

The Committee on Freedom of Association: Its impact over 50 years*

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INTRODUCTION

Since the foundation of the International Labour Organization (ILO) in 1919, international labour standards have always been its fundamental means of action for the promotion of social justice. The objective pursued was and remains the general improvement in the conditions of human beings at work through the adoption of standard-setting instruments. This systematic use of standards to protect human rights at work, which is characteristic of the ILO, has also broadly inspired other international organizations since the Second World War.

However, the value and significance of international labour standards depends, as with all other standards, on their interpretation and practical impact. From the very beginning, the ILO's concern has been to ensure that the standards adopted are given effect in practice. This desire for their practical implementation has progressively led to the emergence of various supervisory mechanisms designed to monitor, following their adoption by the International Labour Conference and ratification by member States, the effect given in practice to Conventions and Recommendations.

In so doing, the ILO has been a pioneer at the international level on two fronts.¹ In the first place, it broke new ground in making use of standard-setting instruments to improve social conditions, particularly since these instruments are formulated by a tripartite assembly bringing together, side by side and on an equal footing, representatives of governments and delegates of employers and workers. Secondly, the ILO acted as a precursor in creating and developing in-depth supervisory machinery with the objective of giving effect to the international labour Conventions and Recommendations adopted by this tripartite assembly.

In general terms, the ILO's supervisory mechanisms developed gradually on the basis of the provisions contained in the Constitution and in line with the functions assigned to them by the International Labour Conference and the Governing Body of the

¹ Wilfred Jenks, *Social Justice in the Law of Nations : The ILO Impact after 50 years*, University Press, London, 1970.

International Labour Office. In the field of freedom of association, as in the other areas covered by international labour standards, regular supervision is carried out by two bodies, namely the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards of the International Labour Conference.²

The Committee of Experts was created in 1926 by the International Labour Conference. It held its first session in 1927 to examine the reports which have to be submitted periodically by governments in accordance with articles 19, 22 and 35 of the Constitution of the ILO. For this purpose, it is composed of 20 independent legal experts who meet once a year in Geneva. By virtue of its mandate, the principal function of the Committee of Experts consists of indicating to which extent the situation in each of the member States is in conformity with the ratified international labour Conventions. The Conference Committee on the Application of Standards, a tripartite body set up at each session of the International Labour Conference, refers to the annual report of the Committee of Experts and invites certain governments to provide specific information on the discrepancies noted by the Committee of Experts and on the measures taken or envisaged in order to eliminate the said discrepancies. In this way, the supervision carried out initially by legal experts is taken up by the Conference Committee on the Application of Standards, in a direct dialogue with governments, employers and workers. Where appropriate, this dialogue can mobilize international public opinion.

Without in any way wishing to minimize the impact of the ILO's regular supervisory machinery, this publication focuses principally on the special supervisory procedure for freedom of association, and in particular on the Committee on Freedom of Association. In 1950, the ILO set up a procedure in parallel to its regular supervisory machinery, which was rightly qualified in some quarters as "revolutionary",³ with a view to strengthening its supervision of the application of international labour standards. The Committee on Freedom of Association, a tripartite body, was

² For a description of the operation of these two Committees, see the publication by the International Labour Standards Department, *Handbook of procedures relating to international labour Conventions and Recommendations*, ILO, Geneva, 1998.

³ Nicolas Valticos, "Les méthodes de la protection internationale de la liberté syndicale", in *Recueil des cours*, Académie de droit international, Vol. I, 1975, Leiden, A.W. Sijthoff, p. 85.

established in 1951 at the initiative of the Governing Body and has developed continuously over the years. Its procedure permits the examination of allegations concerning violations of freedom of association, which are filed by workers' or employers' organizations, without the need for the consent of the government concerned.

On the occasion of the 50th anniversary of the Committee on Freedom of Association of the Governing Body of the ILO, this volume on the Committee's impact proposes to demonstrate, based on a selection of examples from the past 25 years, the manner in which this body carries out its supervisory role. The publication endeavours to show the Committee's influence on the effect that is given to ILO standards and principles in the field of freedom of association.⁴ To this effect, a first section is devoted to the historical background and functions of this special supervisory mechanism. A second and more empirical section then endeavours to assess the impact of this procedure through an analysis of the cases of progress which have been noted over the past quarter of a century, with a view to identifying, where possible, a number of lessons for the future.⁵

⁴ A first general study in this field concerning all the standards and procedures of the ILO, and not only those relating to freedom of association, was published in 1976 by the International Labour Office. See ILO, *The impact of international labour Conventions and Recommendations*, Geneva, 1977.

⁵ This publication therefore also responds to the wishes expressed by the Director-General of the ILO, Juan Somavia, who called for the reports of the supervisory bodies to also review the status of the standards situation in general by region or by subject area. It is therefore hoped that this review will shed greater light on success stories and genuine efforts that are made in the various regions of the world. See ILO, *Decent work*, Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999, p. 20.

PART I

**The Committee on Freedom
of Association:
Creation and functioning**

Historical background

The principle of freedom of association is set out in the Preamble to the Constitution, as adopted in 1919. This text identifies this principle as one of the essential means of preserving lasting peace in the world. It was forcibly re-emphasized in the Declaration of Philadelphia concerning the aims and purposes of the International Labour Organization, adopted on 10 May 1944 and annexed to the Constitution in 1946, which identifies freedom of association as being essential to sustained progress. Under the terms of these constitutional texts, while freedom of association is essential for lasting universal peace and sustained progress, it is also a fundamental requirement for the ILO itself in view of its tripartite nature. By guaranteeing the representation of workers and employers, alongside governments, the principle of freedom of association constitutes a guarantee for the good functioning of the ILO.

This fundamental principle nevertheless had to await the end of the Second World War, and more precisely 1948, to be enshrined through the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by the 40 States which then formed the membership of the ILO. The following year saw the adoption of a second basic instrument concerning freedom of association, namely the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The principle of freedom of association is also set forth in the Universal Declaration of Human Rights of 1948. It was then taken up by other international organizations and is now enshrined in all the major human rights instruments.¹

After the adoption of Convention No. 87, the International Labour Conference then adopted a resolution at its 31st Session in

¹ See, among others, the Universal Declaration of Human Rights, 1948, articles 20 and 23; the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted in 1965 and came into force in 1969, in article 5(e)(ii); the International Covenant on Economic, Social and Cultural Rights, which was adopted in 1966 and came into force in 1976, in article 8; and the International Covenant on Civil and Political Rights, which was adopted in 1966 and came into force in 1976, in article 22, para. 1. For a guide containing these texts, see United Nations, *Human rights: A compilation of international instruments: Volume I (First and Second Parts): Universal instruments*, New York and Geneva, 1994.

1948 in which it invited the Governing Body to engage in consultations with the United Nations with a view to improving existing international procedures to safeguard freedom of association.

It rapidly became apparent to the Governing Body of the ILO that the provisions of the Constitution relating to annual reports, representations and complaints (articles 24-34) only concerned ratified Conventions and that, to really safeguard freedom of association and its application in practice, it would be necessary to develop an additional mechanism which would also cover situations in which the relevant Conventions had not been ratified. This additional body would bear the name of the Fact-Finding and Conciliation Commission on Freedom of Association and would be entrusted with conducting inquiries, with authority and impartiality, on issues of fact raised in complaints submitted directly to the ILO or referred to it for examination by the Economic and Social Council of the United Nations (ECOSOC).

The very broad consensus on the importance of freedom of association, the adoption of the Declaration of Philadelphia and of Conventions Nos. 87 and 98, as well as the tripartite nature and functioning of the ILO's plenary bodies, actively contributed at that time to the almost unanimous acceptance by the International Labour Conference of the establishment of the Fact-Finding and Conciliation Commission.

The Fact-Finding and Conciliation Commission on Freedom of Association was finally established in 1950, following an agreement between ECOSOC and the ILO. As its name indicates, its role consists of undertaking investigations of situations referred to it for examination. It can also, in agreement with the government concerned, examine a situation with a view to resolving difficulties by agreement. A case may be submitted to the Commission with the prior consent of the government concerned.² However, consent is not required if the country in question has ratified the relevant Conventions on freedom of association.

The Commission can also examine allegations concerning violations of freedom of association against States which are not Members of the ILO, but which are members of the United

² Nicolas Valticos, "La Commission d'investigation et de conciliation en matière de liberté syndicale et le mécanisme de protection internationale des droits syndicaux", in *Annuaire français de droit international*, Centre national de la recherche scientifique, Paris, 1967, pp. 445-468.

Nations. In such cases, ECOSOC is responsible for deciding to refer the matter to the Fact-Finding and Conciliation Commission.

The panels of the Commission entrusted with examining a specific case are composed of three independent experts, appointed by the Governing Body at the proposal of the Director-General of the ILO. It was set in motion for the first time in 1964, a little over ten years after its establishment, in a case concerning Japan.³ It subsequently dealt with cases concerning Greece (1965-66),⁴ Lesotho (1973-75), Chile (1974-75),⁵ United States/Puerto Rico (1978-81)⁶ and finally a case concerning South Africa (1991-92).⁷ In total, the Commission has examined six cases over a period of 50 years.

