. The staff of a national radio and television institute, a public undertaking, may not be excluded, by reason of their duties, from the principle concerning the promotion of collective bargaining.

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

601. In cases of complaints concerning the right of teachers to engage in collective bargaining, the Committee, in the light of the

602. 139th Report, Case No. 725, para. 278.

603. 116th Report, Case No. 598, paras. 375-378.

604. 66th Report, Case No. 179, para. 361 and 362; 139th Report, Case No. 737, para. 175.

605. 197th Report, Case No. 823, para. 406; 217th Report, Case No. 1034, para. 410.

606. 211th Report, Case No. 1038, para. 135; 222nd Report, Case No. 1147, para. 119.

607. 54th Report, Case No. 179, para. 156 and 157; 139th Report, Cases Nos. 737 à 744, para. 157 and 210; 142nd Report, Case No. 745, para. 139; 160th Report, Case No. 833, para. 301.

608. 73rd Report, Case No. 264, para. 68 and 69; 143rd Report, Case No. 734, para. 63; 194th Report, Case No. 919, para. 358; 202nd Report, Case No. 948, para. 256 and 257; 217th Report, Case No. 1022, para. 387.

principles contained in Convention No. 98, has drawn 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.

602. The Committee has pointed out that Convention No. 98 covers all public servants who do not act on behalf of the public authorities. Consequently, it covers employees of the postal and telecommunications services.

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

604. The reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with collective agreements entered into by, or on behalf of, that public body.

605. The Committee has recalled that, under the terms of Convention No. 151 concerning conditions of employment in the public service, adopted by the International Labour Conference in 1978 (Article 7) "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters".

606. The Committee acknowledges that Article 7 of Convention No. 151 allows a degree of flexibility in the choice of procedures to be used in the determination of the terms and conditions of employment.

2. Representation of workers by a trade union

607. While the public authorities have the right to decide whether they will negotiate at the regional or national level the workers, whether negotiating at the regional or national level, should be entitled to choose the organisation which shall represent them in the negotiations.

608. The Collective Agreements Recommendation, 1951 (No. 91), stresses the role of workers' organisations as one of the parties in collective bargaining; it refers to representatives of unorganised workers only when no organisation exists. In these circumstances, direct negotiation between the undertaking and its employees, by-passing representative organisations where these exist, might be

609. 117th Report, Case No. 1087, paras. 222-224; 230th Report, Case No. 1174, paras. 214 and 215.

610. 75th Report, Case No. 334, para. 20.

611. 118th Report, Cases Nos. 589 and 594, para. 81 and 82.

612. 93rd Report, Case No. 281, para. 71; 143rd Report, Case No. 655, para. 40; 158th Report, Case No. 655, para. 57.

613. 119th Report, Case No. 590, para. 63; 197th Report, Case No. 918, para. 161.

detrimental to the principle that negotiation between employers and organisations of workers should be encouraged and promoted.

609. In a case where the public authorities decreed the extension of collective agreements when current collective agreements had been concluded by minority organisations, in the face of opposition by an organisation which allegedly represented the large majority of workers in the sector, the Committee considered that the government could have carried out an objective appraisal of representativity of the occupational associations in question, since, in the absence of such an appraisal, the extension of an agreement could be imposed on an entire sector of activity contrary to the views of the majority organisation representing the workers in the category covered by the extended agreement, and thereby limiting the right of free collective bargaining of that majority organisation.

610. Where an offer made directly by the company to its workers is merely a repetition of the proposals previously made to the trade union, which has rejected them, and where negotiations between the company and the trade union are subsequently resumed, the Committee considers that the complainants have not demonstrated in such a situation that there has been a violation of trade union rights.

611. In a case where the right to represent all the employees in the sector in question appeared to have been granted to organisations which were representative only to 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.

612. 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.

613. In one 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 to afford this union the possibility of being associated with the collective bargaining process

614. 13th Report, Case No. 96, para. 137; 75th Report, Case No. 334, para. 19; 76th Report, Case No. 292, para. 256; 138th Report, Case No. 728, para. 51.

615. 17th Report, Case No. 97, para. 148.

616. 230th Report, Case No. 1158, para. 99.

617. 17th Report, Case No. 73, para. 76; 30th Report, Case No. 172, para. 185; 31st Report, Case No. 161, para. 33; 84th Report, Case No. 415, para. 54; 102nd Report, Case No. 512, para. 19; 116th Report, Case No. 598, para. 378; 129th Report, Case No. 635, para. 98; 138th Report, Case No. 728, para. 52; 147th Report, Case No. 756, para. 164; 160th Report, Case No. 829, para. 88, Case No. 833, para. 301; 190th Report, Case No. 882, para. 289; 197th Report, Case No. 937, para. 33; 199th Report, Case No. 922, para. 276; 202nd Report, Case No. 915, para. 53, Case No. 911, para. 137; 207th Report, Case No. 886, para. 97; 211th Report, Cases Nos. 1035 and 1050, para. 110, Case No. 1074, para. 371.

