

International Labour Conference  
81st Session · 1994

F09667/6

Freedom

**OF ASSOCIATION  
AND COLLECTIVE  
BARGAINING**



International Labour Office Geneva



Freedom of association and collective bargaining

---

International Labour Conference  
81st Session 1994

Report III (Part 4B)

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

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

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

---

**FREEDOM OF ASSOCIATION  
AND  
COLLECTIVE BARGAINING**

International Labour Office Geneva

---

ISBN 92-2-108947-9

ISSN 0074-6681

---

*First published 1994*

---

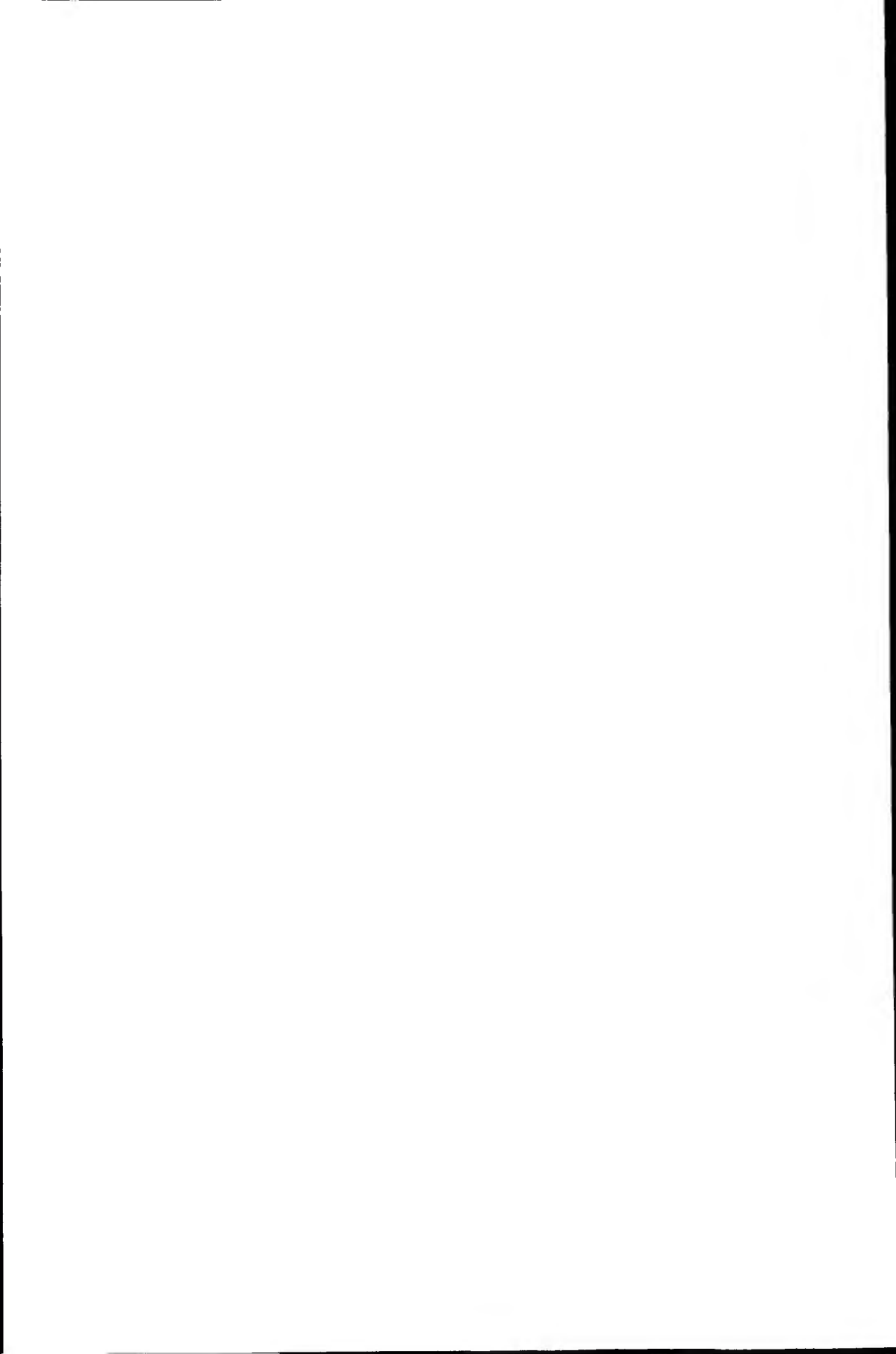
The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers. Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. A catalogue or list of new publications will be sent free of charge from the above address.

---

## Summary

	<i>Paragraphs</i>
Chapter I. General introduction . . . . .	1-22
<b>Part I. Freedom of association and protection of the right to organize</b>	
Chapter II. Trade union rights and civil liberties . . . . .	23-43
Chapter III. Right of workers and employers to establish and join organizations . . . . .	44-107
Chapter IV. Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and organize their administration and activities . . . . .	108-135
Chapter V. The right to strike . . . . .	136-179
Chapter VI. Dissolution and suspension of organizations by administrative authority . . . . .	180-188
Chapter VII. Right of organizations to establish federations and confederations and to affiliate with international organizations . . . . .	189-198
<b>Part II. The right to organize and collective bargaining</b>	
Chapter VIII. Protection against acts of anti-union discrimination . . . . .	202-224
Chapter IX. Protection against acts of interference . . . . .	225-234
Chapter X. Promotion of collective bargaining . . . . .	235-265
<b>Part III. Highlights of the last decade</b>	
<b>Ratification of Conventions: Difficulties and prospects</b>	
Chapter XI. Highlights of the last decade . . . . .	266-283
Chapter XII. Ratification of Conventions: Difficulties and prospects . . . . .	284-325
<b>Final remarks . . . . .</b>	<b>326-340</b>
<b>Appendices</b>	





## Table of contents

	<i>Paragraphs</i>
<b>Chapter I. General introduction</b> . . . . .	1-22
Background . . . . .	1
International sources of law in the field of trade union rights . . . . .	5
Principal source: ILO instruments . . . . .	5
Principles and practices . . . . .	13
Other international sources . . . . .	14
New developments since 1983 . . . . .	15
Promotion and supervision machinery . . . . .	16
Special procedures . . . . .	17
Fact-Finding and Conciliation Commission on Freedom of Association . . . . .	18
Committee on Freedom of Association . . . . .	19
Links between the Committee on Freedom of Association and the Committee of Experts . . . . .	20
Available information . . . . .	21
Arrangement of the survey . . . . .	22
<b>Part I. Freedom of association and protection of the right to organize</b>	
<b>Chapter II. Trade union rights and civil liberties</b> . . . . .	23-43
Introduction . . . . .	23
The right to freedom and security of person . . . . .	28
Physical assaults against persons, disappearance . . . . .	29
Arbitrary arrest and detention . . . . .	31
Forced exile . . . . .	33
Freedom of movement . . . . .	34
Freedom of assembly and demonstration . . . . .	35
Freedom of opinion and expression . . . . .	38
Protection of trade union premises and property . . . . .	40
State of emergency . . . . .	41
<b>Chapter III. Right of workers and employers to establish and join organizations</b> . . . . .	44-107
Introduction . . . . .	44
I. Right of workers and employers, <i>without distinction whatsoever</i> , to establish and join organizations . . . . .	45
Public service . . . . .	48
Police and armed forces . . . . .	55
Fire service personnel and prison staff . . . . .	56
Senior public officials . . . . .	57
Agricultural workers . . . . .	58

	<i>Paragraphs</i>
Other categories of workers . . . . .	59
Workers in export processing zones . . . . .	60
Other forms of discrimination or distinction . . . . .	61
Right to organize of managerial and executive staff in the private sector . . . . .	66
Right to organize of employers . . . . .	67
<b>II. Right to establish organizations <i>without previous authorization</i> . . . . .</b>	<b>68</b>
Introduction . . . . .	68
Filing an organization's rules . . . . .	70
Registration . . . . .	71
Recognition of legal personality . . . . .	76
Appeal to the courts . . . . .	77
<b>III. Right of workers and employers to establish and join organizations <i>of their own choosing</i> . . . . .</b>	<b>79</b>
Introduction . . . . .	79
Structure and composition of organizations . . . . .	80
Trade union monopoly/trade union diversity . . . . .	91
Recognition of the most representative trade unions . . . . .	97
Trade union security . . . . .	100
Coercion or favouritism by the government . . . . .	104
<b>Chapter IV. Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities . . . . .</b>	<b>108-135</b>
Introduction . . . . .	108
Constitutions and rules . . . . .	109
Election of representatives . . . . .	112
Election procedures . . . . .	113
Conditions of eligibility . . . . .	116
Removal of trade union officers or executive bodies . . . . .	122
Administration of organizations . . . . .	124
Inviolability of union premises, correspondence and communications . . . . .	127
Activities and programmes . . . . .	128
Political activities . . . . .	130
<b>Chapter V. The right to strike . . . . .</b>	<b>136-179</b>
Introduction . . . . .	136
ILO instruments . . . . .	142
Other international and regional instruments . . . . .	143
National legislation and practice . . . . .	144
ILO supervisory bodies . . . . .	145
Committee on Freedom of Association . . . . .	146
Committee of Experts . . . . .	147
General prohibition of strikes . . . . .	152
Specific restrictions . . . . .	154
Restrictions relating to the public service . . . . .	156

	<i>Paragraphs</i>
Restrictions relating to essential services . . . . .	159
Negotiated minimum service . . . . .	161
Essential services and minimum service . . . . .	162
Requisitioning . . . . .	163
Compensatory guarantees . . . . .	164
Restrictions relating to the objectives of a strike . . . . .	165
Political strikes/protest strikes . . . . .	165
Strikes, collective bargaining and "social peace" . . . . .	166
Sympathy strikes . . . . .	168
Export processing zones . . . . .	169
Other prerequisites . . . . .	170
Requirement of a strike ballot . . . . .	170
Exhaustion of conciliation/mediation procedures . . . . .	171
Waiting period, advance notice . . . . .	172
Forms of strike action . . . . .	173
The course of the strike . . . . .	174
Picketing/occupation of the workplace . . . . .	174
Replacement of strikers . . . . .	175
Sanctions against strikes . . . . .	176
<b>Chapter VI. Dissolution and suspension of organizations by administrative authority . . . . .</b>	<b>180-188</b>
Introduction . . . . .	180
Dissolution and suspension of organizations . . . . .	182
Trade union assets . . . . .	186
<b>Chapter VII. Right of organizations to establish federations and confederations and to affiliate with international organizations . . . . .</b>	<b>189-198</b>
Introduction . . . . .	189
Right to federation and confederation . . . . .	190
Restrictions on the right of federation and confederation . . . . .	191
Restrictions on the activities of federations and confederations . . . . .	195
International affiliation . . . . .	196
<b>Part II. The right to organize and collective bargaining</b>	
Introduction . . . . .	199
<b>Chapter VIII. Protection against acts of anti-union discrimination . . . . .</b>	<b>202-224</b>
Introduction . . . . .	202
"Trade union security" clauses . . . . .	205
Persons protected . . . . .	206
Period covered . . . . .	210
Acts covered . . . . .	211
Dismissal for economic reasons . . . . .	213
Procedures and sanctions . . . . .	214

	<i>Paragraphs</i>
Evidence . . . . .	217
Compensation . . . . .	219
Penalties . . . . .	222
<b>Chapter IX. Protection against acts of interference . . . . .</b>	<b>225-234</b>
<b>Chapter X. Promotion of collective bargaining . . . . .</b>	<b>235-265</b>
Introduction . . . . .	235
Promotion of collective bargaining . . . . .	237
Recognition of trade unions for the purposes of collective bargaining . . . . .	238
Machinery and procedures to facilitate collective bargaining . . . . .	244
Voluntary collective bargaining; autonomy of the parties . . . . .	248
Level of collective bargaining . . . . .	249
Restrictions on the scope of bargaining . . . . .	250
Other interventions by the authorities . . . . .	251
Compulsory arbitration . . . . .	254
Economic stabilization measures . . . . .	260
Workers in the public and semi-public sectors . . . . .	261
<b>Part III. Highlights of the last decade</b>	
<b>Ratification of Conventions: Difficulties and prospects</b>	
<b>Chapter XI. Highlights of the last decade . . . . .</b>	<b>266-283</b>
I. Implementation of Convention No. 87 . . . . .	266
Major cases of progress . . . . .	266
Major difficulties . . . . .	269
II. Implementation of Convention No. 98 . . . . .	277
Major cases of progress . . . . .	277
Major difficulties . . . . .	279
<b>Chapter XII. Ratification of Conventions: Difficulties and prospects . . . . .</b>	<b>284-325</b>
I. Convention No. 87 . . . . .	284
New ratifications . . . . .	284
Ratifications in progress or considered . . . . .	285
Other cases . . . . .	287
Difficulties delaying or preventing ratification . . . . .	288
Other information . . . . .	299
II. Convention No. 98 . . . . .	309
New ratifications . . . . .	309
Ratifications in progress or considered . . . . .	310
Other cases . . . . .	312
Difficulties delaying or preventing ratification . . . . .	313
Other information . . . . .	320
III. Reports not submitted . . . . .	324
<b>Final remarks . . . . .</b>	<b>326-340</b>

---

**Appendices**

- I. Text of the substantive provisions of Conventions Nos. 87 and 98
- II. Resolution of 1952 concerning the independence of the trade union movement
- III. Resolution of 1970 concerning trade union rights and their relation to civil liberties (extracts)
- IV. Ratifications. Reports received under article 19 of the Constitution
- V. List of abbreviations



## CHAPTER I

### General introduction

#### Background

1. In accordance with article 19 of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office decided at its 251st Session (November 1991) to invite those member States which have not yet ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), to submit reports on their legislation and practice in regard to these Conventions. The reports supplied in application of that decision, together with those submitted in accordance with articles 22 and 35 of the Constitution by States which have ratified one or both of these Conventions, have provided an opportunity for the Committee of Experts on the Application of Conventions and Recommendations (hereinafter referred to as "the Committee"), in accordance with its usual practice, to make a general survey of the situation.

2. The present General Survey is the sixth of its kind on Conventions No. 87 and No. 98. Previous surveys on freedom of association and collective bargaining were carried out in 1956, 1957, 1959, 1973 and 1983.

3. In the present survey, the Committee of Experts has endeavoured in particular to respond to questions and concerns expressed in the Conference Committee on the Application of Standards as to the scope of the Conventions considered.

4. In choosing to request reports on freedom of association and collective bargaining, the Worker and Employer members, together with the representatives of several governments in the Governing Body, have emphasized the importance of these Conventions for the ILO. The fundamental nature of these instruments becomes fully apparent in the present year, 1994, in which the 75th anniversary of the founding of the ILO coincides with the 50th anniversary of the Declaration of Philadelphia, as emphasized by the Committee of Experts in its General Report to the International Labour Conference.<sup>1</sup>

<sup>1</sup> ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, 81st Session, 1994, Report III, Part 4A. The Committee's reports will hereafter be designated by the abbreviation RCE, followed by the year of the report and the number of the page from which the quotation is drawn.

## International sources of law in the field of trade union rights

### *Principal source: ILO instruments*

5. Workers' organizations had been demanding recognition of freedom of association well before the establishment of the ILO. As an integral part of basic human rights and as the cornerstone of provisions intended to ensure the defence of workers, freedom of association is particularly important for the ILO in view of the latter's tripartite structure. It is also of undoubted interest to employers' organizations, which now make greater use of the procedures which have been established for the purpose of ensuring its application. The ILO could therefore not fail to include this principle in its Constitution of 1919 as one of the objectives of its programme of action. The Preamble to Part XIII of the Treaty of Versailles mentioned "recognition of the principle of freedom of association" among the objectives to be promoted by the ILO, and the general principles set forth in Article 427 of the Treaty contained a provision concerning "the right of association for all lawful purposes by the employed as well as by the employers".

6. Freedom of association having thus been proclaimed from the outset as one of the fundamental principles of the Organization, the need was rapidly felt to adopt provisions aimed at defining this general concept more precisely and to set forth its essential elements in a formal ILO instrument in order that its general application could be effectively promoted and supervised. An initial attempt to do this failed in 1927.<sup>2</sup>

7. In 1944, the Constitution of the ILO was supplemented by the inclusion of the Declaration of Philadelphia, which reaffirmed "the fundamental principles on which the Organization is based and, in particular, that freedom of expression and of association are essential to sustained progress".<sup>3</sup> At the same time, the Declaration recognized the ILO's solemn obligation to further the implementation of programmes which would achieve, among other things "the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures".<sup>4</sup> The principles thus enunciated in the Constitution are applicable to all the member States of the Organization.

<sup>2</sup> The placing of this item on the agenda of the 1928 Session of the International Labour Conference was rejected, in particular by the Workers' group, mainly because of questions relating to the right not to organize and to the legal formalities to be observed by organizations.

<sup>3</sup> Declaration concerning the aims and purposes of the International Labour Organization, art. I(b).

<sup>4</sup> *ibid.*, art. III(e).



8. The earliest ILO Convention to deal with the right to organize was the Right of Association (Agriculture) Convention, 1921 (No. 11),<sup>5</sup> followed in 1947 by the Right of Association (Non-Metropolitan Territories) Convention (No. 84). However, the project to regulate freedom of association on an international scale only really materialized with the adoption, in 1948, of the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and, the following year, of the Right to Organize and Collective Bargaining Convention (No. 98), which together constitute the basic instruments governing freedom of association.<sup>6</sup> The International Labour Conference has since adopted several other instruments concerning trade union rights and collective bargaining.

9. As regards collective bargaining and the settlement of disputes, the following can be singled out for particular attention:

- the Collective Agreements Recommendation, 1951 (No. 91), dealing with collective bargaining machinery, the definition of collective agreements, their effects, their interpretation and the supervision of their application;
- the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which is aimed at promoting the establishment of conciliation and arbitration machinery with equal representation on both sides; it stresses the voluntary nature of such machinery and specifies that none of its provisions may be interpreted as limiting the right to strike;
- the Collective Bargaining Convention (No. 154) and Recommendation (No. 163), both adopted in 1981 and aimed at promoting free and voluntary collective bargaining.

10. The Conference has also adopted various instruments in order:

- to take account of the particular difficulties encountered by workers in certain sectors in the exercise of their trade union rights, such as the Rural Workers' Organizations Convention (No. 141) and Recommendation (No. 149), adopted in 1975;
- to adapt the existing instruments to the particular status of certain categories of worker, for example the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), adopted in 1978;
- to strengthen the protection of workers' representatives and to ensure that they are afforded facilities in order to enable them to carry out their functions promptly and efficiently, through the Workers' Representatives Convention, 1971 (No. 135), and the accompanying Recommendation (No. 143).

<sup>5</sup> Without defining this right, the Convention provides that all persons engaged in agriculture shall possess the same rights of association and combination as industrial workers.

<sup>6</sup> The text of the substantive provisions of Conventions Nos. 87 and 98 is reproduced in Appendix I.

11. In order to promote mutual understanding and good relations between the authorities and employers' and workers' organizations, as well as between these organizations themselves, other instruments are aimed at institutionalizing consultation in the field of industrial relations:

- at the workplace, the Cooperation at the Level of the Undertaking Recommendation, 1952 (No. 94); and
- at higher levels, the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113).

12. In addition to Conventions and Recommendations, the International Labour Conference has adopted a number of resolutions relating to freedom of association, two of which, in the view of the Committee, are of particular interest. The first of these is the 1952 resolution concerning the independence of the trade union movement, which lays down several principles with regard to the relations between workers' organizations, governments and political parties; it states that it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission, irrespective of political changes. This resolution finds a particular echo within the context of the recent democratization process and remains altogether relevant.<sup>7</sup> The same is true of the 1970 resolution concerning trade union rights and their relation to civil liberties, which recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil and political freedoms which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights; the resolution adds that the absence of these liberties removes all meaning from the concept of trade union rights, and places special emphasis on civil liberties which are essential for the normal exercise of trade union rights.<sup>8</sup> Finally, it should be pointed out that the promotion and defence of freedom of association occupy a prominent position in most of the resolutions adopted since 1983 by the International Labour Conference or the Regional Conferences.

### *Principles and practices*

13. The ILO standards on trade union matters have been supplemented and developed by the principles enunciated by the supervisory bodies, in particular the Governing Body Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association set up to examine complaints of violation of trade union rights. These decisions, which are not limited to the basic rules laid down by the Conventions on freedom of association — despite the significance which the latter have acquired in substantive law, owing in particular to the large number of ratifications obtained

<sup>7</sup> See the text of the resolution in Appendix II.

<sup>8</sup> See the text of the resolution in Appendix III.

— have progressively become a set of principles which, together with the observations formulated by the Committee of Experts concerning those same instruments, constitutes a veritable international law of freedom of association.

#### *Other international sources*

14. The United Nations does not deal with labour issues as such, and in an agreement concluded in 1946 with the ILO it recognized that body as the specialized agency with responsibility for taking appropriate measures to achieve the objectives laid down in its Constitution. The United Nations has, however, adopted — essentially within the framework of instruments relating to human rights — standards and principles also concerning labour matters, including trade union rights. Thus, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights set forth rights and freedoms which are essential to the free exercise of trade union rights. The Declaration, the moral influence of which is indisputable, provides, *inter alia*, that everyone has the right to freedom of peaceful assembly and association (article 20.1) and the right to form and to join trade unions for the protection of his interests (article 23.4). The Covenants, which entered into force in 1976, contain provisions concerning the right of association, in particular the right to form trade unions and the right to strike. In accordance with article 18 of the International Covenant on Economic, Social and Cultural Rights, the ILO reports to the Economic and Social Council of the United Nations (ECOSOC) on the progress made in ensuring observation of those provisions of the Covenant which lie within the competence of the Organization. The Governing Body entrusted this task to the Committee of Experts, which has examined the position in a number of States party, particularly with regard to the implementation of the relevant articles of the Covenant.<sup>9</sup>

#### **New developments since 1983**<sup>10</sup>

15. Over the past decade there has been a spectacular change in the world political climate which has resulted, among other things, in profound changes in the legislation and practice of many States. Although the most striking symbol of these changes was the dismantling of the Berlin Wall in late 1989, together with the trend towards a generalization of a market economy in the countries of Central and Eastern Europe, this evolution was not restricted to Europe alone, many African, Latin American and Asian countries having also opted for, or returned to, political and trade union pluralism.<sup>11</sup> All of this has had at least

<sup>9</sup> See for example, RCE 1993, para. 33 et seq.

<sup>10</sup> Date of the last General Survey on Conventions Nos. 87 and 98.

<sup>11</sup> ILC, 79th Session, 1992, *Democratization and the ILO*, Report of the Director-General (Part I), pp. 8-12.

three direct consequences for the ILO and international labour standards. First, there has been a rapid increase in the number of member States, which has risen from 150 in 1983 to 170 in January 1994. Second, the number of ratifications of the Conventions covered in the present survey has also increased, from 96 to 109 in the case of Convention No. 87, and from 112 to 123 in the case of Convention No. 98.<sup>12</sup> And third, the consequence which perhaps has the greatest practical significance is that certain issues relating to respect for fundamental human rights instruments, including Conventions Nos. 87 and 98, which for many years had been the subject of observations by the ILO's supervisory bodies, have been — or are currently in the process of being — resolved. While hoping that this evolution will continue and increase, the Committee remains aware that numerous difficulties still exist.<sup>13</sup>

### Promotion and supervision machinery

16. Although during this period the ILO somewhat relaxed the pace of its standard-setting activities in relation to freedom of association, it continued and stepped up its efforts to promote and supervise the application of the Conventions. The Committee refers to the description given in the General Survey of 1983 as regards the general supervision procedures applicable to all international labour Conventions,<sup>14</sup> and to its annual reports to the Conference with regard to promotional activities relating to freedom of association and collective bargaining.

#### *Special procedures*

17. Special procedures for the protection of freedom of association were envisaged during the discussion of Conventions Nos. 87 and 98 by the International Labour Conference, since the failure by a State to ratify those Conventions made it impossible to supervise their application under the general supervision procedures, despite the fundamental importance attached to respect for the standards and principles relating to trade union rights. It was for this reason that the Fact-Finding and Conciliation Commission on Freedom of Association was set up in 1950, followed by the Committee on Freedom of Association in 1951.

<sup>12</sup> The other Conventions on Freedom of Association have also been ratified by many countries since 1983: C.11, 13 ratifications; C.135, 14 ratifications; C.141, 9 ratifications; C.151, 12 ratifications; C.154, 15 ratifications.

<sup>13</sup> See Chapter XI.

<sup>14</sup> ILC, 1983, *Freedom of association and collective bargaining*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, paras. 21-37 (hereinafter, *General Survey*, 1983).

*Fact-Finding and Conciliation Commission on  
Freedom of Association*

18. Established in agreement with the Economic and Social Council of the United Nations,<sup>15</sup> this Commission examines complaints of violations of trade union rights referred to it by the Governing Body and concerning ILO member countries which may or may not have ratified the Conventions on freedom of association; if, however, the country concerned has not ratified them, the complaint may only be referred with its consent.<sup>16</sup> Functioning as a general rule as a panel of three members and composed of independent persons appointed by the Governing Body, this Commission, while essentially an investigatory body, may also examine, together with the government concerned, the possibilities of settling the difficulties involved by agreement. The Commission has been convened only rarely, mainly because prior to 1964 no government that had been requested to do so had given its consent. Complaints submitted against States which are Members of the United Nations but *not* members of the ILO are referred to the Commission in accordance with a special procedure and if the government concerned so agrees. Thus, a complaint presented by the Congress of South African Trade Unions against the Government of South Africa was referred to the ILO in 1988; in 1991, the Government gave its consent to the referral of the complaint to the Commission, which issued a very detailed report containing its conclusions on the situation in law and in practice with regard to labour relations in that country, at the same time formulating numerous recommendations relating in particular to freedom of association and collective bargaining.<sup>17</sup>

*Committee on Freedom of Association*

19. Established in 1951 as a tripartite body comprising nine members of the Governing Body, and chaired since 1978 by an independent personality, the Committee on Freedom of Association examines complaints containing allegations of violations of the Conventions on freedom of association, regardless of *whether or not* the countries concerned have ratified those instruments. The consent of the governments concerned is not necessary in order for these complaints to be examined: the legal basis for this concept resides in the Constitution of the ILO and the Declaration of Philadelphia, according to which member States, by virtue of their membership of the Organization, are bound

<sup>15</sup> Resolutions of the Economic and Social Council No. 239(IX) of 2 August 1949 and No. 277(X) of 17 February 1950; 110th Session of the Governing Body, Official Minutes, pp. 71-90.

<sup>16</sup> As regards the application of ratified Conventions, the Governing Body may, under article 26 of the Constitution, designate the Fact-Finding and Conciliation Commission as a Commission of Inquiry.

<sup>17</sup> International Labour Office, Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the *Republic of South Africa*, Official Bulletin, Special Supplement, Vol. LXXV, 1992, Series B, paras. 746-748 (hereinafter "Report Fact-Finding and Conciliation Commission *South Africa*").

to respect the fundamental principles contained in its Constitution, particularly those concerning freedom of association even though they have not ratified the Conventions on this subject. The Committee on Freedom of Association systematically examines the substance of the cases submitted to it and presents conclusions thereon, unanimously adopted, to the Governing Body, recommending, where appropriate, that it draw the attention of the governments concerned to any principles called into question, and in particular to any recommendations made with a view to settling the difficulties raised in the complaint. The Committee meets three times a year and has, since its establishment, examined nearly 1,800 cases, which are often of a very serious nature. In so doing, it has established a series of principles<sup>18</sup> which constitutes a veritable international law on freedom of association.<sup>19</sup> The upward trend in the number of cases submitted to the Committee on Freedom of Association, already noted in the previous General Survey, has continued.

*Links between the Committee on Freedom of Association  
and the Committee of Experts*

20. When a legislative problem arises and the country concerned has ratified the Conventions to which the complaint refers, the Committee on Freedom of Association can — and, in fact, often does — draw the attention of the Committee of Experts to these aspects of the case, thus enabling the latter to follow the development of the situation during the regular examination of the reports submitted by the government concerned in relation to the Convention in question. Thus, when considering the practice and legislation of a country as part of the regular examination of the application of Conventions under article 22 of the ILO Constitution, the Committee of Experts may be called upon to take account of the unanimous recommendations of the Committee on Freedom of Association approved by the Governing Body, in addition to the information provided by the government and by employers' and workers' organizations. While the Committee on Freedom of Association and the Committee of Experts differ in terms of their composition, the nature of their functions and their procedure, they apply the same principles, which are universal and cannot be applied selectively. The Committee of Experts does take into consideration particular facts when applying these principles which it tends to view as

<sup>18</sup> The Committee's decisions are published *in extenso* in the *Official Bulletin* and significant decisions and principles are collected from time to time, by subject, in a Digest. The decisions taken by the Committee up to 1985 have been published in: *Freedom of association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva, 1985, 3rd revised edition (hereinafter, *Digest*). New developments may have occurred in the legal or factual situations described in the decisions of the Committee on Freedom of Association mentioned in this survey.

<sup>19</sup> In 1953 the Chairman of the Committee stated that it is "a kind of customary rule in common law, outside or above the scope of any Conventions or even of membership of one or other of the international organizations". ILO, Minutes of the 121st Session of the Governing Body, 3-6 Mar. 1953, p. 39.

guidelines from which governments and the social partners might draw inspiration with a view to promoting harmonious labour relations.

### Available information

21. The present survey is based, on the one hand, on the reports communicated under article 19 of the ILO Constitution by countries which have not ratified the Conventions under consideration and, on the other hand, on the reports furnished under articles 22 and 35 by governments which have ratified those instruments. The number of reports supplied under article 19 is 31 and 23 respectively, for Conventions Nos. 87 and 98. Appendix IV contains the list of countries which have presented a report under article 19 and those for which information drawn from the reports communicated under article 22 is available. In addition, the Committee received information and comments from workers'<sup>20</sup> and employers'<sup>21</sup> organizations concerning unratified Conventions. In examining the information contained in the reports, the Committee of Experts has also sought to take account of the corresponding legislation and practice. The Committee stresses the crucial importance it attaches to the latter, since a purely formal compatibility of national legislations with ILO instruments on freedom of association has no real meaning for workers and employers. The Committee feels bound to point out that it has sometimes been difficult to gather information on the practical application of the Conventions, and even, in some cases, to obtain all of the national legislation concerning the subjects dealt with in this survey.<sup>22</sup>

### Arrangement of the survey

22. The present General Survey is divided into three parts dealing, respectively, with the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and finally the highlights of the last decade and the difficulties and prospects with regard to ratification. However, before examining each of the aspects of freedom of association covered by Conventions Nos. 87 and 98, the Committee of Experts considered it worthwhile to recall briefly in a preliminary chapter the relationship between trade union rights and civil and political liberties, since respect for these fundamental rights

<sup>20</sup> New Zealand Council of Trade Unions (C.87 and C.98).

<sup>21</sup> National Confederation of Industry of Brazil (C.87); Confederation of Chambers of Industry of the United States of Mexico (C.98); New Zealand Employers' Federation (C.87 and C.98).

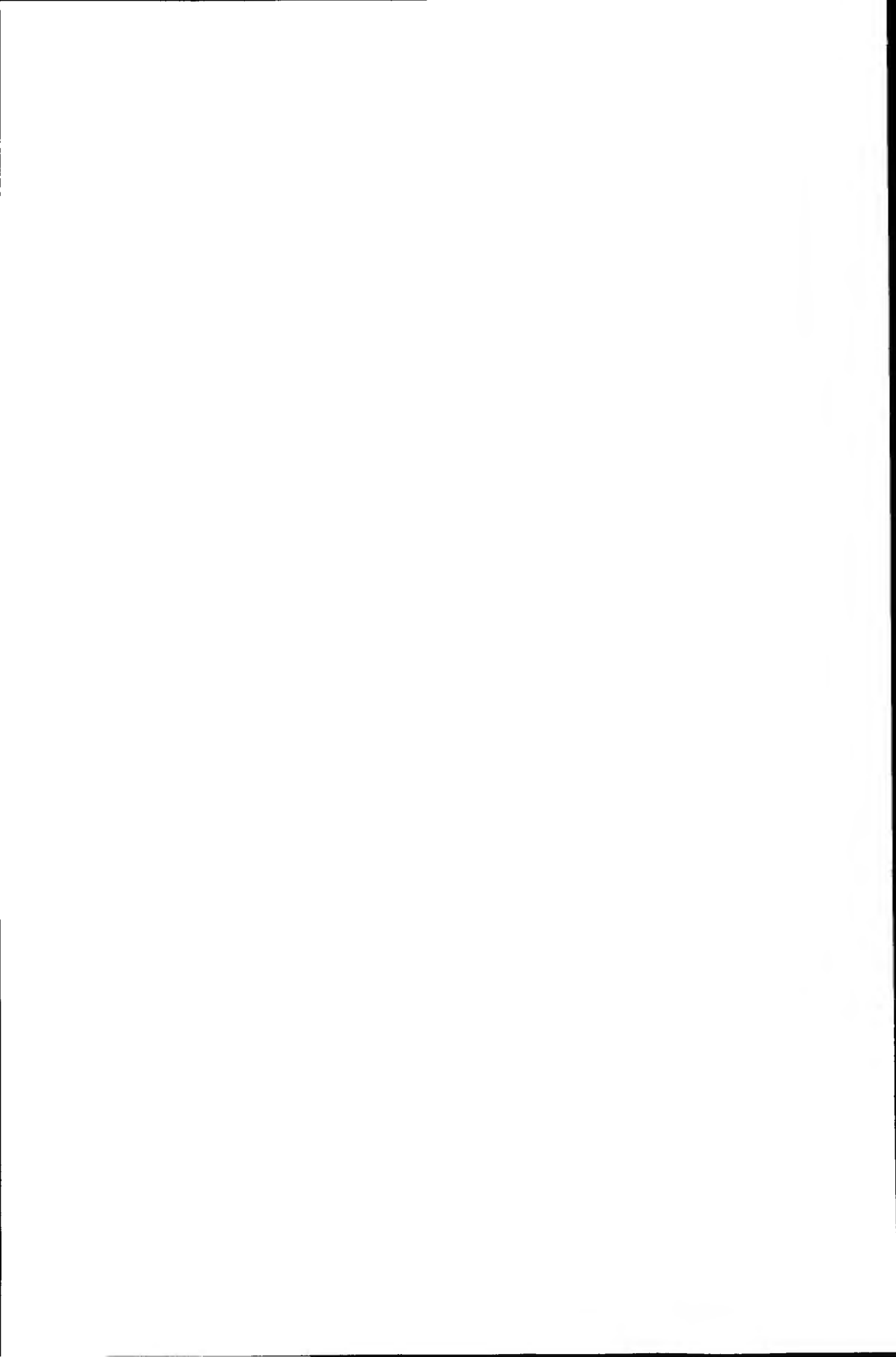
<sup>22</sup> Unless otherwise mentioned, the Committee based itself on information available as of 31 December 1993.

is the essential prerequisite to the genuine and sustained development of the rights of workers' and employers' organizations.



PART I

**Freedom of association and protection of  
the right to organize**



## CHAPTER II

### Trade union rights and civil liberties

#### Introduction

23. The examination of the numerous allegations of violations of trade union rights presented to the Committee on Freedom of Association since its creation in November 1951 shows that the restriction of civil and political liberties is a major factor in violations of freedom of association.<sup>1</sup> Aware of this problem, and aiming to promote social justice in accordance with its fundamental mission, the International Labour Organization has striven to safeguard the rights and liberties which individuals should enjoy at work. As the Director-General of the ILO recalled recently: "The ILO takes a keen interest in civil and political rights, for, without them, there can be no normal exercise of trade union rights and no protection of the workers".<sup>2</sup> Without these liberties, trade union rights are limited or non-existent, but "... respect of civil liberties has a more general dimension in so far as such liberties affect the existence, activities and development of an entire community".<sup>3</sup>

24. The Declaration of Philadelphia, adopted in 1944 by the International Labour Conference and incorporated in 1946 in the ILO Constitution, officially acknowledged the relationship between civil liberties and trade union rights by proclaiming in article I(b) that freedom of expression and of association are essential to sustained progress and referring in article II(a) to the fundamental rights which are an inseparable part of human dignity. Since then, this relationship has been repeatedly affirmed and highlighted, both by the ILO's supervisory bodies and in the Conventions, Recommendations and resolutions adopted by the International Labour Conference.

<sup>1</sup> Nearly half the complaints presented to the Committee concern, in whole or in part, human rights violations.

<sup>2</sup> International Labour Conference, 79th Session, 1992, *Democratization and the ILO*, Report of the Director-General, p. 24.

<sup>3</sup> ILO, Report of the Commission of Inquiry appointed to examine the complaint concerning the observation by *Nicaragua* of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), *Official Bulletin*, Supplement 2, Series B, Vol. LXXIV, 1991, para. 539 (hereinafter "Report of the Commission of Inquiry *Nicaragua*").

25. In the preparatory work on Convention No. 87, the preamble of which includes the principles set out in the Declaration of Philadelphia, it was stressed that "freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another".<sup>4</sup> In 1970, the International Labour Conference solemnly reaffirmed this essential link by adopting a resolution concerning trade union rights and their relation to civil liberties. Considering, inter alia, "that there exist firmly established, universally recognized principles defining the basic guarantees of civil liberties which should constitute a common standard of achievement for all peoples and all nations", it recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights". The Conference explicitly listed the fundamental rights essential for the exercise of freedom of association, in particular: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) 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 and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; and (e) the right to protection of the property of trade union organizations.

