Third item on the agenda


1. Appended is the report of the above-mentioned Commission of Inquiry, which was appointed following the filing of a complaint by Workers' delegates to the 68th (1982) Session of the Conference.

2. The report has been communicated to the Government of Poland.

3. Under article 29, paragraph 2, of the Constitution, the Government must inform within three months the Director-General whether or not it accepts the recommendations contained in the report of the Commission and, if not, whether it proposes to refer the complaint to the International Court of Justice.

4. The Governing Body is invited to take note of the report of the Commission.


POINT FOR DECISION:

Paragraph 4.
Report of the Commission instituted under article 26 of the Constitution of the International Labour Organisation to examine the complaint on the observance by Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) presented by delegates at the 68th Session of the International Labour Conference
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II. Communication dated 24 June 1983 from the Director-General of the ILO to the Permanent Representative of the Polish People's Republic
Filing of the complaint

1. By a letter dated 16 June 1982 addressed to the Director-General of the International Labour Office, Mr. Marc Blondel, Workers' delegate from France, and Mrs. Liv Buck, Workers' delegate from Norway, filed a complaint under article 26 of the Constitution of the International Labour Organisation (ILO) against the Government of Poland for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The complaint is worded as follows:

Mr. Secretary-General of the Conference,

The undersigned Workers' delegates at the 68th Session (1982) of the International Labour Conference hereby lodge with the International Labour Office, under article 26 of the Constitution of the International Labour Organisation, a complaint concerning failure by the Government of Poland to observe Conventions Nos. 87 and 98.

The complaint is based on the following facts.

I. According to indications officially furnished by the Polish authorities following the proclamation of martial law in Poland on 13 December 1981, the activities of trade union organisations have been suspended and many members and leaders of the Solidarity trade union, including those who represented the Polish workers at the 67th Session of the International Labour Conference (1981), have been arrested and have remained interned to this day. Moreover, pursuant to the proclamation of martial law, the right to strike has been suspended, and workers and trade unionists have been prosecuted and sentenced for going on strike. These decisions and these measures constitute in themselves a violation of Article 4 of Convention No. 87, which states that 'Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority', and of Article 3, which provides that:

"1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

II. It appears also, in the light of the information available, that trade unionists have been dismissed from their jobs by reason of their trade union affiliation and activity; moreover, loyalty oaths entailing renunciation of affiliation to the Solidarity trade union have been required under penalty of dismissal, in particular from certain categories of public servants
(as appears clearly from the instructions issued on 17 December 1981 by the Chief of the Office of the Council of Ministers, General Janiszewski. This practice constitutes a clear-cut violation of Article 1 of Convention No. 98, which provides that 'workers shall enjoy adequate protection against acts of anti-union discrimination'.

III. Despite the requests made by the Committee on Freedom of Association and the Governing Body of the ILO at the February-March 1982 Session, the Government has furnished no precise indications concerning the allegations formulated by the complainant organisations concerning:

- suspension of trade union activities;
- internment of a large number of Solidarity leaders and members;
- sentences imposed for strike activities carried out after the announcement of martial law;
- deaths of workers having occurred following action by the forces of order on the occasion of labour disputes;
- dismissals and pressures brought to bear against workers affiliated to Solidarity.

IV. It appears that among the various measures of internment decided by the Polish authorities (cf. the lists submitted to the Committee on Freedom of Association) courts have sentenced many workers to several years of imprisonment and to loss of their civic rights on the grounds of trade union activities and strike action. Finally, further arrests seem to have taken place, as shown by the lists attached.\(^1\)

Taking account of these factors, the undersigned Workers' delegates at the 68th Session of the International Labour Conference are lodging, under article 26 of the Constitution of the ILO, a complaint with the International Labour Office, are requesting the setting up of a Commission of Inquiry to ensure effective observance by the Government of Poland of Conventions Nos. 87 and 98, which it has ratified, and reserve the right to furnish later any other evidence in support of this request.


(Signed) Marc Blondel,
Delegate of the Workers of France
at the 68th Session of the
International Labour Conference.

(Signed) Liv Buck,
Delegate of the Workers of Norway
at the 68th Session of the
International Labour Conference.

2. Poland ratified Conventions Nos. 87 and 98 on 25 February 1957. These Conventions came into force for the country on 25 February 1958. The complainants, Mr. Blondel and Mrs. Buck, were, at the time when they filed their complaint, Workers'...
delegates of their countries to the 68th Session of the Conference and, as such, empowered, under article 26, paragraph 4, of the Constitution of the ILO, to file a complaint.

Provisions of the Constitution of the International Labour Organisation relating to complaints concerning
the observance of ratified Conventions

3. Article 26

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

Article 27

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article 28

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.
Article 29

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Inquiry to the Governing Body and to each of the governments concerned in the complaint, and shall cause it to be published.

2. Each of these governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice.

Article 31

The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of article 29 shall be final.

Article 32

The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any.

Article 33

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

Article 34

The defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the International Court of Justice, as the case may be, and may request it to constitute a Commission of Inquiry to verify its contention. In this case the provisions of articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Inquiry or the decision of the International Court of Justice is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of article 33.

Provisions of the Freedom of Association and Protection of
the Right to Organise Convention, 1948 (No. 87), and
the Right to Organise and Collective Bargaining
Convention, 1949 (No. 98)

4. The basic provisions of Conventions Nos. 87 and No. 98 are as follows:
FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT
TO ORGANISE CONVENTION, 1948 (No. 87)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

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' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, 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 for in this Convention workers and employers and their respective organisations, like other persons or organised 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 Organisation 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 'organisation' means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Article 11

Each Member of the International Labour Organisation 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 organise.

RIGHT TO ORGANISE 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' organisation 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' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, 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 organise 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 utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

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 Organisation 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.
Summary of the measures taken by the Governing Body following the filing of the complaint

5. At its 220th Session (May-June 1982), the Governing Body had before it a report by its Officers concerning the subject of the complaint. This report included the following passages:

"No discussion on the merits of the complaint is admissible at the present stage. It would indeed be inconsistent with the judicial nature of the procedure provided for in article 26 and the following articles of the Constitution that there should be any discussion in the Governing Body on the merits of a complaint until the Governing Body has before it the contentions of the government against which the complaint is filed, together with an objective evaluation of these contentions by an impartial body. Nor would such discussion be appropriate while a proposal to refer the complaint to a Commission of Inquiry is pending before the Governing Body or while the complaint is sub judice before a Commission of Inquiry. If there is to be a Commission of Inquiry - which it is for the Governing Body to decide under article 26, paragraph 4, of the Constitution - it is when the Commission of Inquiry has reported on the merits of the complaint that the Governing Body may be called upon to take action in the matter.

It should be recalled that the Committee on Freedom of Association has before it complaints presented by the International Confederation of Free Trade Unions and the World Confederation of Labour. These complaints have been examined as Case No. 1097, concerning which the Committee has submitted two interim reports to the Governing Body.2

The Governing Body has already agreed in the past3 that in cases such as the present one, where various complainants have resorted to the different procedures established by the Organisation concerning the application of Conventions and the protection of trade union rights, it would be desirable to co-ordinate the procedures and to take account of the role entrusted to the Committee on Freedom of Association for the examination of complaints concerning these matters. In the present case the complaint presented by delegates to the Conference under article 26 of the Constitution concerns questions which are already before the Committee within the context of the special procedure concerning freedom of association. Within the framework of this latter procedure, the Committee will examine the pending case at its November 1982 meeting. It would be useful for the Governing Body to have the recommendations of the Committee on this case and on the complaint presented under article 26 in order to reach conclusions on what action to take concerning the latter complaint."

6. The Governing Body then took the following decisions on the recommendation of its Officers:

(a) The Government of Poland should be requested by the Director-General to communicate its observations on the complaint so as to reach him not later than 10 October 1982.

(b) In accordance with article 26, paragraph 5, of the Constitution, the Governing Body should invite the Government of Poland to send a representative to take part in the proceedings of the Governing Body concerning this matter at its future sessions. When so inviting the Government of Poland, the Director-General should inform it that the Governing Body intends to continue its discussion of this case at its 221st Session, which will take place in Geneva in November 1982.


(c) The Governing Body should, at its 221st Session, consider, in the light of the recommendations of the Committee on Freedom of Association in respect of the complaint received and the information which may be furnished by the Government of Poland, as well as the recommendations of the Committee on Freedom of Association concerning the case which is pending before it, whether the complaint should be referred to a Commission of Inquiry.

7. The Government subsequently sent replies and information and the Governing Body three times examined the reports of the Committee on Freedom of Association concerning Case No. 1097 and the complaint filed under article 26 of the Constitution.4

8. At its 223rd Session (Fourth Sitting) on 27 May 1983, the Governing Body approved by 44 votes in favour to 6 against, with 5 abstentions, the recommendation of the Committee on Freedom of Association to refer the examination of the whole matter to a Commission of Inquiry, in accordance with article 26, paragraph 3 of the Constitution of the ILO.5

9. During the same session (Fifth Sitting), the Governing Body decided by 37 votes in favour to 5 against, with 8 abstentions, that the Commission of Inquiry should have the following composition:

Chairman: Nicolas Valticos (Greece), former Assistant Director-General of the International Labour Office, member of the Permanent Court of Arbitration, Secretary-General of the Institute of International Law.

Members: Andrés Aguilar (Venezuela), former Chairman of the International Labour Conference, member of the Permanent Court of Arbitration, member of the United Nations Commission on Human Rights, member and former Chairman of the Inter-American Commission on Human Rights.

Jean-François Aubert (Switzerland), Professor of Constitutional Law at the University of Neuchâtel.

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4 See 221st, 225th and 229th Reports.

5 See 229th Report.
CHAPTER 2

OUTLINE OF RELATIONS BETWEEN THE ILO AND POLAND CONCERNING

FREEDOM OF ASSOCIATION

10. Poland in 1957 ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

11. In 1959, the Committee of Experts on the Application of Conventions and Recommendations pointed out for the first time that the Polish Trade Union Act of 1949, by obliging trade unions to be registered by the Central Council of Trade Unions, referred to by name in the Act as "one of the supreme authorities of the Federation of Trade Unions", which was "the principal body representing the trade union movement in Poland", was not compatible with the provisions of the Convention, and in particular with the right of workers to establish organisations of their own choosing.  

12. In 1973, the Government stated that a new trade union bill was being drafted and for several years it mentioned in its reports that the work on this bill was continuing.

13. In July 1978, the International Confederation of Free Trade Unions (ICFTU) presented a complaint to the Committee on Freedom of Association alleging that Polish trade union legislation was not in conformity with the provisions of Convention No. 87 and that workers who had tried to form free trade unions in the Baltic area had been persecuted and arrested. After its first examination of the matter, the Committee on Freedom of Association considered in November 1979, "in the light of the problems raised in this case and the repeated promises of the Government to bring its legislation into line with the provisions of Convention No. 87, that the adoption of the necessary amendments to the Trade Union Act and the clarification of the situation with regard to the other aspects of the case could be facilitated by the establishment of direct contacts on these matters between the Government and the ILO".

14. The Government of Poland accepted this suggestion by the Committee on Freedom of Association and the Minister of Labour by a letter dated 26 March 1980 invited a representative of the Director-General to "make an official visit to Poland for a joint overall review of the application of ratified Conventions in order to find solutions to the difficulties encountered in the application of certain of them". The mission was entrusted to Mr. Nicolas Valticos, at the time Assistant Director-General of the ILO and Adviser for International Labour Standards, and was carried out in Poland from 5 to 14 May 1980. Among the persons with whom the representative of the Director-General had discussions were Mrs. Milczarek, Minister of Labour, Mr. Obodowski and Mr. Biatczynski, Deputy Ministers of Labour, Mr. Secomski, Vice-President of the Council of State, and Mr. Kulaga, Deputy Minister of Foreign Affairs. He also met the President of the Central Council of Trade Unions, trade union representatives in various enterprises and representatives of the Polish employers. All the persons he met expressed their willingness to co-operate with the ILO. The representative of the Director-General was assured that the amendment of the Trade Union Act and its adaptation to the Convention were well on their way. He informed the authorities that the ILO would be willing to advise the Government on the new bill in order to avoid further divergencies from the Convention.

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1 See below, para. 122.

2 See 194th Report, Case No. 909.

3 See 197th Report, Case No. 909, para. 557.

4 See 206th Report, Case No. 909, para. 7.
In May 1980 social developments in Poland began to accelerate and they resulted, on 31 August 1980, in the signing of the Agreements of Gdansk, which included the recognition by the Government of the principles set forth in Conventions Nos. 87 and 98. Subsequently, the Diet adopted, on 8 October 1980, an Act that amended the Trade Union Act of 1949 in respect of the registration of trade unions and enabled a trade union to become registered, elsewhere than in the register kept by the Central Council of Trade Unions, by the Court of the Voivodship of Warsaw. With regard to the other aspects of the trade union legislation, the Council of State appointed a committee to prepare a draft.

Following the difficulties encountered by the trade union Solidarity in having its constitution registered (the Court of the Voivodship of Warsaw did register the trade union Solidarity, but with modifications to certain provisions of its constitution), the representative of the Director-General, with the agreement of the Government, again went to Poland in October 1980. In a later communication, the Government stated that these visits had, in its opinion, been useful in the search for a solution to the problems of giving effect to the Conventions ratified by Poland. In November 1980, before the meeting of the Committee on Freedom of Association, Mr. J. Obodowski, Deputy Minister of Labour, who was to become Minister of Labour and later Deputy Prime Minister, went to Geneva, where he had private discussions with the Chairman of the Committee on Freedom of Association and with the Director-General and was heard by the Committee on Freedom of Association. He informed the Committee that on 10 November 1980 the Supreme Court had decided to confirm the registration of the trade union Solidarity on the basis of the constitution drawn up by the trade union, the only amendments being those that the trade union had introduced itself, which consisted in appending to the constitution part of the Agreements of Gdansk and the text of Conventions Nos. 87 and 98 of the ILO. In March 1981, the Committee of Experts on the Application of Conventions and Recommendations noted with satisfaction this development in the legislation.

Social developments between November 1980 and March 1981 led the Director-General of the ILO in March 1981 to propose to the Government that a mission should be sent. The Government accepted the proposal and the Director-General went to Poland from 11 to 14 May 1981, accompanied by Mr. Nicolas Valticos, Assistant Director-General, and Mr. Bernard Gernigon, Deputy Chief of the Freedom of Association Branch. He met members of the Government, representatives of the three national workers' organisations (branch trade unions, autonomous trade unions and Solidarity) and of the employers' organisation and also the chairman of the committee set up to draft the new bill on trade unions. Discussions covered the whole of the trade union situation, including the trade union bill. During the visit of the ILO mission, the trade union Rural Solidarity was registered on 12 May 1981, after the adoption, on 6 May 1981, of an Act authorising the registration of agricultural organisations.

In June 1981, at the 67th Session of the International Labour Conference, the workers in the Polish delegation were represented by the three principal trade union organisations of the country: the branch trade unions, the autonomous trade unions and Solidarity. The place of the Workers' delegate was attributed to the President of the National Committee of Solidarity, Mr. Lech Walesa. In September 1981, a delegation from the ILO attended the Congress of Solidarity at Gdansk and, in November 1981, a study session for a group of trade unionists from the three Polish central organisations was held at the ILO in Geneva.

On 13 December 1981 martial law was proclaimed in Poland. Following the proclamation of martial law and the measures taken by the authorities against the trade union Solidarity and its leaders and active members, the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) on 14 December 1981 presented to the ILO complaints of violation of trade union rights in Poland, complaints that were placed before the Committee on Freedom of Association in accordance with the established procedure. In view of the nature of the allegations, the Director-General of the ILO immediately proposed that an ILO mission should be sent to the country to obtain information on the trade union situation, including that of the

5 A voivodship is a territorial and administrative division.
trade unionists who had been interned. The Government, in reply to the proposal, expressed the view that in the prevailing circumstances it was not possible to receive a mission from the ILO.

20. On 18 and 19 February 1982, a Government delegation led by Mr. K. Gorski, Deputy Minister of Labour, visited the ILO, where it had discussions with the Director-General and the Chairman of the Committee on Freedom of Association.

21. The Committee on Freedom of Association examined the case at its February 1982 meeting and submitted an interim report to the Governing Body, in which it expressed its deep concern about the extreme gravity of the allegations made against Poland. It stated that the suspension of trade union activities was a particularly serious matter and expressed the firm hope that the trade union organisations existing in Poland might resume their activities as quickly as possible on the basis of trade union legislation consistent with the Conventions of the ILO. It urged the Government to agree to the sending of an ILO mission on the spot.6

22. In a letter dated 4 March 1982, the Government of France expressed its deep concern about the situation in Poland and recalled its attachment to the observance of the obligations contained in Convention No. 87, which had been ratified by Poland. The Government of France was otherwise satisfied by the decisions taken by the Governing Body of the ILO and reserved its position concerning the filing of a complaint with the Organisation under article 26 of the Constitution at a later date.

23. At its March 1982 meeting,7 the Committee of Experts on the Application of Conventions and Recommendations made comments in an observation concerning the application of Convention No. 87 by Poland.

24. Following the request of the Committee on Freedom of Association and with the agreement of the Government, Mr. Nicolas Valticos, accompanied by Mr. Bernard Gernigon, went to Poland and remained there from 10 to 16 May 1982. The representative of the Director-General met representatives of the Government and of the different trade union organisations and Mr. Lech Walesa, who at the time was interned.

25. After examining the report of this mission and certain information furnished by the Government, the Committee on Freedom of Association at its May 1982 meeting submitted a new interim report to the Governing Body. It expressed the firm hope that the Parliament would soon adopt a legal framework within which trade union organisations independent of public authorities could function freely and urged the Government to liberate the trade unionists who were still interned.8

26. Subsequently, in a letter dated 16 June 1982, Mr. Blondel and Mrs. Buck, Workers' delegates of France and Norway respectively to the 68th Session of the International Labour Conference, filed a complaint under article 26 of the Constitution against the Government of Poland for the non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both of them ratified by Poland.9

27. On 5, 6 and 7 October 1982, a Government delegation led by the Deputy Director of the Legal Adviser's Office of the Council of Ministers visited the ILO and asked the Office for a legal opinion on the conformity of the trade union bill with Conventions Nos. 87 and 98. The Office then formulated written comments, which were transmitted to

6 See 214th Report, Case No. 1097.
7 The 52nd Session of the Committee of Experts on the Application of Conventions and Recommendations met from 11 to 24 March 1982.
8 See 217th Report, Case No. 1097.
9 See above Chapter 1, Filing of the complaint.
the delegation and then to the Parliamentary committees entrusted with the preparation of the bill. The bill was adopted by the Diet on 8 October 1982 with a few amendments. Under section 52 of the Act, the registration of the existing trade unions, including Solidarity, was cancelled.

28. The Committee on Freedom of Association heard the Deputy Minister of Labour, Mr. K. Gorski, representing the Government of Poland during its November 1982 meeting; following this oral statement, the Committee submitted a new interim report to the Governing Body. The Committee urged the Government to take the necessary measures to lift martial law in the very near future, commented on the new legislation and asked the Government to adopt measures with a view to releasing the interned trade unionists.

29. Martial law was suspended in Poland on 31 December 1982. At its February 1983 meeting, the Committee on Freedom of Association submitted a new interim report. The Committee considered that, in order to elucidate the numerous aspects of the case that remained outstanding, it would be highly desirable for the Government to accept a further on-the-spot visit by a representative of the Director-General.

30. At its March 1983 meeting, the Committee of Experts on the Application of Conventions and Recommendations made comments in an observation on the application by Poland of Conventions Nos. 87 and 98, with particular reference to the Trade Union Act of 8 October 1982.

31. Between 5 and 8 April 1983, an information mission from the Government led by Mr. Karwanski, Director of the Department of International Co-operation of the Ministry of Labour, Wages and Social Affairs, went to the ILO, where it had interviews with the Director-General and senior officials of the Office.

32. On 26 April 1983, the Government sent an invitation to the Director-General with a view to an on-the-spot visit by Mr. Nicolas Valticos as representative of the Director-General. In his reply dated 9 May 1983, the Director-General thanked the Government for the invitation sent for Mr. Nicolas Valticos with a view to a visit in a personal capacity and as representative of the Director-General, and noted the intention of the Government to ensure contacts between Mr. Valticos and the Polish authorities and also with the representatives of the newly formed trade unions and the Polish employers. The Director-General stated that in order that the visit might produce the desired results, it would, in accordance with the practice followed by the ILO in similar cases, be essential for his representative to be able to have private contacts with the representatives of all the parties concerned, and especially with the former leaders of those trade union organisations which, in 1981, had represented the Polish workers at the International Labour Conference. The Director-General stated that, if the Government was prepared to grant the facilities that had been requested, he would make the necessary arrangements for Mr. Valticos to visit Poland.

33. At its May 1983 meeting, the Committee on Freedom of Association noted that it had always considered that a representative of the Director-General charged with an on-the-spot mission would not be able to perform his task properly and thereby be fully and objectively informed on all aspects of the case if he was not free to meet all the parties concerned. In the opinion of the Committee, in the case in question the parties concerned would necessarily include the leaders of the former trade union organisations. The Committee noted with regret that the requests it had made in February 1983 for information and on-the-spot visits had not been fully met and recommended the Governing Body to refer the examination of the case as a whole to a Commission of Inquiry in accordance with article 26, paragraph 3, of the

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10 See 221st Report, Case No. 1097.
11 See 225th Report, Case No. 1097.
Constitution. This recommendation was adopted by the Governing Body by 44 votes in favour to 6 against, with 5 abstentions.

34. The Government of Poland, in a statement dated 31 May 1983, rejected the decision of the Governing Body as unfounded and stated that Poland would not take part in the 69th Session of the International Labour Conference and would suspend its co-operation with the ILO if the decision was put into practice, at the same time reserving its right to take suitable measures respecting its participation in the Organisation. Accordingly, after the nomination by the Governing Body of the members of the Commission of Inquiry, the Government of Poland, in a letter dated 24 June 1983 rejected the decision of the Governing Body to set up a Commission of Inquiry concerning Poland and repeated that it was suspending its co-operation with the ILO. The Director-General, in a letter of the same date, reminded the Government that the appointment of the Commission of Inquiry was based on the provisions of the Constitution of the ILO and on the obligations that the Government of Poland had freely accepted by ratifying the Conventions in question.
CHAPTER 3

ANALYSIS OF THE CASE

35. The Commission carried out an examination of the allegations contained in the complaint and of the communications sent later both by the complainants themselves and by the international employers' and workers' organisations and the governments that had been invited to submit information. Although the Government of Poland had decided to take no part in the proceedings, the Commission had before it certain data, observations and information furnished by the Government before the appointment of the Commission, particularly in connection with the examination of Case No. 1097 before the Committee on Freedom of Association, in reports submitted under article 22 of the Constitution of the ILO and in statements made by the Government representative to the Committee on the Application of Conventions and Recommendations of the International Labour Conference. In the present chapter, the Commission will give a brief summary of the elements that it thus disposes of.

Allegations of the complainants

36. The complaint presented by Mr. Blondel and Mrs. Buck dealt with various questions concerning the proclamation of martial law on 13 December 1981 and its application after that date. The complainants referred to the suspension of trade union activities and the internment of many leaders and active members of the organisation Solidarity. They also stated that the right to strike was suspended and that workers and trade unionists had been prosecuted and sentenced for going on strike. In the opinion of the complainants, the decisions and measures taken by the Government constituted a violation of Articles 3 and 4 of Convention No. 87.

37. The complainants also alleged that trade unionists had been dismissed from their jobs by reason of their trade union affiliation and activities and that loyalty oaths had been required under penalty of dismissal, in particular from certain classes of public servants. Such practices were, in the opinion of the complainants, a clear-cut violation of Article 1 of Convention No. 98. Lastly, the complaint mentioned the deaths of workers that had occurred following action by the forces of order on the occasion of labour disputes and stated that further arrests seemed to have taken place. Lists of persons arrested and sentenced were given in an appendix.

Observations of the Government of Poland presented to the Committee on Freedom of Association

38. The Government of Poland confirmed on 30 December 1981 that the activities of the trade unions had been suspended owing to the proclamation of martial law in accordance with section 33, subsection 2, of the Constitution of Poland. The Government maintained that the measure was intended to prevent the imminent danger of civil war, to re-establish calm and public order, to ensure the normal functioning of the administration of the State and to prevent the collapse of the national economy.

39. According to the Government, during the few months before the proclamation of martial law, the trade union Solidarity had clearly gone not only beyond the framework of the agreements of August 1980 signed with the authorities but also beyond that of its own constitution, which had been approved by the Supreme Court on 10 November 1980. Extremist elements had turned the activity of Solidarity and Rural Solidarity in the direction of actions of a political character with an increasingly open trend towards the seizing of power in Poland and the overthrowing of the constitutionally established system.
40. As soon as the measures had been taken to suspend trade union activities, the Government stated that the resulting restrictions were of a temporary nature. In February 1982, a "document on the future of the trade union movement" was prepared by the Committee for Trade Union Affairs of the Council of Ministers, on the basis of which a discussion was commenced with the workers, in particular through the press. Furthermore, on 3 May 1982, the Diet emphasised the support of the authorities for the rebirth of the independent and self-managing trade union movement for the protection of the living conditions and well-being of the workers. In the meantime, the representation of the daily interests of the workers was being carried out by social committees set up in January 1982.

41. In its observations concerning the internment and sentencing of workers, the Government mentioned the adoption of the "Abolition Act", under which no one could be sentenced for political activities carried out before 13 December 1981. With regard to the number of interned persons, the Government stated that 7,000 persons had been interned in the camps. In May 1982, about 2,300 remained, the others having been released. Still according to the Government, special rules were applied to the internees and, following its visits to the camps, the International Committee of the Red Cross made no comments on their material conditions or their relations with the guards.

42. With regard to the dismissal of members of Solidarity, the Government considered that the allegations made in this connection were without foundation. It observed that Polish legislation provided for wide protection against dismissal and that its principles remained in force even during martial law, except in establishments that had been militarised. Furthermore, the imposition by certain Western countries of an economic embargo and the introduction of economic reforms had necessitated transfers of workers that had nothing to do with discrimination. In about 20 per cent of the cases in which the persons concerned had appealed against their dismissal, the competent bodies had considered that these measures were unfounded and that the workers in question, including former ordinary and active members of Solidarity, must be reinstated. Lastly, with regard to the declarations of loyalty required of the workers, the Government stated that, although these declarations had been required in the period immediately following the proclamation of martial law, the practice had since been discontinued.

43. With regard to the violent deaths of workers in connection with labour disputes, the Government furnished information on the events occurring in December 1981 at the Wujek mine, where eight persons had been killed. The legal inquiry carried out by the Military Prosecutor's Office had shown, according to the Government, that the special forces had acted in self-defence. The affair had therefore been closed.

Developments subsequent to the complaint

44. After the filing of the complaint by Mr. Blondel and Mrs. Buck, the trade union situation in Poland underwent developments that are described in several communications in the possession of the Commission. These later events have modified the data of the original situation, and the Commission is bound to take them into account in appreciating the case in its entirety. The main developments concern the adoption of trade union legislation in October 1982 providing, among other things, for the dissolution of the trade union organisations; the suspension in December 1982, and then, in July 1983, the lifting of martial law and the adoption, also in July 1983, of an Amnesty Act; the detention and prosecution of active members of trade unions, the deaths of workers during clashes with the security forces and measures affecting the employment of trade unionists. In the following paragraphs the Commission summarises the information thus available to it.

Trade union legislation

45. The Government promulgated a new Trade Union Act on 8 October 1982. A few days before its adoption, the Bill was submitted to the ILO, which made its comments in the light of Conventions Nos. 87 and 98 and the principles of freedom of association.
46. The terms of the Trade Union Act had been the subject of criticism, in particular by the ILO and the ILO. The criticisms were largely repeated in the communications addressed to the Commission by these two organisations and by the International Organisation of Employers (IOE) and most of the governments that sent information on the substance of the case.

47. The comments expressing these criticisms condemned, in particular, the dissolution of existing trade union organisations and, especially, of Solidarity. The view was also expressed that, although the right to strike was maintained, the conditions in which it could be exercised were such that effect could not be given to it in practice because of the long and complicated procedures. This right, moreover, was refused to several classes of wage earners. The comments also pointed out that restrictions had been placed on the possibility of trade union pluralism and that the establishment of federations and confederations of trade unions was prohibited, at least for some time.

48. In the reports and observations that it had presented both to the Committee on Freedom of Association and to the Committee of Experts on the Application of Conventions and Recommendations and to the International Labour Conference Committee on the Application of Conventions and Recommendations, the Government expressed the view that the Trade Union Act of 8 October 1982 was a continuation of everything positive that the Polish trade union movement had gained in the past. This Act, according to the Government, conferred wide advantages on the unions and recognised the right to strike as a last resort. The temporary limitations placed on certain rights provided for by the Act, especially in respect of the principle of trade union pluralism, and the annulment of the trade union structure existing before December 1981, were, the Government maintained, the only possible solution in the light of the emergency prevailing in the country.

Suspension and lifting of martial law and the adoption of an Amnesty Act

49. The application of martial law was suspended on 31 December 1982. Most of the restrictions imposed by martial law, the Government stated, then ceased to be in force. Thus, according to the Government, an end was put to the measures of internment, and the rights to associate and to strike were re-established. Subsequently, in July 1983, the Council of State lifted martial law and the Diet adopted an Amnesty Act.

Detention and prosecution of trade unionists

50. Several communications addressed to the Commission, however, pointed out that this Act excluded from its scope a large number of active members of Solidarity, lists of whom were provided. It was also mentioned that certain interned persons had been subjected to gross brutality. Furthermore, information, coming in particular from the complainant Mr. Blondel, showed that trade union leaders had been prosecuted for participating in a plot intended to overthrow by force the prevailing political system in Poland. The complainant maintained that the meaning of these measures was that, contrary to the promises and decisions announced, trade union leaders were being prosecuted for activities carried out before the proclamation of martial law.

Violent deaths of workers

51. The information in the possession of the Commission also refers to further violent deaths among the workers, occurring in consequence of attacks carried out by the security forces during peaceful demonstrations organised in the months of August and September 1982 and in the month of May 1983.
Measures affecting the employment of trade unionists

52. Lastly, several documents mention measures of discrimination in respect of employment exercised against trade unionists, particularly those who had been interned or detained, some of which occurred after the adoption of the Amnesty Act.

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53. In a later part of its report the Commission will examine in detail each of the questions raised in the present case. With a view to carrying out as thorough an examination as possible, the Commission, like others of the same nature appointed previously in the ILO, considers that its role should not be confined to the examination of information furnished by the parties themselves or in support of their contentions, but that it should take into consideration all the information available to it on the matters in question. It is in this spirit, then, that the Commission will approach each of the points raised in the case that has been presented to it.
PART II

PROCEDURE FOLLOWED BY THE COMMISSION

CHAPTER 4

FIRST SESSION OF THE COMMISSION

54. The members of the Commission made a solemn declaration on 14 July 1983 in the presence of Mr. Francis Blanchard, Director-General of the ILO. When he invited them to make this declaration, Mr. Blanchard expressed himself as follows:

You have been nominated to constitute a Commission of Inquiry by virtue of article 26 of the Constitution of the International Labour Organisation, in order to examine complaints of violation of freedom of association made against the Government of Poland.

The task entrusted to you is to establish the facts without fear or favour and in full independence and impartiality. You will therefore take your place on the Commission in an individual and personal capacity.

It is for your Commission itself to fix the procedure it wishes to follow. It may, however, in fixing its procedure, bear in mind the rules adopted by the earlier Commissions set up under article 26 of the Constitution. One of these basic rules is that a Commission of Inquiry has not to confine itself to examining the information that the parties may submit but that it must also itself take all the necessary measures to obtain the fullest and most objective information possible on the questions at issue.

The Governing Body of the International Labour Office has approved the terms of a solemn declaration by which the members of a Commission of Inquiry undertake to perform their duties and exercise their powers 'honourably, faithfully, impartially and conscientiously'. The terms of this declaration correspond to those of the declaration made by the judges of the International Court of Justice.

I therefore invite you to make this solemn declaration in turn.

55. The members of the Commission then made the following declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as a member of the Commission of Inquiry appointed by the Governing Body of the International Labour Office at its 223rd Session (May-June 1983) in pursuance of article 26 of the Constitution of the International Labour Organisation to examine the observance by the Government of Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

56. In accordance with the decision taken on 14 July 1983, the Commission held its First Session on 5 and 6 September 1983, during which it decided on the procedure it was to follow for the rest of its work.

Communication of additional information

57. The Commission invited the Government of Poland to communicate to it before 21 November 1983, any written statement it might wish to offer, which could be confined to supplementary or new information and items. The Commission also invited the complainants to communicate to it, before 21 November 1983, any supplementary or new
information or observations they might wish to offer. It decided that these should be transmitted to the Government of Poland for possible comments before 21 December 1983.

58. Under article 27 of the Constitution of the ILO and in accordance with the practice in earlier cases of complaints, the Commission invited the governments of certain countries in the region or having important economic relations with Poland to make available to it, before 21 November 1983, any information they might have in their possession concerning the subject of the complaint. The invitation was sent to the Governments of the following countries: Bulgaria, Czechoslovakia, Denmark, France, the German Democratic Republic, the Federal Republic of Germany, Hungary, Romania, Sweden, the USSR, the United Kingdom and the United States.

59. The opportunity of presenting, before 21 November 1983, any communication they might wish to on the matters raised in the complaint was offered to the universal workers' and employers' organisations having consultative status with the ILO, namely the International Confederation of Free Trade Unions, the World Confederation of Labour, the World Federation of Trade Unions and the International Organisation of Employers.

60. The Commission notified the governments and organisations concerned that their information would be transmitted to the Government of Poland and the complainants for possible comment before 21 December 1983.

61. The Commission informed the Government of Poland and the complainants and the above-mentioned governments and organisations that, since its sole function was to examine the performance by Poland of its obligations deriving from the ratification of Conventions Nos. 87 and 98, it followed that matters irrelevant to the sphere of trade unionism did not come within its competence, that any papers that might be submitted to it should relate to the affair that had been placed before it and that it would not examine any matter outside its terms of office.

62. The Commission informed the Government of Poland and the complainants that it intended to perform its task with complete objectivity, impartiality and independence. It made clear that it did not consider its role to be confined to an examination of the information furnished by the parties themselves or in support of their contentions, and that it would take all suitable measures to obtain information as full and objective as possible on the matters at issue.

Measures adopted with a view to the Second Session and the subsequent work of the Commission


64. The Commission invited the Government of Poland to nominate a person empowered to represent it before the Commission with any substitutes it might wish. The Commission asked the complainants to state whether they meant to attend the session personally and, if not, to supply the names of their representatives and any substitutes.

65. The Commission drew up a list of witnesses it wished to hear. It informed the Government of Poland that it wished to hear as witnesses the Ministers of Labour, the Interior, Justice and Trade Union Affairs or their representatives. It also informed the Government that, wishing to have a general view of the different trends in the Polish trade union movement, it considered that the evidence of the following persons, or of persons empowered to represent them, should be heard: the Polish Workers' delegate and substitute delegates to the 67th Session of the International Labour Conference in June 1981, the Polish Employers' delegate who took part in the same session of the Conference and the leaders of the trade unions set up under the Trade Union Act of 8 October 1982. The Commission informed the complainants of this step.

66. The Commission addressed letters to the Polish Workers' and Employers' delegates to the 67th Session of the International Labour Conference in June 1981, informing them that they were invited to come and give evidence before it in that capacity or to appoint a person empowered to represent them.
67. The Commission invited the Government of Poland and the complainants to communicate, before 10 December 1983, the names and descriptions of the witnesses they wished to designate, with a brief indication of the points on which these persons wished to give evidence. It informed them that it would itself decide, on the basis of the information obtained in this way, whether it would hear each of the witnesses in question.

68. The Commission also decided to invite the universal workers' and employers' organisations having consultative status with the ILO to designate representatives to explain their views during the session and informed the Government and the complainants accordingly.

69. The Commission asked the Government of Poland to ensure that the persons that the Commission thought should be heard as witnesses and the persons designated by the Government and also any witnesses proposed by the complainants could, if they lived in Poland, come to give evidence in Geneva and enjoy full protection against any kind of measure that might be taken against them by reason of their statements before the Commission and, in particular, that no obstacle should be placed in the way of their return to Poland.

70. The Commission adopted the rules of procedure that it intended to follow during its Second Session for the hearing of witnesses. These rules were brought to the notice of the Government of Poland, the complainants and the international workers' and employers' organisations concerned.¹

71. In its letter to the Government of Poland dated 7 September 1983, the Commission expressed the hope that the Government would give it the co-operation provided for by the Constitution of the ILO, which had always been given to earlier Commissions by the member States of the ILO in the cases in which this procedure had been used in the past.

72. The Commission authorised its chairman to deal with any questions of procedure that might arise between sessions, in consultation with the other members if he considered this necessary.

¹ The texts of these rules is given as an appendix to the present chapter.
APPENDIX

Rules for the hearing of witnesses

1. The Commission will hear all witnesses in private sittings. The information and evidence presented to the Commission therein are to be treated as absolutely confidential by all persons whom the Commission permits to be present.

2. The Government of Poland and the complainants will each be requested to designate a representative to act on their behalf before the Commission. The representatives will be expected to be present throughout the hearing of witnesses and will be responsible for the general presentation of their witnesses and evidence.

3. Witnesses may not be present except when giving evidence.

4. The Commission reserves the right to consult the representatives in the course of or upon the completion of the hearings in respect of any matter on which it considers their special co-operation to be necessary.

5. The function of the Commission is to ascertain facts. The opportunity to furnish evidence and to make statements is given only for the purpose of obtaining factual information bearing on the matters that the Commission has been set up to examine. The Commission will give witnesses all reasonable latitude to furnish such information but will not accept any communication or statement of a political character or in any other way irrelevant to the issues referred to it.

6. The Commission will require each witness to make a solemn declaration, identical to that provided for in the Rules of Court of the International Court of Justice. This declaration reads: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth."

7. Each witness will be given an opportunity to make a statement before questions are put to him. If a witness reads his statement, the Commission would appreciate receiving six copies in English or French.

8. The Commission or any member of the Commission may put questions to witnesses at any stage.

9. The representatives or their substitutes present in accordance with the rules laid down in paragraph 2 above will be permitted to put questions to the witnesses, in an order to be determined by the Commission.

10. All questioning of witnesses will be subject to control by the Commission.

11. Any failure on the part of a witness to reply satisfactorily to a question put will be noted by the Commission.

12. The Commission reserves the right to recall witnesses, if necessary.
CHAPTER 5

SECOND SESSION OF THE COMMISSION

Communications received by the Commission
after its First Session

73. After the Commission had given the Government of Poland, the complainants, the international workers' and employers' organisations and certain governments the opportunity of submitting communications to it, it received the following information, which will be analysed in greater detail in a later part of the report.

Communication from the complainants

74. One of the complainants, Mr. Blondel, sent the Commission a memorandum with various annexes explaining and confirming the allegations contained in the complaint. The memorandum, headed "Repression after 13 December 1981", dealt in particular with acts of repression after the strikes, with demonstrations in the street, with internment, with trials, with the conditions of detention under the Polish prison system, with resort to violence (prisoners beaten or injured, cases of death), with the repression of the workers, and with the attitude of the authorities to the property of Solidarity. The complainant also sent the following three documents published by the Co-ordinating Office Abroad of Solidarity:

- Poland under martial law - A report on human rights, which comprises documents on the violation of human rights during the period from 13 December 1981 to 31 December 1982;
- The situation of trade unions in Poland, which constitutes a legal and factual analysis of the trade unions in Poland;
- Repressions in Poland - State of war, which gives a non-restrictive list of the different forms of repression employed by the Polish authorities between the proclamation of martial law and December 1982.

Refusal of the Polish Government to co-operate in the procedure

75. The Chairman of the Commission was informed orally, by the Permanent Mission of Poland in Geneva that the Government of Poland did not intend to co-operate in the proceedings, as the Permanent Representative of Poland in Geneva had already indicated in a letter addressed to the Director-General of the ILO on 24 June 1983.

76. The Commission took note of this letter and of the reply of the Director-General of the same day and it addressed a communication to the Government of Poland on 25 November 1983 concerning the situation arising out of its policy of non-cooperation. The Commission will refer further on to this letter and, more generally, to the lack of co-operation by the Government of Poland.¹

¹ See below, paras. 457 and 465-472.
Communications from certain international workers' organisations and from the International Organisation of Employers

77. The International Confederation of Free Trade Unions (ICFTU) sent two communications with several annexes. In its first communication the ICFTU referred to the fate of numerous leaders, active members and advisers of the trade union Solidarity still in prison despite the lifting of martial law, and in particular the situation of four advisers and seven members of the National Committee of Solidarity and that of several other leaders of Solidarity sentenced to heavy penalties or facing charges. In its second communication, the ICFTU pointed out that active members and sympathisers of Solidarity continued to be victims of constant repression affecting the elementary civil and trade union rights of Polish workers, including their personal safety. The ICFTU also called attention to the refusal continually expressed by the Polish authorities to renew the dialogue started with the Polish workers after the social Agreements of Gdansk, Szczecin and Jastrzebie in August and September 1980, which had been broken off abruptly by the imposition of martial law. The ICFTU considered that the only possible condition for restoring the situation in Poland appeared to consist in a wide social dialogue accompanied by the releasing of all the leaders, active members and sympathisers of Solidarity and also of the other political prisoners, the cancellation of the administrative consequences suffered by the trade unionists who had been sentenced or dismissed or both and a final end to all repressive measures.

78. The ICFTU supplemented its communications with annexes giving information on the following matters in particular: trade unionists still in prison, conditions of detention, physical violence inflicted on certain leaders and advisers of Solidarity who had been imprisoned and the state of health of these persons, trade unionists who had died following strikes, peaceful demonstrations or physical violence inflicted by the security forces that had resulted in death, sentences of members of Solidarity for trade union activities or convictions and repression exercised against workers because of their trade union membership, activities or sympathies (dismissals, refusals to reinstate, various infringements of the rights of workers who belonged to Solidarity).

79. The ICFTU also sent the Commission a detailed analysis of the Trade Union Act of 8 October 1982 and two documents published by the Co-ordinating Office Abroad of Solidarity, which had also been sent by the complainant, namely Poland under martial law - A report on human rights, and The situation of trade unions in Poland. It also sent a collection of articles on the activities of Solidarity that had appeared in Free Labour World in 1983 under the heading "Solidarnosc lives on".

80. The World Confederation of Labour (WCL) sent a communication accompanied by a number of documents. One of them recapitulates the most flagrant violations of freedom of association carried out by the Polish Government since 13 December 1981, both following the introduction of martial law (suspension of trade union activities, repression against workers and members of the trade union Solidarity, destruction of the organisation of Solidarity, obligation placed on workers to sign a declaration of loyalty, penalties for trade union activities, the incorporation of undertakings in a military structure) and following the adoption of the Trade Union Act of 8 October 1982 (dissolution of existing trade unions, restriction of the right to establish and join trade unions, interference by the employers in the establishment of new trade unions, restrictions on the right to strike).

81. The other documents sent by the WCL have been drafted by the Co-ordinating Office Abroad of Solidarity and deal with "Repression after 13 December 1981" (a document also sent by Mr. Blondel), "The state of law in Poland" (an analysis of certain legislative texts adopted since July 1983), "The forms of social resistance - The clandestine society" (an analysis of the clandestine structures of Solidarity), Poland under martial law - A report on human rights, The situation of trade unions in Poland, and Repressions in Poland - State of war. The last three documents, too, had also been communicated by Mr. Blondel. The WCL further sent a booklet on "Solidarity today and tomorrow" and notes on a journey carried out in Poland in July and August 1983.
82. In its communication to the Commission the International Organisation of Employers refers in particular to the repression suffered by the trade union Solidarity and other Polish workers' unions and also to constitutional, legislative and administrative texts in Poland that are said to be contrary to the principles of freedom of association.

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83. The Commission had also invited the World Federation of Trade Unions (WFTU), as a universal international organisation having consultative status with the ILO, to submit any communication it might wish to. The WFTU did not reply to the invitation.

Communications sent by governments invited to supply information under article 27 of the Constitution of the ILO

84. Among the governments to which the Commission had addressed itself under article 27 of the Constitution, several sent very detailed information on certain points relating to the subject of the complaint.