618. 177th Report, Case No. 879, para. 111; 218th Report, Case No. 1122, para. 327.

619. 119th Report, Case No. 605, para. 75; 121st Report, Case No. 624, para. 55; 132nd Report, Case No. 690, para. 95; 168th Report, Case No. 867, para. 88; 202nd Report, Case No. 947, para. 241; 214th Report, Case No. 922, para. 217.

620. 138th Report, Case No. 728, para. 53; 145th Report, Case No. 776, para. 44; 153rd Report, Case No. 790, para. 46; 177th Report, Case No. 879, para. 111; 190th Report, Case No. 882, para. 291; 204th Report, Case No. 922, para. 217; 218th Report, Case No. 1122, para. 327; 236th Report, Case No. 1264, para. 352.

so as to permit it adequately to represent and defend the collective interests of its members.

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

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

615. Where a government has given legal recognition to trade unions as competent to regulate employment relations, it is not under a duty to make collective bargaining compulsory.

616. The Committee has recalled the position taken by the Committee of Experts on the Application of Conventions and Recommendations namely that, where the law of a country draws a distinction between the most representative trade union and other trade unions, such a system should not have the effect of preventing minority unions from functioning and at least having the right to make representations on behalf of their members and to represent them in cases of individual grievances.

617. Employers, including governmental authorities in the capacity of employers, should recognise for collective bargaining purposes the organisations representative of the workers employed by them.

618. Recognition by an employer of the main unions represented in his undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking.

619. Employers should recognise for the purposes of collective bargaining organisations that are representative of workers in a particular industry.

620. The competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible. If the union concerned is found to be the majority union, the authorities should

621. 109th Report, Case No. 533, para. 102.

622. 168th Report, Case No. 867, para. 88; 187th Report, Case No. 796, para. 173.

623. 202nd Report, Case No. 949, para. 278; 208th Report, Case No. 981, para. 113.

624. 172nd Report, Case No. 876, para. 367.

625. 76th Report, Case No. 291, para. 194.

626. 89th Report, Case No. 449, para. 72.

take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes.

621. If a union other than that which concluded an agreement has in the meantime 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.

622. If the authorities have the power to hold polls for determining the majority union which is to represent the workers for the purposes of collective bargaining, such polls should always be held in cases where there are doubts as to which union the workers wish to represent them.

623. Where, under the system in force, the most representative union enjoys preferential or exclusive bargaining rights, decisions concerning the most representative organisation should be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse.

4. Collective agreements and legislation

624. The Committee has recalled that the Fact-Finding and Conciliation Commission on Freedom of Association has made comments concerning systems in which an unduly or excessively legalistic attitude is taken by either government or workers, and has pointed out that such an attitude and the development of harmonious labour relations are incompatible with, and indeed conflict with each other. The Commission has also stated that, even when there is genuine willingness on both sides to co-operate and reach mutual understanding, the inflexible and detailed requirements of the law often prevent real progress from being made.

625. Where job distribution is subject to legal restrictions the Committee has drawn attention 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 employment, and thereby to infringe the rights of workers concerned to bargain collectively and to improve their working conditions.

626. In one case it was alleged that Article 4 of Convention No. 98 had been infringed because, 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, and that this standard was prescribed by law, Article 4 of Convention No. 98 would be infringed. Such an argument would clearly be untenable. If a government, however, adopted a systematic policy of granting by law what the unions could not obtain by negotiation, the situation might call for reappraisal.

627. 66th Report, Case No. 179, paras. 359 and 360.

628. 106th Report, Case No. 541, paras. 12-16, 19.

629. 116th Report, Case No. 551, para. 109.

630. 139th Report, Cases Nos. 743 and 744, para. 211, Case No. 725, para. 275; 142nd Report, Case No. 745, para. 140; 187th Report, Case No. 893, para. 542; 194th Report, Case No. 893, para. 104; 202nd Report, Case No. 911, para. 141; 214th Report, Case No. 1070, para. 233, Case No. 1071, para. 248.

631. 54th Report, Case No. 179, para. 157.

632. 202nd Report, Case No. 915, para. 53.

633. 217th Report, Case No. 1096, para. 300.

634. 208th Report, Case No. 964, para. 36; 217th Report, Case No. 1096, para. 300.