The limited number of cases examined can be explained by the natural reticence of member States to give their consent to the examination of a case concerning them, particularly in the absence of a formal ratification of the Conventions on freedom of association. Nevertheless, once the procedure had been launched and tried out by Japan, the initial hesitations which had made the Commission inactive for many years partially disappeared. This is shown by the fact that the case of Japan had hardly been completed, when the case of Greece was opened with the acquiescence of the country, which had also ratified Conventions Nos. 87 and 98.

Nevertheless, aside from the usual reticence attributable to the establishment of new procedures, how can the underutilization of the Commission, which has only examined six cases over a period of 50 years, be explained? In the first place, violations of Conventions on freedom of association for countries which have ratified them have on numerous occasions been covered by the procedure set out in article 26 of the Constitution of the ILO, which provides for the possibility of establishing commissions of inquiry.⁸

³ ILO, *Official Bulletin*, Special Supplement, Vol. XLIX, No. 1, Jan. 1966.

⁴ ILO, *Official Bulletin*, Special Supplement, Vol. XLIX, No. 3, July 1966.

⁵ ILO, *The trade union situation in Chile*, Report of the Fact-Finding and Conciliation Commission on Freedom of Association, 1975; 197th Report of the Committee on Freedom of Association, Case No. 823, ILO, *Official Bulletin*, Vol. LXII, 1979, Series B, No. 3, paras. 362-432, and Annex, pp. 85-104.

⁶ ILO, *Official Bulletin*, Vol. LXI, 1978, Series B, No. 2, pp. 5-6, paras. 20-25; the report of the Commission was submitted to the Governing Body at its 218th Session, doc. GB.218/7/2.

⁷ ILO, *Official Bulletin*, Special Supplement, Vol. LXXV, 1992, Series B.

⁸ Bernard Gernigon, *La protection de la liberté syndicale par l'OIT: Une expérience de cinquante ans* (unpublished text).

The repeated use of this complaints procedure concerning the observance of a Convention does not require the prior consent of the State concerned.⁹ Furthermore, the important number of ratifications of the so-called basic Conventions on freedom of association explains the repeated recourse to article 26 and, as a result, the sparse use made of the Fact-Finding and Conciliation Commission. In more pragmatic terms, the high cost of establishing a Fact-Finding and Conciliation Commission also restricts the use of the procedure.

The Committee on Freedom of Association, for its part, was established in 1951 and is a tripartite body of the Governing Body of the ILO. It was initially set up to undertake a preliminary examination of allegations concerning violations of freedom of association. This examination was intended to determine whether the allegations in question merited further examination and, where appropriate, the referral of the case to the Fact-Finding and Conciliation Commission.

Since the latter body has been used very little for the reasons set out above, the Committee on Freedom of Association has not been confined to this role and rapidly came to examine the substance of complaints. Because, originally, it was only intended as a preliminary and internal stage in the functioning of the ILO, it was not designed on the model of the Fact-Finding and Conciliation Commission. It did not therefore require the prior consent of the State to examine allegations in the absence of the formal ratification of the Conventions on freedom of association.¹⁰ The Committee on Freedom of Association retained this feature, even when its role was adapted and it came to examine the merits

⁹ The complaints procedure concerning the application or observance of a Convention that has been ratified may be initiated by a member State against another member State on a Convention which both have ratified. It may also be initiated by the Governing Body, either of its own motion or on receipt of a complaint from a delegate to the International Labour Conference.

¹⁰ In Case No. 102 concerning the Union of South Africa, the Committee on Freedom of Association had to deal with the same constitutional objection that had been raised by that country against the establishment of the Fact-Finding and Conciliation Commission, and which had been rejected by a large majority. The Committee on Freedom of Association took up the essential points of the argument made at the International Labour Conference: while the objectives of the Organization cannot be imposed upon States which have not ratified Conventions, the attainment of these institutional objectives may be promoted by other means. This argument is also based on the Declaration of Philadelphia concerning the aims and purposes of the ILO (article 1), which includes freedom of association among the fundamental principles of the Organization, and on the Constitution of the ILO (article 1, para. 1), which places an obligation on all Members to comply with these principles.

of allegations. In practice, it became the main body responsible for examining complaints concerning freedom of association.¹¹ Up to now, it has examined a total of nearly 2,300 complaints.¹²

The tripartite composition of the Committee on Freedom of Association also derives from its origins. Intended to undertake the preliminary examination of cases, it had been considered that the tripartite composition would guarantee a better balance in the examination of complaints and, subsequently, broader acceptance of the Committee's recommendations. This balance continues to be reinforced by the Committee's practice that its recommendations are adopted by consensus.

Composition and procedure

The Committee is appointed by the Governing Body from among its members and is composed of nine regular members representing equally the Government, Employers' and Workers' groups of the Governing Body. It meets three times a year and, since 1978, has been chaired by an independent person, or in other words a person who is not a member of the Governing Body. It examines the cases which are referred to it, essentially on the basis of documentary evidence. Complaints are communicated to the government in question and are examined at the same time as the observations received in reply from the government. No representative or national of the State against which a complaint has been made, nor any person occupying an official position in the national organization of employers or workers which has made the complaint may participate in the Committee's deliberations, or even be present during the examination of the complaint in question.

The Committee ideally seeks to reach a unanimous decision and, up to the present, which is itself a remarkable fact, has succeeded in adopting all its recommendations by consensus.

¹¹ See Wilfred Jenks, "The international protection of freedom of association for trade union purposes", in *Recueil des cours de l'Académie de droit international*, Leiden, A.W. Sijthoff, 1955, pp. 7-115, and idem, "The international protection of trade union rights", in Eval Luard (ed.), *The international protection of human rights*, London, Thames and Hudson, 1967, pp. 210-247.

¹² With regard to the geographical distribution of the complaints examined by the Committee on Freedom of Association since 1952, around 44 per cent are from Central and South America, 25 per cent from Europe, 13 per cent from Africa, 12 per cent from Asia and 6 per cent from North America (see Appendices I and II).

This methodology adds to the weight of its decisions, while at the same time ensuring a judicious balance between the interests defended by the Government, Employer and Worker members, which subsequently helps to gain broad support within the Governing Body of the ILO.

On several occasions during the early years of its existence, following information supplied by the governments concerned or derived from another source, the Committee had been able to draw up a summary of the action taken in certain countries on its recommendations. With a view to reinforcing its procedure and evaluating cases of progress more effectively, the Committee considered during its November 1971 session that it would be opportune to take more systematic measures in this connection. As a result, as from 1972, in most cases in which it suggests that the Governing Body should make recommendations to a government, the Committee adds to its conclusions a paragraph proposing that the government concerned be invited to state, after a period that is reasonable in the circumstances of the case, what action it has been able to take on the recommendations made to it.

With the more general objective of improving supervision of freedom of association, the Committee also makes a distinction between cases which refer to ratified Conventions and those which do not. The objective of the whole procedure set up by the ILO remains the observance of freedom of association in both law and practice. This objective implies complementarity between the competence of the various supervisory mechanisms. In cases relating to countries which have ratified one or more of the Conventions on freedom of association, the examination of the action taken on the recommendations of the Governing Body and relating to the purely legislative aspects of a case is frequently referred to the Committee of Experts on the Application of Conventions and Recommendations. In cases where the country concerned has not ratified the Conventions, the case may be followed up periodically, with the Committee instructing the Director-General to remind the government concerned of the matter. The Committee may itself examine the situation at intervals which it deems appropriate.

Finally, and ostensibly distancing itself from an adversarial judicial procedure, the Committee has taken pains to emphasize that its function is to secure and promote the right of association of

workers and employers. This function does not therefore involve levelling charges at or condemning governments.

Competence

In a number of cases, the Committee has recalled the principles established as from its first report [para. 29] concerning the examination of complaints which are of a political nature. Even though cases may be political in origin or present certain political aspects, they should be examined by the Committee if they raise questions concerning the exercise of trade union rights. It is for the Committee to rule on this issue after examining all the available information, in the same way as it rules on the question of whether the issues raised in a complaint concern penal law or the exercise of trade union rights.

Similarly, the Committee is not bound by national definitions and it has full freedom to decide whether an organization may be deemed to be an employers' or workers' organization within the meaning of the ILO Constitution. It may also receive complaints from organizations which have been dissolved, are clandestine or which are in exile. By way of illustration, the Committee received and agreed to examine complaints from the General Union of Workers (UGT) in Spain under the Franco regime,¹³ Solidarnosc in Poland¹⁴ and, more recently, the Korean Confederation of Trade Unions (KCTU)¹⁵ and the Indonesian Serikat Buruh Sejahtera. (SBSI).¹⁶

The same objective of the protection of complainant organizations is found when the Committee receives a request from an occupational organization to withdraw a complaint. This request, while constituting a factor which must be taken into account, is not however in itself sufficient reason for the Committee to cease automatically to examine the complaint.¹⁷ Once again, it is the only judge of the reasons given by the organization, out of a concern to avoid situations in which the latter is acting under untoward

¹³ See below the cases of progress in the section on trade union rights and civic liberties.

