

90960A/5

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

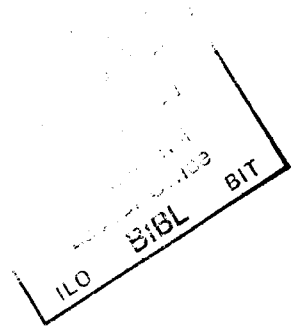
SUPPLEMENT 3

Vol. LXXIV, 1991



Series B

**Report of the Commission of Inquiry appointed under article 26
of the Constitution of the International Labour Organisation
to examine the observance by Romania of the Discrimination
(Employment and Occupation) Convention, 1958 (No. 111)**



Copyright © International Labour Organisation 1991

The material in this publication may be reproduced without permission, but the source should be quoted as ILO, *Official Bulletin*.

1991 price:

Annual subscription: 120 Swiss francs

Price per number: 23 Swiss francs

ISSN 0378-5882 (Series A)

ISSN 0378-5890 (Series B)

The designations employed in the *Official Bulletin*, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

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

Changes of address, orders, renewals and advertising correspondence should be addressed to: ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland.

Changes of address, indicating both the old and the new address, should be sent at least six weeks in advance. If possible kindly enclose a recent mailing label. Claims for undelivered copies must be made immediately on receipt of the following issue.

OFFICIAL BULLETIN

SUPPLEMENT 3

Vol. LXXIV

1991

Series B

REPORT OF THE COMMISSION OF INQUIRY APPOINTED UNDER ARTICLE 26
OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION
TO EXAMINE THE OBSERVANCE BY ROMANIA OF THE DISCRIMINATION
(EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
TITLE I: <u>PRELIMINARY QUESTIONS</u>	1-99	1
CHAPTER 1: <u>FILING OF THE COMPLAINT AND ESTABLISHMENT OF THE COMMISSION</u>	1-8	3
Filing of the complaint	1	3
Provisions of the Constitution of the International Labour Office concerning complaints respecting the application of ratified Conventions	2-3	4
Measures taken by the Governing Body following the filing of the complaint	4-7	6
Composition of the Commission	8	9
CHAPTER 2: <u>PREVIOUS EXAMINATION OF THE SITUATION BY THE SUPERVISORY BODIES OF THE INTERNATIONAL LABOUR ORGANISATION</u>	9-17	10

	<u>Paragraphs</u>	<u>Page</u>
CHAPTER 3: <u>THE REQUIREMENTS OF THE DISCRIMINATION</u> <u>(ENVIRONMENT AND OCCUPATION)</u> <u>CONVENTION, 1958 (NO. 111)</u>	18-49	13
Article 1, paragraph 1, of the Convention (definition)	22	14
Concept of discrimination	23-24	14
Grounds of discrimination	25-27	15
National extraction	28-38	16
Political opinion	39	20
Social origin	40	21
Article 1, paragraph 3 (access to training, employment and occupation, conditions of work)	41-42	21
Article 2 (formulation and application of an equal opportunity and treatment policy	43-45	23
Article 3 (measures to ensure the application of a national equality of opportunity and treatment policy	46	24
Repeal of provisions or amendment of practices inconsistent with a national policy of equality	47	25
Application of the principle of the Convention to sectors subjected to the direct control of the authorities	48	25
Collaboration of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and application of the national policy	49	25
CHAPTER 4: <u>PROCEDURE FOLLOWED BY THE COMMISSION</u> ..	50-99	27
<u>First Session of the Commission</u>	50-62	27
<u>Communications received by the Commission</u> <u>following its First Session</u>	63-79	30
Communications from member States under article 27 of the Constitution	63-67	30