627. According to one legal system, a certain number of matters on questions of labour in local public enterprise may be subject to collective bargaining. The Committee has observed in such cases 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, the modification of local by-laws, therefore, is the duty of local public bodies, and ceases to be a matter falling within their discretion.

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

629. 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.

630. With regard to allegations concerning the refusal to bargain collectively on certain matters in the public sector, the Committee has recalled the view of the Fact-Finding and Conciliation Commission on Freedom of Association that "There are certain matters which clearly appertain primarily or essentially to the management and operation of government business; these can reasonably be regarded as outside the scope of negotiation." It is equally clear that certain other matters are primarily or essentially questions relating to conditions of employment and that such matters should not be regarded as falling outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust.

631. 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.

5. The level of collective bargaining

632. The determination of the bargaining level is essentially a matter to be left to the discretion of the parties. Thus, the Committee does not consider the refusal by employers to bargain at a particular level as an infringement of freedom of association.

633. Legislation should not constitute an obstacle to collective bargaining at the industry level.

634. The best procedure for safeguarding the independence of the parties involved in collective bargaining is to allow them to decide by mutual agreement the level at which bargaining should take place.

635. 25th Report, Case No. 151, para. 312; 30th Report, Case No. 143, para. 123; 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; 101st Report, Case No. 469, para. 108; 118th Report, Case No. 559, para. 121; 176th Report, Case No. 823, para. 23; 230th Report, Case No. 1173, para. 575; 234th Report, Case No. 1173, para. 86; 236th Report, Case No. 1206, para. 506.

636. 65th Report, Case No. 266, para. 70; 230th Report, Case No. 1173, para. 575; 234th Report, Case No. 1173, para. 87; 236th Report, Case No. 1267, para. 597.

637. 125th Report, Case No. 654, para. 86; annexe, Case No. 266, para. 43.

638. 85th Report, Case No. 341, paras. 185-186; 236th Report, Case No. 1267, para. 600.

639. 6th 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.

Nevertheless, it appears that, in many countries, this question is determined by a body that is independent of the parties themselves. The Committee considers that in such cases the body concerned should be truly independent.

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

635. 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 working conditions. Even though a refusal by the authorities to give their approval may sometimes be the subject of an appeal to the courts, the system of official approval in itself is contrary to the whole system of voluntary negotiation.

636. 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.

637. A provision which establishes as a ground for refusing approval the existence in a collective agreement of a clause which interferes with "the right reserved to the State to co-ordinate and have the overall control of the economic life of the nation" involves the risk of seriously restricting the voluntary negotiation of collective agreements.

638. Legislation which permits the refusal to approve a collective agreement on grounds of errors of pure form is not in conflict with the principle of voluntary negotiation. If this legislation, however, implies that the filing of a collective agreement may be refused on grounds such as incompatibility with the general policy of the government, it would amount to a requirement that prior approval be obtained before a collective agreement can come into force.

639. 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 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

640. 230th Report, Case No. 1173, para. 574; 234th Report, Case No. 1173, para. 87.

641. 110th Report, Case No. 503, para. 46; 129th Report, Case No. 385, para. 65; 132nd Report, Case No. 691, para. 27; 151st Report, Case No. 809, para. 196; 160th Report, Case No. 842, para. 443; 187th Report, Case No. 874, para. 481; 192nd Report, Case No. 842, para. 55; 202nd Report, Case No. 927, para. 175; 207th Report, Cases Nos. 997 and 999, para. 313; 222nd Report, Case No. 1147, para. 117; 230th Report, Case No. 1180, para. 55, Case No. 1171, para. 162; Case No. 1173, para. 573; 233rd Report, Cases Nos. 1183 and 1205, para. 482; 236th Report, Case No. 1206, para. 507.

642. 230th Report, Case No. 1182, para. 265.

643. 85th Report, Cases Nos. 294, 383, 397 and 400, para. 378; 129th Report, Case No. 654, para. 161; 208th Report, Case No. 1007, para. 389; 218th Report, Cases Nos. 1047 and 1123, para. 84.

644. 85th Report, Case No. 341, para. 187; 118th Report, Case No. 559, para. 122; 132nd Report, Case No. 691, para. 28; 187th Report, Case No. 874, para. 482; 208th Report, Case No. 1007, para. 389; 217th Report, Case No. 1109, para. 480; 234th Report, Case No. 1173, para. 86; 236th Report, Case No. 1206, para. 508.

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 process of collective bargaining.

640. The Committee has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining.

641. 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.

642. In a case where government measures had fixed the base reference for the indexation of wages whereas the parties had fixed another indexation system, the Committee recalled that the intervention of a government in areas which traditionally have always been negotiated freely by the parties could call into question the principle of free collective bargaining recognised by Article 4 of Convention No. 98 if it is not accompanied by certain guarantees and in particular if its period of application is not limited in time.