¹⁴ See below in the second part of this publication, in the section on cases of progress following direct contacts missions.

¹⁵ Cases Nos. 1629 and 1865.

¹⁶ Case No. 1773.

¹⁷ On this point, see 12th Report, Case No. 66 (Greece), para. 157; and 34th Report, Case No. 130 (Switzerland), para. 24.

influence or pressure from the government. For example, in a recent case concerning Mexico,¹⁸ the Committee received a communication from the workers' organization expressing the wish to withdraw its complaint. The Committee reserved its position until it had been provided with further information concerning the reasons for the withdrawal, so that it could subsequently determine in accordance with its procedure whether the decision to withdraw the complaint had been taken in full independence by the complainant organization.

In contrast with many other international bodies, the competence of the Committee does not depend on the prior exhaustion of domestic remedies. The existence of a national appeals procedure nevertheless constitutes a factor that should be taken into account by the Committee, even though this consideration does not prevent the opening of a case before the Committee.¹⁹ It may, for example, suspend its examination of a case for a reasonable time, or in other words a period that does not appear to be a dilatory measure, while awaiting the national ruling. In such cases, this helps in gathering all the pertinent information and in collaborating with national judicial systems with a view to reaching a more enlightened decision. But the fact of taking into account national judicial procedures in certain cases has not had the effect of slowing down the Committee's own procedures. In practice, the average duration of the examination of a case by the Committee, from the date of the filing of the complaint to the adoption of the Committee's recommendations, is around ten months.²⁰

Finally, the Committee has developed broad competence on subjects relating to the protection of freedom of association. It has itself progressively defined what is meant by such protection and what it excludes, and has then followed the rules that it has developed. For instance, when the Committee has had to deal with precise and detailed allegations regarding draft legislation, it has taken the view that the fact that such allegations relate to a text that does not have the force of law should not in itself prevent it from

¹⁸ Case No. 2039.

¹⁹ For a practical guide on the supervisory machinery, and particularly on the filing of complaints and the procedure followed by the Committee on Freedom of Association, see David Tajzman and Karen Curtis, *Freedom of association: A user's guide*, ILO, Geneva, 2000.

²⁰ See Appendix III.

examining the merits of the allegations made. Indeed, the Committee has considered it desirable that, in such cases, the government should be made aware of the Committee's point of view so that it can make any necessary amendments to the draft text. **This latter consideration illustrates the constructive and non-repressive nature of the approach adopted by the Committee on Freedom of Association, which endeavours to assist States in their efforts to bring their national legislation into conformity with the principles of freedom of association. By being primarily responsible for fixing the limits of its competence, the Committee has allayed criticisms of underlying political motivation and has gradually raised itself to the rank of a mechanism which has been qualified as quasi-judicial.**

Examination by default

If a government does not provide its observations concerning the allegations made by the complainant which have been communicated to it, or the additional information requested from it by the Committee, an urgent appeal may be made to the government. In the event that the government does not respond following this urgent appeal, the Committee may then proceed to examine the complaint by default. In practice, however, the vast majority of governments provide their observations and the additional information requested.

On-the-spot missions

It is fairly frequent for ILO representatives to visit a country concerned by a complaint to obtain additional information on the issues covered by the complaint or to engage in direct discussions with the government and the other parties concerned. The direct contacts method, which was initially intended to permit a more detailed examination of the issues raised during the regular supervision of the application of Conventions, has therefore also been used in relation to the special procedures on freedom of association since 1971.

This method has since been used in nearly 50 countries,²¹ and the Committee on Freedom of Association has actively participated

Note ²¹ on page 16

in developing the applicable methods and rules.²² This method may be employed at various stages of the examination of a case, or when the final recommendations have been made, but it can only be used at the invitation or with the consent of the government concerned. The direct contacts method has also been used on many occasions before or instead of the procedure envisaged in article 26 of the Constitution, which provides for the matter to be referred by the Governing Body of the ILO to a commission of inquiry. This transformation of the procedure envisaged in article 26 into a direct contacts mission which collects additional information through dialogue with all the parties concerned, has been followed in cases involving, among others, Argentina, Bolivia, Côte d'Ivoire, Nicaragua, Uruguay and, more recently, in the cases concerning Colombia and Nigeria.

The traditional method of direct contacts has recently been supplemented by a new variant, with the creation of a high-level tripartite mission including employer, worker and government representatives. A mission of this type visited the Republic of Korea in 1998, with the consent of the Government, in the context of the examination of a case relating, among other things, to allegations of arrests and detentions of trade union leaders and workers, as well as the refusal to register new workers' organizations.

²¹ Up to now, over 80 direct contacts or similar missions have been carried out in the field of freedom of association by ILO officials or independent persons. Several cases of progress following the filing of a complaint with the Committee on Freedom of Association have been noted following such missions, and particularly in the following countries: Argentina (Case No. 1551), Australia (Case No. 1774), Bolivia (Case No. 814), Burkina Faso (Case No. 1266), Central African Republic (Case No. 1040), Costa Rica (Case No. 1483), Côte d'Ivoire (Case No. 1594), El Salvador (Case No. 1524), Estonia (Case No. 2011), Ethiopia (Case No. 887), Guatemala (Case No. 1970), Indonesia (Case No. 1773), Republic of Korea (Case No. 1865), Poland (Case No. 909), Romania (Case No. 1492), Swaziland (Cases Nos. 1884 and 2019), Tunisia (Case No. 899), Turkey (Cases Nos. 997, 999 and 1029) and Uruguay (Case No. 763). See in this regard, in the second part of this publication, developments concerning cases of progress following such missions.

²² For an overview of these rules, see 127th Report of the Committee on Freedom of Association, Official Bulletin, Supplement, Vol. LV, 1972, paras. 20-21; 164th Report of the Committee on Freedom of Association, Official Bulletin, Series B, Vol. LX, No. 2, para. 27; 193rd Report of the Committee on Freedom of Association, Official Bulletin, Series B, Vol. LXII, No. 1, 1979, paras. 26-29. See also the articles on this question by Nicolas Valticos, "Une nouvelle forme d'action internationale: Les contacts directs de l'OIT en matière d'application de conventions et de liberté syndicale", in *Annuaire français de droit international*, Centre national de la recherche scientifique, Vol. XXVII, 1981, pp. 477-489; and G. von Potobsky, "On-the-spot visits: An important cog in the ILO's supervisory machinery", in *International Labour Review*, Vol. 120, No. 5, 1981, pp. 581-596.

Hearing of the parties

Although the Committee generally examines allegations on the basis of documentary evidence, it may in appropriate instances, taking into account the circumstances of the case, hear the parties to obtain fuller information on the matter. Hearings are possible in cases where the statements of the parties are totally contradictory, so that an exchange of views can be held and the possibility of a solution to the problem assessed, or with a view to the conciliation of the parties on the basis of the principles of freedom of association, or again in cases where particular difficulties have arisen and the Committee considers it appropriate to discuss the matters directly with the government concerned.

PART II

**An analysis
of the Committee's impact
based on cases of progress**

Preliminary considerations

By focusing on its historical background and functioning, the first section of this volume has traced the principal parameters of the Committee on Freedom of Association's action. These parameters can now be used to explain the success achieved by the Committee since its creation. In the first place, these cases of success have their roots in the tripartite structure of the ILO and in its general mission to secure the effective implementation of international labour standards.

Secondly, the impact of the Committee can be measured in the reputation that it has developed over the years, a reputation which is in turn largely due to the development and reinforcement of this supervisory mechanism by procedural rules. **By framing its action within legal principles, the procedural rules developed protect the Committee from any appearance of arbitrariness which could otherwise result if the decision-making process were strictly political. In parallel with this procedure, the Committee has developed an important body of principles in the field of freedom of association.¹ In so doing, it has also developed a preventive function. States can at any time refer to the principles developed by the Committee on Freedom of Association with a view to amending or repealing a legislative provision or remedying a de facto situation which is contrary to those principles. This preventive function goes a long way to explaining the Committee's reputation and the impact of its recommendations.**

Finally, and this element should not be overlooked, the effectiveness of ILO action in the field of freedom of association, and more particularly that of the Committee on Freedom of Association, depends on a range of factors which escape any direct control, namely the type of problems experienced, balances of power, political regimes and the economic situation of the State concerned.

In practice, its impact can be appreciated on the basis of the cases of progress noted over the past 30 years, since these cases

¹ See ILO, Freedom of association, *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, Geneva, 1996.

have only been listed by the Committee in a systematic manner since 1971.² A case of progress means that, following the filing of a complaint with the Committee and its subsequent recommendations, a change has been made in the legislation or in practice in the country concerned with a view to bringing the law and practice, or where appropriate both, into greater conformity with the principles of freedom of association developed by the ILO.

The Committee on Freedom of Association has on many occasions contributed to the repeal or interruption of measures which jeopardized the free exercise of the right of association. It has accordingly been informed of the freeing of imprisoned trade unionists; measures such as the reinstatement of workers dismissed as a result of a collective labour dispute; the cessation of intervention by the Ministry of Labour in the internal affairs of a national trade union confederation; the granting of legal personality to trade union organizations or confederations; the adoption of new legislation envisaging the recognition of representative organizations for the purposes of collective bargaining; or the formulation, following a public inquiry, of a recommendation that amendments be adopted to grant public officials access to arbitration machinery. The second part of this volume is therefore devoted to a thematic analysis of the cases of progress noted by the Committee.