85. The Government of the Federal Republic of Germany made observations on certain provisions of the Amnesty Act of 21 July 1983, pointing out in particular that the amnesty for actions coming under sections 46 and 48 of the Decree respecting martial law was not absolute because of the general reservation of section 7, under which the amnesty decision is cancelled if the person concerned commits a similar offence before 31 December 1985. This Government also sent extracts of decisions by the Supreme Court of Poland (Criminal Chamber and Military Chamber) during the year 1982. Furthermore, it sent information on the fate of certain ordinary and active members of the trade union Solidarity.

86. The Government of Denmark pointed out in particular that the activities of the trade union Solidarity were covered by Conventions Nos. 87 and 98, which had been ratified by Poland.

87. The Government of the United States analysed the Trade Union Act of 8 October 1982 in the light of the principles set forth in Conventions Nos. 87 and 98, referring in particular to the provisions concerning the single-trade-union system in the undertaking, trade union structures, the right to strike, the dissolution of trade union organisations, and especially Solidarity, the devolution of the property of this organisation, the right to form federations and confederations and collective bargaining. The Government also referred to reprisals taken against members of Solidarity, to certain recent legislative texts, such as the Act of 21 July 1983 respecting special legal provisions for dealing with the social and economic crisis, and also to the Amnesty Act. Furthermore, the Government furnished information on imprisonment and arrest for trade union activities, on deaths, on ill-treatment and torture, on imprisonment and trials and on the penal policy of the Government of Poland.

88. The Government of France called attention to certain provisions of the Trade Union Act of 8 October 1982 and the above-mentioned Act of 21 July 1983, which do not seem to be in conformity with those of Conventions Nos. 87 and 98. These include the transitional provisions concerning the single-trade-union system in the undertaking, the dissolution of existing trade unions and the possibility of suspending the employment of workers carrying on activities contrary to law or to the social interest. The Government also referred to the Amnesty Act and the exclusion of certain offences from

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2 See above para. 58.
the scope of this Act, to the practical application of the Act of 26 October 1982 respecting social parasitism and to the dismissals that have taken place among academic staff and in radio and television circles.

89. The Government of the United Kingdom sent the Commission a number of papers and in particular an open letter addressed on 6 May 1983 to the Diet by a group of trade unionists, including Mr. Lech Walesa, appealing for a return to trade union pluralism, the setting free of the political prisoners and the reinstatement of workers dismissed for trade union activities. The Government also supplied the text of a statement that it had in October 1982, in which it deplored the new trade union legislation adopted in Poland and, in particular, the dissolution of Solidarity, a step that made it very difficult to restart a genuine dialogue in the country and seemed to indicate that the way chosen by the Government of Poland was that of confrontation rather than reconciliation.

90. The Government of Sweden made observations on certain provisions of the Trade Union Act that raised questions concerning the application of Convention No. 87, particularly in respect of the registration of trade unions, the dissolution of existing organisations and the single-trade-union system in the undertaking during an indefinite period. The Government also mentioned section 278 of the Penal Code, providing for the punishment of persons belonging to an organisation whose registration had been refused or cancelled.

* * *

91. In accordance with the decision of the Commission, a copy of the information received was transmitted to the Government of Poland and to the complainants.

* * *

92. In accordance with article 27 of the Constitution of the ILO, the Commission also asked a number of other governments, namely those of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Romania and the USSR to send it any information they might have relating to the subject of the complaint. The Government of Romania took no action on the request.

93. Each of the other governments sent a letter to the Director-General of the ILO in which it stated essentially that it did not accept the setting up of the Commission of Inquiry and that it considered the decision of the Governing Body in this respect to be interference in the domestic affairs of Poland. The Director-General transmitted these letters to the Commission.

94. The Commission is bound to observe that the Governing Body of the ILO, which had before it a complaint by two delegates to the Conference, filed in accordance with article 26 of the Constitution of the ILO, has, in the exercise of the powers conferred on it by this provision, constituted the Commission of Inquiry regularly with a view to examining the effect given by Poland to Conventions Nos. 87 and 98 on freedom of association and collective bargaining, which have been ratified by this country. 3

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3 See also, in this connection, para. 469 below.
Communications concerning witnesses that the Commission wished to hear at its Second Session

95. By means of a communication dated 10 December 1983, Mr. Blondel sent the Chairman of the Commission a list of persons whom he wished to present, specifying the questions on which these persons would give evidence. In reply to this communication, the Chairman of the Commission informed Mr. Blondel that due note had been taken of his proposals respecting the persons named and the subjects on which they would be called on to give evidence.

96. The Government of Poland did not reply to the invitation that had been sent to it to provide a list of witnesses for the Second Session or to the request of the Commission that it should ensure the attendance of certain persons whom the Commission wished to hear, namely the Ministers of Labour, of the Interior, of Justice and of Trade Union Affairs or their representatives. The Government of Poland made no mention either of the wish expressed by the Commission in its letter of 7 September 1983 to hear the evidence of the Polish Workers' and Employers' delegates and substitute delegates to the 67th Session of the Conference and that of the leaders of the trade unions set up under the Trade Union Act of 8 October 1982 or their representatives.

Hearing of evidence

97. From 16 to 27 January 1983 at Geneva, the Commission held its Second Session, which was mainly devoted to the hearing of evidence. This Session comprised ten private sittings, in which one of the complainants, Mr. Blondel, participated with the assistance of Mr. de Vries, Director of the Geneva office of the International Confederation of Free Trade Unions, and Mr. Milewski, Director of the Co-ordinating Office Abroad of Solidarity. The other complainant, Mrs. Buck, had empowered Mr. Blondel to represent her. The Government of Poland was not represented and did not therefore occupy the seat reserved for it. During its first sitting, the Commission heard a preliminary statement by Mr. Blondel. The members of the Commission also met several times for private discussions.

98. The representatives of certain international workers' and employers' organisations made statements before the Commission. These were the International Confederation of Free Trade Unions (ICFTU), represented by its Secretary-General, Mr. Vanderveken; the World Confederation of Labour (WCL), represented by its Secretary-General, Mr. Kulakowski, with the assistance of Mr. Engelmayer, Secretary-General of the Christian Trade Union Group of the Austrian Confederation of Trade Unions (OGB), and Mr. Seniuta, former adviser at the Regional Office of Solidarity in Lower Silesia; and the International Organisation of Employers (IOE), represented by the Secretary-General, Mr. Lagasse, with the assistance of Mr. Chacko. The World Federation of Trade Unions (WFTU) took no action on the invitation of the Commission to appoint a representative to express its views.

99. The complainant Mr. Blondel had proposed to the Committee that the following 18 witnesses should be heard: Mrs. Anna Walentynowicz, worker at the Lenin shipyard, one of the signatories of the Agreements of Gdansk, at the time in temporary detention; Mr. Andrzej Gwiazda, electronic engineer at the Elmor factory, one of the signatories of the Agreements of Gdansk, at present in temporary detention; Mr. Marian Jurczyk, worker at the Warski shipyard, one of the signatories of the agreements of Szczecin, at present in temporary detention; Mr. Boguslaw Choina, medical doctor, residing in Poland; Mr. Edmund Baluka, worker at the Warski shipyard, former chairman of the central strike committee of the town of Szczecin, at present imprisoned at Barczewo; Mr. Andrzej Milczanowski, legal expert, at present detained; Mrs. Anka Kowalska, writer, at present residing in Poland; Mr. Andrzej Jarmakowski, former Director of the Office of the National Committee of Solidarity, at present residing in the United States; Mr. Zygmunt Dziechciowski, former officer of the trade union Solidarity in the port of Szczecin, at present residing in Sweden; Mr. Dariusz Brzozowski, member of a strike committee at Elblag, at present residing in Norway; Mr. Jan Bartczak, former chairman of the Centre-East Regional Office of Solidarity, at present residing in
the Federal Republic of Germany; Mr. Krzysztof Witon, spokesman of the Rzeszow Regional Office of Solidarity, at present residing in the United States; Mr. Stanislaw Kaczmarczyk, former delegate to the Congress of Solidarity in Silesia and former vice-chairman of a Solidarity committee of invalids and pensioners, at present residing in France; Mr. Jacques Maire, Secretary-General of the Ile-de-France Regional Association of Force Ouvrière (France), who went to Poland in May 1983; Mr. Stefan Nedzynski, General Secretary of the Postal, Telegraph and Telephone International; Mr. Heribert Maier, General Secretary of the International Federation of Commercial, Clerical, Professional and Technical Employees and spokesman of the Workers' group on the Committee on Freedom of Association of the Governing Body of the ILO (to give evidence in the latter capacity); Mr. Jef Houthuys, Chairman of the Confederation of Christian Trade Unions of Belgium and Workers' Vice-Chairman of the Committee on the Application of Conventions and Recommendations of the International Labour Conference (to give evidence in the latter capacity); Mrs. Françoise Breton-Baluka of the Committee for the Defence of Free Trade Unions in the USSR and Eastern Europe, wife of the above-mentioned Edmund Baluka and residing in France.

100. The Commission was able to hear only the witnesses proposed by the complainant who were not resident in Poland.\(^4\)

101. The Government of Poland did not arrange for the attendance of the government witnesses that the Commission had expressed the wish to hear, namely the Ministers of Labour, the Interior, Justice and Trade Union Affairs, or their representatives, or proposed a list of additional witnesses. Neither did it make the necessary arrangements for the attendance of the Polish Workers' delegate and substitute delegates or the Polish Employers' delegate to the 67th (June 1981) Session of the International Labour Conference or of the officers of the trade unions set up under the Trade Union Act of 8 October 1982.

102. Mr. Lech Walesa, however, President of the National Committee of Solidarity and Polish Workers' delegate to the 67th Session of the International Labour Conference, though he stated that he was unable to come to give evidence personally, designated to represent him Mr. Bohdan Cywinski, a former expert of Solidarity, who was heard by the Commission.

103. Before their depositions, the Chairman of the Commission informed the witnesses that the terms of reference of the Commission were to establish the situation concerning the application in Poland of Conventions Nos. 87 and 98 and that their statements must therefore relate to these terms of reference. He invited them to make a solemn declaration analogous to that of the International Court of Justice, in which they were to declare solemnly that they would honourably and conscientiously tell the truth, the whole truth and nothing but the truth.

104. All the witnesses, after making this solemn declaration, took advantage of the opportunity accorded them by the Commission of making a general statement. They were then questioned by the Commission and the representative of the complainants or his assistants. The witnesses handed the Commission various documents in support of their declarations.

105. At the end of the hearings, the representative of the complainants made a final statement on the evidence offered and presented his conclusions. He also handed over a number of written documents to the Commission.

106. The information obtained during the hearings is analysed in a later part of the report. The record of the hearings and a list of written documents provided during the session were sent by the ILO to the Government of Poland, which later returned them to the ILO. Two copies of the record were deposited in the library of the ILO.

\(^4\) See also para. 461 below about the proposed witnesses resident in Poland.
107. At the end of the hearings, the Commission thought that it would be useful if
the whole Commission or one of its members were able to go to Poland to supplement the
information it had obtained. It therefore asked the Government, in a letter dated 31
January 1984, to provide it with the opportunity of obtaining the necessary information
on the spot from the authorities and official bodies, trade union organisations and
Polish citizens that it might wish to meet and of having private conversations and
interviews, for the purpose, without witnesses. On February 1984, the Government
sent back the letter that had been addressed to it for the purpose by the Chairman of
the Commission.

108. Lastly, the Commission decided to offer the complainants the opportunity of
submitting further information up to 15 April 1984.
CHAPTER 6

THIRD SESSION OF THE COMMISSION

Communications received by the Commission after the Second Session

109. Having given the complainants the opportunity of submitting any further communication they might wish to, the Commission received information from the complainant Mr. Blondel, who enclosed with a letter of 26 March 1984 a communication containing the evidence of Professor Andrzej Stelmachowski. In his letter, the complainant stated that Mr. Stelmachowski was a member of the Programming Council of the Centre for Socio-Occupational Research of the National Consultative Committee of the independent self-managing trade union Solidarity and that it was in this capacity that he had participated as an adviser in the Workers' delegation of Poland at the 67th Session of the International Labour Conference in June 1981.

110. In letters dated 14 and 19 April 1984, the complainant also furnished information on the detention of trade unionists and on the present activities of the trade unions in Poland.

Adoption of the report

111. The Commission held its Third Session at Geneva from 24 April to 2 May 1984 to prepare and adopt its report.
PART III

EXAMINATION OF THE CASE BY THE COMMISSION

112. This part of the report contains an analysis of the allegations and information considered by the Commission. It is to be recalled that, for several years, prior to the presentation of the complaint under article 26 of the ILO Constitution, questions concerning the trade union situation in Poland had been under examination by the Committee on Freedom of Association, and that in the first instance that Committee was also requested to consider the action to be taken on the complaint under article 26. On the recommendation of the Committee, the Governing Body decided to refer the examination of the case as a whole to the present Commission of Inquiry. Furthermore, the Committee of Experts on the Application of Conventions and Recommendations had examined the reports furnished by the Government, under article 22 of the Constitution of the ILO, on the application of Conventions Nos. 87 and 98 and the Conference Committee on the Application of Conventions and Recommendations had also discussed the application of these Conventions by Poland.

113. Accordingly, the analysis in the following chapters takes into account all information which had been previously presented to the Committee on Freedom of Association, including information gathered during various missions carried out by representatives of the International Labour Office between 1980 and 1982. The information received directly by this Commission includes communications and documentation submitted by the complainants, by a number of governments and by international organisations of workers and employers, as well as statements and evidence presented during the hearings held by the Commission in January 1984. Indications as to the source of information are given in footnotes.\(^1\)

114. Although the Government of Poland decided not to participate in the proceedings before the Commission, the analysis of the available information indicates the position taken by that Government, on the basis of the written communications and oral statements presented to the Committee on Freedom of Association, information given by representatives of the Government to ILO representatives during the above-mentioned missions to Poland, the reports on the application of Conventions Nos. 87 and 98 presented pursuant to article 22 of the ILO Constitution (the latest of which was received in April 1984), and statements made in the Committee on the Application of Conventions and Recommendations and in plenary sitting at sessions of the International Labour Conference.

115. Before starting the analysis of the case itself, the Committee has thought it necessary to give an account of trade union legislation in Poland and an outline of the trade union situation in the country during the period from August 1980 to December 1981, when martial law was proclaimed.

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\(^1\) Where they refer to the records of the hearings, the footnotes give the name of the party, witness or representative and also the number of the sitting and the page in Roman and Arabic figures respectively.
CHAPTER 7

TRADE UNION LEGISLATION OF POLAND

116. The most important provisions governing trade union activity in Poland are to be found in the Constitution, the Labour Code and the Trade Union Act.¹

117. The Constitution of the Polish People's Republic of 22 July 1952, as amended most recently by an Act dated 20 July 1983, guarantees to citizens the right to associate; it specifies that citizens come together in trade unions with a view to their active participation in political, social, economic and cultural life; the trade unions represent the interests and the rights of the workers. The Constitution further guarantees freedom of conscience and religious belief, of expression, of the press, of public and private meetings and of processions and demonstrations, the inviolability of the person and of the home and the secrecy of correspondence.²

118. The Labour Code of 24 June 1974 contains provisions on the right of workers to associate in trade unions, to take part in social and economic development and to enter into collective agreements and on the protection of trade union representatives against the termination of the employment contract.³

119. The main provisions in Polish legislation respecting trade unions were to be found in the Trade Union Act of 1 July 1949,⁴ as amended in September 1980. This Act as amended was repealed by the Trade Union Act of 8 October 1982, which is the present basis of Polish trade union legislation. The trade union system of independent workers in agriculture is governed by the Act of 8 October 1982 respecting farmers' socio-occupational organisations.⁵ The principles governing the representation of non-manual workers employed by the State are laid down by an Act dated 16 September 1982.

120. The present chapter gives a general view of the main provisions in the different trade union texts that have been in force since 1957, the year of the ratification by Poland of Conventions Nos. 87 and 98. The following three stages in the development of Polish trade union legislation will be considered in succession: the situation before September 1980; that between September 1980 and December 1981; the situation since 13 December 1981.

Provisions in force before September 1980

121. The Act of 1 July 1949 guaranteed to manual and non-manual workers the right of voluntary organisation in trade unions (s. 1). It specified that this right covered manual and non-manual workers employed in undertakings, establishments and institutions

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¹ Some criticisms concerning certain provisions of the legislation will be presented in Chapters 10, 12 and 13.

² Constitution, articles 82-87.

³ Labour Code, ss. 19 and 20, 238-241, 39 and 52.

⁴ See ILO, Legislative Series, 1949 - Pol. 2.

⁵ See ILO, LS 1983 - Pol. 1A (an Act dated 21 July 1983 and an Act dated 6 April 1984 introduced certain amendments to the Trade Union Act; see below paras. 144, 147 and 148) and LS 1983 - Pol. 1B.
and other persons employed under a contract of employment or apprenticeship or by
appointment of public authority.  

122. Under the Trade Union Act (ss. 5, 6 and 9), a trade union acquired legal
personality by inscription in the register of trade unions kept by the Central Council
of Trade Unions, named by the Act as one of the supreme authorities of the Federation of
Trade Unions, which itself constituted the principal body representing the trade union
movement in Poland.

123. The functions, objects and spheres of action of the trade unions were laid
down by the constitution of the Federation of Trade Unions and the constitutions of the
trade unions (s. 3). Among the functions listed in the constitution of the Federation
of Trade Unions the following may be mentioned: to represent and defend the interests
of the workers, to participate actively in the government of the People's State, to
co-operate in economic planning, to develop workers' self-management and to draft and
sign collective agreements. The legislation contained no provisions regarding the
legality or illegality of strikes.

124. Section 4 of the 1949 Act provided that trade unions should co-operate,
through the directing bodies and union offices prescribed in their constitutions, with
authorities and institutions in the fields of public administration, the national
economy and supervision. It was specified that the trade unions should represent both
organised and unorganised workers in all matters affecting the common interests of the
workers.

125. In 1973, the Government informed the Committee of Experts on the Application
of Conventions and Recommendations that a new trade union bill was being drawn up.

126. In May 1980, the Government stated that progress was being made towards the
amendment of the Act and its adaptation to Convention No. 87.

Provisions in force between September 1980
and 13 December 1981

127. Following changes in the social situation in Poland and, in particular, the
signing on 31 August 1980 of the Protocol of Agreements of Gdansk guaranteeing the
independence and self-management of the new trade unions, the Council of State took a
decision on 15 September 1980 concerning the registration of the newly established trade
unions. By virtue of this decision, in order to enable the new trade unions to obtain
registration outside the register kept by the Central Council of the Federation of Trade
Unions pending the adoption of legislation on the principles and procedures of
registration, constituent committees of the newly established trade unions that had not
had these unions inscribed on the register kept by the Central Council of Trade Unions
could apply for registration to the Court of the Voivodship of Warsaw. As soon as
it was registered, a trade union obtained legal personality.

128. On 8 October 1980, the Diet adopted an Act to amend the Trade Union Act of
1 July 1949 and to give statutory confirmation to the above-mentioned decision taken by
the Council of State on 15 September 1980.

6 The constitution of the Federation of Trade Unions specified in section 8 that
"every manual or non-manual worker employed on the basis of a contract of employment, a
nomination or a contract of apprenticeship may belong to a trade union and that members
of work co-operatives whose principal source of income is the pay provided by the work
of the co-operative may also belong to a trade union."

7 See above, para. 15, footnote 5.
129. Under this Act, section 9 of the 1949 Trade Union Act was supplemented with a provision to the effect that a trade union or regional association of trade unions could obtain legal personality as soon as it was registered by the Court of the Voivodship of Warsaw. If a union was refused registration by the Court of the Voivodship, it had the right to appeal to the Supreme Court.

130. Under the new legislation, many new trade unions were registered, including the independent and self-managing union Solidarity. The application for registration by the trade union Solidarity of Gdansk, whose activities covered the whole national territory, was examined, on 24 October 1980, by the Court of the Voivodship of Warsaw, which registered the organisation but made changes in certain provisions of its constitution. Following the appeal against this decision by Solidarity, the Supreme Court decided on 10 November 1980 to confirm the registration of Solidarity on the basis of its constitution as drawn up by the trade union, the only amendments being those introduced by the trade union itself, which consisted in appending to the constitution part of the Agreements of Gdansk and the text of Conventions Nos. 87 and 98 of the ILO.

131. Among the trade unions registered in 1981 special mention should be made of Rural Solidarity. This trade union, composed of tenant farmers and small owners, had its registration refused on the grounds that the formation of trade unions was illegal where not wage earners but small farmers were concerned. After these initial difficulties, an Act was adopted on 6 May 1981 authorising the registration of agricultural organisations under the same procedure as workers' organisations. Rural Solidarity was registered on 12 May 1981.

Provisions in force since 13 December 1981

Martial law

(a) Proclamation of martial law

132. The proclamation of martial law on 13 December 1981 under the Decree respecting martial law issued on 12 December 1981, by virtue of section 33, subsection 2, of the Constitution, had effects on the exercise of civil liberties and trade union rights, the following in particular: the suspension or temporary restriction of basic rights, including the rights to the inviolability of the person, the home and the secrecy of correspondence, to freedom of expression and the press, of public meetings, of processions and of demonstrations; the suspension of the right of association (s. 4); the suspension of the right to strike and to carry out protest actions (s. 14(1)). Under the Decree, the pursuit of activities in a suspended trade union was liable to punishment by imprisonment of up to three years (s. 46(1)). Participation in a strike or an action of protest was punished by being placed under arrest for up to three months or by a fine of 5,000 zlotys (s. 50) and the organisation or management of such a strike or action of protest by imprisonment of up to five years (s. 46(2)). The Decree (s. 42(1)) authorised internment in an internment camp for the period of martial law. The Decree respecting the dismissal of charges arising out of certain crimes and offences, known as the "Abolition Decree" guaranteed that there should be no prosecution of any person by reason of his political activities before 13 December 1981.

8 The Decree of the Council of State respecting martial law and the decrees issued under it on 12 December 1981 were approved by the Diet on 25 January 1982 in an Act respecting the special regulations in force during the period of martial law.

9 According to the ILO Yearbook of Labour Studies, the monthly wage in industry as a whole in 1982 was 11,000 zlotys and that in the extractive industries was 23,000 zlotys.
(b) Suspension of martial law

133. On 18 December 1982, the Diet adopted an Act to amend the Act respecting the special regulations in force during the period of martial law. By a Decision dated 19 December the Council of State suspended martial law with effect from 31 December 1982. Under section 1 of this Act, certain restrictions introduced by the Decree of 12 December 1981 respecting martial law were lifted. These included restrictions on the right to strike and to hold demonstration, which had to be exercised in accordance with the laws in force, and the suspension of the activities of associations and trade unions. Nevertheless, participation, during the period of suspension of martial law, in a strike, an action of protest or a gathering contrary to the legislation was grounds for the termination of the employment relation without notice.

(c) Lifting of martial law

134. By a Decision dated 20 July 1983, the Council of State lifted martial law, with effect from 22 July 1983. The Diet, on 21 July 1983, adopted an Act respecting special legal provisions for dealing with the social and economic crisis and an Amnesty Act and made certain amendments to the Constitution and to the Penal Code.

135. The Amnesty Act applied to a number of offences set forth restrictively in section 1. They included offences committed for political reasons or in connection with a strike or an action of protest and offences committed during activities directed against strikes or actions of protest or against collective breaches of security or order carried out for political reasons.

136. As to the persons benefiting by the amnesty, the Act distinguished several groups, namely persons already sentenced, persons against whom criminal proceedings had been begun but whose trial had not yet taken place and persons whose prosecution had not yet been started. The Act provided for the remission of the penalty where the offender was a woman or a young person under 21 years of age or where the penalty inflicted was of not more than three years. Penalties of over three years were reduced by half. In the above-mentioned cases penalties of confiscation of property, degradation and fines, however, were maintained (ss. 3 and 4 of the Act).

137. With regard to offenders whose prosecution had been started but who had not yet been sentenced, the procedure was cancelled if the circumstances of the case showed that the sentence would be remitted. Exceptionally, the Supreme Court could, at the request of the public prosecutor, stop the prosecution even in cases where a sentence of over three years could have been inflicted.

138. With regard to persons who, at the time when martial law was lifted, had not yet been prosecuted for one or more of the offences listed in section 1 of the Act, section 2 provided that, where a person presented himself voluntarily by 31 October 1983 to the authority responsible for prosecution or to the diplomatic or consular representative of Poland, stating that he was ending all criminal activity and indicating the nature, date and place of the offence he had committed, the proceedings would not be started or, if they had been started they would be stopped. The period was then extended to 31 December 1983.

139. Lastly, under section 7 of the Act, if an offender who has benefited by the amnesty commits, during the period ending 31 December 1985, another deliberate offence similar to that for which a sentence depriving him of liberty has been inflicted on him, the amnesty decision is cancelled. In this case, the proceedings are resumed and the cancelled or reduced penalty is to be carried out in whole or in part.

140. The amendments introduced to the Constitution relate in particular to section 33, under which two situations are now recognised: martial law and the state of emergency. Under section 33, subsection 2, the Council of State may proclaim martial law over the whole or part of the territory of Poland for reasons of defence or external threat to the security of the State. Under the new subsection 3, the Council of State may proclaim a state of emergency in the event of an internal threat to the security of the State or of catastrophe.
141. The provision mainly affected by the amendments introduced to the Penal Code of 1969 is section 278 of the Code. The former section 278 treated as an offence participation in an association or organisation whose existence, structure and aims were secret. Under the new section 278 participation in an association or organisation that has been dissolved or whose legal personality has been refused is also considered to be an offence, punishable by imprisonment for three years. Moreover, under the new section 282(a), any person who organises or carries out an illegal action of protest is liable to imprisonment for up to three years. Furthermore, under the Code of Criminal Procedure, as amended on 28 July 1983, the acts covered by Chapter 19 of the Penal Code (crimes against the fundamental political interests of the Polish People's Republic) are now brought under the jurisdiction of the military courts.

142. Act No. 176 of 21 July 1983 respecting the special legal provisions for dealing with the social and economic crisis introduces amendments to the Trade Union Act of 8 October 1982 and to the provisions concerning labour law.\(^\text{10}\)

**Trade Union Act of 8 October 1982**

143. On 8 October 1982 - that is to say some ten months after the proclamation of martial law and two months before its suspension – the Diet adopted a new Trade Union Act and an Act respecting the farmers' socio-occupational organisations.\(^\text{11}\) Some days before the adoption of the Trade Union Act, on 5, 6 and 7 October, a Government delegation visited the ILO and asked for a legal opinion on the conformity of the Trade Union Bill with Conventions Nos. 87 and 98. The ILO then prepared written comments, which were transmitted to the delegation and the to the committees of the Diet responsible for drafting the Act. These comments related to the following matters: the exclusion of officials of prison establishments from trade union law; too high a minimum number of founders and members for the formation of a trade union organisation; the procedure for the calling of a strike (the agreement of the majority of the workers must be obtained); too extensive a list of essential services in which strikes are prohibited; sentences of imprisonment for the infringement of the provisions on the right to strike; cancellation of the registration of existing trade unions; timetable for the resumption of trade union activities (for first-degree organisations, the beginning of 1983; for branch unions, the beginning of 1984; for inter-union associations and organisations, the beginning of 1985; single-trade-union system for the undertaking until the end of 1984); protection against acts of anti-union discrimination defined in a very general way; collective bargaining to take place by branch of activity. Following these observations, the Diet introduced some amendments to the original bill all in line with certain of the observations of the ILO more particularly on the provisions concerning the minimum number of members of a trade union, the list of essential services, the duration of the transitional provisions on the single-trade-union system in the undertaking and anti-union discrimination. The basic provisions of the Act, however, which had been the subject of substantial comments of the Office, and in particular, the cancellation of the registration of the existing trade unions, were not amended.

(a) Recognition of the right to organise

144. Under section 1 of the Act of 8 October 1982 workers have the right to establish and join trade unions. These trade unions are self-managed (s. 1(2)) and independent of the bodies responsible for the administration of the State and the economy (s. 2(1)). The Act covers all persons working under a contract of employment

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\(^{10}\) See below, paras. 163 and 164.

\(^{11}\) Section 53 of the Trade Union Act has been amended by Act No. 176 of 21 July 1983 - see below, paragraph 148.
(s. 10), and by virtue of an amendment introduced on 6 April 1984 the right to organise is accorded to persons working at home and also to those employed under a management contract, provided that they are not employers (new s. 10).

145. Under section 12, soldiers and officials of the civil militia and prison services do not have the right to establish and join trade unions.

(b) Establishment of organisations

146. The Trade Union Act provides that the right to establish trade unions is guaranteed without the need to obtain previous authorisation (s. 9). The union obtains legal personality and the right to carry on its activities on registration, which is effected by a court, with the possibility of appeal to the Supreme Court (s. 19). An Order of the Council of Ministers dated 15 October 1982 lays down the procedure to be followed for registration. It provides in particular that the court shall not order inscription on the register where inscription would have to be cancelled because of the terms of the application or would for other reasons be incompatible with the provisions in force or the facts of the situation (s. 12 of the Order).

147. The minimum number of founding members for a trade union is fixed at 30 (s. 17), and the court is to delete the union from the register if the number of members remains below 50 for three months (s. 19). By an amendment introduced on 6 April 1984, however, the application of sections 17 and 19, paragraph 4(2), is suspended until 31 December 1985 (s. 53 new (2)).

148. Section 31 implies the possibility of a number of trade unions in the enterprise. However, under section 53, subsection 4 (transitional provisions), of the Act of 8 October 1982, a single trade union organisation was to operate in the enterprise for a transitional period ending on 31 December 1984. This period was subsequently extended by the Act of 21 July 1983 respecting special legal provisions for dealing with the social and economic crisis until the application of the law should be examined by the Council of State after consultation with the trade unions and the adoption of any amendments to the Act that might be necessary. (The examination is to take place three years from the coming into force of the Trade Union Act, that is to say, about October 1985.)

149. Under this section 53, subsection 4 (transitional provisions), the Council of State, on 12 October 1982, adopted a Decision laying down the principles and procedure for the establishment of trade union organisations in undertakings in cases including that of several applications for the registration of a trade union in an undertaking. It provides that where more than one constituent committee in the same undertaking submits an application for the registration of a trade union, the court shall propose an arrangement to these committees and the filing of a joint application for the registration of a single trade union. If there is no such joint application, the court may refuse the constituent committee's registration of the trade union or decide to register the trade union whose founders have said that they would agree to an arrangement and to the filing of a joint application for the registration of a single union (s. 6 of the Decision).

(c) Drafting of constitutions and election of officers

150. Section 1, subsection 2, of the Trade Union Act provides that trade unions may independently and in accordance with the law adopt constitutions and internal rules relating to union activities. The Act lists a number of subjects that must be dealt with (s. 18).

151. The constitutions must be in conformity with the National Constitution and the law. In particular, trade unions must observe the principles of the social ownership of the means of production and recognise the leading role of the Polish United Workers' Party in the construction of socialism and the constitutional principles of the foreign policy of the Polish People's Republic (s. 3).
152. Trade unions may determine the principles for electing their executive boards and other managing bodies (s. 1(2)).

(d) Activities and programmes

153. Trade unions may independently and in accordance with the law determine the purposes and programmes of their activities (s. 1). They represent and defend the rights and interests of the workers; their rights and duties are governed by sections 21 to 29; they have in particular the right to conclude national collective agreements.

154. The right to strike is recognised by the Act and governed by Chapter 5 (ss. 33 to 45). Under section 36, subsection 1, trade unions have the right to organise strikes in accordance with the principles laid down in Chapter 5. They may also resort to other forms of protest, on condition that these are not contrary to the legal system and the principles of social coexistence (s. 36(2)). A strike consists in the workers' voluntary and collective cessation of work for the purpose of defending the economic and social interests of a particular group of workers. A strike of a political nature is not authorised (s. 37(5)). A strike may be called only after all possibilities of settling the dispute have been exhausted (negotiations, conciliation and arbitration) (ss. 33 to 35). Concerning arbitration, section 35, subsection 5, specifies that the decision taken by the Arbitration Chamber of the Supreme Court shall be reached by a majority vote and that, where "neither of the parties decides otherwise before submitting the dispute for determination" by the Chamber, the decision shall be binding on the parties. Under section 38, a strike is called by the works trade union body after the decision has been approved by the majority of the workers in a secret ballot and has been confirmed by the next higher body of the union. An inter-works strike is called by the trade union body specified in the rules. Strike notice must be served seven days before the strike is called (s. 38(4)).

155. Under section 40 of the Act, the right to strike is not recognised to certain classes of workers employed in certain sectors (national defence, prison administration, fire-fighting, food, health and social welfare, chemists' shops, education, the administration of the State, banks, courts, oil and gas pipelines, transit lines, installations connected with international transport or radio and television) (s. 40(2)). In other sectors (railways, transport undertakings, organisational units, establishments supplying the population with water, electric power, heating and gas), strikes are allowed provided that the workers ensure "minimum services" for the defence and safety of the State and the satisfaction of the basic requirements of the population (s. 40(3)).

156. Any person who, in connection with the post he holds or the duties he performs, fails to comply with his obligations or violates the provisions of the Act in any other way shall be liable to a fine of up to 50,000 zlotys (s. 46). Any person who leads a strike organised contrary to the provisions of the Act is liable to imprisonment for up to one year, to the restriction of his freedom or to a fine of up to 50,000 zlotys (s. 47).12

(e) Dissolution of existing organisations

157. Under section 52 of the Act, the registration of existing unions is cancelled.

158. Under section 56 of the Act, the property of trade unions existing before the commencement of the Act is placed for a transitional period under temporary management, the organisation of which is determined by order of the Council of Ministers. The temporary management of the property of trade unions was organised by an Order of the Council of Ministers dated 15 October 1982. Shortly after, an Order of 27 December 1982 laid down the principles and the procedure for transferring the property of the former trade unions. This Order provided in particular that the property of the former

12 Concerning the value of the zloty see above para. 132, footnote 9.
trade unions should be transferred to the unions carrying on their activities in the undertakings after 31 December 1982.

(f) Establishment of higher degree organisations and affiliation with international organisations

159. Trade unions have the right to establish associations and inter-union organisations. The provisions of the Act apply, mutatis mutandis, to such associations and organisations (s. 20).

160. Under section 53 of the Act (transitional provisions), national trade union organisations and inter-union associations and organisations cannot operate before the beginning of 1984 and the beginning of 1985 respectively, though the waiting period may be shortened by the Council of State. With regard to national trade union organisations, the Council of State adopted a Decision on 12 April 1983 concerning the "principles and procedure for the establishment" of these organisations. Under this Decision, workers employed in a given branch of activity, class of employment or occupation who are members of a works trade union organisation, may establish a national trade union organisation (s. 1(1)). Works unions for a given branch of activity, employment or occupation, may also establish a national trade union organisation (s. 1(2)).

161. Trade unions may affiliate with international trade union organisations for the purpose of representing the occupational and social interests of their members in the international community, reinforcing the international solidarity of working people and achieving universal progress and social justice (s. 8).

(g) Protection against anti-union discrimination

162. Under section 4, subsection 2, of the Trade Union Act, the principles governing the protection of the employment of workers holding elective office in trade union bodies are governed by the provisions of the Labour Code. The 1974 Labour Code lays down two procedures for the termination of a worker's contract, namely, termination with notice and termination without notice. With regard to the termination of a contract with notice, section 39 of the Labour Code provides that an establishment shall not terminate a contract if the person concerned is a member of the works council or a trade union representative. As to the termination of a contract without notice, section 52 provides that, where the person concerned is a member of the works council or a trade union representative, the termination of his contract of employment shall require the consent of the next higher trade union authority.

163. The Act of 21 July 1983 respecting special legal provisions for dealing with the social and economic crisis provides that an undertaking may conclude a contract of employment only upon the presentation of a certificate of employment as provided for by section 97 of the Labour Code. This certificate includes particulars of the manner in which the employment relation was terminated or the circumstances of its cancellation. A public undertaking entering into a contract with a worker who has been dismissed without notice through his own fault by the undertaking in which he has been working or who has abandoned his work can accord this worker only the lowest rate of wage laid down for the post in question on the scale of wages in force, a restriction that lasts for one year, but exceptionally the period may be reduced to six months after consultation with the works trade union organisation (s. 3). Any infringement of these provisions is punishable by a fine of 10,000 to 20,000 zlotys (s. 7).
164. Sections 1 and 6 of the Act lay down that, in undertakings of fundamental importance to the national economy or the defence of the State and in the public services and other undertakings providing for the needs of the population, to be specified by the Council of Ministers, hours of work may be increased by the manager of the undertaking and that the new hours of work shall apply to the workers instead of those established in accordance with labour law. In the same undertakings, if a worker wishes to terminate his employment, the manager of the undertaking may require the period of notice provided for by labour law to be extended by up to six months (s. 2). When the activities of the self-management body in an undertaking are contrary to the established order or the social interest, its activities may be suspended for a period of up to six months and, if necessary, the body may be dissolved (s. 9(2)).

165. Under section 13, subsection 3, of the Act, a teacher who commits an offence particularly damaging to society or contrary to important interests of the Polish People's Republic or who is the subject of proceedings for the breach of law and order, may be suspended. Under section 14 of the Act, if a teacher carries on activities incompatible with the Act or with his basic teaching and educational duties, he may be suspended, transferred or dismissed.

166. The Act of 26 October 1982 respecting the procedure for dealing with persons evading work obliges every citizen between the ages of 18 and 45 who has not been working or following a course of study for three months and who is not registered as an applicant for work to appear before the local administrative authority to explain the reasons for his inactivity. The persons in question are inscribed on a register. This is followed by an administrative inquiry to establish whether the reasons for inactivity are "socially justifiable" or not. A person who persistently avoids work or study for reasons that are not socially justifiable and lives on an income whose source is not revealed or is contrary to the principles of social coexistence is liable to be registered on a list of persons persistently evading work. This person can be compelled to perform work of public interest in cases of emergency or natural disaster representing a serious danger to the existence or the whole or part of the population. This Act has been supplemented by provisions appearing in the Act of 21 July 1983. Under section 12, subsection 1, the obligation to work can be imposed in order to avoid the risk of paralysis in the operation of the services that are essential in meeting the fundamental needs of the population. Any person who does not present himself to perform the work of public interest or is reluctant to carry it out is liable to a penalty of up to two years' deprivation of liberty (s. 12(3)).

(h) Right to bargain collectively

167. Trade unions have the right to conclude collective labour agreements at the national level, which cover all workers in the branch concerned (s. 23 of the Trade Union Act). Moreover, an Act dated 26 January 1984 provides for the possibility of introducing a pay system in undertakings on the basis of agreements worked out by the manager of the undertaking and the competent body of the works union, after consultation with the self-management council and the approval of the general assembly of the workers or, in the absence of a self-management council, after approval by the majority of the staff (s. 4 of the Act respecting the principles for establishing pay systems in the undertakings).

Act of 8 October 1982 respecting farmers' socio-occupational organisations

168. The provisions of this Act concern the right to organise of farmers. Individual farmers and the members of their families and other persons directly connected with agriculture may associate in socio-occupational organisations whose function shall be to defend the occupational interests of individual farmers (s. 1).

169. Under the Act, farmers' organisations may take different forms: agricultural circles, agricultural branch associations, federations of farmers, of agricultural circles and of agricultural organisations, federations of agricultural branch associations and the National Federation of Farmers, Agricultural Circles and
Agricultural Organisations. Women in rural areas may also establish rural housewives' clubs.

170. The organisations are registered by the district court competent for the organisation concerned (s. 36).

171. There are a number of questions that must be dealt with in the rules, and the Act permits the organisations to lay down in their rules the principles governing the election of the officers (ss. 16 and 34).

172. The Act provides that individual farmers' organisations shall associate in the National Federation of Farmers, Agricultural Circles and Agricultural Organisations, referred to by name in the Act as the highest-level body representing individual farmers, having legal personality (s. 33) and registered by the Court of the Voivodship of Warsaw (s. 36). As to the agricultural branch associations, they may establish federations of agricultural branch associations (for the district, the province, the region or the entire national territory) (ss. 31 and 32). These may become affiliated, on a voluntary basis, to the National Federation (s. 31(3)).

173. The Act sets forth the rights and duties of farmers' organisations (Div. 2). These organisations represent the needs and occupational and social interests of individual farmers and take part in certain activities listed by the Act (s. 4), the organs of government having the duty of collaborating with these organisations and expressing views on their proposals. If the organisations are not satisfied with the views expressed by the Government they have the right to lodge an objection, which may be followed by a procedure for conciliation or arbitration (ss. 6 to 8). If agreement is found to be impossible and if the case involves the fundamental rights and interests of farmers, the Act provides that the farmers' organisation may, as an exceptional measure, "undertake a protest action" (s. 9), which may be undertaken only by virtue of a resolution adopted by majority vote of the members and with the consent of the managing body of the higher level organisation. A protest action must not endanger human life or health and it is unlawful to interrupt the delivery of food supplies necessary to satisfy the needs of the population or the security needs of the State.

Act of 16 September 1982 on the representation of non-manual workers employed by the State

174. An Act was adopted on 16 September 1982 to lay down the principles governing the representation of non-manual workers employed by the State. Under section 40 of this Act, all non-manual workers employed in the administration of the State are entitled to join the union of workers in the administration of the State, except those occupying posts of great responsibility, whose activities are generally considered to be connected with the framing of policy, those carrying out managerial duties and those whose duties are largely confidential. Order No. 27 of the Prime Minister dated 25 November 1982 determines the posts in the state administration for which the right to join the union is denied and authorises chiefs in the administration to prepare a list of posts equivalent by their rank to those mentioned in the Order, for whom the right to organise is also excluded.

175. The non-manual workers who are excluded from the right to organise may, like any other worker not belonging to the union, set up workers' councils. The purpose of these councils is to defend and represent, before the managing bodies of the administration, the social and occupational interests of the workers making them up.

176. The principles and the scope of the co-operation between the managing bodies and the workers' councils are set forth in the Order of the Council of Ministers dated 8 November 1982. The workers' councils must be consulted on many questions concerning staff, including those relating to pay and conditions of employment.
177. Before analysing the allegations and the available information, the Commission thinks that it would be worth while to refer to certain of the important facts that characterised the trade union situation between August 1980 and December 1981. These relate to the conclusion of the Agreements of Gdansk, Szczecin and the mines of Silesia, to the creation of Solidarity, to the establishment of trade union pluralism, to the participation of a pluralist Polish workers' delegation, led by Mr. Lech Walesa, the President of Solidarity, as Workers' delegate, in the 67th Session of the International Labour Conference in June 1981 and to the programme adopted by Solidarity in October 1981.

Agreements of Gdansk (31 August 1980)

178. The agreements reached in August and September 1980 between the Polish Government and the inter-enterprise strike committees of the regions of Szczecin, Gdansk and Silesia covered a number of claims by the workers, including that of the right to found free trade unions, independent of the Party and the employers, in accordance with Convention No. 87 of the ILO.

179. The following paragraphs will be devoted to an examination of the provisions of the Agreements of Gdansk.

180. The Agreements of Gdansk covered the following points in particular:

- the establishment and the role of the new trade unions;
- the guarantee of the right to strike, the protection of the strikers and partial payment for the days of strikes;
- respect for the freedom of expression in public and occupational life and for freedom of publication, guaranteed by the Constitution;
- the reinstatement in their rights of the persons dismissed after the strikes in 1970 and 1976 and of the students expelled from the institutes of higher learning, and the release of the political prisoners;
- the preparation of economic reform;
- the principle of the choice of managerial and technical staff on the basis of qualifications and skills among the members of the PUWP (Polish United Workers' Party), of the SD (Democratic Party, made up largely of small private craftsmen), and of the ZSL (United Peasants' Party) and those not belonging to a party;
- a programme for the equalisation of family allowances for all occupational groups;
- the gradual raising of basic wages and a sliding wage scale;
- an increase in retirement and other pensions;
- an increase in travelling expenses;
- the improvement of medical protection;
- a study of the possibility of extending paid maternity leave;
- an increased number of places in day nurseries and nursery schools;
- a reduction in the waiting period for the allocation of a flat through an improvement in the housing situation.