	<u>Paragraphs</u>	<u>Page</u>
Communication of information by international organisations	68-71	32
Information communicated by non-governmental organisations	72-74	32
Communications with the Government of Romania and with the complainants	75-79	33
<u>Second Session of the Commission</u>	80-87	34
Communication of additional information	86-87	35
<u>Third Session of the Commission</u>	88-98	36
Hearing of witnesses	89-91	36
On-the-spot visits	92-98	37
<u>Fourth Session of the Commission</u>	99	38
 TITLE II: <u>NATIONAL POLICY IN RESPECT OF EQUALITY OF OPPORTUNITY AND TREATMENT PRIOR TO THE FILING OF THE COMPLAINT (26 JUNE 1989)</u>	 100-431	 39
 CHAPTER 5: <u>LEGAL AND CONCEPTUAL FRAMEWORK OF THE NATIONAL POLICY ON EQUALITY</u>	 102-132	 41
<u>Equality before the law</u>	103-115	41
General provisions applicable to employment and occupation	104-107	41
Provisions in respect of education and training	108-112	43
Provisions on employment	113-114	45
Specific provisions on the protection of intellectual rights	115	46
<u>Equality of opportunity and treatment of the members of national minorities</u>	116-132	46
Legal Statute of Nationalities	117-125	47
Provisions on education and training	126-129	50

	<u>Paragraphs</u>	<u>Page</u>
Participation in decisions concerning employment and occupation	130-131	52
Provisions concerning the administration of justice	132	53
CHAPTER 6: <u>EXAMINATION OF THE SITUATION OF THE</u> <u>MEMBERS OF MINORITY GROUPS IN ROMANIA</u> <u>IN THE FRAMEWORK OF THE NATIONAL</u> <u>POLICY ON EQUALITY</u>	133-185	54
<u>Demographic assessment of the minorities</u>	137-148	55
<u>Numerical size and geographical distribution</u> <u>of the minorities</u>	149-177	61
Magyars, Germans and Roma	150-161	63
(a) Magyars	150-156	63
(b) Germans	157-158	66
(c) Gypsies or Roma	159-161	68
Ukrainians, Serbs, Croats and Slovenes, Russians, Turks and Tatars, Slovaks, Czechs and Bulgarians, Greeks, Poles, Armenians and Jews	162-174	70
(a) Ukrainians	163	70
(b) Serbs, Croats and Slovenes	164	70
(c) Russians	165	70
(d) Turks and Tatars	166	71
(e) Slovaks and Czechs	167	72
(f) Bulgarians	168	72
(g) Greeks	169-170	72
(h) Poles	171	73
(i) Armenians	172	75
(j) Jews	173-174	75

	<u>Paragraphs</u>	<u>Page</u>
Other minorities and minority groups within minorities	175-177	76
<u>The policy followed as regards minorities</u>	178-185	76
 CHAPTER 7: <u>EDUCATION AND TRAINING</u>	 186-233	 81
<u>Examination of the legislative and statutory provisions in force at the time of the filing of the complaint</u>	187-193	81
Methods of access to higher education	188-190	81
Education in the languages of national minorities	191-193	82
<u>Allegations submitted by the complainants</u>	194-198	83
<u>Other information</u>	199-209	85
Communication of information by governments under article 27 of the Constitution	199	85
Communication of information by international organisations at the request of the Commission	200	85
Information communicated by non-governmental organisations at the request of the Commission	201-209	86
<u>Observations of the Government of Romania</u>	210-214	90
Observations of the Government of the Socialist Republic of Romania communicated at the request of the Director-General of the International Labour Office under article 26 of the Constitution of the International Labour Organisation	210-213	90
Observations of the Government of Romania communicated at the request of the Commission	214	92
<u>Examination of the facts and conclusions of the Commission</u>	215-233	92

	<u>Paragraphs</u>	<u>Page</u>
CHAPTER 8: <u>ACCESS TO EMPLOYMENT</u>	234-285	101
<u>Review of legislative and statutory provisions in force at the time when the complaint was filed</u>	235-243	101
General obligation to work	235	101
Measures to keep workers in the enterprises	236-237	102
Allocation to employment	238-241	103
Other measures	242-243	104
<u>Allegations submitted by the complainants</u>	244-246	104
<u>Other information</u>	247-250	105
Information communicated by international organisations at the request of the Commission	247	105
Information communicated by non-governmental organisations at the request of the Commission	248-250	106
<u>Observations of the Government of Romania</u>	251-254	107
Observations of the Government of the Socialist Republic of Romania in response to the request of the Director-General of the International Labour Office under article 26 of the Constitution of the International Labour Organisation	251-252	107
Observations of the Government of Romania communicated at the request of the Commission	253-254	108
<u>Examination of the facts and conclusions of the Commission</u>	255-285	109
CHAPTER 9: <u>GENERAL CONDITIONS OF WORK, WAGES, BONUSES AND LEAVE</u>	286-322	120
<u>Examination of the provisions in force at the time of the filing of the complaint</u>	287-298	120
Provisions regarding remuneration	287-295	120