Over the past 30 years, the Committee on Freedom of Association has noted significant positive progress in relation to the right of association. Admittedly, this should not be allowed to detract from the persistence of serious difficulties in a number of countries in relation to the fundamental rights safeguarded by Conventions Nos. 87 and 98. However, if it were to be concluded that these problems are generalized or that the situation of freedom of association is deteriorating, this would overlook the fact that, since the strengthening of the procedure for following up the Committee's recommendations in 1971, the number of cases of progress noted has risen constantly.³ This increase has been noted since the 1970s. It continued during the 1980s and underwent a

² For a more general study of the influence of the ILO's machinery for the protection of trade union rights over the first 20 years of the existence of the Committee on Freedom of Association, see E.B. Hass, *Human rights and international action: The case of freedom of association*, Stanford (California), University Press, 1970; the approach adopted in this study is reviewed in *International Labour Review*, Vol. 105, Jan. 1972, Booknotes, pp. 88-90.

³ See Appendix 2 on the cases of progress of the Committee on Freedom of Association.

clear acceleration in the 1990s. Indeed, for the single year 1996, more cases of progress were noted than for the whole of the period between 1971 and 1977. The Committee also registered more than 20 cases of progress merely during the course of 1999 and 2000.

It is true that this improvement is also partly a result of the fact that governments appear to be more concerned to keep the Committee informed of the measures taken to give effect to its recommendations. Furthermore, they are finding it increasingly unacceptable that their failings and non-compliance with their international obligations are discussed in public, particularly at a time when new means of communication are making it possible for information to be disseminated more effectively than ever before. However, this increase also tends to show that, despite the persistence of problems in certain regions of the world, the impact of the Committee's recommendations is not only undeniable, but has continued to grow over recent decades. Indeed, it has to be acknowledged that a considerable number of issues relating to the observance of Conventions Nos. 87 and 98 which have been the subject of the Committee's recommendations for many years, have been or are in the process of being resolved.

Emphasis should also be placed on the fact that the Committee can only note cases of progress when the governments concerned or the complainants provide it with the relevant information. In addition, while certain cases of progress are sometimes of great significance, it should also be emphasized that the importance of the progress achieved varies from one case to another. The adoption of specific measures of application in a particular case does not necessarily signify the resolution of all the existing problems in each case.

When these cases of progress are analysed, firstly from a geographical point of view, it may be noted that, over a period of 25 years, over 60 countries on five continents have, at one time or another, taken measures following the recommendations of the Committee and have informed it of positive developments in the field of freedom of association. Among the cases noted up to 1999, some 37 per cent were from Latin America, 23 per cent from Europe, 17 per cent from Africa, 15 per cent from Asia, 5 per cent from North America and 3 per cent from Oceania.

But the Committee's impact cannot be measured only on the basis of the total number of cases of progress, based on gross figures

and percentages, such as those provided above. Clearly these figures alone merely provide a necessarily limited statistical and overall indication of the role played by the Committee on Freedom of Association. However, they have the merit of clearly emphasizing the progress achieved in the field of freedom of association in all the regions of the world.

Once the indicative nature of the figures is accepted, how can a causal relationship be established between the Committee's recommendations and the positive measures taken by a government in relation to freedom of association? In other terms, is a case of progress directly attributable to the action and recommendations of the Committee, or is it due to a simple coincidence or to other considerations by the government concerned?

In several cases, the causal relationship between the Committee's recommendations and the follow-up measures taken by governments is easily established. In some cases, governments even explicitly state that they took certain measures following the Committee's recommendations.

The causal relationship is nevertheless more difficult to establish in cases in which the Committee's recommendations have not had an immediate effect, since a complaint can be followed up by the Committee for several years. It is nevertheless possible to argue that certain of the measures adopted by a government have been taken as a result of the vigilance and persistence of the supervision carried out by the Committee over all those years.

Another indication of the effectiveness of the supervision carried out by the Committee on Freedom of Association is the withdrawal of complaints. In several cases, for example in Cases Nos. 1881 (Argentina), 1990 (Mexico) and 2026 (United States), following negotiations between the parties concerned, the complainant has informed the Committee that a satisfactory agreement has been reached. The mere fact of bringing the parties together in a logic of negotiation, even before the Committee issues formal recommendations, has offered them another mechanism for the peaceful resolution of the dispute. Although the Committee's recommendations are not imposed or binding in the positivist sense of the term, the logic of negotiation becomes in some way obligatory for the parties concerned. The procedural rules of the Committee require and provide a framework for a dialogue which, it would appear, was not, hitherto, seen as being necessary of its own accord.

Indeed, although the progress made in the field of freedom of association cannot all be directly attributed to the influence of the Committee, it is nevertheless reasonable to argue that States are not indifferent to the pressures of a supervisory body working in the framework of an international organization.

So what are the fundamental principles developed by the Committee in the field of freedom of association over recent years? How have they been applied in the various cases examined, and to what extent can a case be considered to be a case of progress? By way of a response to these questions, the principles and a selection of examples illustrating cases of progress are presented below in thematic groups. They have been selected out of a concern to represent cases of progress noted in the various regions of the world. However, they make no claim to being exhaustive.

Trade union rights and civil liberties

The Committee has developed a number of principles relating to trade union rights and civil liberties. For example, on many occasions, it has emphasized the close relationship between the existence of a free and independent trade union movement and respect for fundamental human rights [*Digest*, para. 35].⁴ This link was explicitly established as early as 1970 in the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session.

The Committee has also added that trade union rights, like other basic human rights, should be respected no matter what the level of development of the country concerned [*Digest*, para. 41]. It has also considered that “the rights of workers’ and employers’ organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected” [*Digest*, para. 47].

Undeniably, a country undermined by civil conflict cannot adequately ensure a climate that is conducive to freedom of asso-

⁴ All the information given below for which a reference is given in square brackets to the *Digest*, with one or more relevant paragraphs, invariably refer to the *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, op. cit., note 1 of Part II.

ciation and the Committee has often had to deal with complaints emanating from such contexts. In these cases, the observation of cases of progress can take longer, since they require deep-rooted political changes within the country. Nevertheless, through vigilant and continuous supervision, combined with the action of the regular supervisory machinery and other international bodies, the Committee on Freedom of Association has undoubtedly inspired and encouraged changes which occurred following evolution of a political nature in several countries.

In parallel, “although holders of trade union office do not, by virtue of their position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities” [*Digest*, para. 42]. More specifically, while persons holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [*Digest*, para. 83]. This latter principle, which encompasses the notion of anti-trade union discrimination, in more general terms protects trade unionists against all forms of harassment to which they may be subjected by reason of their membership or legitimate trade union activities.

The Committee has taken care to develop the relationship between the observance of trade union rights and the principles relating to the rule of law, particularly with regard to the administration of justice and the judicial guarantees that trade unionists should enjoy. In particular, it has emphasized the need for an independent judicial inquiry to be carefully carried out in the event of allegations of criminal acts by trade unionists, and in the event of “assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts” [*Digest*, para. 53].

Trade unionists, like anyone else, should benefit from normal judicial proceedings, which involve the right to be informed of the charges brought against them, the right to have adequate time for

the preparation of a full and complete defence and the right to communicate with the counsel of their own choosing [*Digest*, para. 102]. The Committee has also indicated that situations of impunity reinforce the climate of violence which is extremely damaging to the exercise of trade union rights [*Digest*, para. 55] and that “justice delayed is justice denied” [*Digest*, para. 56].

It has recalled, in cases involving arrest, detention or sentencing, that trade unionists also have the right to be presumed innocent until found guilty, and it has developed a certain reversal of the burden of proof by reaffirming that “it was incumbent upon the government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned” [*Digest*, para. 65].

Trade unionists must also enjoy the other rights which are mostly set out in the International Covenant on Civil and Political Rights. Clearly, these rights, such as the right of assembly and demonstration, as well as freedom of opinion and expression, may be subject to reasonable limitations imposed in a State which observes the rule of law.

However, even today, the Committee on Freedom of Association frequently has before it problems relating to the absence of respect for civil liberties. In cases of the most serious violations of these liberties, and particularly of trade union freedoms, it endeavours to obtain the release of imprisoned trade unionists. As in cases requiring major political changes in the States concerned, constant surveillance by the Committee, combined with that of other international human rights organizations, provides considerable support for persons who are in detention. Many cases of progress have been noted up to now in this way involving the release of trade unionists detained in a large number of countries.⁵

⁵ According to recent figures compiled by the Freedom of Association Branch, for the 1991-2001 period, nearly 2,000 trade unionists of 40 countries were released following the Committee's recommendations (this number does not, however, include the case of the Republic of Korea since, in this country alone, several thousands of trade unionists detained at different periods since 1991 have been released). In addition, according to a study carried out in 1982, only covering the period starting in 1978 up to the publication of the study, over 500 trade unionists had in practice been released following the intervention of the Committee. See A.J. Pouyat, “The ILO's freedom of association standards and machinery: A summing up”, in *International Labour Review*, Vol. 101, No. 3, 1982, pp. 299-300.