181. With particular reference to the new trade unions, the Agreements of Gdansk emphasised that the activity of the trade unions in Poland had not met the hopes and aspirations of the workers and declared that the creation of new self-managing trade unions, as the true representation of the working classes, would be desirable. The Government undertook to take the necessary steps to introduce trade union pluralism in the legislation, to create conditions in which the new trade unions could be registered outside the Central Council of Trade Unions, and to guarantee and secure the full observance of independence and self-management for the new trade unions and their protection against all forms of discrimination, in accordance with Conventions Nos. 87 and 98 of the ILO. The Government also undertook to ensure the conditions in which the new trade unions could operate: it was agreed that they should have a real opportunity of participating in key decisions affecting the living conditions of the workers in respect of the principles of the distribution of national income between consumption and investment, the distribution of the social consumption fund, the basic principles of pay and the determination of wages policy, the long-term economic plan, the direction of investment policy and changes in prices.

182. The strike committee undertook to ensure that the new trade unions should observe the principles laid down in the Constitution. It stated that the trade unions would defend the social and material interests of the workers and had no intention of assuming the role of a political party, that they based themselves on the principle of social ownership of the means of production, which was the basis of the socialist system existing in Poland, that they recongised that the PUWP played a governing role in the State, that they did not oppose the existing system of international alliances and that they wished to secure for the workers proper means of supervising, expressing and defending their interests.

183. With regard to the right to strike, the Government undertook to guarantee this in the new Trade Union Act, which was to lay down the conditions governing the calling and organising of strikes, the methods of settling disputes and the penalties applicable in the case of violation of the law. The Government guaranteed to strikers and to persons helping them personal safety and the maintenance of their conditions of employment.

Registration of Solidarity (10 November 1980)

184. On 8 October 1980, the Polish Diet adopted an Act to amend the Trade Union Act of 1949 so as to enable a trade union to become registered outside the register kept by the Central Council of Trade Unions. The trade union Solidarity, set up at the end of August 1980, had difficulties concerning its registration, which was confirmed on 10 November 1980 by the Supreme Court on the basis of the constitution drawn up by the trade union and the amendments introduced by the union itself, which consisted in appending to the constitution part of the Agreements of Gdansk and the text of Conventions Nos. 87 and 98.¹

67th Session of the International Labour Conference (June 1981)

185. During the 67th Session of the International Labour Conference in June 1981, Mr. Janusz Obodowski, Minister of Labour, Wages and Social Affairs of Poland² and Mr. Lech Walesa, Polish Workers' delegate,³ addressed the Conference.

¹ See above para. 6.
Mr. Obodowski referred to the process of renewal in Poland, which was characterised by the setting up of new institutional structures ensuring the effective participation of working people in the management of the country and its economy. He stated that a special role was being played in this context by the trade union movement and referred to the new Trade Union Bill, which had been submitted to the Diet. He emphasised that the economic situation could be improved through the joint efforts of the entire nation with the development of constructive co-operation between the trade unions and the State administration. By co-operation, he meant partnership and the spirit of participation. Co-operation could be facilitated by the reform of the management system in enterprises, based on the principle of autonomy and profitability and on the linking of wages to economic results. He stated that the attitude of workers to strikes would change and that strikes would be replaced by negotiations, for there was no problem that could not be resolved through dialogue. The Government and the trade unions were working towards new relations, those between partners and they had to gain experience and find institutional solutions.

Mr. Walesa, in his speech, recalled the circumstances in which Solidarity had been registered. He also recalled that on 12 May 1981 the registration had taken place of the independent trade union of individual farmers, Solidarity, which consisted of several million peasant owners of small family farms. Thus, he maintained, a cornerstone had been placed under a true alliance of workers and peasants, under the lasting co-operation of all the working people in Poland. Mr. Lech Walesa stated that Solidarity had been born of protest and that, using the traditional methods of workers' struggle, it had contributed in a decisive way to initiating a thorough transformation of the social and political life of Poland. Although the changes were only at their beginning, no one had any doubt that there could be no return to the old methods of ruling the country and governing its economy. Referring to the difficult economic crisis that Poland was passing through as a result of the political and economic errors committed by the leaders during the preceding years, he stated in substance that the trade union Solidarity had declared its readiness to co-operate in implementing any rational programme aimed at overcoming the crisis and reforming the existing structures of the social and economic life of the country. The trade union was aware of the fact that a solution to the difficulties would require sacrifices on the part of every Pole, even though he bore no responsibility for the collapse of the economy; every section of Solidarity had been recommended not to undertake new strikes. The union, however, would continue its struggle and protect the vital interests of the most deprived segments of the population.

Programme of Solidarity (Gdansk, October 1981)

On 7 October 1981, the First Congress of Solidarity, which was held at Gdansk, adopted a number of propositions that constituted the programme of Solidarity. The Congress emphasised that Solidarity was an organisation allying the features of a trade union with those of a great social movement, the alliance of these features providing the organisation with its strength and its role in the life of the nation. The programme was presented as a long-term programme, starting with the settlement of immediate problems: it was regarded first as a programme of rapid actions to surmount the winter period and, at the same time, as a programme of economic reforms that could not be put off until later, a political and social programme for the reconstruction of the public life of the country and a programme leading to a self-managed republic. The Congress stressed that Solidarity wished to carry out this programme of great changes without violating the international alliances.

The propositions worked out by the Congress related in particular to economic policy, the protection of labour, social policy, the protection of health and the environment, the development of culture and education, trade union life, the defence of civil liberties and the self-management of workers in the undertaking, the region and the State.

In the face of the crisis and the economic situation, Solidarity called for the establishment of self-managing and democratic reform at every level of decision-taking and for a new socio-economic order in which equilibrium would be maintained between plan, self-management and market. Against this background, Solidarity considered that it was necessary to separate the authorities administering
the economy from the political power, to create social enterprises, to allow the enterprises freedom of action on the domestic market, except in fields where a plan was essential, and to devise a more human form of planning. According to the union, the fall in production had to be stopped, in order to maintain the level of living of the workers. It recognised that an increase in production and supply, the principal means of restoring the equilibrium of the market, must be accompanied by a reduction in demand, which could be achieved by measures including gradual increases in prices. According to Solidarity, it was the population that must decide the methods to be applied in restoring equilibrium and supervising the way in which this was done, particularly through the setting up of a social council for the national economy. Since economic reform might well result in great wage differences between one enterprise or region and another, the union thought it necessary to ensure the conditions for smoothing out these differences. In accordance with the Agreements of Gdansk, it intended to call in particular for the recognition of a minimum living wage as a criterion in income policy and undertook to protect the lowest incomes from the effects of the crisis. Considering the feeding of the population to be a matter of the first importance, it called for regulations on food supplies until the shortages should be overcome, in order to guarantee the essential minimum to every citizen. Aware that winter might be a threat to the population in the dislocated condition of the economy, it called for immediate action in economic matters and decided to organise mutual social help in the region and in the undertaking.

191. Another of the subjects dealt with by the Congress of Gdansk was that of labour protection: the guarantee of the right to work, to a correct relation with the employer, to occupational safety and the protection of the workers' health and to a fair wage. The union thought it necessary to carry out a thorough reform of the labour legislation and the social security system. It proposed, among other things, to prepare and publish a compendium of laws on occupational safety and health.

192. The programme of Solidarity gave an important place to the social policy that the union intended to defend, which related in particular to the right of the family to fulfil its basic needs and to develop in a feeling of security. In this connection, the union called, in particular, for the abolition of the night work of women, in accordance with the relevant standards of the ILO and for the unification, in accordance with the Agreements of Gdansk, of the principles governing the allocation of family allowances for all socio-occupational groups. The union had the intention of defending the rights of old persons, the handicapped and those suffering from incurable diseases. It called for the setting up of a general and uniform system of retirement and pension and intended to develop social assistance in the home for old persons and invalids and to resist discrimination against the handicapped.

193. In its programme, Solidarity devoted long passages to the protection of health and the environment. In connection with health, the union gave priority to the protection of maternity and of the health of children and young persons, to the guarantee of medical supplies and of good conditions of hygiene in hospitals and dispensaries, to the protection of mental health and to medical assistance for old persons. It recommended measures for improving the housing situation and for the planning of leisure time with a view to a better organisation of work.

194. According to Solidarity, economic and social reform should consist not only in the greater satisfaction of physical needs but also in the development of culture and of the education of the people, particularly youth.

195. In the field of information it criticised the censorship of the means of mass communication and claimed access to the radio and television.

196. Part of the programme of Gdansk was devoted to the internal democratic life of the trade union and to methods of meeting the aspirations of its members (compulsory negotiation but, in the event of failure, demonstrations, actions of protest and strikes). It was specified that, given the economic situation, strikes were regarded as the last resort.

197. Another part of the programme was devoted to reforms in public life intended to lead to self-management, democracy and the possibility of holding different social, political and cultural views, as the basis of democracy in a self-managed republic.
The union considered that the principles of pluralism must apply to political life and to the trade union movement. According to Solidarity, the system that linked political and economic power and depended on constant interference by the Party in the running of undertakings was the main cause of the economic crisis. To rectify this, the Congress recommended a genuine form of workers' self-management in the undertaking. It also called for the setting up of genuine regional authorities appointed by free election, a self-managing structure at the highest level of the State and a change in the electoral system that would enable the political parties, the social organisations and the associations to present candidates for the Diet in full freedom. The Congress was opposed to the creation of organisations equivalent to political parties by the official leaders of Solidarity.

198. In the view of Solidarity, the legal system must guarantee the fundamental civil liberties and justice must be independent. The union undertook to defend persons prosecuted for their political convictions, or their trade union, political or civic activities.

199. The programme of Solidarity must, according to its authors, lead to a new social contract: an anti-crisis contract, a contract of economic reform and a contract for a self-managing republic. The Congress declared that it was ready for a frank and loyal dialogue with the authorities with a view to finding solutions that would be beneficial to the country and would meet the occupational and civic aspirations of the workers.
CHAPTER 9

SUSPENSION OF TRADE UNION ACTIVITIES
AND DISSOLUTION OF THE UNIONS

200. In the complaint presented under article 26 of the Constitution, the complainants alleged that, following the proclamation of martial law in Poland, on 13 December 1981, the activities of the trade union organisations had been suspended, in violation of Articles 3 and 4 of Convention No. 87. It was further alleged that, following the adoption of the Trade Union Act of 8 October 1982, section 52 of this Act had resulted in the dissolution of all existing unions, contrary to the provisions of the Convention.

201. According to the documents submitted by the complainants, the purpose of instituting martial law, although it was not officially stated, was the liquidation of the independent self-managing unions, and above all Solidarity, whose activities, according to the authorities, were a threat to the whole political system established in Poland. The destruction of the existing pattern of trade unions was carried out in two stages after the institution of martial law. During the first stage, by virtue of the Decree of 12 December 1981 respecting martial law, the activity of all trade unions was suspended. The active and ordinary members of Solidarity suffered much persecution and repression. During the second stage, the existing unions were dissolved by virtue of the new Trade Union Act adopted by the Diet on 8 October 1982.1

202. The present chapter will consider in succession the suspension of trade union activities following the proclamation of martial law, the dissolution of the unions by the Act of 8 October 1982 and the fate of the property of the unions.

Suspension of trade union activities

203. On 13 December 1981, the President of the Council of Ministers of the Polish People's Republic, on the strength of section 15 of the Decree of 12 December 1981 respecting martial law, suspended the activities of all existing trade unions, including Solidarity.2

204. In the first place attention must be called to the grounds advanced by the Government of Poland to justify the proclamation of martial law and the suspension of trade union activities. Next, reference will be made to the position of certain representatives of Solidarity met by the representative of the Director-General during his mission to Poland in May 1982. Lastly, an examination will be made of the

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1 Poland under martial law, p. 58.

2 Section 15 included the following provisions:

(1) If the activities of associations, societies or trade unions are directed against the legal or economic system of the Polish People's Republic or threaten interests connected with the security or the defence of the State, or with other matters, these activities may be suspended by the Minister of the Interior where trade unions ... or occupational associations are concerned.

...

(3) The authorities referred to in subsection 1 that suspend the activities of associations, societies or trade unions shall determine the utilisation of their property.
arguments presented both by the complainants and in the information and evidence submitted to the Commission.

Position of the Government of Poland concerning the grounds for suspension

205. In its reply of 30 December 1981 to the message addressed to it by the Director-General of the ILO on 14 December 1981, the Government of Poland stated that trade union activities in Poland had been temporarily suspended owing to the proclamation of martial law throughout the national territory, in accordance with section 33, subsection 2, of the Constitution of the Polish People's Republic. This measure had become necessary to prevent a civil war and counteract the signs of anarchy and economic chaos endangering the fundamental interests of the Polish nation and State. The sole purpose of the measure was to guarantee the far-reaching democratisation of the social and political life of the country.

206. The Government added that trade union activities would be re-established as soon as the grounds for their suspension had disappeared. It also stated that there was room in the socio-economic system of Poland for self-managed and truly independent trade unions.

207. In a letter dated 17 February 1982, the Minister of Labour, Wages and Social Affairs stated that the measures taken were in no way aimed at the interests of the trade unions, including Solidarity, but were preventive measures to protect the existence of the nation and the security of its inhabitants and to escape from a profound crisis. The restrictions would be lifted gradually as the situation was stabilised.

208. On 18 and 19 February 1982, a delegation from the Ministry of Labour, received by the Director-General, stated that the reasons for the introduction of martial law were to avoid the imminent danger of civil war and to re-establish calm and public order, to ensure the normal functioning of the administration of the State and to prevent the collapse of the national economy. The development of the situation in Poland before 13 December 1981 had also been having serious repercussions on European security and on world peace.

209. The extraordinary measures taken under martial law in the different spheres of national life also included, in conformity with the Decree of the Council of State proclaiming martial law, the temporary suspension or the limitation of certain basic civil rights, including the suspension of the activity of the trade unions. According to the delegation, during the preceding few months, the trade union Solidarity had clearly gone beyond not only the framework of the agreements of August 1980 but also that of its own constitution, which had been approved by the Supreme Court on 10 November 1980. In accordance with this constitution, Solidarity had undertaken to conduct its activities as a trade union organisation within the framework laid down by the national Constitution and at the same time to respect the international alliances that had been concluded. In spite of this, for some time extremist elements within the leadership of Solidarity had taken control, under the influence of political organisations that were acting illegally. These elements directed the activity of Solidarity and of Rural Solidarity towards actions of a political character and had an increasingly open tendency towards taking power in Poland and overthrowing the constitutionally established political system by using the trade unions. This tendency had already appeared clearly at the First Congress of Solidarity. It had dominated the work of the Presidium and the National Committee of Solidarity, as was clearly reflected in the decisions taken at Radom on 3 December 1981. The decisions taken by the National Committee of Solidarity on 12 December 1981 at Gdansk went even further in this direction. The decisions, which had the character of an ultimatum addressed to the

3 Committee on Freedom of Association, 214th Report, paras. 714 and 715.

4 ibid., paras. 720 and 722.
Government, encouraged political confrontation including preparations for mass gatherings on 17 December 1981 in public places, in particular at Warsaw and Gdansk.

210. Independently of its transformation into a political movement, Solidarity, without taking account of economic realities in Poland, had exploited its position all through 1981 to impose, using threats of strikes in different forms, successive concessions in such fields as increases in wages, the raising of social expenses, and the reduction of hours of work. Enormous economic losses had been caused by the pressures of Solidarity acting as a trade union.

211. In the face of an extremely tense political atmosphere in November and December 1981, and a dangerous situation threatening civil war, martial law had been proclaimed. Within the framework of martial law, the activity of the trade unions had been suspended. The adoption of such a serious measure had been forced on the authorities, which had to the very last minute tried every possible way of finding a solution to the social conflict, as was shown by many proofs, including the proposal to conclude an agreement of national understanding and the meeting of the Prime Minister, General Jaruzelski, with the Primate, Cardinal Glemp, and the President of Solidarity, Mr. Walesa. Unfortunately, all these government initiatives and suggestions had met with a negative attitude on the part of the extremist group of Solidarity leaders, who had forced on this organisation a systematic deviation from trade union aims.5

212. During the mission carried out by the representative of the Director-General in Poland (10-16 May 1982), the Government authorities stated that the Agreements of Gdansk had provided that Solidarity should conform to the Constitution of the country and respect the leading role of the Party, the socialisation of the means of production and the external relations of Poland, in particular its alliances with the socialist countries. According to the Polish authorities, these agreements had been violated by Solidarity. In fact, for all those speaking with the representative of the Director-General on behalf of the Government, Solidarity had transformed itself into a political party. It had been considered that the regional structure of Solidarity caused it to attach only secondary importance to the occupational interests of its members. Certain members of the Government also insisted on the improper use that had been made of the right to strike in 1980 and 1981, contrary to the Agreements of Gdansk, which provided, according to them, for strikes as a last resort. These movements became more and more political. In addition, Solidarity was opposed to the adoption of a Trade Union Act, which it considered to be a limitation of the workers' rights. At Radom, voices had been raised in favour of the taking over of power. A general strike was to take place on 17 December 1981 and there would have been clashes in the streets. There was total anarchy; undertakings were paralysed and the exportation of coal was held up. The distribution of coal and foodstuffs was becoming very difficult. In these circumstances, the only solution was that which had been adopted on 13 December, namely the proclamation of martial law so as to avoid a civil war or even a world war.6

213. During the same mission, the leaders of the branch trade unions whom the representative of the Director-General met expressed the opinion that Solidarity and its first-degree unions had been manipulated for political purposes, that the country was heading for open confrontation and that real threats existed. They maintained that certain extremist groups of Solidarity had arms. Some leaders of the autonomous trade unions were also of the opinion that the workers were not satisfied with the action of a political nature that Solidarity had been carrying out, which had been leading to situations of extreme conflict.7

5 Committee on Freedom of Association, 214th Report, paras. 723-731.
6 ibid., 217th Report, para. 690.
7 ibid., 217th Report, para. 691 and Annex II (report of the mission).
214. In October 1982, the Government described the period 1980-81 as that when the extremist wing of Solidarity, dominated by destructive forces that imposed on the union a character having nothing in common with trade unionism, had attempted to take over power and change the constitutional order. 8

215. Furthermore, at the 68th Session of the International Labour Conference in June 1982, the Government representative emphasised the following points, among others: Solidarity had carried out activities endangering the country in various spheres. It had taken position against the laws of the State. It had promoted non-respect for certain decisions of the administrative authorities of the State and of Parliament. It had called for the non-observance of the law and above all of the understanding of March 1981 concerning the application of the principles set forth in the Bill on trade unions. An open and public position had been taken against the international agreements of Poland and relations between Poland and the other socialist countries. Account should also be taken of the appeal made in the First Congress of Solidarity to the peoples of other socialist countries, which called in question the basis of socialist society. Certain members of Solidarity had exerted pressure, according to the Government representative, on officials of the administration, so that they should not carry out their duties and had also exerted pressure to hamper the normal working of the courts and the prison administration. There had been attempts against the economic system and efforts to prevent the country from exporting its products abroad. 9

216. As soon as trade union activities were suspended, the Government stated that the resulting limitations were of a temporary and passing nature. The permanent intention of the authorities remained the introduction of the necessary reforms, the pursuit of the renewal of political, social and economic life, which had been started in August 1980, and the reinforcement of socialist democracy, with the participation of all patriotic forces. 10

217. A Decision of the Council of State dated 19 December 1982 suspended martial law with effect from 31 December 1982. The Government stated that its suspension permitted the restoration of the right of association and the right to strike and of protest actions organised in conformity with the provisions of the laws in force, including the Trade Union Act adopted on 8 October 1982. 11

Position of representatives of Solidarity

218. During the mission carried out in Poland by the representative of the Director-General in May 1982, most of the active members of Solidarity that he met recognised that their organisation had committed errors, mainly as a result of the inexperience of its leaders. They considered in particular that Solidarity had not negotiated sufficiently with the authorities and that it had adopted too systematically negative an attitude towards the other organisations. They also regretted that more experienced political groups had infiltrated the organisation. However, they affirmed that the number of extremists had been negligible in comparison with the total of 9 million members and that the Government had sought confrontation by committing certain provocations. It was pointed out by one of the active members that within the Polish political system an independent trade union organisation could be seen only as a political force. Nevertheless, he remarked, the strikes called by Solidarity had been only of short duration, not exceeding 48 hours. Even if political statements might

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8 ibid., 221st Report, para. 40.
10 Committee on Freedom of Association, 214th Report, para. 733.
11 ibid., 225th Report, para. 43.
have been made, no act had been committed that could justify the measures taken on
13 December 1981.¹²

219. The President of Solidarity, Mr. Lech Walesa, stated to the representative of
the Director-General that Solidarity was a great rebirth and that all could not be
perfect. The action of Solidarity was due to a combination of circumstances. The
Government wished to start a reform of the economy. Solidarity certainly did not wish
to take over power, but it did wish to carry out genuine elections so that the base
should be representative.

220. Mr. Walesa admitted that there had been errors. Solidarity had wanted to go
forward too fast and it had not sufficiently explained its aims either to the Government
or to the public. In a bad economic situation the action of Solidarity might have
impeded the action of the Government and of the administration. Solidarity had not had
sufficient confidence in the administration.

221. With regard to the role of trade unions, Mr. Walesa considered that the aim
should be to reach an agreement to bring the country out of its economic situation and
seek a national understanding on the matter. In his opinion trade unionists should
assist in finding a solution and work with the Government to improve the situation of
the country. The unions, however, should not lose their independence. He was ready
to accept that the trade union movement should suspend the exercise of the right to
strike, and help to construct a system of self-management and sound autonomy.
Independence was the essential thing for the trade unions; everything else was
negotiable.

222. With regard to the criticism that had been made of the regional structure of
Solidarity, which was said to have given the movement a political character rather than
the character of a trade union, Mr. Walesa stated that this could be explained by the
fact that at the beginning, because of the rapid development of Solidarity, the wish was
to place known and trusted persons in posts of responsibility and that it had been
easier to do so with the regional structure, but that he was considering changes in this
respect and that the movement could be organised by occupation. All that was necessary
was to take certain measures at the regional level to balance the trade union
differences. Forty national committees based on important occupations might be set up
and the constitution of Solidarity could be amended accordingly. With regard to the
political aspect of the question, Mr. Walesa guaranteed the leading role of the Party
and the socialist character of the trade union.¹³

Arguments of the complainants and information
and evidence submitted to the Commission

223. In the papers submitted by the complainant Mr. Blondel,¹⁴ it was emphasised
that there had been neither armed rebellion nor armed terror in Poland. No attempt had
been organised on the life of the representatives of authority. There had been no
organisation to prepare armed outrages, neither had there been acts that could have
justified the contention that there was a danger to the survival of the nation. The
authorities had offered no convincing proof of the existence of any obvious preparations
for a coup d'état. The authorities had taken no legal steps against the initiators or
organisers of this alleged coup d'état, for no group of the type existed either in
Solidarity or in any other independent social organisation. On the contrary, the truth
was that the Polish authorities were politically isolated in society. They had delayed
introducing reforms, they had lacked ideas for other changes and they had eluded all
genuine control over their actions. They had fostered tension and

¹⁴ The other complainant, Mrs. Buck, had empowered Mr. Blondel to represent her
(see above para. 97).
finally they had resorted to emergency measures to evade the duty of respecting dialogue.¹⁵

224. The complainant also referred to observations made by former leaders of Solidarity pointing out that at the time when martial law was proclaimed, on 13 December 1981, there were no strikes at all since, towards the end of the autumn, largely owing to the personal efforts of Mr. Lech Walesa, the strikes had ceased. The reference to a state of anarchy, said to have been caused by strikes, did not, therefore, accord with the truth.

225. During the hearing of witnesses, a number of speakers rejected as being without foundation the assertions of the Government concerning the "political" attitude of Solidarity and the risks of civil war and economic chaos alleged as the reason for the introduction of martial law and the suspension, and then the dissolution, of the trade unions.

226. The complainant recalled that one of the purposes of a trade union organisation was to defend the material and intellectual interests of its members, emphasised that Solidarity wished to be a trade union that could provide the workers with suitable means of looking after and defending their interests and could discuss problems with persons or bodies in a position to take decisions. In Poland, wages were negotiated with the State, an employer, in a virtual position of monopoly. Trade union activities and collective bargaining had to take place with direct representatives of the Government of Poland, who were alone competent to take decisions. As was shown by the Agreements of Szczecin, Jastrzebie and Gdańsk, Solidarity had no wish to constitute an opposition party or to to call in question the structure of the country. The purpose of Solidarity was to make room for the civil liberties that are indispensable to all genuine trade union activity, in accordance with the resolution adopted by the International Labour Conference in 1970,¹⁶ in which trade union rights are an illusion in a society where the basic freedoms are not respected, a resolution for which the Government of Poland had voted. According to the complainant, there had been nothing in the resolutions adopted by Solidarity or in the positions it had taken up to show that it had any aim but that of defending the material and intellectual interests of the workers. There had been no declaration in which Solidarity had shown itself ready to call the system in question, to seize power in the State or to undertake terrorist or criminal activity (by a call to arms for example). This was also clear from the published writings and from the addresses given by active trade unionists such as A. Michnik, J. Kuron, J. Litynski or A. Gwiajda. The complainant stated that to the best of his knowledge there had been no more than two national warning strikes, that they had been short, and that the purpose of one had been to call for free Saturdays - a trade union action - and that the other had been in support of the registration of Solidarity, in accordance with the Agreements of Gdańsk. He stated that the constitution of Solidarity provided that there should be no strikes in rail transport, in the health services, etc., since Solidarity had no wish to participate in the worsening of the economic and social infrastructure of the country.¹⁷

227. The General Secretary of the International Confederation of Free Trade Unions (ICFTU), Mr. Vanderveken, emphasised the determination of Polish workers to carry on their trade union activities within the framework of the national law and the international obligations entered into by Poland and also the will of the leaders of Solidarity to act in accordance with the Agreements of Gdańsk and to ensure that the rank and file followed, by exercising restraint despite the provocations of the authorities (such as the refusal to register Rural Solidarity and the violence exercised by the police against active members of Solidarity at Bydgoszcz in March 1981). The General Secretary of the ICFTU pointed out the excellent reaction of the members of Solidarity to the appeals of the Government in the autumn of 1980 for the suspension of wage claims or for voluntary work on free Saturdays, decided at the end of August 1981.

¹⁵ Poland under martial law, pp. 47 and 48.
¹⁶ ILO; Record of Proceedings, ILC, 54th Session, 1970, p. 733.
¹⁷ Blondel, I/32, 33, II/24-29, X/9-11.
for the remaining part of the year. Despite the violence exercised against it, the trade union had refused to depart from the way of peace that it had chosen.\(^{18}\)

228. The General Secretary of the World Confederation of Labour (WCL), Mr. Kulakowski, also referred to the sense of responsibility of the leaders of Solidarity, whose concern had been the promotion of the material and intellectual interests of the workers and whose methods had been non-violent action for the realisation of participative democracy and not for the overthrowing of the regime. He emphasised that Solidarity operated in a country where the Government was the only employer and that any action against the employer could be described as "political" since it was exercised against the Government, which was both government and employer. According to the General Secretary of the WCL the trade union movement had always and everywhere been political, in that it exerted pressure on the way in which power was exercised, so that the economy and society should be organised to promote the workers' interests, and it was in this way that Solidarity had acted. On the other hand, a trade union should not be political in the sense of substituting itself for the parties or seizing power, and this was a way in which Solidarity had not acted.\(^{19}\)

229. The Secretary-General of the International Organisation of Employers (IOE), Mr. Lagasse, stated that the legal system in Poland did not permit true freedom of association as this was understood by his organisation.\(^{20}\)

230. Mr. Cywinski, personal representative of Mr. Walesa, referring to the period before August 1980, stated in his evidence that the dependence of the workers on the State as employer, supported by the whole machinery of the State in the spheres of legislation, administration, security, means of communication, etc., was further accentuated by the absence of any genuine structure for their defence and the representation of their interests. The official unions, indeed, entirely under the thumb of the authorities, had not been conceived to play this part and lacked the confidence of the working class. After the August strikes, the Agreements of Gdansk, Szczecin and Jastrzebie had rounded off the victory of the workers and confirmed the creation of Solidarity. During the period when Solidarity was being formed, both in the union and in outside opinion in general, the principles of legality, democracy, solidarity and non-violence were taken for granted. Mr. Cywinski stated that throughout the whole existence of Solidarity, apart from certain excesses by the security forces, not one person had been killed or manhandled in Poland, not one undertaking had been damaged, not one window had been broken. It was not until 13 December 1981 that there were dead and injured, tortured and ill-treated, to say nothing of material damage.

231. According to Mr. Cywinski, the struggle that Solidarity had had to carry on to obtain registration was followed by the constant harassing of the union. This consisted, in particular, in the repeated withdrawal by the authorities from the obligations they had entered into, which, in turn, forced Solidarity to new actions of protest and to strikes, in the placing of innumerable obstacles in the way of reforms in the administration, which was subsequently explained as "local misunderstandings" or "the inability of individual officials" to follow the rhythm of change in government policy, in increasing anti-union propaganda, in false information given by the means of communication and attacks against active trade unionists and, lastly, in sporadic acts of brutality towards local militants, carried out to provoke violent reactions, the responsibility for which could be attributed to Solidarity. The witness emphasised the efforts made by the authorities to favour, at the expense of Solidarity, the branch trade unions and the autonomous trade unions with their limited number of members.

232. Mr. Cywinski stated that the work of formulating a programme for Solidarity was affected by the incessant disputes with the administrative bodies, disputes that were invariably described as "political" by the authorities. The leaders and advisers

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\(^{18}\) Vanderveken, II/4 and 9.

\(^{19}\) Kulakowski, III/6, 7, 20, 21 and 38.

\(^{20}\) Lagasse, X/5.
of the trade union were constantly obliged to insist on restraint in these disputes. The rank and file, revolted by the behaviour of the authorities, called for energetic counter-measures. The leaders, on the other hand, concerned about political developments and the national economy, were anxious to hold back and calm this attitude. The divergencies among the members of the National Committee concerned not opinion or ideals, but rather concrete problems of tactics.

233. Mr. Cywinski observed that the claim had been made that the proclamation of martial law was a necessity in the face of the imminent threat of civil war in Poland. Since 13 December 1981, however, in all the innumerable political trials that had been held in Poland not one accusation had related to any kind of activity directed towards a rising or armed struggle. Even in the trials, which the authorities, moreover, endeavoured to avoid, affecting the two groups of "the principal accused" (the seven leaders and four experts of Solidarity) there was no kind of reference to an imminent civil war. Mr. Cywinski also affirmed that he had nowhere encountered any evidence, even indirect, that Solidarity had had arms.

234. Several witnesses mentioned the way in which Solidarity visualised its role as a trade union organisation and carried on its activities. Some of them provided the Commission with a description of its practical activities in the undertaking or on the regional scale.

235. Thus, Mr. Nedzynski observed that the leaders of Solidarity wished to defend, to advance and to promote the interests of the workers and that they regarded Solidarity not only as a trade union but also as a social movement whose aims were justice and legality. They issued no challenge to the economic system and the political alliances, but they did wish to obtain for the workers and the nation the possibility of making their voices heard in the exercise of power with a view to achieving the economic and social aims fixed by the trade union. Mr. Houthuys stated that it was logical for a trade union organisation to be both a trade union movement and a social movement; in his view, if a movement was to be a true trade union it had to advance and it had to be an organisation. Solidarity wished to be a trade union organisation and not only to defend the rights and interests of the workers but also to improve the situation and promote the economic progress of the country. This attitude was neither destructive nor demagogic, but constructive. Furthermore, the witness stated that the conclusions and resolutions of the Congress, other texts of Solidarity and his own experience with the leaders of Solidarity enabled him to observe that there was in Solidarity a clear acknowledgement, sometimes tacit, sometimes very open, of the political system. Another witness, Mr. Maier, stated that the representatives of the Government of Poland who had spoken before the Committee on Freedom of Association, had not given any example of activities of Solidarity going beyond the limits of the trade union movement. The witness also referred to the willingness to compromise exhibited by Mr. Lech Walesa and drew attention to the fact that the Government, during the sittings of the Committee and the Governing Body, had not replied to the questions put to it concerning Mr. Walesa's offer to negotiate and collaborate.

236. One of the witnesses, Mr. Dziechciowski, mentioned, among the activities of the trade union Solidarity in the undertaking, the claims of the workers of the port of Szczecin concerning the improvement of working conditions, particularly in respect of dust. Another witness, Mr. Brzozowski, observed that the members of the trade union in his undertaking wished it to deal with everything (clean work stations,
activities after work and assistance in finding a flat). Mrs. Breton-Baluka referred to a women’s hunger march at Szczecin, under the direction of a member of the Solidarity works committee of the shipyard, which had called for minimum supplies of commodities such as milk or soap.

237. Mr. Bartczak gave detailed evidence on the activities of Solidarity in the region of Lublin. He stated that this region, which covers four voivodships, had about 1,300 works committees and 330,000 members. In the regional administration of the union, there were sections dealing with particular subjects:

- the section of organisation and statistics;
- the information section, which published a daily, a weekly and a monthly;
- the legal section, which had three legal experts, dealing respectively with problems of the undertaking, difficulties encountered by workers and questions concerning prisons;
- the social section, which dealt with all social and health problems of the workers, the organisation of holidays, the interests of retired workers, those disabled at work and mutual assistance groups (assistance to unmarried mothers, for whom the section had bought a house at some 20 kilometres from Lublin, a house that was to be administered by the members of Solidarity, in co-operation with the voivodship of Lublin);
- office organisation;
- the section for culture, the training of trade unionists and sports: the regional committee had a sports club in which leisure activities were organised for the children of members of Solidarity and for the members themselves. This section had organised a sports gathering for Solidarity in September 1981. It also organised lectures on history and political science, cultural exhibitions, periods of training and sample surveys and had set up a workers’ university in 1980;
- the union’s own centre for trade union and social research, which dealt with opinion surveys and inquiries, for example on distressed areas, on increases in prices and on other matters that might be of interest to the members of Solidarity. It had co-operated in organising national meetings on such subjects as human work, which embraced problems like occupational health and the philosophy of labour.

238. The witness also indicated that Solidarity participated in an economic and social council, which had been set up in the region of Lublin. It was composed of the voivod, the regional chairman and experts who were not all members of Solidarity. They included a priest and a member of the Polish United Workers’ Party. This council was meant to be a forum where discussions could take place between Solidarity and the voivod. There were, for example, consultations on the economic and social programme of the voivodship, which, in the view of Solidarity, should be submitted by the voivod to various organisations, including the trade union organisations, for opinion. This council had also promoted the operation of a number of ventures in the field of co-operatives. According to Mr. Bartczak, the voivod had been removed from office on 24 December 1981. The regional committee co-operated with the Solidarity Agricultural Trade Union and, in 1981, with Rural Solidarity in the Lublin voivodship. It also worked with associations linked to Solidarity such as "Solidarity and Family".

239. The witness further stated that there had been only three strikes in the region of Lublin and Cracow, including that of November 1981 at Lublin, where the

26 Brzozowski, VII/39.
27 Breton-Baluka, IV/50-51.
28 See above para. 15 footnote 5.
educational section, in collaboration with the regional management, had organised a school strike with the purpose of introducing subjects that had not been taught before, such as the humanities and political science, with a view to giving effect to the agreements that had been entered into with a government committee on the subject of school reforms.  

**Dissolution of the trade unions**

240. It was alleged that the dissolution of the existing trade unions by the Act of 8 October 1982, and the suspension and dissolution of various other organisations by decision of the authorities were contrary to Convention No. 87.

**Information and evidence submitted to the Commission**

241. According to the complainant the dissolution of the existing trade unions, and in particular that of Solidarity, by the Polish authorities clearly showed that the trade unions could be dissolved whenever they tried to apply their programmes. The complainant also referred to other organisations and trade union structures suspended or dissolved by administrative authority contrary to the provisions of Article 4 of Convention No. 87 (for example the suspension of the Union of Polish Stage Artists by the Mayor of Warsaw on 1 December 1982; the suspension by administrative authority of the Union of Polish Artists and Designers on 21 April 1983; the dissolution by the Mayor of Warsaw of the Polish Writers' Union on 19 August 1983).

242. The complainant and certain other persons heard by the Commission provided details concerning the number of members of the trade union organisations set up under the Trade Union Act of 1949, as amended, and dissolved by the Act of 8 October 1982. Solidarity had about 9.5 million members, including agricultural wage earners; Rural Solidarity had 2.35 million members; the branch and autonomous trade unions had about 3 million members. The working population was about 16 million out of a total of 36 million inhabitants. The rate of union membership was about 90 per cent.

243. The documents submitted to the Commission showed that the circumstances preceding the adoption of the Trade Union Act had been special. Official propaganda was said to have proclaimed that the text of the Act was based on the Bill of 5 December 1981, which had been accepted by the Diet committees and negotiated at the time with the trade unions, whereas, in fact, on 25 September 1982, the Council of State had introduced important amendments to the original text, with neither negotiations nor consultations. The deputies were said to have been informed of the amendments to the Bill only three days before the meeting of the Diet. Of the 73 sections making up the Bill of 5 December 1981, 55, including the most important, had been amended. The letter and the spirit of the Act in question had been changed. The number and nature of the amendments were such that the relation between the new Bill and that of 5 December 1981 was purely formal. Furthermore, it was emphasised that section 55 of the new Act provided specifically for the dissolution of Rural Solidarity and

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29 Bartczak, VIII/5-9.

30 Section 52: "The registration of trade unions effected before the date of commencement of this Act shall cease to be legally valid."

31 Blondel, I/32, X/7, 8; Kulakowski, III/19; Seniuta, III/17 and 18.

32 The situation of trade unions in Poland, pp. 10 et seq.
Individual Farmers' Solidarity by repealing the Act of 6 May 1981 respecting individual farmers' trade unions, the Act by virtue of which they had been established. 33

244. The Government of the United States referred to the dissolution by the Diet of all the trade unions, namely Solidarity, the branch trade unions, the autonomous trade unions and Rural Solidarity. In view of the absence of any judicial procedure and any possibility of appeal by the dissolved organisations, dissolution by legislative action constituted, in the opinion of this Government, a violation of the principles of freedom of association. This Government also mentioned the suspension and dissolution by administrative authority of other organisations, such as the Union of Polish Stage Artists (ZASP), suspended by the Mayor of Warsaw on 1 December 1982 at the request of the Minister of Culture and Art, on the basis of section 16(4) of the Act respecting associations; the Union of Polish Artists and Designers (ZPAP), suspended on 21 April 1983 and dissolved by administrative authority on 23 June 1983; the Polish Writers' Union (ZLP), dissolved on 19 August 1983 by the Mayor of Warsaw after months of suspension by decision of the Government; the Association of Polish Journalists (SDP), 75 per cent of whose members belonged to Solidarity, dissolved by administrative authority on 20 March 1982. As far as this Government knew, none of these organisations had benefited by a legal procedure or the possibility of appeal.

245. The Governments of France, Sweden and the United Kingdom also referred to the dissolution of the existing trade unions by the Act of 8 October 1982. The Government of the United Kingdom pointed out in particular that the new legislation had effected the dissolution of a free trade union that had the support of 10 million members and that the measure was contrary to the aim stated by the Polish authorities in seeking to justify martial law, namely to establish unity and the process of renewal and reform and to resume the dialogue with the various elements of Polish society.

246. The General Secretaries of the ICFTU and the WCL also referred to the suspension and dissolution of the existing trade unions. 34 The General Secretary of the WCL emphasised that the event was a case, rare if not unique, in which a decision by a supreme court, a judicial authority, was called in question by the legislative authority. He also considered that the obligations prescribed by Article 11 of Convention No. 87 had never been observed by the Polish authorities and they had been deliberately violated since 13 December 1981. 35

Position of the Government of Poland

247. On 9 November 1982, the Deputy Minister of Labour, Mr. K. Gorski, stated before the Committee on Freedom of Association that, with regard to section 52 of the Act, which cancelled the registration of the trade unions, dissolution had not been pronounced by administrative authority but by the supreme legislative body. The Government could have opted for either of two other solutions: one, very liberal, would have consisted in reactivating the trade union Solidarity under another name and with new leaders; the other would have been to dissolve the union through the courts for violation of its constitution. Both these solutions had the same defect: they would have revived profound divisions in society. The Government had wanted to avoid these consequences at any price, since Poland needed tranquillity and national understanding above all. 36

248. In a communication dated 19 May 1983 in reply to the comments of the Committee of Experts on the Application of Conventions and Recommendations, the Government stated that the cancellation - under section 52 of the Trade Union Act - of the registration of the unions existing before the adoption of the Act did not affect

33 ICFTU, letter of 26 October 1983, Annex No. 3.
34 Vanderveken, II/15 and 16; Kulakowski, III/8.
36 Committee on Freedom of Association, 221st Report, para. 62.
the Convention. Article 4 of the Convention prohibited the dissolution or suspension of workers' and employers' organisations by administrative authority. Thus, the prohibition concerned exclusively administrative measures, including certain decrees (when they were promulgated by the executive authority). Legislative measures were not concerned. The Act adopted by the Diet was a legislative text promulgated by the supreme, sovereign organ of state power and was not an administrative decision. The only limitation was that the new legislation should not impair the guarantee provided by the Convention (Article 8, paragraph 2). 37

Trade union property

249. It was alleged that, following the proclamation of martial law, the property of the trade unions, and in particular that of Solidarity, was seized, that their premises were occupied by the army and that part of their equipment was destroyed. It was also alleged that, following the adoption of the Trade Union Act of 8 October 1982, the property of the dissolved unions was placed under temporary management and was later transferred to the new trade unions set up under this Act.

Information and evidence submitted to the Commission

250. The complainant referred to the fact that on the proclamation of martial law the banking accounts of Solidarity were frozen. This measure was aimed at both the accounts of the National Committee and those of the 38 regional administrations and the amounts that the works committees had deposited on their accounts in their undertakings. Not only had the real estate and office equipment of Solidarity been confiscated but also a great part of them had been seriously damaged. On 13 and 14 December 1981, divisions of the militia (zomos), in occupying the buildings of the regional administrations, destroyed the printing and office equipment, the telex installations, the telephone exchanges and the radio equipment. According to the complainant, despite the short period during which the trade union Solidarity had been officially active, its property was considerable and included both money deposited in banks and real and movable estate. The funds came from various sources and, in particular, from the members' dues. Solidarity had enjoyed the assistance of both international and national trade union organisations in the form of financial help for the purchase of machinery and equipment or practical gifts such as typewriters, printing machinery and office equipment.

251. With regard to the transfer to the new trade unions of the property of the organisations dissolved under the Act of 8 October 1982, as supplemented by the Orders of the Council of Ministers dated 15 October and 27 December 1982, the complainant considered that the principle of distributing the property among the new trade unions was open to serious objection. He pointed out that it was not possible to create privileges for the newly formed trade unions and to allocate the whole property to the trade unions in establishments. The complainant referred to the statements made by certain members of Solidarity on the allocation of property in which they recommended that the amounts on the accounts of the trade unions should be transferred to the social fund of the parent undertaking and assigned to social purposes for all the workers in the undertaking. 38

252. The complainant also referred to criticisms by former leaders of Solidarity concerning the arbitrary dissolution not only of Solidarity but also of the autonomous and branch trade unions and the confiscation of the property of all these unions, which came under the administration of the State and was transferred to the new unions.

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38 Blondel, written communication dated 21 November 1983, pp. 21 to 23, and 109, a document also submitted by the WCL.
Thus, all the property of the works unions had been transferred to the new unions and the other trade union property had been granted in the form of "instalments" to the new federations that were being formed. This practice had been particularly damaging to the branch unions, which had accumulated a considerable amount of property over their decades of existence.

253. The Government of the United States observed that, according to the Polish authorities, the property of the branch unions came to about 20,000 million zlotys, whereas that of Solidarity came to about 320 million zlotys of fixed assets and 609 million in banking accounts.

254. Some of the witnesses provided information on the funds of Solidarity. Mr. Jarmakowski, for example, said that there were about 2,200 dollars in the account of Solidarity and that the National Committee had 36 million Polish zlotys. On the basis of information furnished by the regions, about 500,000 million zlotys had been confiscated from Solidarity. This amount related only to the regional committees and had nothing to do with the accounts of the works committees, whose funds, according to this witness, were difficult to assess. Mr. Bartczak stated that the funds of the Lublin regional committee came to about 20 million zlotys. Mr. Brzozowski stated that in the region of Elblag Solidarity had about 4.5 million zlotys in its account.