26. The Committee of Experts itself,<sup>5</sup> the Conference Committee on the Application of Standards<sup>6</sup> and the Committee on Freedom of Association,<sup>7</sup> have on many occasions stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights. The exercise of civil liberties in relation to trade union rights "should be examined on the basis of the provisions contained in Article 3 of Convention No. 87. It is in connection with this standard that the respect of certain basic human rights acquires its full importance for trade union life".<sup>8</sup>

27. The information available, in particular on the nature of the complaints submitted to the Committee on Freedom of Association, shows that the main difficulties encountered by trade union organizations and their leaders and

<sup>4</sup> International Labour Conference, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*, p. 11.

<sup>5</sup> See, for example: *RCE* 1988, para. 12; *RCE* 1990, para. 37; *RCE* 1991, paras. 43 and 45. See also *General Survey*, 1983, para. 52.

<sup>6</sup> For example, International Labour Conference, *Provisional Records*, 1988 (General Report, paras. 5-10); 1990 (General Report, para. 48); 1991 (General Report, para. 97).

<sup>7</sup> *Digest*, Ch. II.

<sup>8</sup> Report of the Commission of Inquiry *Nicaragua*, op. cit., note 3, para. 435.

members relate to basic rights, in particular to the right to security of the person, freedom of assembly, freedom of opinion and expression, as well as the right to protection of trade union property and premises. The Committee stresses that trade union rights violations may also result by reason of legislation, sometimes taken for genuine economic motives, which favour individual rights to the detriment of collective rights, thereby weakening trade unions through a series of legislative measures which, taken individually, may otherwise be compatible with the principles of freedom of association.<sup>9</sup> Serious problems also frequently arise with regard to the exercise of trade union rights where the public authorities have declared states of emergency.

### **The right to freedom and security of person**

28. The resolution concerning trade union rights and their relation to civil liberties rightly lists as first among the liberties essential for the normal exercise of trade union rights the right "to freedom and security of person" since this fundamental right is crucial to the effective exercise of all other liberties, in particular freedom of association. The violations noted by the Committee on Freedom of Association are as serious as they are varied: serious physical assault and even murder, arbitrary arrest and detention, restrictions on freedom of movement, exile and disappearances.

#### *Physical assaults against persons, disappearance*

29. In its examination of such complaints, the Committee on Freedom of Association has stated that a climate of violence in which the murder and disappearance of trade union leaders go unpunished constitutes a serious obstacle to the exercise of trade union rights and that such acts require that severe measures be taken by the authorities.<sup>10</sup> It has also stressed that, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions.<sup>11</sup> Judicial inquiries of this kind should be conducted as promptly and speedily as possible, since otherwise there is a risk of de facto impunity which reinforces the climate of violence and insecurity and which is therefore highly detrimental to the exercise of trade union activities.<sup>12</sup>

<sup>9</sup> See on this point paras. 236, 335 and 336.

<sup>10</sup> *Digest*, para. 76. CFA, 281st Report, Case No. 1273 (*El Salvador*), para. 279; 283rd Report, Case No. 1538 (*Honduras*), para. 254.

<sup>11</sup> *Digest*, paras. 78, 79 and 85. CFA, 279th Report, Case No. 1444 (*Philippines*), para. 560; 283rd Report, Case No. 1590 (*Lesotho*), para. 347.

<sup>12</sup> CFA, 278th Report, Case No. 1426 (*Philippines*), para. 139; 284th Report, Case No. 1538 (*Honduras*), para. 743.

30. As regards more specifically torture, cruelty and ill-treatment, trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>13</sup> Governments should give the necessary instructions to ensure that no detainee suffers such treatment, and should apply effective and exemplary sanctions where evidence is available.<sup>14</sup> Complaints of this type should be investigated so that appropriate measures, including compensation for damages suffered, may be taken.<sup>15</sup>

#### *Arbitrary arrest and detention*

31. The arrest and detention, even for short periods, of trade union leaders and members engaged in their legitimate trade union activities, without any charges being brought and without a warrant, constitute a grave violation of the principle of freedom of association.<sup>16</sup> While being engaged in trade union activities does not confer immunity from sanctions under ordinary criminal law, the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention; the Committee recalls in this respect that the imposition of heavy criminal sanctions for violations of industrial relations legislation is inappropriate and not conducive to sound industrial relations.<sup>17</sup> In view of the importance which it attaches to the protection of the right of arrested or detained persons to a fair trial, the Committee has called on governments to bring detainees before the courts in all cases, irrespective of the reasons put forward for prolonging their detention.<sup>18</sup> Preventive detention may also involve serious interference in trade union activity and must be accompanied by all adequate judicial safeguards applied within a reasonable period.<sup>19</sup> The Committee also takes the view that so-called "education through labour" systems amount to administrative detention and forced labour which, when applied to people involved in trade union activities, constitute a blatant violation of the principles of freedom of association.<sup>20</sup>

32. The authorities must therefore ensure observance of the right of all detained or accused persons, including trade unionists, to be tried promptly

<sup>13</sup> *Digest*, paras. 82 and 86. CFA, 279th Report, Case No. 1577 (*Turkey*), para. 438.

<sup>14</sup> *Digest*, para. 84. CFA, 277th Report, Case No. 1524 (*El Salvador*), para. 377; 278th Report, Case No. 1508 (*Sudan*), para. 357.

<sup>15</sup> See also *Digest*, para. 85. CFA, 279th Report, Case No. 1520 (*Haiti*), para. 214.

<sup>16</sup> *Digest*, paras. 87-89. CFA, 279th Report, Case No. 1556 (*Iraq*), para. 61; 281st Report, Case No. 1593 (*Central African Republic*), para. 262.

<sup>17</sup> See Ch. V, paras. 176-178.

<sup>18</sup> *Digest*, para. 95. CFA, 265th Report, Case No. 1168 (*El Salvador*), para. 257; 270th Report, Case No. 1508 (*Sudan*), para. 404.

<sup>19</sup> *Digest*, para. 100.

<sup>20</sup> CFA, 281st Report, Case No. 1500 (*China*), para. 81.

through normal judicial procedures,<sup>21</sup> which includes in particular: the right to be informed of the charges brought against them, the right to have adequate time 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<sup>22</sup> in all cases, including cases in which trade unionists are charged with criminal offences, whether of a political nature or not, which in the government's view have no relation to their trade union functions.<sup>23</sup> The Committee, while refraining from expressing an opinion on the political aspects of a state of emergency, has always emphasized that the same safeguards must be applied when trade unionists are detained during a state of emergency.<sup>24</sup> Respect for the legal safeguards would not appear to be ensured if, under national law, the effect of a state of emergency is that a court cannot examine, and does not in fact examine, the merits of the case.<sup>25</sup>

### *Forced exile*

33. Forced exile has particularly serious implications when imposed on trade unionists, since it weakens trade union organizations by depriving them of their leaders and key activists.<sup>26</sup> The practice of freeing trade unionists on condition that they leave the country is also incompatible with the free exercise of trade union rights.<sup>27</sup> Related sanctions, such as house arrest or banishment on the grounds of trade union activity, also violate freedom of association; the Committee has also stressed that such sanctions should not be imposed by administrative action.<sup>28</sup>

### *Freedom of movement*

34. The leaders of workers' and employers' organizations should be able freely to travel within the country, enter and leave it when their activities on behalf of their members so require; the authorities should guarantee these rights.<sup>29</sup> Participation by trade unionists in international trade union meetings is also a fundamental trade union right; governments should refrain from any measure, such as withholding travel documents, which prevent representatives

<sup>21</sup> *Digest*, para. 108.

<sup>22</sup> *Digest*, para. 110. CFA, 279th Report, Case No. 1556 (*Iraq*), para. 61.

<sup>23</sup> *Digest*, para. 113. CFA, 259th Report, Case No. 1426 (*Philippines*), para. 585; 270th Report, Case No. 1508 (*Sudan*), para. 404.

<sup>24</sup> *Digest*, para. 128. See also para. 41 below.

<sup>25</sup> *Digest*, para. 130.

<sup>26</sup> *Digest*, para. 134. CFA, 256th Report, Case No. 1309 (*Chile*), para. 276.

<sup>27</sup> *Digest*, para. 136.

<sup>28</sup> *Digest*, para. 138. CFA, 272nd Report, Case No. 1516 (*Bolivia*), para. 153.

<sup>29</sup> Report of the Commission of Inquiry *Nicaragua*, op. cit., note 3, para. 113. See also CFA, 254th Report, Case No. 1406 (*Zambia*), para. 470.

of occupational organizations from exercising their mandate in full freedom and independence.<sup>30</sup>

### *Freedom of assembly and demonstration*

35. Freedom of assembly constitutes a fundamental aspect of trade union rights.<sup>31</sup> The authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a *serious* and *imminent* threat to public order.<sup>32</sup> In addition, where trade unionists are arrested or charged for breaching public order in such circumstances, they should be entitled to refer the matter promptly to judicial authorities, with all guarantees of due process, so that the court may assess whether these measures were justified and, where necessary, issue appropriate remedial orders. Trade unions should therefore be able to hold meetings freely in their own premises for the discussion of trade union matters, without the need for previous authorization and without interference by the public authorities,<sup>33</sup> to draw up their agendas freely,<sup>34</sup> and to hold meetings without members of the police<sup>35</sup> or any representative of the authorities<sup>36</sup> being present. Employers' organizations should also be able to hold such meetings freely, without any interference or supervision by the authorities.

36. The freedom of assembly extends to international meetings. Any measure preventing an official of a workers' or employers' organization to attend to or participate in such reunions is a serious restriction on the guarantees set out in Article 3 of Convention No. 87.<sup>37</sup>

37. The right to organize public meetings, including May Day processions or demonstrations in support of social and economic demands, constitutes an important aspect of trade union rights.<sup>38</sup> Nevertheless, organizations must observe the general provisions relating to public meetings, which are applicable to everyone.<sup>39</sup> The prohibition of demonstrations or processions on public streets, in particular in the busiest parts of a city, when it is feared that

<sup>30</sup> 283rd Report, Case No. 1590 (*Lesotho*), para. 346.

<sup>31</sup> *Digest*, para. 140.

<sup>32</sup> CFA, 278th Report, Case No. 1479 (*India*), para. 278; 281st Report, Case No. 1564 (*Sierra Leone*), para. 186.

<sup>33</sup> *Digest*, para. 142. CFA, 283rd Report, Case No. 1479 (*India*), para. 98.

<sup>34</sup> *Digest*, para. 145.

<sup>35</sup> *Digest*, para. 148. CFA, 278th Report, Case No. 1337 (*Nepal*), para. 125.

<sup>36</sup> *Digest*, para. 149.

<sup>37</sup> CFA, 287th Report, para. 3: member of the Freedom of Association Committee prevented from participating in a session of the Committee. See also, *Digest*, para. 271.

<sup>38</sup> *Digest*, paras. 154-156. CFA, 283rd Report, Case No. 1590 (*Lesotho*), para. 349.

<sup>39</sup> *Digest*, para. 158. CFA, 279th Report, Case No. 1572 (*Philippines*), para. 583.



disturbances might occur, does not necessarily constitute an infringement of trade union rights,<sup>40</sup> but the authorities should strive to reach agreement with organizers of the meeting to enable it to be held in some other place where there would be no fear of disturbances.<sup>41</sup> While reasonable restrictions are acceptable, they should not result in breaches of fundamental civil liberties.

### *Freedom of opinion and expression*

38. Another essential aspect of trade union rights is the right to express opinions through the press or otherwise.<sup>42</sup> The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications, and in the course of their other activities.<sup>43</sup> In cases in which the issue of a trade union publication is subject to the granting of a licence, mandatory licensing should not be subject to the mere discretion of licensing authorities, nor should it be used as a means of imposing prior restraint on the subject-matter of publications; in addition any application for such a licence should be dealt with promptly.<sup>44</sup> If trade unions are required to provide a substantial bond before being able to publish a newspaper, this constitutes, especially in the case of smaller unions, a condition which is hardly compatible with the right of trade unions to express opinions through the press.<sup>45</sup> Measures of administrative control — for example, the withdrawal of a licence granted to a trade union newspaper, the control of printing plants and equipment, or the control of paper supply — should be subject to prompt and independent judicial review.<sup>46</sup>

39. An important aspect of freedom of expression is the freedom of speech of delegates of workers' and employers' organizations meetings, conferences and reunions, and in particular to the International Labour Conference. The functioning of the latter would risk being considerably hampered and the freedom of speech of the workers' and employers' delegates 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 ILO Constitution provides that delegates to the Conference shall enjoy "such immunities as are necessary for the independent exercise of their functions in connection with the Organization". The right of delegates to the Conference to express freely their point of view on questions within the competence of the Organization implies

<sup>40</sup> *Digest*, para. 163.

<sup>41</sup> *Digest*, para. 164. CFA, 280th Report, Cases Nos. 997, 999 and 1029 (*Turkey*), para. 34.

<sup>42</sup> *Digest*, para. 172. CFA, 286th Report, Case No. 1640 (*Morocco*), para. 638.

<sup>43</sup> *Digest*, para. 175. See also the Report of the Commission of Inquiry *Nicaragua*, op. cit., note 3, para. 541.

<sup>44</sup> *Digest*, para. 177.

<sup>45</sup> *Digest*, para. 178.

<sup>46</sup> *Digest*, paras. 180 and 181.

point of view on questions within the competence of the Organization implies that delegates of employers' and workers' organizations have the right to inform their members in their respective countries of what they have said. The arrest and sentencing of a delegate as a result of his speech to the Conference, or by reason of information given on the debates thereof, jeopardize freedom of speech for delegates as well as the immunities that they should enjoy in this regard.<sup>47</sup>

### Protection of trade union premises and property

40. While trade unions cannot claim any special immunity, such as immunity from searches of trade union offices, such searches should only be made when a warrant has been issued by the regular judicial authority, when that authority has good reason to believe that evidence for criminal proceedings under the ordinary law will be found on the premises, and on condition that the search is restricted to the purpose for which the warrant was issued.<sup>48</sup> Judicial review is also required for any similar measures taken by the authorities (for instance, searches of the private homes of trade unionists; occupation, closure or sealing of trade union premises; seizure of material needed by the union in its work) in view of the significant risk that such measures may paralyse trade union activities.

### State of emergency

41. The freedom of association Conventions contain no provisions allowing the invocation of a state of emergency to justify exemption from the obligations arising under the Conventions or any suspension of their application. This motive is frequently invoked and the exercise of trade union rights is seriously endangered thereby. Such a pretext cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity (acts of God, serious disruption of civil order, etc.), and on condition that any measures affecting the application of the Conventions are limited in scope and duration to what is strictly necessary to deal with the situation in question.<sup>49</sup> While it is conceivable that the exercise of some civil liberties, such as the right to public assembly or the right to hold street demonstrations, might be limited, suspended and even prohibited it is not

<sup>47</sup> *Digest*, para. 189.

<sup>48</sup> *Digest*, para. 205. CFA, 284th Report, Case No. 1597 (*Mauritania*), para. 283.

<sup>49</sup> Report of the Commission instituted under article 26 of the Constitution of the International Labour Organization to examine the complaint on the observance by *Poland* of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98): *Official Bulletin*, Special Supplement, Series B, Vol. LXVII, 1984, para. 479 (hereinafter "Report of the Commission of Inquiry (*Poland*)").

permissible that, in the field of trade union activities, the guarantees relating to the security of the person should be limited, suspended or abolished.<sup>50</sup>

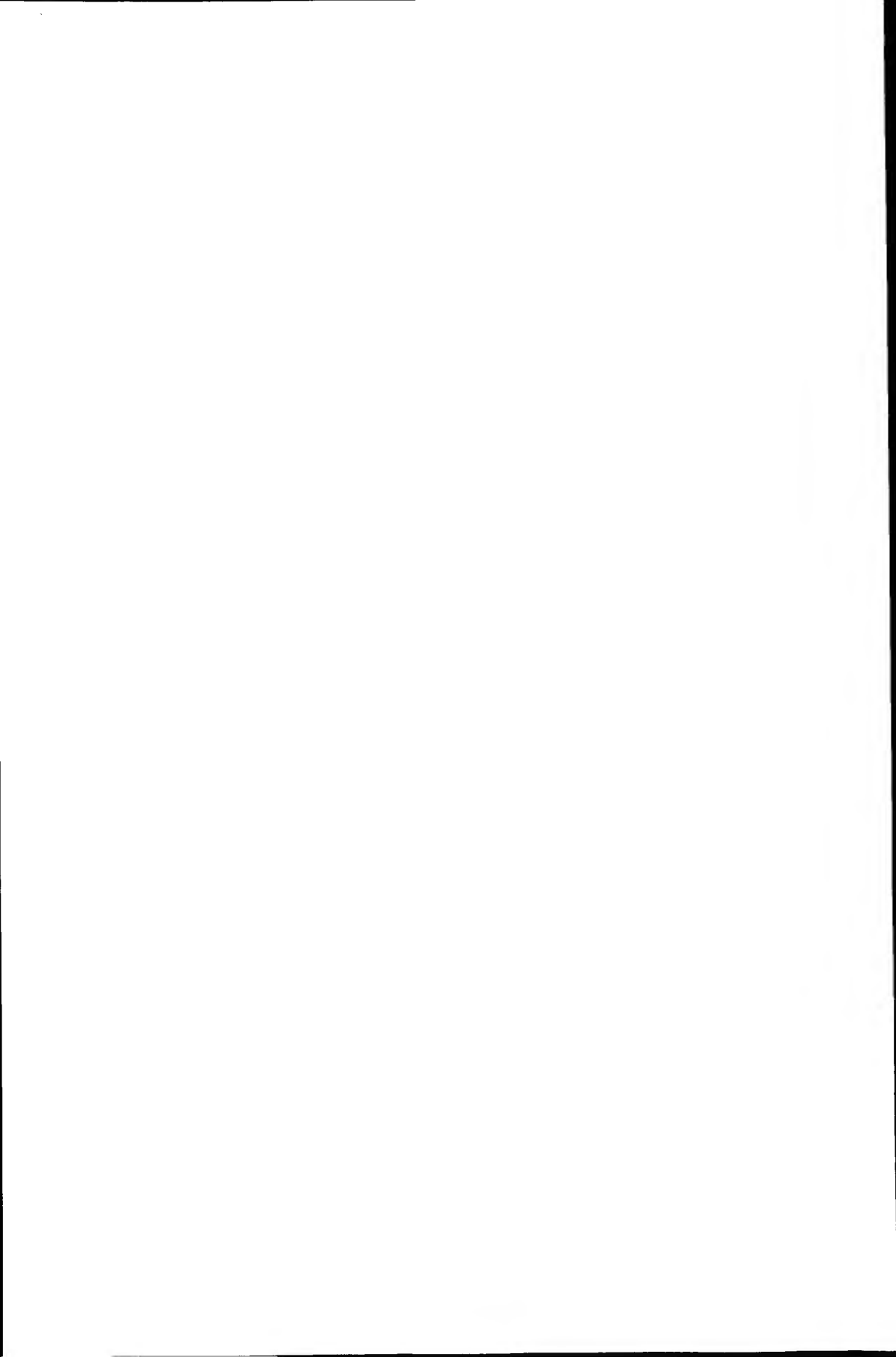
42. The ILO supervisory bodies assess measures taken against workers' or employers' organizations during a political or civil crisis in the light of the exceptional circumstances prevailing at the time to determine independently whether the circumstances invoked by a State justify a temporary exemption from the principles of freedom of association; the States concerned are not allowed to be sole judge of the issue.<sup>51</sup>

\* \* \*

43. *The Committee considers that the guarantees set out in the international labour Conventions, in particular those relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments, notably the International Covenant on Civil and Political Rights, are genuinely recognized and protected. These intangible and universal principles, the importance of which the Committee wishes to emphasize particularly on the occasion of the 75th anniversary of the creation of the ILO and the 50th anniversary of the Declaration of Philadelphia, should constitute the common ideal to which all peoples and all nations aspire.*

<sup>50</sup> *General Survey*, 1983, paras. 71 and 72. *Digest*, paras. 192, 194-196.

<sup>51</sup> *General Survey*, 1983, para. 73. *Digest*, para. 193. Report of the Commission set up to examine the complaints concerning the observance by Greece of Conventions Nos. 87 and 98, ILO, *Official Bulletin*, Special Supplement, Vol. LIV, 1971, para. 111.



## CHAPTER III

### Right of workers and employers to establish and join organizations

#### Introduction

44. The industrial relations systems in certain countries can entail conditions or restrictions which in practice make it very difficult for large numbers of workers and employers in certain categories to establish organizations for furthering and defending their economic and social interests. The Committee considers that the freedom, *de facto* and *de jure*, to establish organizations is the foremost among trade union rights and is the essential prerequisite without which the other guarantees enunciated in Conventions Nos. 87 and 98 would remain a dead letter. The free exercise of this right, to which this chapter is devoted, depends on three things, namely the *absence of any distinction*, in law and in practice, among those entitled to the right of association, the *absence of the need for previous authorization* to establish organizations, and *freedom of choice* with regard to membership of such organizations. The rights to which organizations are entitled are examined in the subsequent chapters.

#### I. Right of workers and employers, *without distinction whatsoever*, to establish and join organizations

45. Article 2 of Convention No. 87 provides that "Workers and employers, without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing ...". In adopting the terms "without distinction whatsoever", which it considered a more suitable way in which to express the universal scope of the principle of freedom of association than a list of prohibited forms of distinction, the International Labour Conference emphasized that the right to organize should be guaranteed without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion.<sup>1</sup> The right to organize should therefore be considered as the general principle, the only exception to which is that stipulated in Article 9 of the Convention, which permits States to determine the

<sup>1</sup> ILO: *Record of Proceedings*, ILC, 30th Session, 1947, p. 570.

extent to which the guarantees provided for in the Convention apply to the armed forces and the police.

46. The use of the terms “employers” and “workers” in Convention No. 87 underscores the fact that that instrument guarantees the right of association for trade union purposes — a subject which comes directly and unquestionably within the competence of the International Labour Organization — and not the right of association in general, which falls within the competence of other international agencies.<sup>2</sup> Consequently, the various terms used in the present survey, which are often based on those used in national legislation, all refer, unless otherwise stated, to the right to organize or associate for occupational purposes with the aim of furthering and defending the interests of workers or employers.

47. Most countries recognize the right of workers and employers to organize as provided for in Article 2. In several countries, however, the law draws a distinction in that regard for certain categories of occupation or persons. The distinctions most frequently encountered concern certain groups of workers such as public servants, executive and managerial staff and agricultural workers. They may also apply to specific categories such as workers in free export zones, seafarers and domestic workers, be based on other factors such as nationality, or refer to the recognition of the right of association of employers.

#### *Public service*

48. During the preparatory work on Convention No. 87, it was emphasized that freedom of association was to be guaranteed not only to employers and workers in private industry, but also to public employees.<sup>3</sup> Accordingly, the law and practice report prepared by the Office provided that public servants and officials should be covered by that instrument: “The guarantee of the right of association should apply to all employers and workers, public or private, and, therefore, to public servants and officials and to workers in nationalized industries. It has been considered that it would be inequitable to draw any distinction, as regards freedom of association, between wage-earners in private industry and officials in the public services, since persons in either category should be permitted to defend their interests by becoming organized ... However, the recognition of the right of association of public servants in no way prejudices the question of the right of such officials to strike ...”.<sup>4</sup> The Committee has always considered that the exclusion of public servants from this fundamental right is contrary to the Convention.

<sup>2</sup> See also ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 108.

<sup>3</sup> ILO: *Record of Proceedings*, ILC, 30th Session, 1947, p. 570.

<sup>4</sup> ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 109. See also Chapter V regarding the right to strike of public servants.

49. Given the very broad wording of Article 2 of Convention No. 87, all public servants and officials should have the right to establish occupational organizations, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings. However, an examination of the legislation of different countries shows that the terms used to refer to public servants vary a great deal. The same expressions in the legislation of different countries do not necessarily cover the same persons,<sup>5</sup> while in some countries the legislation itself draws distinctions as to the status and rights of the various categories of public servant.<sup>6</sup> The Committee considers that all workers in this category are covered by the Convention, whatever the terms used.

50. For some countries it is not possible to determine from the substantive law in force the precise extent to which public servants enjoy the right of association in practice. Even if the legislation does not recognize their right to form trade union organizations, associations have in some cases been established under the terms of an act on the right of association in general,<sup>7</sup> and there are even cases in which such associations are accorded de facto recognition by the government in its capacity as employer for the purpose of discussing wage claims or other working conditions.

51. In many countries, the right of public servants to organize for the purpose of defending and furthering their occupational interests is guaranteed by the legislation applicable to trade unions in general.<sup>8</sup> In others, the right of public servants to organize is governed by a set of provisions contained in public service statutes or regulations or in special legislation.<sup>9</sup> Most of these countries have for a long time recognized the right of public servants to organize. In some cases, however, such recognition may have been accorded only more recently<sup>10</sup>

<sup>5</sup> For example, the French word "fonctionnaire" (public servant) does not have the same meaning in all French-speaking countries.

<sup>6</sup> For example, in *Germany*, law and practice draw a distinction, based on *status* rather than on the nature of *functions*, between public servants having the status of "Beamte", and other persons employed at the various levels of public service, white collars ("Angestellte") or manual workers ("Arbeiter").

<sup>7</sup> For example: *Bangladesh*, with limited exceptions, public servants are excluded from the 1969 Industrial Relations Ordinance, although they can form and join associations for the purpose of pursuing claims and furthering their interests; these associations are, however, subject to certain constraints which do not apply to the trade unions referred to in the 1969 Ordinance (RCE, 1994 observation on C.87). In *Ecuador*, public servants ("servidores públicos") are barred from establishing trade unions, even though they have the right to associate and to designate their representatives (RCE 1993, p. 193).

<sup>8</sup> For example: *Argentina, Australia, Belarus, Egypt, Finland, India, Italy, Philippines, Poland, Venezuela*.

<sup>9</sup> For example: *Belgium, Benin, Denmark, Djibouti, France, Japan, Mexico*.

<sup>10</sup> For example: *Mali* (1987). *Yemen* (1991).

and may be closely linked to profound changes in the wake of a country's return to democracy following a period of authoritarian government.<sup>11</sup> In other countries, the right to organize is granted only to certain categories of public servants, as an exception to the general rule.<sup>12</sup>

52. Where legislation recognizes the right of public servants to organize, it does not necessarily follow that they enjoy this right for the purpose of defending their economic and social interests. In this connection, the Committee has emphasized the importance it attaches to the need for clear recognition in the legislation of the right of public servants to associate not only for cultural and social purposes, but also for the purpose of furthering and defending their occupational and economic interests.

53. In a number of countries, the legislation explicitly or indirectly denies public servants the right to organize in trade unions.<sup>13</sup> In such cases, this right may be denied to all categories of personnel in the service of the State or to some of them,<sup>14</sup> to public servants engaged in the administration of the State and, in certain cases, even to workers in public undertakings and public institutions.

54. In some countries the legislation, although recognizing in principle the right of public servants to organize, may deny this right to certain categories of public servants or subject them to particular restrictions on account of their level of responsibility (senior officials) or the nature of their functions, where these are perceived as being incompatible with the right to organize (for instance fire service personnel and prison staff).

<sup>11</sup> For example, *Guatemala* in 1986.

<sup>12</sup> For example: *Malaysia*, public servants may not join a trade union unless an exemption is granted by the Head of State (s. 27(1) and (2) of the Trade Unions Act). *Panama*: public servants are not covered by the Labour Code (s. 2, para. 2), except in the case of dispensations authorizing organization in trade unions (e.g. s. 137 of Act No. 8 of 25 Feb. 1975). *Singapore*: government employees are prohibited from joining trade unions; the President may exempt a given category of government employees, either completely or under certain conditions (s. 28(3) of the Trade Unions Act); according to the Government, exemptions have been granted to all government departments and public bodies other than the police and armed forces.

<sup>13</sup> For example: *Bolivia*: s. 104 of the 1939 General Labour Act. *Chad*: The Committee requested the Government to communicate the texts which repealed the provisions which denied the right to organize to public employees (RCE 1993, p. 180). *Ecuador*: art. 60(g) of the Act of 29 Nov. 1972, as amended in 1991. *Ethiopia*: s. 3(2)(e) of Proclamation No. 42 of 1993. *Liberia*: s. 4700 of the Labour Practices Law (the Government states that in practice there are organizations of public servants).

<sup>14</sup> For example: *Chile*: s. 74 of Legislative Decree No. 2756 of 29 June 1979 denies state employees the right to organize, although workers in state enterprises may establish trade unions under s. 1 of Act No. 19069 of 22 July 1991 concerning trade union organizations and collective bargaining. *Nicaragua*: s. 9 of the Labour Code. *Nigeria*: s. 11 of Trade Unions Decree No. 31 of 1973 excludes the following from the right to organize: customs employees and employees of the mint, of the Central Bank and of the External Telecommunications Company. According to the Government, however, these categories of workers have the right to establish joint advisory committees.



*Police and armed forces*

55. The only exceptions authorized by Convention No. 87 are the members of the police and armed forces (Article 9), such exceptions being justified on the basis of their responsibility for the external and internal security of the State. Most countries deny the armed forces the right to organize, although in some cases they may have the right to group together, with or without certain restrictions, to defend their occupational interests.<sup>15</sup> As regards members of the police and security forces, it is frequently the case that countries which deny this right to members of the armed forces include the police under the same heading and generally apply the same legal provisions in both cases. Sometimes, members of the police are restricted to the right to establish and join their own organizations,<sup>16</sup> although in some countries they have the same right to organize as other categories of public servants or are entitled to do so under separate legislation.<sup>17</sup> Although Article 9 of Convention No. 87 is quite explicit, it is not always easy in practice to determine whether workers belong to the military or to the police or are simply civilians working in military installations or in the service of the army and who should, as such, have the right to form trade unions.<sup>18</sup> In the view of the Committee, since Article 9 of the Convention provides only for exceptions to the general principle, workers should be considered as civilians in case of doubt.<sup>19</sup>

*Fire service personnel and prison staff*

56. While exclusion from the right to organize of the armed forces and the police, as defined above, is not contrary to the provisions of Convention No. 87, the same cannot be said for fire service personnel<sup>20</sup> and prison staff,<sup>21</sup> to whom a number of countries nevertheless deny the right to organize. The Committee is of the opinion that the functions exercised by these two categories of public servants should not justify their exclusion from the right to organize

<sup>15</sup> For example: *Austria, Denmark, Finland, Germany, Luxembourg, Norway, Sweden.*

<sup>16</sup> For example: *Cyprus.*

<sup>17</sup> For example: *Australia, Austria, Belgium, Côte d'Ivoire, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malawi, Netherlands, New Zealand, Niger, Norway, Portugal, Senegal, Spain, Sweden, Tunisia, United Kingdom, United States.*

<sup>18</sup> This problem arose, for example, in the *United Kingdom* in the case of workers at the Government Communications Headquarters (GCHQ) in Cheltenham, which has been the subject of observations by the Committee for several years.

<sup>19</sup> See also CFA, 238th Report, Case No. 1279 (*Portugal*), para. 137; 286th Report, Case No. 1664 (*Ecuador*), para. 287.

<sup>20</sup> For example: *Japan*, art. 52(4) of the Local Public Service Law expressly denies this right to fire service personnel. Since the *General Survey* of 1983, *Gabon* (Act No. 8/91) and *Sudan* (Act of 1992 on workers' unions) have repealed the provisions which excluded fire service personnel from this right.

<sup>21</sup> The following countries, among others, deny the right to organize to prison staff: *Cameroon, Malaysia, Mexico, Nigeria, Pakistan, Sri Lanka, Swaziland.*

on the basis of Article 9 of Convention No. 87. However, the restrictions imposed as regards the means of exerting pressure that are allowed to these workers are another matter altogether, dealt with in Chapter V of this Survey.

### *Senior public officials*

57. Some countries draw a distinction between personnel and management in the public service with a view to limiting the right to organize of senior officials and public servants holding managerial or supervisory positions of trust. The right to organize of senior public servants and some of their supporting staff is thus often subject to restriction and in some cases excluded.<sup>22</sup> In some countries, the legislation specifies the categories or posts thus excluded. These restrictions do not necessarily constitute an outright denial of the right of these persons to organize. In several countries, for example, they seem to have the right to form associations to protect their occupational interests, provided they do not join associations of public servants of a lower grade or trade unions of other categories of public servants.<sup>23</sup> The Committee is of the opinion that to bar these public servants from the right to join trade unions which represent other workers is not necessarily incompatible with freedom of association, but on two conditions, namely that they should be entitled to establish their own organizations, and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities.

### *Agricultural workers*<sup>24</sup>

58. It is clear from the preparatory work on Convention No. 87 that Article 2, in affirming the right of all workers to establish free and independent organizations, includes workers engaged in agricultural activities. In practice, however, workers in this category have often encountered obstacles in their attempts to organize, and in many countries agricultural workers continue frequently to experience difficulties arising out of legislation or practice when it comes to organizing in trade unions.<sup>25</sup> Recognizing the importance of an

<sup>22</sup> For example: *Pakistan*: senior public servants are not covered by s. 2(viii) of the Industrial Relations Ordinance. The Government states that associations of public servants exist and that these may act in different ways to defend the interests of their members. They are, however, subject to serious restrictions incompatible with Article 2 of the Convention. The Committee has requested the Government to modify the legislation in question (RCE 1993, p. 218). *Poland*: The Committee noted with interest that the number of public servants excluded from the right to establish trade unions had been reduced in comparison with the previous situation (RCE 1992, p. 236).

<sup>23</sup> For example: *Bangladesh*: s. 2 of the Industrial Relations Ordinance, No. XXIII, 1969. *Mexico*: s. 363 of the Federal Labour Act.

<sup>24</sup> See Chapter XIII on rural workers' organizations in the *General Survey* of 1983.

<sup>25</sup> For example: *Honduras*: s. 2 of the Labour Code excludes workers in agricultural or livestock-breeding concerns which do not have a permanent workforce of at least ten workers. By contrast, the Committee noted with satisfaction that s. 168(2) of the new Labour Code of *Lesotho*,

organized rural sector, the International Labour Conference adopted the Rural Workers' Organizations Convention, 1975 (No. 141), and Recommendation, 1975 (No. 149), with a view to encouraging the establishment of such organizations. The Committee recalls that agricultural workers continue to benefit from the guarantees provided for in freedom of association Conventions, in particular Conventions Nos. 87 and 98.

#### *Other categories of workers*

59. There are numerous other categories of workers who are denied the right to form trade unions, either because they are excluded from the scope of the labour legislation, or because the latter expressly denies them the right to organize. In particular, the Committee has noted that this is often the case of domestic staff,<sup>26</sup> persons working at home or in family workshops,<sup>27</sup> workers in the informal sector, persons working in charitable institutions, seafarers<sup>28</sup> and workers in export processing zones. Since, however, Convention No. 87 does not exclude any of these categories, they should all be covered by the guarantees it affords and should have the right to establish and join occupational organizations. The Committee has requested those countries whose legislation denies the right to organize to one or more of the above-mentioned categories to take the necessary measures to ensure that they be accorded this right.

#### *Workers in export processing zones*

60. As regards more specifically the right to organize of workers in export processing zones, the Committee has on several occasions in recent years looked into the problems posed by the legislation in certain countries within the context of Article 2 of Convention No. 87,<sup>29</sup> and has emphasized the importance it

drawn up with ILO assistance and in force since 1992, guarantees to all agricultural workers the same rights of association and combination as workers in other sectors (RCE 1993, p. 66).

<sup>26</sup> For example: *Yemen*, s. 3 of the Labour Code.

<sup>27</sup> For example: *Nicaragua*: s. 9(1) of the Labour Code. By contrast, the Committee noted in the case of *Bolivia* that homeworkers and domestic staff are covered by the General Labour Act of 1939, and that they have the right to organize in trade unions (RCE 1987, p. 151).

<sup>28</sup> For example: *Greece* (RCE 1993, p. 199). *Madagascar* (RCE 1993, pp. 207-208). As regards freedom of association of seafarers, see also the resolution concerning freedom of association, collective bargaining and tripartite consultation of the Joint Maritime Commission, Report of the 26th Session of the Joint Maritime Commission (October 1991), ILO Governing Body, 252nd Session, March 1992, doc. GB.252/3/2.

<sup>29</sup> For example: *Bangladesh*: the Committee was of the view that s. 11A of the Export Processing Zones Authority Act, 1980, which provides for the exemption of a zone from the operation of all or part of the Industrial Relations Ordinance, is not compatible with Article 2 of Convention No. 87 (RCE 1991, p. 149). *Pakistan*: s. 25 of the Export Processing Zones Authority Ordinance, 1980, excludes completely such zones from the scope of the Industrial Relations Ordinance, 1969, thus denying workers there the right to establish and join trade unions; the Committee has requested the Government to modify its legislation (RCE 1993, pp. 217-218). *Togo*: the Government having stated that free trade zones are in the process of being established,

attaches to the need for all workers, without distinction whatsoever, fully to enjoy the trade union rights provided for by the Convention. It has also recalled that the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body in November 1977, states in paragraph 45 that "where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively".