The most notable cases of progress concern situations of mass arrests under a system which, at the time that the complaint was examined by the Committee, had little inclination to respect civil liberties. Cases relating to Argentina, Bangladesh, Bolivia, Chile, El Salvador, Greece, Guatemala, Indonesia, Republic of Korea, Nicaragua, Paraguay, Poland, Portugal, Spain, Tunisia, Turkey and Uruguay have all raised during different periods of time problems of this nature. Nevertheless, waves of releases of prisoners noted as cases of progress by the Committee do not always mean the end of a political system which tends to violate civil liberties and trade union freedoms. In some cases, these truces are only short-lived and further waves of mass arrests follow.

To take a single example amongst this non-exhaustive list, the Committee dealt on several occasions between 1973 and 1976 with complaints against the Government of Spain.⁶ The Committee had deeply regretted the arrest and detention by the Franco authorities of trade union leaders and workers for trade union activities. It was only after the return of a democratic system that all the persons mentioned in the various cases were released after receiving pardons in a Decree of 1975. In this situation, the cases of progress noted by the Committee required a more radical change in the Spanish political system.

In certain cases, prisoners can be freed very rapidly, while in others the Committee has to persevere in making ever stronger recommendations before obtaining the release of trade unionists who have been imprisoned for several years. The release of prisoners can sometimes be accompanied by repressive measures, or may be conditional on their exile or house arrest. However, the Committee considers that the imposition of this type of sanction is unacceptable and contrary to the principles of freedom of association [*Digest*, paras. 122-128]. Certain trade unionists who have been freed are dismissed from their jobs, while others are acquitted and can also return to their jobs and once again carry out trade union activities.

In addition to obtaining the release of trade unionists who were imprisoned for trade union activities, the Committee therefore endeavours to ensure that they have the right in all

⁶ See Cases Nos. 658, 678, 679, 684, 697, 704, 722, 735, 780, 803 and 812.

circumstances to a fair and equitable trial. It ensures that trade unionists enjoy all judicial guarantees, thereby participating in the international movement for greater democratization of political systems and, in more general terms, the consolidation of the rule of law in all the regions of the world. Several cases of progress, in addition to the release of imprisoned persons, involve a reduction or cancellation of the sentences imposed on trade unionists, or indeed a decision duly handed down during the course of an independent judicial inquiry.

Several cases concerning the detention of trade union leaders who wished to obtain the official recognition or registration of their organization have come to a favourable conclusion with the release of the leaders concerned and the acquisition of legal personality to the trade union. In addition to the most famous case of Solidarnosc in Poland,⁷ the most significant cases concerned Côte d'Ivoire,⁸ Indonesia⁹ and the Republic of Korea.¹⁰

The communication of the judgements of the national judicial system means that the Committee continues to be regularly informed of the release of imprisoned trade unionists. By way of illustration, in February 1982 the Committee requested the Government of Brazil to communicate the text of the judgement of the military judicial authorities concerning five trade unionists.¹¹ In August 1984, the Government did indeed forward the complete text of the judgement acquitting the above trade unionists. It also confirmed that they were all free and carrying out normal trade union activities.

In a complaint concerning the Government of India relating to anti-trade union violence in tea and plywood estates, the Committee requested the Government to supply information on the outcome of the criminal case for assault brought against a trade

⁷ Case No. 909.

⁸ Case No. 1594.

⁹ Case No. 1773.

¹⁰ Case No. 1865.

¹¹ Case No. 1041.

union leader and eight workers.¹² In August and October 1993, the Government informed the Committee that all the persons concerned had been acquitted. Another case concerning the Government of India related to seven different trials concerning serious incidents which had occurred in 1988 in the State of Tripura, in which charges had been brought against trade unionists.¹³ The Committee examined this case on several occasions after 1989 and, after noting that the charges had been withdrawn, brought these cases to an end at its session in November 1995. It however noted that three other cases were still pending. In September 1996, the Government stated that the charges had been dropped in one case and that the trade unionists had been acquitted following trials in the other two.

In March 1998, the Committee requested the Government of Mauritius¹⁴ to indicate whether the prosecutions had in fact been carried out against 11 trade union leaders and, if so, to withdraw the charges. Two months later, the Government indicated that the Director of Public Prosecutions had decided not to prosecute the trade union leaders concerned.

The right not to be harassed by reason of trade union activities also extends to international trade unionists.¹⁵ In a case concerning Gabon,¹⁶ in May 1992 the Committee deeply regretted the arrest and detention of a trade unionist on mission who was endeavouring to obtain information on recent developments relating to freedom of association in the country. It also asked for an investigation to be undertaken. The Gabonese authorities in December 1992 stated that the incident was the result of an error by the police and that they had given instructions for the trade unionist to be freed and to be able to carry on his mission securely.

Finally, with regard to states of emergency, “the Committee has considered it necessary, when examining the various measures taken by the governments, including some against trade union organizations, to take account of such exceptional circumstances when

¹² Case No. 1428.

¹³ Case No. 1468.

¹⁴ Case No. 1940.

¹⁵ For additional developments, see below in the section on the right of workers’ and employers’ organizations to establish federations and confederations and to affiliate with international organizations of employers and workers.

¹⁶ Case No. 1599.

examining the merits of the allegations” [*Digest*, para. 197]. It has however emphasized, in cases where emergency measures are renewed year after year, that martial law is incompatible with the full exercise of trade union rights, thereby consolidating the principle that a climate of violence, pressure or threats is bound to be extremely damaging to the exercise of trade union rights. In general terms, cases of progress in these types of situations occur when the government provides information to the effect that the state of emergency was only of a temporary nature and the restrictions imposed on freedom of association are no longer applicable.

By way of illustration, the Committee examined a complaint on several occasions between 1977 and 1979 concerning the Government of Bangladesh,¹⁷ in which it regretted the restrictions on freedom of association placed on trade unions in the context of the general emergency measures. In a communication in 1979, the Government stated that the restrictions on freedom of association, strikes, meetings and processions had only been imposed temporarily in view of the emergency prevailing and that they had since been raised.

Without being exhaustive, these few examples clearly demonstrate the impact of the Committee on Freedom of Association in the field of trade union rights and civil liberties. In practice, the intervention and follow-up by the Committee have led not only to the release of imprisoned trade unionists, but also to their acquittal when they have been subjected to arbitrary trials or unreasonable charges, or a reduction of disproportionate sentences. In addition, in all circumstances, the Committee on Freedom of Association has verified that trade unionists and workers against whom charges have been brought have really benefited from an independent judicial inquiry and the accompanying judicial guarantees.

¹⁷ Case No. 861.

Right of workers and employers, without distinction whatsoever, to establish organizations

Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87),¹⁸ is designed to give expression to the principle of freedom to establish or join workers' or employers' organizations. Based on the examination of the cases which have been referred to it, the Committee on Freedom of Association has been able to develop this fundamental principle. This means essentially that freedom of association is recognized without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc., not only to workers in the private sector of the economy, but also to civil servants and public service employees in general [*Digest*, para. 205].

In addition to these distinctions, the Committee has refused distinctions based on occupational category in relation to freedom of association. In particular, it has reaffirmed on many occasions that "all public service employees (with the sole possible exception of the armed forces and the police, as indicated in Article 9 of Convention No. 87), should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members" [*Digest*, para. 206].

A large part of the cases of progress noted in this area relate to this distinction between workers in the private and public sectors. The Committee has therefore had on numerous occasions to reaffirm the right of state employees to establish organizations of their own choosing. In this connection, in November 1993, it requested the Government of Chile to adopt in the near future a Bill guaranteeing the right to organize of employees in the state administration.¹⁹ It also expressed the hope that the Bill would be based on the principles of freedom of association as developed by the ILO. In October 1994, the Government forwarded a copy of Act No. 19296 setting forth rules for the establishment of trade union organizations in the state administration.

Also in the context of workers in the public service, the Committee has been called upon to examine certain cases relating

¹⁸ Article 2 of Convention No. 87 reads as follows: "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."

¹⁹ Case No. 1710.

to the more specific situation of teaching personnel. In a case concerning Canada,²⁰ the Committee requested the Government in 1991 to repeal section 80 of the University Act, which excluded university faculty members from the ambit of the Industrial Relations Act. The Canadian Government informed the Committee in December 1992 that the section in question had been repealed by the University Amendment Act, 1992.

In a series of cases concerning Turkey, the Committee regretted in May 1991 the restriction on the right of organization and collective bargaining of teachers, as well as the arrest of teachers who were members of the trade union organization EGIT-SEN.²¹ In November 1991, the Government indicated its intention of institutionalizing trade union rights in accordance with ILO standards and of taking the necessary measures to guarantee that employees in the public sector enjoyed trade union rights. Two years later, Turkey ratified Convention No. 87 and the Labour Relations (Public Service) Convention, 1978 (No. 151), and informed the Committee in February 1993 that the provisions of these two Conventions had been incorporated into its domestic legislation. The Government also stated that the teachers in EGIT-SEN who had been imprisoned had been either acquitted or released.