255. With regard to the office equipment and the premises of Solidarity, the Government of Sweden stated that the Polish authorities had confiscated the technical equipment offered to Solidarity by the Swedish Trade Union Confederation and other trade unions. The General Secretary of the ICFU and the WCL observed that some of the material and office equipment of Solidarity had been seized and then confiscated by the authorities and that a great part of it had been destroyed during the attack on the offices of Solidarity by the security forces on 13 December 1981. They mentioned the telephone equipment, printing machinery and office equipment furnished by their organisations to Solidarity.

256. Several witnesses provided information on the occupation of the premises of Solidarity and the destruction of its property in their region or undertaking. Mr. Jarmakowski stated that, during his internment, he had the opportunity of speaking with Mr. Arkadiusz Rybicki, head of the press and information office of Solidarity, who was on the premises when the building was attacked by the security forces and who had spoken to the witness of the destruction of equipment and documents. After his release in August 1982, the witness visited the Solidarity building and observed in the former offices of the National Committee and the Regional Committee that accountants were working with a military auditor appointed to administer the property of Solidarity. The witness observed that typewriters had been destroyed and a printing press worth 100,000 dollars and tape recorders damaged. The traces of destruction were still visible eight months after the events. When he consulted the records, Mr. Jarmakowski noted that all the documents of Solidarity, including those relating to accountancy and those of the committee for the election of the office to organise the congress and the district office had been destroyed. Mr. Dziechciowski stated that the documents and records of Solidarity in his undertaking had never been found. They had been deposited on 13 December 1981 in a cellar and two months later it was observed that

39 For the value of the zloty see above para. 132, footnote 9.
40 Jarmakowski, VI/19.
41 Bartczak, VII/34.
42 Brzozowski, VII/47.
43 Vanderveken, II/7, 8; Kulakowski, III/9.
44 Jarmakowski, VI/4, 5.
this cellar had been forced and that there was nothing left in it. Mr. Brzozowski stated that the premises of the regional committee of Elblag had been sacked and plundered. The information provided by an eye-witness who was a member of the regional management showed that nothing had remained. Mr. Witon referred to the evidence of Mr. Stanislaw Alot, secretary of the regional committee of Rzeszow, who had witnessed the destruction of the property of Solidarity in his region. At the regional headquarters, the windows had been broken, the doors had been forced, the typewriters had been smashed and the furniture and printing presses destroyed. Part of the latter had been taken away on lorries and a whole issue of a periodical had been confiscated.

257. According to Mr. Bartczak, a woman worker belonging to the regional administration, who was responsible for the equipment, Mrs. M. Abrahamowska, had seen the militia breaking into the premises of the regional administration of Lublin and destroying furniture and telephones. The curtains had been removed and the pictures taken away. This person vainly tried to join the committee set up to make an inventory of the property of Solidarity. Mr. Bartczak said that he did not know what had become of the printing presses. A duplicating machine had been dismantled and taken away. Several tons of paper had been taken away. The region had 16 subsections with offices; these had been occupied and the equipment had been destroyed. The home for unmarried mothers, which was worth 4.5 million zlotys, had been taken over.

258. With regard to the devolution of property provided for by the Act of 8 October 1982 and the orders issued under it, the ICFTU observed that the property of a dissolved organisation should be distributed among the members or transferred to the organisation succeeding it, namely to the trade union following the aims for which the first had been voluntarily formed and following them in the same spirit. According to the ICFTU, the Trade Union Act contained no provisions enabling the new trade unions to follow the aims for which Solidarity and Rural Solidarity had been established. The new trade unions could not carry on their activities in the same spirit of independence and self-management as the dissolved trade union. One of the witnesses, Mr. Jarmakowski, stated that the property of Solidarity that had not been destroyed had been transferred to the new unions. According to another witness, Mr. Bartczak, the office equipment in his undertaking had been handed over to the new trade unions; the property of the Lublin regional committee had in part been dispersed.

Position of the Government of Poland

259. In May 1982, the representative of the Director-General was informed that the assets of the organisations were controlled by administrators appointed by the authorities, who were responsible for their maintenance and preservation.

260. In a communication dated 19 May 1983 replying to the comments of the Committee of Experts on the Application of Conventions and Recommendations, the Government provided the following information on the property of the dissolved trade unions.

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45 Dziechciowski, VII/23.
46 Brzozowski, VII/47.
47 Witon, VII/59.
48 Bartczak, VIII/34.
49 ICFTU, communication dated 26 October 1983, Annex 3.
50 Jarmakowski, VI/7.
51 Bartczak, VIII/33.
52 Committee on Freedom of Association, 217th Report, para. 694.
261. Under section 54 of the Trade Union Act, the property of the Federation of Trade Unions and of the unions existing before the coming into effect of the Act had been temporarily placed under the control of a provisional body whose organisation and functions had been fixed by the Order of the Council of Ministers of 15 October 1982 on the temporary administration of assets of former trade unions, as authorised by the Act. To this end, a committee had been set up to administer the assets of the trade unions. It was composed of 11 persons: the president and five representatives of the trade unions (including Solidarity) and five representatives of the government authorities.

262. The assets of works trade union organisations remained under the administration of the heads of the undertakings, who gradually transferred the trade union property to the new works unions, as the statutory executive committees of the unions came into existence. These matters were governed by the provisions of the Order of the Council of Ministers dated 27 December 1982 on the principles and procedures for the transfer of the property of the former works unions.

263. With regard to the temporary administration of the property of trade union organisations at a higher level than works unions, the committee entrusted 24 persons to administer the property of the former central organisations and branch unions. The committee was purely administrative, that is to say it performed only work that was indispensable to the preservation of the property in good condition and in accordance with its destination. All expenses connected with the administration of the property were covered by the State.

264. The real estate accumulated by the trade unions during the whole period of their activity included: 41 sanatoria, 88 rest centres, and over 50 administrative buildings, hotels and dwellings. The unions formed after August 1980 had not yet acquired real estate of any importance. The property of Solidarity consisted mainly of means of communication, duplicating equipment and a large number of publications, office equipment and small sums of money in banking accounts. In view of the absence of inventories and the incomplete nature of the accounts, there had been great difficulties in taking over this property.

265. By the end of April 1983, the committee set up to administer the assets of the trade unions had taken control of all the property. The value of the fixed assets was as follows:

- for the branch trade unions, over 3,719,228,000 zlotys;
- for the trade union Solidarity, over 36,900,000 zlotys.

266. In addition to the work of taking over and preserving the property, the committee organised and supervised, among other activities those of the sanatoria and rest centres, dealt with investment and renovation in these centres, and ensured the normal running of the cultural centres, hotels, clubs, administrative buildings, etc.53

267. In its report, under article 22 of the Constitution of the ILO, on the application of Convention No. 87 for the period from 1 July 1983 to 31 March 1984, which was received in the ILO on 16 April 1984, the Government stated, in connection with the transfer of the property of the former trade unions to the new trade union organisations, that the matter was governed by an Order of the Council of Ministers dated 24 October 1983 respecting the principles and procedure for the partial transfer of the property of the former trade unions. It also repeated that the trade unions had been dissolved not by administrative authority but by a law of the supreme legislative authority of the State, the Diet of the Polish People's Republic.

268. According to the Government, the property of the former trade unions had been fully protected by the committee for the administration of trade union property. In

property operating irrespective of the state of the trade union movement, such as sanatoria, rest centres, clubs and canteens, activities had continued in full independence. Gradually, as trade union organs were developed at the highest level of the undertakings, all decisions concerning the right to dispose of this property were taken by the committee in consultation with these organs.

269. The property of the works trade union organisations had been transferred to the trade union organisations newly set up in the undertakings after 31 December 1982, in accordance with the Order of the Council of Ministers of 27 December 1982. Under section 7 of this Order, property that had not been taken over by the unions by 31 December 1983 continued to be administered by the committee for the administration of trade union property. In view, however, of the delay of the trade unions in taking over the property — due to technical and organisational reasons — the above-mentioned committee had sent the bank an order to transfer the property to all the unions formed before 31 December 1983, even in the absence of an official application for the taking over of property.

270. With regard to the finances of the former national trade unions, transfer to the new federations and national branch trade unions had been effected gradually, in accordance with the Order of the Council of Ministers of 24 October 1983. By the time of the report a sum of 136 million zlotys had been transferred to 52 higher degree trade union organisations. The remaining property was to be turned over gradually to the new unions, after the adoption by the Council of State of new provisions for the purpose. These provisions were in the final stages of preparation and the text was to be sent to the ILO as soon as they were published.

271. Lastly, the Government stated that the committee for administration was ensuring that the organs of the newly formed trade unions functioned in normal conditions even before the turning over of the property of the former unions, by making premises, transport and publishing facilities available to them.
CHAPTER 10

THE INTERNMENT, INTERROGATION, CONVICTION AND PROSECUTION OF LEADERS AND MEMBERS OF SOLIDARITY

272. The complaint of Mr. Blondel and Mrs. Buck referred to measures of internment\(^1\) taken against a very large number of leaders and members of Solidarity and convictions after the proclamation of martial law for strike activities.\(^2\) It was also alleged that the conditions of internment were sometimes appalling and that brutality had been practiced in certain camps. More generally speaking, interned persons were said to have been pressed to sign declarations of loyalty or to go into exile and to have been subjected to unjust treatment and harassment on coming out of internment. They were even said to have been placed in special military camps in which persons suspected of opposition activities, including many former internees, had been mobilised. Furthermore, the allegations referred to acts of brutality to which trade unionists had been subjected during their interrogation by the Polish security forces and to the maintenance of legal proceedings against leaders and active members of Solidarity, even after the adoption of the Amnesty Act. These matters will be examined in turn in the present chapter.

**Information and evidence submitted to the Commission**

**Internment**

273. It was alleged that 700 persons mentioned by name had been interned by administrative authority on the proclamation of martial law and that a government

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\(^1\) The following are extracts from the Decree respecting martial law, which was announced by the radio on 13 December 1981 and subsequently published in the Official Gazette:

Section 42-1: Polish citizens over 17 years of age whose previous conduct suggests that, if they remain at liberty, they will not observe public order or will carry on activities contrary to the security or the defence of the State shall be liable to internment for the duration of martial law in isolation centres.

These decisions shall not affect immunities provided for by special regulations.

Section 43-1: The procedure and the decision respecting internment shall be within the competence of the commanding officer of the militia of the voivodship responsible for the district in which the person affected by the procedure is staying or, if he has absconded, has been staying.

2. The procedure respecting internment may be followed without the participation of the person concerned.

3. The decision to intern shall be handed to the person concerned himself at the time of his arrest by the member of the militia. The decision shall have immediate effect.

\(^2\) The complaint also contains a list giving the names of the persons sentenced to penalties of imprisonment and of persons arrested.
spokesman admitted on 22 December 1981 that 5,000 persons had been arrested. Later on the Deputy Minister of the Interior, General Stachura, was said to have informed the Judicial Committee of the Diet that by 8 December 1982 there had, in all, been 10,131 internees in the camps. Preventative internment, which was started on 13 December 1981, was abolished on 23 December 1982.  

274. The complainants recognised that it was difficult, or indeed impossible, to give an exact figure respecting cases of internment. The estimation was made more difficult by repeated announcements of releases that are said to have been acted on only partially or to have been followed by the almost immediate reinternment of many of the persons who had been released. It was stated, for example, that General Jaruzelski had announced to the Diet on 21 July 1982 the release of "most of the interned persons including all the women" and that on 13 August 1982 the Polish Press Agency (PAP) had stated that 1,221 persons had been released since 21 July, "a certain number" of whom had again been interned for having resumed activities conflicting with the security of the State. According to certain sources, 9,000 persons were arrested between 12 and 23 December 1981. Other reports refer to the declarations of General Kiszczak, Minister of the Interior, to the effect that 6,647 persons had been interned in the camps by 26 February 1982.  

275. The first persons interned were the President of Solidarity, Mr. Lech Walesa, members of the national and regional authorities of Solidarity, members of the works committees, permanent trade union representatives, advisers and experts. The following classes of persons were stated to have been interned:  
- active members, employees and advisers of Solidarity;  
- active members and employees of Rural Solidarity;  
- active members and employees of the Independent Association of Students;  
- active members of the clubs of the Catholic Intelligentsia;  
- active members of Patronat (the prisoners' defence association);  
- active members of independent social organisations such as the Workers' Self-Defence Committee (KOR), the Confederation for an Independent Poland (KPN), the Movement for the Defence of Human and Civil Rights, the Young Poland Movement, the Committee for the Defence of Prisoners of Conscience, the Movement of Independent Scouts (NRH);  
- intellectuals;  
- employees of independent printing establishments and active members of the "horizontal structures" of the Polish United Workers' Party.  

4 Blondel, I/17; communication of the Government of the United States; Poland under martial law, pp. 204 et seq.  
5 Repressions in Poland - State of war, p. 5.  
6 The situation of trade unions in Poland, p. 4.  
7 Poland under martial law, loc. cit.  
8 The situation of trade unions in Poland, loc. cit.  
9 Poland under martial law, pp. 191 and 192.
276. The internments that took place at the end of December 1981 and the beginning of January 1982 appear to have affected most the participants in strikes and strike leaders. A large group of internees was released at the end of April 1982, but it appears that further persons were interned in May 1982 and that they included mainly persons who had participated in demonstrations. Although the women were released on 22 July 1982, it appears that some were arrested subsequently and that many men and women were interned at the end of August 1982, just before the anniversary of the Agreements of Gdansk. Those who remained the longest in the camps were those who had been arrested during the night of 12 to 13 December 1981. Many of them did not leave the camps until a year had passed. Several witnesses heard by the Commission stated that they had remained interned from December 1981 to December 1982: Mr. Seniuta, at the prison of Grodkow, was not released until 3 December 1982 with several other intellectuals; Mr. Bartczak, chairman of the Centre-East Region (Lublin) of Solidarity, interned first at Potulice, then, from April 1982, at Strzebielinek, who was not released until 22 December 1982, and Mr. Brzozowski, a mason in the Elblag construction combine, a member of the corresponding works committee, interned at Ilawa and, from 15 June 1982, at Kwidzyn, who was not released until 7 December 1982. The other witnesses who had been arrested on 13 December 1981 remained a shorter time in the camps: Mr. Jamakowski, a university assistant, was released on 24 August 1982 from the Strzebielinek camp; Mr. Dziechciowska, a worker in the management of the port of Szczecin, chairman of the Solidarity committee of a section of his undertaking, was released on 26 July 1982 after having been interned first at Goleniow in a prison for offenders under ordinary law, then transferred, on 11 January 1982, to Wierzchowo Pomorskie and Mr. Witon, press spokesman of the regional committee of Solidarity at Rzeszów, who was released from the prison of Zaleze on 16 March 1982.

Conditions of internment

277. The documents submitted to the Commission showed that the internment centres varied greatly. Sometimes they were holiday centres or hotels for members of the armed forces or of the Party, and they were then clean and comfortable, but sometimes other places were opened in haste: they were then cold, damp shanties. The food was of poor quality and conditions of hygiene were appalling.

278. With regard to material conditions, it was alleged that the cells were unheated and overcrowded, and that the food was of poor quality. The internees very quickly became weak through lack of vitamins and an inadequate intake of calories. Parcels from the families and the assistance bodies generally made it possible to improve the prison food, when they were distributed. The sick, however, were unable to follow a diet, the overcrowded cells were not cleaned and a hole in one of the corners served as toilets. Soap was rare and a bath was possible only once a fortnight. Meanwhile, a daily bucket of cold water was placed at the disposal of those occupying a cell. There was no hot water. The prisoners' own clothing was taken away at the beginning. The cells were generally closed and exercise took place rarely, in a group,
in the presence of dogs, which led to a lack of contact and a feeling of isolation. Newspapers and books were rationed and censored. The internees had no form of amusement. The light was poor and cut off very early.

279. With regard to psychological conditions, it was alleged that the mental harm done to the internees or prisoners under martial law was felt in several ways: a sense of isolation, humiliation, threats and blackmail. The sense of isolation was due to the fact that the persons had been interned unexpectedly and were well aware that their families had not been warned. They were locked up in narrow cells and had no communication with the other internees. Correspondence with the outside world was either stopped or reduced. It was stated that selected, false or distorted news was given to the internees. Family visits were rare: once a month as a rule. It was further stated that, at the beginning of martial law, prison uniform was imposed, personal effects were confiscated and the persons and cells of the internees were searched by surprise and without reason. Crosses and medals were said to have been snatched away, religious feelings ridiculed and the practice of religion prohibited or beset with obstacles. The allegations referred to the insulting and jostling of the internees and to the omnipresence of the militamen and security agents, usually in battle dress and holding dogs. Lastly, the documents submitted to the Committee referred to the methods of intimidation used by the authorities to make the internees sign declarations of loyalty or statements that they were abandoning trade union activity or applications to leave for abroad, methods involving threats or blackmail.

280. These material, physical and psychological conditions, accounted for the deterioration in the health of the internees. There were thus cases of chronic bronchitis, gastro-duodenal ulcers, heart diseases and nervous troubles.

281. Several witnesses heard by the Commission corroborated these allegations. They placed emphasis in particular on brutality against individuals, the fierce cold, the bad food, the dirt, the presence of rats in the cells, the humiliations, the refusal to allow family visits, the sense of isolation from the outside world, the listening devices in the cells and the pressure to make internees sign declarations of loyalty, or failing that, to leave the country.

18 ibid., loc. cit.
19 ibid., pp. 10 and 11.
20 ibid., pp. 6 and 7.
21 Seniuta III/32 to 34; Kaczmarczyk IX/23.
22 Brzozowski at Ilawa VII/31; Dziechciowski at Goleniow and at Wierzchowo VII/14, 15 and 19; Witon at Zaleze VII/51.
23 Jarmakowski VI/4; Brzozowski at Ilawa VII/43.
24 Brzozowski at Ilawa VII/42.
25 Bartczak VIII/13 and 14.
26 Bartczak VIII/16; Brzozowski at Kwidzyn VII/33.
27 Bartczak VIII/15; Jarmakowski VI/4.
28 Dziechciowski at Wierzchowo VII/25.
29 Dziechciowski VII/14; Brzozowski VII/32; Witon VII/53, 54 and 58 (Mr. Witon stated that the gist of the declaration of loyalty was as follows: I undertake to act in conformity with martial law and I will do nothing in the future to conflict with the interests of the Polish People's Republic); Bartczak VIII/15.
Lastly, a witness, Mr. Cywinski, stated to the Commission that, according to the information in his possession, ten days after the proclamation of martial law, some of the internees, including the most prominent persons, the advisers of Solidarity and persons belonging in particular to the world of culture, were transferred to centres of internment that were sometimes set up in former rest homes. Their conditions of detention were then fairly comfortable. There were, however, several dozen very different internment centres to which others were sent. Here living conditions were extremely hard, though they were in conformity with the standards of Polish prison law. This witness mentioned the case of Zbigniew Romaszewski, whom he said to have lost from 15 to 20 kilos in 16 months of imprisonment, and the wife of Jacek Kuron, who was interned while her health was poor, and who had to be transferred to a hospital, where she subsequently died.

The Commission received a quantity of information on the brutality said to have been committed in the camps for futile reasons. According to the documents submitted by the complainant, and by the ICFTU and WCL, repressions against the internees sometimes consisted in collective punishment decided on against the regulations, the best known cases having occurred at the camps of Wierzchowo, Ilawa and Kwidzyn.

At Wierzchowo, for example, on 13 February 1982, over 40 internees were said to have been beaten and a dozen injured to have been transferred to the hospital of Szczecin. Brutality was said to have been carried out by Lieutenants Wronkowski and Ambryszewski while Major Gadomski was commanding officer of the camp. Among the victims was Mr. Sliwinski, a member of Rural Solidarity. The Commission has detailed written evidence concerning the events at Wierzchowo and the oral evidence of one of the internees, who was in one of the cells where the brutality was carried out. The documents supplied to the Commission contained the full text in Polish and English of a decision by the military investigator of Koszalin, Lieutenant Ryclinski, dated 28 August 1982, concerning this affair. The investigator reconstituted the sequence of events, but he decided to suspend the inquiry for two years on the grounds of the hitherto irreproachable careers of the officers in question.

The document of the military investigator showed that, in this camp on 13 February 1982, two internees were sentenced to seven days' solitary confinement, one because he had sat on a chair without permission and had refused to get up and the other because he had been absent from the morning roll-call and had refused to take part in the prisoners' exercise. The persons punished accepted their punishment with good grace, but the other internees protested through solidarity by banging on their metal plates. The camp authorities then sounded the alarm at 2.30 p.m. and Lieutenant Wronkowski took command of the assault party. The investigator not only noted that the encouragement of Lieutenant Wronkowski had had a decisive influence on the assault party but also stated that "The behaviour of the assault party, commanded by the lieutenant, had all the characteristics of an action of reprisals intended to intimidate the internees and inflict physical pain on them. In particular, what took place in the corridor of quarters I and II and on the path leading to quarter V is difficult to describe in accordance with the legal rules. The commanding officer of the party Lieutenant K. Wronkowski, took no action at any time to moderate the behaviour of the subordinates, whereas the responsibility for the behaviour of the party was his under the law, and it is in this respect that he failed in his duty. It must therefore be admitted that his behaviour entirely fits the characteristics of the offence provided for by section 246, subsection 1, of the Penal Code".

The military investigator recorded the fact that the internees had been bludgeoned, one of them, lying on his bed since he was suffering from pains in the loins, was thrown to the ground. The guardians, when questioned, denied having used bludgeons, but all the victims among the internees had injuries on their back and the nape of the neck, which makes it clear that they had been attacked and had not been the

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30 Cywinski IV/11 and 13.

31 Repressions in Poland - State of war, pp. 49 et seq., and text supplied by the witness Mr. Dziechciowski.
attackers. The sincerity of the victims was confirmed by the evidence of six reserve soldiers, and the investigator continued: "The events took place in the following way: the guardians bludgeoned some of the internees into falling in in a given order, standing to attention and keeping absolute silence. Even if it is accepted that refusal to fall in in a given order may be considered to be an infringement of the rules, this does not explain the use of bludgeons. In the present case they were used as a form of summary punishment. Such a punishment is not provided for in the rules". Although the military investigator did not order a prosecution, he decided to make use of the educational aspect of the trial and so placed the two officers on probation for two years and ordered each of them to pay a fine of 10,000 zloty\textsuperscript{32} for social purposes.

287. Mr. Dziechciowski, who was a direct witness of the brutality carried out at Wierzchowo on 13 February 1982, confirmed to the Commission that its immediate cause had been the refusal of the internees to stand to attention and answer the roll-call. In the morning, he explained, the internees already had the feeling that something was being prepared. The guards were reinforced on the towers and at the observation posts, the hydrants were unblocked in front of the shacks and the fire hoses were connected. About 6 p.m. he heard someone call "Why are you beating us?" and about 7 p.m. a guard came into cell number 16, where he was, to warn the internees that a roll-call was going to be carried out in accordance with the rules and that they would have to stand to attention. From the outside they were informed that the guards, armed with bludgeons, were coming towards their cell. The internees decided not to touch the guard so as to avoid giving any pretext for reprisals, to open the windows and to lie in their beds to protect themselves against tear gas and blows. Lieutenant Ambryszewski, who was responsible for the roll-call, came in and observed the disorder in the cell. At his command eight men in helmets came into the room and struck them with bludgeons and kicked them. The lieutenant himself directed gas in the eyes of the internee Stankiewicz, and the internee Janukieniez was thrown from one end of the cell to the other. The witness informed the Commission that he had not been beaten. When calm was restored, the authorities invited those who wished to to undergo a medical examination so that the injuries they had suffered could be recorded by the doctor. To have the possibility of lodging a complaint, the internees had to start a hunger strike when the Red Cross visited the camp of Wierzchowo. The witness stated that the real cause of the brutality in question was the dismantling of the listening equipment hidden in the cells and the refusal of the internees, particularly those of the Szczecin group, to sign the declarations of loyalty.\textsuperscript{33}

288. At Ilawa, on 25 March 1982, internees also appear to have been bludgeoned. According to the documents submitted to the Commission, the victims stated that they had been beaten up with bludgeons for no reason by several uniformed agents and that they had undergone the blows of a "guard of honour" consisting of two rows of agents, who struck them.\textsuperscript{34} The Commission also heard the evidence of Mr. Brzozowski in this connection. According to him, on that day four of his companions from cell number 14, who had asked for paper so that they could make a statement, had been beaten by ten armed guards.\textsuperscript{35}

289. At Kwidzyn, on 14 August 1982, it appears, 81 persons were beaten, 50 of whom were seriously wounded with back injuries and concussion. According to the account in the documents submitted to the Commission, these were reprisals carried out when the persons concerned had been refused the monthly visit of their families and had sent a delegation to the commanding officer of the camp to ask for explanations. When the internees received no explanation they protested by banging on their metal dishes. The agents of the camp dressed up, with helmet, shield, bludgeon and three unmuzzled dogs, then retaliated: 100 internees are said to have been struck, some of them having to be

\textsuperscript{32} For the value of the zloty, see para. 132, footnote 9.
\textsuperscript{33} Dziechciowski VII/16, 17 and 25.
\textsuperscript{34} Repressions in Poland - State of war, p. 68.
\textsuperscript{35} Brzozowski VII/32 and 33.
taken to hospital. Eight of the internees who had suffered most were transferred to the prison of Elblag, one of them with a spine injury being transferred on a stretcher. The evidence shows that no action was taken against the prison guards but that proceedings were taken against the victims for having organised an action of protest and that the internees who had been beaten were sentenced to imprisonment.\(^\text{36}\)

290. Mr. Brzozowski indicated to the Commission that he was at Kwidzyn on 14 August 1982 while this bludgeoning was carried out. He confirmed the allegations, stating that a trial had taken place later and that some of the internees who had been savagely beaten were sentenced to one, or even two, years of imprisonment. When the complainant called the attention of the witness to the objection of the prosecutor, who, during the trial of the victims, had claimed that there had been a riot, that the guardhouse was in danger of being taken and that the prisoners under ordinary law were likely to escape, Mr. Brzozowski replied that, the prison of Kwidzyn being considered by the prisoners under ordinary law to be less severe than the others such as the prison of Sztum, these prisoners under ordinary law had no wish to escape. On the other hand, the guards had on three occasions ostentatiously opened the gates of the camp and closed them in a movement of provocation in order to encourage the 160 internees grouped in the court at 20 metres from the gate, to join their families, who were waiting for them outside. He asserted that the internees were completely isolated from the ordinary offenders and that their presence in the court could on no account lead to the escape of the convicts.\(^\text{37}\)

291. Several witnesses heard by the Commission, particularly Mr. Bartczak\(^\text{38}\) and Mr. Jarmakowski,\(^\text{39}\) who had been interned for some time in the Strzebielinek camp, had seen persons arriving in their place of internment who had come from Kwidzyn and had been savagely beaten and some of whom were disabled for life. Mr. Bartczak stated that he had looked after one of these persons who was suffering from hearing trouble, from lack of balance and from defects of memory.

292. Speaking more generally, according to the report of the Medical Section of the Primate's Committee for Aid to Persons Deprived of their Freedom on the health of persons interned during martial law, out of 988 persons in the centres for a period of five to 12 months, 368 were found to be in perfect health. Divergences from normal health were detected in 620 cases: 140 persons were in need of hospital treatment, and the others of ambulatory treatment. There were 100 persons suffering from affections of the digestive system, including 55 with bad ulcers. There were 54 persons suffering from motor troubles (acute inflammation of the joints or spondylitis deformans) and 45 suffering from lung diseases, including four cases of tuberculosis. The persons who had been beaten during internment formed a separate group, with headaches, dizziness, defective sight, spinal injuries and symptoms of epilepsy.\(^\text{40}\) The written documents also referred to the death of three persons following blows received in the places of internment.\(^\text{41}\) The Commission will return to this question in Chapter 11.

293. According to the information given in the documents, during the first months following the proclamation of martial law, the rules applied in the camps were those for persons in temporary detention. The time allowed for exercise was between half an hour and an hour and the rest of the day was passed in the cells. Visits were allowed

\(^{36}\) Repressions in Poland - State of war, pp. 9 and 63 et seq.; Blondel, written communication dated 21 November 1983, Annex II/V.

\(^{37}\) Brzozowski VII/33 to 36.

\(^{38}\) Bartczak VIII/17.

\(^{39}\) Jarmakowski VI/10 and 11.

\(^{40}\) Blondel, communication of 21 November 1983, Annexes IV/10 and II/6.

\(^{41}\) ICFTU, communication of 26 October 1983, Annex 4.
once a month. As the time passed, conditions became less severe, the period allowed for exercise was increased, showers could be taken more often, and there was more opportunity for contact among the different cells. From time to time, however, conditions became severer, for example in October 1982 in the camp of Kielce-Piaski. 

Several sources have shown that changes in the way the rules were applied depended not so much on the commanding officers of the camps as on the agents of the security service responsible for supervising these camps, who were instructed, for this purpose, to obtain information and often to suggest to the internees during informal questionings that they should sign a declaration of loyalty. This declaration could have an influence on the possibility of release for the persons concerned. A refusal to sign it could also lead to compulsory exile.

Persecution of internees after release

The witnesses heard by the commission referred to the harm and harassment that they suffered on release from internment. Thus, Mr. Bartczak, who was released from the camp of Strzebieliniek on 22 December 1982 with a medical certificate stating that he was unfit for work, was summoned twice a month by the militia and placed under a supervisor. Mr. Brzozowski, who had refused to work under the orders of a member of the Polish United Workers' Party, was summoned three times by the security services, who forbade him all contact with his companions. Mr. Dziechciowski, who was released on 25 July 1982, found a job for a year, but he lost part of his pay and was denied the possibility of finding another job. He too was placed under a supervisor. He was summoned by the militia every two or three weeks and harassed in his home and in his workplace. Mr. Witon, who was released on 16 March 1982, could not find work and, after his release, his home was searched several times and he was frequently disturbed.

Special military camps

It was alleged that 450 persons, all members of the trade union Solidarity and some of them ill, had been compelled to perform their service in the military camp of Czerwony Bor and that they were housed in railway carriages. Active members of Solidarity were thus subjected to another form of deprivation of liberty by being mobilised in special military camps, where those suspected of opposition activities, including many former internees, were brought together. According to the documents, these camps were in operation until February 1983 and the number of persons deprived of their freedom in this way was at least 2,000.
In this connection, the Government of the United States alleged in its communication that in late 1982 and early 1983 former internees and active members of Solidarity had been called up for special military service, which constituted in fact another form of internment, though it was not publicly acknowledged as such by the Polish authorities. There were about 20 internment centres disguised as military camps, including those at Czerwony Bor in the province of Lomza, at Czarne in the province of Szczecin, and at Wilomina near Warsaw. The former internees and active members of Solidarity were called up for 90-day periods of supposed military reserve training when strikes and demonstrations against martial law were announced for 20 November 1982. Some of these reservists, who had previously been exempt from military service, were thus forced to serve. No military training was given to them and they were housed in makeshift quarters and forced to perform routine non-military, manual labour. Since then, however, the practice seems to have been discontinued.

The witness Mr. Jarmakowski, who was released on 24 August 1982 from the camp of Strzebielinek, informed the Commission that, after he had left Poland to settle in the United States, his family on 6 September 1982 received a call-up for military service addressed to him for service in a special camp. He stated that this enrolment of former internees for military service was current practice.\(^{51}\)

Brutality during interrogations

It was alleged in the documents submitted to the Commission that brutality was inflicted on the trade unionists during their interrogations by the police. Sometimes, according to the allegations, the blows and injuries received by the active members and sympathisers of Solidarity even led to death or extremely serious injury. The allegations concerning the death of 14 persons listed by name will be set forth in Chapter 11.

According to the allegations of the complainant and the ICFTU examined in this chapter, ill-treatment was inflicted on several persons. The first mentioned were the following four persons: Bogumila Janas, the wife of Zbigniew Janas, a leader of Solidarity in the Warsaw region now in hiding, who was ill-treated and beaten on 5 October 1983 at the militia station in the Mostowskich Palace while she was being questioned on the activities of her husband with the purpose of forcing him out of hiding; Grzegorz Walesa, the nephew of the President of Solidarity, who was beaten at Bydgoszcz by a militia patrol on 20 August 1983; Jan Witkowski, editor of the review Robotnik, who, having been the victim of a "guard of honour" at the Szczecin police station on 30 August 1983, was suffering from partial blindness, deafness and paralysis of the arm and was subsequently charged with "insulting a militiaman" and imprisoned; Jerzy Wyskiel, chairman of the Solidarity works committee of an undertaking at Nowy Sacz, who was kidnapped in the street on 2 September 1983 by security agents, interrogated in a cellar about tracts and clandestine publications, beaten and thrown from a moving car. At the hospital he was found to be suffering from concussion, a broken arm and general injuries.\(^{52}\)

According to the documents, several other persons were subjected to interrogations with violence, in particular Anna Michalska, at the Cracow police station in March 1982; T. Piekarz at the police station in Mogilska Street at Cracow on 11 May 1982; Jerzy Mnich at the militia station of the voivodship of Katowice. In addition, Piotr Milewski, who was arrested in December 1982 at the Gdansk shipyard was taken to the mental hospital at Koczorow following blows received in the police station.\(^{53}\) In his statement to the Commission, the witness Mr. Kaczmarczyk confirmed the allegations concerning the treatment suffered by Jerzy Mnich, a striker at the "Manifest Lipcowy" coal mine, who was arrested while he was in hospital on

\(^{51}\) Jarmakowski VI/6.

\(^{52}\) Blondel, written communication of 21 November 1983, pp. 73, 74 and 80; ICFTU, communication of 18 November 1983, Annex 4.

13 January 1982 and beaten at the militia station of the Katowice voivodship. Gas was even directed into his eyes with a spray and he suffered a gradual loss of vision in the right eye. The complainant also mentioned the case of an unnamed miner who was interrogated in November and then in December 1982 and tortured with electricity in the fingers, bludgeoned and even partially asphyxiated with a gas mask that two agents held to his face while a third blocked the air entry. It appears that they then tried to revive him with injections of glucose and vitamins and proposed to him that he should collaborate, which he refused to do. Lastly, at the prison of Lakowa Street at Wroclaw, still according to the complainant, the persons undergoing interrogation were strapped to a hard bed with a metal bowl under the back. This very painful method was apt to provoke partial paralysis of the arms and legs without leaving any visible trace.

302. The documents mention a case in which the militiamen were punished: the verdict was pronounced against agents who, in the militia station at Wegrowo on 21 September 1982, had beaten the chairman of the Independent Farmers' Solidarity of the village of Korytnica, Mr. Krzysztof Szymanski, who was carrying tracts when he was stopped for questioning. The victim had to spend 68 days at the prison hospital. The military tribunal of the Warsaw region is said to have passed sentence in the month of April 1983 on the agents responsible: Moszynski of the volunteers' detachment of the militia to two-and-a-half years' detention and the other three agents, Kalinowski, Drozdzewski and Rydzewski to two years' imprisonment, referring to the "sadism and bestiality" that they had exhibited and also the "special danger they represented for society". In May 1983, however, the convicted agents are said to have been released.

303. When he was heard by the Commission, Mr. Nedzynski, General Secretary of the Postal, Telegraph and Telephone International, who had gone to Poland several times, confirmed the allegations that the police bludgeoned the persons who had been arrested, and the witness Mr. Jarmakowski added that at the Strzebielinek camp he had been interned with persons who had been beaten at the militia station of Katowice. Lastly, several witnesses stated that those who complained found themselves back in the dock. In this connection, Mr. Nedzynski asserted that in these matters the evidence of a policeman was enough and he referred to the case of a judge at Radom who had accepted evidence even though it was contradicted by the same policemen and to the case of Mr. Switon, founder of the free trade unions of Silesia, who complained of having been struck by militiamen on leaving church and was at once accused of having attacked a militiaman.

Sentences

304. The complaint referred to the conviction for going on strike of workers and active trade unionists and contained an annex listing the names of persons sentenced to imprisonment for trade union activities and of persons arrested. Furthermore, in October 1983, the ICFTU submitted to the Commission a list of members of Solidarity sentenced for their trade union activities or sympathies during the period of martial law, in which reference is made to the sentencing of about 1,700 persons listed by name,
concerning whom information is given on the charges on which their sentences were based. By means of a communication dated 18 November 1983, the ICFTU submitted a second list of over 350 trade unionists whom it stated to be still interned on the basis of sentences of over three years' imprisonment and who therefore had not been released under the Amnesty Act of 21 July 1983.

305. With regard to the Polish workers still in prison, the complainant provided some information in a communication dated 14 April 1984. According to lists drawn up in December 1983, which he enclosed with this communication, 121 more persons had been arrested after the adoption of the Amnesty Act of 22 July 1983. The complainant also mentioned statements made by Mr. Zawadzki before the Diet at its session on 29 September 1983, while he was Minister of Justice. According to these statements, by 20 September 1983, 1,427 persons had been affected by the amnesty, comprising 533 convicted persons who had been pardoned, 797 persons undergoing prosecution against whom proceedings had been stopped and 97 convicted persons whose sentences had been partially remitted. Thus, according to the Minister of the 640 political offenders who had been sentenced or were in preventive detention in Polish prisons at the time of the amnesty, 557 had been released. At 24 September 1983, 83 persons remained in prison, of whom 41 were serving sentences that had been reduced under the Amnesty Act, 30 were not affected by the amnesty and 12 remained in temporary detention. As to these last persons, the amnesty would be applied to them only when their sentence was pronounced in accordance with the criminal charges they were facing. The Minister also estimated at 196 the number of persons amnestied for offences connected with the militarisation of undertakings. With another communication, dated 14 April 1984, the complainant enclosed a list giving the names of 138 persons still in prison, sentenced or in preventive detention in March 1984.

306. Lastly, in a communication dated 19 April 1984, the complainant stated that information of April 1984 mentioned 409 political prisoners officially in detention in Poland, some of whom were on hunger strike and being forcibly fed. Moreover, ill-treatment continued to be inflicted in the prisons.

307. The sentences were passed by virtue of the Decree respecting martial law of 12 December 1981, which suspended the right to strike and to demonstrate. Under this Decree, the members of a suspended association or trade union who did not abandon membership and those who used a vehicle for strikes or demonstrations were liable to a sentence of three years of imprisonment (s. 46). Those who organised or directed a demonstration of protest or a strike were liable to a sentence of five years of imprisonment (s. 46), as were those who spread false news likely to arouse anxiety in the public or who carried or dispatched papers, tracts, recordings or films giving such news (s. 48). Furthermore, those who acted in the same way through the use of printing presses or any other means of information were liable to a sentence of ten years of imprisonment (s. 48).

308. It was alleged that, following the proclamation of martial law, many functions of the civil courts were transferred to the military tribunals and certain judges were especially severe, in particular at the Court of the Voivodship of Warsaw, the Court of the Voivodship of Wrocław, the court of the military region of Warsaw pronouncing judgement at Rzeszów, the Court of the Voivodship of Bydgoszcz and above all the naval tribunal of Gdynia.62

309. During the first six months of the year 1982, the courts are said to have judged 183 persons in summary proceedings, including 122 for strike activities of whom 112 were sentenced and ten acquitted. At Warsaw the great majority of cases judged concerned the editing, printing and dissemination of clandestine publications of Solidarity. 20 persons are said to have been sentenced for strike activities at the Ursus tractor factory, at the Huta Warszawa steel works, at the FSO motor car factory, at the Nuclear Research Institute and the Polkolor Chemical Works at Piaseczno. At Gdansk, of the 160 sentences to imprisonment, 60 per cent related to the strikes of December 1981 in the large undertakings of the coast (Gdansk, Gdynia and Szczecin),

61 For the definition of a voivodship, see para. 15, footnote 5.
62 Poland under martial law, pp. 138, 140 and 141.
20 per cent to the preparation and distribution of tracts and 20 per cent to participation in demonstrations, in particular those of 31 August 1982. At Katowice, of 19 sentences for imprisonment of five years or more, 11 are said to have related to the strikes of December 1981 and seven to the preparation and distribution of tracts.63

310. The severest sentences are said to have been passed by the military tribunals of Gdansk, Gdynia and Warsaw. Thus, the President of the tribunal of the military region of Warsaw, Colonel Mieczyslaw Przybos, passing judgement at Rzeszow, passed sentences that were heavier than those called for by the prosecutor: one person is said to have been sentenced to six-and-a-half years of imprisonment "for having set up new trade union structures and distributed illegal publications", whereas the prosecutor had demanded only four-and-a-half years of imprisonment.64 Likewise, three persons are said to have been sentenced to six years of imprisonment for having organised and directed a strike of five minutes at the Stalowa Wola steel works. With regard to the naval court at Gdynia, in February 1982, Ewa Kubasiewicz was sentenced to ten years of imprisonment and those accused with her to nine years. The persons concerned are said to have been accused of having organised and directed a strike, on 14 December 1981, at the Senior Naval Academy of Gdynia and of having edited, published and distributed a strike bulletin giving false news likely to be damaging to the defence of the country. It is further stated that the strikers themselves ended the strike voluntarily after 20 hours, following a discussion with the administration of the Academy and an assurance from the rector that they need not fear penal action. As to the false news, the text of the bulletin in question is said to have informed readers that the strike at the school had started and that the rector had already changed.65

311. It was further alleged that sentences of from four to six years of imprisonment had been passed on several important leaders of Solidarity, including Mr. Piotr Bednarz, a member of the Presidium of Solidarity for the region of Wroclaw and of the Provisional Co-ordinating Committee of Solidarity (TKK), Mr. Władysław Prasnyk, chairman of Solidarity for the region of Wroclaw and a member of the TKK, Mr Patrycjusz Kosmowski, chairman of Solidarity for the region of Bielsko-Biała, Mr Jerzy Kropiwnicki, vice-chairman of Solidarity for the region of Łódź, Mr. Janusz Palubicki, a member of the Provisional Co-ordinating Committee of Solidarity (TKK), Mr. Andrzej Slowik, chairman of Solidarity for the region of Łódź and a member of the Presidium of the National Committee of Solidarity, though certain of these leaders had their sentences reduced under the Amnesty Act.66

312. According to the allegations, the Supreme Court sometimes increased the sentences: for example, the above-mentioned Solidarity leaders, Mr. Kropiwnicki and Mr. Slowik, prosecuted for having organised a demonstration on 14 December 1981 at the Solidarity office at Łódź, who were sentenced by the Court of the Voivodship of Łódź to four-and-a-half years of imprisonment, were sentenced by the Supreme Court to six years of imprisonment.67 When he was heard by the Commission, the witness Mr. Kaczmarczyk stated that the Supreme Court had passed a sentence of five years of imprisonment on Dr. Choina, who had been arrested on 16 December 1981 and accused of having given young people tracts to distribute, whereas the military tribunal of Katowice had sentenced him in the first instance on 11 January 1982 to only two-and-a-half years of imprisonment.68

63 ibid., pp. 142 et seq.
64 ibid., p. 150.
65 ibid., pp. 155 et seq.
66 Blondel I/26 and 27; Government of the United States.
67 Poland under martial law, p. 152.
68 Kaczmarczyk IX/26.
313. The Government of the Federal Republic of Germany provided extracts from decisions of the Supreme Court (Criminal Division and Military Division) for the year 1982, which showed that the lightest sentence that a court could pass, under the procedure for the application of martial law, by virtue of section 4, subsection 1, of the Decree of 12 December 1981 respecting special procedures for cases of infringements and violations of the provisions on martial law, was, in the absence of extenuating circumstances, three years of imprisonment. Furthermore, an act of protest within the meaning of section 46 of the Decree respecting martial law could be constituted by an action (action or omission) of the participants directed, in an obvious way, towards a given aim. The wearing of arm bands could thus constitute an act of protest. Lastly, the distribution of tracts signed by a trade union whose activity had been suspended constituted, if the offender belonged to the same union, the carrying on of trade union activity in violation of the prohibition provided for by the Decree respecting martial law. This, still according to the Supreme Court, did not exclude the fact that the distribution of tracts could, depending on their contents, be considered secondarily to be the dissemination of false news, the defamation of the regime or a call for disobedience.