	<u>Paragraphs</u>	<u>Page</u>
Deductions from wages	296-297	123
Rest days and leave	298	123
<u>Allegations submitted by the complainants</u>	299-308	124
Payment of wages and bonuses	299-307	124
Leave and public holidays	308	126
<u>Other information</u>	309	126
Information communicated by non-governmental organisations at the request of the Commission	309	126
<u>Observations of the Government of Romania</u>	310-311	127
Observations of the Government of the Socialist Republic of Romania communicated at the request of the Director-General of the International Labour Office under article 26 of the Constitution of the International Labour Organisation.....	310	127
Observations of the Government of Romania communicated at the request of the Commission	311	127
<u>Examination of the facts and conclusions of the Commission</u>	312-322	128
 CHAPTER 10: <u>PROMOTION, DOWNGRADING AND TRANSFERS</u>	 323-347	 132
<u>Recapitulation of the provisions in force at the time of the filing of the complaint</u> ..	 324-326	 132
Promotion	324	132
Downgrading	325	132
Transfer	326	133
<u>Allegations submitted by the complainants</u> ...	327-332	133
<u>Observations of the Government of Romania</u> ...	333	134
<u>Observations and conclusions of the Commission</u>	334-347	134

	<u>Paragraphs</u>	<u>Page</u>
CHAPTER 11: <u>DISMISSAL AND JOB SECURITY</u>	348-377	140
<u>Review of the legislative and statutory provisions in force at the time when the complaint was filed</u>	349-357	140
Dismissal	349-357	140
<u>Allegations submitted by the complainants</u> ...	358-365	142
<u>Other information</u>	366-369	144
Information communicated by governments to the Commission under article 27 of the Constitution of the International Labour Organisation	366	144
Information communicated by international organisations at the request of the Commission	367	145
Information communicated by non-governemental organisations at the request of the Commission	368-369	145
<u>Observations of the Government of Romania</u> ...	370-371	146
Observations of the Government of the Socialist Republic of Romania communicated at the request of the Director-General of the International Labour Office under article 26 of the Constitution of the International Labour Organisation	370	146
Observations of the Government of Romania communicated at the request of the Commission	371	147
<u>Examination of the facts and conclusions of the Commission</u>	372-377	147
CHAPTER 12: <u>RULE OF LAW AND APPEAL PROCEDURES</u> ...	378-396	150
<u>Review of the provisions in force at the time of the filing of the complaint</u>	379-384	150
<u>Examination of the facts and conclusions of the Commission</u>	385-396	151

	<u>Paragraphs</u>	<u>Page</u>
CHAPTER 13: <u>EFFECTS OF THE SYSTEMATISATION POLICY</u>	397-431	156
<u>Presentation of the legal framework and evolution of the systematisation programme</u> ...	398-409	156
<u>Allegations submitted by the complainants</u>	410-411	159
<u>Observations of the Government of Romania</u>	412-413	160
Observations of the Government of the Socialist Republic of Romania communicated at the request of the Director-General of the International Labour Office under article 26 of the Constitution of the International Labour Organisation	412	160
Observations of the Government of Romania communicated at the request of the Commission	413	160
<u>Examination of the facts and conclusions of the Commission</u>	414-431	160
Rural systematisation	414-417	160
Urban systematisation	418-421	162
Effects of systematisation	422-431	163
TITLE III: <u>NATIONAL POLICY IN RESPECT OF EQUALITY OF OPPORTUNITY AND TREATMENT SINCE THE FILING OF THE COMPLAINT (26 JUNE 1989)</u>	432-554	167
CHAPTER 14: <u>ADOPTION OF NEW LEGISLATION, REPEAL OF LEGISLATIVE PROVISIONS AND MODIFICATION OF ADMINISTRATIVE PRACTICES</u>	435-470	169
<u>Repeal or modification of legislative or statutory provisions</u>	436-453	169
General obligation to work	438-439	170
Education and training	440	170
Assignment to specific employment	441	170