In addition, in the Republic of Korea,²² the prohibition of the right to organize upon teachers was lifted in 1999, in conformity with the Committee's recommendations. This measure allowed for the registration of two organizations which previously could only function in illegality.

Furthermore, the Committee has refuted distinctions relating to civilian workers in the armed forces [*Digest*, paras. 223 and 224], agricultural workers [*Digest*, paras. 225 and 226], plantation workers [*Digest*, para. 227], employees of airlines [*Digest*, para. 228], hospital personnel [*Digest*, para. 229], managerial and supervisory staff relating to the establishment of their own organization [*Digest*, paras. 230 to 234], self-employed workers, temporary workers, workers

²⁰ Case No. 1547.

²¹ Cases Nos. 1577, 1582 and 1583.

²² Case No. 1865.

undergoing a period of work probation and concessionaires [*Digest*, paras. 235, 236, 237 and 239] and finally the increasingly numerous workers in export processing zones [*Digest*, para. 240].

Article 9 of Convention No. 87²³ is the only provision in the Convention explicitly authorizing exemptions from the principle of non-discrimination in the establishment of organizations and it only applies to members of the armed forces and the police. The Committee has nevertheless recalled, as the Committee of Experts on the Application of Conventions and Recommendations has done, that these exemptions from the general principle of non-discrimination must be defined in a restrictive manner. In cases of doubt as to the classification of workers, they should be considered as civilians [*Digest*, para. 222].

In this respect, the Committee decided, in a case involving Portugal,²⁴ that civilian workers in the manufacturing establishments of the armed forces should have the right to establish organizations of their own choosing in accordance with Convention No. 87. In September 1989, the Portuguese Government indicated that the matter had been resolved in favour of the Union of Workers in the Manufacturing Establishments of the Armed Forces and that the organization had been registered by the Ministry of Employment and Social Welfare in August 1989.

The cases of progress noted in the field of the right of workers and employers, without distinction whatsoever, to establish organizations demonstrate the impact of the Committee in relation to the scope of the right set out in Article 2 of Convention No. 87. It has clearly determined the categories of workers who should be able to benefit from protection of the right to organize, and has rejected differences of treatment made in several States in respect of workers in the public sector, as well as insisting on a restrictive interpretation of the exemption provided for in Article 9 of the Convention.

²³ Article 9, paragraph 1, of Convention No. 87 reads as follows: "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."

²⁴ Case No. 1279.

Right of workers and employers to establish organizations without previous authorization

The Committee on Freedom of Association has also frequently had occasion to examine matters relating to the previous authorization and registration of trade union organizations.²⁵ It has accorded its full attention to these two important issues, which can constitute major obstacles to the freedom to establish trade union organizations, thereby nullifying freedom of association. These two issues are also frequently intimately related, – to the point that one is often confused with the other – in the event of the conditions governing the registration of a trade union being tantamount to previous authorization by the government or administrative authorities. For this reason the issues of previous authorization and registration are covered together in this volume. Indeed:

... the principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization. Such authorization could concern the formation of the trade union organization itself, the need to obtain discretionary approval of the constitution or rules of the organization, or, again, authorization for taking steps prior to the establishment of the organization. This does not mean that the founders of an organization are freed from the duty of observing formalities concerning publicity or other similar formalities which may be prescribed by law. However, such requirements must not be such as to be equivalent in practice to previous authorization, or as to constitute such an obstacle to the establishment of an organization that they amount in practice to outright prohibition. Even in cases where registration is optional but where such registration confers on the organization the basic rights enabling it to “further and defend the interests of its members”, the fact that the authority competent to effect registration has discretionary power to refuse this formality is not very different from cases in which previous authorization is required [*Digest*, para. 244].

²⁵ The question of previous authorization is covered by Article 2 of Convention No. 87.

The Committee has invariably considered that the absence of recourse to a judicial authority against any refusal by a ministry to grant authorization to establish a trade union, or against any administrative decision concerning the registration of a trade union, violates the principles of freedom of association [*Digest*, paras. 246 and 264]. The availability of recourse to the courts constitutes a guarantee against decisions by the administrative authorities which are arbitrary, unfounded, unlawful or dilatory. Refusal to register an organization, for example on the pretext that it might engage in activities unconnected with normal trade union activities, must be based on serious acts duly proven *a posteriori* by the judicial authorities [*Digest*, paras. 261, 262 and 268]. The obligation to apply the decision of the judicial authorities then lies with the government authorities.

The Committee on Freedom of Association has in many cases managed to obtain the registration of an organization by the competent national authorities. Indeed, cases of progress in this field are very significant for the Committee, since the free and voluntary establishment of organizations is in many ways the sine qua non for the effective application of the other rights set out in Conventions Nos. 87 and 98.

A full enumeration of the cases of registration obtained by the Committee would be tedious. For the purposes of this publication, it is sufficient to refer to a number of examples, including a complaint concerning the Dominican Republic.²⁶ The Committee requested the Government in May 1984 to provide assurances concerning the formation of the Union of Workers in the Dominican Agrarian Institute. The Government informed the Committee in July of the same year that the Secretary of State for Labour had indeed registered the union. In another case concerning Argentina, the Committee also requested the Government in March 1997 to take measures for the immediate registration of the Congress of Argentine Workers (CTA).²⁷ Once again, the

²⁶ Case No. 1779.

²⁷ Case No. 1777.

Committee was able to note, according to the information provided by the Government, that the CTA had been registered by the Ministry of Labour and Social Security under the terms of Decree No. 325 of 27 May 1997.

In the last few years, two other cases of denial of registration had a considerable impact within the Organization. In Indonesia, the Government registered in 1998 the Serikat Buruh Sejahtera trade union (SBSI). This came after the Committee had examined on several occasions a complaint related to that matter and a direct contacts mission had visited the country.²⁸ In addition, in a case concerning the Republic of Korea, following a visit to the country of the Chairperson of the Committee, the Government indicated that the Korean Confederation of Trade Unions (KCTU)²⁹ had been recognized as a legal entity in 1999, in conformity with the Committee's previous recommendations.

The Committee also requested the Government of Pakistan in November 1994 to ensure that registration was granted to the Awami Labour Union.³⁰ In May 1996, the Government indicated that the Labour Appellate Tribunal had confirmed the decision of the Labour Court ordering the competent authority to register the trade union. The Government added that a registration certificate had been issued in accordance with the judicial decision.

Administrative authorities often refer, to justify refusals to authorize or register trade unions, to the formalities set out in the national regulations. At first sight, the formalities prescribed concerning the constitution and functioning of workers' and employers' organizations are not incompatible with the principles of freedom of association, provided of course that they do not raise insurmountable obstacles to the freedom to establish organizations, thereby impairing the guarantees laid down in Convention No. 87, which depend in the last resort on the establishment of such organizations [*Digest*, paras. 247 and 248].

²⁸ Case No. 1773.

²⁹ Case No. 1865.

³⁰ Case No. 1726.

In the case concerning Côte d'Ivoire,³¹ which was also the object of a complaint lodged by two Workers' delegates at the International Labour Conference in 1992 in virtue of article 26 of the ILO Constitution, the Government had argued that a trade union centre which had just been established, the centre "Dignité", had not joined to its statutes the necessary documents related to its union members, and this explained the delay in the delivery of a receipt which would have enabled it to obtain legal personality. After several examinations of the case by the Committee, the Government finally indicated in August 1992 that the receipt had been delivered and that the centre "Dignité" had obtained official recognition from the authorities.

Similar arguments had been put forward in a case concerning Mauritania. In March 1998 the Committee then urged the Government to take all the necessary measures to ensure the legal recognition of the Free Confederation of Workers of Mauritania (CLTM).³² During the course of the year, the Government indicated that the CLTM had obtained legal recognition in April 1998.

During its examination of cases, the Committee has on occasion rejected formalities which might be transformed into obstacles to the freedom to establish workers' and employers' organizations.

Similarly, the setting of a minimum number of members for the establishment of a trade union may sometimes be evidently too high. In a case concerning Australia, the Committee requested the Government in November 1992 to remove the requirement, recently introduced into the Federal Industrial Relations Act, that a union have 10,000 members for registration at the federal level.³³ In 1994, the Australian Government followed the Committee's recommendations and provided a copy of the Industrial Relations Reform Act amending the Federal Industrial Relations Act, to provide for new criteria for registration, namely a minimum requirement of 100 members for the registration of an employee association.

³¹ Case No. 1594.

³² Case No. 1894.

³³ Case No. 1559.

Right of workers and employers freely to establish and join organizations of their own choosing

The right of workers to establish organizations of their own choosing, set forth in Article 2 of Convention No. 87, implies in particular, if the workers so choose and in a climate of full security, the possibility of forming organizations independent of those which exist already and of any political party [*Digest*, paras. 273 and 280]. The Committee has therefore recognized the effective possibility for workers to create more than one organization per enterprise, as well as their right to join the trade union of their own choosing. This possibility offered to workers then opens the way for the possibility of trade union pluralism, even if the latter is not a formal obligation.