643. The requirement of ministerial approval before a collective agreement can come into effect is not in full conformity with the principles of voluntary negotiation laid down in Convention No. 98. In cases where certain collective agreements contain terms 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 these considerations to enable them to examine the matter further, it being understood that the final decision thereon should rest with the parties. The setting up of a system of this kind would be in conformity with the principle that trade unions should enjoy the right to endeavour to improve, by means of collective bargaining, the conditions of living and of work of their members and that the authorities should abstain from any interference which might limit this right.

644. 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 in accordance with the principle laid down by the Consultation (Industrial 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.

645. 7th Report, Case No. 52, para. 29.

646. 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; 132nd Report, Case No. 682, para. 16.

647. 69th Report, Case No. 280, paras. 11-26; 77th Report, Case No. 368, paras. 15-20.

648. 73rd Report, Case No. 264, para. 57.

649. 85th Report, Case No. 341, para. 195.

650. 124th Report, Case No. 531, para. 25; 202nd Report, Case No. 949, para. 275.

CHAPTER X

PARTICIPATION OF WORKERS AND EMPLOYERS IN VARIOUS PROCEDURES AND ON VARIOUS BODIES

645. When setting up 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.

646. 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.

647. The Committee has accepted that, under certain conditions, 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.

648. Having regard to the fact that the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), provides for the participation 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.

649. 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 situations of fact, and it is indispensable that any decision should be based on objective criteria laid down in advance by an independent body.

650. While the refusal to permit or encourage the participation of trade union organisations in the preparation of new legislation or regulations affecting their interests does not necessarily constitute an infringement of trade union rights, the principle of consultation and co-operation between public authorities and employers' and workers' organisations at the industrial and national levels is one to which importance should be attached. In this connection, the Committee has drawn attention to the provisions of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113).

651. 110th Report, Case No. 561, para. 224.

652. 114th Report, Cases Nos. 503 and 576, para. 101.

653. 211th Report, Case No. 823, para. 398.

651. The establishment of a tripartite group to examine the question of wages and the anti-inflationary measures that should be taken is in accordance with the provision in Recommendation No. 113 which provides 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. In particular, 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.

652. 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 has pointed out the importance it attaches to the effective promotion of 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.

653. The Committee has stressed the importance, for the preservation of a country's social harmony, of regular consultations with employers' and workers' representatives; such consultations should involve the whole trade union movement, irrespective of the philosophical or political beliefs of its leaders.

654. 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.

655. 6th Report, Case No. 12, para. 264; 108th Report, Case No. 510, para. 250; 197th Report, Case No. 315, para. 471; 202nd Report, Case No. 915, para. 47.

656. 113th Report, Case No. 266, para. 168.

CHAPTER XI

RECOGNITION OF FREEDOM OF ASSOCIATION IN FACT AND IN LAW

654. The right of workers to establish and join organisations of their own choosing cannot be said to exist unless such freedom is fully established and respected in law and in fact.

655. 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.

656. The guarantee of equality before the law in trade union matters should be supplemented by measures to promote effective opportunities for all workers in overseas provinces to establish and join organisations of their own choosing and to participate fully in the trade union movement.

657. 2nd Report, Case No. 27, para. 64; 6th 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; 204th Report, Case No. 966, para. 83.

658. 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; 125th Report, Case No. 649, para. 58.

659. 11th Report, Case No. 71, para. 101; 14th Report, Case No. 95, para. 56.

660. 134th Report, Case No. 714, para. 46.

661. 25th Report, Case No. 138, para. 48.

662. 109th Report, Case No. 557, para. 77.

CHAPTER XII

MISCELLANEOUS QUESTIONS

Status of aliens

*657. 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.

*658. 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.

659. Noting that measures taken by the authorities in application of a law concerning immigration and nationality related to the sovereign right which every country has to decide who shall and who shall not be admitted to its territory, the Committee 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.

660. While admitting that there may be justification for legislation forbidding foreigners to interfere in the internal affairs of the country, the Committee considers that it is important that such legislation should be applied solely for the purposes for which it has been enacted, and that it should not be used in such a way as to impair the free exercise of trade union rights.

661. 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 of those concerned to benefit from due process of law, particularly cogent evidence should be required to show that measures taken in any individual case constituted an infringement of trade union rights.

*662. 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.

663. 25th Report, Case No. 152, para. 216; 199th Report, Case No. 861, para. 207.

664. 30th Report, Case No. 182, para. 108; 34th Report, Case No. 188, para. 34; 234th Report, Case No. 1226, para. 60.