314. The Government of the Federal Republic of Germany observed that the amnesty was subject to a set of restrictions. It did not apply to offences of flight or attempted flight abroad with the purpose of evading the obligation to work. The remission of the sentence covered acts under sections 46 and 48 of the Decree of 12 December 1981 respecting martial law (carrying on an activity in a prohibited association or trade union, participation in or direction of strikes, damage to industrial installations during strikes, dissemination of false information with a view to weakening the defensive capacity of Poland, dissemination and production of printed texts or films for the same purpose), but the effect of this provision was reduced by the fact that the amnesty was granted only on condition that the person concerned committed no new similar offence before 31 December 1985, for if he should do so the right to take advantage of the amnesty would be withdrawn (s. 7).

315. In its written communication, the Government of the United States asserted that, according to the Government of Poland, the day after the adoption of the Amnesty Act, that is to say on 22 July 1983, only 640 persons were in prison for offences under martial law and that on 24 September 1983 there remained only 83 persons imprisoned for political offences committed while martial law was in force, 30 of whom were not eligible for the amnesty owing to the seriousness of the offences they were charged with. According to this communication, the Government of Poland announced that 3,068 political offenders and 11,000 persons sentenced for other offences were eligible for the amnesty. On 2 November 1983, however, the Minister of the Interior of Poland stated that 648 persons had taken advantage of the amnesty. The Government of the United States observed that the amnesty applied only to certain violations of martial law and that it was accorded to members of Solidarity only if they confessed their crimes. Moreover, it was conditional, since a person committing within two years an offence similar to that for which he had been punished would have to serve his full sentence. In the view of the United States Government, this constituted a form of intimidation intended to discourage membership of Solidarity. It pointed out that the Polish authorities acknowledged having arrested 116 persons between 22 July and 29 September 1983. In fact, according to the Government of the United States, the number of persons arrested since that date was three or four times as high. The whole of this information was repeated by the complainant, who placed special emphasis on the statements made by the Commanding Officer of the militia, who was Deputy Chief of the Department of Investigation of the Ministry of the Interior, in a Warsaw newspaper, to the effect that those who had not by 31 October 1983 made up their minds voluntarily to acknowledge their faults should realise that under existing legislation they could at any moment be subject to repressive measures.

316. The Government of France regretted that the Amnesty Act excluded from its terms, on the pretext of crimes against the fundamental interests of the State, the principal leaders of Solidarity who had not been released in December 1982, those of the Workers' Self-Defence Committee (KOR) and those of the Independent Poland Confederation.

69 Blondel I/18, 19 and 21.
(KPN) accused under sections 123 and 128 of the Penal Code. In this connection, Mrs. Breton-Baluka, when she was heard by the Commission, confirmed that her husband, who had been sentenced to five years of imprisonment under section 128 of the Penal Code, was excluded from the amnesty under the provisions of the Act itself.

317. To explain the background to the departure from Poland of the witnesses he had presented and the intentions of the Government concerning the amnesty, the complainant read to the Commission, during the hearings, a document that he said contained passages from speeches given by three Polish leaders, Mr. Barcikowski and Generals Siwicki and Baryla, during a working meeting before senior members of the Party and officers and non-commissioned officers of the army on 16 November 1982 at Warsaw. The following passage was among those delivered:

The suspension of martial law entails the settlement of the situation of persons in internment camps. Each case is examined individually. The following possibilities are taken into consideration: release, conviction, encouragement to go into exile and amnesty. The possibility of a partial amnesty is being considered for young persons who have been sentenced to minor penalties; the remission of sentences is also under consideration. Active members in hiding will not be concerned by these measures.

318. With regard to the general effects of the Amnesty Act, the witness Mr. Bartczak stated to the Commission that in fact in the two weeks following the adoption of the Act, certain persons were released, in particular those who had been sentenced to the lightest penalties. Release took place gradually. The active members of Solidarity sentenced to heavier penalties, for whom the effects of the amnesty were only partial, were grouped together in one place. According to the witness, certain persons who had been amnestied were again imprisoned afterwards. The witness Mr. Maire, who had shortly before been several times to Poland, added that a number of prisoners who should have benefited from the amnesty had not been released and that certain persons were sometimes administratively interned for short periods in order to intimidate them and discourage them from showing their attachment to Solidarity. For example, Anna Walentynowicz, who had been given a suspended sentence at the beginning of 1983, was again arrested with two other persons shortly before 13 December 1983 because she wished to pay homage to the dead of the Wujek mine.

Maintenance of legal proceedings against trade union leaders after the adoption of the Amnesty Act

319. It was alleged that four members of the Workers' Self-Defence Committee (KOR) namely Mr. Jacek Kuron, Mr. Adam Michnik, Mr. Zbigniew Romaszewski and Mr. Henryk Wujek had been charged with attempts to overthrow the prevailing system by force and that seven members of the National Committee of Solidarity, Mr. Andrzej Gwiazda, Vice-President of Solidarity, Mr. Seweryn Jaworski, vice-chairman of Solidarity for the Mazowsze region, Mr. Marian Jurczyk, chairman of Solidarity for the Szczecin region, Mr. Karol Modzelewski, vice-chairman of Solidarity for the Wroclaw region, Mr. Grzegorz Palka, member of the National Commission of Solidarity, Mr. Andrzej Rozplochowski, member of the Solidarity Committee for the Katowice region, and Mr. Jan Rulewski, chairman of Solidarity for the Bydgoszcz region, had been charged with conspiring to overthrow the prevailing system by force. According to the allegations, the persons in question were liable, under sections 123 and 128 of the

70 An extract from Serwis Informacyjny Malopolska No. 42.
71 Blondel VII/8 and 9.
72 Bartczak VIII/35.
73 Maire VIII/46 to 48.
74 Committee on Freedom of Association, 225th Report, para. 31.
Penal Code, to ten years of imprisonment or even to the death penalty. With regard to this last point, Andrzej Gwiazda himself, in a letter addressed to the Commission, explained that he had first been charged in December 1982 under section 123 and threatened with the death sentence but that since August 1983 the preliminary investigation had ended and the investigator of the General Military Prosecution Department had informed him that the terms of his charge had been modified. He was thus on trial under section 128 for attempting to overthrow the system by violence and was liable to a sentence from one to ten years of imprisonment.

320. According to the ICFTU, these persons were materially incapable of having carried out the activities they were accused of, since they had been interned since 13 December 1981 and the Abolition Act adopted by the Government of Poland covered all political and trade union activities carried on before 13 December 1981. Moreover, the accusations against these trade unionists were gratuitous from the factual point of view and entirely devoid of foundations from the legal point of view. According to the Government of the United States and the complainant, amnesty was proposed to these 11 persons on the condition that they left Poland or disowned their past trade union activities, but they had all refused.

Position of the Government of Poland

321. The grounds advanced by the Government of Poland to justify the proclamation of martial law and the various measures adopted under it, including the internments, have already been mentioned in Chapter 9.

322. With regard to the information concerning the situation of persons in internment or detention, the Government stated in May 1982 that 7,000 persons had been placed in the internment camps, but that 5,000 had been released, the last thousand of them on 28 April 1982, and that 2,300 persons were still interned in May 1982. It also provided written information on 28 May 1982 to the effect that out of the 725 persons mentioned in the complaint examined by the Committee on Freedom of Association, 340 had been interned or arrested, including 313 active or ordinary members of Solidarity, and that 128 of these 313 persons had been released.

323. Moreover, on the same date, the Government stated that the living conditions of the internees were different from those of persons in detention in that they came under special rules. According to the Government the camps had been visited by the International Committee of the Red Cross and no comments had been made by it on the material conditions of the detained persons or their relations with the guards.

324. In a further communication dated 22 October 1982, the Government stated that out of the total of 204 persons whose names appeared in the list annexed to an earlier report of the Committee on Freedom of Association, 100 persons had been released and 92 remained in internment or under arrest, and that, out of the 111 persons whose names were annexed to the complaint of Mr. Blondel and Mrs. Buck, nine had been released and 14 were still interned or under arrest. The others had not been identified or had been sentenced.

75 Blondel 1/28; Governments of France and the United States.
76 ICFTU, written communication dated 26 October 1983.
77 Government of the United States; Blondel 1/28.
78 Committee on Freedom of Association, 217th Report, para. 700. A list annexed to the said report contains information provided by the Government on the persons mentioned in the annex to the 214th Report.
79 ibid., para. 701.
80 Committee on Freedom of Association, 221st Report, paras. 48 and 49.
CHAPTER 11

DEATHS OF TRADE UNION MEMBERS AND LEADERS

325. The complaint of Mr. Blondel and Mrs. Buck referred to the deaths of workers after the intervention of the security forces during labour disputes. It was alleged that active members and leaders of trade unions had died, particularly during the strike of December 1981 at the Wujek mine and during strikes and demonstrations organised by Solidarity during the years 1982 and 1983, and that other deaths had occurred following violence against persons in internment or during interrogation.

326. In his communication dated 21 November 1983, Mr. Blondel alleged that 18 persons he mentioned by name had died following the intervention of the militia, that 20 persons had died after being beaten and that 11 persons had died in circumstances that remained obscure or were indirectly connected with the action of the militia.1

327. The WCL referred, in a communication dated 15 December 1982, to the death of 32 persons killed by the militia or dead following injuries inflicted by the security forces between December 1981 and November 1982.2

328. According to information provided by the IGFTU, a score of persons were shot dead or killed by tear gas bombs by the security forces during the demonstrations organised by Solidarity or during strikes at Lublin, Gdansk, Wujek, Poznan, Wroclaw, Nowa Huta, Warsaw and Biala Podlaska. Lastly, 40 other persons died after being bludgeoned by the militia, the security services or the police, or in other circumstances.3

Information and evidence submitted to the Commission

Leaders and active members of trade unions said to have died following the intervention of the security forces during strikes and demonstrations

329. According to the documents submitted to the Commission, the strikes called after 13 December 1981 in every region of the country and the many demonstrations that took place in 1982 calling for the restoration of Solidarity, the release of those imprisoned for trade union activity and the lifting of martial law were broken by the massive intervention of the militia and the army with the use of gas, grenades, water cannons and bludgeons. Fire-arms were used not only on 15 December 1981 in the Wujek mine at Katowice, but also on 17 December 1981 in the streets of Gdansk, 31 August 1982 at Lublin and Wroclaw and 13 October 1982 at Nowa Huta, where they are said to have killed 14 persons.4

2 The list of persons who, according to the WCL, were killed by the security forces is annexed to the 225th Report of the Committee on Freedom of Association.
4 The situation of trade unions in Poland, p. 4.
According to the information supplied by the complainant, the total number of
dead and injured at the Wujek mine was very high, since seven miners had been shot
dead and another had died on the way to hospital and 50 workers had been seriously
injured. According to the same source, militiamen fired without warning.

A witness, Mr. Kaczmarczyk, during his hearing, gave a detailed account of
the events at the Wujek mine, and stated that the affair had taken on a new dimension
when the daughter of Mr. Ludwiczak, chairman of the works committee, had been beaten by
the militia. He explained that, during the night of 12 to 13 December 1981, four
militiamen came to the flat of the chairman of the works committee, who then asked ten
miners to join him at home. Fifty more militiamen arrived later. They beat guards
and miners, who lost consciousness. The militiamen then broke in the door of the flat
of the chairman of the works committee and brutally beat his daughter, who was trying to
defend him. The news of this brutality reached the mine and 500 persons then assembled
to call for the occupation of the premises. According to the witness, a vain attempt
at mediation took place on 15 December, but in the afternoon 30 tanks and armoured cars
took up their positions near the mine. On 16 December, the tanks drove towards the
mine and the authorities issued an ultimatum to the miners to leave within an hour.
Some 500 women and children then gathered before the gates. The militiamen had blocked
the streets and the crowd rushed in front of the tanks and was attacked with water
cannons and tear-gas bombs. The tanks went as far as the pit head, throwing tear-gas
bombs. The strikers then counter-attacked. They jumped on the vehicles, which were
compelled to leave the place, and they seized some weapons. The militiamen launched a
second attack. The rattle of fire-arms was heard in the neighbourhood. The following
miners fell under the bullets: Zbigniew Wilk, Ryszard Idzik, Josef Czekarski,
Krzysztof Giza, Roman Zajac, Boguslaw Kopczak and Jan Stawisinski and Joachim Gnida.
Andrzej Palka was taken to hospital and died of his injuries. The strikers, when they
learned that their comrades were dead, seized a private and two officers as hostages.
The militiamen stopped the operations and negotiations began. The commanding officer
stated that he had not given the order to fire. The miners demanded in exchange for
the three hostages permission to leave the mine safely in buses. The commanding
officer agreed to this and the three hostages were released after the departure of the
last bus.

According to the documents submitted to the Commission, in addition to the
miners who died at the Wujek mine, the following persons were fatally wounded by the
bullets of the militia or by gas or by tear-gas bombs:

- Antoni Browarczyk, Wieslaw Adamczyk and Slawomir Dobrzanski at Gdansk, on
  17 December 1981;
- Wojciech Cielecki at Biala Podlaska, on 2 April 1982;
- Wladyslaw Durda at Szczecin, on 3 May 1982;
- Andrzej Trajkowski, Mieczyslaw Pozniak and Michal Adamczak at Lublin, on 31 August
  1982;
- Tadeusz Wozniak at Wroclaw, on 31 August 1982;
- Piotr Sadowski at Gdansk, on 31 August 1982;
- Bogdan Wlosik at Nowa Huta, on 13 October 1982;

5 With regard to events at the Wujek mine, the information collected by the
representative of the Director-General in Poland in May 1982 appears in para. 703 of the


7 Kaczmarczyk, IX/16 to 20.
Waclaw Kaminski at Gdansk, on 11 November 1982;
Ryszard Smagur at Nowa Huta, on 1 May 1983.

Two other miners are said to have died during the strike at the Manifest Lipcowy coalmine in Silesia, on 17 December 1981.°

333. According to the documents, bludgeoning by the militia during the demonstrations led to deaths including those of the following persons:

- Franciszek Tyszko, struck by militiamen at Wroclaw, who died on 3 January 1982;
- Tadeusz Matuszynski, struck at Wroclaw on 1 February 1982, who died of a brain haemorrhage;
- Wojciech Cielewicz, bludgeoned at Poznan on 13 February 1982, who died of skull injuries in spite of a trepanation on 27 February 1982;
- Stanislaw Kot, struck at Rzeszow on 31 March 1982, who died on 3 April 1982 in hospital at Rzeszow of several fractures (skull, spine);
- Franciszek Rycerz, struck at Cracow on 13 April 1982, who died in hospital;
- Adam Szulecki, bludgeoned at Warsaw on 3 May 1982, who died on 9 May in hospital at Praga;
- Malgorzata Lenartowicz, bludgeoned at Warsaw on 3 May 1982, who died on 5 May in hospital;
- Mieczyslaw Radomski, struck by militiamen at Warsaw on 3 May 1982, while going to mass, who died on his way to hospital;
- Marek Kuchta, detained and struck by the police at Warsaw in the Old City, who died on 5 May 1982;
- Piotr Majchrzak, struck by militiamen at Poznan on 13 May 1982, who died in hospital on 18 May 1982;
- Andrzej Flak, struck by militiamen at Warsaw on 25 May 1982, who died from a rupture of the spleen and haemorrhage of the abdominal cavity;
- Stanislaw Szymanski, chairman of the Solidarity Committee of the Post Office at Gdansk, beaten by officers of the security service in his own flat, who died in May 1982;
- Wlodzimierz Lisowski, struck by militiamen at Cracow on 13 May 1982, who died from his wounds on 13 July 1982;
- Jacek Osmanski, struck at Torun by a militia patrol, who died on 1 August 1982;
- Kazimierz Michalczyk, struck by militiamen at Wroclaw on 31 August 1982, who died from his wounds on 2 September 1982;
- Stefan Sznaider, 78 years old, struck at Wroclaw by the security forces, who died on 31 August 1982 of general paralysis;
- Eugeniusz Wilkomirski of Czestochowa, struck by militiamen on 1 September 1982, who died two days later;

- Stanislaw Krolik, struck by militiamen at Warsaw on 10 November 1982 near the Church of the Holy Cross, who died at the Bielany hospital on 16 November 1982.9

334. The ICFTU also gives names and information concerning other persons the circumstances of whose deaths have not been clearly established though the security forces are said to have been responsible, including Andrzej Gasiewski, of Warsaw, found dead on 19 June 1983; Mieczyslaw Joniec, of Nowa Huta, killed on 31 August 1982 during a demonstration; Tadeusz Jurek, who died on 30 June 1983 as a result of the ill-treatment inflicted on him; Ryszard Kowalski, who died on 31 March 1983; Ryszard Lyskawa, who died on 1 May 1983 during a demonstration at Wroclaw; Andrzej Urbanowicz and Jan Samsonowicz, who died on 16 June 1982 and 6 July 1983 respectively after being arrested by the police.10

Leaders or active members of trade unions said to have died as a result of the brutality inflicted on them during internment or interrogation

335. It was alleged that the following persons, who had been interned in the camps or detained on premises of the security forces, died after brutal treatment:

- Zenon Beszczyński ou Reszczyński, said to have been severely beaten in the Bydgoszcz prison, transported in a critical condition to the prison hospital on 28 December 1982 and to have died despite two trepanations during the night of 13 to 14 January 1983;

- Adam Grudziński, interned at Zaleze until June 1982, said to have been beaten for having tried to protect a fellow detainee and taken to hospital following a heart attack;

- Jacek Jerz, interned at Kwidzyn, said to have been beaten by militiamen during the brutalities committed in this camp on 14 August 1982, where he remained despite the very serious condition of his health until December. He is said to have died of a heart attack on 31 January 1983 as a result of this ill-treatment;

- Tadeusz Wolski, residing at Prosta Street at Bielst Podlaskie, said to have been beaten to death at Szkolny Dwor by two agents of the militia, one of whom was Sergeant-Major Feflinski, in July or August 1982; his death is said to have been due to a rupture of the spleen caused by bludgeoning;

- Emil Barchanski, said to have been beaten by officers of the security services while he was in preventive detention at Warsaw in March 1982; after being released on 30 March 1982, he is said to have been drowned in the Vistula on 6 June 1982, the eve of the day when he was to give evidence in a trial, having announced his intention of retracting earlier evidence and informing the court that he had been beaten;

- Agata Kobylinska, detained at the prison of Kleczkowska Street at Wroclaw, said to have died at the prison hospital of Wroclaw on 27 July 1982, after a miscarriage and after having been severely beaten in the prison while she was suffering from asthma, bronchitis and thyroid deficiency;

- Wanda Kołodziejczyk, said to have been tortured by the security services at the preventive detention centre of Rakowiecka Street at Warsaw and to have died on 4 June 1982;

9 ICFTU, communication dated 26 October 1983, Annex 4; Poland under martial law, pp. 224 and 225.

Kazimierz Majewski, chairman of Solidarity at the tool plant at Jelenia Gora, said to have committed suicide on 29 October 1982, leaving a letter in which he explained that his act was due to the harassment of the security services, brutal interrogations, pressure to collaborate and threats concerning his family;

Mieczyslaw Rokitnicki or Rokitowski of Przemysl, said to have died after being tortured on 3 April 1982 during an interrogation at the preventive detention centre of Zaleze;

Jan Ziolkowski, a member of Solidarity at Poznan said to have been beaten during an interrogation at the police station on 1 March 1983 and to have died in hospital of brain injuries and a heart attack on 5 March;

Zbigniew Szymanski, said to have died at the end of April 1983 after being beaten by two drunk militiamen, Roman Prudawczuk and Jerzy Niewiec;

Jozef Larysz, said to have died of a heart attack on 7 March 1983 following several interrogations;

Jerzy Jozef Marzec, of Wroclaw, an active member of Solidarity in the carriage repair plant, said to have been found dead on 22 June 1983, the day after the Pope's visit, beside the river Oder; his workmates suspected the security forces of having beaten him to death and firmly rejected the rumours circulating at Wroclaw to the effect that he had been a drug addict and had disappeared from his home on 15 June 1983, payday. They asserted that they had seen him on 21 June 1983;

Andrzej Grzywna, 63 years old, residing at Wyzwolelice Street at Nowy Port, said to have been stopped for questioning by militiamen during the night of 29 to 30 August 1983 and to have died at the militia station after the bludgeoning of his head.

The Government of the United States and the complainant laid special emphasis on the death on 14 May 1983 of Grzegorz Przemyk, 18 years old and the son of Barbara Sadowska the poetess, who had links with Solidarity. It appears that the young man was interrogated at the police station of Jezuicka Street on 12 May and was thoroughly beaten. He is said to have been taken away in an ambulance and then brought to his mother, who again had him taken to hospital, and to have died there from a rupture of the liver after the doctors had vainly tried to operate. The office of the voivodship of Warsaw published a statement on 8 September 1983 to the effect that the young man had been aggressive and that "he had, in particular, attempted to seize one of the ambulance attendants by the hair and the face, at the same time uttering an inarticulate cry, for which reason he had been overcome by physical force". It appears that the two militiamen, the two ambulance attendants and two doctors have been charged with blows and injuries and faulty diagnosis, but that the result of the inquiry into the matter is not yet known.

During the hearings, Mr. Nedzynski, General Secretary of the Postal, Telegraph and Telephone International, mentioned the case of a young postman, chairman of a local committee of Solidarity, who after interrogation by the militia was found dead at his home. His body was mutilated and the forensic pathologist stated on the death certificate that the person concerned had mutilated himself in a fit of madness. The witness Mr. Kaczmarczyk mentioned the evidence of an active

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12 For the definition of voivodship see para. 15, footnote 5.

13 Blondel, communication of 21 November 1983, pp. 72 et seq., and 1/22; Government of the United States.

14 Nedzynski, IV/27 and 28.
member of Solidarity who had taken refuge in France, Mr. Ryszard Czeh, to the effect that the editor of a journal of Solidarity, Jan Linder, had died of a heart attack on 12 August 1982, the day before another interrogation by the militia, while he had already undergone 25. The witness also spoke of Kazimierz Majewski, saying that he had committed suicide on 29 October 1982, leaving a letter in which he explained his act as due to surveillance by the security services, and brutal interrogations.

Position of the Government of Poland

338. The Government of Poland furnished information to the Committee on Freedom of Association concerning the death of miners at the Wujek mine. It maintained that an inquiry carried out by the military prosecutors' office had lead to the stopping of proceedings since the security forces had acted in self-defence. The Government further stated that they were threatened by heavy objects (wagon wheels, extinguishers, concrete slabs and iron bars) that were thrown on them from the roof tops and windows of the mine buildings. The shields and helmets that were the only equipment of the security forces, who were unarmed, were not sufficient. The use of tear gas also proved inadequate. A number of militiamen were injured and, since their lives were directly threatened, the special force of the civil militia, armed with small arms, had to be called in. Some warning shots were fired and then the militiamen fired direct at the strikers. Six miners fell, two of whom died of their wounds, 23 were injured, one of them seriously, and 41 of the security forces were seriously injured.

339. The Government furnished no information on the other cases mentioned above.

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15 Kaczmarczyk, IX/29 and 30.
16 Committee on Freedom of Association, 221st Report, paras. 50 and 51.
CHAPTER 12

MEASURES OF ANTI-UNION DISCRIMINATION

340. Mr. Blondel and Mrs. Buck alleged in their complaint that trade unionists had been dismissed because of their trade union membership and activities and that loyalty oaths entailing the renunciation of membership of the trade union Solidarity had been required under penalty of dismissal, in particular from certain classes of public servants. During the Second Session of the Commission, Mr. Blondel maintained that the Government of Poland, in its decisions and administrative measures, had violated Conventions Nos. 87 and 98, among others, by dismissing with and without notice, placing in early retirement or transferring union members and representatives in the public administration or State undertakings because of their trade union activities, even after the lifting of martial law.

Information and evidence submitted to the Commission

341. In the documents submitted to the Commission, it was alleged that the proclamation of martial law in Poland had led to the abolition of the laws that had hitherto governed labour relations and permitted the militarisation of undertakings, which were compelled to carry out the work laid down by the authorities. It was said that trade unionists had been dismissed and subjected to other acts of anti-union discrimination, such as the termination of their contract of employment followed by re-engagement on less favourable conditions and with reduced benefits, refusal to recruit, discrimination concerning wages and bonuses, the refusal of bonuses and promotion, censure, disciplinary penalties, transfers to less well paid posts with inferior conditions of safety and health and sometimes transfers to branches of the undertaking far away from the worker's home. Some workers had even been refused reinstatement in their work despite court decisions in their favour. Workers are said to have been subjected to procedures of "verification" involving declarations of loyalty and often dismissal in the event of refusal. These measures had been applied to members of Solidarity for their trade union activities.

342. It was alleged in particular that tens of thousands of workers had been dismissed, often for the mere fact of belonging to Solidarity or for having refused to leave their union and sign the declarations of loyalty to the regime. Dismissal was often applied to workers with responsibilities in Solidarity and workers who had taken part in a strike or demonstration, sometimes of a symbolic nature. The following are among the dismissals referred to as having taken place in the various sectors of the economy, particularly during the first months of martial law:

- 3,000 persons in the Gdansk-Gdynia-Sopot conglomeration;
- 120 persons belonging to the regional administration of Little Poland (financial department, Cracow firemen, etc.);
- 108 persons at the Zwar Miedzylesie factory at Warsaw;
- 200 persons at the WSK factories at Swidnik;
- 50 persons at the FSO factories at Warsaw;
- 20 persons out of 150 at the town hall at Gdansk;
- 60 journalists out of 100 at the daily Zycie Warszawy.¹

¹ Poland under martial law, Ch. X; Repressions in Poland - State of war, p. 17; The situation of trade unions in Poland, pp. 5 and 6.
Dismissal of Solidarity representatives and trade union leaders

343. According to the documents submitted to the Commission, representatives of Solidarity and Rural Solidarity had been dismissed by administrators of public property, starting in February 1982, on the grounds that other work could not be found for them and, where representatives of Rural Solidarity were concerned, that the financial resources were lacking. The persons who had been dismissed appealed against the decisions dismissing them. It appears that on 15 July 1982 the Supreme Court decided that the administrators were fully entitled to terminate the contracts of employment of persons who, by reason of the suspension of their trade union, were no longer working.2

344. During the mission of the representative of the Director-General in Poland in May 1982, it was explained to him that the representatives of the different trade union organisations had had to rejoin their former undertakings, though this had not always occurred without difficulties. It was stated, for example, that a provincial leader of Solidarity had been dismissed a few days after his reinstatement and that it was only when he had laid the matter before the Labour Court and this had decided in his favour that he had been able to resume his work at the undertaking where he had worked before.3

345. The documents mentioned cases in which workers who had held responsibility in Solidarity had been dismissed. Thus, on 17 December 1981, two active members of Solidarity were dismissed from the Cerabud undertaking at Sochaczew for "having failed to prevent a collection of money in the undertaking for the benefit of the family of an internee". On 31 December 1981, the employment contracts of five members of the Solidarity trade union committee in the Cefarm pharmaceutical supply undertaking at Warsaw were terminated. In February 1982, nine members of the works trade union committee of the Central Directorate of Insurance (ZUS) Warsaw were dismissed. On 26 February 1982, the chairman and vice-chairman of the works trade union committee of a wire factory at Gliwice were dismissed. Several former internees who had remained formally employed during their detention received notices of dismissal after their release.4

Dismissal for taking part in strikes and demonstrations

346. According to the documents submitted, the application of penalties for participation in strikes began immediately after the strikes of December 1981. This happened, for example, after the occupation by 2,000 miners of the Piast mine in Silesia, where all the workers were dismissed, and in the shipyards at Gdansk and Szczecin, where 2,000 and 1,500 respectively were dismissed.5

347. Penalties were again applied strictly after the demonstrations of May and August 1982 and the strikes of October 1982. For example, according to the official figures of the Ministry of Mines and Industry, immediately after the demonstrations of 13 May 1982, which marked five months of martial law, 798 workers were dismissed without notice in this sector and 311 with legal notice, and 3,330 workers, including 117 of managerial or technical rank, had disciplinary penalties inflicted on them. In a cotton mill at Lodz, 35 persons were dismissed after 13 May 1982. In the communications equipment plant at Swidnik 260 persons were dismissed. The supervisory staff were asked to prepare a list of persons for dismissal, and those who refused to

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2 Poland under martial law, pp. 256 and 257.
3 Committee on Freedom of Association, 217th Report, para. 695.
4 Poland under martial law, pp. 252, 253 and 270.
5 Committee on Freedom of Association, 214th Report, para. 711; Poland under martial law, pp. 264 and 265.
comply were dismissed themselves. At the Predom works at Wroclaw about 250 persons were dismissed. A board under the direction of a military administrator examined the re-engagement files and in most cases wages were reduced and conditions of employment made harsher. At the Warski shipyards at Szczecin, following the demonstrations to commemorate the strikes of August 1980, which had resulted in the signature of the Agreements of Szczecin, Gdansk and the Silesian mines, about 100 persons were dismissed. At the Lenin shipyard at Gdansk, after the strike of 13 and 14 October 1982 called in response to the dissolution of Solidarity by the Trade Union Act of 8 October 1982, 500 persons were dismissed. 6

348. The documents show that, starting in May 1982, penalties were imposed on workers who demonstrated in a purely symbolic way. For example, on 31 August 1982, the anniversary of the Agreements of Gdansk, workers in a toy factory at Czestochowa were dismissed for refusing to remove the Solidarity badge, and some workers in a railway repair workshop at Gdansk were dismissed after laying flowers before a cross set up at a factory and singing the national anthem and a religious song. 7

349. Furthermore, in April 1982 the idea of collective responsibility was introduced in the undertakings, and this led to collective dismissals. For example, at the Control Systems Institute at Sosnowiec, following the discovery that a worker was carrying tracts printed in the reproduction department of the Institute, 62 workers belonging to Solidarity were dismissed. 8

350. Lastly, according to the documents in the shipyards at Gdansk, active members or sympathisers of Solidarity still employed in the undertaking were warned that they would be held personally responsible for any protest action that might occur. 9

**Political control of workers: Verifications - declarations of loyalty**

351. According to the documents submitted to the Commission, the authorities endeavoured to supervise the undertakings by means of "verification" procedures, during which it was suggested to the workers that they should sign a declaration of loyalty towards the authorities in which they renounced their membership of the trade union Solidarity, under threat of dismissal. During the first months of martial law, these "verifications" consisted in making the workers appear before special boards, which were to "qualify" them to continue to perform the duties that had been assigned to them. The verifiers were particularly interested in the ideological and political attitude of the person concerned and his opinion on the situation in Poland since December 1981 and asked him to make a written declaration of loyalty towards the regime, in which he abjured Solidarity. It appears that these procedures affected both manual workers and the employees of state institutions, 10 and that the standard text of loyalty declarations contained the following passage:

> Considering that numerous executive bodies of the Solidarity trade union have in recent months clearly acted against the constitutional bodies of Government and administration with the aim, from counter-revolutionary positions, of overthrowing the socialist regime, I hereby declare that I withdraw from that union. 11

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6 *Poland under martial law*, pp. 262 et seq.
7 ibid., loc. cit.
8 ibid., p. 266.
9 *Repressions in Poland - State of War*, p. 18.
10 *Poland under martial law*, pp. 258-262 and 323; *Repressions in Poland - State of war*, pp. 16 and 17.
352. It was alleged in particular that the 2,000 miners of the Piast mine in Silesia who had been dismissed after the strikes of December 1981 had to reapply for a job and that the management decided not to re-engage them unless they agreed to sign a pledge never to strike again and to renounce their membership of Solidarity.  

353. In other Silesian coal mines, miners who had been dismissed for being on strike for over three days were obliged, in order to be re-engaged, to address a petition to the manager, accompanied by a letter in which they confessed that they had been forced to take part in the strike. Mr. Kaczmarczyk stated that the payment of the thirteenth and fourteenth months of wages was made conditional on the signing of the petition. The text was as follows:

I humbly request you to be good enough to excuse my absence from work for the period from 16 to 23 December 1981.

I wish to mention that, during this period, I was underground with my colleagues. When the working day was over, I observed that it was not possible to go up again, the shaft being blocked by a group of persons I did not know, who obliged us to remain below and take part in the protest action ... I never took part in the protest action but was forced to remain underground by those who were directing it ... and others whose names I did not know. These persons influenced us by threats, false information and lies; they threatened to spray us with cold water and to put explosive charges in the galleries and the installations connected with the shaft. I realised from the beginning that martial law imposes duties on the citizens including the prohibition of any strike or protest action. Even before martial law I did not support strikes. I saw them as a factor in the deterioration of the economy, in anarchy, in scarcity and in hooliganism.

In future I will do everything within my power to contribute to increasing the attainments of my country ... Discipline and order guarantee security and strengthen the position of Poland in the camp of the socialist States, in Europe and in the world ...

I shall be happy when the instigators and organisers of the incidents that took place in our mine between 15 and 26 December have been severely punished.

354. According to the documents submitted, the verifications were aimed especially at members of Solidarity who were employed in the institutions of the State: the administration, the courts, the prosecutors' office, national education and certain scientific institutes, the radio and television, publishing and the press.

(a) Control over the administration

355. It was stated that on 17 December 1981 the Secretary-General of the Council of Ministers, General Janiszewski, addressed to ministers, heads of central administrations, voivodships and presidents of communes, a circular laying down the procedure for verifications in the administration. The text included the following passage:

... Officials in the service of the State are required to display exceptional devotion and to declare themselves unequivocally to be committed to the service of the Polish People's Republic. The membership of the trade union Solidarity of certain officials is no guarantee of these ...

12 ibid., para. 711.
13 Poland under martial law, p. 264.
14 Kaczmarczyk IX/26.
Another passage read as follows:

With a view to the full and regular performance of the duties of the administration, I call, in the name of the President of the Council of Ministers, for the holding during the coming three days of private interviews with officials belonging to Solidarity in the ministries, central administrations, voivodships and communes. During the interviews emphasis will be laid on the incompatibility of work in the administration with membership of the union that is now suspended...

According to the documents, in order to keep his job a person had to sign a declaration of loyalty to the authorities accompanied by a letter of resignation from Solidarity. Refusal to resign was generally punished by dismissal preceded by a "special" leave of the same length as the period of notice. The following is an example of such a declaration:

I hereby declare that I have read the memorandum of the Administrative Head of the Office of the Council of Ministers dated 17 December 1981 and I confirm that I am fully aware of the fact that my duty is to behave in accordance with the principles of the people's law. Taking as my guide the interest of society and the principles of the construction of socialism, I undertake to defend with my own conduct the authority of the people's power and to carry out to the letter the orders of my superiors, bearing always in mind the socialist development of the Polish People's Republic and my constant allegiance to the people's State.

Considering that numerous executive bodies of the trade union Solidarity have in recent months clearly acted against the constitutional bodies of the Government and administration with the aim, from counter-revolutionary positions, of overthrowing the socialist regime, I hereby declare that I withdraw from that union...

356. According to the documents submitted and the evidence of Mr. Kaczmarczyk, the Deputy Minister of the Administration on National Development and the Protection of Nature, in an interview given on 24 March 1982 to the Party daily Trybuna Ludu, announced a change in the procedure of "verifications" (No. 70/82). The assessment of a person's work was thenceforth to be carried out in accordance with the following criteria:

(1) ideological and political attitude;
(2) moral attitude;
(3) vocational qualifications;
(4) skill in organising and fitness for responsibility.17

357. The principle of the "verifications" and the way of carrying them out were challenged by the Polish Episcopacy, and the Primate, His Eminence Josef Glemp, addressed a letter on the matter to General Jaruzelski "asking him to withdraw the circular in question, to stop trying to obtain declarations under pressure and to cancel any effects produced by the circular".18

358. The verifications were said to have resulted in many dismissals in the services of the State and among judges, academics and journalists.

16 Blondel, communication dated 21 November 1983, p. 32; Poland under martial law, p. 259; Repressions in Poland - State of war, p. 17.

17 Poland under martial law, p. 260; Kaczmarczyk, IX/10.

18 Blondel, communication dated 21 November 1983, pp. 33 and 34.
359. The documents mentioned the following examples of dismissals in the state administrations, following verifications: in the Ministry of Transport, 120 members of Solidarity out of 250, who refused to leave the union; in the Roads and Highways Board, 30 out of 50; in the National Standards and Measures Board, 17 persons were dismissed on the same grounds.\(^{19}\)

(b) Control over justice

360. As to the judges, according to the documents submitted by the complainant, some 900 judges out of the 3,000 in the country had joined Solidarity in August 1980. Their purpose was to create a new model for the administration of justice in which institutional guarantees for the independence of the courts should be provided by the self-management of the judiciary and the irrevocability and immunity of the judges.\(^{20}\)

361. On 18 December 1981 at a meeting of presiding judges of voivodships at the Ministry of Justice, Colonel Kostrzewa, judge at the Military Chamber of the Supreme Court, is said to have submitted an unambiguous programme in the following terms for the verification of judges in accordance with their trade union membership: "At the present time the decisions must be taken not only in accordance with the qualifications and the qualities of a judge but, and above all, in accordance with his political attitude ... Sentences must be pronounced rapidly and they must be in conformity with the law and the requirements of martial law, in other words severe."\(^{21}\)

362. Between 13 December 1981 and December 1982, 40 judges are said to have been removed from office by the Council of State on the grounds that "they did not offer guarantees for the performance of their duties as judges of the Polish People's Republic". Most of them are said to have been removed from office before 10 March 1982. None of these judges had the opportunity of defending himself. The decision of the Council of State contained nothing but the wording just mentioned.\(^{22}\) In the first few days of martial law, the judge Stanislas Rudnicki is said to have been deprived by the Council of State of the right to exercise his profession. This judge had been the Solidarity candidate for the post of Presiding Judge of the Court of the Voivodship of Warsaw and had obtained the majority of the votes.\(^{23}\) Another judge, Joseph Lubieniecki, of the Court of Olsztyn, a member of the National Co-ordinating Committee of Workers of the Judiciary of the trade union Solidarity, is said to have been removed from office on 24 December 1981 after having been interned in violation of the immunity of the judiciary since the night of 12 to 13 December 1981.\(^{24}\)

363. According to the General Secretary of the ICFTU 30 judges had been dismissed from the Court of Warsaw alone. The witness Mr. Nedzynski stated that judges who had tried to be independent had not stayed long in office. According to Mr. Seniuta, this "purge" of the judiciary enabled the authorities to influence the judges and obtain decisions conforming to their wishes.\(^{25}\)

\(^{19}\) *Poland under martial law*, pp. 259 and 260.

\(^{20}\) ibid., p. 94.

\(^{21}\) ibid., p. 95; *Repressions in Poland - State of war*, p. 17.

\(^{22}\) *Poland under martial law*, loc. cit.

\(^{23}\) ibid., p. 94.

\(^{24}\) ibid., p. 96.

\(^{25}\) Vanderveken, II/10; Nedzynski, IV/30; Seniuta, III/25.
(c) Control over education and the press

364. Verifications also took place in educational circles, particularly among academics. For example, at the beginning of June 1982, instructions reached the universities concerning the verification of the teaching and research staff. It was a verification disregarding merit. The political attitude was the basic criterion, a fact made clear in the questionnaire and in the instructions on the procedure. The extent of the verification depended on the protest actions that had taken place in the various university establishments. The effects of verification varied with the establishment. At the Warsaw Polytechnic, for example, 38 persons were chosen for dismissal and 502 were transferred or left conditionally in their posts. At the University of Silesia, the verification board, on the basis of the lists prepared by the section councils of the different faculties and the instructions of the security service, drafted dismissal letters affecting 50 members of the university staff, including all who were interned and all active members of Solidarity. Some 20 rectors were removed from office, including those of the universities of Warsaw and Gdansk and the Cracow Polytechnic.26

365. According to the documents submitted in November 1983 by the complainant and the WCL, "verifications" were still being carried out among the staff of establishments of higher education and scientific institutes.27

366. With regard to verifications and dismissals in the Polish radio and television services, according to the documents submitted, the first stage of verification took place between January and March 1982 and resulted in the dismissal of about 1,200 journalists, 1,000 others being transferred to inferior jobs, subjected to other penalties or else retired or pensioned before their time. The second stage of verification took place in September 1982 and resulted, in Warsaw, in the dismissal of from 200 to 250 persons. In January 1983, the contracts of 50 further persons were terminated. The verification board was composed of representatives of the Party, the army, the administration of the radio service and, in most cases, an official of the security service. The interviews were concentrated almost entirely on the activities of the trade union Solidarity and the political aspect of martial law. The journalistic profession comprised some 10,000 persons, including 9,000 members of the Polish Journalists' Association, and it follows that nearly 20 per cent of the journalists were subjected to penalties and 10 per cent dismissed.28

367. The Government of France referred to a statement by Mr. Jerzy Urban, spokesman of the Government of Poland, who said on 27 September 1983 that over 1,000 academics had been dismissed after the "verification" of the teaching profession and also pointed out that, under a "reorganisation", 172 journalists and 231 other persons employed in the radio and television services had been dismissed. It seems that Mr. Urban confirmed at the same time that many of those dismissed had been members of Solidarity and that they had had difficulty in finding new work.

Other cases of dismissal since the suspension and lifting of martial law

368. According to the documents submitted to the Commission, the Act of 18 December 1982 respecting the special regulations in force during the period of the suspension of martial law, added to the number of serious offences for which a worker could be dismissed without notice. Serious offences were taken to include participation in an illegal strike and demonstrations or gatherings at the workplace or even outside the undertaking.29 Furthermore, workers suspected of not accepting

26 Poland under martial law, pp. 298, 299 and 308.
27 Blondel, communication dated 21 November 1983.
28 Poland under martial law, pp. 261 and 262 and pp. 282-286.
29 Ibid., p. 74.
the policy of the authorities with regard to the workers' movement or the suppression of Solidarity were said to have been dismissed. It was stated, for example, that at the Nuclear Research Institute at Swierk many workers, eminent scientists, were dismissed on the pretext of reorganisation. Many of those dismissed had been active in the trade union Solidarity. Earlier, during the period of martial law, 65 workers of the Institute had been persecuted, sentenced, interned or deprived of work. 30

The ICFTU provided a non-exhaustive list of workers against whom measures of anti-union discrimination, such as dismissals or frequent changes of workplace, had been taken because of their trade union membership, activities or sympathies. Among the cases mentioned were those of Mr. Marek Czekalski and Mrs. Elzbieta Frontczak, respectively chairman and secretary of the Solidarity works committee at the Polanil undertaking at Lodz. Both were dismissed on 1 September 1983. Mrs. Frontczak had already been transferred to an inferior job in which she had not the right to enter the production workshop. She was denied the right to bonuses and allowances and had been sentenced to fines. 32

The ICFTU also called attention to cases of the dismissal of groups or classes of workers. For example, craftsmen employing workers who had been dismissed for their activities in Solidarity or imprisoned for trade union activities were said to have been threatened by the security services with the closing down of their workshops or heavier taxes if they did not dismiss these persons. 33

The Government of the Federal Republic of Germany provided information on the fate of a number of persons in Poland who had asserted their right to enjoy the guarantees set forth in Convention No. 98 as members or collaborators of the trade union Solidarity. In their own interest, the Government did not reveal the names of the persons concerned, who were well known to all, but it summarised a few cases of anti-union discrimination that it considered typical: the dismissal of a member of a regional endowment committee of Solidarity after imprisonment; the dismissal of a teacher belonging to Solidarity after detention; the withdrawal of his licence to operate a private craftsmen's workshop from the president of a local organisation of Solidarity for self-employed workers, who had not been able to find a job since. 34

The Government of the United States referred to repressive measures concerning employment taken by reason of participation in Solidarity; it stated that there had been a systematic effort, since the proclamation of martial law, to discourage participation or activity in Solidarity through the threat of loss of employment and that, since the lifting of martial law, workers, particularly those who had been interned or imprisoned, continued to be dismissed because of their previous or continued association with Solidarity.