Moreover, while the Committee on Freedom of Association recognizes the advantages of measures designed to prevent a proliferation of competing organizations, it refuses any situation of trade union monopoly imposed by the State [*Digest*, paras. 288 and 289]. A situation in which an individual is denied any possibility of choice between different organizations, by reason of the fact that the legislation permits the existence of only one organization in an area in which he carries on his occupation, is incompatible with the principles embodied in Convention No. 87: in fact, such provisions establish, by legislation, a trade union monopoly which must be distinguished both from union security clauses and practices and from situations in which the workers voluntarily form a single organization” [*Digest*, para. 292]. The Committee has added that union security clauses imposed by law are also in violation of Convention No. 87, since they facilitate a system of trade union monopoly [*Digest*, para. 321].

The problems related to situations of trade union monopoly referred to the Committee on Freedom of Association have clearly fallen in numbers since the beginning of the 1990s, whereas they were a matter of great concern in the 1970s and 1980s. Positive developments on this issue have been noted by the various supervisory bodies of the ILO, particularly in Central and Eastern Europe, with the collapse of communist systems (see, for instance, cases concerning Bulgaria, Poland,

Romania and the former USSR), and in Africa (see, for instance, cases concerning Côte d'Ivoire and Senegal), following the advent of a pluralistic and democratic political system.

However, the Committee, following the position of the International Labour Conference, has agreed to a certain extent that a distinction could be made between various unions according to how representative they are, as long as the determination of the most representative union is based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse [*Digest*, paras. 309 and 314]. In a recent case concerning Luxembourg,³⁴ the Committee also underlined that, in order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: that of representativeness and that of independence. The determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity. After its examination of the case, the Committee was informed that the Administrative Court of Luxembourg had recognized the representativeness at the national level of the complainant organization in that case, which would enable it to negotiate and sign collective agreements.

Right of workers' and employers' organizations to establish federations and confederations and to affiliate with international organizations of workers and employers

The right of workers and employers to establish and join organizations of their own choosing, as laid down in Article 2 of Convention No. 87, implies for the organizations themselves the right to establish and join federations and confederations of their choosing, and without previous authorization [*Digest*, paras. 606 and 608]. This right is set out in Article 5 of the Convention. Affiliation depends only on the rules of the organization concerned and acceptance by the federation or confederation.

³⁴ Case No. 1980.

In March 1999, the Committee for example requested the Government of Panama to recognize and register without delay the affiliation of the National Federation of Associations and Organizations of Public Servants (FENASEP) to the Joint Trade Union Central.³⁵ In a communication in October 1999, the International Confederation of Free Trade Unions confirmed that the affiliation of FENASEP to the Joint Trade Union Central had been registered.

At a broader level, “international trade union solidarity constitutes one of the fundamental objectives of any trade union movement and underlies the principle laid down in Article 5 of Convention No. 87 that any organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers” [*Digest*, para. 622].

In a case concerning Nigeria, in May 1991 the Committee requested the Government to take measures to repeal the Trade Unions (International Affiliation) Decree (No. 35 of 1989).³⁶ In October 1991, the Government forwarded to the Committee the text of Decree No. 32, repealing Decree No. 35.

Just as the Committee ensures the right of workers to join organizations, it does the same for the right of organizations to affiliate to federations, confederations and international organizations. The cases of progress noted most frequently concern the resolution of difficulties faced by organizations relating to the registration of their affiliation.

Right of workers’ and employers’ organizations to elect their representatives in full freedom and to organize their administration

Freedom of association also involves the right of workers and employers to elect their representatives in full freedom. This right is indeed an indispensable condition for organizations to be able to act in full freedom and in the interests of their members [*Digest*,

³⁵ Case No. 1967.

³⁶ Case No. 1530. The issue of the international affiliation of trade unions in Nigeria has however resurfaced in Cases Nos. 1793 and 1935. These cases were the subject of a direct contacts mission. The progress noted following this mission is covered below in the section on direct contacts missions.

paras. 350 and 353]. It is therefore essential that the public authorities refrain from any intervention which might impair the exercise of this right. This latter prohibition presupposes that the regulation of procedures and methods for the election of trade union officials is primarily to be governed by the rules of the trade unions [*Digest*, para. 354].

In a complaint in 1992 concerning the Government of Fiji, the Committee requested the Government to amend certain legislative provisions which were not compatible with the principles of freedom of association.³⁷ In January 1994, the Government indicated that it had up to that time repealed several contentious provisions, including the ban on multiple office-holding for trade union officers and the requirement for secret ballots. It indicated that it had also restored check-off for all public sector unions. In more general terms, the Government had adopted amendments which accorded workers' organizations the necessary autonomy to elect their representatives and organize their administration and activities freely, in accordance with the Committee's recommendations and Article 3 of Convention No. 87.

Based on the same concerns, the Committee requested the Government of Paraguay in 1993 to take the necessary measures to revise a Decree restricting the free election of trade union representatives.³⁸ In a communication in May 1995, the Government informed the Committee that the Decree concerned had been found unconstitutional by the Supreme Court of Justice.

No violation of Article 3 of Convention No. 87 is involved where the legislation is intended to promote democratic principles within trade union organizations or to ensure that the electoral procedure is conducted in a normal manner [*Digest*, para. 361]. In cases where the results of trade union elections are challenged, the Committee has indicated that such questions should be referred to the judicial authorities in order to guarantee an impartial, objective and expeditious procedure [*Digest*, para. 366].

In November 1997, in a case concerning Lebanon, the Committee requested the Government to indicate whether or not the contested results of the elections for the officials of the General Labour Confederation of Lebanon (CGTL) held on 24 April 1997

³⁷ Case No. 1622.

³⁸ Case No. 1705.

were the subject of judicial recourse.³⁹ At the same time, it urged the Government to withdraw the charges brought against two CGTL trade union leaders. In 1998, the Government informed the Committee that new elections for the post of president of the CGTL had been held under the supervision of the Ministry of Labour and that on that occasion the two trade union leaders against whom charges had been brought had been elected president and a member of the executive committee, respectively.

While interference by government authorities is not acceptable, they may however be called upon to facilitate the holding of trade union elections. This was what the Committee requested the Government of Côte d'Ivoire in March 1998.⁴⁰ More specifically, it requested the Government to adopt the necessary measures to ensure that elections for staff representatives were held in the autonomous Port of Abidjan and that first-level organizations affiliated to the trade union confederation "Dignité" could participate in them. In a communication dated May 1998, the Government indicated that these elections had been held in April 1998. It also attached a copy of the election act containing the name of the Free Trade Union of Dockers of the Autonomous Ports of Côte d'Ivoire (SYLIDOPACI), an organization affiliated to "Dignité".

The right of organizations to organize their administration and draw up their own constitutions and internal rules presupposes their financial independence [*Digest*, paras. 428-434], the collection of union dues and their control over their trade union assets. A recent case of progress concerning Brazil is a good example of the success of the Committee in the field of the right of trade unions to organize their administrations.⁴¹ The Committee had requested the Brazilian Government in November 1999 to take the necessary measures to deduct trade union dues and ensure that they were transferred promptly to the organizations concerned, as soon as they had presented proof to the authorities of the government of the State of Paraná of their members' authorization for the deduction of trade union dues from their wages. In a communication of January 2000, the Government confirmed that, in accordance with the Committee's recommendations, the state government of Paraná

³⁹ Case No. 1920.

⁴⁰ Case No. 1594.

⁴¹ Case No. 2016.

had begun deducting the trade union dues of members who had provided authorization.

Right to strike

In its second report, in 1952, the Committee on Freedom of Association considered the right of workers and their organizations to strike as an essential and legitimate means of promoting and defending their economic and social interests [*Digest*, paras. 474 and 475]. The recognition of this right is based on Article 3 of Convention No. 87, which grants workers' organizations the right to organize their activities and to formulate their programmes.

(i) General prohibition, specific restrictions for certain categories of workers, essential services and requisitioning in the event of a strike

The Committee has indicated that responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved [*Digest*, paras. 522 and 523]. This recommendation is all the more important when the government is a party to the dispute.

The Committee has recognized that the right to strike may be restricted or prohibited: (i) in the public service only for the public servants exercising authority in the name of the State; or (ii) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [*Digest*, para. 526].

The Committee has also been called upon to define, more specifically, the concept of essential services: "what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population" [*Digest*, para. 541]. The criterion to be retained is therefore the clear and imminent threat to the life, personal safety or health of the whole or part of the population. Over the course of its examination of cases, the Committee has included in the list of essential services

the hospital sector, electricity services, water supply services, the telephone service and air traffic control [*Digest*, para. 544]. It has excluded from this list, among others, radio and television, the petroleum sector and ports (loading and unloading), banking, transport generally, agricultural activities, the education sector, postal services, etc. [*Digest*, para. 545].

In a case concerning Sri Lanka, the Committee requested the Government in February 1993 to amend the list of essential services where strikes were prohibited and which had been adopted under emergency regulations.⁴² The Committee more specifically requested the Government to remove from this list export industries and other non-essential services in accordance with its case law. In a communication of December 1993, the Government informed the Committee that the export industries had been removed from the list and that the emergency regulations had been rescinded.