	<u>Paragraphs</u>	<u>Page</u>
Provisions allowing discrimination on grounds of political opinion or social origin	442-444	171
Wages	445-446	172
Promotion	447-448	173
Appeals	449-450	173
Systematisation policy	451	174
Other measures	452-453	174
<u>Modification of discriminatory administrative practices</u>	454-470	175
Dismissals and reprisals	457-466	176
Calls for denunciations	467	179
Threats	468-470	179
CHAPTER 15: <u>REPARATIONS</u>	471-506	181
<u>Amnesty measures</u>	473	181
<u>Activities of the Provisional Council of National Unity Committee</u>	474-477	182
<u>Legislative Decree No. 118 of 30th March 1990</u>	478-496	183
Scope	479-482	183
Exclusions	483-484	184
Nature of the situation and means of proof .	485-486	184
Nature and scope of reparations	487-491	185
Committee composition and procedure	492	186
County Committees	493	186
National Committee	494	186
Implementation of decisions	495-496	187
<u>Measures enacted in higher education</u>	497-498	187

	<u>Paragraphs</u>	<u>Page</u>
<u>Action taken in favour of members of national minorities</u>	499	188
<u>Special cases brought to the notice of the Commission</u>	500-506	188
CHAPTER 16: <u>EQUAL OPPORTUNITY AND TREATMENT IN RESPECT OF MEMBERS OF MINORITY GROUPS</u>	507-554	191
<u>General measures</u>	511-517	192
<u>Measures taken in the sphere of education and training for members of national minorities</u> ..	518-538	195
Reactions to the adoption of these measures	529-530	198
Application of Decision No. 521	531-538	198
<u>Measures adopted in respect of employment</u>	539-554	200
TITLE IV: <u>CONCLUSIONS AND RECOMMENDATIONS</u>	555-617	207
CHAPTER 17: <u>GENERAL CONCLUSIONS</u>	555-615	209
Preliminary considerations	556-562	209
Presentation of witnesses by the parties	563-564	211
Position of the Government of Romania	565-571	211
Mandate of the Commission	572-573	213
Government obligations	574-579	214
Discrimination based on political opinion and social origin	580-585	216
Discrimination based on religion	586	218
Discrimination based on national extraction and race	587-603	218
Situation of persons belonging to minorities up to December 1989	587-594	218
Germans	588	218

	<u>Paragraphs</u>	<u>Page</u>
Magyars	589-591	219
Roma	592-593	219
Other minorities	594	220
Situation of minorities since December 1989	595-603	220
Germans	596	220
Magyars	597-599	220
Roma	600-601	221
Other minorities	602-603	222
General context of equality	604	222
The rule of law	605-607	222
Development of a climate of mutual tolerance .	608-610	224
Policies to promote equality of opportunity and treatment	611-615	224
CHAPTER 18: <u>RECOMMENDATIONS</u>	616-617	226

APPENDICES

APPENDIX I:	Observations of the Romanian Government in response to the letter of the Director-General of the International Labour Office dated 20 July 1989	231
APPENDIX II:	Observation of the Committee of Experts on the Application of Conventions and Recommendations concerning the observance by Romania of Convention No. 111 (International Labour Conference, 76th Session, 1989, Report III (Part 4A))	243
APPENDIX III:	Text of the substantive provisions of the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958	250
APPENDIX IV:	Rules for the hearing of witnesses	256
APPENDIX V:	Index of legislation cited in the report	258