665. 71st Report, Case No. 318, para. 35; 158th Report, Case No. 800, para. 125, Case No. 824, para. 292; 214th Report, Case No. 1069, para. 538.

666. 165th Report, Case No. 843, para. 44; 172nd Report, Case No. 865, para. 74; 217th Report, Case No. 1086, para. 93.

667. 73rd Report, Case No. 322, para. 11; 214th Report, Case No. 1069, para. 538; 234th Report, Case No. 1226, para. 60.

668. 83rd Report, Case No. 418, paras. 345-347; 165th Report, Case No. 843, para. 44; 172nd Report, Case No. 865, para. 74; 230th Report, Case No. 1193, para. 317.

669. 95th Report, Case No. 448, para. 123; 218th Report, Case No. 1122, para. 346, Case No. 1129, para. 479.

670. 109th Report, Case No. 533, para. 116; 135th Report, Case No. 695, para. 63; 153rd Report, Case No. 695, para. 94; 218th Report, Case No. 1129, para. 479.

Conflicts within the trade
union movement

*663. The Committee has considered it inappropriate to examine the merits of conflicts between unions concerning their respective areas of competence.

*664. The Committee had declined to examine cases involving inter-union disputes over union security arrangements.

*665. A matter involving no dispute between the government and the trade unions, but which involves a conflict within the trade union movement itself, is the sole responsibility of the parties themselves.

*666. The Committee is not competent to make recommendations on internal dissensions within a trade union organisation, so long as the government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organisation.

667. 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 (e.g. by virtue of its having ratified an international labour Convention).

668. 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 to refrain from any interference which would impede the lawful exercise of that right.

669. 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.

670. 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 with regard to the alleged violence.

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671. 165th Report, Case No. 843, para. 46; 172nd Report, Case No. 865, para. 75.

672. 26th Report, Cases Nos. 134 and 141, para. 63.

673. 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; 217th Report, Case No. 1104, para. 315.

674. 28th Report, Cases Nos. 141, 153 and 154, para. 208.

675. 60th Report, Case No. 274, para. 233.

676. 177th Report, Case No. 853, para. 85.

671. In cases of internal conflict, the Committee has pointed out that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling questions concerning the management and representation of the trade union federation concerned. Another possible means of settlement would be to appoint an independent arbitrator to be agreed on by the parties concerned, to seek a joint solution to existing problems and, if necessary, to hold new elections. In either case, the government should recognise the leaders designated as the legitimate representatives of the organisation.

Privileges and immunities of
delegates to ILO meetings

672. The Committee has expressed 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, once proceedings have been initiated, the independence of the judiciary cannot be invoked by the government as an excuse for the action which it itself has taken. The Committee, therefore, has drawn 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.

673. It is important that no delegate to any organ or Conference of the ILO, and no member of the Governing Body, should in any way be hindered, prevented or deterred from carrying out his functions or from fulfilling his mandate.

674. It is the duty of a government to refrain from taking measures calculated to hinder 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 in no way prejudiced by his acceptance of functions as a delegate or by his conduct as a delegate; measures on other grounds should not be envisaged against him in his absence but should await his return, so that he may be in a position to defend himself.

675. A government decision which requires workers' representatives wishing to attend an international meeting outside the country to obtain permission from the authorities in order to leave the country, is not, in the case of members of the Governing Body, compatible with the principles set forth in article 40 of the ILO Constitution.

676. In general, the refusal by a State to grant leave to one of its officials holding trade union office to attend an advisory meeting organised by the ILO does not constitute an infringement of the principles of freedom of association, unless this refusal is based on the trade union activities or functions of the person concerned.

677. 181st Report, Case No. 880, para. 111.

Miscellaneous questions

677. Participation as a trade unionist in symposia organised by the ILO is a legitimate trade union activity, and a government should not refuse the necessary exit papers for this reason.

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575	India	624	United Kingdom/ British Honduras
576	Argentina	625	Venezuela
577	Morocco	626	Guatemala
578	Ghana	627	United States
579	Guatemala	628	Venezuela
580	United States	629	Nicaragua
581	Panama	630	Spain
582	Brazil	631	Turkey
583	Argentina	632	Brazil
584	Nicaragua	633	Argentina
585	Pakistan	634	Italy
586	Panama	635	Costa Rica
587	Costa Rica	636	Argentina
588	Argentina	637	Spain
589	India	638	Lesotho
590	Luxembourg	639	United States
591	Senegal	640	India
592	Jamaica	641	Colombia
593	Argentina	642	United Kingdom/ British Honduras
594	India	643	Colombia
595	Brazil	644	Mali
596	Panama	645	Ecuador
597	Togo	646	Costa Rica
598	Ecuador	647	Portugal
599	Netherlands/ Netherlands Antilles	648	United Kingdom/ Saint Vincent
600	Yemen	649	El Salvador
601	Colombia	650	El Salvador
602	Guyana	651	Argentina
603	Mexico	652	Philippines
604	Uruguay	653	Argentina
605	Jamaica	654	Portugal
606	Paraguay	655	Belgium
607	Uruguay	656	Argentina
608	India	657	Spain
609	Guatemala, Argentina and Uruguay	658	Spain
610	Panama	659	Guatemala
611	Costa Rica	660	Mauritania
612	Spain	661	Spain
613	Mauritius	662	Nicaragua
614	Peru	663	Paraguay
615	Dominican Republic		