A witness, Mr. Nedzynski, mentioned the case of a worker who had attended the Congress of the Postal, Telegraph and Telephone International. After being in detention for a year, he was able to resume work in telecommunications, but he was dismissed later. Another person who had been employed on the television was dismissed when he came out of internment. 34

Lack of guarantees against arbitrary dismissal, refusal to reinstate and other acts of anti-union discrimination

According to the documents submitted to the Commission, the decision to terminate a contract of employment was left to the discretion of the manager of the

30 The situation of trade unions in Poland, p. 7.
31 ibid.
33 ibid. See also the evidence of Mr. Witon under para. 380 below.
34 Nedzynski, IV/27.
undertaking, trade union activity being suspended. Under the provisions of the Labour Code, however, the decision to dismiss should have been submitted to the works council for opinion and the workers with trade union responsibilities in Solidarity should have enjoyed protection under section 39 of the Labour Code, which provides that an undertaking shall not dismiss a member of the works council or a trade union representative.\(^{35}\)

375. The appeal boards and labour courts sometimes set aside the decisions to dismiss and, in certain cases, dismissal took place only after an extraordinary appeal procedure confirmed by the Supreme Court. It was alleged in the documents, however, that the authorities had tried to modify the attitude of the boards and the courts and that, very often, the manager of the undertaking did not carry out the decisions of the boards and courts to reinstate a dismissed worker. It was pointed out that on 18 May 1982 a conference had been held at the Court of the Voivodship of Warsaw on the basic problems in the arbitration of disputes relating to contracts of employment. The judges received instructions on the direction that was to be taken by their judgements and were threatened with disciplinary sanctions if they should find in favour of the workers. On 5 May and 27 July 1982, the Supreme Court found that the prohibition against dismissal provided for by section 39, subsection 1, of the Labour Code could not be applied when trade union activities were suspended. Furthermore, on 27 February 1982, the Supreme Court had specified that in militarised undertakings the decision of the managers to dismiss one of the workers was not subject to control by the bodies (appeals board and labour courts) that normally pronounced on disputes relating to contracts of employment.\(^{36}\) The Government of the United States pointed out that under section 144, subsections 2 and 3, of the Act of 29 November 1967 respecting the general obligation to defend the Polish People's Republic, a worker in a militarised undertaking could be dismissed without explanation and with no right of appeal.

376. According to the documents submitted to the Commission, on 28 July 1982, the Secretary-General of the Council of Ministers sent a letter to the ministers and the voivods in which he ordered managers of undertakings to lodge a complaint against the "faulty" decisions (that is to say, those in favour of the workers) of the appeals boards and labour courts. He also ordered that an analysis should be carried out, in accordance with an accelerated procedure, of all the judgements already put into effect that reinstated persons who had been dismissed since 13 December 1981 and that suitable suggestions should be made for an extraordinary appeal procedure in all cases in which these judgements, in view of their political and social implications, had to be set aside.\(^{37}\)

377. As to the workers who, despite a decision in their favour by an appeals board or a labour court, were refused reinstatement in their job, the documents emphasised that this measure of discrimination had been practised against many workers who had been interned.\(^{38}\)

378. The ICFTU stated that, contrary to the offical assurances given by various representatives of the authorities, persons freed under the Amnesty Act were not always reinstated in their previous jobs. They were often taken on in jobs that were inferior to those they had occupied before being sentenced, with reduced income and loss of acquired rights, particularly in the field of social benefits. In certain cases, the management simply refused to re-engage them or denied them access to the undertaking. Still according to the ICFTU, such decisions often conflicted with a judgement that had been passed in favour of the worker, by a labour court or a board, particularly the TKO (the second stage in proceedings under labour law). The ICFTU indicated only some of the cases of such practices:

\(^{35}\) *Poland under martial law*, p. 252.

\(^{36}\) *ibid.*, pp. 252-256.

\(^{37}\) *ibid.*, p. 256.

\(^{38}\) *ibid.*, p. 269.
MISTRZAK, Ryszard, and MLCZEWESKI, Jan, employed by the Zamech undertaking at Bydgoszcz: refusal to reinstate in their original jobs.

WIELZOGOSZ, Stanislaw, NOGA, Kazimierz, and KOPAR, Marek, employed in the Elana undertaking at Torun: refusal to reinstate in their original jobs.

CZERWINSKI, Arkadiusz, sentenced to three years' imprisonment for having directed the strike of December 1981 at Ursus (tractor works), KASZUBA, Witold (same charges and same sentence), and KARPEZ, Stanislaw: réintégration refused by the manager of the Ursus works. Decision upheld, despite an opinion in favour of the workers given by the TKO on 29 September 1983.

The same decision also applied to BIELANSKI, Roman, and KANIEWSKI, Jerzy, who had appealed to the TKO.

GOLDSYN, Franciszek, chairman of a Solidarity section at the "Commune de Paris" shipyard of Gdynia, who had received a suspended sentence of a year and a half of imprisonment: refusal to reinstate.

GINOBÜRG, A., active member of Solidarity in an undertaking at Warsaw, dismissed in November 1982: denied by the management the right to enter the undertaking in April 1983, despite a decision in his favour by the labour court of the Ochota district in March 1983.

ZDANOWSKI, J., dismissed for strike activity on 13 May 1982: refusal to reinstate him in his job as foreman despite a decision in his favour by the labour court in August 1982.39

The Government of the Federal Republic of Germany mentioned the case of a member of a regional body of Solidarity who, after detention and sentence, was transferred from a foreman's job to a subordinate job. More generally, the Government of the United States emphasised that workers released from detention or imprisonment were refused the right to resume their previous employment or were demoted to work that was less well paid or called for lower qualifications.

Several of those appearing before the Commission gave evidence of their own experience. Mr. Dziechciowski, for example, stated that after his release from detention in July 1982 he had worked for a year at the Szczecin shipyard, his former workplace. He pointed out that he had lost a good part of his wages in comparison with his colleagues. Before he left for abroad in September 1983, he was receiving wages that, in fact, obliged him to find a second job, but at the same time he was prevented from finding another or from changing his occupation. Mr. Witon stated that after his release he could not find work. Having succeeded with the help of a friend in finding work in a bakery, he had to leave it after one day. The manager, although he expressed his confidence in Mr. Witon, informed him that he could not continue to work in the bakery and offered to give him bread every day. He then applied to an employment office organised by the voivod, but it was unable to find work for him. This situation and other factors led him to leave the country. Mr. Bartczak stated that trade unionists who had been released had difficulty in finding work again at their workplace and that some of them were not even allowed to enter it. In his own undertaking, six persons had been dismissed; some had appealed to the boards and courts but, despite a favourable decision, they were unable to resume their work. The chairman of the regional committee of Elblag had won his case before the court but he had not been permitted to resume his work. Mr. Mairé mentioned the case of Anna Walentynowicz, whom he had met at Gdansk in May 1983. On coming out of prison, she was

40 Dziechciowski, VII/18.
41 Witon, VII/63.
42 Bartczak, VIII/27.
unable to resume her work at the Lenin shipyard or to obtain a retirement pension. She was thus placed in a situation in which she ran the risk of being prosecuted for social parasitism. Her parish provided her with certificates enabling her to show that she was carrying on charitable activities, which saved her from prosecution. Similar cases had been reported to the witness, who considered that they conflicted with the right to work, the most serious element being the pressure exerted by the authorities on these jobless persons.\textsuperscript{43} According to Mr. Kaczmarscyk, not only were active members of Solidarity deprived of their work, but also efforts were made to detract from their dignity by humiliation and discrimination. For example, a foreman who had worked 20 years in the mines was dismissed on disciplinary grounds for having taken part in a strike. Later he was prevented from working in the mine and compelled to sweep the streets. Other miners had been dismissed on the same grounds and compelled to work as sweepers in public places.\textsuperscript{44} Mr. Brzozowski referred to transfers that had taken place in his undertaking, a building combine in the Elblag region, both before and after 15 December 1981 though he mentioned that after 13 December the persons working in the offices who had been well disposed to the workers had been transferred.\textsuperscript{45}

Restrictions affecting workers under the legislation on social parasitism and on the provisions in force during the socio-economic crisis

381. According to the documents submitted to the Commission, a dismissed worker who had been refused reinstatement not only suffered the direct consequences of dismissal but also was exposed to other repressive measures, in particular those deriving from the Act of 26 October 1982 on "social parasitism" and the Act of 21 July 1983 on the special provisions in force during the social and economic crisis.\textsuperscript{46}

382. The Act of 26 October 1982 obliges every citizen between the ages of 18 and 45 who has not been working or following a course of study for three months and is not registered as an applicant for work to appear before the local administrative authority to explain the reasons for his inactivity. The persons in question are inscribed on a register. This is followed by an administrative inquiry to establish whether the reasons for inactivity are "socially justifiable" or not. A person who persistently avoids work or study for reasons that are not socially justifiable and lives on an income whose source is not revealed or is contrary to the principles of social coexistence is liable to be registered on a list of persons persistently evading work. This person, considered to be a "social parasite", can be compelled to perform work of public interest. The Act has been supplemented by provisions appearing in Act No. 176 of 21 July 1983.\textsuperscript{47} According to the Government of the United States, a person who fails to register or to perform work of public interest is liable to imprisonment of up to one year and to forced labour. Act No. 176 of 21 July 1983 eliminated fines as a penalty and left only sentences of imprisonment.

383. According to the documents, the criteria employed in the application of this legislation were purely subjective and determined entirely by the authorities. This operation of registration appeared to have the double aim of providing an indirect means of exerting pressure on those who did not work so that they should accept a job and creating a repressive mechanism for those who were without work for "political"

\textsuperscript{43} Mairé, VIII/40.

\textsuperscript{44} Kaczmarscyk, IX/13 and 24.

\textsuperscript{45} Brzozowski, VII/31 and 37.

\textsuperscript{46} Act of 26 October 1982 respecting the procedure for dealing with persons evading work. Act of 21 July 1983 respecting special legal provisions for dealing with the social and economic crisis.

\textsuperscript{47} See above para. 166.
According to the complainant and the WCL, some of the released workers were unable to find work and were inscribed on the register of "social parasites", and a black list of persons who should not be recruited was thus drawn up. Furthermore, the existence of the Act could provide an additional "argument" for the signature of declarations of loyalty by workers, who were threatened, if they refused, not only with dismissal but also with registration on the list of parasites.

384. According to the Government of the United States, some concern had been expressed about the possible use of this legislation to lead the workers to join the new unions. To the knowledge of the Government of the United States at the date of its communication, however, the Acts of 26 October 1982 and 21 July 1983 had not been used against members of Solidarity dismissed from their employment and unable to find other work or to coerce workers into joining the new unions.

385. The Government of France considered that there was complete contradiction between the international principles of trade union law and the imposition of compulsory labour, announced by the Deputy Minister of Justice of Poland, on 23,190 persons for "social parasitism" under the Act of 26 October 1982. These measures put pressure on a good many members of dissolved associations and on the representatives of the intelligentsia who were threatened in their jobs to join the new associations controlled by the authorities.

386. According to one of the witnesses, Mr. Bartczak, it was common knowledge and sometimes recognised by the official bodies that camps were being prepared in the voivodships of Gdansk and Elblag for those evading work. According to other information at the disposal of the Commission, the obligation to perform labour to carry out public works was introduced in 47 voivodships during the last quarter of 1983. By the end of 1983 work sites for public works had been organised in 28 voivodships. It is said that over 1,500 persons were working at these work sites on 10 January 1984 and that in six cases sentences of imprisonment had been pronounced against persons evading work.

387. Another witness, Mr. Kaczmarczyk, referred to other provisions of Act No. 176 of 21 July 1983. Under section 3 of this Act, a collective undertaking entering into a contract of employment with a worker who had been dismissed without notice through his own fault by the undertaking in which he worked previously or who had abandoned his work could accord this worker only the lowest rate of wages laid down for his post in the wage scale in force. This rate could not be increased for a year (except after consultation with the works union and after six months). Any person acting on behalf of the undertaking who infringed these provisions was liable to a fine (s. 7). Furthermore, the undertaking could enter into a contract of employment only on the presentation of a certificate of employment, as provided by section 97 of the Labour Code, issued by the undertaking in which the applicant worked previously.

388. According to the Government of the United States, these provisions deterred managers from taking on applicants who had been concerned in the activities of Solidarity. This Government also referred to the provisions of Act No. 176 of 21 July 1983 concerning some 2,000 undertakings regarded as "essential". It pointed out that

48 Poland under martial law, pp. 63 et seq.; Repressions in Poland – State of war, p. 18.


50 Bartczak, VIII/30.


52 Kaczmarczyk, IX/25.
when a worker wished to terminate his employment, the management of the undertaking could require the extension of the period of notice beyond the term provided for by labour law by as much as six months (s. 2). It was stated that the Council of Ministers could introduce a system of compulsory placing and the obligation to work (s. 6). The Government of the United States considered that these provisions provided a basis for restricting the mobility of workers having links with Solidarity or engaged in other trade union activities. This Government also pointed out that Act No. 176 empowered the authorities to dismiss teachers and school administrators for breaches of law and order. It was proved that the Act could constitute a form of anti-union discrimination since many of those affected by it were ordinary or active members of Solidarity.

389. The Government of France considered that Act No. 176 of 21 July 1983 could be held to violate the obligations arising from Article 1 of Convention No. 98, which lays down that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, since it provided for the possibility of suspending the employment of certain classes of workers carrying on activities "contrary to the law or the social interest" - the violation being aggravated by the fact that amendments to the Penal Code introduced by an Act of 28 July 1983 provided for penalties of three years of imprisonment for any person belonging to a trade union or association that had been dissolved. According to the documents submitted by the WCL, these amendments were directed against Solidarity and the numerous other associations that had been dissolved.53

Position of the Government of Poland

390. In a communication dated 22 October 1982, the Government of Poland had stated to the Committee on Freedom of Association that the allegations relating to discrimination in the employment of members of Solidarity were false and baseless for the following reasons:

(1) Polish legislation provided wide protection for workers against dismissal. Termination of a contract of employment must, in every case, be justified by serious factors and never by a worker's membership of any kind of organisation. The principle was applied in practice. The worker who considered that he had been dismissed unjustly had the right to appeal to the bodies dealing with labour disputes, including the labour courts.

(2) These principles were applicable even during the period of martial law. Some limitations had been introduced temporarily in certain particularly important militarised establishments. Any decisions taken to dismiss workers in these establishments were not subject to the control of the labour courts.

(3) The application by certain western countries of an economic embargo and the realisation of a reform of the economy (proposed by the former union Solidarity itself) required the transfer of workers. As a general rule, each time a worker was dismissed he was offered another job. Because of the numerical importance of Solidarity, some of its former members might be affected by measures of dismissal. This, however, according to the Government, had nothing to do with discrimination.

53 WCL, communication dated 18 November 1983 and Annex concerning "The state of law in Poland".
In many cases, continued the Government, dismissed workers appealed to the bodies dealing with labour disputes. In about 20 per cent of all cases these bodies had decided that the dismissals were unjustified, and the workers concerned were reinstated. Such measures also concerned former members and militants of Solidarity.

As regards the question of declarations of loyalty required of workers, the Deputy Minister of Labour admitted in November 1982, before the Committee on Freedom of Association that, in fact, during the first period following the proclamation of martial law, workers had been asked to provide such declarations. According to the Deputy Minister, the practice had since been abandoned. He recalled that appeals procedures before the labour courts were available to dismissed workers and that in most cases decisions had been handed down in favour of the workers.  

54 Committee on Freedom of Association, 221st Report, paras. 52 and 71.
CHAPTER 13

TRADE UNION LIFE IN POLAND TODAY

392. The complainants referred to the restrictions on freedom of association laid down in the Trade Union Act of 8 October 1982 and also to the interference of the Government in the establishment of new trade unions. They further stated that, despite having been suspended and dissolved by law, the trade union Solidarity was carrying on its activities.

Information and evidence submitted to the Commission

Trade union legislation

393. In the documents submitted to the Commission, there was an allegation concerning the Trade Union Act of 8 October 1982 to the effect that the Council of State had introduced 55 amendments to the 73 sections of the Bill of 5 December 1981, a Bill that had been accepted by the Commissions of the Diet and negotiated at the time with the trade unions, and that the letter and the spirit of the Bill had thus been changed. Generally speaking, the criticisms made both by the complainant and by several governments and the international trade union organisations concerning the Act related to the establishment and dissolution of trade unions, limitations on the classes of persons authorised to form unions, limitations on the creation of trade union structures other than those provided for by the Act and restrictions on the right to strike.

394. In the information he submitted to the Commission, the complainant referred to criticisms of the legislation by former leaders of Solidarity in relation to the suspension and dissolution of the trade unions, the revocation of the Act of 6 May 1981 respecting individual farmers' associations, which were replaced by farmers' "socio-occupational organisations", having their structure and functions fixed "from above", and the denial of the right to organise to prison staff, to the civilian personnel of military units or organisational units of the sector coming under the Ministry of the Interior (ss. 13 and 14(2) of the Trade Union Act), to workers in undertakings coming under the Ministries of National Defence and the Interior, who could organise only in a single union determined "from above" (s. 14(1)) and to workers employed in posts of responsibility or whose duties were of "a highly confidential nature" (courts, public prosecutor's office, etc.).

395. The criticisms in question also related to the provisions of the Trade Union Act obliging workers to organise in a given branch of activity, type of employment or occupation (s. 10(2)), which precluded the establishment of an organisation like Solidarity, to the imposition of the single-trade-union system in undertakings until 31 December 1984 and to the new prerogatives of the Council of State, which was alone vested with the power, for three years from the date of the Act of 21 July 1983, to decide the authorisation of trade union pluralism.

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1 The situation of trade unions in Poland, pp. 10, et seq.

2 Blondel, I/11 and 12.

3 See below the criticisms made by the Governments of France, Sweden and the United States.

The above-mentioned criticisms also referred to the Social Consultative Commission set up by the Council of State to "help the constituent committees to set trade union activity in motion", which had even drawn up model constitutions for the trade unions. They related also to the power of the Council of State to authorise the formation and operation of the various federations of the new trade unions before 31 December 1984. It was observed that the federations had been created on the authorisation of an organ of State power and that the authorities had made sure that the unions should be dispersed and feeble, since, by the end of 1983 the courts had registered 19,000 unions with 3.8 million members, which made an average of 200 members per union. Fifty-five federations had already been registered and the formation of some 40 more was expected, the purpose being to disperse the trade union movement. It was alleged, moreover, that no national collective agreement had so far been concluded and that the Ministers fixed wages unilaterally.

Lastly, still according to these criticisms, the regulations had practically eliminated the right to strike since a strike could be called only by a majority of the workers voting for it in secret ballot and not by the members of the union. The calling of a strike going beyond the limits of an undertaking required a majority of the workers in all the undertakings concerned, voting in secret ballot.

The ICFTU, in a communication dated 26 October 1983, denounced the negative effects of the Act. Thus, it drew attention to the dissolution of all trade unions (s. 52 of the Act), the abolition of the right to organise of individual farmers (s. 55), the transfer of the property of unions that had been dissolved to the newly established unions (Decree of 27 December 1982), the waiting periods imposed for the resumption of trade union activities and above all the imposition of the single-trade-union system in the undertaking until 31 December 1984 (s. 53 of the Act), the restrictions on the right to strike (ss. 38, 40, 46 and 47 of the Act), the restrictions on the right to bargain collectively (s. 23 of the Act) and the denial of the right to associate in trade unions imposed on prison staff (s. 12 of the Act).

The ICFTU also criticised section 19, subsection 2, of the Trade Union Act, which empowered the courts to refuse to register a union if its constitution indicated that it was not a trade union or was not in conformity with the Act. In the opinion of the ICFTU, this provision constituted the requirement of previous authorisation for the registration of trade unions and, moreover, this previous authorisation was aggravated by the provisions of sections 2 and 3 of the new Act, under which trade unions, though, in theory, they were independent of the bodies responsible for the administration of the State and the economy, were in fact obliged in drawing up their constitutions to "recognise the leading role of the Polish United Workers' Party". It also drew attention to section 17 of the Act, which required a minimum of 30 persons for the establishment of a trade union and section 19, subsection 4, which empowered a court to cancel the registration of a trade union if the number of members of the union fell below 50 for more than three months, and to section 10, subsection 2, which imposed a trade union structure based on the branch of activity or the type of employment or occupation. This provision, according to the ICFTU, was intended to prevent the establishment of trade unions on a regional basis as when Solidarity existed legally. Furthermore, still according to the ICFTU, the provisions on compulsory conciliation and arbitration were contrary to the Conventions on freedom of association and voluntary collective bargaining, even if, under section 35, subsection 5, of the Act, the arbitration award was compulsory only when neither of the parties decided otherwise.

With regard to restrictions on the right to strike, the ICFTU called attention not only to the requirement, laid down by section 38, subsection 1, of the Act, of a decision by the majority of the workers in the undertaking for the calling of a strike, but also to the exclusion from the right to strike laid down by section 40 of a series of workers whose functions were not essential strictly speaking, namely workers in banks, international or inter-city telecommunications, radio and television, those who serviced road or air transport installations, those in health or social welfare services, those in chemists' shops, education centres or centres for the upbringing of children, those in establishments producing, storing or supplying food, those concerned with pipelines, those working in the courts or the offices of the public prosecutor and those employed in the administration of the State. The ICFTU also observed that sections 46 and 47 of the Act provided for the imposition of fines on those who failed
to comply with their obligations and of one year of imprisonment on those who led a strike contrary to the Act. Section 36, subsection 2, allowed the trade unions only forms of protest that were not contrary to the legal system or to the principle of social coexistence; section 41 provided that the exercise of the right to strike should not release establishments and the workers employed in them from their obligations under the provisions governing the general duty of defending the Polish People's Republic and section 40, subsection 3, made binding the decision of the competent military authority respecting requirements connected with the defence and security of the State.

401. According to the documents communicated by the WCL, the establishment of national trade unions provided for by section 53 of the Act of 8 October 1982 was dependent on the agreement of more than half the trade union organisations in the undertakings of a given branch of activity, type of employment or occupation (section 2, subsection 4, of the Decision of the Council of State of 12 April 1983 on the principles and procedure for the establishment of national trade union organisations). Furthermore, section 53, subsection 4, of the Act, which provided that only one trade union organisation could operate in any undertaking during the transitional period up to 31 December 1984, had been amended by section 13 of the Act of 21 July 1983, which postponed the possibility of a return to trade union pluralism in the undertaking by means of a vague wording. With regard to the right to strike, according to the documents, not only was it impossible to call a strike in an undertaking without the majority vote of the staff in secret ballot, but also, when the dispute concerned more than one undertaking the vote of the staff of each undertaking was necessary and, furthermore, strikes in the undertaking needed the agreement of the next higher trade union authority. As to the international affiliation of trade unions, it was restricted by section 8 of the Act, which provided that trade unions could join international occupational organisations only for the purpose of representing the occupational and social interests of their members in the international community, reinforcing the international solidarity of the working class and promoting progress and social justice. In this connection, the witness Mr. Kaczmarczyk stated that the provisions of section 8, precisely defining the aim of affiliation with international organisations, was interference in trade union activities contrary to Convention No. 87.

402. The Government of the United States called attention not only to the provisions on the imposition of the one-trade-union system in the undertaking until the end of December 1984, the dissolution of all trade union organisations with no possibility of judicial appeal, the placing of trade union property under temporary control, the waiting periods imposed for the resumption of trade union activities in federations and confederations and the level of collective bargaining, but also to a number of provisions referred to by the ICFTU.

403. This Government referred in particular to the previous authorisation laid down by section 19, subsection 2, for the establishment of trade unions; it also referred to the imposition of a trade union structure by branch of activity (s. 10(2)) and the obligation placed on trade unions to have constitutions in conformity with the National Constitution and recognising the leading role of the Polish United Workers' Party in the construction of socialism (s. 3). In this connection, according to the Government of the United States, the Polish radio had announced on 17 October 1983 that the provincial courts had refused 828 applications for registration out of a total of 18,000, because these applications were not in conformity with the restrictive provisions laid down by the Act of 8 October 1982.

5 "The state of law in Poland", pp. 25 to 27 and above para. 148.
6 The situation of trade unions in Poland, p. 13.
7 Poland under martial law, p. 61.
8 Kaczmarczyk, VIII/71.
With regard to the right to strike, the Government of the United States considered that several provisions unreasonably restricted its exercise. Thus, section 47 provided for the infliction of one year of imprisonment on any person participating in a strike organised in violation of the provisions of the Act and section 39 burdened participants in a strike or action of protest with a criminal liability whose definition was left to the authorities. This Government also pointed out that actions of protest must comply with the principles of social coexistence (s. 36) and that the list of essential services in which the right to strike was prohibited appeared to be excessively broad (s. 40). Furthermore, sections 41 and 43 seemed to permit the Government, without any judicial check, to militarise undertakings or to declare a state of emergency, making an illegal strike already declared and making participants in it liable to the penalties provided for by sections 39 and 47. Moreover, according to the Government of the United States, the strike at the Gdansk shipyard in October 1982 had in fact been broken by the mechanism provided for in section 41 of this Act, the shipyard having been declared necessary for the defence of Poland, the strike prohibited and the workers militarised and so liable to harsh penalties if they continued the strike. Still according to this Government, section 37, subsection 4, appeared to permit the prohibition of strikes in situations where disputes could be "settled by means of an award by a body competent for workers' affairs" and section 35 seemed to restrict the possibility of resorting to a strike following arbitration by establishing that the decision of the Social Arbitration Chamber should be binding on the parties where either of the parties (in particular the management) so agreed. The Government concluded by stating that section 37, subsection 3, seemed to enable the authorities to declare a strike illegal if they considered that the union had not properly weighed the demands in comparison with the loss entailed by the strike.

With regard to the right to establish federations and confederations, the Government of the United States, although it recognised that the Council of State had taken a positive step in its Decision of 12 April 1983 lifting the ban on national federations earlier than had been provided for in its Decision of 12 October 1982, it pointed out that confederations remained prohibited until 1985. According to this Government, the journal Trybuna Ludu had announced on 14 September 1983 that five federations were functioning and that 24 applications for registration were pending before the courts. This Government had no information on the activities that could be pursued by the federations or on the extent to which they were free to choose their international affiliations.

With regard to the right to voluntary collective bargaining, guaranteed by Article 4 of Convention No. 98, this Government considered that, following the adoption of the Decision of the Council of State dated 12 April 1983 lifting the ban on national federations earlier than had been provided for in its Decision of 12 October 1982, it pointed out that confederations remained prohibited until 1985. According to this Government, the journal Trybuna Ludu had announced on 14 September 1983 that five federations were functioning and that 24 applications for registration were pending before the courts. This Government had no information on the activities that could be pursued by the federations or on the extent to which they were free to choose their international affiliations.

The Governments of France and Sweden also considered that the imposition of the one-trade-union system in the undertaking by section 53, subsection 4, of the Act of 8 October 1982 was contrary to Convention No. 87. The Government of Sweden feared that the amendment of the said section 53 by the above-mentioned Act of 21 July 1983 respecting special legal provisions for dealing with the social and economic crisis, under which the self-management organs could be suspended or dissolved.

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Mr. Cywinski, the personal representative of Mr. Lech Walesa, asserted that the Government's fears in this connection. He added that, if the prospect of trade union pluralism were to materialise, it would be a very good thing but that in the light of the unfortunate experiences of recent years he doubted whether the promises of the
Government would be kept. Several other witnesses regretted that the Government of Poland had not respected the engagements it had taken with the Polish workers by signing the Agreements of Gdansk and promising to observe Conventions Nos. 87 and 98 in respect of freedom of association.

The establishment of new trade unions

409. The complainant, referring to the establishment of new trade unions, mentioned a document which he said had been prepared on 31 December 1982 by the socio-occupational section of the Central Committee of the Polish United Workers' Party (PUWP) for use by Party officials. This document, entitled "Information on the process of forming trade unions", contained directives explaining that before the passing of the Trade Union Act the establishment of new trade unions had been entrusted to staff appointed by the Party authorities. According to this document, since the passing of the Act, Party workers from the Central Committee had been sent to the large undertakings and a system of direct communication had been set up between the Central Committee and local Party authorities: meetings had been held in the voivodship committees with active Party members and representatives of the State and the army to define their tasks in the establishment of the trade unions. Still according to the document, following this action, groups to initiate the establishment of new trade unions had rapidly come into existence. The establishment of the new trade unions was thus politically directed and inspired by Party authorities and bodies. In parallel with these measures, the Council of State had appointed a Social Consultative Commission, composed of persons chosen by the authorities to meet representatives of the works unions with a view to preparing union structures at a higher level and organising the training of active trade unionists. In this connection, the complainant also mentioned the propositions advanced on 16 November 1982 in Warsaw by Mr. Barcikowski and Generals Siwicki and Baryla, in which these leaders explained to their audience, active Party members and army officers and non-commissioned officers, that they must work together patiently for the establishment of new trade unions without deviating from the Leninist conception of the unions as the driving belt between the Party and the masses.

410. As to the registration of the new unions, Mr. Seniuta pointed out that the decisions of the Council of State of 12 October 1982 and 13 April 1983 on the principles and procedure for establishing works and national unions conferred on the Court of the Voivodship of Warsaw the power of registration, in other words the power to decide, where two conflicting constituent councils were set up in the same undertaking, which of them should remain in existence. He informed the Commission that even if former active members of Solidarity had tried to set up a union in an undertaking the authorities would have prevented them. With regard to the "Social Consultative Commission" appointed by the Council of State, Mr. Seniuta explained that this Commission had been set up "to assist the working class in establishing new trade unions" but that in fact one of its functions was to prepare for model constitutions the new trade unions, of which he handed a copy to the Commission. Most of the new trade unions had been registered on the basis of these model constitutions adapted to various undertakings. He added that the situation of two competing constituent committees had not arisen and that cases of the entry of former members of Solidarity into the new

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9 Cywinski, IV/16.
10 For example, Kaczmarczyk, VIII/66 and 67; Seniuta, III.
11 For the definition of voivodship see para. 15, footnote 5.
12 The situation of trade unions in Poland, pp. 15 and 16; Blondel, III/46.
14 Seniuta, III/24, 27 and 31.
15 Seniuta, III/24.
unions had been extremely rare, since the provisional management of Solidarity had decided not to take part in the new unions. Several witnesses said that the Polish authorities had had difficulties in finding founding members to establish new trade unions.

411. With regard to the methods of establishing new trade unions, both the documents and the oral evidence indicated that members had been obtained by incentive methods, including the interference of the Government and the employers in the establishment of the new trade unions. For example, workers were offered wage increases, priority vouchers for obtaining a motor car or housing, places on excursions abroad or even the remission of disciplinary penalties (for example for drunkenness at the workplace) through the restitution to the guilty persons of the thirteenth month of wages.

412. According to several witnesses, despite these incentive methods, the Polish workers continued to reject "the new order" and the new trade unions set up by the authorities. The complainant stated that in the FSO motor car assembly works at Warsaw in February 1983 out of 13,800 workers only 1,780 were union members, that is to say less than 15 per cent of the workforce in the undertaking, although this undertaking had about 2,000 members of the Polish United Workers' Party. As a comparison, according to the complainant, before 13 December 1981, Solidarity had obtained the membership of 9,800 workers and the branch unions that of 3,200 workers, while 3,000 workers were not union members. The witness Mr. Dziechciowski stated that in the harbour administration of Szczecin, in October 1982, one of his comrades, who was a Party member, had been summoned to the headquarters of the militia and asked to set up the new trade union. Having refused and handed in his Party card, his comrade was demoted. Nevertheless, two persons who did not enjoy the confidence of the workers and a third, who had been chosen by the Party, then set up a committee for the formation of the new trade union, whose members were approved by the Party committee of the voivodship. According to the witness, the workers in this undertaking had little wish to join the new trade union, but in view of the lamentable economic situation of Poland, in which everything was lacking, certain of the poorest workers did join. The witness Mr. Bartczak stated that in his undertaking, the Municipal Transport Company of Lublin, the manager, who was a member of the Voluntary Militia Reserve (ORMO), convened a compulsory meeting of the whole staff to establish a new trade union. Those who refused to attend the meeting were dismissed. In this undertaking employing 2,200 workers, in which before 13 December 1981 Solidarity had had 1,700 members and the branch unions 350 and 150 workers had not been union members, in January 1984, despite the inducements to join the new union, only 200 workers belonged to it.

413. With regard to the numerical strength of the new trade unions, Mr. Seniuta referred to the report prepared by the French General Confederation of Labour under the date of 31 October 1983, following a mission carried out by this Confederation in Poland. According to the report, there were 3.8 million members of the new trade unions out of 14 million workers in a position to join unions. Mr. Seniuta, however, considered that these figures required explanation, since, in addition to the 14 million

16 Seniuta, III/27 and 31.
17 Seniuta, III/31; Brzozowski, VII/36.
18 The situation of trade unions in Poland, pp. 16 and 17.
19 Seniuta, III/31; Bartczak, VII/22; Dziechciowski, VII/22.
20 Vanderveken, II/14; Seniuta, III/30; Cywinski, III/61.
21 Blondel, III/49.
22 Dziechciowski, VIII/21 and 22.
23 Bartczak, VIII/22.
workers there were 3 million retired workers to take into consideration who could also become members of the new trade unions. In the event, he said, out of the 3.8 million persons who had joined the new unions, one-third were composed of retired workers. These were former members of the PWP or the Central Council of Trade Unions, who had set up many of the constituent committees. Of the 60,000 undertakings in Poland, trade unions had been established only in 18,600, that is to say one-third. In the others there were neither unions nor constituent committees, and 3,500 unions with fewer than 50 members were threatened with dissolution under the law. Furthermore in the large undertakings, only 10 to 15 per cent of the staff were union members. On the other hand, in small undertakings the workers were either not union members or union members to the extent of 30 or 40 per cent, since pressure was more easily exerted on these workers.24

414. The General Secretary of the ICFTU, Mr. Vanderveken, considered that the new trade unions were under the close control of the Government and the Party. He considered that they continued to be boycotted by the immense majority of the workers, who reproached them with their inability to advance the real interests of the workers and defend their comrades, who were repressed, in detention or dismissed. The activities of the new unions consisted, according to him, essentially in making the Polish workers accept the anti-social policy of the Government.25 In the opinion of the General Secretary of the WCL, Mr. Kulakowski, the figure of 3.8 million members, announced by the Polish authorities, was excessive.26

The continued activity of Solidarity

415. The complainant pointed out that, despite its suspension and dissolution by the Trade Union Act, the trade union Solidarity was continuing its trade union activity. The complainant and the general secretaries of the ICFTU and the WCL explained that the independent and self-managing trade union Solidarity was still in existence and operating despite the harassment of the authorities. The General Secretary of the ICFTU insisted in particular on the fact that Solidarity was established in every region. In the undertakings, according to him, active members collected contributions giving right to various allowances (birth, death, sickness, education). Works committees published information bulletins, the number of regular titles being over 1,500. Despite the dissolution of Solidarity, 1.2 million persons were still active members.27

416. Among the documents submitted to the Commission by the WCL, certain came from organs of Solidarity. These documents included the programme of the provisional Solidarity committee of the Centre-East region, published at Lublin in April 1983.28 This programme set forth the aims of Solidarity, dealt with trade union structures and strategy, insisted on the independence of the movement and pointed out that the proposed programme was derived from propositions of the First Congress of delegates of Solidarity. According to this document, the fundamental aim of Solidarity was to bring about social, economic and political changes that would make it possible to provide correct and fair living and working conditions for the workers of Poland. It was thus necessary to establish working conditions that were no threat to the life and health of the workers, to establish political, social and economic relations in which there was no room for wasting what was produced by the work of society, to guarantee freedom and human rights and those of the worker and to ensure for society genuine participation in the taking of decisions in matters concerning it.

24 Seniuta, III/39 and 40.
25 Vanderveken, II/14.
26 Kulakowski, III/40.
27 Vanderveken, II/13 and 19.
28 A French translation was published at Brussels in May 1983.
417. Under the programme, these aims were to be reached by strengthening and developing the organisation of Solidarity in undertakings, regions and the whole country, by maintaining the struggle to obtain a general amnesty and the right of Solidarity to operate legally and by bringing about the conditions in which a social pact with the authorities was possible on the basis of the Agreements of Gdansk, Szczecin and Jastrzebie.

418. The activities of the organisations of Solidarity in the undertakings were to be directed mainly towards ensuring the protection of all members of the union and of the active members who had been victims of repression (legal aid, public demonstrations on their behalf, a struggle for their release and a call for a general amnesty), collecting the funds that were essential to trade union action, distributing social assistance benefits, helping workers belonging to the union to arrange holidays for their children and themselves, and helping workers who had been dismissed to start working on their own behalf. The organisations of Solidarity were also to influence the existing situation in the undertaking, particularly in respect of conditions of employment and wages; they must develop and teach enthusiasm for work and carry on activities for the public protection of health and the defence of the environment.

419. To this end, according to the programme, trade union strategy must consist in boycotting the new trade unions, calling for an amnesty, helping union members and the victims of repression and disseminating true information from the works committees.

420. The union, according to this programme, did not abandon strikes, but it considered that for the time being strikes accompanied by the occupation of the undertaking, which were treated by the authorities as rebellion, were to be excluded. Nevertheless, should the standard of living fall even lower and provocation by the authorities continue, the programme stated that the place of the trade union would then be at the side of the people. Its task would be to transform these movements of rage and despair into an organised struggle in the form of a general strike.

421. The programme recalled that Solidarity was a trade union, not a political party, that it had no wish for power, that it had no thought of challenging the alliances of Poland with the countries of the socialist bloc and that it did not call in question the basis of the regime. Society, however, must obtain the right to decide for itself. Machinery permitting a certain control by society must be established to ensure that there was not a gradual degeneration of authority.

422. During the hearings, a film made at Gdansk in June 1983 was projected before the Commission at the request of the complainant. In this film the following four leaders of Solidarity appeared: Mr. Bogdan Lis of the Gdansk region, Mr. Zbigniew Bujak of the Warsaw region, Mr. Eugeniusz Szuniejko of the Wroclaw region and Mr. Vladislaw Hardek of the Cracow region in the company of Mr. Jean Bornard, General Secretary of the French Confederation of Christian Workers. According to the complainant, although Mr. Hardek had later, in July 1983, been arrested and obliged, under pressure from the authorities, to state publicly that the clandestine struggle no longer had any meaning, he had nevertheless not repudiated his activity as a leader of Solidarity.

423. In this film, Mr. Bujak stated that the situation in the trade union movement in Warsaw was of paramount importance, since it was there that the activities of the branch unions and autonomous unions that had existed before martial law were concentrated. Although there had been rivalry before 13 December 1981 between these unions and Solidarity, their active and ordinary members now boycotted the Government unions. Their leaders appeared in semi-public activities such as the meeting with Mr. Lech Walesa and the joint statement made with Solidarity on the aims of the trade union movement. They supported the joint achievements, including the trade union pluralism and the independence that were the strength and the real meaning of trade union movements.

29 Film, IX/4 to 8.
30 Bujak, IX/4.
424. Mr. Lis stated that the branch unions and autonomous unions that had previously been in competition with Solidarity had also been dissolved. This situation had made contacts and the establishment of a joint fund possible. Mr. Hardek added that Solidarity maintained its position both in the undertakings and among scientific and health workers and even those in agriculture. Its activities were of a charitable and social nature, such as the defence of human rights. On the other hand, asserted Mr. Lis, the official unions represented mainly the Party: they were organised by the authorities and not by the workers. Solidarity continued to form cells in the undertakings, to collect dues and to deal with problems of importance to the trade union movement, which enabled it to speak on behalf of Polish workers belonging to trade unions. For example, over 1,700 trade union papers continued to circulate. They were published in nearly every undertaking employing from 500 to 1,000 workers. At Gdansk, there were 3,000 cells in undertakings and 1,000 active works committees. Mr. Bujak added that in June 1983, in the Warsaw region alone, Solidarity had between 150,000 and 200,000 regular members paying their dues and 200,000 sympathisers. The activities of Solidarity in Warsaw consisted essentially in helping the 70 persons of this region who were still in prison and the persons who had been dismissed.

425. Mr. Seniuta stated that between 30,000 and 40,000 persons were working on the works committees, the regional committees of the Provisional National Committee (TKK) and that, in addition to the regular members who paid their dues, Solidarity had sympathisers who made gifts. They read the trade union press while the official press remained in the kiosks. According to him, these sympathisers represented 50 to 60 per cent of the workers in each undertaking.

426. According to the General Secretary of the ICFTU, the works committees of Solidarity dealt with assistance to the victims of repression, continued to organise hundreds of workers' education circles, and sometimes even persuaded the management of the undertaking to change its position on problems concerning the workers, particularly in respect of safety, health and wages.

427. The witness Mr. Cywinski, representing Mr. Lech Walesa, stated that despite the gap between the Government and the workers in Poland, a gap resulting from an accumulation of injustices, sufferings and violations of all the values that the Polish people remained attached to, the people were aware of their geo-political situation and were ready to resume the dialogue with the authorities. Only, such a dialogue presupposed the recognition by the authorities of the true partner. The dialogue could take place only with the genuine representatives of the people and could relate only to a return to the Agreements of Gdansk with everything that that meant in respect of equality, basic freedoms, trade union pluralism and the re-establishment of Solidarity.

31 Lis, IX/4.
32 Hardek, IX/5.
33 Lis, IX/7.
34 Bujak, IX/8.
35 Seniuta, III/40, 42 and 43.
36 Vanderveken, II/13 and 14.
37 Cywinski, III/61 and 62.
Position of the Government of Poland

428. In November 1982, shortly after the adoption of the Trade Union Act of 8 October 1982, the Deputy Minister of Labour, Mr. K. Gorski, asserted before the Committee on Freedom of Association that, in accordance with Conventions Nos. 87 and 98, the new Act respected the right to organise without previous authorisation by the public authorities and recognised the independence of the trade unions in respect of the establishment of their constitutions, aims, programmes of activities and future structures. It recognised the principle of trade union pluralism and that of the equality of unions without distinction and guaranteed the right to strike as a last resort after the exhaustion of the procedures of conciliation and also the right of trade unions to affiliate to international organisations. The Deputy Minister stated that, although the Act introduced certain restrictions, they were of a temporary nature and that the Council of State could reduce the periods during which they were applicable. He explained that, under the new Act, 1,600 constituent committees had set up new trade unions, which had deposited their constitutions in November 1982. The Presidium of the Government had given clear instructions to ministers, heads of central institutions and local administrators to take all the necessary measures to prevent cases of administrative interference in the formation of the new trade unions.38

429. Later, in a communication dated 19 May 1983, the Government stated, referring to the cancellation of the registration of existing trade unions by section 52 of the Trade Union Act, that this did not violate Article 4 of Convention No. 87, since the measure had been taken by the legislature and not by the administration. As to the waiting periods laid down for beginning the activities of the national trade union organisations and federations, the Government stated that the Council of State, on 12 April 1983, had adopted Decision No. 34/83 respecting the principles and procedure for establishing national trade union organisations. This Decision had granted the right to establish national trade union organisations before 31 December 1983. Moreover, the Council of State had decided that the Federation of Steel Workers' Unions could start its activities as soon as it was registered.

430. With regard to the trade union representation of workers in the employment of the State, the Government stated that an Act had been adopted on 16 September 1982 to lay down the principles and that, under section 40 of this Act, persons employed in the administration of the State could join the union, with the exception of those who occupied posts of great responsibility, whose activities were considered, as a rule, to be connected with the formulation of policy or managerial, and those whose duties were largely confidential. The Government added that those excluded from the right to organise were entitled, like other workers not belonging to the union, to set up workers' councils, whose function was to protect and represent, before the managing bodies of the administration, the social and occupational interests of the workers making them up. It also explained that officials of the prison service, who were excluded from the right to organise, formed part of the military services and had a system of ranks and discipline similar to that of the army, since one of their duties was to ensure security and order in places of detention. They had the same characteristics as the militia and should be regarded in the same way.

431. Refering to the Act of 8 October 1982 respecting farmers' socio-occupational organisations, the Government stated that the national union to which this Act attributed the highest-level representation of individual farmers was not monopolistic in character, since the branch union representing the rights of farmers specialising in a given sphere of vegetable or animal production did not belong to this national union, any more than many other social organisations carrying on an activity in the countryside. The Government stated that this Act covered neither agricultural wage earners in the nationalised or private sector nor the members of production co-operatives, who could join the organisation governed by the Trade Union Act.