#### *Other forms of discrimination or distinction*

61. Problems of recognition of the right to organize may also stem from restrictions relating, for example, to race, nationality, sex, opinion or political affiliation, which limit, in a manner incompatible with Convention No. 87, the right to establish or join occupational organizations. Such restrictions are, moreover, contrary to the principles contained in the resolution of 1952 concerning the independence of the trade union movement, which provides, inter alia, that a condition for the freedom and independence of the trade union movement "is that trade unions be constituted as to membership without regard to race, national origin or political affiliations".<sup>30</sup>

#### *(i) Race*

62. As far as can be ascertained from the information available to the Committee, there appears to be no ILO member State whose legislation still prohibits or restricts *specifically* trade union membership on the grounds of race.<sup>31</sup> Indeed, in some countries the law expressly prohibits discrimination based on this ground, stipulating, for example, that no employee may be denied trade union membership on the grounds of race, or prohibiting occupational associations whose aim is to restrict rights on such grounds.<sup>32</sup> In others, it is unlawful for a trade union to discriminate against members by refusing or deliberately omitting to grant them the same benefits as are accorded to other members,<sup>33</sup> or to limit, segregate or classify its membership according to race,

the Committee requested it to specify whether the provisions of the Labour Code apply to industrial relations in such zones. By contrast, the Committee was able to note that some progress had been made recently as regards the *Dominican Republic* (RCE 1993, p. 191), and *Panama* (RCE, 1994 observation on C.98).

<sup>30</sup> See the full text of the resolution in Appendix II.

<sup>31</sup> As regards the trade union situation in *South Africa* (as of the date of preparation of this survey, *South Africa* was member of the United Nations but not of the ILO); see Report of the Fact-Finding and Conciliation Commission on Freedom of Association, *South Africa*, op. cit., Ch. I, note 18.

<sup>32</sup> For example: *Argentina*: s. 7 of Act No. 23551 of 14 Apr. 1988 on trade union associations. *China*: s. 3 of the Trade Unions Act of 1992. *El Salvador*: s. 204 of the Labour Code. *Japan*: s. 5, para. 2, of Trade Union Law No. 174, 1949.

<sup>33</sup> For example *United Kingdom*: s. 11 of the Race Relations Act, 1976.

colour or national origin.<sup>34</sup> Certain laws relating to human rights and equitable employment practices prohibit all racial discrimination in connection with trade union membership.<sup>35</sup>

(ii) *Nationality*

63. Restrictions on the right to organize based on nationality exist in varying degrees in the legislation of several countries. Some countries, for example, make citizenship a precondition for the establishment of trade unions;<sup>36</sup> others stipulate that a certain proportion of the members must be nationals;<sup>37</sup> and in others, trade union affiliation of non-nationals is subject to conditions of residence<sup>38</sup> or reciprocity,<sup>39</sup> or both. The Committee considers that such restrictions may, in particular, prevent migrant workers from playing an active role in the defence of their interests, especially in sectors where they are the main source of labour. The right of workers, without distinction whatsoever, to establish and join organizations implies that anyone legally residing in the territory of a given State benefits from the trade union rights provided by the Convention, without any distinction based on nationality. The ILO has also adopted a number of legal standards relating to the special situation

<sup>34</sup> For example *United States*: Civil Rights Act. *New Zealand*: s. 37, Human Rights Act, 1993.

<sup>35</sup> For example *Canada (Quebec)*: ss. 10 and 17 of the Quebec Charter of Rights and Freedom.

<sup>36</sup> For example: *Algeria*: s. 6 of Act No. 90-14 of 2 June 1990 respecting the procedures for the exercise of the right to organize provides that only Algerian workers or workers having held Algerian nationality for at least ten years may establish a trade union organization. *Thailand*: s. 88 of the Labour Relations Act, 1975.

<sup>37</sup> For example: *Colombia*: two-thirds of the membership (s. 384 of the Labour Code). *Panama*: 75 per cent of the membership (s. 347 of the Labour Code).

<sup>38</sup> For example: *Kuwait*: non-Kuwaiti workers must have resided five years in Kuwait to be able to join a trade union (s. 72 of the Labour Code — Ordinance No. 38 of 1964). *Lithuania*: permanent residence in Lithuania (s. 1 of Act No. I-2018 of 1991 on trade unions).

<sup>39</sup> For example, in the case of the *Philippines*, foreign workers holding valid permits issued by the Ministry of Labor and Employment may establish and join organizations of their own choosing on condition that the same rights are accorded to Philippine workers in the country of origin of the foreign worker (s. 269 of the Labour Code, as modified by Act No. 6715). As regards the *Central African Republic*, the Committee noted with interest that Act No. 88/009 of 19 May 1988 on freedom of association and protection of the right to organize has repealed the restrictions on the rights of foreigners to join a trade union, i.e. residence of at least two years, with reciprocity condition (RCE 1989, p. 140). In some countries, the legislation draws distinctions other than race or nationality for the purposes of trade union membership, for example: *Libyan Arab Jamahiriya*: s. 5 *in fine* of the Workers' Trade Unions Act No. 107, 1975, distinguishes between Arab and non-Arab workers for the purposes of trade union membership. *Syrian Arab Republic*: The Committee noted with interest that a bill has been submitted to the Council of Ministers to repeal specifically provisions which differentiated between Arab and non-Arab foreign workers for purposes of trade union membership (RCE 1993, p. 230).

of migrant workers, particularly in so far as their right to join trade unions is concerned.<sup>40</sup>

(iii) *Sex, marital status and age*

64. In most countries the trade union legislation normally makes no distinction based on sex; some countries even include provisions which implicitly or explicitly prohibit any discrimination in this respect.<sup>41</sup> In several countries where restrictions on the right to organize might result from provisions contained in the civil code, the legislation on occupational organizations provides specifically that a married woman may join a trade union without the authorization of her husband.<sup>42</sup> Some countries have legislative provisions concerning union membership of minors.<sup>43</sup> The Committee considers that no distinction based on these grounds is authorized by the Convention.

(iv) *Political affiliation or activities*

65. The political opinions or affiliation of individuals are rarely referred to as a criterion for recognition of their right to organize. In some cases, the law seeks to prevent any discrimination by trade unions against their members on the grounds of their political beliefs.<sup>44</sup> There are cases, however, in which the legislation restricts the right of association by reason of subversive opinions or activities of those concerned or of their membership of particular organizations,<sup>45</sup> or denies the right to establish a trade union to certain persons by reason of their past political conduct.<sup>46</sup> The Committee considers that any legislative or regulatory measure whereby an individual is deprived of his or her

<sup>40</sup> Article 6(1)(a)(ii) of Convention No. 97; Article 10 of Convention No. 143; Paragraph 2(g) of Recommendation No. 151. See also para. 118 regarding eligibility of non-nationals for trade union office.

<sup>41</sup> For example: *Cameroon*: s. 1 of the Labour Code of 1992. *Central African Republic*: s. 1 of the Labour Code. *China*: s. 3 of the Trade Unions Act of 1992. *United States*: s. 703 of the Civil Rights Act. Indeed, the constitution of certain trade unions goes beyond such legal prescriptions and provides that a given number of seats on the Executive Council are set aside for women or representatives of visible minorities (for example, Constitution of Canadian Labour Congress, art. 15.1).

<sup>42</sup> For example: *France* (Labour Code, Book IV, s. L.411-5).

<sup>43</sup> For example: *Argentina*: persons over 14 years of age may join a trade union without authorization (s. 13 of Act No. 23551 on trade union associations). *Congo*: minors over 16 years may join a trade union (s. 189 of the Labour Code). *Lithuania*: membership authorized from 14 years of age (s. 1 of Act No. I-2018 of 1991 on trade unions).

<sup>44</sup> For example: *Argentina*: s. 7 of Act No. 23551 of 1988 on trade union associations. *Dominican Republic*: Principle VII of Act No. 16-92 of 1992 promulgating the Labour Code.

<sup>45</sup> For example: *Philippines*: s. 241(e) of the Labour Code, as amended.

<sup>46</sup> For example: *Algeria*: persons having displayed conduct inconsistent with the War of Liberation are barred from the right to establish a trade union (s. 6 of Act No. 90-14 of 1990 respecting the procedures for the exercise the right to organize).

right to become or remain a trade union member for professing certain political opinions or having political activities (except those which advocate violence) would constitute an infringement of the right to organize as it is recognized in Article 2 of the Convention. Conversely, the authorities should not practice favouritism toward persons or trade union organizations which share their political views. The Committee recalls in this connection the importance it attaches to the resolution of 1952 concerning the independence of the trade union movement, so that the latter should be in a position to carry forward its economic and social mission irrespective of political changes.<sup>47</sup> Furthermore, conviction for a political offence should in no case constitute a valid ground for withdrawal of the right to trade union membership. All workers and employers should therefore have the right, without any discrimination whatsoever on the basis of their political opinions, to join the organizations of their choice.

*Right to organize of managerial and executive staff  
in the private sector*

66. Article 2 of Convention No. 87 makes no distinction based on the nature of the functions or the hierarchical level of workers, who should all enjoy the right to organize, including managerial and executive staff. In many countries, managerial and executive staff in the private sector have the right to establish trade unions. The Committee considers that provisions which prohibit workers in this category from joining trade unions in which other workers are represented are not necessarily incompatible with the Convention, provided they had the right to establish their own organizations and that the right to belong to those organizations was restricted to persons performing senior managerial or decision-making functions. By contrast, legislation which allows for the granting of fictitious promotions to unionized workers without actually according them management responsibilities, thereby effectively placing them in the category of so-called "employers" to whom the right to organize is not permitted, is not in accord with the Convention, since in end effect it denies the right of association and artificially reduces the size of the bargaining unit.<sup>48</sup>

*Right to organize of employers*

67. In the legislation of some countries, the provisions governing the right to organize are the same for employers and workers.<sup>49</sup> In certain countries, however, employers are excluded from the general trade union law or are governed by special regulations.<sup>50</sup> It should be noted that significant developments with regard to the right to organize of employers are currently taking place in the countries of Central and Eastern Europe. Following the

<sup>47</sup> See the full text of the resolution in Appendix II.

<sup>48</sup> CFA, 281st Report, Case No. 1534 (*Pakistan*), paras. 170-172.

<sup>49</sup> For example: *Dominican Republic, Equatorial Guinea, Namibia, Venezuela.*

<sup>50</sup> For example: *Argentina, Egypt, Mozambique, Uganda, Zambia.*

changes that have occurred in those countries, in the course of which most undertakings have been freed from state control, many new laws have appeared relating to the right to organize and applying both to workers and employers,<sup>51</sup> or containing specific provisions relating to the latter.<sup>52</sup> The Committee recalls in this respect that Convention No. 87 covers employers as well as workers.

## II. Right to establish organizations *without previous authorization*

### *Introduction*

68. Article 2 of Convention No. 87 guarantees the right of workers and employers to establish organizations "without previous authorization" from the public authorities. During the preparatory work on the Convention, it was stated that States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of organizations. National regulations governing the constitution of organizations are therefore not in themselves incompatible with the provisions of the Convention, provided that they do not impair the guarantees granted by that Convention.<sup>53</sup>

69. In many countries, legislation expressly provides that organizations may be established without previous authorization or specific formalities. In most countries, however, certain formalities must be observed when occupational organizations are established, for example, depositing by-laws or registering the organization in question. However, national regulations in this respect must not be equivalent to a requirement for "previous authorization", in violation of Article 2 of the Convention, nor must they constitute such an obstacle that they amount in practice to a prohibition.

### *Filing an organization's rules*

70. National legislation providing that an organization must deposit its rules is compatible with Article 2 of the Convention if this is merely a formality to ensure that those rules are made public.<sup>54</sup> However, problems may arise when the competent authorities are obliged by law to request the founders of organizations to incorporate in their constitution certain provisions which are not in accord with the principles of freedom of association.<sup>55</sup>

<sup>51</sup> For example: *Hungary*, Act No. II of 1989 on the right to organize.

<sup>52</sup> For example: *Poland*, Act of 23 May 1991 concerning employers' organizations.

<sup>53</sup> International Labour Conference, *Record of Proceedings*, 31st Session, 1948, First Report of the Committee on Freedom of Association and Industrial Relations, p. 477.

<sup>54</sup> For example: *Comoros, Côte d'Ivoire, Guinea, Israel, Rwanda*.

<sup>55</sup> See also para. 74. As for the right of organizations freely to draw up their own by-laws, see Ch. IV, paras. 109-111.



### Registration

71. In many countries, organizations are required to register with a judicial body or with the competent administrative authority. Registration may also be optional; depending on the case, it may be merely a formality akin to depositing the by-laws, or a genuine registration subject to more or less stringent conditions and having different implications for the operation of the organization.

72. In countries where registration is optional,<sup>56</sup> failure to register does not prevent organizations from existing or functioning. In most cases, however, registration confers significant advantages such as special immunities, tax exemptions, the right to have recourse to the dispute settlement machinery or to the procedure for dealing with unfair labour practices, or the right to be recognized as sole bargaining agent for a given category of workers. Such legislation is not in principle incompatible with the Convention.<sup>57</sup> However, in this type of system the benefits of registration sometimes include the fundamental rights necessary to defend and further the interests of members; if the competent authority has the discretionary power to refuse registration, this can in practice amount to a system of previous authorization, contrary to the principles of Convention No. 87.

73. In many countries, registration is compulsory and is a prerequisite for the normal functioning of an organization.<sup>58</sup> The formalities covered by the concept of "registration" vary according to national legislation. In some cases, all that is required is to deposit the organization's by-laws, possibly with details of the officers and constituent meeting, to satisfy the registration authority that the organization has complied with trade union legislation; in such cases, the competent authority does not normally have discretionary power.<sup>59</sup> In some other countries, however, legislation does not clearly define the procedures of the formalities which must be observed or the reasons which the competent authority may give for refusal, which may be tantamount to requiring previous authorization.<sup>60</sup>

74. In some countries, legislation confers on the competent authority a genuinely discretionary power to grant or reject a registration request or to grant or withhold the approval required for the establishment and functioning of an organization. In the Committee's view, such provisions are tantamount to a requirement for previous authorization which is not compatible with Article 2

<sup>56</sup> For example: *India, Japan, Lithuania, Namibia, New Zealand, Pakistan, Romania.*

<sup>57</sup> See para. 83 below concerning the requirement for a minimum number of members to obtain the right to register.

<sup>58</sup> For example: *Bahamas, Brazil, Chile, Dominican Republic, Greece, Hungary, Jamaica, Mexico, Poland, San Marino, United Republic of Tanzania, Zaire.*

<sup>59</sup> For example, in the *Russian Federation* the registration authorities have no control over the establishment of trade unions (Trade Union Act of 1990, s. 2).

<sup>60</sup> For example: *Ghana*, Trade Unions Ordinance, 1941, s. 13(1): registration is granted if in the opinion of the Registrar none of the objections brought to his notice justify refusal.

of the Convention.<sup>61</sup> However, member States remain free "... to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of occupational organizations".<sup>62</sup> Consequently, the formalities prescribed by national regulations concerning the constitution and functioning of workers' and employers' organizations are compatible with the provisions of Convention No. 87, provided, of course, that these regulations do not impair the guarantees laid down in the Convention.

75. Problems of compatibility with the Convention also arise where the registration procedure is long and complicated<sup>63</sup> or when registration regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation. These factors may be a serious obstacle to the establishment of organizations and may amount to a denial of the right of workers and employers to establish organizations without previous authorization.

#### *Recognition of legal personality*

76. Article 7 of Convention No. 87 provides that "The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 thereof". Legislation is thus compatible with the terms of the Convention if it automatically confers legal personality on the organization in question at the time of establishment, be it without any formalities being observed,<sup>64</sup> when the

<sup>61</sup> For example, in *Cameroon*, under s. 2 of Act No. 68/LF/19 of 1968, the legal existence of a trade union or occupational association of civil servants requires the prior consent of the Minister of the Territorial Administration. In *Haiti*, under s. 236bis of the Criminal Code, any association of more than 20 persons which convenes in pursuit of political, literary, religious or other ends may be established only with the Government's consent; the Committee considers that this section may constitute a restriction on the right of workers to establish organizations without previous authorization (RCE 1993, p. 202). In *Kuwait*, a certificate must be obtained from the Minister of the Interior to the effect that there are no objections to any of the founders (Labour Code, s. 74) (RCE 1993, p. 205). In *Malaysia*, the Registrar must refuse to register a trade union if in his opinion it might be used for unlawful purposes or for purposes contrary to or incompatible with its own rules (Trade Unions Act, s. 12(3)). In *Yemen*, the establishment of a trade union requires previous authorization (Labour Code, s. 154; and the Regulations governing the by-laws of the General Union of Workers and Employees) (RCE 1993, p. 238). In *Zimbabwe*, the Clerk has wide-ranging powers to refuse registration (Industrial Relations Act, 1985, s. 45).

<sup>62</sup> ILC, 31st Session, 1948, *Record of Proceedings*, p. 477.

<sup>63</sup> The Committee on Freedom of Association has for example expressed regret at the delay in registering a trade union, given that there was no clear justification for such a delay: 238th Report, Case No. 1289 (*Peru*), para. 148. See also 281st Report, Case No. 1580 (*Panama*), para. 157.

<sup>64</sup> For example, in *Switzerland* workers' and employers' organizations are not required to register, most frequently choosing the legal form of the association and acquiring legal personality once they have expressed in their by-laws the wish to organize cooperatively (Civil Code, s. 60).

by-laws are deposited,<sup>65</sup> or following a registration procedure or other formalities<sup>66</sup> which are compatible with the Convention. However, when legislation makes the acquisition of legal personality a prerequisite for the existence and functioning of organizations, the conditions for acquiring legal personality must not be such that they amount to a de facto requirement for previous authorization to establish an organization, which would be tantamount to calling into question the application of Article 2 of the Convention. Legal personality should not be denied to organizations once they have met legal requirements.

### *Appeal to the courts*

77. Trade unions should have the right to appeal to independent courts against any administrative decision regarding their registration; this is a necessary safeguard against unlawful or ill-founded decisions by the registration authorities. In many countries, legislation provides for appeals to a court.<sup>67</sup> In other countries, such appeals may be lodged only with the competent minister or labour authorities:<sup>68</sup> such appeals, however, are liable to lack the necessary conditions of objectivity. Moreover, the existence of the right to appeal to a court is not in itself an adequate safeguard; the competent judges should be able, on the basis of the record, to review the grounds for refusal given by the administrative authorities, which grounds should not be contrary to the principles of freedom of association. They should also be empowered to give a ruling rapidly and, where necessary, order appropriate remedies.<sup>69</sup>

78. The principle that organizations should be established freely may also be jeopardized where legislation on public and private meetings stipulates that previous authorization by the government or administrative authorities is required for all meetings. As the Committee has indicated in previous general surveys,<sup>70</sup> such a requirement is equivalent to a prior control by the State on the constitution of trade union organizations.

<sup>65</sup> For example: *Benin, Guinea*.

<sup>66</sup> For example: *Argentina, Chile, Dominican Republic, Lithuania, Namibia, Philippines, Poland*.

<sup>67</sup> For example: *Argentina, Poland, Swaziland, Zambia*.

<sup>68</sup> For example, in the *Bahamas*, appeals may be lodged with the Minister (Industrial Relations Act, s. 13). In the *Philippines*, appeals are made to the labour authorities (Labour Code of 1989, s. 236).

<sup>69</sup> CFA, 284th Report, Case No. 1633 (*United Kingdom (Isle of Man)*), para. 382: the Committee considered that the compulsory registration system established under the Trade Unions Act of 1991 did not contravene the terms of Convention No. 87, since decisions by the Chief Registrar can be challenged in the High Court, which can examine the substance of the case, including the grounds given for non-registration or cancellation.

<sup>70</sup> For example, *General Survey*, 1983, para. 118.

### III. Right of workers and employers to establish and join organizations of their own choosing

#### *Introduction*

79. Under Article 2 of Convention No. 87, workers and employers have the right to establish organizations and to join them, subject only to the rules of the organization concerned. This right, which is essential if there is to be genuine freedom of association, has significant implications as regards free determination of the structure and membership of trade unions. The various restrictions to which this right is subjected in many countries give rise to several problems, in particular as regards the structure and composition of organizations, the question of trade union unity or pluralism and clauses respecting trade union security.

#### *Structure and composition of organizations*

80. Sometimes workers' and employers' choices as to the structure and composition of the organizations they wish to set up or join are limited by legal or statutory restrictions. Such restrictions may take the form of a required minimum number of members or may limit membership to certain workers on the basis of criteria such as occupation, branch of activity, enterprise, hierarchical ranking, public or private sector, etc.

#### *(i) Minimum membership*

81. In many countries an organization may not be established unless it has a minimum number of members. Although this requirement is not in itself incompatible with the Convention, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered; it may vary according to the particular conditions in which a restriction is imposed. In cases in which it has considered that the minimum number fixed by national legislation is too high,<sup>71</sup> the Committee has requested that it be reduced to a reasonable level.<sup>72</sup>

<sup>71</sup> For example: *Kuwait*: 100 workers to establish a trade union and ten employers to form an association (ss. 71 and 86 of the Labour Code). *Nigeria*: 50 workers (s. 3 of Trade Union Decree No. 31 of 1973). *Panama*: 50 workers or ten employers (s. 344 of the Labour Code). *Portugal*: s. 8(2) of Decree No. 215/B/75: 10 per cent of workers concerned a membership of 2,000 workers; s. 7(2) of same Decree: one-quarter of the employers concerned; s. 8(3): one-third of trade unions of the region or of the same category in order to establish a union or a confederation; s. 7(3) at least 30 per cent of the employers' association in order to establish a union or a confederation (RCE 1993, p. 225).

<sup>72</sup> As regards *Venezuela*, the Committee noted with satisfaction that s. 418 of the Labour Act of 1990 reduced the number of workers required for the establishment of works trade unions (20) and occupational unions (40); however, it considered that the figure of 100 self-employed workers required for the establishment of an occupational, branch or sectoral union appeared to be too high (RCE 1991, pp. 223-224).

82. Similar problems arise when legislation stipulates that an organization may be set up only if it has a certain number of members in the same occupation or enterprise, or when it requires a high minimum proportion (sometimes even more than 50 per cent) of workers which, in the latter case, in practice precludes the establishment of more than one trade union in each occupation or enterprise.<sup>73</sup>

83. The legislation in some countries, while not requiring a minimum number of workers for the establishment of a trade union, does lay down this kind of condition for their *registration*, which may considerably restrict their scope of activities.<sup>74</sup> The Committee considers that such requirements are contrary to the Convention.

(ii) *Membership limited to workers in the same occupation or branch of activity*

84. The legislation in some countries stipulates that members of a trade union must belong to the same or a similar profession, occupation or branch of activity.<sup>75</sup> In some of these, the law also fixes the general structure of the trade union movement according to the same criteria.<sup>76</sup> In the view of the Committee, such restrictions may be applied to first-level organizations, on condition that these organizations be free to establish inter-professional

<sup>73</sup> For example: *Chile*: enterprises with more than 50 workers, a minimum of 25 workers representing at least 10 per cent of the total number of workers; enterprises with 50 or fewer workers, eight workers representing more than 50 per cent of the staff; if the enterprise comprises more than one establishment, at least 25 workers representing at least 40 per cent of the workers of the said establishment; irrespective of the percentage which they represent, 250 workers or more belonging to the same enterprise may establish a trade union (s. 16 of Act No. 19069 of 1991 respecting trade union organizations and collective bargaining). *Nicaragua*: absolute majority of workers of an enterprise required for the establishment of a trade union (s. 189 of the Labour Code).

<sup>74</sup> For example: *Bangladesh*: a trade union may be registered — a prior requirement for the establishment of a trade union — only if it represents at least 30 per cent of the workers of the establishment or the group of establishments in which it is set up (RCE, 1994 observation on C.87). *Indonesia*: only “registered” unions are entitled to negotiate collective agreements and, to be registered, a trade union must have 100 plant-level units, 25 units at district level and five units at the provincial level, or have 10,000 members at the national level. *Philippines*: at least 20 per cent of the workers of a bargaining unit must be affiliated to a trade union for the latter to be registered (RCE 1993, p. 223). By contrast, as regards *Australia*, the Industrial Relations Reform Act, 1993, among others, reduced to 100 (as opposed to 10,000 previously) the minimum membership requirement for a trade union to have access to the *federal* conciliation and arbitration system.

<sup>75</sup> For example: *Algeria, Benin, Congo, France, Jordan, Senegal, Thailand*.

<sup>76</sup> For example: *Iraq*: s. 5 of the Act respecting trade union organizations of workers of 1987. *Jordan*: s. 84 of the Labour Code. *Libyan Arab Jamahiriya*: s. 2 of Act No. 107 of 1975 respecting workers’ trade unions. *Sudan*: s. 9(1) and (2) of the Act respecting workers’ trade unions of 1992. See also in this connection CFA, 284th Report, Case No. 1508 (*Sudan*), para. 431.

organizations, and to join federations and confederations in the form and manner deemed most appropriate by the workers or employers concerned.<sup>77</sup>

(iii) *Special categories of workers*

85. The legislation of some countries restricts the free choice of certain categories of workers, in particular public servants, executive and managerial staff, confidential employees, agricultural workers and domestic staff.

*Public servants*

86. The guarantees contained in Convention No. 87 apply to workers in the public sector as well as those in the private sector. It was also pointed out that some legal systems deny the right of public servants to associate, while others, although recognizing this right, restrict their right to join trade unions, for instance, the free choice of public servants may be restricted when legislation forbids them to establish mixed trade unions, i.e. organizations which accept workers from other sectors, or prohibits them from joining such organizations.<sup>78</sup> Provisions of this kind are often intended to prevent any form of political involvement by trade union members in the public sector or to deter them from taking strike action. The Committee considers that it is admissible for first-level organizations of public servants to be limited to that category of workers, subject to two conditions: firstly, that their organizations are not also restricted to employees of any particular ministry, department or service, and secondly, that they may freely join federations and confederations of their own choosing, like organizations of workers in the private sector. However, provisions stipulating that different organizations must be established for each category of public servants are incompatible with the right of workers to establish and join organizations of their own choosing.<sup>79</sup>

*Executive and managerial staff*

87. Some legislation, citing the need to prevent interference by employers in trade union activities and to avoid any conflicts of interest involving

<sup>77</sup> See also Ch. VII.

<sup>78</sup> For example: *Malaysia*: s. 27 of the Trade Unions Act. *Mauritania*: public officials do not have the right to join trade unions of workers in the private sector (s. 231 of the Labour Code). *Switzerland*: until 1 July 1987, public servants were prohibited from joining associations which advocate or use strike action, which implicitly restricted their right to join organizations of workers in the private sector (s. 13(2) of the Civil Servants' Statute); only illicit activities or those likely to endanger the security of the State are now covered by this provision.

<sup>79</sup> For example: *Mexico*: ban on the coexistence of several trade unions in the same state body ("dependencia"), s. 68 of the federal Act respecting workers in the service of the State. *Pakistan*: trade union membership is reserved to public servants in the same unit (s. 28 of the Sindh Government Servants Conduct Rules). *Sri Lanka*: s. 21 of the Trade Unions Act. *Thailand*: ban on the coexistence of more than one trade union in the same state enterprise (s. 21 of the State Enterprise Labour Relations Act).

managerial staff, restrict their right to establish and join organizations of their own choosing. Thus, these persons may sometimes be prohibited from joining or belonging to trade unions which are open to lower-grade employees or from joining workers' unions.<sup>80</sup> Legislation sometimes does not allow workers' unions to represent managerial staff<sup>81</sup> or authorizes an employer to require a person appointed or promoted to a managerial position to withdraw from, or refrain from joining, a workers' union;<sup>82</sup> provisions of this kind are found both in the private and public sectors.<sup>83</sup> Such restrictions are compatible with freedom of association provided that two conditions are met: first, that the persons concerned have the right to form their own organizations to defend their interests; and second, that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their actual or potential membership.<sup>84</sup>

### *Managerial and confidential exclusions*

88. The legislation in certain countries denies staff "in positions of trust" the right to join trade unions. Generally speaking, this category concerns very senior staff who play a decisive role in determining and implementing commercial strategies and options (in the private sector) or major policies and guidelines (in the public sector). Sometimes these restrictions extend to their direct collaborators who, by virtue of their post, have access to confidential information. This category may also include executives or workers representing the employer in collective bargaining. In the opinion of the Committee, the criteria set out in the preceding paragraph apply equally to these cases.

### *Agricultural workers*

89. Because of the nature of their work and the conditions in which they carry it out, rural workers are in something of a special category. In the opinion of the Committee, while restrictions can be imposed on first-level organizations of rural workers, they should nevertheless be entitled to affiliate to the federations and confederations of their own choosing, in whatever way they deem appropriate.<sup>85</sup>

<sup>80</sup> For example: *Guatemala*: s. 212 of the Labour Code. *Japan*: s. 2 of the Trade Unions Act. *Philippines*: s. 245 of the Labour Code.

<sup>81</sup> For example: *Malaysia*: s. 9 of the Industrial Relations Act. *Singapore*: s. 29 of the Trade Union Law.

<sup>82</sup> For example: *Malaysia*: s. 5 of the Industrial Relations Act. *Pakistan*: s. 15(2) of the Industrial Relations Ordinance. *Singapore*: s. 77 of the Industrial Relations Act.

<sup>83</sup> See above, paras. 57 and 66.

<sup>84</sup> See also, CFA: 281st Report, Case No. 1534 (*Pakistan*), para. 170; 284th Report, Case No. 1591 (*India*), para. 959.

<sup>85</sup> See also para. 58 above.

*Domestic staff*

90. The personal nature of the services rendered by domestic staff and the isolation in which they work add to the peculiarity of their situation. The Convention does not provide for any exception in their case, however, and they should normally be entitled to join trade unions, in accordance with the criteria set out in the preceding paragraph.<sup>86</sup>

*Trade union monopoly/trade union diversity*

91. The right of workers and employers to establish and join organizations of their own choosing raises the problem of trade union monopoly. The difficulty arises where the legislation provides, directly or indirectly, that only one trade union may be established for a given category of workers. Although it was clearly not the purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases. There is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law and, on the other hand, *voluntary* groupings of workers or unions which occur (without pressure from the public authorities, or due to the law) because they wish, for instance, to strengthen their bargaining position, coordinate their efforts to tackle ad hoc difficulties which affect all their organizations, etc. It is generally to the advantage of workers and employers to avoid proliferation of competing organizations, but trade union unity directly or indirectly imposed by law runs counter to the standards expressly laid in the Convention.

*(i) Trade union monopoly imposed directly by law*

92. Certain legislations explicitly prescribe a single-trade-union system for first-level organizations by allowing the establishment of only one such organization for all the workers in an enterprise,<sup>87</sup> a public body,<sup>88</sup> an occupation or branch of activity;<sup>89</sup> in other countries, unity is imposed at all levels of trade union organization. In such cases, generally speaking, only one first-level organization and one national trade union may be established for a given category of workers, or only one federation for each category or region.

<sup>86</sup> In practice, given the particular nature of the working conditions of both domestic staff and rural workers, membership in first-level inter-occupational organizations would present little interest in the vast majority of cases.

<sup>87</sup> For example: *Honduras*: s. 472 of the Labour Code. *Nicaragua*: s. 189 of the Labour Code.

<sup>88</sup> For example: *Mexico*: ss. 68, 71, 72 and 73 of the federal Act respecting workers in the service of the State.

<sup>89</sup> For example: *Kuwait*: s. 71 of the Labour Code. *Swaziland*: s. 20 of the Act of 1980.



These organizations in turn may or must join a single national confederation or central organization which is sometimes specifically designated in the law.<sup>90</sup>

93. In recent years the Committee has been able to note positive developments in a relatively large number of countries in which, following the advent of a pluralistic and democratic political system, the trade union unity previously established by law, and often controlled by an organization closely linked to the single party in power, has been abolished and replaced by a system allowing trade union pluralism. As a result of these changes, many first-level trade unions and central organizations have been freely set up,<sup>91</sup> which does not mean that all difficulties concerning freedom of association are solved.

(ii) *Indirect trade union monopoly*

94. An indirect result of some legislative provisions is that it is impossible to establish a second organization representing workers' interests, for example when legislation attributes trade union functions to a specifically designated trade union committee or fixes a percentage for membership which makes it impossible to establish several organizations, by requiring the participation of at least 50 per cent of the workers.<sup>92</sup> This is also the case when provisions expressly stipulate that trade unions are to be grouped together in a single federation or confederation, when the establishment of a new trade union is subject to the approval of the trade union which already exists in the occupation concerned, when first-level organizations must conform to the constitutions of the single existing central organization, when an organization is obliged to affiliate to the single central organization on penalty of remaining illegal, or when there is an obligation to pay contributions to a single national trade union whose establishment has been authorized.

95. Some provisions regulating the registration of trade unions may in practice lead to the same result as those establishing a single trade union organization.<sup>93</sup> This is the case if the competent authorities have discretionary

<sup>90</sup> For example: *Central African Republic*: s. 4 of Act No. 88.009 of 1988 respecting freedom of association and the protection of the right to organize; the Government, however, pointed out that the single trade union system no longer exists in practice and that first-level trade unions and central organizations have been freely set up (RCE 1993, p. 180). *Egypt*: ss. 7, 13, 14, 16 and 17 of the Trade Unions Act of 1976. *Kuwait*: ss. 71, 79 and 80 of the Labour Code. *Myanmar*: s. 9 of Act No. 6 of 1976; according to the Government, these two legislative texts have fallen into abeyance. *Nigeria*: ss. 19, 29 and 33 of Decree No. 31, as amended in 1978 and 1986. *Syrian Arab Republic*: s. 7 of Trade Union Legislative Decree No. 84 of 1968. *Yemen*: ss. 158 and 159 of the Labour Code. By contrast, in *Zambia*, the new Industrial Relations Act of 1993 no longer requires trade unions to be affiliated to the Congress of Trade Unions of Zambia.

<sup>91</sup> The Committee noted with interest or with satisfaction that new legislation in the following countries, for instance, has put an end to the system of trade union monopoly and introduced the possibility of trade union pluralism: *Algeria, Belarus, Bulgaria, Congo, Ethiopia, Hungary, Mongolia, Poland, Romania, Russian Federation, Rwanda, Ukraine.*

<sup>92</sup> For example: *Bolivia*, s. 103 of the General Labour Act of 1939.

<sup>93</sup> For example, *Indonesia*: s. 2 of Regulation No. 3/1993.

power to refuse the registration of a trade union when they believe that an already registered union adequately represents the workers concerned, or if they consider that is not in the interests of the workers concerned to register a new trade union.<sup>94</sup> Even if they do not expressly prohibit the establishment of more than one trade union for a given category of workers or employers, provisions of this kind may be used to impose trade union unity or maintain a monopoly, thus suppressing any freedom of choice.

(iii) *Factual monopoly*

96. Movements to group together may also occur among trade unions, independently of legislation or any pressure by the public authorities, when the workers or their unions join voluntarily in a single organization, for example in order to strengthen their position at the bargaining table or to better deal with structural reform or changes affecting their activities. In these circumstances, the Committee believes that the same basic principle is applicable: Convention No. 87 implies that pluralism should remain possible in all cases. Therefore, the law should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish.<sup>95</sup> Furthermore, the rights of workers or employers who do not wish to join the existing trade unions or central organization should also be protected.

*Recognition of the most representative trade unions*

97. Although trade union unity imposed directly or indirectly by law is incompatible with the Convention, an excessive proliferation of trade union organizations may weaken the trade union movement and ultimately prejudice the interests of workers. In some countries, in an attempt to establish a proper balance between imposed trade union unity and the fragmentation of organizations, legislation establishes the concept of the most representative trade unions, which are generally granted a variety of rights and advantages. The Committee believes that this type of provision is not in itself contrary to the principle of freedom of association,<sup>96</sup> provided that certain conditions are met. First, the determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility

<sup>94</sup> For example: *Malaysia*: s. 12(3) of the Trade Unions Act. *Malawi*: s. 15 of the Trade Unions Act. *Uganda*: s. 10 of the Trade Unions Decree of 1976. *Singapore*: s. 14 of the Trade Unions Act.

<sup>95</sup> For example, the Committee recently recalled this principle as regards *Cuba* (RCE 1993, p. 189).

<sup>96</sup> The concept of "most representative" organizations is mentioned in Article 3, paragraph 5, of the ILO Constitution.

of bias or abuse.<sup>97</sup> Furthermore, the distinction should generally be limited to the recognition of certain preferential rights — for example for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations.

98. However, the workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the prohibition of other trade unions which workers would like to join, or in the granting of privileges such as to influence unduly the choice of organization by workers. Therefore, this distinction should not have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances),<sup>98</sup> for organizing their administration and activities, and formulating their programmes, as provided for in Convention No. 87.

99. The situation is different in some industrial relations systems where only one bargaining agent may be certified to represent the workers of any given bargaining unit, which gives it the exclusive right to negotiate the collective agreement and to monitor its implementation, usually through the grievance procedure negotiated in the collective agreement, or under a subsidiary procedure established in legislation. In the Committee's opinion, this type of system does not raise difficulties under the Convention, provided that legislation or practice impose on the exclusive bargaining agent an obligation to represent fairly and equally all workers in the bargaining unit, whether or not they are members of the trade union.

#### *Trade union security*

100. On the basis of the preparatory work on Convention No. 87 and taking account of the rejection by the International Labour Conference of an amendment to grant workers the right not to join an organization,<sup>99</sup> the Committee recognized that Article 2 of the Convention "leaves it to the practice

<sup>97</sup> For example: *Trinidad and Tobago*: for a number of years, the Committee has asked the Government to amend the provisions that afford a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (RCE 1993, p. 232). *Belgium*: for a number of years, the Committee has insisted on the need to ensure by law that objective, pre-determined and detailed criteria are adopted in establishing rules for the access for workers' and employers' occupational organizations to the National Labour Council and the various public and private sector committees in which binding collective agreements are formulated. In 1993, the Committee noted that the Minister of Employment and Labour is currently preparing a Bill setting out such objective criteria, which will be submitted to the social partners for their opinion and to the Government for approval (RCE 1993, p. 174).

<sup>98</sup> *Pakistan*: minority unions prohibited from representing their members in individual grievances (RCE 1993, p. 219).