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664	Colombia	714	Ecuador
665	Costa Rica	715	Nicaragua
666	Portugal	716	United Kingdom/ Saint Vincent
667	Spain	717	Costa Rica
668	Jordan	718	Dominican Republic
669	Argentina	719	Colombia
670	Cyprus	720	India
671	Bolivia	721	India
672	Dominican Republic	722	Spain
673	Madagascar	723	Colombia
674	Indonesia	724	Philippines
675	Colombia	725	Japan
676	Nicaragua	726	Uruguay
677	Sudan	727	Nigeria
678	Spain	728	Jamaica
679	Spain	729	Bangladesh
680	United Kingdom	730	Jordan
681	Central African Republic	731	Argentina
682	Costa Rica	732	Togo
683	Ecuador	733	Guatemala
684	Spain	734	Colombia
685	Bolivia	735	Spain
686	Japan	736	Spain
687	Colombia	737	Japan
688	Chile	738	Japan
689	Mauritius	739	Japan
690	United Kingdom/ British Honduras	740	Japan
691	Argentina	741	Japan
692	Brazil	742	Japan
693	Uruguay	743	Japan
694	Honduras	744	Japan
695	India	745	Japan
696	Mexico	746	Canada
697	Spain	747	Guatemala
698	Senegal	748	Brazil
699	Canada	749	Senegal
700	Guyana	750	Spain
701	Colombia	751	Republic of Viet Nam
702	Costa Rica	752	El Salvador
703	Chile	753	Japan
704	Spain	754	Jamaica
705	United States	755	Japan
706	Uruguay	756	India
707	Argentina	757	Australia
708	Bulgaria	758	Costa Rica
709	Mauritius	759	United Kingdom/ British Honduras
710	Argentina	760	Spain
711	Morocco	761	Mauritius
712	Guatemala	762	Peru
713	Peru		

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763	Uruguay	814	Bolivia
764	Colombia	815	Ethiopia
765	Chile	816	Bangladesh
766	Yemen	817	France/Territory of the
767	Republic of South Africa		Afars and the Issas
768	Dominican Republic	818	Canada
769	Nicaragua	819	Dominican Republic
770	Greece	820	Honduras
771	Uruguay	821	Costa Rica
772	Israel	822	Dominican Republic
773	Mexico	823	Chile
774	Central African Republic	824	Dahomey
775	Uganda	825	Nicaragua
776	Jamaica	826	Costa Rica
777	India	827	Mexico
778	France	828	India
779	Argentina	829	Italy
780	Spain	830	Brazil
781	Bolivia	831	Mexico
782	Liberia	832	India
783	Costa Rica	833	India
784	Greece	834	Greece
785	Colombia	835	Spain
786	Uruguay	836	Argentina
787	Brazil	837	India
788	Peru	838	Spain
789	Guatemala	839	Jordan
790	Jamaica	840	Sudan
791	Israel	841	Canada
792	Japan	842	Argentina
793	India	843	India
794	Greece	844	El Salvador
795	Liberia	845	Canada
796	Bahamas	846	Australia
797	Jordan	847	Dominican Republic
798	Cyprus	848	Spain
799	Turkey	849	Nicaragua
800	Brazil	850	Colombia
801	Uruguay	851	Greece
802	Dominican Republic	852	Republic of South Africa
803	Spain	853	Chad
804	Pakistan	854	Paraguay
805	Malta	855	Honduras
806	Bolivia	856	Guatemala
807	United States/Puerto Rico	857	United Kingdom/Antigua
808	Ivory Coast	858	Ecuador
809	Argentina	859	Costa Rica
810	France/Guyana	860	United Kingdom/ Saint Vincent
811	Jordan		
812	Spain	861	Bangladesh
813	Colombia	862	India