38 Committee on Freedom of Association, 221st Report, paras. 59, 60, 63 and 64.
432. With regard to the taking of a decision to strike by a majority of the workers in secret ballot, the Government stated that this kind of ballot guaranteed that the decision so taken was democratic and in accordance with the will of the workers. Since a strike was a serious matter, it should not be left to a minority or imposed by an executive body against the will of the majority. As to the list of essential services in which the right to strike was not recognised, the Government gave assurances that it would be revised in the light of the practical application of the Act and that the revision might take place during the bringing up to date of the Labour Code. The Government further stated that the Trade Union Act provided for other forms of protest than the strike, which could go beyond the undertaking, the occupation or the branch of industry, provided that they did not violate the legal order or the principle of social coexistence.

433. With regard to the application of Convention No. 98, the Government stated that, in view of the suspension of trade union activities during the period of martial law, it had authorised the central administrative authorities and other bodies representing undertakings in collective bargaining to introduce amendments favourable to the workers into collective agreements. An example of this was the liberalisation of the principles relating to the granting of seniority allowances. Furthermore, under the economic reform, the undertakings were entitled to fix the total resources available for wages, to make partial changes in the principles governing pay and to fix their own wage scales, particularly in the iron and steel industry and coalmining. The Government also stated that, though the Act governed collective bargaining at the level of the occupational branch, it did not exclude the possibility of carrying out negotiations at other levels, particularly in the light of the independence of the undertakings resulting from the economic reform.39

434. In its report on the application of Convention No. 87, submitted under article 22 of the Constitution of the ILO and received in the Office on 17 October 1983, the Government stated that 16,730 works unions and three higher degree trade union organisations had been registered by 30 June 1983.

435. Since then, in a more recent report on the application of Convention No. 87, also submitted to the ILO under article 22 of the Constitution, which arrived on 16 April 1984 and covers the period from 1 July 1983 to 31 March 1984, the Government explains that the trade unions, which take part in the preparation and carrying out of the socio-economic activities for the development of the country and represent the interests and rights of the workers, constitute a school of civic activities and of commitment to the building of the socialist society in which they play an outstanding social role.

436. The Government states that the Labour Code confirms these principles, set forth in articles 84, paragraphs 1 and 2, and 85 of the Constitution of the Polish People's Republic. Section 19, subsection 1, of the Code provides that "workers shall have the right to associate in trade unions" and defines their special functions in section 19, subsection 2, and section 20, subsection 1, providing that "the trade unions shall take part in formulating and carrying out the tasks connected with the social and economic development of the nation, the improvement of conditions of work and the workers' standard of living and the exertion of influence on the standard of social awareness and socialist human relations. They shall more particularly co-operate with the competent organs of government in issuing and applying the provisions of labour law and shall take action to reinforce the rule of law in connection with the observance of the workers' rights and obligations".

437. According to the Government, the right of workers to establish and join trade unions - recognised by the Trade Union Act - is based on the following four essential principles:

- independence; that is to say that the trade unions are not subject to the supervision or control of the administration of the State or of the economy;

39 Committee on Freedom of Association, 229th Report, paras. 34 to 44 and 48 and 49.
- self-management: that is to say that the trade unions have full liberty and independence - in accordance with the legal provisions in force - to draw up their constitutions and rules, to formulate their programmes in full freedom and direct their activities, to determine their organisational structure and set up their own governing bodies and to unite in a central trade union organisation and affiliate with international organisations;

- voluntary membership: that is to say that persons can join or leave a union of their own free will, without any negative consequence;

- democracy: that is to say that the trade union authorities are established by election and that every member of the union has the right to elect and to be elected, which is guaranteed by the constitution of the union.

438. The Government describes the changes that have taken place in national law and practice since 1 July 1983. It states that, by a Decision of the Council of State dated 20 July 1983, martial law, which had previously been suspended, was finally lifted on 22 July 1983. This was done because the purpose for which it had been temporarily introduced, namely to avoid the extremely serious danger threatening the existence of the nation, had been achieved. The lifting of martial law was accompanied by certain important legal and practical measures aimed at the full democratisation of national life and the introduction of broad political, economic and social reforms.

439. Accordingly, an Act dated 6 April 1984 to amend the Trade Union Act of 8 October 1982 has introduced two changes: firstly, the right of persons working at home and those employed under a management contract, where they are not employers, to belong to the trade unions existing in the undertakings (new s. 10); secondly, the extension to 31 December 1985 of the non-application of the provisions of the Act relating to small trade union organisations in undertakings are to be suspended (new s. 53(2)). The first amendment is justified by the importance for the national economy of the many homeworkers and workers employed under management contracts. These workers number 300,000 and their conditions of employment are not very different from those of workers employed under a contract of employment. Accordingly, it was desirable to settle the question of trade union membership for this group of persons, all the more as they had previously had the right. In this connection, the Government gives the assurance that it has taken into consideration one of the observations made by the ILO during its examination of the Trade Union Act. The second amendment, which concerns extension, suspends the application of sections 17 and 19, subsection 4(2), of the Act concerning the requirement of a minimum of 30 persons for the establishment of a trade union organisation and the power of the court to cancel the registration of a trade union if it has fewer than 50 members for a period of over three months. The waiting period for the application of these provisions of the Act expired at the end of 1983, which practically deprived workers of the right to join a union when they were fewer than 50, and workers in this situation form a very important group of trade unionists, since most occupational circles have chosen the organisational structure of national federations, in which each organisation has legal personality. The waiting period has thus been extended to 31 December 1985. This temporary solution is based on the principle that, at the end of 1985, in accordance with the legislative power conferred on it, the Council of State will carry out an analysis of the general application of the Trade Union Act and, after consultation with the trade unions, will submit proposals for the amendments that will have to be made to the Act. It will thus be possible to find a lasting solution to the problem of small trade union organisations. To justify this solution it is also pointed out that in the view of the ILO, the minimum of 50 persons to which the number of members of a trade union was restricted was too high.

440. The Government also encloses information concerning the settlement of disputes in labour relations, including details of the number of conciliation tribunals existing at the level of the undertaking, the local level and the national level and also the number of individual disputes coming before the labour courts in 1979, 1980, 1982 and 1983. It is also stated that disputes concerning certain groups of workers in respect of dismissal are examined by the administrative tribunals, the ordinary courts being competent in respect of social benefits (allowances for death, industrial accidents, etc.).
441. With regard to the registration of trade union organisations in undertakings, the Government states that at 31 March 1984 there were 20,000 works unions, with over 4.3 million members, that is to say about 40 per cent of all workers. The development of works unions was proceeding systematically, with differences according to the region, the voivod, the sector of the national economy, the occupational branch and the occupational group. The most dynamic trade union development is that of workers in education, agriculture, trade, posts and telecommunications, mines, the iron and steel industry, the metalworking industries and light industry.

442. The constituent committees and initiative groups of the trade unions, however, are still operating in several undertakings. Over the country as a whole, 60 per cent of trade union members are manual workers, who are also numerous among the representatives elected to the governing bodies of the trade union organisations. The process of democratic elections by secret ballot is operating in all the unions and the activities of these unions are independent.

443. The present stage in the development of the trade unions is marked by the dynamic formation of national trade union organisations. By 28 March 1984, 90 national trade union organisations had been registered. In accordance with the Decision of the Council of State of 12 April 1983 respecting the principles and procedure for the formation of national trade union organisations, trade union organisations in the undertakings can form organisations at the higher level of the undertakings "in a given branch of labour, a type of employment or an occupation". This Decision lays down two procedures for the establishment of national trade union organisations. These may be organisations of workers employed in the same branch, that is to say unions bringing together individuals employed in a given sector of the national economy or organisation combining the unions operating in the undertakings, that is to say trade union associations or federations whose members are legal entities. Nearly all the national trade union organisations have already held their constituent conference or congress.

444. The most representative national trade union organisations are the following:

- the Federation of Agricultural Workers' Unions, with 400,000 members,
- the Association of Polish Teachers, with 350,000 members,
- the Federation of Building Workers' Unions, with 215,000 members,
- the Federation of Unions of Workers in Coal Mines and Mining and Shaft-sinking Undertakings in the Coal Industry, with 202,000 members,
- the Federation of Steelworkers' Unions, with 150,000 members,
- the Federation of Independent and Self-managing Unions in Light Industry, with 150,000 members,
- the Federation of Workers' Unions in the Mechanical and Electro-mechanical Industries (Metalworkers), with 135,000 members,
- the Federation of Co-operative Workers' Unions (Spelem), with 128,000 members,
- the Federation of Workers' Unions in Forestry and Woodworking, with 100,000 members.

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40 Information from the Ministry of Justice and the Office for Co-operation with Trade Unions of the Council of Ministers.

41 Data from the Ministry of Justice and the Court of the Voivodship of Warsaw.

42 Data on numbers at 31 December 1983, published by the national trade union organisations.
- the Federation of Workers' Unions in the Chemical Industries, with 85,000 members,
- the Federation of Miners' Unions, with 965,000 members.

445. According to the Government, the trade unions operate on the basis of their constitutions prepared in accordance with the provisions of section 18 of the Trade Union Act. The constitutions refer as a rule to the ILO Conventions ratified by Poland, sometimes mentioning that the trade unions enjoy the rights deriving from these Conventions. This is true, for example, of the constitution of the Federation of Steelworkers' Unions, clause 5 of which provides that the Federation shall enjoy the rights guaranteed by the ILO Conventions that have been ratified by Poland. Similar clauses appear in the constitutions of works and national trade union organisations, including those of the Federation of Unions of Workers in Coal Mines and Mining and Shaft-sinking Undertakings in the Coal Industry (clause 3), the Federation of Agricultural Workers' Unions (clause 3) and the Federation of Polish College Teachers' Unions (clause 8).

446. With regard to the types of trade union activities, the constitutions refer in particular to the organisation and carrying out of acts of protest, including strikes, in the event of infringement of the rights and interests of the workers, provision being made for the establishment of a strike fund. The Government gives as examples the constitution of the Paper Workers' Union at Warsaw (clause 8), the constitution of the Union of Workers in the Communications Equipment Works (WSK) at Okęcie, Warsaw (clause 8), the constitution of the Graphic Arts Workers' Union (clause 10, paragraph 1, concerning the right to actions of protest, including strikes, and paragraph 3, which provides for the setting up of a strike fund), the constitution of the Federation of Unions of Workers in Coal Mines and Mining and Shaft-sinking Undertakings in the Coal Industry (clause 2, paragraph 3, which provides for the right to strike, and paragraph 4, which sets forth the types of strike: warning and actual strikes), the constitution of the Federation of Workers' Unions in the Mechanical and Electro-mechanical Industries (clause 23, paragraph 3, concerning the strike fund) and the constitution of the Federation of Miners' Unions (clause 22). Seventeen constitutions of works and national trade union organisations are given in an annex to the report.

447. The Government states that the process of integrating the trade unions has started. The need to create a joint trade union representation has been confirmed, in particular by uninterrupted consultations between the Government and the trade union movement. A panel of presidents of national trade union organisations was set up on the initiative of the unions in January 1984 with a view to consultations and exchanges of opinion. This panel forms a suitable basis for the co-ordination of questions calling for the adoption of a common position towards the authorities by the trade union movement. It does not yet, however, form a national inter-union organisation within the meaning of the Trade Union Act.

448. The process of integrating the trade union movement is also going on in the different sectors and branches of the economy. A committee is being formed for the co-operation of the 14 trade union federations in the food industry. Committees are also being set up in the voivodships for understanding or consultation among the presidents of the unions. This trade union force creates suitable material conditions for co-operation with the central bodies of the Government, the administration of the State and the administration of the economy.

449. The important problems concerning the workers are published systematically in the press and submitted to national consultation, for example the consultation on the proposed increase in the prices of certain food products and compensatory measures for the disadvantaged groups of society. This has led the Government to take into consideration a number of proposals by the trade union movement. Consultations are going on with the unions in respect of the laying down of new principles for general regulations concerning the staggering of working hours and the notion of collective agreements.

450. According to the Government, the main fields of co-operation between the bodies of the administration and the unions in 1984 include the following:
- the drawing up of the Central Plan for the year 1985, with particular reference to questions of social policy;
- the principles for the pay of workers in nationalised undertakings;
- the principles for the conclusion of collective agreements and social agreements in the undertakings;
- better solutions — from the legal and practical points of view — in respect of hours of work, which would lead to a better adaptation of timetables to the real needs of the production and services undertakings, and changes in the regulations concerning overtime;
- the analysis by the different ministries of the problems and proposals — submitted to the congresses of the trade unions — concerning the living and working conditions of the workers and their families and the procedure for bringing this about;
- the review and evaluation by the different ministries and the trade union federations, with the participation of trade union representatives from the larger undertakings, of the measures taken on behalf of the workers and, on this basis, the fixing of the range and the forms of future co-operation.

451. The Government concludes that all the above-mentioned problems will be solved in co-operation with the trade unions, which form the mass organisation most representative of the workers.
CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 14

452. It is now for the Commission to state its conclusions and recommendations on the complaint that the Governing Body referred to it for consideration.

453. It must first examine a preliminary question, that of the non-participation of the Government of Poland in the procedure.

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Preliminary question of the non-participation of the Government of Poland in the procedure

454. The Commission found itself faced with a serious difficulty in that the Government of Poland, against which the complaint was made, systematically abstained from participating in the procedure and from replying to the various communications addressed to it concerning the complaint.

455. When the Governing Body took the decision on 23 June 1983 to appoint a Commission of Inquiry under article 26 of the Constitution of the International Labour Organisation on the complaint in question, the Government of Poland addressed a communication dated 24 June 1983 to the Director-General of the International Labour Office, the text of which is appended to the present report. In this communication, the Government rejected the decision of the Governing Body, which constituted "interference in Poland's internal affairs". According to the Government, the complaint was politically motivated and the ILO was being used "in a manner contrary to the spirit and letter of its Constitution". The Government therefore decided to suspend its co-operation with the ILO. The same day, the Director-General of the ILO replied that he regretted the decision all the more because he was personally convinced that a Commission of Inquiry could provide a valuable means of arriving at a mutually acceptable solution. The Director-General also recalled that the appointment of the Commission of Inquiry was based on provisions of the Constitution of the ILO to which the Government of Poland had subscribed on becoming a Member of the Organisation, and on the obligations that the Government had freely accepted by ratifying the Conventions in question.

456. When the Commission held its First Session, in September 1983, it addressed to the Government a communication dated 7 September 1983, in which it informed the Government of the procedure it intended to follow and expressed the hope that the Government would extend to it the co-operation that was provided for by the Constitution of the ILO and that had always been given to earlier Commissions by the various member States of the ILO in cases in which this procedure had been used in the past. The Government did not reply to the communication, but let the Commission know orally that it abided by its declaration of non-cooperation with the ILO.

457. After the expiry, on 21 November 1983, of the time in which the parties and certain governments and organisations had been asked to communicate information to the Commission, the Commission once again addressed itself to the Government. In its letter, dated 25 November 1983, the Commission expressed itself as follows:

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1 See Appendix 1.

2 See Appendix 2.
The Governing Body of the ILO, having received a complaint from two delegates to the Conference, filed under article 26 of the Constitution of the ILO, has, in the exercise of the powers conferred on it by this provision, regularly appointed the present Commission with a view to examining the application by Poland of two Conventions ratified by your country. The competence of the Commission is thus beyond doubt in international law, under article 26 of the Constitution of the ILO, which has been accepted by Poland and by which Poland is bound as a Member of the Organisation. Under article 27 of the Constitution, Poland and all other Members have agreed that they will 'place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint'. The non-cooperation of your Government in this connection would constitute a breach of an international obligation on the part of your Government.

The Commission further wishes to emphasise that, as it has stated in its previous letter, it intends to carry out its task with absolute objectivity and impartiality and in full independence. The Commission's task will be to examine, in accordance with the Constitution of the Organisation, how your Government has given effect to the international obligations that it freely accepted by ratifying the Conventions that are the subject of the complaint. The Commission will thus carefully examine the position of the various parties, including that of your Government, as expressed during earlier procedures, but it earnestly hopes that the point of view of your Government and the factors on it which it is based will be presented by a Government representative. It is obvious that the participation of your Government in the procedure would in no way imply the recognition of the exactitude or validity of the substance of the complaints filed under article 26 of the Constitution.

The Commission is aware that the world is going through a period of tension during which every effort should be made to reduce such tension and to seek solutions to the problems that exist. This end can be attained only through respect for international obligations and participation in good faith in the procedures established with a view to the peaceful settlement of disputes. It is in this spirit that the Commission appeals to the Government of Poland to collaborate in the procedure provided for by article 26 and the following articles of the Constitution of the ILO, to which it is the duty of the Commission to give effect. Acting in this way, the Government would give proof, as various countries in Europe, Africa and the Americas have done in similar cases, of its desire to meet its international obligations and to contribute to international co-operation.

This letter also indicated to the Government of Poland the communications received from the complainants, certain governments and certain international organisations, copies of which were transmitted to the Government for its information and for any comments it might wish to make.

The Government did not reply to this communication and returned it without comment.

On a third occasion, the International Labour Office, having prepared for the Commission an account of Polish trade union legislation, transmitted it on 6 January 1984 to the Government of Poland to enable it to make any observations which it might deem appropriate. The Government also refrained from replying to this communication.

At the session devoted to the hearing of witnesses (16 to 27 January 1984), the Government of Poland was not represented nor did it produce the witnesses whose presence the Commission had asked it to ensure or to facilitate; neither did it facilitate the presence of those witnesses proposed by the complainants who lived in Poland.

After the session devoted to the hearing of witnesses, the Commission wrote to the Government on 31 January 1984, asking it to provide an opportunity to the Commission or one of its members to visit Poland to obtain on the spot the requisite further information from all authorities, official bodies, trade union organisations and Polish citizens whom the Commission might wish to meet. The Commission pointed out that, for that purpose, it would naturally be necessary for the Commission, or one of its members, to be able to have conversations in private without the presence of
witnesses and that persons who might have contact with it should not be subjected to any punitive measure on that account. This letter, too, was returned without comment.

463. Lastly, by a communication dated 23 February 1984, the secretariat of the Commission transmitted a copy of the record of the hearings held during the Second Session of the Commission and lists of members of Solidarity said to have been imprisoned and of workers whose death was alleged to have been caused by the Polish security forces. The Government returned this communication and its enclosures.

464. This attitude raises two questions that need to be examined in succession: the reasons advanced by the Government to justify its non-cooperation (undue interference in internal affairs and the political character of the complaint) and the practical consequences of this non-cooperation from the point of view of establishing the facts.

1. Examination of the objections concerning undue interference in internal affairs and the allegedly political character of the complaint

465. The basic objection advanced by the Government of Poland to justify its attitude of non-cooperation was, as has already been said,3 that the procedure of the complaint constituted "interference in Poland's internal affairs".

466. The Commission is bound to point out that the ILO, by virtue of its Constitution, was established, in particular, to improve conditions of labour and to promote freedom of association in the various countries. It follows that the matters dealt with by the Organisation in this connection no longer fall within the exclusive sphere of States and that the action taken by the Organisation for the purpose cannot be considered to be undue interference in internal affairs, since it falls within the terms of reference that the ILO has received from its Members with a view to attaining the aims assigned to it. By virtue of these terms of reference, the ILO has, moreover, established a procedure for the protection of trade union rights that applies even to countries which have not ratified the Conventions on freedom of association. What is more, in the present case, the action of the Organisation is based on a Convention ratified by the State concerned and it follows a procedure expressly laid down by the Constitution of the ILO (article 26 and the following articles). If the reasoning of the Government of Poland were to be accepted, all action by the ILO - indeed, its very existence - would have to be considered to be interference in the internal affairs of the States. The action involved in the present case consists merely in verifying the effect given to Conventions adopted by the International Labour Conference and ratified by States.

467. The objection based on undue interference in the internal affairs of Poland is thus devoid of any legal validity and cannot justify the non-participation of the Government of Poland in the procedure provided for by article 26 of the Constitution of the ILO. It cannot release the Government from its obligation, under article 27 of the Constitution of the ILO - to which the Commission will return4 - to "place at the disposal of the Commission all the information in [its] possession which bears upon the subject-matter of the complaint". This obligation to co-operate was observed by the other six governments of countries in Africa, the Americas and Europe that had previously been concerned in similar procedures.5 The present case is thus the only one in which a government has entirely failed to respect this obligation.

3 See above, para. 455.
4 See below, para. 471.
468. In addition to advancing the objection of undue interference in its internal affairs, the Government of Poland maintained in its letter of 24 June 1983 that the complaint submitted to the Commission was "politically motivated" and that the ILO was "being used in a manner contrary to the spirit and letter of its Constitution". On this point too, the Commission is unable to consider that the complaint has not been validly presented in consequence of its allegedly political character. A similar question was examined in 1963 by a previous Commission of Inquiry appointed under article 26 of the Constitution of the ILO, which concluded that it was "not concerned with any political aspects which the matter may have; the task entrusted to it is that of examining judicially whether or not there had been a failure of the State concerned to secure the effective observance of the provisions of the Convention under consideration. The Commission in question indicated that, in taking this view, it had been guided by a series of decisions of the International Court of Justice in cases in which it had been contended before the Court that it should decline to give an advisory opinion by reason of the political nature of the question at issue. As had been said by the Court, the Commission in question considered that it was "not concerned with the motives which may have inspired this request"; it stated that "it is no part of its function either to endorse or to impugn them"; while it might be said that the matter before that Commission was "intertwined with political questions", the task of the Commission is to examine judicially, without regard to such considerations, whether or not the obligations of the Constitution and the Convention are being carried out".

469. The present Commission is of the same opinion and can only emphasise, as it did in the above-mentioned letter of 25 November 1983 to the Government of Poland, that, following receipt of a complaint from two delegates to the Conference filed under article 26 of the Constitution of the ILO, the Governing Body of the ILO, in the exercise of the powers conferred on it by this provision, regularly appointed the Commission with a view to examining the application by Poland of two Conventions ratified by that country. The complaint itself represents the exercise of a constitutional right (under the Constitution of the ILO) by two delegates to the International Labour Conference to file, at their discretion, a complaint that they consider that a member State is not securing the effective observance of a Convention which it has ratified. As was pointed out by the above-mentioned Commission of Inquiry stated, borrowing an expression used by the International Court of Justice, the language used by the Constitution of the International Labour Organisation to create and to define this constitutional right is "broad, clear and precise: it gives rise to no ambiguity and permits of no exception". The Commission is thus

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7 International Court of Justice: Reports of judgements, advisory opinions and orders, conditions of admission of a State to membership of the United Nations Case, 1947-48, p. 61.


9 See above-mentioned report of the Commission, para. 386, p. 155.

10 See above, para. 457.

11 See the above-mentioned report of the Commission, para. 384, pp. 154-155.

12 This expression was used by the International Court of Justice in the South-West Africa Cases (Ethiopia v. South Africa, Liberia v. South Africa), Preliminary objections; see International Court of Justice, Reports of judgements, advisory opinions and orders, 1962, p. 343.
bound to act in accordance with the relevant provisions of the Constitution and it
cannot refuse to examine the complaint by reason of the alleged, but by no means
established, political motivation said to have inspired the complainants. The
objection advanced by the Government in this connection is thus unfounded.

2. Consequences of the absence of co-operation
   by the Government of Poland from the point
   of view of establishing the facts

470. It is clear that the legal validity of the work of the Commission and of its
report cannot be affected by the lack of co-operation by the Government. Article 26 of
the Constitution of the ILO expressly provides that the Governing Body may refer to a
commission of inquiry a complaint filed by a delegate to the International Labour
Conference concerning the observance by a Member of a Convention which that Member has
ratified. As the Commission stated in the above-mentioned letter of 25 November 1983,
its competence is undoubted in international law by virtue of the Constitution of the
ILO, which has been accepted by Poland and by which Poland is bound. Neither the
establishment nor the work of the Commission of Inquiry are subject to the agreement or
the actual co-operation of the State concerned.

471. Furthermore, the fact that, under article 27 of the Constitution, as has
already been stated,₁₃ each Member agrees to "place at the disposal of the Commission
all of the information" in its possession that relates to the matter clearly shows that
Members have the obligation to co-operate in the procedure and cannot, by refusing to
co-operate, obstruct its development. The Commission can only deplore the failure by
the Government of Poland to comply with this obligation. In these circumstances, it
has carried out, to the best of its ability, the inquiry entrusted to it by the
Governing Body.

472. The lack of co-operation by the Government of Poland, however, raises the
question how far this may have affected the establishment of the facts by the Commission
and its assessment of the trade union situation in Poland. The Commission sent the
documents to the Government for comment which it received during the procedure. The
Commission would have earnestly wished the Government of Poland to participate in the
procedure, as it should have done, in particular by making available the factual and
legal elements that would have facilitated an assessment of the situation, by enabling
the Commission to go to Poland and meet members of the Government, as well as trade
unionists and workers, and by agreeing to discuss with it possible ways of giving full
effect to the Conventions in question. Although such co-operation has not been
forthcoming, the Commission has systematically taken account, as has been seen, of the
information which the Government of Poland had provided and of the position which it had
adopted before other organs of the ILO, such as the Committee on Freedom of Association,
the Committee of Experts on the Application of Conventions and Recommendations and the
Committee on the Application of Conventions and Recommendations of the International
Labour Conference; the most recent such information was contained in the reports under
article 22 of the Constitution of the ILO received by the Office in October 1983 and in
April 1984. The Commission has also taken account of various legislative texts
recently published in Poland, of other official and public documents and of information
derived from the very substantial communications and the extensive evidence from persons
who had had direct, recent experience of the trade union situation in Poland, which it
has carefully evaluated. Moreover, during the hearing of witnesses, the Commission
took great pains to obtain information on the various questions to which the Government
had attached importance in earlier statements, in order to form an objective opinion on
the situation. The Commission considers that the information at its disposal has been
entirely sufficient to enable it to make a precise evaluation of the situation as a
whole.

₁₃ See above para. 467.
Terms of reference of the Commission

473. Article 28 of the Constitution of the International Labour Organisation provides that the Commission shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken and the time within which they should be taken.

474. After the Commission had been appointed and before taking up its duties, its members made a solemn declaration, in accordance with previous practice and as had been suggested to the Governing Body by its officers, undertaking to perform their duties and exercise their powers "honourably, faithfully, impartially and conscientiously". In inviting them to make this declaration, Mr. Francis Blanchard, Director-General of the International Labour Office, said in particular: "The task entrusted to you is to establish the facts without fear or favour and in full independence and impartiality."

475. It is in this capacity as an independent body called up to make an objective evaluation of the issues in dispute that the Commission has sought to carry out its task. It is in this spirit of independence and impartiality that it set out below its findings of facts and, with regard to points on which it does not consider the situation to be satisfactory, makes recommendations concerning the steps that should be taken to put them right.

476. It should be recalled here that the role of a Commission of Inquiry, under article 26 of the Constitution of the ILO, is not confined to an examination of the information provided by the parties but that, as has been indicated above, the Commission must itself take all necessary steps to obtain full and objective information on the questions at issue, having regard, as the first Commission of Inquiry pointed out in 1962, to "the public importance of the issues raised by the complaint". Its terms of reference being thus defined, the Commission must, at the conclusion of its work, in accordance with the Constitution of the ILO, record its findings and make recommendation on the substance of the case.

Conclusions on the substance of the case

477. The allegations made by the complainants had their origin in the measures taken by the authorities against the trade union movement - principally against Solidarity - following the proclamation of martial law in Poland on 13 December 1981. In the information and observations furnished both to the Committee on Freedom of Association and to the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Conventions and Recommendations of the International Labour Conference, the Government of Poland insisted on the necessity of taking account of the political, economic and social situation in Poland before martial law, which would have led the country to the brink of civil war, led to a growing crisis in the economy and endangered the fundamental interests of the Polish nation and State. The complainants and various international trade union organisations, in the documents that they supplied to the Commission, also referred to the period preceding martial law to indicate that in their opinion none of the activities of Solidarity justified the repressive measures taken by the Government. In
this connection, the Commission wishes to make clear that, in accordance with its terms of reference, it will confine itself to examining how far effect was given to Conventions Nos. 87 and 98 in Poland during the period referred to in the complaint and the later communications of the complainants, that is to say, the period following the proclamation of martial law. The Commission will take earlier events into account only so far as they have a direct bearing on the decisions adopted by the Government which affected trade union activities in the country.

478. The complaint and the information placed before the Commission referred to the very serious consequences of the subsequent measures and decisions taken by the authorities, not only against the trade union organisations themselves - in particular their suspension and their dissolution and the restrictions imposed on the activities of trade unions by the new legislation in this field - but also against the leaders and active and ordinary members of the former trade unions: internments, convictions, violent deaths and measures of anti-union discrimination. On each of these points, the Commission received a considerable quantity of information, both in the written documents submitted to it and during the session devoted to the hearing of evidence. The Commission will now examine separately each of these questions and also the various aspects of the present activities of the trade unions, in the order already adopted in the analysis of the information available to it in the previous part of the report.

International obligations under Conventions Nos. 87 and 98 and martial law

479. Before dealing with these various points, the Commission considers it useful to examine the question raised by the fact that the measures alleged by the complainants were initially taken under martial law. This problem was already considered by an earlier Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine complaints relating to the violation of Conventions Nos. 87 and 98. As that Commission pointed out, neither of these Conventions contains a provision allowing the possibility of basing a plea of emergency, as an exception to the obligations arising under the Conventions, on the terms of the Conventions themselves. Furthermore, the plea of emergency to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights can be advanced before an international authority only in circumstances of extreme gravity constituting a case of force majeure and provided that any measures affecting the application of the Convention are limited in scope and in duration to what is strictly necessary to deal with the situation in question.

480. In the present case, the information in the possession of the Commission on the circumstances prevailing before the proclamation of martial law do not enable it to conclude that a situation existed in Poland such as to justify the temporary non-observance of the Conventions in question. The Government of Poland has supplied no precise information in this connection, either in the communications to the Committee on Freedom of Association or in the reports submitted under article 22 of the Constitution of the ILO. It confined itself to general indications to be mentioned below. Even if it were admitted that a situation of emergency existed in December 1981, the measures which this might have justified could be taken only "to the extent strictly required by the exigencies of the situation", and the complete suppression of the entire trade union movement would have gone beyond these exigencies, as appearing from the information available.

481. At all events, the Commission must observe that the Government remained bound by Conventions Nos. 87 and 98; since martial law has in any case been lifted, it must examine the allegations solely in the light of the provisions of these Conventions ratified by Poland.

Suspension and dissolution of trade union organisations

482. The measures taken by the authorities after the proclamation of martial law led to the complete liquidation of the trade union structures which had existed during the preceding period. This operation was carried out in two stages: In the first stage, on 13 December 1981, the activities of the trade unions were completely suspended; in the second stage, the trade union organisations were dissolved by the new Trade Union Act adopted on 8 October 1982.

483. To justify the proclamation of martial law and the measures suspending trade union activity that resulted from it and the subsequent dissolution of the trade unions, the Government of Poland insisted on the necessity of averting the imminent danger of civil war, restoring law and order, ensuring the normal operation of the state administration and saving the national economy from collapse. The Government maintained that Solidarity had gone beyond the limits not only of the agreements signed with the authorities in August 1980, but also of its own constitution, approved by the Supreme Court in November 1980, by virtue of which the organisation had undertaken to carry on its activities as a trade union in accordance with the national Constitution and respecting the international alliances concluded by Poland. Despite this undertaking, extremist elements among the leaders of Solidarity had directed the organisation towards political action and called for the seizure of power and the overthrow of the political system. According to the leaders of the branch unions, certain groups within Solidarity even had arms and the country was thus heading for open confrontation.

484. To prove its assertions, the Government referred particularly to the proceedings of the First Congress of Solidarity and especially to the appeal to the peoples of other socialist countries, as well as to the session of the Presidium of the National Committee of Solidarity held in Radom, in December 1981, when voices were raised in favour of seizing power. It also mentioned the decisions taken by the National Committee of Solidarity at Gdansk, on 12 December 1981, which arranged for mass gatherings in public places on 17 December. Furthermore, Solidarity had not taken account of the economic situation of Poland and had, under the threat of strikes, secured concessions that would have led to an exceptionally dramatic economic decline.

485. On the other hand, the information provided by the complainants and by the international workers' organisations, as well as evidence given by several witnesses during the hearings, deny the assertions of the Government concerning the allegedly political attitude of Solidarity. According to these sources, there was nothing in the positions adopted by Solidarity, in its resolutions or in its declarations, to justify the assertion that the aims of the organisation went beyond the defence of the material and moral interests of the workers. Never, it was stated, had the organisation declared itself ready to call the system into question, to take power in the State, or to undertake terrorist or criminal activities. On the contrary, no proof, even indirect, had been furnished to show that Solidarity had held arms. It was true that the leaders of Solidarity, including its President, had recognised that the organisation had made mistakes and that, against the background of a bad economic situation, its activities might have hampered the action both of the Government and of the administration. However, according to the evidence given, the number of extremists was negligible in comparison with the total number of members. Moreover, the national and regional leaders and advisers had played an entirely restraining role during the disputes with the authorities and in the formulation of claims. As to the strikes

17 See above, paragraph 213.
called by Solidarity, the same sources indicated that they had been only of short duration, and had related to trade union aims and that the organisation had adopted a responsible attitude by excluding, in its constitution, strikes in vital sectors and by refusing to take part in the destruction of the national economy.

486. The contradictory nature of these statements raises the question whether Solidarity had deviated from the aims and activities of a trade union organisation so far that it was no longer possible to consider it an organisation for furthering and defending the interests of workers, in accordance with the definition of Article 10 of Convention No. 87.

487. Although it must be understood in a broad sense, the notion of freedom of association is subject to certain limits. Having to be exercised essentially in the setting of a state, it cannot disregard rules concerning publicity and other rules aimed at enabling it to be practiced normally. These rules, however, should not be such as to deprive freedom of association of its meaning or drain it of its substance. The double equilibrium and the double limitation of the scope of freedom of association and of the powers of the State have been defined by Article 8 of Convention No. 87, which states that "in exercising the rights provided for in this Convention, workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land", but in turn provides 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 this Convention". These two rules cannot be separated.

488. The question of the political activity of trade unions is one of the most delicate aspects of the limits of their activities. It is significant in this respect to recall the preparatory work on Convention No. 87, which shows that the Conference Committee that drafted the text did not accept a proposal to confine trade union activity to occupational matters. Though it is obvious that the activities of trade union organisations must in the first place concern the occupational interests of their members, their activities cannot be confined to such matters in the strict and narrow sense. As the Committee of Experts on the Application of Conventions and Recommendations has remarked, the choice of policies, particularly in economic affairs, has consequences for the situation of employees and workers more generally. Trade unions must therefore be able to express their views on the economic and social policy of the government, since - as the Committee of Experts has also pointed out in its general survey - the fundamental aim of the trade union movement is to ensure the development of the social and economic well-being of workers. Moreover, the new Polish trade union legislation of October 1982 itself defines the activities of trade unions very broadly.

489. There have, however, to be limits to the inevitable interplay between social and political questions. They have been stated in the resolution concerning the independence of the trade union movement, which was adopted by the International Labour Conference in 1952. They concern both the action of governments and that of trade unions. On the one hand, governments should recognise that the value of the co-operation of trade unions in carrying out their economic and social policy rests to a

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18 See above, paragraph 218.


large extent on the freedom and independence of the trade union movement, which the
governments should not therefore attempt to transform into a political instrument. On
the other hand, the trade unions should seek to ensure that any political action that
they may think it proper to undertake to advance their economic and social objectives
should not be of such a nature as to compromise the continuance of the trade union
movement, irrespective of political changes in the country. This resolution has often
been recalled since its adoption over 30 years ago.

490. For the trade unions to be able to play this part positively and
constructively and for their contribution to be as useful and convincing as they would
wish, their participation must take place in a climate of freedom and security. This
means that, where trade unions feel that they do not enjoy the basic freedoms
indispensable for carrying out their purposes, they should be entitled to demand the
recognition and exercise of these freedoms and their claims should be considered to form
part of legitimate trade union activity.

491. The Commission has given particular attention to examining the resolutions
and decisions of Solidarity and the attitudes and statements of its leaders. In the
opinion of the Commission, the proposals drawn up during the First Congress of
Solidarity, held in Gdansk in October 1981, which laid down the programme of action of
the organisation, constitute one of the basic factors to be taken into consideration in
this connection. In the statement of these proposals, it was indicated that Solidarity
was an organisation that allied the features of a trade union with those of a great
social movement. The programme presented was "a long-term programme advancing from
the settlement of immediate problems" and laid down among its general principles the
necessity of reconstructing the country and re-establishing the economy on the basis of
democracy and the bringing about of great changes while respecting international
alliances. Admittedly, several of the proposals adopted, particularly those for a
"self-managing republic", embodied ideas that belonged to the strictly political sphere
rather than to trade union matters and do not therefore normally find their place in the
programme of a workers' organisation. It appears, however, that most of the points
covered in the programme concerned economic policies, the protection of labour, social
policy, the defence of certain civil liberties essential to trade union activities, and
trade union affairs, all of which were questions falling within the normal activities of
a workers' organisation furthering and defending the interests of its members,
particularly in countries where the State is the principal employer. Doubtless, as can
happen in any organisation, whether of a political nature or a trade union, the position
taken by individual members and activists within Solidarity may have been excessive.
They did not, however, in any way commit the trade union itself. The Commission has
noted, moreover, that the Government, in its arguments to justify the measures taken
against Solidarity, generally referred to the actions of elements or groups within the
organisation rather to the activities of the union as a whole. Furthermore, the
Commission has not received the slightest evidence of the possession of arms by groups
within Solidarity, nor did the Government produce any such evidence during the earlier
examination of the case by the Committee on Freedom of Association.

492. The suspension of trade union activities and the subsequent dissolution of
the existing trade union organisations which deprived the workers of all the mechanisms
that had ensured the defence of their interests, therefore constituted, in the opinion
of the Commission, steps of an exceptional gravity having no common measure with the
occasional excesses that may have occurred in the trade union movement. If the
Government considered that the deterioration of the economic situation called for
emergency measures, the most suitable way of settling the problems in the best interests
of the workers and of the nation was certainly not the elimination of the trade union
organisations, but rather frank and open negotiation among all the parties concerned to
consider together the means of resolving the crisis. If it was found that certain
members of the trade unions had committed excesses going beyond the limits of normal
trade union activity, they could have been prosecuted under specific legal provisions
and in accordance with ordinary judicial procedure, without involving the suspension and
subsequent dissolution, of an entire trade union movement.

493. Having examined the reasons underlying the measures taken by the authorities,
the Commission must deal with the conformity - or non-conformity - with Convention No.
87 of the procedure followed in suspending and then dissolving the trade unions. The
suspension of trade union activities was decreed on 13 December 1981 by the President of
the Council of Ministers on the basis of the Decree of 12 December 1981 respecting martial law. It was thus a measure taken by administrative authority constituting an evident violation of Article 4 of Convention No. 87, which provides that "workers and employers organisations shall not be liable to be dissolved or suspended by administrative authority".

494. The dissolution of the existing organisations was pronounced in two ways. Certain occupational organisations were dissolved by administrative authorities, including the Association of Polish Journalists on 20 March 1982, the Union of Polish Artists and Designers on 23 June 1983 and the Polish Writers' Union on 19 August 1983. The organisations registered as trade unions were dissolved under the Trade Union Act of 8 October 1982, their registration ceasing to be valid on the coming into force of the Act.

495. The measures of administrative dissolution taken against the above mentioned organisations constitute unequivocally a violation of Article 4 of Convention No. 87.

496. As to the cancellation of the registration of the existing trade unions by virtue of the Trade Unions' Act, the Government has stated that it was unable to resort to a judicial procedure since this would have revived profound divisions in society. It emphasised that this measure did not constitute dissolution by administrative authority but a decision of the supreme legislative body and that there was therefore no breach of the guarantees provided for by Article 4 of the Convention, which covered only administrative decisions.

497. On this point, the Commission observes that, 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. The two procedures also have another point in common that is prejudicial to the organisations against which they are directed, since neither of them respects the rights of defence, which can be guaranteed only by the normal procedure before the courts.

498. Nevertheless, in the opinion of the Commission, the essential aspect of the problem is not so much that of the compatibility or incompatibility of dissolution by legislative authority with Article 4 of Convention No. 87. The essential point is that the principal consequence of the cancellation of the registration of the trade unions and of the absence of all possibility of re-establishing similar ones was to deprive the workers of the right to join the existing unions which had been freely and lawfully set up since 1980, and thus of joining organisations of their own choosing. It has to be concluded that the Act of 8 October 1982, by pronouncing the dissolution of the trade unions, infringed the guarantees provided for by Article 2 of Convention No. 87 respecting the free choice of organisations and at the same time violated Article 8, paragraph 2, of the Convention, under which the law of the land shall not be such as to impair, nor be applied so as to impair, the guarantees provided for by the Convention.

499. The suspension and dissolution of the organisations have obviously raised the problem of administration and subsequent devolution of the funds and property of the organisation affected by these measures. Before the coming into force of the Trade Union Act, the property of the organisations, which, despite their brief existence, represented considerable sums and assets, were managed by administrators appointed by the authorities with the mission of ensuring their maintenance and preservation. After the cancellation of the registration of the trade unions, the property of enterprise unions was administered by the heads of the undertakings, who transferred them to the new trade unions set up under the new Act, as and when the statutory executive bodies of these unions came into existence. The property of the trade union organisations at a higher level than undertakings, that is to say the former central organisations and the respective branch unions, has been transferred to the newly established federations or

are administered temporarily by a committee whose functions are administrative and consist in carrying out work that is indispensable for the preservation of the property in good condition, in accordance with its intended use.

500. The supervisory bodies of the ILO have enunciated a general principle concerning the devolution of the property of dissolved trade unions in accordance with which this property should be temporarily placed in trust and finally distributed among the members of the dissolved organisation or transferred to the organisation that succeeds it. An important detail must, however, be insisted on respecting the meaning of the last expression. As the Committee on Freedom of Association has emphasised, the expression must not be taken to mean the unions that, in fact, simply take over from the dissolved unions, but rather those that pursue the aims for which the latter were voluntarily established and pursue them in the same spirit.

501. The question that arises in this connection, then, is whether the allocation of the assets, which is today definitive, that is to say that concerning trade unions in undertakings and federations, meets the criteria thus defined. In other words, it is necessary to determine whether the new trade unions constitute the successors to the workers' organisations which existed in Poland during the previous period.

502. If the elements making up trade union life in Poland today are examined, one of the main features, which was repeatedly underlined in the documents in the possession of the Commission and during the hearing of evidence, is that Solidarity is still in practice carrying on activities throughout the country on a continuing basis; these activities have not been disowned by the bodies or by most of the persons responsible for directing the organisation when it existed legally. The mere recognition of this fact shows that the leaders of Solidarity do not see their own reflection in the directions and tendencies that have taken shape in the new trade unions. These, therefore, cannot be considered to be the true successors to the unions that were formerly affiliated to Solidarity, which implies that the system for the devolution of the property of the dissolved organisations adopted by the Government is not in conformity with the principles of freedom of association in this respect.

503. A related problem concerning the property of the trade union organisations was raised in the information submitted to the Commission, namely, that of the destruction of trade union property during the military or police operations carried out in the offices of the trade unions immediately after the proclamation of martial law. Although this question is not directly linked to the suspension of trade union activities, the Commission considers that it should be examined at this stage of its conclusions.

504. It was alleged several times, with reference to specific cases, that offices of organisations belonging to Solidarity had been laid waste by the security forces and that equipment, including printing machinery, office equipment and telephone exchanges, had been ransacked and destroyed.

505. In this connection, the Commission is bound to recall that the International Labour Conference in the resolution concerning trade union rights and their relation to civil liberty, adopted in 1970, considered that the right to the protection of the property of trade union organisations was one of the civil liberties essential for the normal exercise of trade union rights. While trade unions, like other associations and private individuals, do not enjoy immunity against the searching of

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23 ibid., para. 234.


trade union premises, any action of this sort should be carried out only after the issue of a warrant by the ordinary judicial authority, when that authority is satisfied that solid grounds exist for supposing that the necessary evidence will be found for a prosecution under ordinary law, and provided that the search is confined to the purposes for which the warrant was issued. When these guarantees are not respected, there may be obvious abuses, particularly when the premises are ransacked and the property of the trade unions damaged or destroyed. The Commission is bound to record that such abuses occurred in Poland, in conflict with the standards of Convention No. 87, at least during the first days following the application of martial law.