<sup>99</sup> ILC, 30th Session, 1947, *Record of Proceedings*, p. 571.

and regulations of each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice".<sup>100</sup> Thus, systems which prohibit union security practices in order to guarantee the right not to join an organization, as well as systems which authorize such practices, are compatible with the Convention.

**101.** In several countries, the law guarantees directly or indirectly the right not to join a trade union organization and forbids the exercise of any constraint which would oblige a person to join or support a trade union.<sup>101</sup>

**102.** In other countries, the law allows "union security" clauses in collective agreements or arbitration awards which make trade union membership or payment of union dues compulsory, sometimes by making them subject to certain conditions or prohibiting certain types of arrangements. These clauses may specify that an employer can recruit only workers who are members of trade unions and who must remain union members in order to keep their job (closed shop).<sup>102</sup> In other cases the employer may recruit the workers he chooses, but these must then join a trade union within a specified period (union shop). They may also require all workers, whether or not they are members of trade unions, to pay union dues or contributions, without making union membership a condition of employment (agency shop),<sup>103</sup> or oblige the employer, in accordance with the principle of preferential treatment, to give preference to unionized workers in respect of recruitment and other matters.<sup>104</sup> These clauses are compatible with the Convention provided, however, that they are the result of free negotiation between workers' organizations and employers.

**103.** However, when union security clauses are imposed by the law itself, the right of workers to set up and join organizations of their own choosing is compromised. Legislation which makes it compulsory to join a union or which

<sup>100</sup> ILC, 43rd Session, 1959, RCE, Report III (Part IV), para. 36. In adopting Convention No. 98, the Conference Committee on Industrial Relations, with account being taken of its discussions on the question of trade union security clauses "finally agreed to express in the report their view that the Convention could in no way be interpreted as authorizing or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice" (ILC, 32nd Session, 1949: *Record of Proceedings*, p. 468).

<sup>101</sup> For example: *Chile*, article 19 of the Constitution. *Portugal*, article 56(2)(b) of the Constitution, s. 37 of the Trade Unions Act and s. 1(3) of Act No. 57 of 1977.

<sup>102</sup> For example: *Japan*, s. 7(1) of the 1949 Trade Union Law. *Mexico*, s. 395 of the Federal Labour Act. *Philippines*, s. 248(e) of the Labour Code. By contrast, *Mauritius*, nullity of closed shop clauses, s. 51 of the Industrial Relations Act of 1973.

<sup>103</sup> For example: *Switzerland*, collective agreements may require the payment of solidarity contributions by non-unionized employees.

<sup>104</sup> For example: *Australia (Queensland)*, s. 11(a), Industrial Relations Act, 1990.

designates a specific trade union as the recipient of union dues,<sup>105</sup> or which achieves the same aim through regulation of the system of compulsory union dues, has a similar effect to provisions establishing a trade union monopoly and is not compatible with the Convention.<sup>106</sup> However, provisions which require the deduction at source of contributions by all workers, whether or not they are union members, to a majority union, without mentioning a specific trade union,<sup>107</sup> are, in the view of the Committee, compatible with the Convention.

#### *Coercion or favouritism by the government*

**104.** When governments place one occupational organization at an advantage or disadvantage in relation to the others, the choice of workers regarding the organization to which they intend to belong may be influenced. Such favouritism or discrimination may take various forms and relate to different aspects of labour relations: pressure exerted on organizations in public statements by the authorities; unequally distributed aid; premises provided for holding meetings or activities to one organization but not to another; refusal to recognize the officers of some organizations in the exercise of their legitimate activities, etc. Any unequal treatment of this kind compromises the right of workers or employers to establish and join organizations of their choosing and gives rise to difficulties with regard to the Convention.<sup>108</sup>

\* \* \*

**105.** *The guarantees of Convention No. 87 should apply to all workers and employers [without any distinction whatsoever], the only exceptions provided by the Convention being the armed forces and the police. Provisions prohibiting the right to organize for specific categories of workers, such as public servants, managerial staff, domestic staff or agricultural workers, are incompatible with the express provisions of the Convention.*

**106.** *Although the right of workers and employers to establish organizations [without previous authorization] does not imply absolute freedom, the formalities required, such as those intended to ensure publicity, must not be so complex or lengthy as to give the authorities in practice discretionary power to refuse the establishment of organizations. Provision should be made for the possibility of a judicial appeal against any administrative decision of this kind*

<sup>105</sup> For example: *Congo*, the Committee has noted with satisfaction the repeal of a 1973 Decree which established compulsory check-off to the benefit of the Congolese Trade Union Confederation (RCE 1993, p. 184).

<sup>106</sup> See also *Digest*, para. 248.

<sup>107</sup> For example: *Canada (Quebec)*: s. 47(2) of the Labour Code.

<sup>108</sup> For example: *Madagascar*: the Committee noted with interest the repeal of provisions under which only members of trade unions belonging to a revolutionary organization had the right to be elected to works committees (RCE 1993, p. 207). See also above, Political affiliation or activities, para. 65.

*to an independent and impartial body which would re-examine the substance of the case.*

**107.** *The right of workers and employers to establish organizations [of their own choosing] is one of the fundamental aspects of freedom of association. It implies in particular the right to take freely the following decisions: choice of the structure and composition of organizations; the establishment of one or more organizations in any one enterprise, occupation or branch of activity; and the establishment of federations and confederations. Excessive restrictions, for example as regards the minimum number of members, systems of trade union unity or trade union monopoly imposed by law are incompatible with Article 2 of the Convention; however, when moves towards unification of the trade union movement are made at the initiative of the workers themselves, they are in conformity with the Convention. Finally, although the Convention clearly does not aim to make trade union pluralism compulsory, pluralism must be possible in every case, even if trade union unity was once adopted by the trade union movement.*

## CHAPTER IV

### **Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities**

#### **Introduction**

**108.** Article 3 of Convention No. 87 guarantees the free functioning of workers' and employers' organizations by recognizing four basic rights: to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes without interference by the public authorities. Article 8 of the Convention provides that in exercising these rights, organizations shall respect the law of the land, but stipulates 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. During the preparatory work on the Convention, several Government members, although they accepted complete trade union autonomy, pointed out that the State could not refrain from all intervention since it must at least ensure that trade unions carried on their activities within the limits of the law. In an attempt to achieve this twofold objective, the International Labour Conference finally decided to word the second paragraph of Article 3 as follows: "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".<sup>1</sup>

#### **Constitutions and rules**

**109.** In order for this right to be fully guaranteed, the Committee believes that two basic conditions must be met: firstly, national legislation should only lay down formal requirements as regards trade union constitutions; secondly, the constitutions and rules should not be subject to prior approval at the discretion of the public authorities.

<sup>1</sup> ILC, 30th Session, 1947, *Record of Proceedings*, pp. 571.

110. Thus, legislation which does not contain any provisions respecting the content or approval of the constitutions and rules of organizations is compatible with Convention No. 87.<sup>2</sup> The same applies to legislation which, in order to protect members' rights by ensuring a sound administration and preventing legal complications arising as a result of constitutions and rules being drawn up in insufficient detail, lists particular points of a formal kind which must appear in the constitutions.<sup>3</sup> Model constitutions and rules intended to serve as *guidelines* to trade unions may also be included in this category, provided that there is no legal obligation to accept them or any pressure exerted for this purpose.

111. However, the Committee considers that any legislative provisions concerning the preparation, content,<sup>4</sup> amendment,<sup>5</sup> acceptance or approval of constitutions and rules of occupational organizations which go beyond these formal requirements may hinder the establishment and development of organizations and constitute interference contrary to Article 3(2) of the Convention. Such interference may take different forms: for example a first-level trade union may be required to conform to the constitution of a single federation;<sup>6</sup> the constitution of a new trade union may be subject to approval by the central administration of the existing organization; the sole central organization or higher-level organizations specified by the law may have the exclusive right to elaborate the by-laws of first-level trade unions;<sup>7</sup> the constitutions may have to be drawn up by the public authorities;<sup>8</sup> trade unions may be required to follow a model constitution which contains more than certain purely formal clauses or to use such a model as a basis.<sup>9</sup> This is also the case when the approval of constitutions and rules of occupational organizations is subject to the discretionary power of the public authorities,<sup>10</sup> and when the latter have the right to require amendments to the constitutions.

<sup>2</sup> For example: *Belgium, Côte d'Ivoire, Denmark, Finland, France, Germany, Italy, Luxembourg, Norway, Russian Federation, Senegal.*

<sup>3</sup> For example: *Algeria, Chile, Lithuania, Mozambique, Namibia, Poland, Romania.*

<sup>4</sup> For example: *Yemen*, s. 150 of the Labour Code of 1970: the authorities may request the amendment of rules.

<sup>5</sup> For example: *Colombia*, the Committee noted with satisfaction the repeal of the provisions which required ministerial approval of amendments to the rules of first-level trade unions, federations and confederations (RCE 1991, pp. 159-160).

<sup>6</sup> For example: *China*: s. 4 of the Trade Unions Act of 1972.

<sup>7</sup> For example: *Ethiopia*: the Committee noted with satisfaction that Proclamation No. 42/1993 repealed, inter alia, the previous provisions which gave this power to the higher-level trade union organizations (RCE 1993, p. 195).

<sup>8</sup> For example: *Kenya, United Republic of Tanzania.*

<sup>9</sup> For example: *Egypt*: s. 61 of Trade Unions Act No. 35 of 1976. See also CFA, 284th Report, Case No. 1508 (*Sudan*), para. 441.

<sup>10</sup> For example: *Iran*: s. 131 of the Labour Code of 1990. See also CFA, 278th Report, Case No. 1512 (*Guatemala*), para. 397; and *Digest*, para. 266.



## Election of representatives

112. The autonomy of organizations can be effectively guaranteed only if their members have the right to elect their representatives in full freedom. The public authorities should therefore refrain from any interference which might restrict the exercise of this right, whether as regards the holding of trade union elections, conditions of eligibility or the re-election or removal of representatives.

### *Election procedures*

113. In the majority of countries the law recognizes, implicitly or explicitly, the principle of election of trade union officers by members. The provisions of national legislation respecting election procedures can be divided into two categories.

114. The legislation in the first category does not contain any specific provisions on this subject or provides only that the constitutions of trade union organizations must indicate the procedure for appointing their executive bodies, as well as provisions to promote democratic principles within trade unions or to ensure the proper conduct of the election process, with respect for members' rights, so as to avoid any dispute on their outcome. The Committee considers that provisions of this kind do not involve any violation of the principles of freedom of association as long as they are not so detailed as to allow undue control by the authorities.

115. The second category contains provisions which go beyond these objectives and may enable the authorities to interfere in the right of organizations to elect their representatives in full freedom. For example, the Committee considers that the following provisions are contrary to the principles of freedom of association: those which establish very precise rules on the subject of trade union elections, thus constituting a kind of *a priori* control over the electoral procedure and enabling the public authorities to interfere in the voting process;<sup>11</sup> provisions which allow supervision by the administrative authorities or the single trade union central organization of the election procedure, for example by requiring the presence of labour inspectors or of representatives of the administration or the acceptance or approval of elections or their results.<sup>12</sup>

<sup>11</sup> For example, CFA, 279th Report, Case No. 1592 (*Chad*), para. 179: the legal provisions according to which trade union leaders must be subject to a background investigation conducted by the ministry amounts to prior approval by the authorities of candidates to the executive committee of a trade union and is contrary to Article 3 of Convention No. 87.

<sup>12</sup> For example: *Colombia*: the Committee noted with satisfaction that the provisions making the election of officials subject to approval by the administrative authorities had been repealed (RCE 1992, p. 207). See also CFA, 284th Report, Case No. 1622 (*Fiji*), para. 692: a provision which gives an administrative official the power to refuse a person freely elected by members of a workers' organization is incompatible with Article 3 of Convention No. 87.

The criterion applied by the Committee is therefore the risk of arbitrary interference by the authorities in the election process of workers' and employers' organizations. If, however, supervision is deemed necessary, it should be exercised by a judicial authority.

### *Conditions of eligibility*

116. The conditions of eligibility most frequently encountered in national legislation concern occupational requirements, nationality, political views or activities or penal records; some provisions also establish restrictions or prohibitions concerning the re-election of trade union officers.

(i) *Requirement to belong to an occupation or to an enterprise*

117. The Committee considers that provisions which require *all* candidates for trade union office to belong to the respective occupation, enterprise or production unit<sup>13</sup> or to be actually employed in this occupation, either at the time of their candidature<sup>14</sup> or during a certain period before their election<sup>15</sup> are contrary to the guarantees set forth in Convention No. 87. Restrictions may also arise out of provisions requiring members of trade unions to belong to the occupation concerned, coupled with a requirement that the officers of the organization be chosen from among its members.<sup>16</sup> Provisions of this type infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. When national legislation imposes conditions of this kind on all trade union leaders, there is also a real risk of interference by

<sup>13</sup> For example: *Colombia*: ss. 388(1)(c) and 432(2) of the Labour Code and, as regards federations, s. 422(1)(c). *Peru*: Arts. 12 and 24 of the Act of 26 June 1992 on Collective Labour Relations. *Romania*: s. 9 of Act No. 54 of 1991 respecting trade unions and s. 13(3) of Act No. 15 of 1991 respecting the settlement of collective labour disputes. By contrast, as regards *Cyprus*, the Committee has noted with satisfaction the repeal of provisions which provided that only persons currently employed in the occupation or trade concerned could be appointed or elected to hold office in a trade union or confederation (RCE 1992, p. 211).

<sup>14</sup> For example: *Panama*: s. 359 of the Labour Code: automatic removal from office of an enterprise trade union official who is dismissed. On the dismissal of trade union officials, see also *Digest*, para. 305.

<sup>15</sup> For example: *Honduras*: s. 510 of the Labour Code: at the time of their election, trade union officers must normally exercise the occupation represented by the trade union, and have exercised it for more than six months during the previous year.

<sup>16</sup> For example: *Central African Republic*: ss. 1 and 2 of Act No. 88-009 of 1988 respecting freedom of association and protection of the right to organize.

the employer through the dismissal of trade union officers, which deprives them of their trade union office. In order to bring such legislation into conformity with the Convention, it would be desirable to make it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization.<sup>17</sup>

(ii) *Nationality*

118. In many cases being a national of the country concerned is a condition of eligibility for trade union office.<sup>18</sup> Sometimes this requirement applies only to a certain proportion of the officers of a trade union or is flexible, for example where there is reciprocity between countries<sup>19</sup> or where the authorities may grant exemptions. Since provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the workforce, the Committee considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country. Other ILO instruments can provide guidelines in this respect: thus, Article 10 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), stipulates that migrant workers should be granted equality of opportunity and treatment, in particular as regards trade union rights, and Paragraph 2(g) of the Migrant Workers Recommendation, 1975 (No. 151), mentions that the policy of equality of opportunity and treatment should, inter alia, concern eligibility for office in trade unions.

(iii) *Political views or activities*

119. Legislation which prohibits the exercise of trade union functions solely on the grounds of political belief or affiliation is not compatible with the right of organizations to elect their representatives in full freedom. Provisions concerning ineligibility for trade union office on political grounds are sometimes directed against activities of an allegedly subversive nature, activities in a

<sup>17</sup> For example: *Bangladesh*: for a number of years the Committee has requested the Government to exempt a "reasonable proportion" of trade union officers from the requirement of belonging or having belonged to the occupation or of working or having worked in the sector concerned (RCE, 1994 observation on C.87).

<sup>18</sup> For example: *Colombia*, s. 384 of the Labour Code. *Djibouti*: s. 4 of Decree No. 83-099/PR/FP of 1983 establishing conditions for the exercise of the right to organize and to strike and s. 6 of the Labour Code. *Ecuador*: s. 455 of the Labour Code. *Guatemala*: s. 223(b) of the Labour Code. *Kuwait*: s. 72 of the Labour Code of 1964. *Mauritania*: Art. 7, Book III, Labour Code, as amended by Act No. 93-038 of 20 July 1993. *Romania*: s. 9 of Trade Unions Act No. 54 of 1991. *Rwanda*: s. 8 of the Labour Code.

<sup>19</sup> For example: *Central African Republic*, s. 2(2) and (3) of Act No. 88.009 of 1988 respecting freedom of association and protection of the right to organize.

specific political party<sup>20</sup> or movement,<sup>21</sup> or the defence of ideological principles of a prohibited party or association whose activities are deemed contrary to the national interest and whose registration has been cancelled or suspended.<sup>22</sup> The Committee is of the view that the practice of giving a broad interpretation to legislation which imposes restrictions on persons with a criminal record so as to deprive certain persons of the right to be elected to trade union office solely on the grounds of their political beliefs or affiliation is not compatible with the Convention.

(iv) *Criminal record*

120. Some legal systems contain provisions disqualifying from trade union office all persons who have been convicted, regardless of the gravity or nature of the offence,<sup>23</sup> or those convicted of certain specific offences.<sup>24</sup> In other cases, certain types of conviction can result in the loss of civil and political rights which a candidate must possess in order to be eligible for trade union office.<sup>25</sup> The Committee considers that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office. Thus, legislation which establishes excessively broad ineligibility criteria, for example by means of an open-ended definition or a long list including acts which have no real connection with the qualities of integrity required for the exercise of trade union office, is incompatible with the Convention.

(v) *Conditions of re-election*

121. Provisions restricting or prohibiting the re-election of trade union officers are a serious obstacle to the right of organizations to elect their representatives in full freedom,<sup>26</sup> irrespective of the scope and form of the provision: absolute prohibition, or prohibition of re-election where previous

<sup>20</sup> For example: *Malaysia*, officials or employees of a political party may not stand as candidates for trade union office (s. 28 of the Trade Unions Act); the minister may lift the prohibition.

<sup>21</sup> For example: *United States*, s. 504 of the Labor-Management Reporting and Disclosure Act of 1959, and para. 7120(a)(2), C.71, Title 5, Labour Code.

<sup>22</sup> For example: *Brazil*, s. 530 of the Consolidated Labour Laws.

<sup>23</sup> For example: *Madagascar*, s. 7 of the Labour Code. *Zaire*, s. 234(a) and (d) of the Labour Code.

<sup>24</sup> For example: *Uganda*, ss. 10, 22 and 23 of the Trade Unions Act of 1976.

<sup>25</sup> For example: *Burkina Faso*, s. 159(2) of the Labour Code. *Cameroon*, s. 10 of the Labour Code.

<sup>26</sup> For example: *Mexico*, s. 75 of the Federal Act of 1963 respecting workers in the service of the State prohibits the re-election of trade union officers. By contrast, as regards *Peru*, the Committee noted with satisfaction the repeal of the provisions prohibiting the re-election of officers of a union of public officials at the end of their term (RCE 1992, p. 234).

terms or a certain number of consecutive terms have been served.<sup>27</sup> In the view of the Committee, any provision, irrespective of its form, which restricts or prohibits re-election to trade union office is incompatible with the Convention. Such provisions may entail particularly serious consequences for organizations which do not have a sufficient number of persons capable of carrying out the duties of a trade union officer. The same principle is applicable to provisions fixing the maximum length of terms of trade union office.

### **Removal of trade union officers or executive bodies**

**122.** Any removal or suspension of trade union officers which is not the result of an internal decision of the trade union, a vote by members or normal judicial proceedings, seriously interferes in the exercise of the trade union office to which the officers have been freely elected by the members of their trade unions. Provisions which permit the suspension and removal of trade union officers or the appointment of temporary administrators by the administrative authorities,<sup>28</sup> by the executive board of a single central organization<sup>29</sup> or under the provisions of legislation or a decree promulgated for the purpose are incompatible with the Convention.

**123.** Measures of this kind should be solely directed towards protecting the members of organizations and should only be possible through judicial proceedings. The law should lay down sufficiently precise criteria to enable the judicial authority to determine whether a trade union officer has committed acts warranting his suspension or removal; provisions which are too vague or fail to comply with the principles of the Convention do not constitute an adequate guarantee. The persons concerned should also enjoy all the guarantees of normal judicial procedures.

### **Administration of organizations**

**124.** The right of workers' and employers' organizations to organize their administration without interference by the public authorities includes in particular autonomy and financial independence and the protection of the assets and property of these organizations. Legislation intended to protect the rights of members and to ensure sound and efficient management which require trade

<sup>27</sup> *Venezuela*: the Committee noted with satisfaction the removal of the provisions requiring trade union officers who have completed two consecutive terms to wait at least one term before standing for re-election (RCE 1991, p. 223).

<sup>28</sup> For example: *Colombia*, suspension for up to three years, with withdrawal of the rights of association, of trade union officers who are responsible for the dissolution of their trade union (RCE 1993, p. 182).

<sup>29</sup> For example: *Syrian Arab Republic* (RCE 1993, p. 230).

union rules to include provisions concerning the source of the organization's funds, the use of its funds, its internal financial administration or the distribution of assets in the event that the organization is dissolved, wound up or merged, or legislation which provides for the external supervision of the financial reports of trade unions are in general compatible with the Convention.

**125.** The Committee considers that there is no infringement of the right of organizations to organize their administration if, for example, the supervision is limited to the obligation of submitting periodic financial reports or if there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association); similarly, there is no violation of the Convention if such verification is limited to exceptional cases, for example in order to investigate a complaint, or if there have been allegations of embezzlement.<sup>30</sup> Both the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity.

**126.** Problems of compatibility with the Convention arise when the law gives the authorities powers of control which go beyond the principles set forth in the previous paragraph.<sup>31</sup> This may take the form of permanent control by the authorities where the law establishes the minimum contribution of members,<sup>32</sup> specifies the proportion of union funds that have to be paid to the federations<sup>33</sup> or requires that certain financial operations, such as the receipt of funds from abroad, be approved by the public authorities.<sup>34</sup> The same applies if the administrative authority has the power to examine the books and other documents of an organization, conduct an investigation and demand

<sup>30</sup> For example: *Philippines*, the Committee noted with satisfaction the amendment of provisions which gave excessive powers of inquiry to the authorities into the financial management of trade unions; they may now undertake such inquiries only upon filing of a complaint duly supported and signed by at least 20 per cent of the members of a bargaining unit (RCE 1990, pp. 202-203).

<sup>31</sup> For example: *Bangladesh*: s. 10 of the Industrial Relations Rules of 1977 gives the registrar of trade unions very extensive powers to inspect the books and other documents of trade unions. *Panama*: s. 376(4) of the Labour Code gives the authorities excessive powers in examining, at least every six months, the financial accounts and records of proceedings of trade unions. By contrast, in *Greece*, Act No. 1915 of 1990 respecting the protection of trade union rights has eliminated the powers of the authorities to intervene in the financial administration of trade unions.

<sup>32</sup> For example: *India*: s. 6 of the Trade Unions Act.

<sup>33</sup> For example: *Syrian Arab Republic*: s. 36 of Legislative Decree No. 84 and s. 12 of Legislative Decree No. 250 require trade unions to assign a certain percentage of their receipts to higher-level trade union bodies (RCE 1993, p. 230).

<sup>34</sup> *Yemen*: some financial operations require the prior authorization of the minister and the financial resources of trade unions must necessarily be used for certain expenditure (ss. 132 and 133 of the Labour Code) (RCE 1993, p. 239).

information at any time,<sup>35</sup> or is the only body authorized to exercise control, or if such control is exercised by the single central organization expressly designated by the law.<sup>36</sup>

*Inviolability of union premises, correspondence  
and communications*

127. The freedom to organize their administration is not limited to strictly financial operations but also implies that trade unions should be able to dispose of all their fixed and movable assets unhindered and that they should enjoy inviolability of their premises, correspondence and communications. When legislation makes provision for exceptions in this respect, for example in emergency situations or in the interests of public order, the Committee is of the view that while trade unions cannot claim immunity against the searching of their premises, such searches should be possible only when a warrant has been issued for the purpose by the regular judicial authority, when the latter is satisfied that there is a good reason to presume that such a search will produce evidence for criminal proceedings under the ordinary law, and provided the search is restricted to the purpose for which the warrant was issued.<sup>37</sup>

### Activities and programmes

128. Freedom of association implies that workers' and employers' organizations should have the right to organize their activities in full freedom and formulate their programmes with a view to defending all of the occupational interests of their members, while respecting the law of the land. This includes in particular the right to hold trade union meetings,<sup>38</sup> the right of trade union officers to have access to places of work and to communicate with management, certain political activities of organizations, the right to strike and, in general, any activity involved in the defence of members' rights.

129. In practice, however, the main difficulties which are most frequently encountered in national legislation concern restrictions or prohibition of political

<sup>35</sup> For example: *Chile*: s. 54 of Act No. 19069 of 1991 respecting trade union organizations and collective bargaining. *Kuwait*: s. 76 of the Labour Code: extensive powers enabling the authorities to have access at all times to the registers and books of trade unions (RCE 1993, p. 205). *Nigeria*: ss. 42 and 43 of Trade Unions Decree No. 31, as amended in 1978 and 1986 (RCE 1993, p. 216).

<sup>36</sup> For example: *Egypt*: supervision by the Egyptian Confederation of Trade Unions of the financial administration of trade union organizations (RCE 1993, p. 194).

<sup>37</sup> See also Ch. II, para. 40.

<sup>38</sup> For example: *Colombia*: the Committee noted with satisfaction the repeal of provisions which regulated trade union meetings too strictly; however, the final paragraph of s. 444 of the Labour Code still allows the presence of the authorities in general assemblies convened to vote on the launching of a strike and s. 1 of Decree No. 672 of 1956 provides for supervision of trade union meetings by public servants (RCE 1992, p. 207).

activities of organizations and of the right to strike, which is dealt with separately in the following chapter in view of its importance, as well as restrictions on collective bargaining.<sup>39</sup>

### *Political activities*

130. Until recently, legislation in several countries established a close relationship between trade union organizations and the single political party in power. Although this type of subordination still remains in some countries,<sup>40</sup> the Committee has noted with satisfaction in recent years and in particular since the fall of the Berlin Wall in 1989 a clear trend towards its abolition. It also observes that the autonomy and independence of trade unions are now enshrined in the legislation of several countries.<sup>41</sup> The legislation of other countries restricts the political activities of trade unions by forbidding them, for example, from making financial contributions to a political party or candidate. Finally, there is a total ban on *any* political activities by trade unions in certain legislations.<sup>42</sup>

131. It was pointed out during the preparatory work on Convention No. 87<sup>43</sup> that trade union activities cannot be restricted solely to occupational matters, since a government's choice of a general policy is usually bound to have an impact on workers (remuneration, leave, working conditions, functioning of the enterprise, social security, etc.). This relationship is obvious in the case of a national economic policy (for example, the impact of budgetary austerity programmes or price and wage restrictions; structural adjustment policies, etc.), although for workers in particular it may also appear in the form of broader political or economic options (for example, bilateral or multilateral free trade agreements; the application of directives of international financial institutions, etc.) or even decisions taken at the supranational level (for example,

<sup>39</sup> See Ch. X.

<sup>40</sup> For example: *China* "Trade unions shall organize and educate the workers ... to enable them ... to defend the socialist state power of the People's Democratic Dictatorship directed by the working class ..." (s. 5 of the Trade Unions Act of 3 Apr. 1992). *Cuba*: the Workers' Central Organization of Cuba recognizes the supreme authority of the Communist Party, accept its policy and carry out their activities in accordance with the principles of democratic centralism (preamble to the Constitution of the Workers' Central Organization).

<sup>41</sup> For example, the Committee noted with satisfaction that the autonomy and independence of workers' organizations have now been enshrined in the legislation of the following countries: *Belarus, Bulgaria, Congo, Ethiopia, Guinea, Hungary, Madagascar, Mongolia, Poland, Romania, Russian Federation, Rwanda, Ukraine*.

<sup>42</sup> For example: *Kuwait*, ban on the exercise of any political activities by trade unions (s. 73 of the Labour Code). *Swaziland*: ban on the exercise of political activities by federations and restriction of their activities to consultation and service functions (s. 33 of the Industrial Relations Act of 1980). By contrast, in the case of *Colombia*, the Committee noted with satisfaction the repeal of s. 379(a) of the Labour Code which prohibited trade unions from intervening in political matters (RCE 1992, p. 207).

<sup>43</sup> ILC, 31st Session, 1948, *Record of Proceedings*, p. 476.



the effects of the delocalization of enterprises on employment and wages). Although the promotion of working conditions by collective bargaining remains a major feature of trade union action, the Committee believes that the development of the trade union movement and the increasing recognition of its role as a social partner in its own right mean that workers' organizations must be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy.

**132.** As regards the political activities of the trade union movement, the Committee recalls that the 1952 resolution of the International Labour Conference concerning the independence of the trade union movement<sup>44</sup> remains as valid as it then was: when trade unions, in accordance with the law and practice of their respective countries and following a 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 the 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 and economic functions irrespective of political changes in the country. Furthermore, in order to guarantee the independence of the trade union movement, governments should not attempt to transform trade unions into an instrument for the pursuance of political aims or interfere with the normal functions of a union under the pretext of its freely established relationship with a political party.

**133.** The Committee is therefore of the view that both legislative provisions which establish a close relationship between trade union organizations and political parties and those which prohibit *all* political activities for trade unions give rise to serious difficulties with regard to the principles of the Convention.<sup>45</sup> Some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interest of organizations in expressing their point of view on matters of economic or social policy affecting their members and workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other.

**134.** Workers' organizations have several means available to promote and defend the economic and social interests of their members within the framework of collective bargaining. These means, which include meetings, protest demonstrations or the presentation of petitions, are solely intended to express the discontent of trade unions on certain matters. Means of action which place stronger pressure on the employer, essentially through strike action, are dealt

<sup>44</sup> See the full text of the resolution in Appendix II.

<sup>45</sup> See Ch. II, Freedom of opinion and expression of organizations. See also Report of the Committee of Inquiry on *Nicaragua*, op. cit., Ch. III, note 3, para. 544(3)(a).

with separately in the following chapter because of their importance and the effects they may have on labour relations.

\* \* \*

**135.** *Legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organizations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body so as to avoid any risk of excessive or arbitrary interference in the free functioning of organizations.*

## CHAPTER V

### The right to strike

#### Introduction

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

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

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

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

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

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

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

### ILO instruments

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

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

<sup>2</sup> ILC, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*.

<sup>3</sup> *ibid.*, pp. 30, 31, 34, 46, 52, 73-74.

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

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

### Other international and regional instruments

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

<sup>5</sup> Forced or compulsory labour is prohibited ... "(d) as a punishment for having participated in strikes;"

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

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

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

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

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

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

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

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

### National legislation and practice

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

### ILO supervisory bodies

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

#### *Committee on Freedom of Association*

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

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

<sup>11</sup> Additional protocol of 1988, known as the “Protocol of San Salvador”.

<sup>12</sup> For example: *Argentina, Burkina Faso, France, Portugal, Romania, Rwanda.*

<sup>13</sup> For example: *Ireland, United Kingdom.*

<sup>14</sup> Second Report, 1952, Case No. 28 (*Jamaica*), para. 68.

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

### *Committee of Experts*

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

<sup>15</sup> Fourth Report, 1953, Case No. 5 (*India*), para. 27.

<sup>16</sup> *Digest*, paras. 362-363.

<sup>17</sup> *Digest*, p. 2.

<sup>18</sup> *Digest*, paras. 366, 379, 416, 438, 443.

<sup>19</sup> *General Survey*, 1959, para. 68.

<sup>20</sup> *General Survey*, 1973, para. 107.

<sup>21</sup> *General Survey*, 1983, paras. 200, 205.

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

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

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

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

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

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

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

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



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

### General prohibition of strikes

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

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

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

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

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

### Specific restrictions

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

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

#### *Restrictions relating to the public service.*

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

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

<sup>28</sup> For example: *Côte d'Ivoire, Fiji, France, Gabon, Poland, Spain.*

<sup>29</sup> For example: *Bolivia, Republic of Korea.*

<sup>30</sup> For example: *Central African Republic, Guatemala, Italy, Lesotho, Luxembourg, Portugal.*

sectors, so that workers in the latter must observe the procedures laid down in the general legislation in order to strike.<sup>31</sup>

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

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

#### *Restrictions relating to essential services*

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

<sup>31</sup> For example: *Algeria, Australia, Egypt, Hungary, Iceland, India, Mauritania, Sweden.*

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

<sup>33</sup> For example: *Germany: Beamte, Arbeitnehmer (Angestellte, Arbeiter). Turkey: manual workers, office employees.*

<sup>34</sup> *General Surveys: 1959, para. 68; 1973, para. 109; 1983, para. 214.*

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

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

<sup>35</sup> For example: *Algeria, Dominican Republic, Haiti, Hungary, Lesotho.*

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

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

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

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

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

#### *Negotiated minimum service*

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

#### *Essential services and minimum service*

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

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

### Requisitioning

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

### Compensatory guarantees

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

### Restrictions relating to the objectives of a strike

#### *Political strikes/protest strikes*

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

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

<sup>41</sup> *General Surveys*, 1959, para. 69; 1973, para. 113; 1983, para. 216.

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

### **Strikes, collective bargaining and "social peace"**

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

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

<sup>42</sup> See also Ch. IV, paras. 130-133.

## Sympathy strikes

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

## Export processing zones

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

## Other prerequisites

### *Requirement of a strike ballot*

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

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

<sup>44</sup> RCE 1993, paras. 58-61. See also Ch. III, para. 60.

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



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

— *Exhaustion of conciliation/mediation procedures*

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

— *Waiting period, advance notice*

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

<sup>46</sup> For example: *Bahamas, Bulgaria, Cameroon, Madagascar, Morocco, Poland, Thailand, Venezuela, Zambia.*

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

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

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

<sup>50</sup> An identical period of advance notice is generally required for lockouts.

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

### Forms of strike action

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

### The course of the strike

#### *Picketing/occupation of the workplace*

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

#### *Replacement of strikers*

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

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

seriously impairs the right to strike and affects the free exercise of trade union rights.<sup>52</sup>

### Sanctions against strikes

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

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

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

\* \* \*

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

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

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

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

## CHAPTER VI

### **Dissolution and suspension of organizations by administrative authority**

#### **Introduction**

**180.** Article 4 of the Convention provides that workers and employers' organizations shall not be liable to be dissolved or suspended by administrative authority; Article 6 extends this guarantee to federations and confederations. Administrative measures of this kind being one of the most extreme forms of interference by the public authorities in the activities of organizations, since they put an end to the exercise of trade union activities, the Committee pays close attention to the conditions under which it may be concluded that dissolution or suspension — or any measure having the same results in practice — does not impair the guarantees provided for in the Convention.

**181.** While Article 4 of the Convention completes the guarantees relating to the establishment and functioning of organizations by affording them guarantees against arbitrary dissolution or suspension by administrative authority, it does not grant them any immunity with regard to the ordinary law; organizations and their members, under Article 8(1) of the Convention, are bound to respect the law of the land. Thus, for example, an organization seeking to undermine the internal and external security of the State cannot invoke the principles of freedom of organization in order to evade the application of the rules laid down in the ordinary law which are applicable to all unlawful associations.<sup>1</sup> The corollary of this obligation imposed on organizations and their members is that, under Article 8(2), 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.

#### **Dissolution and suspension of organizations**

**182.** In many countries the legislation provides that only the judicial authorities may order the dissolution or suspension of an organization alleged to

<sup>1</sup> ILC, 30th Session, 1947, *Freedom of association and industrial relations*, p. 111.

have infringed the law;<sup>2</sup> in some cases a request must be submitted by the registrar.<sup>3</sup> Some laws, however, provide for dissolution or suspension by administrative authority,<sup>4</sup> the situation varying according to a number of factors: the possibility of a judicial appeal against the administrative decision, the extent to which the court can examine the substance of the case, and whether or not the appeal has the effect of staying the execution of the administrative decision.

**183.** In addition to situations in which organizations may be dissolved or suspended under the legislation on labour relations, such measures may also be taken following a decision of the executive power pursuant to a law conferring full powers,<sup>5</sup> a special decree<sup>6</sup> or a state of emergency.<sup>7</sup> As the Commission of Inquiry on Poland emphasized, "... although it is true that Article 4 of the Convention refers only to measures taken by administrative authority, the fact remains that dissolution by legislative authority entails consequences that are just as irremediable as a definitive dissolution by administrative authority since neither admits of appeal to independent bodies".<sup>8</sup> It is therefore essential to determine whether a given dissolution by legislative authority prevents workers from maintaining their membership and pursuing their activities in trade unions of their own choosing; if this is the case, such legislation would not be in conformity with the Convention.

<sup>2</sup> For example: *Argentina, Belarus, Greece*. As regards *Finland*, the Committee noted with satisfaction the adoption of the Associations Act, No. 503, which lays down that, as from 1 January 1990, associations are only subject to suspension by judicial decision (RCE 1991, p. 173).

<sup>3</sup> For example: *Pakistan*: s. 10 of the Industrial Relations Ordinance, 1969.

<sup>4</sup> For example: *Bolivia*: s. 129 of the Decree of 23 Aug. 1943; according to the Government, this provision is not applied in practice. *Yemen*: the Council of Ministers has power to dissolve a trade union (s. 157 of the Labour Code of 1964). By contrast, the Committee noted with interest the repeal of provisions which allowed administrative authorities to dissolve trade unions in the cases of *Guatemala* (RCE 1993, p. 200) and *Madagascar* (RCE 1993, p. 207).

<sup>5</sup> In *Poland*, for example, the martial law declared on 13 December 1981 had entirely suspended the activity of the trade unions and all trade union organizations had been dissolved by the Trade Union Act of 8 October 1982; the Committee noted with satisfaction that the Act was at first amended in 1989 (RCE 1990, p. 205), then repealed in 1991 (RCE 1992, pp. 235-236). *Turkey*: following the military take-over in 1980, certain trade unions had been suspended, their property confiscated and many trade union officers imprisoned; these measures were lifted in 1991.