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863	Turkey	913	Sri Lanka
864	Spain	914	Nicaragua
865	Ecuador	915	Spain
866	France	916	Peru
867	United Kingdom/Belize	917	Costa Rica
868	Peru	918	Belgium
869	India	919	Colombia
870	Peru	920	United Kingdom/Antigua
871	Colombia	921	Greece
872	Greece	922	India
873	El Salvador	923	Spain
874	Spain	924	Guatemala
875	Costa Rica	925	Yemen
876	Greece	926	Italy
877	Greece	927	Brazil
878	Nigeria	928	Malaysia
879	Malaysia	929	Honduras
880	Madagascar	930	Turkey
881	India	931	Canada
882	United Kingdom/ Saint Vincent	932	Greece
883	United Kingdom/Belize	933	Peru
884	Peru	934	Morocco
885	Ecuador	935	Greece
886	Canada	936	New Zealand
887	Ethiopia	937	Spain
888	Ecuador	938	Honduras
889	Colombia	939	Greece
890	Guyana	940	Sudan
891	Guatemala	941	Guyana
892	Fiji	942	India
893	Canada	943	Dominican Republic
894	Ecuador	944	Egypt
895	Morocco	945	Argentina
896	Honduras	946	Paraguay
897	Paraguay	947	Greece
898	United States/Puerto Rico	948	Colombia
899	Tunisia	949	Malta
900	Spain	950	Dominican Republic
901	Nicaragua	951	Peru
902	Australia	952	Spain
903	Canada	953	El Salvador
904	El Salvador	954	Guatemala
905	USSR	955	Bangladesh
906	Peru	956	New Zealand
907	Colombia	957	Guatemala
908	Morocco	958	Brazil
909	Poland	959	Honduras
910	Greece	960	Peru
911	Malaysia	961	Greece
912	Peru	962	Turkey
		963	Grenada

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964	Canada	1015	Thailand
965	Malaysia	1016	El Salvador
966	Portugal	1017	Morocco
967	Peru	1018	Morocco
968	Greece	1019	Greece
969	Peru	1020	Mali
970	Greece	1021	Greece
971	Dominican Republic	1022	Malaysia
972	Peru	1023	Colombia
973	El Salvador	1024	India
974	Peru	1025	Haiti
975	Guatemala	1026	Guatemala
976	Greece	1027	Paraguay
977	Colombia	1028	Chile
978	Guatemala	1029	Turkey
979	Spain	1030	France/Guyana and Martinique
980	Costa Rica	1031	Nicaragua
981	Belgium	1032	Ecuador
982	Costa Rica	1033	Jamaica
983	Bolivia	1034	Brazil
984	Kenya	1035	India
985	Turkey	1036	Colombia
986	Dominican Republic	1037	Sudan
987	El Salvador	1038	United Kingdom
988	Sri Lanka	1039	Spain
989	Greece	1040	Central African Republic
990	Sri Lanka	1041	Brazil
991	Costa Rica	1042	Portugal
992	Morocco	1043	Bahrain
993	Morocco	1044	Dominican Republic
994	Colombia	1045	Portugal
995	India	1046	Chile
996	Greece	1047	Nicaragua
997	Turkey	1048	Pakistan
998	Greece	1049	Peru
999	Turkey	1050	India
1000	El Salvador	1051	Chile
1001	Spain	1052	Panama
1002	Brazil	1053	Dominican Republic
1003	Sri Lanka	1054	Morocco
1004	Haiti	1055	Canada
1005	United Kingdom/Hong Kong	1056	Honduras
1006	Greece	1057	Greece
1007	Nicaragua	1058	Greece
1008	Greece	1059	Dominican Republic
1009	Colombia	1060	Argentina
1010	Spain	1061	Spain
1011	Senegal	1062	Greece
1012	Ecuador	1063	Costa Rica
1013	Upper Volta	1064	Uruguay
1014	Dominican Republic		