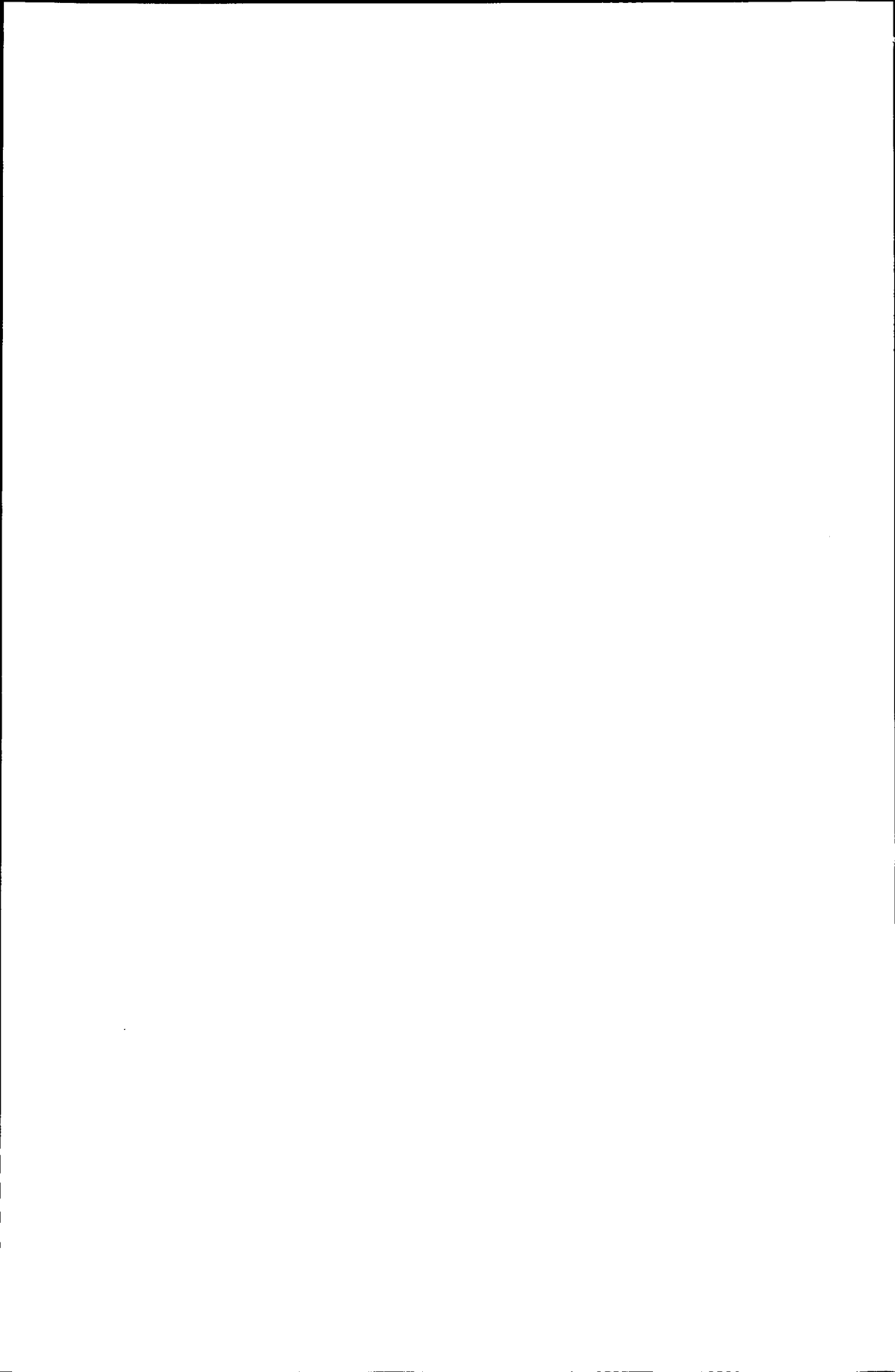
TABLES AND MAPS

TABLE I:	The minorities in Romania (1956-77)	58
TABLE II:	Comparison of categories of data concerning minorities presented in the censuses of 1956, 1966 and 1977	60
TABLE III:	Evolution of the Magyar population from 1966 to 1977 in the districts where it exceeded 30 per cent of the total population	64
TABLE IV:	Evolution of the Magyar population from 1966 to 1977 in the municipalities, towns and communes where it exceeded 30 per cent of the total population	65
TABLE V:	Evolution of the Magyar population from 1966 to 1977 in the rural communes	66
TABLE VI:	Evolution of the number of Germans from 1966 to 1977 by department	67
TABLE VII:	Evolution of the number of Germans from 1966 to 1977 by municipalities and towns	67
TABLE VIII:	Electoral results and census results concerning the Greek minority	74
TABLE IX:	Changes in the number of teaching staff at Babes-Bolyai University of Cluj by nationality	87
TABLE X:	Number and proportion of Magyar pupils educated in Hungarian and Romanian (primary school and gymnasium)	88
TABLE XI:	Synopsis of the situation of teaching in the languages of nationalities existing in Romania for the school year 1988-89	91
TABLE XII:	Number of students in educational establishments	96
TABLE XIII:	Number of students in higher education	97
TABLE XIV:	Number of graduates from the Institute of Medicine and Pharmaceutical Studies of Tirgu-Mures, by nationality (in percentages)	98