<sup>6</sup> For example, in the *Central African Republic*, the General Union of Central African Workers (UGTC) had been dissolved and the activities of trade unions suspended in 1981 by presidential decree. The Committee noted with interest that these measures were lifted in 1988 (RCE 1990, p. 174).

<sup>7</sup> For example, the state of emergency which had been in force in *Nicaragua* for several years was lifted in 1988; see *Report of the Commission of Inquiry — Nicaragua*, op. cit., Ch. II, note 3, paras. 173 to 175.

<sup>8</sup> *Report of the Commission of Inquiry — Poland*, op. cit., Ch. II, note 49, para. 497.

**184.** Certain measures, which cannot be described as dissolution or suspension by administrative authority in the strict sense of the term, none the less give rise to difficulties because they have a similar effect on the organizations concerned. For example, such measures may consist in the loss of advantages which are essential to carrying out their activities, or a condition upon which their existence depends: arbitrary cancellation of registration by an administrative authority<sup>9</sup> or annulment or suspension of legal personality.<sup>10</sup> This category can also include provisions resulting in dissolution or de facto paralysis of an organization's activities, for example, by depriving it of its financial resources (stopping or suspending for a long period the payment of dues) under the terms of legislation which itself runs counter to the principles of freedom of association.

**185.** All of the measures described above involve a serious risk of interference by the authorities in the very existence of organizations and should therefore be accompanied by all of the necessary guarantees, in particular due judicial safeguards, in order to avoid the risk of arbitrary action. It is preferable for legislation not to allow dissolution or suspension of workers' and employers' organizations by administrative authority, but if it does, the organization affected by such measures must have the right of appeal to an independent and impartial judicial body which is competent to examine the substance of the case, to study the grounds for the administrative measure and, where appropriate, to rescind such measure;<sup>11</sup> moreover, the administrative decision should not take effect until a final decision is handed down. Measures of dissolution or suspension taken during an emergency situation should also be accompanied by normal judicial safeguards, including the right of appeal to the courts against such dissolution or suspension.

### Trade union assets

**186.** The dissolution of an organization raises the problem of distribution or transfer of its assets. The legislation in some countries contains provisions on

<sup>9</sup> For example: *United Kingdom (Isle of Man)*: discretionary power of the Chief Registrar to cancel registration in certain cases (s. 4 of the 1991 Trade Unions Act). The Committee on Freedom of Association considered in this respect that the appeal provision — not having suspensive effect — was not sufficient to save the cancellation provision: 284th Report, Case No. 1633, paras. 383 and 384. See also 284th Report, Case No. 1508 (*Sudan*), para. 435.

<sup>10</sup> For example: *Ghana*, s. 14 of the Trade Unions Ordinance of 1941. *India*: ss. 10 and 11 of the Trade Unions Act. *Kenya*: ss. 17 and 18 of the Trade Unions Act. *Malawi*: s. 16 of the Trade Unions Act. *Sri Lanka*: ss. 15 to 18 of the Trade Unions Ordinance.

<sup>11</sup> The possibility of such an appeal exists in several countries, for example: *United Kingdom (Hong Kong)*, *Zambia*. In other countries, by contrast, legislation does not provide for such an appeal, for example: *El Salvador*: s. 230 of the Labour Code of 1972. *Malaysia*: s. 71A of the Trade Unions Act. *Singapore*: ss. 17 and 18 of the Trade Unions Act. *Somalia*: s. 27 of the Labour Code of 1972. See also *Digest*, paras. 497 and 498.

this subject which vary according to whether the dissolution was voluntary or not.<sup>12</sup> As regards the distribution of trade union assets, the Committee shares the view of the Committee on Freedom of Association that the assets should be used for the purposes for which they were acquired.<sup>13</sup>

187. A special problem has arisen and continues to occur, in particular in several Central and Eastern European countries where, following the process of political, economic and social transformation, special laws have recently been adopted in order to distribute the assets of former single trade union organizations.<sup>14</sup> Such legislative measures should take into account the fact that these trade unions often performed functions normally carried out by the State in a system of trade union pluralism, and possessed the corresponding amount of resources and staff. In the view of the Committee, legislative intervention to regulate the devolution of trade union assets is not in itself incompatible with the Convention; however, it is for the government and all of the trade union organizations concerned to cooperate in seeking a definitive formula so that the government, on the one hand, may recover the assets it needs to perform its new functions and all the trade unions, on the other, are able to carry out their activities effectively, in full independence, and on an equal footing. To this end the authorities should duly consult the country's representative organizations before adopting legislative measures.<sup>15</sup>

\* \* \*

188. *The dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations, and should therefore be accompanied by all the necessary guarantees. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution. As regards the distribution of trade union assets in the event of dissolution, these should be used for the purposes for which they were acquired. The authorities and all of the organizations concerned should cooperate so that all of the trade unions are able to carry out their activities in full independence and on an equal footing.*

<sup>12</sup> For example: *Algeria*: ss. 32 and 33 of Act No. 90-14 respecting procedures for the exercise of the right to organize. *Guinea*: s. 264 of the Labour Code of 1988. See also *Digest*, para. 504.

<sup>13</sup> CFA, 194th Report, Case No. 900 (*Spain*), para. 261; 286th Report, Case No. 1623 (*Bulgaria*), para. 506.

<sup>14</sup> For example: *Bulgaria*: Act of 19 Dec. 1991 respecting the property of the Bulgarian trade unions. *Hungary*: Act No. 28 of 11 July 1991 on the protection of trade union property, on equal chances of association for workers and on equal chances of operation for their organizations; Act No. 29 of 11 July 1991 on the voluntary nature of the payment of trade union membership dues. *Poland*: s. 45 of the Trade Unions Act of 23 May 1991.

<sup>15</sup> CFA, 286th Report, Case No. 1623 (*Bulgaria*), para. 511; 287th Report, Case No. 1637 (*Togo*), para. 82.



## CHAPTER VII

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

#### **Introduction**

**189.** Article 5 of Convention No. 87 provides that "Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers". Article 6 completes this right by stipulating that "The provisions of Articles 2, 3 and 4 [of the Convention] apply to federations and confederations". Convention No. 87 therefore does not merely recognize the right of organizations to establish bodies operating at higher level; it extends to the latter the same rights as are accorded to the first-level organizations.

#### **Right of federation and confederation**

**190.** In order to coordinate their activities and strengthen the efficacy of their action, workers' organizations generally group together in federations, either with a vertical structure covering organizations which represent the same or similar categories of workers, or with a horizontal structure representing workers of the same region in different occupations or branches of activity. Federations in turn often establish confederations at the national or inter-occupational level. Although the problems and methods of action of employers' organizations are different, the same concerns for coordination and efficiency lead them to group together in occupational or inter-occupational associations at local, regional or national level. While workers' and employers' organizations are able to exercise these rights in full freedom in many countries,<sup>1</sup> in others legislation subjects them to serious restrictions which may even go as far as de facto prohibition.

<sup>1</sup> For example: *Belarus, Côte d'Ivoire, France, Morocco, Panama, Poland, Romania, Russian Federation.*

## Restrictions on the right of federation and confederation

191. The applicable restrictions are very varied, with several restrictions being cumulated in the legislation of some countries: requirement of an excessively large minimum number of member organizations;<sup>2</sup> prohibition on setting up more than one federation or confederation per occupation,<sup>3</sup> branch of activity<sup>4</sup> or region;<sup>5</sup> enumeration in the law of which federations and confederations may be legally established;<sup>6</sup> need to obtain prior authorization for the establishment of higher-level organizations;<sup>7</sup> and any other excessive conditions concerning their establishment.<sup>8</sup> Provisions of this kind are contrary to the clear provisions of the Convention.

192. As in the case of the establishment of first-level organizations, the most serious problems arise in countries in which the law establishes, directly or indirectly, a single trade union system (or allows only one national confederation of employers), a situation which has already been examined and analysed in Chapter III in connection with the various aspects of trade union monopoly.<sup>9</sup>

<sup>2</sup> For example: *Brazil*, five or more first-level organizations, provided they represent the majority of workers in a branch of activity or identical, similar or related occupations (ss. 534 and 535 of the Consolidated Labour Laws). *El Salvador*: at least ten workers' organizations and three employers' organizations required for the establishment of a federation; at least three workers' and employers' federations for the establishment of a confederation (s. 257 of the Labour Code). *Philippines*: ten first-level organizations for the establishment of a federation (s. 237(a) of the Labour Code).

<sup>3</sup> For example: *Nigeria*, s. 28 of 1973 Decree on Trade Unions.

<sup>4</sup> For example: *Kuwait*, trade unions are required to federate by identical activities or industries producing similar goods or supplying similar services (s. 79 of the Labour Code of 1964).

<sup>5</sup> For example: *Philippines*, prohibition of federations or confederations covering more than one industry in a region (s. 238 of the Labour Code).

<sup>6</sup> For example: *Brazil*, s. 535 of the Consolidated Labour Laws.

<sup>7</sup> For example: *Yemen*, arts. 154 and 158 of the Labour Code (RCE, 1994 observation on C.87).

<sup>8</sup> For example: *Dominican Republic*, vote of two-thirds of the members of federations required for the establishment of confederations (s. 383(2) of the Labour Code of 1992). See also CFA, 279th Report, Case No. 1581 (*Thailand*), para. 474.

<sup>9</sup> For example, in some countries, a central organization (*Cuba*) or a national trade union (*Kenya*, *Uganda*) has been set up and specifically named by legislation. See also *Ghana* (RCE, 1994 observation on C.87).

193. In some countries legislation establishes prohibitions which apply specifically to particular categories of workers, in particular agricultural workers<sup>10</sup> or public servants;<sup>11</sup> in the case of the latter, the prohibition may result implicitly from provisions which prevent them from joining organizations which may have recourse to strike action. As pointed out earlier,<sup>12</sup> although first-level organizations of public servants may be restricted to this category of workers, such organizations should, however, be free to join federations and confederations of their choosing, including those which also group together organizations from the private sector. As regards organizations of agricultural workers, there is no justification, in the view of the Committee, for prohibiting their affiliation to higher-level bodies which group together trade unions from other sectors.

194. Workers' and employers' choice of a higher-level organization is motivated by the same reasons as those which prompt them to group together naturally because of their common interests and problems. In addition, in view of the more general nature of the problems discussed and negotiated at this level, they may wish to form groups with a broader occupational, inter-occupational or geographical coverage. The guarantees afforded to workers' and employers' organizations therefore imply that they may group together in full freedom into federations and confederations without intervention from the public authorities. This freedom of choice must be possible even where workers' and employers' organizations have chosen a single central organization in the past, a situation which should not be institutionalized by legislation.

### Restrictions on the activities of federations and confederations

195. Article 6 of the Convention stipulates that the guarantees provided to first-level organizations also apply to higher-level organizations. Therefore most of the remarks made by the Committee concerning the rights of first-level organizations, in particular as regards their internal functioning and activities, also apply, with the appropriate adjustments, to federations and confederations. Although legislation in several countries expressly or implicitly affords them these same rights, restrictions are sometimes imposed, in particular as regards

<sup>10</sup> For example: *Liberia*: agricultural workers may not join organizations of industrial workers (s. 4601-A of the Labour Act).

<sup>11</sup> For example: *Malaysia*: trade unions of workers employed by statutory authorities may only affiliate to trade unions whose membership is confined to workers employed by such authorities (s. 27 of the Trade Unions Act).

<sup>12</sup> See Ch. III, para. 86.

their activities,<sup>13</sup> strike action<sup>14</sup> or collective bargaining.<sup>15</sup> Provisions of this kind are such as to seriously hinder the development of industrial relations, in particular for small trade unions which are not always able to defend the interests of their members effectively because they are unable to recruit from their small membership a sufficient number of well trained officers. The social partners should in particular be able to choose themselves, without any interference by the authorities, the level at which to bargain collectively (central, branch or enterprise level).<sup>16</sup>

### International affiliation

196. Article 5 of the Convention stipulates that first-level organizations, as well as federations and confederations, have the right to affiliate with international organizations of workers and employers. As was already pointed out during the preparatory work on the Convention,<sup>17</sup> Article 5 thus recognizes the solidarity which unites workers or employers and which is not limited to one enterprise or a specific industry or even the national economy but extends to the whole international economy. The United Nations and the International Labour Organization have formally recognized certain international organizations of workers and employers by granting them consultative status.

197. In some countries, legislation restricts the right of international affiliation by limiting it to certain organizations,<sup>18</sup> by requiring prior

<sup>13</sup> For example: *Swaziland*: federations are not allowed to exercise political activities and must limit their activities to providing advice and services (s. 33 of the Industrial Relations Act of 1980); the Committee has recalled that federations, like first-level organizations, must be able to express their opinion publicly on the Government's social and economic policy (RCE 1990, pp. 208-209).

<sup>14</sup> For example: federations and confederations cannot declare a strike in *Colombia* (RCE 1993, p. 182) and *Honduras* (RCE 1993, p. 203).

<sup>15</sup> For example: *El Salvador*: federations and confederations enjoy the same rights as first-level organizations, except the right to bargain collectively (ss. 228 and 260 of the Labour Code). As regards *Uruguay*, the Committee noted with satisfaction the repeal of the provisions which denied the right of collective bargaining to organizations other than those of the first level (RCE 1987, p. 301).

<sup>16</sup> See also Ch. X, para. 249.

<sup>17</sup> ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 111.

<sup>18</sup> For example: *Iraq*, s. 27(8) of the Trade Unions Act of 1987. By contrast, as regards *Ethiopia*, the Committee noted with satisfaction the repeal of the provisions which gave the single central organization the exclusive right to sign agreements with international organizations (RCE 1993, p. 195); as regards *Nigeria*, the Committee noted with satisfaction the repeal of provisions which prohibited the international affiliation of trade unions (RCE 1992, p. 225).

authorization by the public authorities,<sup>19</sup> or by permitting it only in certain conditions established by the law. As regards measures of assistance resulting from international affiliation, legislation in some countries prohibits trade unions from receiving financial aid or subsidies from foreign organizations.<sup>20</sup> The Committee on Freedom of Association has received several complaints concerning cases in which the authorities restricted contacts between organizations which are members of the same international organization<sup>21</sup> and in which organizations or their representatives had been prevented from participating in congresses and activities of international organizations.<sup>22</sup> Legislative measures of this kind or acts by the authorities which have the same result pose serious difficulties with regard to the Convention.

\* \* \*

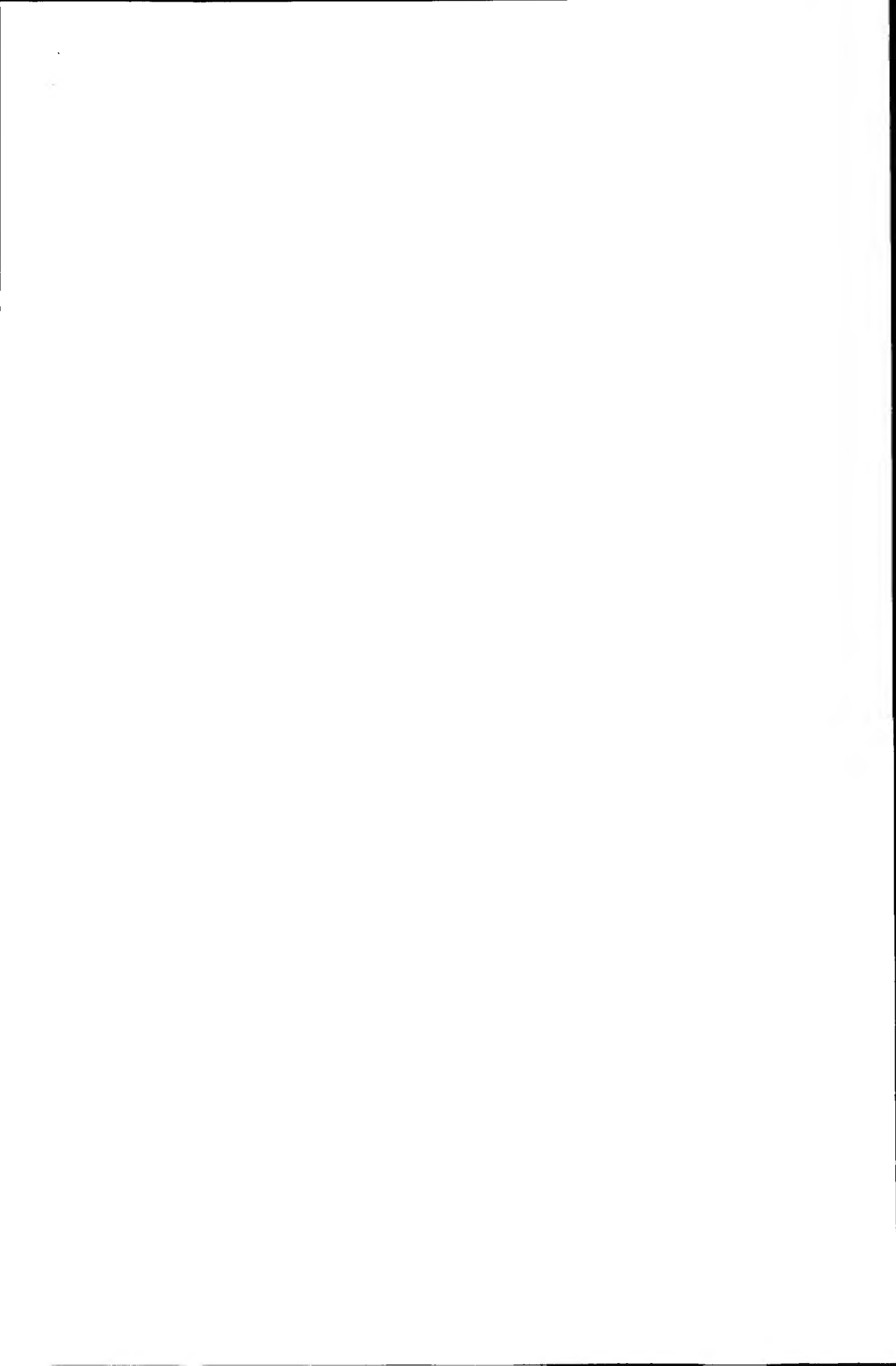
*198. In order to defend the interests of their members more effectively, workers' and employers' organizations should have the right to form federations and confederations of their own choosing, which should themselves enjoy the various rights accorded to first-level organizations, in particular as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

<sup>19</sup> For example: *Cameroon*, occupational associations or unions of public servants may not join a foreign occupational organization if they have not obtained prior authorization from the minister responsible for the supervision of public freedoms (s. 19 of Decree No. 69/DF/7 of 1969).

<sup>20</sup> For example: *Philippines*, prior authorization of the minister (s. 270 of the Labour Code). See also CFA, 285th Report, Case No. 1594 (*Côte d'Ivoire*), para. 58: national associations, including trade unions, must obtain prior approval from the authorities for the financing of any project submitted through the diplomatic missions; according to the Committee, steps should be taken to ensure that these provisions do not prevent the trade unions from receiving funds from outside the country, in particular from international workers' organizations, for normal and lawful trade union purposes.

<sup>21</sup> For example: CFA, 243rd Report, Case No. 1269 (*El Salvador*), para. 401; 283rd Report, Case No. 1599 (*Gabon*), para. 188. *Digest*: para. 531.

<sup>22</sup> As regards the confiscation by the authorities of passports of trade union officials, which prevents them from participating in ILO meetings, the Committee on Freedom of Association has emphasized that while workers and their organizations should respect the legislation of their country, it is important that no delegate to a body or meeting of the ILO be prevented from carrying out his or her functions or exercising his or her mandate. Participation as a trade unionist in a meeting organized by the ILO is a fundamental trade union right; it is therefore incumbent on the government of any member State of the ILO to refrain from any measure which would prevent a representative of an employers' or workers' organization from exercising his or her mandate in full freedom and independence; in particular, a government must not withhold the documents necessary for this purpose: 254th Report, Case No. 1406 (*Zambia*), para. 470 and 262nd Report, para. 31. See also CFA, 278th Report, Case No. 1525 (*Pakistan*), para. 56.



**PART II**

**The right to organize and collective bargaining**





## Introduction

**199.** The Right to Organize and Collective Bargaining Convention, 1949 (No. 98), deals with two different aspects of freedom of association. First, it seeks to protect workers' exercise of their right to organize vis-à-vis employers and to protect workers' and employers' organizations against interference by each other (Articles 1 to 3). Secondly, to ensure the promotion of collective bargaining, the Convention emphasizes the autonomy of the parties and the voluntary nature of negotiation (Article 4). Like Convention No. 87, Convention No. 98 leaves it to national legislation to decide whether it applies to the armed forces and the police (Article 5). On the other hand, unlike Convention No. 87, Convention No. 98 excludes some categories of public servants from its scope, by providing in Article 6 that it "... does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way".

**200.** Since the concept of public servant may vary considerably under the various national legal systems, the application of Article 6 may pose some problems in practice. The Committee has adopted a restrictive approach concerning this exception by basing itself in particular on the English text of Article 6 of the Convention which refers to "public servants engaged in the administration of the State" (in Spanish "los funcionarios públicos empleados en la administración del Estado" and in French "fonctionnaires publics").<sup>1</sup> The Committee could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as public officials engaged in the administration of the State. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants employed in government ministries and other comparable bodies, as well as ancillary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention.<sup>2</sup> In this connection, the Committee

<sup>1</sup> *General Surveys*: 1983, para. 255; 1973, para. 138. *Digest*, paras. 597 to 606.

<sup>2</sup> Legislation in many countries grants these rights to public servants other than those engaged in the administration of the State, for example: *Cameroon, Poland*. However, in other countries, legislation denies them the right to collective bargaining, for example: *Colombia*: s. 416 of the Labour Code; *Malaysia*: s. 52 of the Industrial Relations Act; *Pakistan*: s. 38A-38I of the Industrial Relations Ordinance of 1969; *Panama*: s. 2 of the Labour Code.

emphasizes that the mere fact that public servants are white-collar employees is not *in itself* conclusive of their qualification as employees "engaged in the administration of the State"; if this were the case, Convention No. 98 could be deprived of much of its scope.<sup>3</sup>

201. In order to dissipate a confusion which sometimes appears to arise, the Committee also wishes to emphasize that the right to organize and the right to bargain collectively are two distinct matters. While certain restrictions to collective bargaining are acceptable under Convention No. 98, for instance that minority unions be prevented from bargaining collectively, this should not affect the right to organize, which is a basic feature of workers' rights.

---

<sup>3</sup> CFA, 291st Report, Case No. 1557 (*United States*), para. 278.

## CHAPTER VIII

### Protection against acts of anti-union discrimination

#### Introduction

**202.** The protection afforded to workers and trade union officials against acts of anti-union discrimination constitutes an essential aspect of freedom of association, since such acts may result in practice in denial of the guarantees laid down in Convention No. 87. This means in particular that anti-union dismissal cannot be treated in the same way as other kinds of dismissal, because freedom of association is a fundamental right. In the view of the Committee, this means that certain distinctions must be made, for example as regards conditions as to proof, sanctions and remedies.

**203.** Article 1 of Convention No. 98 provides in general terms that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment" (paragraph (1)). The scope of this protection is made explicit in paragraph (2).<sup>1</sup> Thus, under the terms of this instrument, workers should enjoy adequate protection against any measures of anti-union discrimination both at the time of taking up employment and in the course of employment, with recognition of freedom of association by the other party to the contract of employment being the necessary corollary to recognition of freedom of association by the State. The same guarantees are laid down for public employees by Article 4 of the Labour Relations (Public Service) Convention, 1978 (No. 151).

**204.** Legislation in most countries contains general or detailed provisions protecting workers against acts of anti-union discrimination. However, the degree of protection varies according to the period covered, the persons protected, the measures referred to, as well as the procedures and sanctions for ensuring compliance with protective provisions.

<sup>1</sup> "Such protection shall apply more particularly in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."

### “Trade union security” clauses

205. Special difficulties have arisen in this connection because of the existence, in some countries, of trade union security systems making union membership or payment of union contributions compulsory, or making provision for the recruitment of workers through trade union organizations which are signatories to a collective agreement and requiring payment of contributions by workers who are not members of these trade unions. The Committee has taken into account the view expressed by the Committee on Industrial Relations of the International Labour Conference during the adoption of Convention No. 98, that this instrument should not in any way be interpreted as authorizing or prohibiting trade union security clauses and that such questions are matters for regulation in accordance with national law and practice.<sup>2</sup> The problems related to union security clauses should therefore be resolved at the national level, in accordance with the practice and industrial relations system of each country.<sup>3</sup>

### Persons protected

206. In several countries, workers covered by general labour law are protected against acts of anti-union discrimination;<sup>4</sup> in others, however, legislation provides no general protection in this respect,<sup>5</sup> or denies it directly or indirectly to certain categories of workers.<sup>6</sup>

207. On the other hand, some legislation grants special protection to certain persons, for example, to the members of a trade union which has applied for registration or which is in the process of being established,<sup>7</sup> or to the

<sup>2</sup> ILC, 32nd Session, 1949, *Record of Proceedings*, p. 468.

<sup>3</sup> See also Ch. III, paras. 100-103 (trade union security).

<sup>4</sup> For example: *Cape Verde, Côte d'Ivoire, France, Haiti, Ireland, Italy, Luxembourg*. In the *Dominican Republic* the Labour Code now applies to categories of workers who previously did not benefit from such protection and in particular all workers in agricultural, agro-industrial, stock raising or forestry enterprises.

<sup>5</sup> For example: *Iraq, Sri Lanka* (RCE, 1994 observations on C.98).

<sup>6</sup> For example: *Libyan Arab Jamahiriya*, agricultural workers and seafarers (RCE, 1994 observation on C.98). *Jordan*: agricultural and domestic workers (RCE, 1994 observation on C.98). *Nigeria*: persons exercising managerial, technical or administrative functions, commercial travellers and other commercial agents, homeworkers, persons employed on board ships and planes.

<sup>7</sup> For example: *Australia*, s. 334 of the Industrial Relations Act. *Ecuador*: the Committee noted with interest that Act No. 133 to reform the Labour Code provides that employers may not dismiss any of their workers from the time that they notify the respective labour inspector that they have met in a general assembly in order to establish a workers' association until the first meeting of the executive committee (RCE 1992, p. 267).

founding members of a trade union,<sup>8</sup> or to trade union officers and leaders.<sup>9</sup> Such protection is particularly desirable for trade union officers and representatives, because in order to be able to perform their trade union duties in full independence they must have the guarantee that they will not be prejudiced on account of their trade union office; one of the ways of ensuring the protection of representatives is to provide that they may not be dismissed or otherwise prejudiced either during their term of office or for a specified period following its expiry. While certain exceptions may be made in the event of a serious offence, the importance and nature of duties performed by a trade union representative and the demands made by this kind of office should be taken into account when deciding whether an offence was actually committed and assessing its seriousness.

**208.** Such guarantees for trade union officers are also necessary to ensure the respect of the principle whereby workers' organizations have the right to elect their representatives in full freedom. The Workers' Representatives Convention (No. 135) and Recommendation (No. 143) contain a number of provisions which effectively supplement the principles of Convention No. 98 in this respect, in particular Paragraph 6(2)(d) of Recommendation No. 143 which mentions, among effective remedies in the case of unjustified dismissals, reinstatement with payment of unpaid wages and maintenance of acquired rights.

**209.** The Committee also draws attention to the possible repercussions of a recent tendency, seen in some industrialized countries in particular, to appoint public servants for a fixed term. Should they wish to carry out trade union activities, these workers could find themselves in a more vulnerable position than others by reason of their precarious status.

### Period covered

**210.** The legislation in several countries guarantees protection at all times against acts of anti-union discrimination: at recruitment and during employment, including at the time of work termination.<sup>10</sup> In other countries such protection is afforded at the time of recruitment and during employment,<sup>11</sup> and in others, workers are protected only during the period of employment.<sup>12</sup> Furthermore, trade union officers are sometimes granted special protection for a certain period when they resume their occupational activities in the enterprise at the end of the term of trade union office to which they have been elected. Provisions of this

<sup>8</sup> For example: *Honduras*, s. 517 of the Labour Code.

<sup>9</sup> For example: *Algeria, Egypt, Finland, Hungary, India, Spain, Romania, Trinidad and Tobago*.

<sup>10</sup> For example: *Belgium, Congo, Germany, Madagascar, Mauritania, Panama*.

<sup>11</sup> For example: *Comoros, Finland, Guinea-Bissau, Hungary, Poland, Togo*.

<sup>12</sup> For example: *Ecuador, Lebanon, Libyan Arab Jamahiriya*.

kind ensure that trade union officers do not find themselves in an excessively vulnerable position at the end of their term of office. The Committee considers that the protection provided for in the Convention covers both the time of recruitment and the period of employment, including the time of work termination.

### Acts covered

**211.** A worker who is the victim of anti-union discrimination at the hiring stage may face insurmountable difficulties because it will often be virtually impossible to prove that his union membership or trade union activities were the real reason for the refusal to employ him. A particularly serious problem arises concerning the establishment and use of "blacklists", the secret nature of which often makes a dead letter of the remedies laid down by ordinary legislation on the protection of privacy and confidential information — even assuming that such legislation exists. Some legislation expressly prohibits such blacklists, treating them as unfair labour practices.<sup>13</sup> The Committee is of the view that practices involving the "blacklisting" of trade union officials constitute a serious threat to the free exercise of trade union rights and that governments should take stringent measures to combat such practices.<sup>14</sup>

**212.** Of all forms of anti-union discrimination, dismissal is both the most obvious and the one with the most serious consequences. However, other measures may also cause serious prejudice to the worker concerned: transfer, relocation, demotion, deprivation or restrictions of all kinds (remuneration, social benefits, vocational training). In order to prevent such situations Article 1(2)(b) of the Convention covers, in addition to dismissal, acts which "otherwise" prejudice a worker by reason of union membership or because of participation in union activities. However, as in the case of discrimination in hiring, the main difficulty often concerns the possibility of proving the discriminatory nature of the measure in question.<sup>15</sup>

### Dismissal for economic reasons

**213.** A special problem arises in connection with dismissals for economic reasons, which may have negative repercussions on unionized workers, and in

<sup>13</sup> For example: *Panama*, s. 388(1) of the Labour Code.

<sup>14</sup> *Digest*, para. 564. CFA, Case No. 1618 (*United Kingdom*), 283rd Report, para. 448, and 287th Report, para. 267. See also 286th Report, Case No. 1658 (*Dominican Republic*), para. 735. The Committee recently noted with satisfaction that art. 63 of the 1993 Labour Code of the *Dominican Republic* now expressly prohibits the use of "blacklists" to prevent workers from finding a job (RCE, 1994 observation on C.98).

<sup>15</sup> See below, paras. 217-218.

particular on union officers, if they are used as an indirect means of subjecting them to acts of anti-union discrimination, under the guise of dismissal on economic grounds.<sup>16</sup> Amongst other measures, the Workers' Representatives Recommendation, 1971 (No. 143) includes in Paragraph 6(2)(f) a provision which is likely to strengthen protection in this sphere, namely recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce. Furthermore, the Termination of Employment Convention, 1982 (No. 158), stipulates that when the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, provisions must be made for consultation with workers' representatives (Article 13) and notification of the competent authority (Article 14). Although these two provisions do not provide specific protection for unionized workers and trade union officers in the event of dismissal for economic reasons, they may help protect them against acts of anti-union discrimination.<sup>17</sup>

### Procedures and sanctions

214. The existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. Hence the importance of Article 3 of Convention No. 98, which provides that "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize ..." as defined in Articles 1 and 2 of the Convention. Such protection against acts of anti-union discrimination may thus take various forms adapted to national legislation and practice, provided that they prevent or effectively redress anti-union discrimination,<sup>18</sup> and allow union

<sup>16</sup> For example, *Brazil*: the Committee considered that a directive from the President of the Bank of Brazil to compile a register of employees likely to be dismissed as part of the staff restructuring policy and drawing attention to the employees who "worked the least and demanded the most" is based on selection criteria likely to impair the employees' right to organize which is guaranteed by the Constitution and national legislation (RCE 1991, p. 251).

<sup>17</sup> Convention No. 158, which came into force in 1985, had received 20 ratifications as of 31 December 1993.

<sup>18</sup> For example: *Gabon*, the Committee considers that legislative provisions accompanied by sufficiently effective and dissuasive sanctions need to be adopted in order to give workers adequate protection in this respect (RCE 1991, p. 264). *Morocco*: for a number of years the Committee has stressed the need to adopt specific measures to provide effective protection to workers against acts of anti-union discrimination (RCE 1992, p. 276). *Venezuela*: noting that the new Organic Labour Act of 1990 merely prescribes fines only of a sum between one-quarter and twice the minimum wage, the Committee asked the Government to consider the adoption of sufficiently effective and dissuasive sanctions (RCE 1991, p. 292). By contrast, as regards *Uruguay*, the Committee noted with interest that Act No. 15903 of 1987 allows the administrative labour authority to impose sanctions (fines, warnings or closures of establishments) in the event of the infringement of international labour Conventions, laws, resolutions, arbitration awards or collective agreements which regulate labour relations (RCE 1989, pp. 303-304).

representatives to be reinstated in their posts and continue to hold their trade union office according to their constituents' wishes.

215. In some cases legislation establishes *preventive* machinery by requiring that certain measures taken against trade union representatives or officers must first be authorized by an independent body or public authority (labour inspectorate or industrial tribunals),<sup>19</sup> a trade union body or the works council.<sup>20</sup> In most legislation, however, the emphasis is laid on *compensation* for the prejudice suffered.<sup>21</sup> The bodies authorized to rule on such cases are the ordinary courts<sup>22</sup> or specialized bodies hearing cases dealing with industrial relations.<sup>23</sup> Sometimes the measure taken by the employer against the worker is suspended until the competent authority has ruled on the matter.<sup>24</sup>

216. Whether the machinery is based on prevention or compensation, experience has shown that similar problems arise in practice and concern in particular the slowness of the proceedings, the difficulties relating to the burden of proof and the possibility for the employer to acquit himself by paying compensation which bears no proportion to the seriousness of the prejudice suffered by the worker. The Committee therefore emphasizes the necessity of providing expeditious, inexpensive and impartial means of preventing acts of anti-union discrimination or reducing them as quickly as possible.

### *Evidence*

217. One of the main difficulties results from placing on workers the burden of proving that the act in question occurred as a result of anti-union discrimination, which may constitute an insurmountable obstacle to compensation for the prejudice suffered. Legislation in several countries has therefore strengthened the protection of workers by placing on the employer the onus of proving that the act of alleged anti-union discrimination was connected with questions other than trade union matters,<sup>25</sup> and some texts expressly establish a presumption in the worker's favour.<sup>26</sup> Since it may often be difficult, if not impossible, for a worker to prove that he has been the victim of an act of anti-

<sup>19</sup> For example: *Brazil, Dominican Republic, France, India, Venezuela.*

<sup>20</sup> For example: *Afghanistan, Finland, Lithuania, Romania, Russian Federation.*

<sup>21</sup> For example: *Finland*, the Committee noted with interest that the compensation to be paid by an employer for illegal dismissals of shop stewards or of employees having participated in industrial action was raised to a minimum of three months' and a maximum of 24 months' wages (RCE 1992, p. 268).

<sup>22</sup> For example: *Italy, Switzerland.*

<sup>23</sup> For example: *Belgium, Pakistan, Trinidad and Tobago.*

<sup>24</sup> For example: *Italy, Japan.*

<sup>25</sup> For example: *Finland*, when a worker alleges that he has been dismissed for trade union activities, the employer must prove that he had sufficiently serious reasons for dismissing the worker (RCE 1991, p. 263). *Hungary*, art. 5(2) of the Labour Code of 1992.

<sup>26</sup> For example: *Canada (Quebec)* art. 17 of the Labour Code.



union discrimination, legislation or practice should provide ways to remedy these difficulties, for instance by using the methods mentioned above.

**218.** The Committee draws attention to the relevance of certain provisions of other ILO instruments. Thus, Article 9(2) of the Termination of Employment Convention, 1982 (No. 158), provides as follows: "In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities: (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer; ...". Paragraphs (a) and (b) of Article 5 of the Convention provide further that union membership or participation in union activities, including acting as union representative, do not constitute valid reasons for termination. Moreover, Paragraph 6(2)(e) of the Workers' Representatives Recommendation, 1971 (No. 143), provides that "provision for laying upon 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 justified."

### Compensation

**219.** As regards the form of compensation, the Committee is of the view that its purpose must be to compensate fully, both in financial and in occupational terms, the prejudice suffered by a worker as a result of an act of anti-union discrimination, since this is a violation of a fundamental right. The best solution is generally the reinstatement of the worker in his post with payment of unpaid wages and maintenance of acquired rights. For this to be done, the authorities responsible for examining such cases, the ordinary courts or specialized bodies, should have all the necessary powers to rule rapidly, completely and in full independence and in particular to decide the most appropriate form of redress in the light of the circumstances, including reinstatement if it is requested by the worker.<sup>27</sup>

**220.** The Committee considers that legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in all cases of unjustified dismissal, when the real motive is his trade union membership or activity, is inadequate under the

<sup>27</sup> See also the many decisions of the Committee on Freedom of Association in this respect: 281st Report, Case No. 1510 (*Paraguay*), paras. 94 and 95; 283rd Report, Case No. 1589 (*Morocco*), para. 314; 284th Report, Case No. 1549 (*Dominican Republic*), para. 753, Cases Nos. 1588 and 1595 (*Guatemala*), para. 734; 285th Report, Case No. 1594 (*Côte d'Ivoire*), para. 50; 286th Report, Case No. 1629 (*Korea*), para. 569, and Case No. 1655 (*Nicaragua*), para. 275.

terms of Article 1 of the Convention, the most appropriate measure being reinstatement.<sup>28</sup>

221. Where reinstatement is impossible, compensation for anti-union dismissal should be higher than that prescribed for other kinds of dismissal. The amount should be reviewed periodically, in particular in countries with galloping inflation where the compensation soon becomes merely symbolic. In order to avoid this problem, the compensation established by the law in the event of anti-union discrimination should not be expressed in absolute figures; rather, the relevant provisions should be drafted in such a way as to retain their dissuasive effect.<sup>29</sup>

### Penalties

222. In some countries the law provides for penal sanctions such as fines or imprisonment or both, to be imposed on employers found guilty of anti-union discrimination.<sup>30</sup> Such sanctions, which have the dual purpose of punishing those responsible for violating a fundamental right and of acting as a deterrent, are likely to strengthen protection against anti-union discrimination.