Internment and conviction of leaders and members of Solidarity

506. The documents submitted to the Commission devote much space to the mass measures of arrest and detention taken against the leaders and members of Solidarity. The trade unionists who have been, or are, in detention can be divided into two main groups: those - the greater number - who were interned under martial law, because "their previous behaviour suggested that they would not respect law and order or that that they would carry on activities contrary to security or the defence of the State", and those who have been prosecuted in the courts and sentenced or whose trial is still going on, most of whom have been prosecuted for infringing the provisions of martial law or for attempting to overthrow the political system in force.

507. Measures of internment started as soon as martial law had been proclaimed, on 13 December 1981, and seem to have continued for several months, since, according to the information at the disposal of the Commission, internment orders were still being made in May and August 1982. It is extremely difficult, if not impossible, to give an exact number of those interned, for the information provided in this respect varies enormously. According to the data communicated by the Government in May 1982, 7,000 persons had been in the internment camps. Other information mentions a total number of internees of over 10,000. The duration of detention varied from person to person. Many of those who were arrested on 13 December 1981 left the camps only a year later. The first persons affected were the national and regional leaders, advisers and experts of Solidarity, then those taking part in strikes and their leaders, and lastly persons who had demonstrated in public. There were many releases in May and July 1982, and internments under martial law came to an end in December 1982. Various sources of information, however, have indicated that after this period active trade unionists - including many former internees - were placed in special military camps, where they were obliged to carry out non-military manual labour. According to the same sources, these measures affected at least 2,000 persons and continued until February 1983.

508. Another important element in the information furnished to the Commission relates to the conditions of internment prevailing in the camps. It was affirmed, by eye witnesses among others, that physical coercion and brutality - sometimes with lasting effects - had been used against the internees and that, in general, the conditions imposed on detainees were often very severe, particularly during the early days of internment. Special mention was made of a report prepared by the medical section of the Primate's Committee for aid to persons deprived of liberty, in which it was stated that of the persons whose situation had been examined (about 1,000) nearly two-thirds displayed health troubles and that over 100 required hospital treatment. According to certain information, the complaints made by the detainees who had been victims of brutality had not always had the results expected since charges against those responsible had often been dropped and in certain cases the victims had even been subjected to reprisals. Lastly, the evidence of several former detainees referred to the psychological pressure that had been exerted on most of the internees to persuade them to sign declarations of loyalty, in which they undertook not to act against the interests of the country or even agreed to go into exile.

509. In the information that it provided in the procedure before the Committee on Freedom of Association, the Government stated mainly that the measures of internment were of a preventive nature and were intended to protect the existence of the nation and the security of the inhabitants. According to the Government, it had interned the extremist leaders of Solidarity who had imposed on the union an openly political course. The steps had been undertaken not because of the trade union activities of
those concerned but because of their political actions contrary to the constitution of
the trade union and to national legislation. With regard to the conditions of
internment, the Government stated that the visits to the camps by the International
Committee of the Red Cross had given rise to no comment by that Committee on the
material conditions of detention or relations with the guards.

510. As to the second group of persons in detention, namely those who have been
prosecuted in the courts and in some cases convicted, there too it is difficult to
determine the exact number of persons concerned, since the figures vary greatly
according to the source. Under the Decree respecting martial law, prison sentences of
from three to ten years were provided for in cases of infringement of the provisions
suspending the rights to strike and to demonstrate, or prohibiting the distribution of
written matter, tracts, recordings or films. The sentences actually pronounced were
often severe, since certain persons were sentenced to the maximum penalties and the
Supreme Court sometimes even increased the sentences passed at first instance. The
charges most often preferred concerned the printing and distribution of clandestine
publications of the dissolved organisation Solidarity, the organisation of strikes and
participation in them.

511. In July 1983, an Amnesty Act was promulgated, which made provision for the
complete remission of sentences for persons sentenced to periods of imprisonment of
three years or less and also for women and minors, whatever the sentence passed on
them. In respect of sentences for over three years, remission applied to only half the
penalty. Criticisms were made of the scope of the Amnesty Act. For example, it was
observed that a new similar offence led to the cancellation of the amnesty and that the
amnesty covered only certain acts coming under the Decree respecting martial law and
not, for example, crimes committed against interests of the State. According to the
same criticisms, the limited nature of this amnesty, made it possible to continue the
trials that were being conducted against certain leaders of Solidarity and of the
Workers' Self Defence Committee (KOR). These proceedings had been instituted although,
under the "Abolition Act" adopted by the Government, no person could be sentenced for
political activities before 13 December 1981 and it was impossible for the persons
concerned to have carried out the activities of which they were accused since they had
been interned since the proclamation of martial law.

512. It is appropriate to evaluate the facts concerning the internment and
detention of leaders and members of trade unions in the light of the provisions of
Article 3 of Convention No. 87. This article, after stating that workers' and
employers'organisations shall have the right to draw up their constitutions and rules,
to elect their representatives in full freedom, to organise their administration and
activities and to formulate their programmes, provides that "the public authorities
shall refrain from any interference which would restrict this right or impede the lawful
exercise thereof". Furthermore, the guarantees thus granted to trade union
organisations can be effectively ensured only if a number of basic civil liberties are
respected. The Commission must once more refer to the resolution, adopted without
opposition by the International Labour Conference in 1970, concerning trade union rights
and their relation to civil liberties.\(^{26}\) In this resolution, which thus reflects the
views of the parties to the Convention on the implications of the Convention, the
International Labour Conference put particular emphasis on certain civil liberties
defined in the Universal Declaration of Human Rights and in the Covenant on Civil and
Political Rights, ratified by Poland, which it stressed as essential for the normal
exercise of trade union rights. These include the right to freedom and security of
persons and freedom from arbitrary arrest and detention; 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;
freedom of assembly and the right to a fair trial by an independent and impartial
tribunal.

513. It follows from all these elements that Convention No. 87 has neither the aim
nor the effect of prohibiting a government from using its legitimate powers in respect

\(^{26}\) See para. 505.
of law and order when trade unionists commit crimes or offences covered by national law. The Convention, thus, does not create any immunity for the members of a trade union or their leaders and, in Article 8, it even provides that workers and their organisations, like other persons, shall respect the law of the land, although the law of the land, as has been pointed out above, shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. On the other hand, these rules do imply both that the public authorities cannot deprive trade unionists of their freedom for reasons related to their membership or their legitimate trade union activity or in order to put an end to such membership or activity and that, when trade unionists are accused of political or criminal offences that the government considers to be unrelated to their trade union activities, the persons in question shall have the benefit of normal judicial proceedings initiated at the earliest possible moment.

514. Since the arrest or conviction of trade unionists does not in itself constitute a violation of the Convention, the real grounds on which these measures were based must be sought and it is only if these measures were actually directed against trade union activities as such that there has been an infringement of the guarantees provided for by Convention No. 87. Furthermore, since the persons concerned are entitled to a presumption of innocence, it is incumbent on the government to show that the measures taken by it were not occasioned by the trade union activities of these persons.

515. If the statements of the Government on the grounds for the internments are considered, it will be seen that the Government confined itself to a general assertion that the measures were taken because of political activities and not because of trade union activities. No concrete evidence has been produced in support of this assertion. The Commission, however, is bound to note that the persons interned included the great majority of the national leaders and a large number of regional leaders of the organisation Solidarity. In the opinion of the Commission, it is difficult to conceive that so great a number of trade union leaders had undertaken activities likely to endanger the security or the defence of the State, whereas, as the Commission has already observed, shortly before the proclamation of martial law, the Congress of the organisation had adopted a programme that was essentially of a trade union nature. It will further be observed that the immense majority of the trade unionists interned were not subjected to any subsequent judicial investigation. These various elements may justify the belief that one of the aims of the Government, in depriving the majority of the leaders of Solidarity of their freedom, was to suppress or prevent the activities and development of the trade union movement embodied by this organisation and that it therefore acted in violation of Article 3 of Convention No. 87.

516. As the Commission has already stated, the grounds for the sentences pronounced by the courts were the organisation of strikes and participation in the strikes or the distribution of publications of the dissolved organisation Solidarity. The question that arises in these cases is thus to determine whether such activities can be considered to be of a trade union nature.

517. Convention No. 87 provides no specific guarantee concerning strikes. The supervisory bodies of the ILO, however, have always taken the view - which is shared by the Commission - that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members. An absolute prohibition of strikes thus constitutes, in the view of the Commission, a serious restriction on the right of trade unions to organise their activities (Article 3 of the Convention) and, moreover, is in conflict with Article 8, paragraph 2, under which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for [by the Convention]."

518. As to the printing and the distribution of publications, the Commission must point out that the right to the free expression of thought is of special importance as an integral part of the freedom to which trade union organisations are entitled. As
the Committee on Freedom of Association has often stressed, the right to express opinions through the press or otherwise is one of the essential elements of trade union rights. The prohibition of trade union publications and the conviction of trade unionists for infringing this prohibition cannot therefore be anything but a violation of the right of trade unions to organise their activities, as recognised in Article 3 of Convention No. 87.

519. With regard to the nature of the legal proceedings instituted, the Commission is bound to observe that it has little information on the way in which the trials of the trade unionists were conducted. Although certain evidence given during the hearings alleged the failure to respect certain fundamental rights in the judicial field such as the right of defence, the Commission cannot, in view of the small number of concrete cases brought to its attention, conclude that, generally speaking, the guarantees of normal judicial procedure were systematically disregarded.

520. Another question concerning the detentions which the Commission must examine is that of the conditions imposed on the detainees and, in particular, the most serious allegation of all, the ill-treatment said to have been inflicted on them. The information from the Government available to the Commission on this point was extremely limited. However, from the many statements made during the hearings and the substantial documentation submitted to it on this point, the Commission is led to believe that the standard minimum rules for the treatment of prisoners were not always observed in Poland during the period of martial law. This was true, in particular, of certain internment camps, where the rules regarding detention premises, food, physical exercise, contact with the outside world and the imposition of forced labour on persons detained and placed in the military camps seem to have been largely disregarded. The Commission has even noted from direct evidence that physical or moral pressure exerted during or after detention had been decisive in making several persons decide to leave the country. Recent information provided by the complainants again refers to ill-treatment of detainees. Lastly, as is clear from certain cases mentioned in the foregoing analysis, the ill-treatment of certain detainees does not seem to have led to the imposition of sufficiently severe and dissuasive penalties upon the persons responsible for these acts to prevent the renewal of such practices.

Deaths of trade union members and leaders

521. The information available to the Commission shows that a large number of active and ordinary members of trade unions died during the period when martial law was in force. Their deaths occurred during strikes, particularly in December 1981, and during demonstrations organised by Solidarity during 1982. Furthermore, the violence to which trade unionists were subjected after arrest is said to have led to the death of some of them. In all, according to the complainants, the number of persons whose death can be attributed to the security forces comes to over 60.

522. Although the list of persons alleged to have died violently was transmitted to the Government for observations, it made no comment on the matter. The only elements of information from the authorities in the possession of the Commission concern the events at the Wujek mine that occurred in December 1981, when eight miners died. An investigation into the case by the military prosecutor's office concluded that the militia had acted in self-defence and no charge was therefore laid against the security forces.


523. The voluminous and very detailed information obtained on the various cases of violent deaths, and in particular, on the circumstances of deaths which occurred after arrest leads to the conclusion that not only trade union rights but also rights connected with life and security of persons were violated in Poland while martial law was in force. In particular, there are no indications, according to the information available to the Commission, that the deaths of trade unionists have been the subject of thorough, independent and impartial inquiries to establish the facts and to determine responsibility so as to open the way to legal proceedings for the punishment of the persons found guilty.

Measures of anti-union discrimination

524. The Commission had before it allegations concerning measures of anti-union discrimination against leaders and members of Solidarity. The trade unionists in question were said to have suffered dismissal and other acts of discrimination such as refusal of employment, re-employment on less favourable conditions, reductions of wages, disciplinary sanctions, changes of workplace, changes of job, placing on blacklists or refusal to reinstate in the worker's job. Furthermore, "verification procedures" on the ideological and political attitudes of the workers, carried out in certain administrations or undertakings, are said to have resulted in dismissals or the signature of declarations of loyalty to the authorities.

525. According to the information available, tens of thousands of workers were dismissed for the mere fact of belonging to Solidarity, for having refused to sign declarations of loyalty or for having taken part in a strike or demonstration.

526. Precise details on the number of dismissals in workplaces mentioned by name were furnished to the Commission. These sources of information show that, although dismissals occurred mainly in large undertakings during the first months of martial law, similar measures were still being taken during the second half of 1982 and even after the suspension and the lifting of martial law.

527. These dismissals seem to have affected a very wide range of persons, in terms of their occupational and trade union functions and the branches of activity in which they worked. Such measures, however, were applied frequently to workers who had held positions of responsibility in Solidarity, particularly former full-time officers of the organisation or trade union leaders who had been interned. According to the documents received, in the public administration, the sectors most affected were the judiciary, teaching and radio and television services.

528. There is complete contradiction between the explanations given by the complainants and those given by the authorities concerning the reasons for the measures in question. For the former, they clearly constituted acts of anti-union discrimination, whereas for the latter, they were taken above all in response to economic requirements.

529. The Labour Code provides for protection against improper dismissals. Thus, the decision to dismiss must be submitted for the opinion of the works trade union committee, and members of works committees and trade union representatives cannot normally be dismissed. However, the information available to the Commission shows that the Supreme Court had considered that these protective measures could not be applied while trade union activities were suspended. Moreover, dismissals in militarised undertakings were not subject to review by the disciplinary and judicial authorities usually competent in this field. Certain documents even mentioned pressure exerted on judges so that decisions should be given against workers and pressure on managers of undertakings to appeal where consent to dismissal had been refused. It was also stated that decisions to reinstate given by the courts were not put into effect. Lastly, the adoption of laws in October 1982 (Act respecting persons evading work) and in July 1983 (Act respecting special legal provisions for dealing with the social and economic crisis) had consequences for the situation of workers who had been dismissed.

29 See above, paras. 375 and 376.
such as the placing on a register of "social parasitism" of any person not registered as seeking employment who had been without employment for three months, with the possibility of being called up for work in the public interest, and the re-employment at the lowest wage of workers who had been dismissed without notice or had resigned.

530. In the observations which the Government submitted to the Committee on Freedom of Association concerning protection against dismissal, it maintained that the guarantees provided by the legislation were extensive, in respect both of the grounds for dismissal and of the appeals procedures open to the workers. These guarantees remained applicable, even during the period of martial law, with the exception of militarised undertakings, where certain restrictions had been introduced. Referring to the many cases in which workers had appealed, the Government stated that in 20 per cent of these cases the competent bodies had ordered the reinstatement of the workers concerned on the grounds that the dismissals had not been justified.

531. The Commission must state its position on the allegations of anti-union discrimination in the light of Article 1 of Convention No. 98, which provides, among other things, that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment". The Commission must therefore determine whether the grounds on which the measures were taken against the workers were connected with the trade union membership and activity of the persons concerned and, if so, whether the guarantees and remedies provided for in law and practice may be considered adequate.

532. On the first point, the Commission obviously cannot affirm, on the basis of the information received, that all the dismissals or other measures taken during the period in question constituted acts of anti-union discrimination. The Commission cannot overlook the particularly difficult circumstances faced by the Polish economy at present, which undoubtedly justify certain measures of adaptation. Nevertheless, the extent of the dismissals that took place and above all the large number of active members and leaders of Solidarity who were affected by these measures show that, in many of the cases, the trade union activities of the persons concerned must have been a decisive factor in the dismissals.

533. With regard to the protection provided for workers against acts of anti-union discrimination, it is necessary to make sure that legislative provisions exist to lay down the requisite guarantees and also that they are accompanied by effective procedures for their application in practice. It is here that appears the full importance of Article 3 of Convention No. 98, under which machinery appropriate to national conditions must be established, where necessary, for the purpose of ensuring respect for the right to organise.

534. It appears that it was not possible, at least while martial law was in force, to give full practical effect to the guarantees laid down by the Labour Code for protection against dismissal: firstly, a considerable number of workers employed in undertakings essential to the economy were no longer covered by the relevant provisions and, secondly, some of the guarantees could no longer be applied because trade union activities were suspended. In addition, some information suggests that the bodies responsible for examining the appeals submitted were not always able to take decisions with all the independence desirable. The Commission must therefore conclude that the protection afforded the workers does not appear to have been sufficient in relation to Article 1 of Convention No. 98.
Trade union legislation

535. Trade union activities in Poland are now governed by the Trade Union Act of 8 October 1982, the Act respecting farmers' socio-occupational organisations adopted the same day, and an Act of 16 September 1982 respecting the principles governing the representation of persons employed by the State. This legislation has been supplemented by several decrees and decisions of the Council of State and orders of the Council of Ministers.

536. As the Commission has already pointed out, a few days before the adoption of the Act the Government asked the International Labour Office for a legal opinion on the conformity of its provisions with international labour standards. The Office then prepared written comments, some of which were taken into consideration by the Diet during the final discussion on the Bill.33

537. Generally speaking, the Commission has noted that the Trade Union Act, from the point of view of giving effect to the relevant Conventions of the ILO, contains important improvements in relation to the 1949 Act, which governed trade union activities before September 1980.34 In particular, the new Act no longer refers to the obligation to register with a central trade union organisation, a requirement in the former Act which had been the subject of repeated comments by the Committee of Experts on the Application of Conventions and Recommendations. Certain provisions of the trade union legislation, however, call for the following comments.

Right of workers, without distinction whatsoever, to establish organisations of their own choosing without previous authorisation

538. Under section 12 of the Act, the right to organise is not granted to officials of the prison service. The Government has stated that this class of personnel constitutes a militarised formation whose system of ranks and discipline is similar to that of the army. It thus possesses, according to the Government, characteristics identical to those of the militia and must be regarded in the same way. The Commission refers, in particular, to the 1983 General Survey of the Committee of Experts on the Application of Conventions and Recommendations,35 and considers that the functions exercised by this class of public servants should not normally justify their exclusion from the right to organise on the basis of Article 9 of the Convention, which provides restrictively, that "the extent to which the guarantees provided for in this Convention can apply to the armed forces and the police shall be determined by national laws or regulations".

539. Section 19(4) provides for the cancellation of registration of a trade union if the number of members is below 50 for three months. In the opinion of the Commission, the minimum number of members imposed in this way may hamper the establishment and maintenance of organisations, particularly in small undertakings, contrary to Article 2 of Convention No. 87. The Commission notes in this connection that an amendment introduced in April 1984 suspends the application of this provision until the end of 1985.

540. Under section 19(2), a court may refuse to register a union if the content of its rules indicates that the organisation is not a trade union within the meaning of the Act or the provisions of the rules are not in accordance with the requirements of the Act. This provision raises the question whether such a possibility of refusing to register may be considered to imply a previous authorisation within the meaning of Article 2 of the Convention. It was specified in the preparatory work of the

33 See above, para. 143.
34 See above, paras. 121 to 124.
35 See Freedom of association and collective bargaining, op. cit., para. 87.
Convention that States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations. The existence of national legislation concerning the establishment of the organisations is thus not in itself incompatible with the provisions of the Convention, provided that it does not amount to previous authorisation and that it does not constitute an obstacle leading in effect to a prohibition.

541. The Trade Union Act lays down as a simple formality the filing of the rules of the organisation and their examination by the judicial authorities, with the possibility of an appeal to the Supreme Court. According to the Act, the sole purpose of the supervision exercised by the judicial authorities seems to be that of ensuring conformity of the rules with the legislation. However, an order by the Council of Ministers dated 15 October 1982 specifies, in section 12, that the court may not order the registration of a trade union if, amongst other things, "this is incompatible with the provisions in force or the prevailing situation". In view of this last factor, the courts are vested with broad powers of appreciation going beyond those of a simple verification of legality. In these circumstances, the conformity of the laws and regulations on the registration of trade unions will largely depend on the way in which the relevant provisions are interpreted and applied. It would thus be more in conformity with Convention No. 87 to eliminate this provision of the Order, under which the courts have the power to refuse the registration of a trade union organisation for reasons relating to "the prevailing situation".

542. Under the transitional provisions of the Act (section 53(4)), only one trade union organisation may operate in an undertaking until 31 December 1984. Under the Act of 21 July 1983 respecting special legal provisions for dealing with the social and economic crisis, this period has been extended to the time when the application of the Act is to be examined by the Council of States, three years after its coming into force, that is to say, October 1985. In addition, on the basis of this transitional provision, the Council of State has adopted a decision laying down the principles and procedure for establishing trade union organisations in undertakings. Section 6 of this decision provides that, where there is more than one application for registration, the court shall propose to the constituent committees an arrangement and the filing of a joint application. If the joint application is not presented, the court can either refuse to register the trade unions or register the union that has stated its agreement to an arrangement and the filing of a joint application.

543. These provisions, by imposing a single-trade-union system in the undertaking, conflict with Article 2 of the Convention, according to which workers have the right to establish organisations of their own without previous authorisation. As the Committee of Experts on the Application of Conventions and Recommendations has often pointed out, although the Convention clearly does not aim to make trade union pluralism compulsory, it requires that pluralism must at least be possible in every case. The Commission must also express its concern that the Government has extended the waiting period initially laid down in the Trade Union Act and that there is uncertainty about a return to the possibility of trade union pluralism, which will depend on the examination of the application of the legislation to be carried out by the Council of State.

544. Still in connection with right of workers to establish organisations of their own choosing, the Commission has examined the wording of section 33(2) of the Act respecting farmers' socio-occupational organisations, which imposes a national federation of farmers. It has also considered the statements made by the Government in this connection, to the effect that the federation is not of a monopolistic character since the branch unions for farmers specialised in a given sphere do not join this


37 See, for example, Freedom of association and collective bargaining, para. 148.
national trade union organisation; nor do many other rural social organisations.\(^{38}\) The Commission must, however, observe that it is impossible, under this Act, for national farmers' federations to be established other than that expressly designated in section 33(2). There is thus clearly a single-trade-union system imposed at the highest level of representation of farmers, which is contrary to Article 2 of the Convention.

545. Lastly, the Commission notes that section 40 of the Act respecting the representation of workers in the employment of the State provides that these workers are entitled to join the union of workers in the administration of the State. If, as the wording suggests, this provision excluded the possibility of trade union pluralism for workers of a given class, it too would constitute a violation of Article 2 of the Convention.

546. With regard to trade union structure, section 10(2) of the Trade Union Act lays down that a trade union shall comprise the workers employed in a given field of work, type of employment or occupation. To determine whether this provision is in conformity with the right of workers to establish organisations of their own choosing or not, one must examine whether the basic organisations covered by this section can freely join federations and confederations in the form and manner which the workers consider most appropriate.

547. In this connection, reference must be made to section 20 of the Act, under which trade unions have the right to establish associations and inter-union organisations. This provision seems to cover federations and confederations and does not impose any special conditions for their establishment, subject to the indications in paragraphs 559 and 560 below. There may, however, remain a doubt concerning the possibility, under this section, of forming associations of trade unions on a regional basis. The conditions laid down in section 10(2) of the Act respecting the trade union structure of basic organisations would thus be in conformity with Article 2 of Convention No. 87 in so far regional associations of trade unions could be formed.

### Right of trade unions to draw up their constitutions and rules

548. Under section 3 of the Act, the rules of a trade union must be in conformity with the Constitution of the Polish People's Republic and the other laws. In particular, trade unions must observe the principles of social ownership of the means of production and recognise the guiding role of the Polish United Workers' Party (PUWP), as determined by the national constitution, in the construction of socialism and the constitutional principles of the foreign policy of Poland.

549. The Commission has had to examine these provisions in relation to Article 8 of Convention No. 87, under which workers and their organisations, like other persons or organised collectivities, must respect the law of the land (paragraph 1), while in turn the law of the land must not be such as to impair, nor be so applied as to impair, the guarantees provided for in the Convention (paragraph 2).

550. It is therefore necessary to determine, firstly, whether the provisions in the Constitution referred to by the Trade Union Act infringe the Convention. In the opinion of the Commission, these provisions are of a general nature and are not aimed at trade union activities as such. They thus fall within the scope of Article 8 of the Convention.

551. Secondly, it is necessary to consider whether section 3 of the Act may affect the right of trade unions to organise their activities, as recognised by Article 3 of the Convention. The Commission observes that the legal provision in question refers to the recognition of the guiding role of the PUWP in society as a whole and not in trade union activity as such. Taking all these factors into account, the Commission considers that section 3 of the Act cannot be taken to impair the guarantees laid down

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\(^{38}\) See above, para. 431.
in the Convention, provided that, as the wording seems to indicate, this provision is interpreted as concerning the general constitutional and political order of the country and not trade union activity itself. The attention of the Government is therefore called to the importance which the practical application of this provision will have for the purpose of assessing its conformity with Convention No. 87.

Right of trade unions to organise their activities - right to strike

552. The Act, in section 36(1), recognises the right of trade unions to organise strikes, but fixes a number of conditions for the exercise of this right and prohibits it in certain sectors of activity.

553. The Commission must examine these provisions to determine whether they impose restrictions which call in question the right to strike and, consequently, the right of trade unions to organise their activities (Article 3 of Convention No. 87) for furthering and defending the interests of their members (Article 10 of the same Convention). It has observed that some of these provisions could constitute serious restrictions.

554. It is necessary to refer, firstly, to the conditions for the calling of a strike laid down by section 38(1) which requires that the decision shall be approved by the majority of the workers concerned and not merely by the majority of those voting. The Commission considers that a majority of this kind may be difficult to reach, particularly in large undertakings, and jeopardise the possibility of the workers concerned to call a strike. Section 38(1) also requires the prior agreement of the higher body of the trade union, that is to say, apparently, the federation to which the organisation is affiliated. The Commission considers that such a requirement, laid down by legislation, imposes an undue restriction on the right of trade unions to organise their activities.

555. Secondly, the Commission observes that section 40 of the Act establishes a very long list of essential services in which strikes are prohibited. It feels bound to refer in this regard to the views expressed by ILO supervisory bodies that the prohibition of strikes should be confined to essential services in the strict sense, that is, those whose interruption would endanger the life, personal safety or health of the whole or part of the population.

556. The Commission must also point out the severity of the penalties laid down for the organisers of strikes, going as far as imprisonment for one year for infringement of the provisions on the right to strike (section 47 of the Act).

557. The Commission considers that the provisions concerning procedures of negotiation, conciliation and arbitration that must be exhausted before a strike can be called do not require special comment, since the final arbitration award is not of a binding nature, either party being entitled to declare, before the start of the procedure, that the award will not bind it (section 35(5)) of the Act.

Right to establish federations and confederations

558. As the Commission has already pointed out, trade unions have the right, under section 20 of the Act, to establish inter-union associations and organisations. This provision gives effect to Article 5 of Convention No. 87, under which workers' organisations have the right to establish federations and confederations. However, if full effect is to be given to this Article, section 20 of the Act will have to be so applied that trade unions can form associations not only by branch of activity but also by region.

39 See above, para. 547.
559. Under the transitional provisions of the Act (section 53), activities might be resumed after 31 December 1983 by national trade union organisations and after 31 December 1984 by inter-union associations and organisations. Until these dates, the Act thus prohibited the establishment of federations and confederations mentioned above. It is true that the Council of State, by a decision dated 12 April 1983, advanced the date for the establishment of federations and that several organisations of this type are operating today. However, it remains impossible to establish confederations before the end of 1984, and such a prohibition is in conflict with Article 5 of Convention No. 87.

560. The Commission also observes that, under section 20, the provisions of the Act apply, mutatis mutandis, to inter-union associations and organisations. The comments made by it concerning basic unions, particularly concerning the single trade union system, thus apply also to federations and confederations.

Right to collective bargaining

561. Under section 23 of the Act, trade unions have the right to conclude collective agreements at the national level. The Government has stated that this provision does not exclude the possibility of negotiation at other levels, particularly in view of the autonomy of undertakings resulting from the economic reforms. The Commission considers that, if this is so, the Act should unequivocally recognise the right to collective bargaining at all levels of economic activity (undertaking, branch of activity, inter-occupational), so as to give full effect to Article 4 of Convention No. 98. The possibility, under a new Act adopted in January 1984, of concluding wages agreements under certain conditions at the level of the undertaking may constitute a first step towards this full recognition of the right to collective bargaining.

Dissolution of trade unions

562. Under sections 19(4) and 48 of the Trade Union Act, the courts may, in the event of violation of the provisions of the Act, order the deletion from the register of the trade union concerned. These provisions, which prescribe recourse to a judicial procedure for the dissolution of trade unions, do not call for comments, subject to the remarks made above on section 19(4) of the Act.

563. The documents submitted to the Commission refer to the dissolution of the existing trade unions by virtue of section 52 of the Act and to the transfer of the property of the dissolved organisation under section 54 of the Act. The Commission refers to its conclusions on these points in paragraphs 482 to 505 above.

Trade union life today

564. Following the adoption of the new trade union legislation, groups to found new trade unions began to form and works unions have been registered by the courts. According to data in the possession of the Commission, these unions today comprise over 4 million workers, about one-third of whom are pensioners, out of the 17 million, including 3 million pensioners, in a position to join unions. National structures by industrial branch have also been set up and have begun to operate. A meeting bringing together the chairmen of the trade union federations, moreover, was organised in January 1984 to create a body to co-ordinate the national policy of the trade unions.

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40 ibid.

41 See para. 539.

42 See above, paras. 413 and 441.
565. In its most report on the application of Convention No. 87, the Government has set forth the four basic principles on which trade union life in Poland is founded today: independence, which implies the absence of control by the administration; self-management, that is to say the right to determine and to carry on the activities of the union freely; voluntary membership of the unions by workers; democracy, respect for which is ensured by the appointment of the governing bodies of the unions by election.

566. According to the complainants and the witnesses whom they presented, the establishment of the legal trade union structure has not prevented Solidarity from continuing to carry on activities for defending the interests of the workers. The organisation is said to exist in every region of Poland and 1.2 million persons are stated still to be active members. Its activities appear to be mainly social and connected with the defence of human rights and it produces a considerable number of publications.

567. The independence of the trade unions established under the new Act has been called in question several times in the documents submitted to the Commission and in the evidence obtained during the hearings. It has been stated, in particular, that the Polish United Workers' Party (PUWP), and even the army have played a decisive role in their formation and that their constitutions were prepared on the basis of model constitutions prepared by a committee appointed by the Council of State. It was said that these unions did not enjoy the confidence of the population and that the number of their members was due to the inducements - such as wage increases and various advantages - that had been offered to members and to the dissuasive measures - such as dismissals or penalties - by which workers refusing to join were threatened.

568. The conflicting nature of the information available to the Commission does not enable it to make a clear assessment of the representative character of the new trade unions or of their independence from the undertakings and the public authorities. It regrets this all the more as these matters constitute an essential factor for evaluating the present state of trade union life by reason of the monopoly under the law possessed by the trade unions today.

569. There are, however, certain factors that can be taken into consideration to determine whether the new trade unions fully meet the aspirations of the world of labour. On the one hand, these trade unions, by obtaining a large number of members, have no doubt acquired some degree of representativity. On the other hand, it is obvious that a large number of workers continue to give their confidence to Solidarity and even to belong to it, despite the difficulties and risks to which participation in a dissolved organisation gives rise. Lastly, the Commission cannot disregard the fact that the principal leaders of all the national organisations existing before the introduction of martial law published a joint declaration supporting the principles of the independence of organisations and trade union pluralism. All these factors suggest that part of the working population does not identify itself with the newly established trade union structure and that the present situation does not therefore offer workers the possibility of joining organisations of their own choosing, as required by Article 2 of Convention No. 87.

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Recommendations

570. Having recorded its findings on the questions submitted to it and with a view to action to remedy the unsatisfactory application of Conventions Nos. 87 and 98 noted in its conclusions, the Commission makes the following recommendations, which are resolutely directed towards the future.

571. Considering that the degree of independence enjoyed by the trade union organisations depends largely on the recognition and observance in law and practice of
basic civil liberties, the Commission considers that it must in the first place make certain recommendations concerning the right to freedom and the right to security of the person.

572. The Commission has observed that, despite the adoption of the Amnesty Act, trade union leaders and members are still being prosecuted before the court or remain in detention after conviction. In order to calm feelings and to create the climate of tranquillity that is indispensable to the renewal of a genuine trade union life, the Commission recommends that measures should be taken by the Government without delay to discontinue the legal proceedings against trade union leaders and to end the detention of persons who have been sentenced for trade union activities such as participation in strikes or demonstrations or the distribution of publications.

573. With regard to the violent deaths of workers, the Commission recommends that impartial and independent inquiries into these events be undertaken in order to establish the facts, to determine responsibilities and to punish any person found guilty. The Commission is convinced that it is only by this course that the recurrence of incidents as tragic as these may be avoided.

574. With regard to the other aspects of the case referred to it, the Commission finds it necessary to make recommendations on three points: anti-union discrimination, the trade union legislation and, lastly, the transfer of the assets of dissolved organisations.

575. On the first point, the Commission, concerned by the large number of dismissals of leaders and active members of trade unions since the proclamation of martial law, recommends that the situation of those dismissed be re-examined in conditions of complete independence and impartiality.

576. As to the trade union legislation, the Commission, referring to the conclusions set forth above in paragraphs 535 to 563, recommends the Government to amend in the near future the laws and regulations issued under them that are in force with a view to ensuring the clear and full recognition of the following rights established by Conventions Nos. 87 and 98:

1. the right of workers, without distinction whatsoever (including public servants), to establish trade unions;

2. the right of workers to establish organisations of their own choosing; the recognition of this right implies the re-establishment in practice of the possibility of trade union pluralism at every level: undertaking, branch of activity, regional and inter-occupational;

3. the right of basic unions and federations to associate in confederations;

4. the right of trade unions to conclude collective agreements at all levels;

5. the right of the unions to organise their activities, which implies the elimination of the unduly strict limitations imposed upon the exercise of the right to strike.

The Commission also recommends the Government to ensure that the provisions of the legislation (particularly those on the recognition of the guiding role of the Polish United Workers' Party, the registration of organisations and the contents of their rules), whose conformity with Convention No. 87 largely depends upon their implementation in practice, are applied in a manner fully respecting the principles contained in the Convention.

577. Lastly, with regard to the transfer of the assets of the dissolved trade union organisations, the Commission considers that this problem must be solved with regard to the situation of trade union pluralism that existed before the proclamation of martial law. In order that the principles of freedom of association may be respected in this connection, the organisations that are to receive the assets of the dissolved unions can be designated only when trade union pluralism can be effectively exercised in practice. The Commission therefore recommends the Government, within this perspective,
to study a system for the devolution of assets which would make it possible to attribute them to the true successors of the dissolved organisations.

578. In conclusion and in view of the above considerations, the Commission recommends that the Government of Poland, in its reports submitted under article 22 of the Constitution of the ILO on the application of Conventions Nos. 87 and 98, should regularly indicate the measures taken, both in law and in practice, during each period under consideration to give effect to the recommendations set forth above and also to those of a more general nature contained in the following paragraphs. The Commission does not consider it possible to fix the exact dates at which such information should be provided: the period during which such a procedure will remain necessary depends on the rate of progress made, and the Commission considers it preferable to leave this question to the Committee of Experts on the Application of Conventions and Recommendations.

579. Article 28 of the Constitution of the ILO provides that the Commission of Inquiry, in stating its findings and recommendations, shall indicate the time within which the measures that it recommends should be taken. It is obvious that the situation in which Poland finds itself cannot be put right from one day to the next. Among the measures recommended by the Commission there are some that require time for reflection, for consultation and sometimes also for putting into effect. Yet some of them are so urgent that the Committee of Experts on the Application of Conventions and Recommendations at its March 1985 session should be enabled to report on the action taken by the Government in the fields concerned during the months immediately preceding that session.

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580. The various recommendations made above must be considered in relation to the general situation prevailing in Poland and they can find meaning only so far as this situation develops in such a way as to make it possible to put them into effect.

581. The major events that have occurred in Poland during the past four years are to a great extent linked to the trade union situation of the country. They have been briefly outlined at the beginning of the present report.43

582. These events have led to a situation today which no one can consider normal and even less to be satisfactory.

583. It is true that, after a period of great tension, some degree of tranquillity has been secured. A Trade Union Act was adopted on 8 October 1982, martial law was suspended and then lifted, an Amnesty Act was adopted on 21 July 1983 and most of the persons in detention have been released. Some trade unions have been formed, but their representative character is obviously limited.

584. Tensions and difficulties, however, are far from having disappeared. Certain persons, in particular former trade unionists, are still under arrest and in detention, severe sentences have been pronounced and civil liberties have not been fully re-established. The Trade Union Act, as has been seen, although it introduces some progress on certain points, has serious limitations.44 In particular, the right of workers freely to establish the trade unions of their own choosing, which presupposes that pluralism is legally possible and which was recognised - in accordance with Convention No. 87, ratified by Poland - between September 1980 and December 1981, has not been reaffirmed by the texts adopted so far.45 The present trade union legislation is still, in some respects, provisional and it is not yet possible to

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43 See above, Chapter 3.
44 See above, paras. 535-563.
45 See above, paras. 542-545.
foresee the form that it will assume during the coming months and years. The Government has not indicated its intentions and the Commission has been unable to observe any pointers in this connection. The general economic situation continues to be marked by serious difficulties. Tension remains in the country and a great part of the population seems to remain attached to the trade union principles and organisation that were recognised between September 1980 and December 1981.

585. A determined effort must be made by all to break the deadlock in which the country finds itself. The problems have arisen because the activities of the Solidarity trade union movement appeared to the public authorities contrary to the interests of the country and to the normal running of the established political system in Poland. The Commission is aware that it may be difficult to reconcile trade union pluralism with a political system of a single or dominant party. It is nevertheless convinced that it should be possible to achieve a situation which would ensure the effective observance of the Conventions on freedom of association without jeopardising the general interest or the conceptions underlying the regime of the country. The standards respecting freedom of association are universal in scope by their very purpose and this is confirmed by the wide range of ratifications which they have received from countries with the most varied political regimes. It should thus be possible for these standards to be observed irrespective of the political regime, as was shown, moreover, by the law and practice in Poland not long ago.

586. The question does, however, raise various difficulties, which the Government should endeavour to resolve, a task that should not prove impossible. In the present case, the Commission is bound to observe that the questions of freedom of association which it was called upon to examine depend largely on the general evolution of the country.

587. If Conventions Nos. 87 and 98 are to be fully observed in Poland, it is obviously indispensable that the legislation be amended to bring it into conformity with these texts. The fulfilment of this condition, though necessary is not enough. The effective application of the Conventions on freedom of association is not merely a matter of texts. It also depends to a large extent on the general context, on the relations established between workers, employers and the public authorities and on the climate of freedom, dialogue and mutual respect in which these relations can be established. Considerable progress undoubtedly remains to be achieved in this respect.

588. The Commission considers that one of the first measures which it would be desirable to take in this connection is the initiation of free and unprejudiced exchanges of views between the public authorities and the representatives of the various trade union trends that have arisen at various dates in the country in recent years, with a view to restoring the harmony and agreement necessary for the resumption of trade union activity based on the standards of the ILO Conventions. Such harmony would be beneficial not only from the point of view of the trade union situation. It would be essential, more generally, to an effective recovery of economic activity and a normalisation of the general conditions of life in the country.

589. Although this general recommendation is addressed in the first place to the Government, since it holds power, the Commission considers that the leaders of the various trade union trends, too, should make a parallel effort to restore national understanding, devoting their entire efforts to the operation of a normal trade union system and helping, by their action, to bring the country out of its present difficulties. In other words, it is through an open and constructive dialogue between the various representative elements in the country, born of the desire to find together the solutions required by the higher interests of the State as well as by the interests of the workers, and based on respect for the international obligations of Poland, that the trade union situation can really evolve towards normality.

46 See above, para. 576.
590. A development of this kind, moreover, can take place only in a general climate of confidence and freedom. Such a climate presupposes and requires a general effort of understanding and agreement on the part of all concerned. The first measures taken by the Government, in suspending martial law and releasing most of the persons in detention, could be a move in this direction if they were followed by broad and generous measures for the release and amnesty of all workers still in prison by already sentenced on account of the recent events, or the abolition of all exceptional measures and by the full restoration of freedom of expression and of assembly. It would be of the greatest importance for the full observance of the Conventions on freedom of association if, as provided by the Final Act of the Conference on Security and Co-operation in Europe, adopted at Helsinki in 1975, the Government of Poland, which subscribed to that Act, were to "promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development".

591. Normal trade union life presupposes, among other things, the elimination of all feeling of constraint among workers and the creation of an atmosphere in which they do not feel restricted. The public authorities should keep in mind, after the period of tension that the country has gone through, the necessity of fully re-establishing the civil liberties set forth in the International Labour Conference resolution of 1970 and in the Covenant on Civil and Political Rights, ratified by Poland, particularly in respect of protection against arbitrary arrest and freedom of opinion and expression so far as these are necessary to enable workers' and employers' organisations to further and defend the interests of their members.

592. From this general point of view also, the Commission is convinced that any gesture by the public authorities in this direction could only meet with the good will and co-operation of the various trade union trends and in general of the whole country.

593. There are moments in the life of a nation when the choice between division, social tension and even confrontation on the one hand and, on the other, reconciliation and harmony stands out clearly and there should be no room for doubt. The way recommended by the Commission is certainly not the easiest. It does seem, however, that it is the way desired by the Polish people. Admittedly, it may not be possible to embark upon this way from one day to the next. It is nevertheless the only one by which Poland can at the same time ensure the observance of the Conventions on freedom of association, recover its unity and turn a new page in its long and often painful history.


(Signed) Nicolas Valticos
Chairman

Andrés Aguilar

Jean-François Aubert
In submitting this report, the members of the Commission wish to thank Mr. Francis Blanchard, Director-General of the ILO, and the staff of the ILO services concerned for the support they have unstintingly given at the various stages of the procedure. The members of the Commission wish in particular to stress their keen appreciation for the work carried out and the assistance provided by the members of the secretariat placed at their disposal, in particular Mr. B. Gernigon, and also Mr. K.T. Samson, Mrs. J. Ancel-Lenners and Mrs. A.J. Pouyat-Donsimoni, Miss M. Chuard and Mrs. Y. Piriou. The quantity and the quality of the work carried out and the keen sense of duty displayed by the members of the secretariat have earned them the deep gratitude of the Commission.

N.V.

A.A.

J.F.A.
Mr. Director-General,

Upon the instructions of my Government, I have the honour to communicate the following:

The Government of the Polish People's Republic resolutely rejects the decision of the Governing Body of 23 June 1983, establishing a Commission of Inquiry concerning Poland. Thereby, the campaign against Poland in the International Labour Organisation has been further stepped up. This is yet another manifestation of an artificial, politically motivated resolve to keep by every means the so-called Polish case on ILO's agenda, in disregard of the multifarious consequences of this decision, harmful to international co-operation in the Organisation. Interference in Poland's internal affairs testifies to ILO's being used in a manner contrary to the spirit and letter of its Constitution, it undermines the authority and credibility of the Organisation.

Under the circumstances, in line with the statement of the Government of the Polish People's Republic of 31 May 1983, concerning relations with the International Labour Organisation, Poland is suspending its co-operation with the ILO.

The responsibility for the decision - which, provided the existence of good will of the organs concerned and of the International Labour Office, could have been avoided - rests with quarters unfriendly to the Polish People's Republic. At the same time, subject to the position which the Organisation will take concerning Poland, the Government of the Polish People's Republic reserves its right to take further measures, as appropriate, regarding Poland's membership in ILO.

I shall be grateful if you will have this letter circulated as an official document of the International Labour Organisation.

Please accept, Mr. Director-General, the assurances of my high consideration.

(Signed) Stanislaw Turbanski
Ambassador
Dear Mr. Ambassador,

I have noted with regret the decision of the Government of the Polish People's Republic to suspend its co-operation with the ILO following the appointment on 23 June 1983 of the members of the Commission of Inquiry to consider the complaint concerning the non-observance by Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). I regret this decision all the more because I am personally convinced that a Commission of Inquiry could provide a valuable means of arriving at a mutually acceptable solution, to which I remain committed.

Might I also recall in this regard that the appointment of the Commission of Inquiry is based on provisions of the Constitution to which your Government subscribed on becoming a Member of the ILO, and on obligations which your Government freely accepted by ratifying the Conventions in question.

I shall communicate the text of your letter and my reply to the Officers of the Governing Body, and bring it to the notice of the Governing Body at its 224th Session in November of this year.

Yours sincerely,

(Signed) Francis Blanchard