	<u>Page</u>
TABLE XV: Results obtained by candidates presented by national minorities in the elections for the Assembly of Deputies	194
Map: Romania: Administrative districts	62

TITLE I

PRELIMINARY QUESTIONS



CHAPTER 1

FILING OF THE COMPLAINT AND ESTABLISHMENT
OF THE COMMISSION

Filing of the complaint

1. On 27 June 1989 the Director-General of the ILO received a communication dated 26 June 1989 in which Messrs. N. Adiko, J. Baker, M. Bonmati, L. Cal, F. Chiluba, J.J. Delpino, Mrs. R. Dreifuss, Messrs. Y. Maruyama, R. Mercier, J. Morton, B. Mourgues, G. Muhr, J. Svenningsen, Workers' delegates respectively of Côte d'Ivoire, United States, Spain, Italy, Zambia, Venezuela, Switzerland, Japan, Canada, United Kingdom, France, Federal Republic of Germany and Denmark, to the 76th Session of the International Labour Conference, stated that they were filing a complaint against the Government of Romania under article 26 of the Constitution of the International Labour Organisation, in the following terms:

The undersigned Workers' delegates to the 76th Session (1989) of the International Labour Conference file with the International Labour Office, under the provisions of article 26 of the Constitution of the International Labour Organisation, a complaint against the Government of Romania for non-observance of Convention No. 111.

The complaint is based upon the following facts:

1. A significant minority of Romanian citizens of Hungarian origin (more than 2 million persons, or 9.5 per cent of the population) are subjected to particular discrimination in the political, cultural, social and employment spheres.

2. Members of ethnic minorities, in particular the Hungarian minority, are currently being forcibly dispersed from their places of birth and assigned by the authorities to employment not of their own choosing. Population transfers are carried out as a rule without previous notice and without informing those concerned where they are being sent. Persons of Hungarian origin are barred from a number of cities.

3. The programme of rural systematisation gives rise to considerable damage in cultural as well as social terms; villages are destroyed only to be replaced by agro-industrial centres; Transylvania has been particularly affected by this process. Citizens are forced to destroy their own houses and are resettled elsewhere with their families in crowded, low-quality buildings.

4. Restrictions are deliberately imposed in the field of Hungarian language education; access to higher education and training is restricted. The prohibition of the Hungarian

language in public life goes hand in hand with the gradual elimination of Hungarian cultural institutions.

5. Youth of the Hungarian ethnic minority as well as those of other minorities (Germans, South Slavs, Slovaks, Ukrainians, Jews and Gypsies) are discriminated against in education, training and employment. Young people who request to leave the country are conscripted into the army and sent to unhealthy forced labour camps.

6. The Hungarian minority, among which there are more than 300,000 unemployed, is affected by suppressions of jobs or whole enterprises, and restrictions on employment through the use of a numerus clausus. Moreover, and as a result of economic difficulties, wages are paid only in part, and Hungarian nationals do not benefit from special premiums paid by way of compensation in enterprises.

In view of the foregoing, the undersigned Workers' delegates to the 76th Session of the International Labour Conference file, under article 26 of the Constitution of the ILO, a complaint with the International Labour Office and request the appointment of a Commission of Inquiry in order to ensure the effective observance by the Government of Romania of Convention No. 111, which it has ratified; They reserve the right to supply at a later stage further elements in support of this request.

Provisions of the Constitution of the
International Labour Office concerning
complaints respecting the application
of ratified Conventions

2. Article 26 of the Constitution of the International Labour Organisation which is mentioned by the complainants in their communication, reads as follows:

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 is necessary to communicate the complaint of 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.

3. The following articles of the Constitution apply to the subsequent stages of the procedure which may be initiated on the basis of article 26:

Article 27

The Members agree that, in the event of the reference of the 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.

.....