\* \* \*

223. *Article 1 of Convention No. 98 guarantees workers adequate protection against acts of anti-union discrimination, in taking up employment and in the course of employment including at the time of termination, and covers all measures of anti-union discrimination (dismissals, transfers, demotions and any other prejudicial acts). The protection provided in the Convention is particularly important in the case of trade union representatives and officers, as these must have the guarantee that they will not be prejudiced on account of the union office which they hold.*

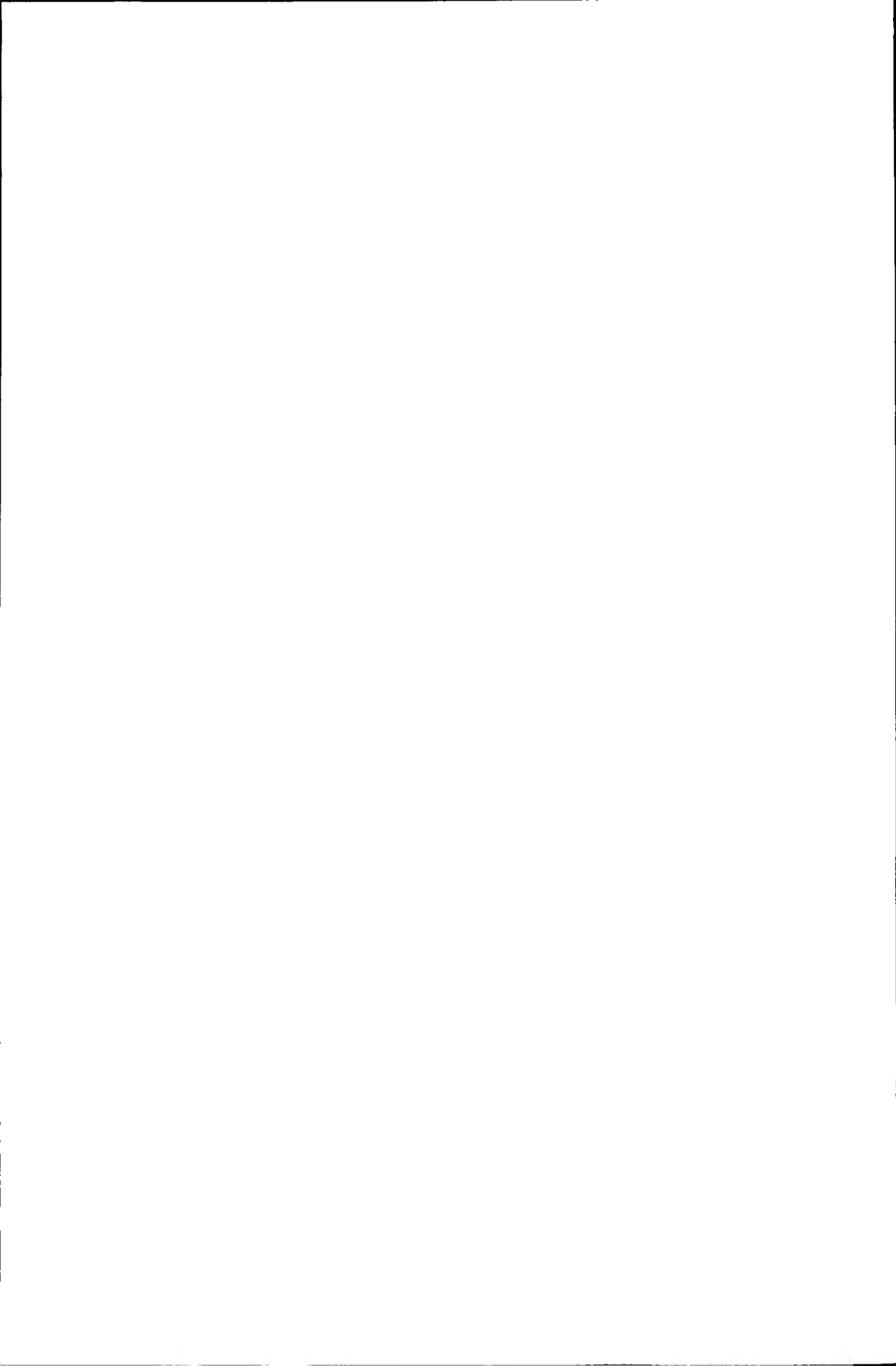
224. *The effectiveness of legal provisions, however, depends to a large extent on the way in which they are applied in practice and on the forms of compensation and sanctions provided. Legal standards are inadequate if they are*

<sup>28</sup> In France, according to a well-established jurisprudence of the "Cour de cassation", the court must order the reinstatement of workers dismissed for anti-trade union reasons, if they so request.

<sup>29</sup> For example: *Costa Rica*: fine up to 23 times the monthly minimum wage. *Dominican Republic*: fine 7-12 times monthly minimum wage. See also RCE 1993, para. 111.

<sup>30</sup> For example: *Colombia*: the Committee noted with satisfaction that s. 39 of Act No. 50 of 1990 increased the amount of sanctions applicable in the event of acts that interfere with the right of association (from five to 100 times the highest minimum monthly wage), without prejudice of penal sanctions under s. 292 of the Penal Code (imprisonment of one to five years) (RCE 1991, pp. 253-254). *Romania*: s. 48 of Act No. 54 of 1991 respecting trade unions: fine or sentence of imprisonment of six months to two years. *Swaziland*: ss. 35, 10 and 76 of the Industrial Relations Act of 1980: fine or 30 days' imprisonment.

*not coupled with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application. Machinery for preventive protection (for example, prior authorization of the labour inspectorate in the event of dismissal) is particularly useful in this respect. The onus placed on the employer to prove that alleged anti-union discrimination measures are connected with questions other than trade union matters, or presumptions established in the worker's favour are additional means of ensuring effective protection of the right to organize guaranteed by the Convention. Legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in any case of unjustified dismissal, when the real motive is the worker's union membership or activity, is inadequate under the terms of Article 1 of the Convention. Legislation should also provide effective means for implementing means of compensation, with the reinstatement of the dismissed worker, including retroactive compensation, being the most appropriate remedy in such cases of anti-union discrimination.*



## CHAPTER IX

### Protection against acts of interference

225. Article 2(1) of the Convention provides that “Workers’ and employers’ organizations 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”. Paragraph 2 of the same Article goes on to give the example of particular acts of interference “which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers or employers’ organizations”. The Convention thus completes the trade union rights recognized for individual workers by guaranteeing the free exercise of the right of association of workers’ organizations;<sup>1</sup> it also affords employers’ organizations the same protection as workers’ organizations.<sup>2</sup>

226. Article 3 of the Convention provides that “Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles”. This Article covers both the protection of workers against acts of anti-trade union discrimination and the protection of organizations against acts of interference. The principles set forth in Chapter VIII therefore also apply to the protection established in Article 2 of the Convention.

227. Legislative provisions which protect workers’ and employers’ organizations directly or indirectly against acts of interference by each other are often of a very general nature, either providing for the independence of trade unions vis-à-vis any other organization<sup>3</sup> or incorporating the terms used in Article 2 of Convention No. 98.<sup>4</sup>

<sup>1</sup> See ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 114. Similar provisions are established for public servants in Article 5 of Convention No. 151.

<sup>2</sup> ILC, 32nd Session, 1949, *Record of Proceedings*, p. 469: the principle of equal treatment was introduced during the Conference at the request of the Employers’ group.

<sup>3</sup> For example: *Poland, Romania*.

<sup>4</sup> For example: *Algeria, Antigua and Barbuda, Cameroon*.

228. Others are more specific and stipulate the measures employers are prohibited from carrying out: interference in the establishment or administration of trade unions;<sup>5</sup> activities aimed at restricting the right of workers to join together in trade unions or at exercising control over their organizations;<sup>6</sup> becoming a member of a workers' organization;<sup>7</sup> or using means of pressure in favour of or against any trade union organization.<sup>8</sup> In other countries, legislation stipulates that the competent authorities may cancel the registration of a trade union if it is set up, organized, supported or directed with the objective of opposing or impairing the workers' interests which it is supposed to defend and promote.<sup>9</sup>

229. It is fairly common for legislation or practice to allow employers to contribute to the financing of trade unions or to afford them certain advantages, such as premises or facilities, which could involve the risk of interference or favouritism. In the view of the Committee, while there is no objection *in principle* to an employer expressing its recognition of a trade union as a social partner in this manner, this should not have the effect of allowing the employer control over a trade union, or favouring one trade union over another.

230. Explicit protective provisions in the law are less frequent with regard to acts of interference than to acts of anti-union discrimination. Some governments consider that the trade unions in their countries are sufficiently developed and strong to be protected against any acts of interference or that, because of trade union plurality, no problem arises in this connection. Governments which have ratified the Convention are, however, under the obligation to take specific action, in particular through legislative means, to ensure respect for the guarantees laid down in Article 2. When such protection is non-existent<sup>10</sup> or inadequate<sup>11</sup> or when acts of interference are committed

<sup>5</sup> For example: *Uganda*, s. 56 of the Trade Unions Decree of 1976.

<sup>6</sup> For example: *Poland*, s. 4 of the Act of 23 May 1991 concerning employers' organizations.

<sup>7</sup> For example: *Greece*, s. 14(2) of Act No. 1264 of 1982.

<sup>8</sup> For example: *Mali*, s. 257 of the Labour Code of 1992.

<sup>9</sup> See, however, Ch. VI (Dissolution and suspension by administrative authority) as regards the necessary limits on the power of the competent authority in this respect, and judicial appeals against such a measure.

<sup>10</sup> For example: *Jordan, Sri Lanka, Swaziland, Yemen*.

<sup>11</sup> For example: *Bangladesh, Chad, Fiji, Gabon, Indonesia, Iraq, Liberia, Mauritius, Zaire*. By contrast, the Committee noted with interest that in *Guinea-Bissau* the Act of 1991 respecting the right to freedom of association protects trade unions against any act of interference in respect of their establishment, functioning, administration or activities; employers' organizations, under the penalty of a fine, are prohibited from favouring workers' organizations by granting them financial advantages, with the object of interfering in their functioning or subordinating them to objectives which are different from their own aims (RCE 1992, p. 269).

in practice,<sup>12</sup> the Committee therefore requests governments to adopt specific measures, coupled with effective and sufficiently dissuasive sanctions.

231. The specific forms of such acts of interference likely to impair the guarantees established by the Convention are very varied in nature, and it would be futile to attempt to draw up an exhaustive list. The many complaints of this kind examined by the Committee on Freedom of Association are, however, a good illustration of such interference in practice: the existence of two executive committees within a trade union, one of which was allegedly manipulated by the employer;<sup>13</sup> the presence of a parallel trade union which had allegedly been set up under pressure from the management;<sup>14</sup> dismissal of trade union officers prejudicing the existing trade union and promoting the establishment of another trade union;<sup>15</sup> and a member of the government who was also a leader of a trade union representing several categories of workers employed by the State.<sup>16</sup>

232. The Committee is of the view that legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application in practice of Article 2 of the Convention. Moreover, to ensure that these measures receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down these substantive provisions, as well as appeals and sanctions in order to guarantee their application.

233. The Committee would like to draw attention to the special problem of the *solidarist associations* which have been set up in some Central American countries. Solidarist associations are associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare (savings, credit, investment, housing and educational programmes, etc.) and of unity and cooperation between workers and employers; their deliberative bodies must be made up of workers, though an employers' representative may be included who may speak but not vote.<sup>17</sup> In recent years, the Committee on Freedom of Association has on a number of occasions received allegations concerning interference by solidarist associations in the industrial relations sphere of the trade unions, unequal treatment accorded to trade unions and solidarist associations in legislation and practice, as well as control of the latter

<sup>12</sup> For example, *Morocco* (RCE 1992, p. 276).

<sup>13</sup> 268th Report, Case No. 1435 (*Paraguay*), para. 391.

<sup>14</sup> 278th Report, Case No. 1571 (*Romania*), para. 548.

<sup>15</sup> 262nd Report, Case No. 1445 (*Peru*), para. 90.

<sup>16</sup> 246th Report, Case No. 1330 (*Guyana*), para. 379.

<sup>17</sup> CFA, Case No. 1483, 275th Report (*Costa Rica*), para. 316. For a complete description of the solidarist philosophy, movement and associations, see CFA, Case No. 1483, 278th Report (*Costa Rica*), paras. 174-191, and in particular the report of the direct contacts mission, which essentially concerned this subject, annexed to the decision of the Committee.

by employers; all these measures often result in employer interference in trade union activities and favouritism towards solidarist associations.<sup>18</sup> The fact that these associations are partly financed by employers, although their members include workers as well as senior staff and personnel having the employer's confidence, and that they are often set up at the employers' initiative, means that they cannot be independent organizations, and thus often raises problems as regards the application of Article 2 of the Convention. The governments concerned should adopt legislative or other measures to guarantee that solidarist associations do not exercise trade union activities, in particular collective bargaining by means of "direct settlements" between employers and groups of non-unionized workers. Furthermore, these governments should take measures to eliminate any inequality of treatment between solidarist associations and trade unions,<sup>19</sup> and to ensure that employers abstain from bargaining with this type of association.

\* \* \*

*234. Article 2 of Convention No. 98 provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other. It is important, therefore, that whenever it appears that there is insufficient protection against interference or that such acts do occur in practice, governments take specific action, in particular through legislative means, to ensure that the guarantees provided for in the Convention are respected and to give these provisions the necessary publicity to ensure that they are effective in practice.*

<sup>18</sup> CFA, Case No. 1483 (*Costa Rica*), 272nd Report, para. 444 and 278th Report, paras. 174-191; 259th Report, Case No. 1459 (*Guatemala*), para. 305; 281st Report, Case No. 1568 (*Honduras*), para. 380, and 283rd Report, para. 268.

<sup>19</sup> The Committee has very recently noted substantial progress in this respect, among others, as regards *Costa Rica* (RCE, 1994 observation concerning the application of Conventions Nos. 87 and 98).



## CHAPTER X

### Promotion of collective bargaining

#### Introduction

235. Article 4 of Convention No. 98 provides that "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements".<sup>1</sup> This provision contains two essential elements: action by the public authorities to *promote* collective bargaining, and the *voluntary* nature of negotiation, which implies autonomy of the parties.

236. More generally, the Committee would like to express concern at two trends occurring in certain industrialized countries in particular, which have a negative impact on collective rights and hence on collective bargaining. First, in several countries there has been a recent tendency for the legislature to give precedence to individual rights over collective rights in employment matters. Second, although often dictated by objective considerations, structural change may be used to undermine the trade unions if the necessary measures are not taken by the authorities. In particular, this problem could arise in the public or semi-public sectors, where privatization often results in the fragmentation of bargaining units, and therefore of collective bargaining itself.

#### Promotion of collective bargaining

237. In the vast majority of countries the right of workers to negotiate their conditions of employment through collective bargaining is recognized in law or in practice. However, national legislation promotes collective bargaining in varying degrees; the main difficulties arising in practice concern the

<sup>1</sup> Since Convention No. 98, the ILO has adopted other instruments which deal directly or indirectly with collective bargaining, in particular: the Labour Relations (Public Service) Convention, 1978 (No. 151), and Recommendation, 1978 (No. 159); the Promotion of Collective Bargaining Convention, 1981 (No. 154), and Recommendation, 1981 (No. 163); the Collective Agreements Recommendation, 1951 (No. 91); and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92).

recognition of trade unions for the purposes of collective bargaining and the establishment of machinery and procedures to facilitate bargaining. Furthermore, special problems arise concerning bargaining in the public service.

### Recognition of trade unions for the purposes of collective bargaining

**238.** In some countries legislation stipulates that only registered trade unions may be recognized as bargaining agents. If in addition the conditions required for registration are excessive, the development of collective bargaining may be seriously impaired.<sup>2</sup>

**239.** The recognition of one or more trade unions as partners in collective bargaining immediately raises the question of their representativity. During its discussion on Convention No. 98, the International Labour Conference referred to this question and to some extent accepted the distinction sometimes made between the various trade unions according to their degree of representativity. Furthermore, article 3, paragraph 5, of the Constitution of the ILO establishes the concept of most representative organizations. Thus, the mere fact that legislation draws a distinction between the most representative trade union organizations and other organizations is not, in itself, reason for criticism. However, such a distinction should not result in the most representative organizations being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by governments or the appointment of delegates to international bodies.

**240.** Recognition of a trade union for the purposes of collective bargaining is sometimes optional,<sup>3</sup> in which case the public authority should encourage employers to recognize trade unions which can prove their representativity. Recognition may also be voluntary when provided for in a bipartite or tripartite agreement<sup>4</sup> or where it constitutes a well-established practice.<sup>5</sup> In many countries, however, the legislation establishes a system of "compulsory"

<sup>2</sup> For example: *Bangladesh*, ss. 7(2), 22 and 22A of the Industrial Relations Ordinance; only registered trade unions may become bargaining agents and in order to be registered a trade union must represent at least 30 per cent of the workers of an establishment; these provisions might impair the development of voluntary collective bargaining in small establishments because they appear to inhibit the establishment of sectoral or industry unions (RCE 1991, p. 250). *Indonesia*: s. 2 of Ministerial Regulation No. 05/MEN/1987: to be registered, labour organizations must cover at least 20 provinces, 100 districts and 1,000 "labour units within companies"; since the relevant regulations also establish that only registered trade unions have the right to conclude agreements, the Committee considers that these requirements impose a major obstacle on the right of workers' organizations to bargain collectively (RCE 1991, p. 267; RCE 1993, p. 253). See also Ch. III, paras. 71-75.

<sup>3</sup> For example: *Bahamas*: s. 40 of the Industrial Relations Act.

<sup>4</sup> For example: *Madagascar*: s. 54 of the Labour Code.

<sup>5</sup> For example: *Iceland*.

recognition where the employer, under certain conditions, must recognize the existing trade union(s). The Committee considers that it is important in such cases for the determination of the trade union in question to be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse. Furthermore, when national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, certain safeguards should be attached, such as: (a) the certification to be made by an independent body; (b) the representative organization to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; (d) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed.

**241.** Problems may arise when the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a majority union which fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers that under such a system, if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members.<sup>6</sup>

**242.** In other countries legislation stipulates that workers may be represented by more than one trade union, even in enterprise-level bargaining, or grants exclusive bargaining rights for a specific category of workers to the union which represents a certain proportion or a relative majority of workers. Representativity may be determined by the number of members or by secret ballot.<sup>7</sup> The Committee considers that, in order to encourage the harmonious development of collective bargaining and avoid disputes, it would be desirable to draw up and apply objective procedures which make it possible to determine the most representative trade unions for the purpose of collective bargaining when it is not clear which trade unions the workers would like to represent them.

<sup>6</sup> For example: *Ecuador*: s. 230 of the Labour Code: to be entitled to present a draft collective agreement, a trade union must cover 50 per cent of all the workers in the public sector to which the Labour Code applies or enterprises in the private sector of a social or public nature (RCE 1992, p. 267). *Jamaica*: s. 5(5) of Act No. 14 of 1975 and regulations issued under it (RCE, 1992, p. 270). *Lebanon*: s. 3 of Decree 17386/64: in order to be able to bargain, workers' representatives must obtain the support of at least 60 per cent of the Lebanese employees concerned. *Trinidad and Tobago*: s. 34 of the Industrial Relations Act: only a majority trade union covering more than 50 per cent of the workers may be recognized as a bargaining agent (RCE 1992, p. 286). *Turkey*: s. 12 of Act No. 2822 stipulates that trade unions may conclude a collective agreement only if they represent 10 per cent of the workers of a branch and more than half of the workers employed in an establishment (RCE, 1993, p. 257).

<sup>7</sup> For example: *Algeria, Botswana, Costa Rica, Greece, Pakistan, Philippines, Thailand, Venezuela*.

243. The provisions governing the recognition of trade unions are also closely linked to the obligation to bargain, which in some legislation takes the form of the obligation on the parties to "negotiate in good faith", compliance with this requirement and its consequences usually being evaluated by specialized bodies. In several countries legislation makes the employer liable to sanctions if he refuses to recognize the representative trade union,<sup>8</sup> an attitude which is sometimes considered as an unfair labour practice. The Committee recalls in this connection the importance which it attaches to the principle that employers and trade unions should negotiate in good faith and endeavour to reach an agreement, the more so in the public sector or essential services where trade unions are not allowed strike action.<sup>9</sup>

### Machinery and procedures to facilitate collective bargaining

244. National legislation on the subject varies considerably; furthermore, several countries have decided to establish different systems for the public and private sectors in order to take better account of the specific characteristics of the latter.

245. Several countries provide for the setting up of joint bodies (within the enterprise or the branch of activity, or at the central or interoccupational level) within which collective agreements must be, or usually are, concluded.<sup>10</sup> When the conditions imposed by law for participation in these bodies are such that they prevent a trade union which would be the most representative of its branch of activity from being associated in the work of the said bodies, the principles of Convention are impaired. The Committee considers in this respect that the criteria established by the law should enable such organizations to bargain collectively. Other legislation provides for the setting up of specialized, permanent<sup>11</sup> or ad hoc<sup>12</sup> institutions whose purpose is to help promote collective bargaining by studying general problems, drawing up codes of good conduct and giving advice to the parties to help them solve particular problems

<sup>8</sup> Several countries have adopted legislation prohibiting some of these practices which are detrimental to collective bargaining, for example: *Antigua and Barbuda, Canada, Equatorial Guinea, Japan, Malaysia, Spain, Suriname, United Kingdom.*

<sup>9</sup> See Ch. V.

<sup>10</sup> For example: *Belgium, Cameroon, Russian Federation, Zambia.*

<sup>11</sup> For example: *Bangladesh: Tripartite Consultative Committee. Colombia: National Labour Council. Ireland: Labour Relations Commission. Italy: National Council for Economy and Employment. Spain: National Consultative Commission on Collective Agreements.*

<sup>12</sup> For example: *Comoros: s. 80 of the Labour Code of 1984.* However, the Committee believes that when an ad hoc body is set up only rarely and each time on the initiative of the Government, a system of this kind is not likely to promote collective bargaining within the meaning of Art. 4 of Convention No. 98 (RCE 1987, p. 262).

they may encounter. The specific task — though not necessarily the only task — of these institutions is to promote collective bargaining.

**246.** Various rules and practices are designed to facilitate collective bargaining, such as mediation and conciliation procedures — whether compulsory or voluntary — the prohibition of certain practices likely to hinder the development of collective bargaining, such as unfair labour practices;<sup>13</sup> provisions to facilitate access by the parties to certain information,<sup>14</sup> and in particular the communication to workers' organizations of information on the economic situation of the bargaining unit, the enterprise or companies in the same sector. In the view of the Committee, in the latter case, when the objectivity of such economic information is reasonably guaranteed, provisions of this kind are particularly useful, since they enable the bargaining agents to make a realistic evaluation of the situation and prevent simple errors of appreciation or poor communication from bringing about an impasse in the bargaining.

**247.** Whatever the kind of machinery used, its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they *may* have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement. Experience shows that the mere intervention of a neutral, independent third party, in which the parties have confidence, is often enough to break a stalemate which the parties would be unable to resolve themselves. The provisions of the Collective Bargaining Convention, 1981 (No. 154) are particularly useful in this respect; the accompanying Recommendation (No. 163) also lists a series of specific means which can be used to promote collective bargaining. In addition, the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), mentions some of the essential characteristics of conciliation and arbitration machinery: the joint nature of such machinery; voluntary recourse to procedures, which should be free of charge and expeditious. However, paragraph 7 of this instrument clearly recalls that none of its provisions "may be interpreted as limiting, in any way whatsoever, the right to strike".

### **Voluntary collective bargaining; autonomy of the parties**

**248.** The principle of voluntary negotiation of collective agreements, and thus the autonomy of the bargaining partners, is the second essential element of Article 4 of Convention No. 98. The existing machinery and procedures should be designed to facilitate bargaining between the two sides of industry, leaving them free to reach their own settlement. However, several difficulties arise in

<sup>13</sup> For example: *Argentina*: s. 53 of Act No. 23551 of 1988 on trade union associations.

<sup>14</sup> For example: *Romania*: s. 29(2) of Act No. 54 of 1991 respecting trade unions.

this respect, and an increasing number of countries restrict this freedom to various extents. The problems most frequently encountered concern unilateral decision as to the level of bargaining; the exclusion of certain matters from the scope of bargaining; making collective agreements subject to prior approval by the administrative or budgetary authorities; observance of criteria pre-established by the law, in particular as regards wages; and the unilateral imposition of working conditions.

### Level of collective bargaining

249. As was pointed out in Chapter VII, the right to bargain collectively should also be granted to federations and confederations; any restriction or prohibition in this respect hinders the development of industrial relations and, in particular, prevents organizations with insufficient means from receiving assistance from higher-level organizations, which are in principle better equipped in terms of staff, funds and experience to succeed in such bargaining. On the other hand, legislation which makes it compulsory for collective bargaining to take place at a higher level (sector, branch of activity, etc.) also raises problems of compatibility with the Convention. The choice should normally be made by the partners themselves, since they are in the best position to decide the most appropriate bargaining level, including, if they so wish, by adopting a mixed system of framework agreements supplemented by local or enterprise-level agreements.

### Restrictions on the scope of bargaining

250. In some countries the nature and scope of negotiable issues are regulated by legislation, which either prescribes the discussion of certain matters to ensure that the parties themselves reach their own settlement on the major problems affecting them<sup>15</sup> or prohibits the discussion of certain matters for reasons of general interest or public policy.<sup>16</sup> Other countries set aside certain topics for the legislative authority to regulate, for example by excluding from bargaining certain matters which are normally included in conditions of employment.<sup>17</sup> The Committee considers that measures taken unilaterally by

<sup>15</sup> For example: *Angola*: s. 78 of the General Labour Act of 1981; *Chile*: s. 121 of Act No. 19069 of 1991 respecting trade union organizations and collective bargaining; *Mexico*: s. 391 of the Federal Labour Act.

<sup>16</sup> For example, provisions prohibiting trade union security clauses or discriminatory clauses considered as unacceptable. See also: *Guinea*: s. 298 of the Labour Code; *Niger*: s. 67 of the Labour Code; *Trinidad and Tobago*: s. 43(5) of the Industrial Relations, Act No. 23 of 1972.

<sup>17</sup> For example: *Malaysia*: s. 13(3) of the Industrial Relations Act of 1967, as amended in 1980: exclusion of promotions, transfers, recruitment, dismissal without notice, and assignment of jobs; however, the Government indicated that, in practice, these questions are subject to

the authorities to restrict the scope of negotiable issues are often incompatible with the Convention; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method to resolve these difficulties.

### Other interventions by the authorities

**251.** In some countries legislation stipulates that collective agreements between the parties must be submitted for approval to the administrative authority, the labour authorities or the labour tribunal before coming into force. Provisions of this kind are compatible with Convention No. 98, provided they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. On the other hand, if legislation allows the authorities full discretion to deny approval or stipulates that approval must be based on criteria such as compatibility with general or economic policy of the government or official directives on wages and conditions of employment, it in fact makes the entry into force of the collective or works agreement<sup>18</sup> subject to prior approval, which is a violation of the principle of autonomy of the parties.

**252.** The discretionary power of the authorities to approve collective agreements is by its very spirit contrary to the principle of voluntary bargaining, but this does not mean that the public authorities may not establish machinery to encourage the parties to collective bargaining to take voluntary account of government social and economic policy considerations and the protection of the public interest. However, such machinery is not likely to be supported by the

negotiations. *Singapore*: s. 17 of the Industrial Relations Act: exclusion of promotions, transfers, appointment, dismissal without notice and assignment of duties.

<sup>18</sup> For example: *Chad*: approval of establishment collective agreements by the Minister of Labour, who may remove clauses which are not consonant with the social and economic situation in the establishment concerned. *Libyan Arab Jamahiriya*: collective agreements may be denied if they are not in the economic interest of the country (RCE, 1994 observation on C.98). *Papua New Guinea*: discretionary power of the authorities to declare wage agreements void when they are contrary to government policy or the national interest (RCE, 1994 observation on C.98). *Singapore*: power of the Industrial Arbitration Court to refuse to register a collective agreement which is not in the public interest and to refuse to register collective agreements of newly established enterprises which contain provisions which are more favourable than those of the Employment Act (RCE, 1994 observation on C.98). *Syrian Arab Republic*: the Minister may refuse to approve a collective agreement and to cancel any clause in it which is likely to prejudice the economic interest of the country (RCE, 1994 observation on C.98). *Yemen*: compulsory registration of collective agreements, which may be cancelled if they are contrary to the security and economic interest of the country (RCE, 1994 observation on C.98). By contrast, as regards *Algeria*, the Committee noted with interest the repeal of provisions which subjected the entry into force of a collective agreement to prior approval by the Minister (RCE 1991, p. 248). As regards *Portugal*, the Committee noted with satisfaction the repeal of the provisions requiring prior authorization by the Minister for the entry into force of collective agreements concluded in a public enterprise (RCE, 1994 observation on C.98).

parties concerned if the objectives which the authorities would like to see recognized as being in the public interest are not first submitted for consultation to the parties at the appropriate level within an advisory body, for example in line with the provisions of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113).

**253.** The public authorities could also envisage a procedure to draw the attention of the parties in certain cases to considerations of general interest that might call for further examination by them of proposed agreements, provided, however, that preference is always given to persuasion rather than coercion. Thus, rather than making the validity of collective agreements subject to administrative or judicial approval, it might be prescribed that any collective agreement submitted to the Ministry of Labour would normally enter into force within a reasonable period after being filed; if the public authority considers that the terms of the imposed agreement are clearly contrary to the economic policy objectives recognized as being in the public interest, the case could be submitted for advice and recommendation to an appropriate joint body, provided, however, that the final decision would rest with the parties.

### Compulsory arbitration

**254.** Another frequent problem concerns legislation which makes provision for recourse to compulsory arbitration in the event of failure of collective bargaining. Stressing that the different circumstances of the private, public and semi-public sectors may call for some qualifications,<sup>19</sup> the Committee considers it necessary to elaborate somewhat its views on the subject.

**255.** A distinction is usually made between two types of disputes: on the one hand rights disputes (sometimes also called grievances) which concern the application or the interpretation of a collective agreement<sup>20</sup> and, on the other hand, interest disputes which relate to the establishment of a collective agreement or to the modification, through collective bargaining, of wages and other conditions of work contained in an existing collective agreement. Only the latter are dealt with here.

**256.** Some confusion arises at times as to the exact meaning of the term "compulsory arbitration". If that term refers to the compulsory *effects* of an arbitration procedure resorted to voluntarily by both parties, this does not raise difficulties in the Committee's opinion since parties should normally be deemed to accept to be bound by the decision of the arbitrator or arbitration board they have freely chosen. The real issue arises in practice in the case of compulsory arbitration which authorities may impose in an interest dispute at the request of *one* party, or at their *own initiative*.

<sup>19</sup> See below, paras. 261-263.

<sup>20</sup> See Ch. V, para. 167.



257. As regards arbitration imposed by the authorities at the request of one party, the Committee considers that it is generally contrary to the principle of the voluntary negotiation of collective agreements established in Convention No. 98, and thus the autonomy of bargaining partners. An exception might however be made in the case of provisions which, for instance, allow workers' organizations to initiate such a procedure on their own, for the conclusion of a *first* collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing a sound bargaining relationship, these types of provisions may be said to be in the spirit of machinery and procedures which facilitate collective bargaining.<sup>21</sup>

258. As regards arbitration imposed by the authorities at their own initiative, the Committee considers that it is difficult to reconcile such interventions with the principle of the voluntary nature of negotiation established in Article 4 of Convention No. 98. However, it has to recognize that there comes a time in bargaining where, after protracted and fruitless negotiations, the authorities might be justified to step in when it is obvious that the deadlock in bargaining will not be broken without some initiative on their part. In view of the wide variety of legal frameworks (completed through national case-law and practice) established in the various member States to address what constitutes one of the most difficult problems of industrial relations, the Committee would only give some general guidance in this respect and suggest a few principles that could be implemented through "measures adapted to national conditions", as contemplated in Article 4 of the Convention.

259. In the Committee's opinion, it would be highly advisable that the parties be given *every* opportunity to bargain collectively, during a *sufficient period*, with the help of *independent* facilitators (mediator, conciliator, etc.) and machinery and procedures designed with the foremost objective of facilitating collective bargaining. Based on the premise that a negotiated agreement, however unsatisfactory, is to be preferred to an imposed solution, the parties should always retain the option of returning voluntarily to the bargaining table, which implies that whatever disputes settlement mechanism is adopted should incorporate the possibility of suspending the compulsory arbitration process, if the parties want to resume negotiations.

### Economic stabilization measures

260. In recent years, an increasing number of governments, believing that the national economic situation required stabilization measures, have taken steps to restrict or prevent the free fixing of wages by means of collective bargaining, in particular for public servants. The Committee must, however, recall that if, under an economic stabilization or structural adjustment policy, that is for imperative reasons of national economic interest, wage rates cannot be fixed

<sup>21</sup> See above, paras. 244-247.

freely by means of collective bargaining, these restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected.<sup>22</sup>

### Workers in the public and semi-public sectors<sup>23</sup>

**261.** Bargaining in the public service has special characteristics which are found in various degrees in most countries. The first reason generally given is that the State has a twofold responsibility in this sphere, since it is both employer and the legislative authority; the sometimes difficult distinction between these two roles and the virtual contradictions between them may give rise to problems. Furthermore, the State's room to manoeuvre depends very much on receipts from taxation and it is ultimately responsible to the voters for the way in which it utilizes and manages these resources in its role as employer. Lastly, according to certain legal and even sociocultural traditions, the status of public servants is incompatible with the concept of collective bargaining or even the right to organize.<sup>24</sup> Although the legislation in many countries guarantees the right of collective bargaining for public servants,<sup>25</sup> in others it is expressly denied them.<sup>26</sup>

**262.** The situation of the public service is specifically dealt with in the Labour Relations (Public Service) Convention, 1978 (No. 151), and Recommendation, 1978 (No. 159), in terms similar to those of Convention No. 98. Article 7 of Convention No. 151 does, however, allow some flexibility in the choice of methods of determining conditions of employment in the public service, since it envisages procedures enabling conditions of employment to be

<sup>22</sup> For example, persons with a low income, or workers subject to systemic discrimination.

<sup>23</sup> Although this notion differs widely from country to country, the semi-public sector might be defined as encompassing those workers who, without enjoying *all* the benefits associated with the *status* of *public servant*, are employed by bodies which render services to the public and have some autonomy in their management, but which are financed, at least in part, by public funds. In the *United Kingdom* for instance, Quasi Autonomous Non-governmental Organizations (QUANGOs) would belong to this category.

<sup>24</sup> See Ch. III (Recognition of the right to organize in the public service).

<sup>25</sup> For example: *Argentina, Belgium, Guatemala, Italy, Portugal, Spain*.

<sup>26</sup> For example: *Colombia*: prohibition for trade unions of certain public employees ("empleados públicos") to conclude collective labour agreements (RCE, 1994 observation on C.98). *Iraq*: workers considered under national legislation as public officials, as well as persons employed by the State or autonomous public enterprises and institutions (teachers, for example) do not have the right to bargain collectively (RCE 1991, p. 268). *Liberia*: employees of state enterprises and other authorities excluded from the scope of the Labour Code to bargain collectively (RCE 1993, p. 254). *Pakistan*: employees of banking and financial institutions in the nationalized sector (RCE, 1994 observation on C.98).

negotiated between the public authorities and the organizations concerned, or "such other methods as will allow representatives of public employees to participate in the determination of these matters". As already noted, while Article 6 of Convention No. 98 allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages.<sup>27</sup>

**263.** While the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by the Convention, the special characteristics of the public service described above require some flexibility in its application. Thus, in the view of the Committee, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package" within which the parties may negotiate monetary or standard-setting clauses (for example: reduction of working hours or other arrangements, varying wage increases according to levels of remuneration, fixing a timetable for readjustment provisions) or those which give the financial authorities the right to participate in collective bargaining alongside the direct employer are compatible with the Convention, provided they leave a *significant* role to collective bargaining. It is essential, however, that workers and their organizations be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts.<sup>28</sup>

**264.** This is not the case of legislative provisions which, on the grounds of the economic situation of a country, impose unilaterally, for example, a specific percentage increase and rule out any possibility of bargaining, in particular by prohibiting the exercise of means of pressure subject to the application of severe sanctions. The Committee is aware that collective bargaining in the public sector "... calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent upon state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of budgetary laws — a situation which can give rise to difficulties."<sup>29</sup> The Committee therefore takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and

<sup>27</sup> See paras. 200-201.

<sup>28</sup> The Committee recalls the observations which it made on the subject of the application by *Spain* of Convention No. 154: "... in so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable — after wide discussion and consultation between the concerned employers and employees' organizations in a system having the confidence of the parties — for wage ceilings to be fixed in state budgetary laws. Neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect for such ceilings" (RCE 1989, p. 469; RCE 1991, p. 465).