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1065	Colombia	1116	Morocco
1066	Romania	1117	Chile
1067	Argentina	1118	Dominican Republic
1068	Greece	1119	Argentina
1069	India	1120	Spain
1070	Canada (Nova Scotia)	1121	Sierra Leone
1071	Canada (Ontario)	1122	Costa Rica
1072	Colombia	1123	Nicaragua
1073	Colombia	1124	Bolivia
1074	United States	1125	Argentina
1075	Pakistan	1126	Chile
1076	Bolivia	1127	Colombia
1077	Morocco	1128	Bolivia
1078	Spain	1129	Nicaragua
1079	Colombia	1130	United States
1080	Zambia	1131	Upper Volta
1081	Peru	1132	Uruguay
1082	Greece	1133	Nicaragua
1083	Colombia	1134	Cyprus
1084	Nicaragua	1135	Ghana
1085	Colombia	1136	Chile
1086	Greece	1137	Chile
1087	Portugal	1138	Peru
1088	Mauritania	1139	Jordan
1089	Upper Volta	1140	Colombia
1090	Spain	1141	Venezuela
1091	India	1142	Thailand
1092	Uruguay	1143	United States
1093	Bolivia	1144	Chile
1094	Chile	1145	Honduras
1095	Chile	1146	Iraq
1096	Chile	1147	Canada
1097	Poland	1148	Nicaragua
1098	Uruguay	1149	Honduras
1099	Norway	1150	El Salvador
1100	India	1151	Japan
1101	Colombia	1152	Chile
1102	Panama	1153	Uruguay
1103	Nicaragua	1154	Cameroon
1104	Bolivia	1155	Colombia
1105	Colombia	1156	Chile
1106	Dominican Republic	1157	Philippines
1107	India	1158	Jamaica
1108	Costa Rica	1159	Nicaragua
1109	Chile	1160	Suriname
1110	Thailand	1161	Bolivia
1111	India	1162	Chile
1112	Bolivia	1163	Cyprus
1113	India	1164	Malta
1114	Nicaragua	1165	Japan
1115	Morocco	1166	Honduras

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1167	Greece	1218	Costa Rica
1168	El Salvador	1219	Liberia
1169	Nicaragua	1220	Argentina
1170	Chile	1221	Dominican Republic
1171	Canada (Quebec)	1222	Bahamas
1172	Canada (Ontario)	1223	Djibouti
1173	Canada (British Colombia)	1224	Greece
1174	Portugal	1225	Brazil
1175	Pakistan	1226	Canada
1176	Guatemala	1227	India
1177	Dominican Republic	1228	Peru
1178	Israel	1229	Chile
1179	Dominican Republic	1230	Ecuador
1180	Australia	1231	Peru
1181	Peru	1232	India
1182	Belgium	1233	El Salvador
1183	Chile	1234	Canada
1184	Chile	1235	Canada (British Colombia)
1185	Nicaragua	1236	Uruguay
1186	Chile	1237	Brazil
1187	Islamic Republic of Iran	1238	Greece
1188	Dominican Republic	1239	Colombia
1189	Kenya	1240	Colombia
1190	Peru	1241	Australia (Northern Territory)
1191	Chile	1242	Costa Rica
1192	Philippines	1243	Grenada
1193	Greece	1244	Spain
1194	Chile	1245	Cyprus
1195	Guatemala	1246	Bangladesh
1196	Morocco	1247	Canada (Alberta)
1197	Jordan	1248	Colombia
1198	Cuba	1249	Spain
1199	Peru	1250	Belgium
1200	Chile	1251	Portugal
1201	Morocco	1252	Colombia
1202	Greece	1253	Morocco
1203	Spain	1254	Uruguay
1204	Paraguay	1255	Norway
1205	Chile	1256	Portugal
1206	Peru	1257	Uruguay
1207	Uruguay	1258	El Salvador
1208	Nicaragua	1259	Bangladesh
1209	Uruguay	1260	Canada (Newfoundland)
1210	Colombia	1261	United Kingdom
1211	Bahrain	1262	Guatemala
1212	Chile	1263	Japan
1213	Greece	1264	Barbados
1214	Bangladesh	1265	United States
1215	Guatemala	1266	Upper Volta
1216	Honduras	1267	Papua New Guinea
1217	Chile		

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1268 Honduras
 1269 El Salvador
 1270 Brazil
 1271 Honduras
 1272 Chile
 1273 El Salvador
 1274 Uruguay
 1275 Paraguay
 1276 Chile
 1277 Dominican Republic
 1278 Chile
 1279 Portugal
 1280 Chile
 1281 El Salvador
 1282 Morocco
 1283 Nicaragua
 1284 Grenada
 1285 Chili
 1286 El Salvador
 1287 Costa Rica
 1288 Dominican Republic
 1289 Peru
 1290 Uruguay
 1291 Colombia
 1292 Spain
 1293 Dominican Republic
 1294 Brazil
 1295 United Kingdom/Montserrat
 1296 Antigua
 1297 Chili
 1298 Nicaragua
 1299 Uruguay
 1300 Costa Rica
 1301 Paraguay
 1302 Colombia
 1303 Portugal
 1304 Costa Rica
 1305 Costa Rica
 1306 Mauritania
 1307 Honduras
 1308 Grenada
 1309 Chili
 1310 Costa Rica
 1311 Guatemala
 1312 Greece
 1313 Brazil
 1314 Portugal
 1315 Portugal
 1316 Uruguay
 1317 Nicaragua

Case No.

1318 Federal Republic
 of Germany
 1319 Ecuador
 1320 Spain
 1321 Peru
 1322 Dominican Republic