<sup>29</sup> CFA, 287th Report, Case No. 1617 (*Ecuador*), para. 63.

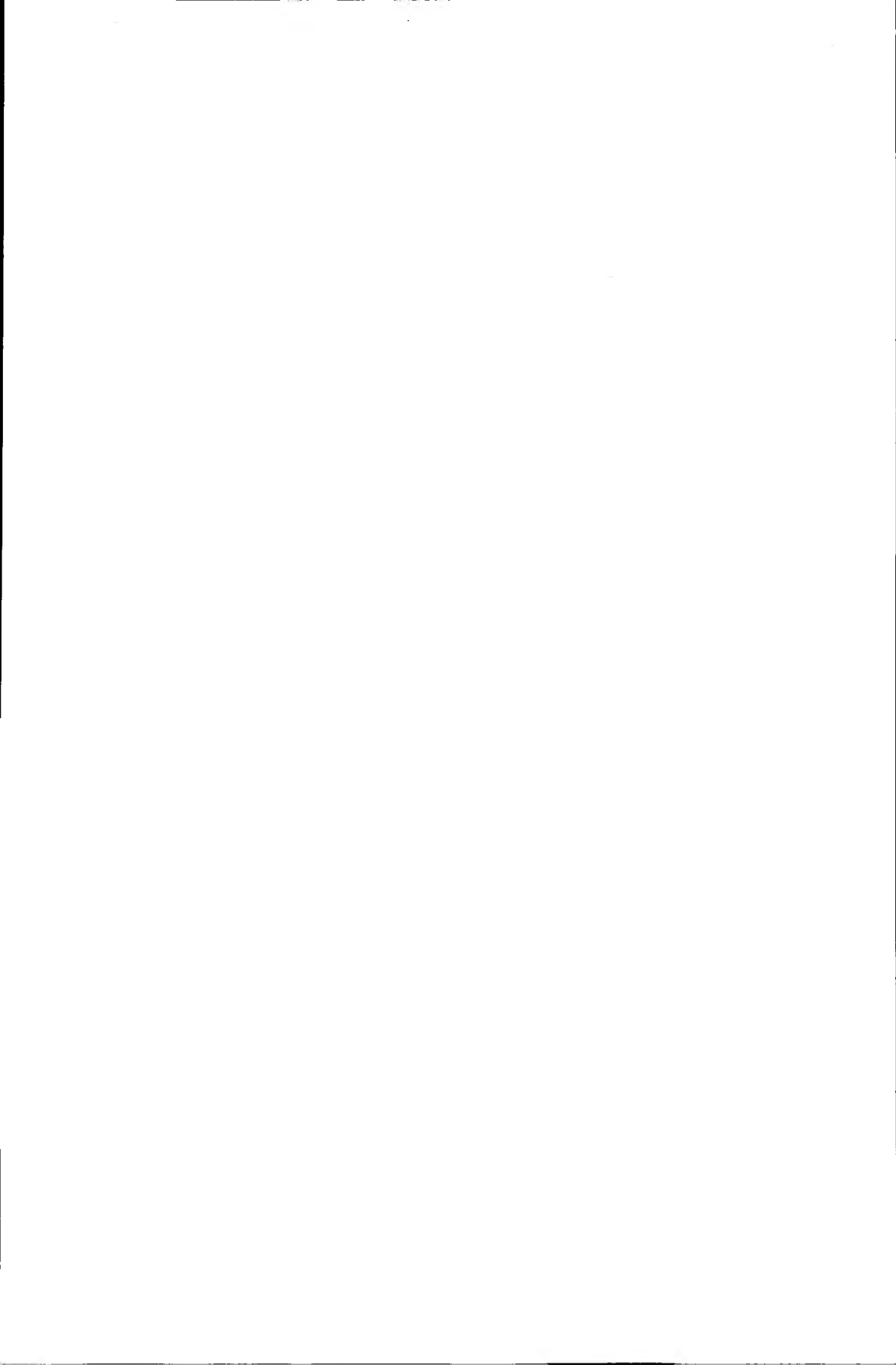
widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants; where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the parties to bargaining, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other.

\* \* \*

265. *The two essential elements of Article 4 of Convention No. 98 refer to action by the public authorities to promote bargaining between the social partners and the voluntary nature of such bargaining. In the view of the Committee, it would be contrary to the principles of Convention No. 98 to exclude from collective bargaining certain issues such as those relating to conditions of employment, to make a collective agreement subject to prior approval before it can enter into force, or to allow it to be cancelled on the grounds that it runs counter to the government's economic policy. The parties in interest disputes should be given every opportunity to bargain collectively, during a sufficient period, with the help of independent mediation or conciliation. The government should endeavour to convince the parties to have regard voluntarily in their negotiations to major economic and social policy considerations and the general interest invoked by the government. If, for compelling reasons of national economic interest, a government considers that the wage rates cannot be fixed freely by means of collective negotiations, such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. In the case of negotiations in the public or semi-public sector, intervention by the authorities is compatible with the Convention in so far as it leaves a significant role to collective bargaining. Measures which unilaterally fix conditions of employment should be of an exceptional nature, be limited in time and include safeguards for the workers who are the most affected.*

PART III

**Highlights of the last decade**  
**Ratification of Conventions: Difficulties and prospects**



## CHAPTER XI

### Highlights of the last decade

#### I. Implementation of Convention No. 87

##### *Major cases of progress*

266. Since 1983, the Committee has been able to express satisfaction in about 50 cases regarding amendments introduced by various member States in legislation or practice in order to give effect to its comments and observations, supported or taken up in some cases by the conclusions and recommendations of the Committee on Freedom of Association, the Conference Committee on the Application of Standards, or both. Such changes have been noted in the following countries: *Algeria, Argentina, Bangladesh, Belarus, Bulgaria, Burkina Faso, Cameroon, Canada, Colombia, Congo, Costa Rica, Cyprus, Dominican Republic, Egypt, Ethiopia, Finland, France (French Polynesia), Greece, Guatemala, Guinea, Hungary, Iceland, Lesotho, Madagascar, Mali, Mauritania, Mongolia, Netherlands, Nicaragua, Nigeria, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Rwanda, Ukraine, Uruguay, Venezuela.*<sup>1</sup> These improvements, which are substantial both in number and in importance, bear witness to the vitality and relevance of the ILO's system of supervision of the application of standards; they also reflect the essential contribution of tripartism in this process.

267. The key landmark in the last decade in this area has undoubtedly been the transition in many countries from a situation of trade union monopoly, most often enshrined in legislation, to a system allowing trade union pluralism.<sup>2</sup> While this change took place in the Central and Eastern European countries in particular,<sup>3</sup> substantial developments have also been seen in this area in several African countries<sup>4</sup> and in Latin America.<sup>5</sup> This movement towards trade union

<sup>1</sup> Several cases of progress have been noted for some of these countries.

<sup>2</sup> See also Ch. III, para. 93.

<sup>3</sup> For example: *Belarus* (RCE 1991, pp. 153-154 and RCE 1993, p. 174); *Bulgaria* (RCE 1991, p. 152); *Hungary* (RCE 1991, p. 181); *Poland* (RCE 1990, p. 204); *Romania* (RCE 1991, pp. 206-207); *Russian Federation* (RCE 1991, pp. 215-216); *Ukraine* (RCE 1991, p. 215).

<sup>4</sup> For example: *Algeria* (RCE 1991, p. 143); *Cape Verde* (RCE, 1994 observation on C.98); *Congo* (RCE 1993, p. 184); *Ethiopia* (RCE 1993, p. 195); *Rwanda* (RCE 1993, pp. 225-226).

<sup>5</sup> For example: *Paraguay*.

pluralism, which reflects political democratization, was in most cases accompanied by the dissolution of links between the political party in power and workers' organizations and was manifested in an increased autonomy of the latter with respect to the authorities. Nevertheless, the Committee intends to carefully monitor the measures which will be taken in these countries to guarantee a genuine opportunity for pluralism of workers' and employers' organizations, since laying down this principle in the statutes is not always enough to ensure that it is applied in practice.

**268.** Significant improvements have also been achieved in other areas: extension of the right of association to certain categories of workers;<sup>6</sup> establishment of organizations without prior authorization;<sup>7</sup> right of organizations to elect their representatives in full freedom,<sup>8</sup> to organize their administration<sup>9</sup> and their meetings freely;<sup>10</sup> increased autonomy of trade union organizations with respect to the public authorities;<sup>11</sup> and the possibility for organizations to become involved in certain political matters.<sup>12</sup> As regards the right to strike, several improvements have been noted in the general recognition of this right,<sup>13</sup> its extension to certain categories of workers,<sup>14</sup> the legality of certain types of strike or industrial action<sup>15</sup> or more flexible procedures leading

<sup>6</sup> Public servants: *Guatemala* (RCE 1987, pp. 185-186); *Mali* (RCE 1991, pp. 186-187); *Paraguay* (RCE, 1994 observation on Convention No. 87); *Peru* (RCE 1985, p. 177). University teachers: *Canada (British Columbia)* (RCE 1993, p. 178). Domestic employees: *Ethiopia* (RCE 1993, p. 195). Workers in free trade zones: *Dominican Republic* (RCE 1993, p. 191). Agricultural workers: *Costa Rica* (RCE, 1994 observation on C.87).

<sup>7</sup> *Colombia* (RCE 1991, p. 159); *Peru* (RCE 1991, p. 201); *Venezuela* (RCE 1991, p. 223).

<sup>8</sup> Exercise of trade union office by foreigners: *Cameroon* (RCE 1993, p. 176); *Guinea* (RCE 1989, p. 174). Exercise of trade union office by persons not employed in the occupation: *Cyprus* (RCE 1992, p. 211); *Greece* (RCE 1985, p. 150); *Nicaragua* (RCE 1984, p. 150). Re-election of trade union officers: *Nicaragua* (RCE 1984, p. 150); *Venezuela* (RCE 1991, p. 223).

<sup>9</sup> *Colombia* (RCE 1992, p. 207); *Nicaragua* (RCE 1984, p. 150); *Philippines* (RCE 1990, pp. 202-203); *Venezuela* (RCE 1991, p. 223).

<sup>10</sup> *Colombia* (RCE 1992, p. 207); *Dominican Republic* (RCE 1985, p. 137); *Nicaragua* (RCE 1984, p. 150).

<sup>11</sup> *Argentina* (RCE 1989, pp. 125-126); *Guinea* (RCE 1988, pp. 160-161); *Madagascar* (RCE 1991, pp. 185-186); *Mongolia* (RCE 1993, pp. 213-214).

<sup>12</sup> *Colombia* (RCE 1992, p. 207).

<sup>13</sup> *Algeria* (RCE 1991, p. 143); *Argentina* (RCE 1984, p. 134); *Belarus* (RCE 1993, p. 174); *Bulgaria* (RCE 1991, p. 152); *Hungary* (RCE 1991, p. 181); *Nicaragua* (RCE 1985, p. 170); *Poland* (RCE 1992, pp. 235-236); *Russian Federation* (RCE 1991, pp. 215-216); *Uruguay* (RCE 1987, p. 241).

<sup>14</sup> Employees of the State and decentralized bodies: *Guatemala* (RCE 1987, p. 185). Public servants: *Mali* (RCE 1991, pp. 186-187). Career members of the public service: *Paraguay* (RCE, 1994 observation on Convention No. 87). *Peru* (RCE 1985, p. 176).

<sup>15</sup> *Dominican Republic* (RCE 1993, p. 190).



up to the launching of a strike.<sup>16</sup> Lastly, mention should also be made of significant improvements as regards the right of organizations to establish federations and confederations<sup>17</sup> and to affiliate to international organizations.<sup>18</sup>

### *Major difficulties*

**269.** In spite of these numerous and substantial improvements, the Committee cannot but note, both on the basis of reports submitted by Governments under articles 19 and 22 of the Constitution, and other information at its disposal (reports of the Committee on Freedom of Association, reports of direct contacts missions, debates at the Conference Committee on the Application of Standards) that serious, and sometimes persistent, difficulties still arise as regards compliance with fundamental rights guaranteed by Convention No 87.

**270.** One of the main difficulties concerns the maintaining of trade union monopoly<sup>19</sup> but problems also persist in countries where a system of single trade union is imposed in the form of a single central trade union organization,<sup>20</sup> or when legislation prohibits the coexistence of more than one trade union in the same branch of activity, establishment, region, etc.<sup>21</sup>

**271.** In other countries, certain categories of workers who should enjoy the right of association under the terms of the Convention are still denied this right: public servants,<sup>22</sup> agricultural workers,<sup>23</sup> seafarers,<sup>24</sup> firefighting personnel,<sup>25</sup> prison staff,<sup>26</sup> workers in export processing zones,<sup>27</sup> and employees in the customs service, in mints, in the central bank and in external telecommunications.<sup>28</sup>

<sup>16</sup> *Greece* (RCE 1990, p. 190).

<sup>17</sup> *Nicaragua* (RCE 1984, p. 150); *Peru* (RCE 1991, p. 201).

<sup>18</sup> *Nigeria* (RCE 1992, p. 225).

<sup>19</sup> For example: *China, Indonesia, Myanmar*.

<sup>20</sup> For example: *Cuba* (RCE 1993, p. 189); *Egypt* (RCE 1993, p. 194); *Gabon* (RCE 1993, p. 195); *Kuwait* (RCE 1993, p. 205); *Nigeria* (RCE 1993, p. 216).

<sup>21</sup> For example: *Brazil; Gabon* (RCE 1993, p. 195); *Kuwait* (RCE 1993, p. 205); *Mexico* (RCE 1993, p. 210); *Nigeria* (RCE 1993, p. 216); *Sri Lanka*.

<sup>22</sup> For example: *Bolivia* (RCE 1993, p. 175); *Chad* (RCE 1993, p. 181); *Ecuador* (RCE 1993, p. 193); *Liberia* (RCE 1993, p. 207).

<sup>23</sup> For example: *Honduras* (RCE 1993, p. 203).

<sup>24</sup> For example: *Greece* (RCE 1993, p. 199); *Madagascar* (RCE 1993, p. 207).

<sup>25</sup> For example: *Japan* (RCE 1993, p. 204).

<sup>26</sup> For example: *Swaziland* (RCE 1993, p. 229).

<sup>27</sup> For example: *Pakistan* (RCE 1993, p. 217).

<sup>28</sup> For example: *Nigeria* (RCE 1993, p. 216).

272. The legislation in some countries continues to impose excessive restrictions on eligibility or re-election to trade union office, in particular as regards the obligation to belong to the occupation,<sup>29</sup> and nationality.<sup>30</sup>

273. In several countries, trade unions come up against various obstacles when they wish to obtain registration, in particular when the legislation requires prior authorization of the executive or administrative authorities.<sup>31</sup>

274. The legislation in several countries allows the authorities to intervene or even interfere in the functioning of organizations, either by granting them discretionary power to inspect trade union documents,<sup>32</sup> sweeping powers to control trade union activities or to restrict the administration of trade union property. Some difficulties also persist as regards the suspension and dissolution of organizations by administrative authority.<sup>33</sup>

275. Lastly, substantial and persistent problems arise as regards the recognition or the exercise of the right to strike: general prohibition or prohibition in certain non-essential sectors, mandatory arbitration, excessive conditions making strikes impossible, absence of adequate guarantees as regards discriminatory measures against strikers, or sanctions for holding a strike.<sup>34</sup>

276. Recalling its comments in Part I on these matters, the Committee considers that several minor difficulties could be smoothed out or even resolved by means of provisions allowing a certain amount of flexibility. As regards more fundamental problems arising out of the philosophy itself of a given legal system, the Committee would remind those governments which have expressed their intention of bringing their legislation into conformity with the Convention that they may avail themselves of the technical assistance of the ILO, initially to identify those problems — real or assumed — deterring them from ratifying this Convention, and then to explore possible solutions.

<sup>29</sup> For example: *Central African Republic* (RCE 1993, p. 180); *Colombia* (RCE 1993, p. 182).

<sup>30</sup> For example: *Ecuador* (RCE 1993, p. 193); *Kuwait* (RCE 1993, p. 205); *Rwanda* (RCE 1993, p. 226).

<sup>31</sup> For example: *Bolivia* (RCE 1993, p. 175); *Cameroon* (RCE 1993, p. 176); *Ghana* (RCE 1993, p. 198); *Haiti* (RCE 1993, p. 202); *Swaziland* (RCE 1993, p. 229).

<sup>32</sup> For example: *Bangladesh* (RCE 1991, p. 148).

<sup>33</sup> For example: *Ecuador* (RCE 1993, p. 193); *Senegal* (RCE 1993, p. 226); *Yemen* (RCE 1993, p. 239).

<sup>34</sup> See Ch. V, paras. 176-178.

## II. Implementation of Convention No. 98

### *Major cases of progress*

277. Since 1983, the Committee has expressed satisfaction in about 20 cases regarding measures taken by various member States, following the Committee's observations, to bring their legislation and practice into conformity with the provisions of Convention No. 98. Such changes have been noted in the following countries: *Bangladesh, Belgium, Brazil, Cape Verde, Colombia, Costa Rica, Dominican Republic, Ethiopia, Finland, Guatemala, Guinea-Bissau, Malta, Panama, Paraguay, Poland, Portugal, Uganda, Uruguay.*<sup>35</sup> As in the case of Convention No. 87, the Committee on Freedom of Association and the Conference Committee on the Application of Standards have contributed substantially to the search for a positive outcome to serious and sometimes persistent problems. The Committee views this as additional proof of the virtue of tripartite dialogue.

278. These cases of progress mainly concern measures strengthening the protection against anti-union discrimination<sup>36</sup> and introducing various improvements in collective bargaining: restoring the autonomy of the parties<sup>37</sup> or granting the right to bargain collectively to state employees.<sup>38</sup>

### *Major difficulties*

279. The Committee must, however, point out that there remain a fair number of problems, some of them persistent, as regards the application of Convention No. 98.

280. As regards measures of protection against anti-union discrimination, the legislation of several countries fails to ensure satisfactorily the guarantees laid down in the Convention, in particular because provisions are non-existent or not sufficiently dissuasive,<sup>39</sup> or because they exclude certain categories of

<sup>35</sup> Several cases of progress have been noted for some of these countries.

<sup>36</sup> For example: *Brazil* (RCE 1989, pp. 264-265); *Cape Verde* (RCE 1992, p. 266); *Colombia* (RCE 1991, pp. 253-254); *Costa Rica* (RCE, 1994 observation on C.98); *Dominican Republic* (RCE, 1994 observation on C.98); *Finland* (RCE 1989, pp. 275-276); *Guinea-Bissau* (RCE 1988, p. 197).

<sup>37</sup> For example: *Belgium* (RCE 1989, p. 263); *Guinea-Bissau* (RCE 1988, p. 197); *Panama* (RCE, 1994 observation on C.98); *Poland* (RCE 1992, pp. 282-283); *Uruguay* (RCE 1987, p. 301).

<sup>38</sup> For example: *Guatemala* (RCE 1989, pp. 277-278); *Paraguay* (RCE, 1994 observation on C.98); *Uganda* (RCE, 1994 observation on C.98).

<sup>39</sup> For example: *Cameroon* (RCE 1993, p. 251); *Gabon* (RCE 1991, p. 264); *Indonesia* (RCE 1993, p. 252); *Iraq* (RCE 1991, p. 267); *Morocco* (RCE 1992, p. 275); *Peru* (RCE, 1994 observation); *Sri Lanka* (RCE 1991, p. 283); *Venezuela* (RCE 1990, p. 246); *Yemen* (RCE 1993, p. 257).

workers.<sup>40</sup> Much of this legislation also lacks provisions, or makes inadequate provision, for protection against acts of interference.

**281.** Intervention by the authorities in the collective bargaining process also remains a matter of concern for the Committee, whether in the form of denial of the right to bargain collectively to certain categories of workers (domestic personnel, agricultural workers, public servants), approval of collective agreements by the authorities, restrictions on subjects for bargaining, or repeated intervention by government in the bargaining process.<sup>41</sup>

**282.** Referring to its comments on these subjects in Part II, the Committee emphasizes that systems allowing a certain flexibility are helpful in settling minor difficulties; as regards the other problems, it would remind in particular those governments which have expressed an intention to bring their legislation into conformity with the Convention that they may avail themselves of ILO technical assistance, initially to identify those problems constituting a real or assumed obstacle to ratification, and then to explore possible solutions.

\* \* \*

**283.** *While the Committee has been able to note significant positive changes since the last General Survey as regards the right of association and collective bargaining, it cannot but note that in some countries, serious — and sometimes persistent — difficulties still remain with respect to the fundamental rights guaranteed by Conventions Nos. 87 and 98. However, to conclude that these problems are widespread or that the situation is worsening would be to overlook the fact that, for a good many countries, the Committee has not made observations on these instruments during this period in its annual reports under article 22 of the Constitution. However, any supervisory system, by its very nature, tends to draw attention to difficulties, which are likely to be highlighted as long as a satisfactory solution has not been found. The Committee emphasizes that, far from trying to impose a uniform model of labour relations legislation, it endeavours, in cooperation with the other supervisory bodies, to open up a dialogue with member States with the aim of bringing national legislation into conformity with the Conventions. It recalls that member States may avail themselves of ILO technical assistance if they experience problems of implementation of the Conventions.*

<sup>40</sup> For example: *Libyan Arab Jamahiriya* (RCE 1992, p. 272) (seafarers). *Jordan* (RCE 1992, p. 271) (domestic personnel, agricultural workers). *Pakistan* (RCE 1992, p. 277) (workers employed in export processing zones).

<sup>41</sup> See Ch. X.

## CHAPTER XII

### Ratification of Conventions: Difficulties and prospects

#### I. Convention No. 87

##### *New ratifications*

284. The Committee notes with satisfaction that Convention No. 87 has been ratified by the following member States since 1983: *Burundi, Latvia, Rwanda, San Marino, Sao Tome and Principe, Turkey*. In addition, the following member States have officially informed the ILO that they remain bound by the Convention which was applicable to their territory: *Azerbaijan, Belize, Bosnia and Herzegovina, Croatia, Czech Republic, Kyrgyzstan, Russian Federation, Slovakia, Slovenia, Tajikistan*. This brings the total number of ratifications of Convention No. 87 to 109 as at 31 January 1994.<sup>1</sup>

##### *Ratifications in progress or considered*

285. The Committee notes with interest that the Government of *Estonia* states that there are no obstacles to the application of the Convention and announced in May 1993 that it would be submitted to Parliament for ratification. The Committee welcomes this initiative and trusts that the formal process of ratification will be rapidly completed.

286. The Government of *Cape Verde* states that it has begun the process with a view to ratifying the Convention since the necessary conditions already exist in legislation. The Government of *Iraq* states that it intends to adopt the necessary measures to bring its legislation into conformity with the provisions of the Convention, which will be examined with a view to ratification. The Committee notes the intention stated by these Governments and invites them to pursue and speed up the process leading up to ratification, if necessary with the technical assistance of the ILO.

##### *Other cases*

287. The Committee notes however that several other countries state that they are not in a position to ratify the Convention, citing various difficulties,<sup>2</sup>

<sup>1</sup> See Annex IV for the complete list of ratifications.

<sup>2</sup> *Botswana, Brazil, Cambodia, El Salvador, Kenya, Republic of Korea, Malaysia, Morocco, Sri Lanka, United States* (see below for the reasons cited).

or do not take up any position on the question of ratification.<sup>3</sup> In the latter group, some countries state that the provisions of the Convention will be considered at a later date, in some cases with the assistance of a body set up for that purpose, while others point out more generally that their legislation is, on the whole, compatible with the Convention or adequately governs the rights of workers' and employers' organizations.

#### *Difficulties delaying or preventing ratification*

**288.** Pointing out that freedom of association is enshrined in the country's Constitution, the Government of *Botswana* adds that it is also protected by legislation (the Trade Unions and Employers' Organizations (Amendment) Act, 1992) and by the guiding principles contained in certain documents outlining its policy in these matters (Government Paper No. 1 of September 1990). The latter provides, for example, that aspects of industrial relations legislation which may inhibit collective bargaining and the development of trade unions should be reviewed and abolished where necessary. Improvements have thus been introduced as regards the drafting of organizations' rules, the election of trade union officers, and affiliation to federations and international organizations; a provision entitling the Labour Minister's representative to attend every meeting of trade union federations has been repealed. However, the Government states that the Convention cannot be ratified at this time in view of the incompatibility of certain provisions of national legislation with Convention No. 87, in particular the power of the minister to dissolve trade unions, the need for unions to obtain previous authorization to affiliate with international organizations, and to observe certain guidelines in order to qualify for registration.

**289.** The Government of *Brazil* considers that two provisions of national legislation could give rise to difficulties with respect to the Convention, that is those prescribing a single trade union system at branch level and imposing the financing of trade union organizations by means of a compulsory contribution fixed by their general assembly (articles 8 II and IV of the Constitution).

**290.** According to the Government of *Cambodia*, the main difficulty preventing or delaying the ratification of the Convention is the absence of a law on trade unions, although the Labour Code and some Ministerial Regulations ("Prakas") give effect to some provisions of the Convention. It adds that the elaboration of a trade unions act is currently under study. The Committee recalls that the ILO may provide its technical assistance to the Government in this matter.

**291.** The Government of *El Salvador* raises the question of the armed forces and the police, which are governed by special legislation. As it had

<sup>3</sup> *Angola, Chile, China, Grenada, Indonesia, Islamic Republic of Iran, Lebanon, Malawi, Mauritius, New Zealand, Saudi Arabia, Singapore, Sudan, United Republic of Tanzania, Thailand, Uganda, Zambia, Zimbabwe.*

already emphasized in the General Surveys of 1973 and 1983,<sup>4</sup> the Committee recalls that according to Article 9 of the Convention, the extent to which the guarantees provided for in the Convention apply to the armed forces and the police is to be determined by national law and regulations: consequently, States ratifying the Convention are free to decide on the extent to which such workers shall enjoy the right to organize, if at all. The Government also mentions that several provisions prohibit the right to strike in the public sector and in essential services, where the settlement of labour disputes may be imposed by means of compulsory arbitration; the Committee refers to its comments on this subject in this Survey.<sup>5</sup> Noting in addition that *El Salvador* has recently received technical assistance from the ILO, including a direct contacts mission, on these matters in particular,<sup>6</sup> the Committee trusts that this enabled the Government to identify the discrepancies with respect to the Convention and to envisage possible solutions.

**292.** Referring to the relative stability of its legislation concerning freedom of association, the Government of the *United States* essentially reiterates the information supplied for the previous General Survey. Constitutional provisions guarantee workers and employers the right to establish organizations, without prior authorization or government interference. The main machinery for the settlement of disputes lies in the obligation on both parties to bargain in good faith, with the option of seeking the assistance of the Federal Mediation and Conciliation Service. In general, workers have the right to strike, and employers the right to continue operations during the strike, if necessary by hiring workers not employed in the enterprise; if the strike is what is known as an "economic strike" the employer is not required to re-employ the workers at the end of the dispute, but only to place them on a preferential re-hire list. Federal employees generally do not have the right to strike, as this is considered to be against the public interest; federal employees who do strike are subject to termination of employment and possible criminal penalties. At the request of the President of the United States, a federal district court may impose an injunction if it finds that a strike or lock-out threatens an entire industry or a substantial part thereof, and will imperil the national health and safety. The Government states that although no recent in-depth tripartite analysis has been performed regarding this Convention, federal legislation appears to be in general conformity with the Convention: no additional measure is envisaged, including as regards ratification of the Convention. The draft report of the Government was reviewed by the Tripartite Advisory Panel on International Labour Standards (TAPILS).

**293.** The Government of *Kenya* states that the present level of social and economic development prevents ratification of the Convention. The Committee recalls in this respect that the Conventions on freedom of association are part of fundamental human rights and cannot be called into question for purely

<sup>4</sup> *General Survey*, 1983, para. 368.

<sup>5</sup> Chapter V, in particular paras. 156-162.

<sup>6</sup> CFA, 291st Report, Cases Nos. 1273, 1441, 1494 and 1524, paras. 228-246.

economic reasons. The Government also considers that a problem arises concerning the armed forces and the police; the Committee refers to its comments above in this respect. Among the other difficulties preventing it from ratifying the Convention at this stage, the Government of Kenya mentions that trade unions are subject to registration. According to the Government, other provisions of national legislation should be amended in order bring it into conformity with the requirements of the Convention, in particular: the discretionary powers of the Registrar to refuse registration or deregister a trade union and the provisions requiring that union officials, except the secretary-general, should be connected with a particular industry. The Government adds that it continues to encourage the development of a few, but strong, viable and independent workers' and employers' organizations.

**294.** The Government of *Lebanon* mentions the fact that trade unions must obtain previous authorization to be set up as a difficulty which may impede ratification of the Convention. It adds, however, that this authorization is not granted by the State in a discretionary manner but is dictated by the need to provide rules and authority for the organization of trade union activity, and points out that these provisions have not prevented a substantial number of workers' and employers' organizations from being set up. The Committee emphasizes in this respect that regulations concerning the establishment of organizations are not in themselves incompatible with the Convention, unless they impair the guarantees laid down in the Convention.<sup>7</sup> Noting that in order to bring the Labour Code up to date, the authorities have recently set up a committee of specialists which should, among other things, study the possibility of taking the provisions of the Convention into account, including in the examination of a new planned trade union structure, the Committee reminds the Government that it may avail itself of ILO technical assistance for this purpose.

**295.** The Government of *Malaysia* mentions that the main difficulty preventing ratification of the Convention is that it would enable the formation of general unions which might be led by persons having nothing to do with the activities or interests represented by the unions and pursuing political or even subversive aims. According to the Government, the present system contributes to the orderly growth of trade unions, which in turn contributes to industrial harmony in the country.

**296.** According to the Government of *Morocco*, the Dahir of 1957 on organizations of employers and workers drew its inspiration to a large extent from the Convention and its provisions are mostly in conformity with it. However, the Convention has not been ratified due to provisions in legislation requiring that candidates to the executive committee and administration of trade unions be of Moroccan nationality and be in full possession of their civil and political rights. Noting that the Government had already raised this point in its

<sup>7</sup> See paras. 68-78.



report for 1983,<sup>8</sup> the Committee refers to its remarks in this survey,<sup>9</sup> pointing out that a formula which would allow a certain amount of flexibility would enable to overcome this minor difficulty.

**297.** The Government of *New Zealand* states that there have been substantial changes recently in the industrial relations legislation with the entry into force of the Employment Contracts Act 1991. As regards difficulties which may prevent or delay the ratification of the Convention, the Government mentions that the new Act leaves employers and employees free to choose whether they will associate collectively and if so, with whom. The Committee refers in this respect to its comments in the present Survey concerning trade union security.<sup>10</sup> The Government adds that, although strikes and lockouts are allowed in support of negotiations for an expired collective agreement, a problem could arise relating to certain restrictions on the right to strike, such as strikes a trade union would like to hold in order to secure an employment contract covering more than one enterprise; according to it, this provision is intended to protect the right of employers and employees to choose the coverage of employment contracts. The New Zealand Council of Trade Unions considers that these prohibitions constitute a fundamental restriction on the right to organize and to bargain collectively.

**298.** According to the Government of *Sri Lanka*, the main difficulties preventing ratification of the Convention at this stage are restrictions imposed on public servants and their organizations (prohibition on setting up more than one public servants' trade union for the same government department or service, prohibition on such unions from being affiliated or federated with any other trade union, whether in the private or the public sector, prohibition on pursuing political objectives or having political funds, prohibition on public servants from joining a trade union admitting private sector employees, and prohibition on any person who is not a public officer being admitted to membership of any public servants' trade union), and the power conferred on the Minister of Labour to refer any dispute for compulsory arbitration and broad powers of the Registrar to cancel registration of a union. The Government adds that the law requires that not less than half of the total number of officers must be employed in the industry or occupation concerned; on this last point, the Committee recalls that provisions of this kind do not pose problems with regard to the Convention when they only affect some of the trade unions' officers, which seems to be the case here. As for the other difficulties cited by the Government, the Committee refers to the comments it has made in this survey concerning the right to organize of public servants, the structure and composition of public servants' organizations (Ch. III), political activities of trade unions (Ch. IV), the prohibition on strike action (Ch. V) and the dissolution and suspension of organizations by administrative authority (Ch. VI).

<sup>8</sup> *General Survey*, 1983, para. 371.

<sup>9</sup> Chapter IV, paras. 118 and 120.

<sup>10</sup> Chapter III, paras. 100-103.

*Other information*

**299.** The Government of *Angola* states that inspiration was taken from the Convention in drafting the new Act respecting trade unions and that legislation has been extensively amended in order to give effect to the Convention.

**300.** The Government of *China* considers that the provisions of national legislation on this subject, in particular those of the Constitution, are in conformity with the fundamental principles and spirit of the Convention. Trade unions are mass organizations of the working class which should abide by the Constitution and the law, devote themselves to the unity of the country and the nation and should not infringe on the interests of the State and society, or the legitimate rights and freedom of other citizens.

**301.** The Government of *Malawi* states that national legislation guarantees the principles laid down in the Convention. However, the Government intends to review the labour legislation in order to accommodate developments and changes in the field of labour administration. This review will take account of the provisions of the Convention. The Committee reminds the Government that it may avail itself of ILO technical assistance for this purpose.

**302.** According to the Government of *Uganda*, the provisions of the Convention have been incorporated in the Trade Unions Decree, No. 20 of 1976. It states that there are now 15 legally registered trade unions; at the national level, affiliation is limited to one recognized central body, in view of past experience and problems occurring with a multiplicity of trade unions. According to the Government, the Trade Unions Decree also imposes certain restrictions on trade union activities, in that it requires a minimum number of members for registration of a trade union and confers broad powers on the Registrar to refuse registration or dissolve a trade union.

**303.** The Government of *Sudan* states that its labour relations legislation, which guarantees equal rights for workers' and employers' organizations, is in full conformity with, and even exceeds the requirements of the Convention, in particular as regards freedom to establish and administer trade unions. Moreover, legislation adequately protects their freedom of activity.

**304.** The Government of *Singapore* states that the national industrial relations system emphasizes consultation and the amicable resolution of industrial disputes through conciliation and arbitration; it has made it possible to improve the standard of living of the workers, who enjoy the right to organize, trade union membership having increased over the last seven years. The Government considers that there is no need to modify existing legislation and practice, but nevertheless notes the provisions of the Convention.

**305.** The Government of the *United Republic of Tanzania* states that with the recent adoption of a multi-party system, the ties between the workers' union and the single ruling party were severed and that various trade unions were set up. Referring to several provisions in the labour legislation which appear to be in conformity with the Convention, the Government points out however that, under the current legislation, the Organization of Tanzania Trade Unions

(OTTU) remains the sole body representative of all employees in the country; the relevant provisions have been scrutinized by the Government, employers and workers, who proposed that they be amended if the Convention is to be ratified. The Government foresees adoption of measures in the future which will give effect to those provisions of the Convention not yet covered by the national legislation and practice. The Committee notes these positive developments and recalls that the Government may avail itself of the technical assistance of the Office in this respect.

306. The Government of *Zambia* states that consultations are currently taking place within the Tripartite Labour Consultative Council with a view to adopting measures to ensure complete exercise of the right to organize. Noting that a new Industrial and Labour Relations Act (Act No. 27 of 1993) has recently entered into force, the Committee trusts that these tripartite consultations will soon bear fruit and enable the Government to ratify the Convention, if necessary with ILO technical assistance.

307. The Government of *Zimbabwe* states that the principle of a single trade union for each branch of industry has been removed from legislation, but that public servants are not yet covered by the Labour Relations Act.

308. Several governments state that they have entrusted an ad hoc body with the task of examining industrial relations legislation, or that the latter is currently being reviewed. Thus, in 1992 the Government of the *Republic of Korea* set up a Committee on Labour Laws (including representatives from academia, labour, management, legal circles and the media) to conduct a systematic examination of labour relations legislation in order to bring it into line with the changing industrial society; all of the social partners have been consulted and the Government planned to submit proposed amendments to the National Assembly in 1993. The Government is determined to achieve the ILO's objectives, but states that a considerable amount of time and effort will be required to harmonize national legislation and practice with the Convention. The Government of *Mauritius* likewise states that it is currently studying the report submitted to it by a Special Law Review Committee to examine industrial relations legislation, and that consideration will be given to the provisions of the Convention during this examination. The Government of *Thailand* reports that, since national legislation is not entirely in conformity with the Convention, it is currently undertaking a review which will take its provisions into consideration.

## II. Convention No. 98

### *New ratifications*

309. The Committee notes with satisfaction that Convention No. 98 has been ratified by the following member States since 1983: *Latvia, Netherlands, Rwanda, San Marino, Sao Tome and Principe, Togo*. Moreover, the following member States have officially informed the ILO that they remain bound by the Convention which was applicable to their territory: *Azerbaijan, Belize, Bosnia*

and Herzegovina, Croatia, Czech Republic, Kyrgyzstan, Russian Federation, Slovakia, Slovenia, Tajikistan. This brings the total number of ratifications of this instrument to 123 as at 31 January 1994.<sup>11</sup>

#### *Ratifications in progress or considered*

**310.** The Government of *Burundi* mentions that ratification follows its normal course and could be completed at any time, since the draft texts have been submitted to the competent authorities at the beginning of the year. The Government of *Estonia* states that there are no obstacles to the application of the Convention and announced in May 1993 that it would be submitted to Parliament for ratification. The Government of *Suriname* states that the process of ratifying the Convention is under way, although the legislation on collective agreements is incomplete and it intends to adopt more uniform rules applicable to all sectors of industry. The Committee welcomes these initiatives and trusts that the formal process of ratification will be rapidly completed in all of these countries.

**311.** The Government of *Zambia* states that national legislation has not been amended to give effect to the provisions of the Convention. Pointing out that a continuous review of the legislation is undertaken, it considers that in due course it should be possible to consider ratification of the Convention. The Committee notes this information with interest and trusts that the formal process of ratification will be initiated in the near future.

#### *Other cases*

**312.** The Committee notes however that several other countries state that they are not in a position to ratify the Convention, citing various difficulties,<sup>12</sup> or do not take up any position on the question of possible ratification.<sup>13</sup> In the latter group, some countries state that the provisions of the Convention will be taken into consideration in a review of the legislation currently in force; others state more generally that their legislation is, on the whole, compatible with the Convention or adequately governs the rights of workers' and employers' organizations.

#### *Difficulties delaying or preventing ratification*

**313.** Referring to various legislative and other provisions protecting workers against discrimination for trade union activities and organizations against acts of interference, as well as measures to promote collective bargaining, the Government of *Botswana* states, however, that there exist

<sup>11</sup> See Annex IV for the complete list of ratifications.

<sup>12</sup> *Botswana, Cambodia, Canada, Republic of Korea, Switzerland, United States* (see below for the reasons cited).

<sup>13</sup> *Chile, China, El Salvador, Islamic Republic of Iran, Kuwait, Madagascar, Mexico, Myanmar, New Zealand, Saudi Arabia, Thailand, Zimbabwe.*

difficulties preventing ratification of the Convention. It refers to the prohibition on civil servants from forming trade unions.

**314.** The Government of *Cambodia* states, due to the absence of an act on trade unions and to the fact that professional associations and trade unions do not exist, the issue of protection against anti-union discrimination remains somewhat theoretical. The authorities have undertaken a study with a view to elaborate a trade unions act and regulations concerning labour disputes and collective agreements. The Committee recalls that the ILO may provide technical assistance to the Government in this matter.

**315.** Mentioning that the legislation in force in the different jurisdictions is essentially in conformity with the basic provisions of the Convention, the Government of *Canada* recalls that, according to long-standing practice concerning instruments on subjects coming under both the federal and provincial/territorial jurisdictions (which is the case of Convention No. 98), ILO Conventions are only ratified if all of the authorities concerned concur with ratification and undertake to implement the instruments.

**316.** The Government of *El Salvador* states that Article 5 of the Convention is not applicable under national law, as the armed forces and the police are governed by special texts. In its General Surveys of 1973 and 1983, the Committee already drew the attention of the Government to the fact that under Article 5, the extent to which the guarantees provided for in the Convention apply to the armed forces and the police is to be determined by national law and regulations. Consequently, States ratifying the Convention may decide on the extent to which such persons shall enjoy the right to organize, if at all.

**317.** The Government of the *United States* points out that the application of the Convention is widely assured by constitutional and legislative provisions, in particular the National Labour Relations Act (NLRA). The latter protects workers against acts of anti-union discrimination and organizations against acts of interference, by means of remedies against unfair labour practices, with enforcement being entrusted to an independent body, the National Labour Relations Board (NLRB); specific Acts provide similar protection to railway and airline employees; employees who are not covered by these Acts are protected by state legislation or, subsidiarily, by constitutional guarantees. The promotion of collective bargaining is ensured by means of legal remedy against unfair labour practices and by provisions expressly obliging the parties to meet and confer in good faith, even if this does not include any duty to make concessions or agree to a proposal made by the other party to bargaining; the NLRA provides that the parties have the right to strike and lockout in support of their respective positions. Disputes that cannot be resolved by the parties themselves are generally resolved by means of mediation, conciliation and arbitration, usually on a voluntary basis, with or without the assistance of an independent agency, the Federal Mediation and Conciliation Service (FMCS). Federal public servants have rights and remedies similar to those provided under the NLRA, but there are limitations on the subject-matter of collective bargaining, and the

right to strike is denied; state and local government employees are covered by a variety of legislation which cannot be inconsistent with fundamental constitutional guarantees of freedom of association. In the view of the Government, legislation, which has been relatively stable, is in general conformity with the Convention, and no new measures are envisaged, including ratification of the Convention. The draft government report was reviewed by the Tripartite Advisory Panel on International Labour Standards (TAPILS).<sup>14</sup>

318. Recalling the substantial changes in labour legislation which have recently entered into force, the Government of *New Zealand* states that it has now instituted a labour relations system in which the parties are free to bargain collectively or individually, which could lead to disputes. It also reiterates the difficulties cited as regards certain restrictions on the right to strike.<sup>15</sup>

319. The Government of *Switzerland* states that while new provisions improve protection of workers against dismissal, in particular for the lawful exercise of trade union activities, ratification of the Convention is still impossible due to the absence of provisions in national legislation protecting workers against acts of anti-union discrimination before employment. At this stage, no measure is envisaged to give effect to the provisions of the Convention which are not yet covered by national legislation.

#### *Other information*

320. The Governments of the *Republic of Korea* and *Thailand* give the information supplied regarding the process of review of their national legislation with respect to Convention No. 87, as regards Convention No. 98, stating that the provisions of the Convention will be taken into consideration, but that several obstacles to ratification remain at this stage.<sup>16</sup> The Committee trusts none the less that the work of the bodies reviewing this legislation will be completed within a reasonable period and recalls that the ILO can provide technical assistance for this purpose.

321. The Governments of *Chile*, the *Islamic Republic of Iran*, *Kuwait*, *Madagascar* and *Mexico* state that, in their view, the provisions of national legislation are in conformity with the Convention and that no change is currently being envisaged.

322. The Government of *Myanmar* states that following the changes which occurred in 1988, a national Convention representing all social groups is currently discussing new constitutional and legislative provisions which will include those regarding the fundamental rights and responsibilities of workers. Noting that the Conference Committee on the Application of Standards suggested that the Government avail itself of ILO assistance with respect to Convention

<sup>14</sup> See also para. 292.

<sup>15</sup> See also para. 297.

<sup>16</sup> See also para. 308.

No. 87,<sup>17</sup> the Committee is of the view that such assistance could also prove useful and appropriate at this stage, in connection with Convention No. 98.

323. The Government of *Zimbabwe* states that although the Labour Relations Act has decentralized the collective bargaining process, it still does not cover public servants.

### III. Reports not submitted

324. Regarding the reports requested under article 19, the Committee notes with concern that 52 of the 106 reports requested were not submitted.<sup>18</sup> While it is aware that some of these countries have been going through, or are still experiencing, severe political crises, or periods of civil unrest or war, the Committee stresses the importance of compliance with this constitutional obligation, as it does regularly with regard to article 22 of the Constitution,<sup>19</sup> since the reports supplied under article 19 are the first step in the dialogue undertaken with governments leading up to the possible ratification of Conventions. In view of the particular importance of Conventions Nos. 87 and 98 the Committee deeply regrets that these reports were not transmitted.

\* \* \*

325. *The Committee recalls the utmost importance of ratifying ILO Conventions, in particular those concerning freedom of association, which the revised classification adopted in 1987 placed first among the instruments to be promoted on a priority basis.*<sup>20</sup> *It also observes that, at its 153rd Session, the Inter-Parliamentary Council adopted a resolution calling on each of the Parliaments represented in the Inter-Parliamentary Union to "take the necessary initiatives for the rapid ratification of [the ILO Conventions which have not yet been ratified]" and to take initiatives to ensure that, particularly by adapting*

<sup>17</sup> ILC, 80th Session, 1993, Geneva, Report of the Committee on the Application of Standards, *Provisional Record* No. 25, paras. 124-126 of the General Report; adopted by the International Labour Conference, 1993, *Provisional Record* No. 28.

<sup>18</sup> The following countries did not transmit the report requested on C.87: *Bahamas, Fiji, Guinea-Bissau, Jordan, Libyan Arab Jamahiriya, Papua New Guinea, Zaire.*

The following countries did not transmit the report requested on C.98: *Congo, Mauritania, Seychelles.*

The following countries did not transmit any of the two reports requested: *Afghanistan, Armenia, Bahrain, Equatorial Guinea, Eritrea, Georgia, India, Kazakhstan, Lao People's Democratic Republic, Lithuania, Republic of Moldova, Mozambique, Namibia, Nepal, Qatar, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia, United Arab Emirates, Uzbekistan, Viet Nam.*

<sup>19</sup> See, for example RCE 1993, paras. 87-92. See also ILC, 80th Session, 1993, Committee on the Application of Standards, *Provisional Record*, paras. 26-30.

<sup>20</sup> *Report of the Working Party on International Labour Standards*, ILO, Official Bulletin, Vol. LXX, 1987, Series A, Appendix II, p. 29 (known as the "Ventejol Report").

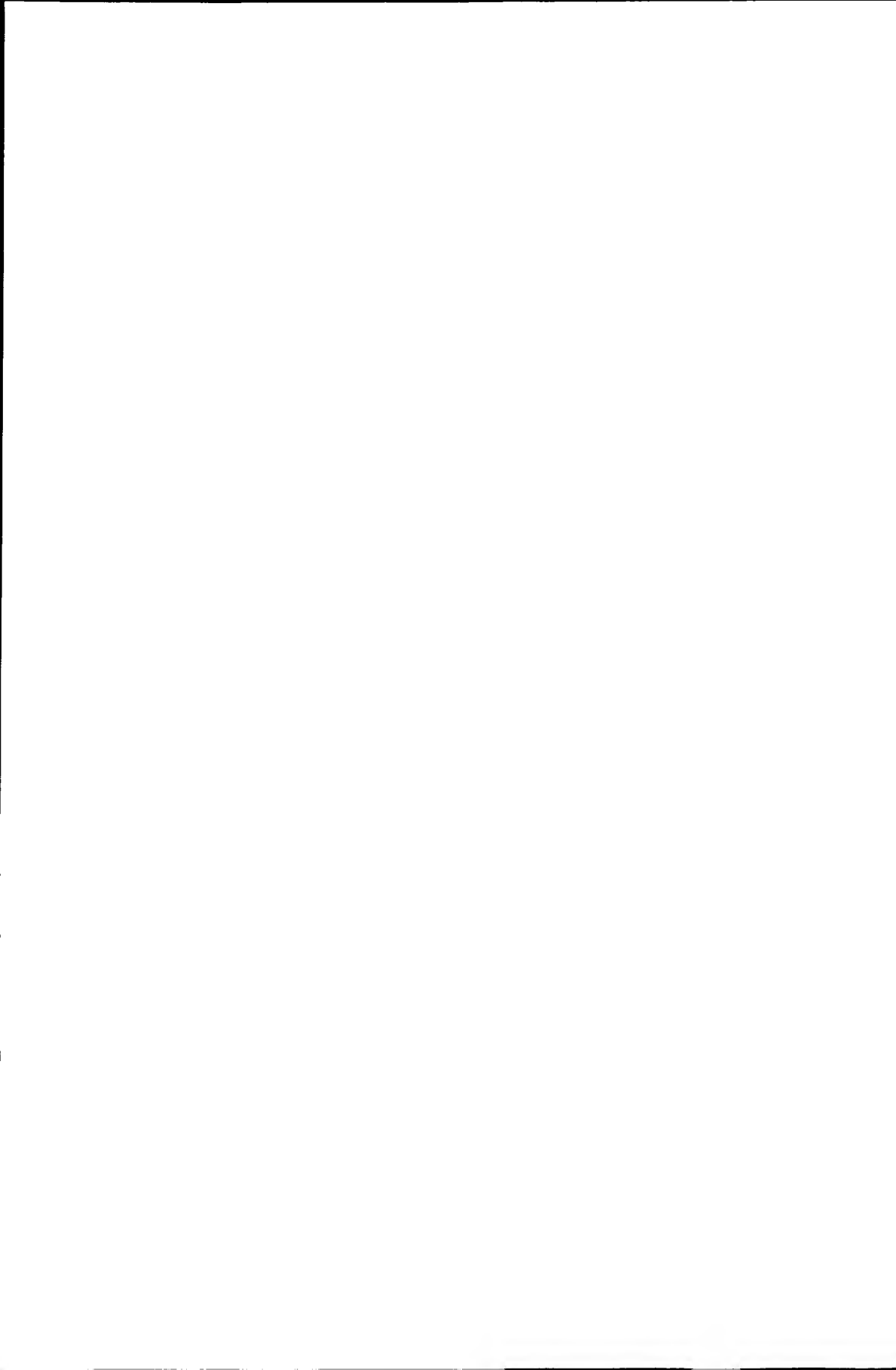
*national labour legislation, the standards set by the ILO are fully implemented.*<sup>21</sup> *On the occasion of the 75th anniversary of the founding of the ILO and the 50th anniversary of the Declaration of Philadelphia, the Committee urges member States which have not yet done so to ratify the Conventions concerning freedom of association, in particular those which are the subject of this survey.*<sup>22</sup>

<sup>21</sup> Resolution concerning the 75th anniversary of the ILO adopted by the Inter-Parliamentary Council, 153rd Session, Canberra, 13-18 Sep. 1993. The full text of the resolution is contained in document GB.258/13/3, 258th Session, Nov. 1993.

<sup>22</sup> See also ILC, 81st Session, 1994, Report of the Director-General, *Defending values, promoting change*, Ch. 3, "Standards: A broader approach", p. 51.



## **Final remarks**



## Final remarks

**326.** The year 1994 marks the 75th anniversary of the founding of the ILO and the 50th anniversary of the Declaration of Philadelphia. The fundamental principles contained in the Constitution and in the ILO standards on freedom of association are more relevant than ever at a time when the world is in the grip of sweeping and lasting changes affecting the political, economic and social spheres.

**327.** While aware of the extremely wide diversity of the problems faced by countries with very different levels of development, and of the special economic difficulties currently experienced in certain countries, the Committee none the less recalls once again the universal nature of international labour standards, especially the fundamental ILO Conventions such as those dealt with in this survey. The application of these Conventions cannot be made contingent upon the level of economic development of a country or periodic fluctuations of economic cycles, because these are instruments which involve basic human rights.

**328.** The effective implementation of the standards and principles of freedom of association, and especially of Conventions Nos. 87 and 98, is closely dependent upon respect of civil and political liberties. Although this interdependence sometimes seems to be taken for granted, the Committee wishes to recall and emphasize it, in view of the persistence and the seriousness of human rights violations infringing basic trade union rights, which the Committee on Freedom of Association is called upon to examine at all of its meetings.

**329.** Since the last General Survey, the Committee has been able to note certain trends in matters pertaining to freedom of association. While it has noted with satisfaction an increase in the number of ratifications, particularly in emerging States, as well as an improved implementation in certain countries which have ratified these Conventions, the fact remains that 61 member States have not ratified Convention No. 87 and 47 Convention No. 98. Amongst them can be found a number of States applying the rule of law which often have a long tradition of industrial relations and have legislation and practice that are, for a large part, in conformity with the Conventions on freedom of association. Ratification could intervene in these cases with little or no legislative amendments. Concerning some of the difficulties mentioned by other countries as preventing ratification, they should not raise serious problems, or could be solved through relatively minor legislative amendments. Recalling that the technical assistance of the ILO is at the disposal of countries which request it, the Committee urges those member States which have not yet done so to ratify

the Conventions on freedom of association and, in particular, Conventions Nos. 87 and 98.

**330.** New ratifications would certainly help to strengthen the ILO's action to protect trade union rights. If, as the Committee hopes, enough countries heed its call, these ratifications could also pave the way for setting up a *world social platform*, as a first step towards creating "humane conditions of labour" in every country, one of the objectives put forward by the drafters of the Constitution of the ILO 75 years ago.

**331.** As regards the application of Conventions, the Committee was able to note with satisfaction that substantial progress has been achieved, in particular as regards the possibility of trade union pluralism in several countries where it had been denied to workers' and employers' organizations until quite recently. While some of the improvements are modest and do not take effect as quickly as is desirable, the Committee none the less remains deeply convinced of the value of dialogue with the ILO's constituents and the correspondence between its own action and that of the other supervisory bodies with a view to gradually achieving a better application of the Conventions.

**332.** However, the Committee notes with deep concern that in a number of other countries the situation has hardly improved, and has even deteriorated, and that their legislation or practice, or both, remain in open violation of the Conventions on freedom of association. This is illustrated in particular by the repetitive observations made by the Committee in its annual report and the growing number of complaints presented to the Committee on Freedom of Association, which raise issues of both law and practice.

**333.** The Committee stresses the utmost importance of an open and frank dialogue in the improved implementation of the Conventions and recalls that the ILO is always available to provide help and technical assistance in these matters to member States which so request.

**334.** The Committee would like to point out that despite the current economic difficulties in many countries, and because of them, free and independent organizations of workers and employers, more than ever before, have a vital part to play in society: that of indispensable partners in economic development and the advancement of social justice.

**335.** From its studies since the last General Survey of these Conventions, embracing government reports, trade unions' comments, the work of the Committee on Freedom of Association and a number of reports of Commissions of Inquiry and direct contacts missions, the Committee has become aware of a considerable number of developments which appear likely, unless care is taken, to impede the rights to organize and to bargain collectively and to disrupt arrangements already in place. Policies such as those to increase competitiveness, to split large organizations and business into smaller units of profit centres, to move functions from the public to the private sector and to expand the rights of individuals and facilitate their enforcement are a matter for national policy. However, great care has to be taken to ensure that they may not result in weakening organizations of workers and bargaining arrangements built

up over the years, or seriously weaken the ability to organize and bargain effectively.

**336.** Two illustrations may be given. The growing emphasis on the right of the individual has had great advantages for workers and has helped to secure in several countries marked advantages for individuals, and especially for women. But progress by that method, which may be fragmented and slow, should not divert attention from the need for collective bargaining which, where successful, can in many cases secure fundamental rights more likely and more speedily through incorporation in a collective agreement.

**337.** Particular concern must be expressed about the establishment of "free trade zones" to attract foreign enterprises, which are excluded from the application of national custom duties and taxation, and much or all of the national law. Although it cannot be the intention of such action to remove the protection afforded to workers by the rights to organize and bargain collectively or to nullify the impact of fundamental protections contained, for example, in the laws protecting health and safety, that may be the result in practice. If so, other employers in the country may be induced to seek similar relaxation in the legislation which is applicable to them and so effectively reduce the benefit of effective trade union organization.

**338.** Indeed, attitudes and planning which increasingly regard workers merely as an "item of resource" or a "cost factor" identical to others fail to give enough emphasis to the human factor and are to be deplored.

**339.** The Committee hopes that this Survey will contribute to a better application of the fundamental Conventions on freedom of association and to significant progress in ratifications, that it will have helped to clarify certain points which have been the subject of debate for several years within the ILO, and that it will further the knowledge and the understanding of these Conventions, in particular by the social partners in the countries which have not ratified them.

**340.** On the occasion of these anniversaries which are particularly important for the ILO, and thus for workers and employers all around the world, the Committee wishes to pay tribute to all those who have helped protect and promote freedom of association, sometimes by risking their freedom and even their lives. The Committee also makes an urgent appeal that, in the near future, this basic freedom becomes a daily reality, everywhere and for everyone.



APPENDIX I

**Text of the substantive provisions of Conventions  
Nos. 87 and 98**

**Freedom of Association and Protection of the  
Right to Organize Convention, 1948 (No. 87)**

*Article 1*

Each Member of the International Labour Organization for which this Convention is in force undertakes to give effect to the following provisions.

*Article 2*

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

*Article 3*

1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

*Article 4*

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

*Article 5*

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

*Article 6*

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organizations.

*Article 7*

The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

*Article 8*

1. In exercising the rights provided in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

*Article 9*

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

*Article 10*

In this Convention the term "organization" means any organization of workers or of employers for furthering and defending the interests of workers or of employers.

*Article 11*

Each Member of the International Labour Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.

## **Right to Organize and Collective Bargaining Convention, 1949 (No. 98)**

*Article 1*

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to —

- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.



*Article 2*

1. Workers' and employers' organizations 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.

2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

*Article 3*

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles.

*Article 4*

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

*Article 5*

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

*Article 6*

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

## APPENDIX II

### **Resolution of 1952 concerning the independence of the trade union movement**

Whereas the International Labour Conference at its recent session has formulated in international Conventions and Recommendations principles for the establishment of freedom of association and good industrial relations;

Whereas a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvements of social conditions generally in each country;

Whereas the relations between the trade union movement and political parties will inevitably vary for each country; and

Whereas any political affiliation or political action by the trade unions depends on national conditions in each country;

Considering nevertheless that there are certain principles which should be laid down in this regard which are essential to protect the freedom and independence of the trade union movement and its fundamental task of advancing the social and economic well-being of the workers,

The International Labour Conference at its 35th Session adopts this twenty-sixth day of June 1952 the following resolution:

1. The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.
2. The trade unions also have an important role to perform in cooperation with other elements in promoting social and economic development and the advancement of the community as a whole in each country.
3. To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.
4. A condition for such freedom and independence is that trade unions be constituted as to membership without regard to race, national origin or political affiliations and pursue their trade union objectives on the basis of the solidarity and economic and social interests of all workers.
5. 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 and economic functions irrespective of political changes in the country.
6. Governments in seeking the cooperation of trade unions to carry out their economic and social policies should recognize that the value of this cooperation rests to

---

a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and 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.

### APPENDIX III

## **Resolution of 1970 concerning trade union rights and their relation to civil liberties (extracts)**

The General Conference of the International Labour Organization,

Considering that the preamble to the Constitution of the International Labour Organization proclaims recognition of the principle of freedom of association as one of the objectives of the Organization,

Considering that the Declaration of Philadelphia, an integral part of the Constitution, proclaims that freedom of expression and of association are essential to sustained progress and refers to other fundamental and human rights inherent in human dignity,

Considering that the International Labour Organization has laid down basic standards of freedom of association for trade union purposes in the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98),

Considering that without national independence and political liberty full and genuine trade union rights could not exist,

...

Considering that trade unions, provided they enjoy their full rights, are an essential factor for the attainment of the objective of the economic, social and cultural progress stated in the Constitution of the ILO,

...

Considering that the supervisory machinery of the ILO, and particularly the Governing Body Committee on Freedom of Association, on the basis of existing standards, has taken supplementary decisions concerning infringements of trade union rights which refer also to specific civil liberties,

...

1. Recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

2. Places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights:

- (a) the right to freedom and security of person and freedom from arbitrary arrest and detention;

- (b) 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 and regardless of frontiers;
- (c) freedom of assembly;
- (d) the right to a fair trial by an independent and impartial tribunal;
- (e) the right to protection of the property of trade union organizations.

3. Reaffirms the ILO's specific competence — within the United Nations system — in the field of freedom of association and trade union rights (principles, standards, supervisory machinery) and of related civil liberties.

4. Emphasizes the responsibility of the United Nations for protecting and promoting human rights in general political freedoms and civil liberties throughout the world.

5. Expresses its deep concern about and condemns the repeated violations of trade union rights and other human rights.

9. Reaffirms its belief in the principles which inspired the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and strongly urges that all member States which have not already done so ratify these Conventions and, pending ratification, that they ensure that the principles embodied in these Conventions are observed and that they respect the principles enshrined in these Conventions in the enactment of their national legislation.

13. Invites the Director-General of the ILO to express the support of the ILO for the action of the United Nations in the field of human rights and to draw the attention of the appropriate United Nations bodies to the relationship which exists between trade union rights and civil liberties.

14. Invites the Governing Body to undertake all efforts with a view to strengthening the ILO machinery for securing the observance by member States of ILO principles concerning freedom of association and trade union rights.

15. Invites the Governing Body to instruct the Director-General to undertake further comprehensive studies and to prepare reports on law and practice in matters concerning freedom of association and trade union rights and related civil liberties falling within the competence of the ILO, with a view to considering further action to ensure full and universal respect for trade union rights in their broadest sense;

For this purpose particular attention should be given to the following questions:

- right of trade unions to exercise their activities in the undertaking and other workplaces;
- right of trade unions to negotiate wages and all other conditions of work;
- right of participation of trade unions in undertakings and in the general economy;
- right to strike;
- right to participate fully in national and international trade union activities;
- right to inviolability of trade union premises as well as of correspondence and telephonic conversations;
- right to protection of trade union funds and assets against intervention by the public authorities;
- right of trade unions to have access to media of mass communication;

- right to protection against any discrimination in matters of affiliation and trade union activities;
- right of access to voluntary conciliation and arbitration procedures;
- right to workers' education and further training.

APPENDIX IV

**Ratifications. Reports requested and received  
under article 19 of the Constitution**

Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Afghanistan		X		X
Albania	1957		1957	
Algeria	1962		1962	
Angola		R	1976	
Antigua and Barbuda	1983		1983	
Argentina	1960		1956	
Armenia		X		X
Australia	1973		1973	
Austria	1950		1951	
Azerbaijan	1992		1992	
Bahamas		X	1976	
Bahrain		X		X
Bangladesh	1972		1972	
Barbados	1967		1967	
Belarus	1956		1956	
Belgium	1951		1953	
Belize	1983		1983	
Benin	1960		1968	
Bolivia	1965		1973	
Bosnia and Herzegovina	1993		1993	
Botswana		R		R
Brazil		R	1952	
Bulgaria	1959		1959	
Burkina Faso	1960		1962	
Burundi	1993			R
Cambodia		R		R
Cameroon	1960		1962	
Canada	1972			R
Cape Verde		R	1979	
Central African Republic	1960		1964	
Chad	1960		1961	
Chile		R		R
China		R		R
Colombia	1976		1976	
Comoros	1978		1978	
Congo	1960			X
Costa Rica	1960		1960	
Côte d'Ivoire	1960		1961	
Croatia	1993		1993	
Cuba	1952		1952	
Cyprus	1966		1966	
Czech Republic	1964		1964	
Denmark	1951		1955	

R = Report received.

X = Report not received.

Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Djibouti	1978		1978	
Dominica	1983		1983	
Dominican Republic	1956		1953	
Ecuador	1967		1959	
Egypt	1957		1954	
El Salvador		R		R
Equatorial Guinea		X		X
Eritrea		X		X
Estonia		R		R
Ethiopia	1963		1963	
Fiji		X	1974	
Finland	1950		1951	
France	1951		1951	
Gabon	1960		1961	
Georgia		X		X
Germany	1957		1956	
Ghana	1965		1959	
Greece	1962		1962	
Grenada		R	1979	
Guatemala	1952		1952	
Guinea	1959		1959	
Guinea-Bissau		X	1977	
Guyana	1967		1966	
Haiti	1979		1957	
Honduras	1956		1956	
Hungary	1957		1957	
Iceland	1950		1952	
India		X		X
Indonesia		R	1957	
Iran, Islamic Republic of		R		R
Iraq		R	1962	
Ireland	1955		1955	
Israel	1957		1957	
Italy	1958		1958	
Jamaica	1962		1962	
Japan	1965		1953	
Jordan		X	1968	
Kazakhstan		X		X
Kenya		R	1964	
Korea, Republic of		R		R
Kuwait	1961			R
Kyrgyzstan	1992		1992	
Lao People's Democratic Rep.		X		X
Latvia	1992		1992	

R = Report received.

X = Report not received.



Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Lebanon		R	1977	
Lesotho	1966		1966	
Liberia	1962		1962	
Libyan Arab Jamahiriya		X	1962	
Lithuania		X		X
Luxembourg	1958		1958	
Madagascar	1960			R
Malawi		R	1965	
Malaysia		R	1961	
Mali	1960		1964	
Malta	1965		1965	
Mauritania	1961			X
Mauritius		R	1969	
Mexico	1950			R
Moldova, Republic of		X		X
Mongolia	1969		1969	
Morocco		R	1957	
Mozambique		X		X
Myanmar	1955			R
Namibia		X		X
Nepal		X		X
Netherlands	1950		1993	R
New Zealand		R		R
Nicaragua	1967		1967	
Niger	1961		1962	
Nigeria	1960		1960	
Norway	1949		1955	
Oman*				
Pakistan	1951		1952	
Panama	1958		1966	
Papua New Guinea		X	1976	
Paraguay	1962		1966	
Peru	1960		1964	
Philippines	1953		1953	
Poland	1957		1957	
Portugal	1977		1964	
Qatar		X		X
Romania	1957		1958	
Russian Federation	1956		1956	
Rwanda	1988		1988	
Saint Lucia	1980		1980	
San Marino	1986		1986	
Sao Tome and Principe	1992		1992	
Saudi Arabia		R		R

\* Became Member of the ILO on 31 January 1994. No report requested under article 19.

R = Report received.

X = Report not received.

Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Senegal	1960		1961	
Seychelles	1978			X
Sierra Leone	1961		1961	
Singapore		R	1965	
Slovakia	1993		1993	
Slovenia	1992		1992	
Solomon Islands		X		X
Somalia		X		X
Spain	1977		1977	
Sri Lanka		R	1972	
Sudan		R	1957	
Suriname	1976			R
Swaziland	1978		1978	
Sweden	1949		1950	
Switzerland	1975			R
Syrian Arab Republic	1960		1957	
Tajikistan*				
Tanzania, United Republic of		R	1962	
Thailand		R		R
The former Yugoslav Republic of Macedonia		X		X
Togo	1960		1983	
Trinidad and Tobago	1963		1963	
Tunisia	1957		1957	
Turkey	1993		1952	
Turkmenistan**				
Uganda		R	1963	
Ukraine	1956		1956	
United Arab Emirates		X		X
United Kingdom	1949		1950	
United States		R		R
Uruguay	1954		1954	
Uzbekistan		X		X
Venezuela	1982		1968	
Viet Nam		X		X
Yemen	1976		1969	
Yugoslavia	1958		1958	
Zaire		X	1969	
Zambia		R		R
Zimbabwe		R		R

\* Became Member of the ILO on 26 November 1993. No report requested under article 19.

\*\* Became Member of the ILO on 24 September 1993. No report requested under article 19.

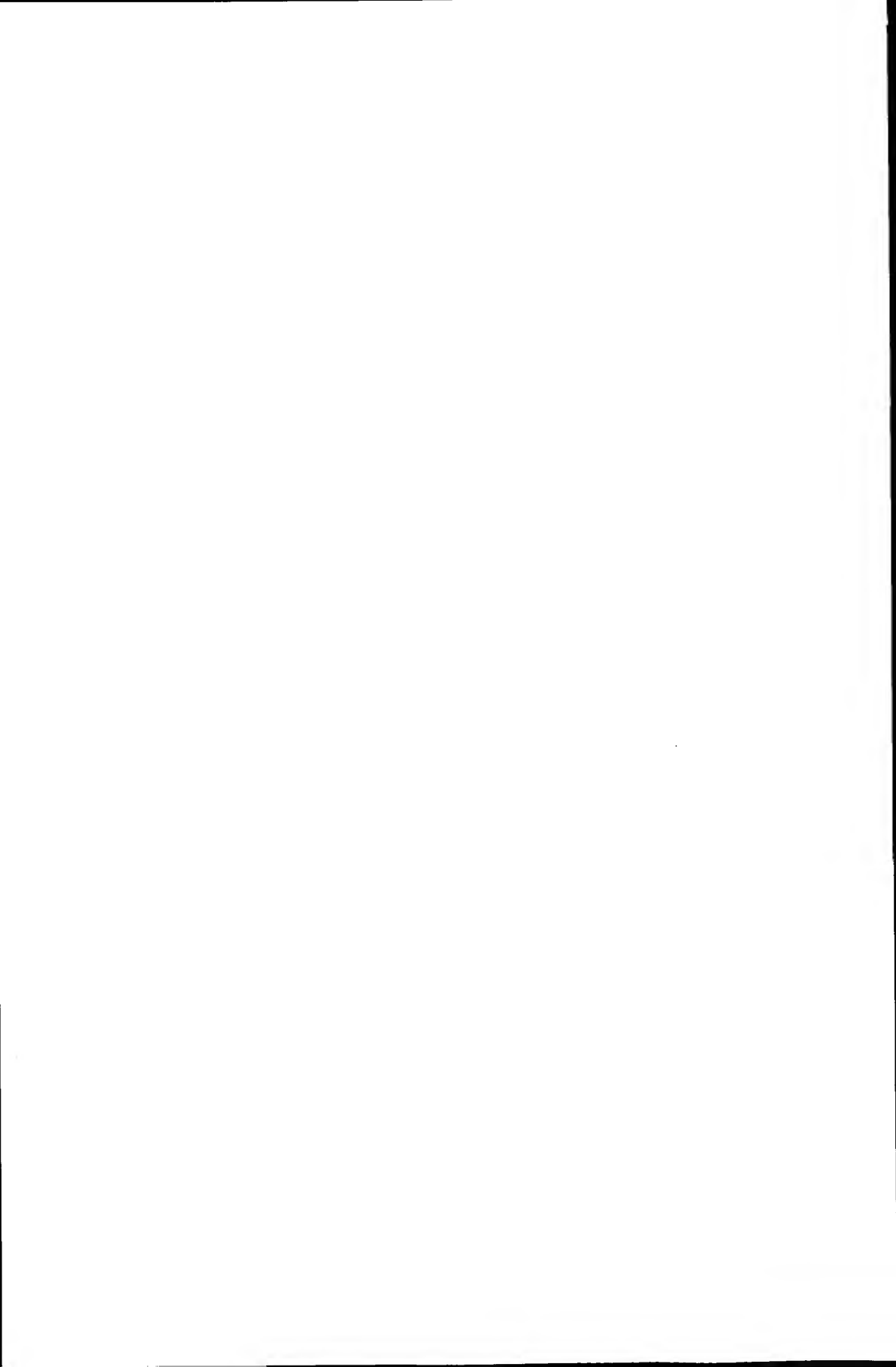
R = Report received.

X = Report not received.

## APPENDIX V

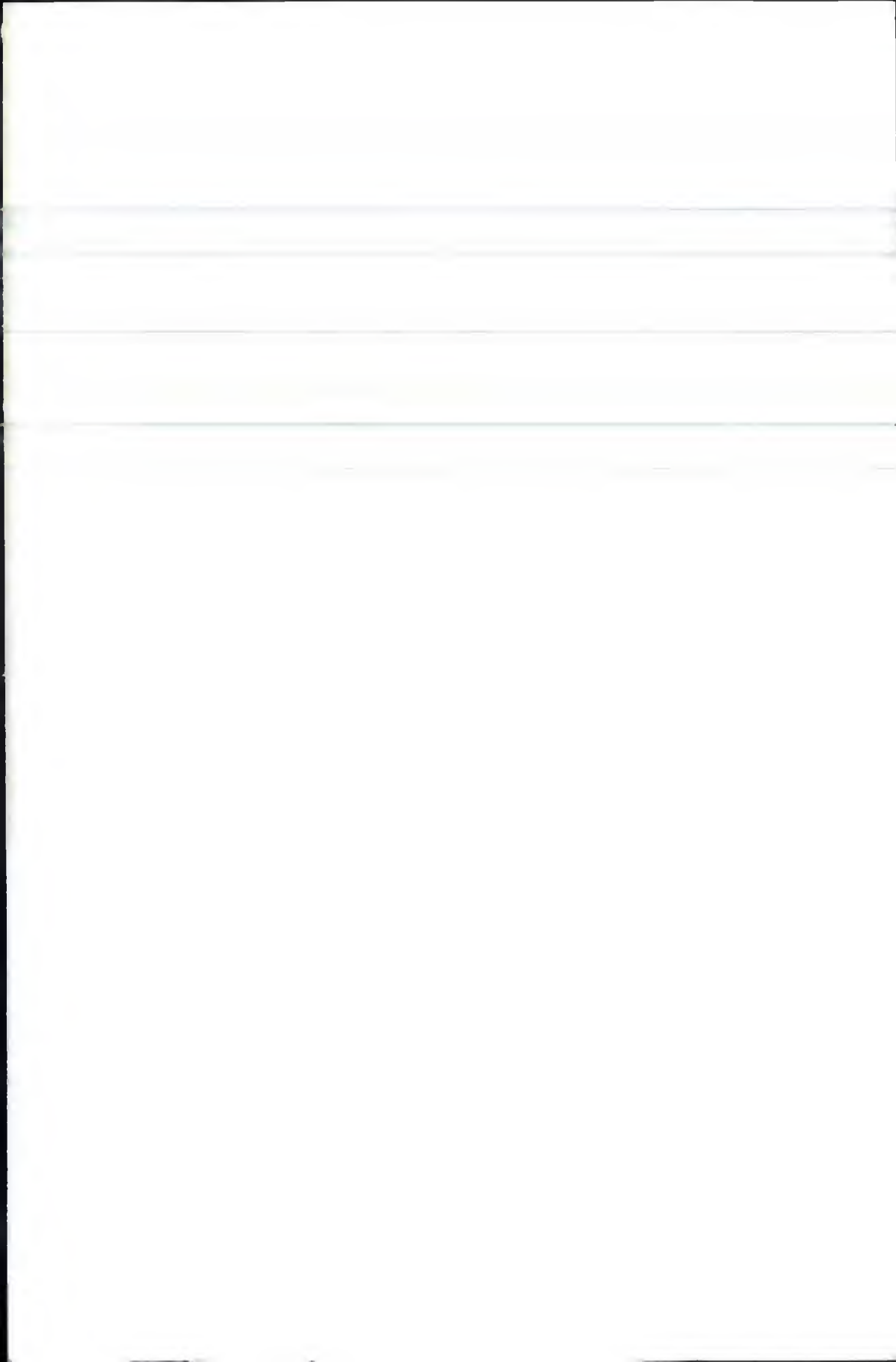
### List of abbreviations used

ILO	International Labour Organization or International Labour Office
ILC	International Labour Conference
CFA	Committee on Freedom of Association
RCE	Annual Report of the Committee of Experts to the International Labour Conference, Part III(4A)
OB	Official Bulletin, ILO, Series B
Digest	Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 1985, 3rd ed.
General Survey	General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 1983 (except where another year mentioned)









Price: 22.50 Swiss francs

ISBN 92-2-108947-9