The Committee has condemned the hiring of workers to break a strike in a sector which cannot be regarded as essential [*Digest*, para. 570] and, if a strike is legal, recourse to the use of labour drawn from outside the enterprise of a sector subject to the stoppage to replace the strikers [*Digest*, para. 571]. Also, “the use of the military and requisitioning orders to break a strike over occupational claims, unless these actions aim at maintaining essential services in circumstances of the utmost gravity, constitute a serious violation of freedom of association” [*Digest*, para. 573].

In a complaint concerning Germany, the Committee examined allegations respecting the requisitioning of civil servants in the postal services to perform the work abandoned by employees and manual workers in the federal postal services during a lawful strike.⁴³ In a communication in August 1993, the Government drew the Committee’s attention to a ruling of the federal Constitutional Court of April 1993, endorsing the principles established by the Committee concerning requisitioning, since it deemed that the assignment of civil servants to workplaces affected by a strike of state employees and manual workers was not compatible with the German Constitution, without explicit legislative provisions to that

⁴² Case No. 1621.

⁴³ Case No. 1692.

effect. The German Government added that, in the absence of legislation explicitly authorizing requisitioning, it would henceforth no longer be possible to replace state employees exercising their right to strike.

In a complaint in 1996 concerning Argentina, the Committee, among other matters, requested the Government to repeal resolution No. 203/96 allowing workers to be hired during a teachers' strike.⁴⁴ The Government informed the Committee a few months later that this resolution of the Education Council of the Río Negro Province had been repealed.

(ii) Sanctions following the exercise of the right to strike (dismissals, arrests for participating in strike action)

When the parties are not able to resolve their differences by means of negotiation and the workers choose to have recourse to strike action, the conflict may harden the positions and result in reprisal measures and discrimination. In extreme cases, these reprisal measures may take the form of the imprisonment of striking workers without any other form of trial. The cases of progress referred to below must therefore be read in conjunction with those covered by the section on trade union rights and civil liberties.⁴⁵ Acts of discrimination may also consist of dismissals and other prejudicial measures relating to employment. The Committee has nevertheless clearly indicated in this respect that “no one should be penalized for carrying out or attempting to carry out a legitimate strike” [*Digest*, para. 590].

The affirmation of this principle implies that no workers or trade union leaders should ever be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike [*Digest*, para. 602]. Moreover, even in the context of unlawful strikes, all penalties should be proportionate to the offence committed [*Digest*, para. 599].

The fact of imposing sanctions for acts related to strikes is in any event unlikely to facilitate the development of harmonious industrial relations. The Committee has always emphasized that the use of extremely serious measures, such as the

⁴⁴ Case No. 1899.

⁴⁵ See above in the section on trade union rights and civil liberties, which refers to a number of cases of progress in relation to the arrest or detention of striking workers.

dismissal of workers for having participated in a strike, or the refusal to re-employ them, constitutes serious violations of freedom of association [*Digest*, para. 597].

The lifting of sanctions following strike actions (dismissals or suspensions) has recently allowed for a positive outcome of several cases concerning Morocco.⁴⁶

In a case concerning Tunisia, the Committee requested the Government in 1987 to keep it informed of the results of the measures taken for the reinstatement of workers dismissed for participating in strikes and other trade union activities, as well as any measures taken to grant an amnesty to a trade union leader.⁴⁷ A few months later, the Government indicated that the order placing the trade union leader under house arrest had been cancelled. The Government also indicated that, during a meeting between the Minister of Education and the Executive Committee of the Tunisian General Labour Union, it had been decided, in response to the requests of the central union organization, to reinstate 13 dismissed teachers and gradually re-employ the remaining teachers as required, giving them priority.

Again in the education sector, the Committee requested the Government of Mali in November 1988 to ensure the reinstatement of teachers dismissed as a result of the strike by teachers due to the delays of several months in the payment of their salaries.⁴⁸ In communications in January 1990 and January 1991, the Government informed the Committee that the Ministry of Employment and the Public Service had retroactively re-established the rights of three teachers, including the payment of their salaries and their rights to promotion.

In 1991, the Committee also asked the Government of the Philippines to take the necessary measures to allow teachers to exercise the right to strike.⁴⁹ More specifically, it urged the education authorities, namely the Education Department, to have the suspension and dismissal orders reviewed and to secure the reinstatement of the teachers concerned without loss of pay. In September 1991, the Alliance of Concerned Teachers informed the Committee,

⁴⁶ For example, Cases Nos. 1877 and 2000.

⁴⁷ Case No. 1327.

⁴⁸ Case No. 1449.

firstly, that the 36 teachers against whom disciplinary sanctions had been taken had been reinstated and, secondly, that an increasing number of teachers suspended for participating in strikes in 1990 were gradually benefiting from reinstatement orders.

At another level, the imposition of fines is also unlikely to encourage the development of harmonious industrial relations. In this respect, the Committee requested the Government of Brazil in March 1997 to take measures to ensure that the fines imposed on the Single Federation of Oil Workers for participating in strikes in the PETROBRAS enterprise in 1995 were annulled.⁵⁰ The Government subsequently informed the Committee that Act No. 9689 had cancelled the fines imposed on the trade union.

The Committee has also indicated that deductions of pay should not be higher than the amount corresponding to the period of the strike [*Digest*, para. 595]. The Committee had, for example, in February 1986 regretted the measures taken by the Ministry of Works and Housing of Malta concerning 31 “worker-students”.⁵¹ These “worker-students” had lost two months’ pay as a result of a strike and had been obliged to sign a declaration before being reinstated in their jobs. The Committee requested the Government to take measures to compensate them. In a communication in March 1987, the Government stated that it had decided to make a payment to the “worker-students” as compensation for the wages withheld following their protest strike.

In cases of the imposition of sanctions for participation in legitimate and peaceful strikes, in the light of the circumstances of each case, the Committee generally endeavours to obtain the release of the strikers by the governments concerned in the event of arrests or detentions, or the setting aside of the sanctions in the event of dismissals, demotions or fines. It may also insist on the reinstatement of dismissed workers, or on compensation commensurate with the losses suffered by striking workers.

⁴⁹ Case No. 1570.

⁵⁰ Case No. 1889.

⁵¹ Case No. 1335.

Dissolution and suspension of organizations by administrative authority or decree

Organizations of workers and employers should not be subjected to suspension or dissolution by administrative authority. In the view of the Committee, where such measures are taken by government authorities, they constitute a clear violation of the principles of freedom of association, and in particular of Article 4 of Convention No. 87 [*Digest*, paras. 664 and 665]. They should only be taken in extremely serious cases and only as a last resort, following a judicial decision so that the rights of defence are fully guaranteed [*Digest*, paras. 666 and 667].

In a case relating to Ecuador, in 1978 the Committee deeply regretted that a general strike called one year earlier by three central trade union organizations had resulted in the arrest of trade union leaders and outlawing the National Union of Educators.⁵¹ In December 1979, the Government informed the Committee that the National Union of Educators had been re-accorded the legal personality that had been withdrawn from it by administrative authority following the strike in 1977.

In a case concerning Burkina Faso, the Committee noted with deep concern in November 1982 the dissolution by administrative authority of the Trade Union Confederation of Upper Volta (CSV) for protesting against the general ban on strikes proclaimed by the Government one year previously.⁵³ The Committee once again requested the Government to amend its restrictive legislation respecting strikes. In a letter in January 1983, the Government informed the Committee of the improvement in the trade union situation as a whole following the rescission in December 1982 of the Decree dissolving the CSV and of the release of the general secretary of the above confederation and the rehabilitation by decree of 154 strikers who had been prosecuted in the courts. In a subsequent communication, the Government indicated that a new Ordinance had been adopted in which the right to strike was now recognized.

The above considerations on dissolution by administrative authority apply identically to dissolution by the executive branch

⁵² Case No. 885.

⁵³ Case No. 1131.

of the government by decree. Once again, the right of defence of the organization can only be guaranteed by normal judicial procedures [*Digest*, para. 675]. In this regard, the Committee requested the Government of Belarus to repeal articles 1 to 3 of Presidential Decree No. 336, which restricted the free exercise of trade union rights.⁵⁴ In communications in May and September 1998, the Government reported the revocation of a provision of Presidential Decree No. 336. This provision suspended the activities of the Free Trade Union of Belarus (FTUB). The Congress of Democratic Trade Unions of Belarus, the confederation to which the FTUB is affiliated, was also registered following the recommendations of the Committee.

The Committee therefore endeavours, in cases of the suspension or dissolution of organizations, to have them reinstated in their rights by seeking the revocation of the administrative or government measures. The cancellation of these measures is generally followed by the re-registration of the organization.

Trade union assets

The dissolution of an organization raises the problem of the distribution of its property and the transmission of its assets. The Committee on Freedom of Association has on several occasions addressed the issue of the assets of trade unions and it has laid down the principle that they should be used for the purposes for which they were originally acquired.⁵⁵ When an organization is dissolved, its assets should therefore be provisionally sequestered and handed over to the organization that succeeds it, or distributed according to its own rules [*Digest*, paras. 684 and 685]. In the absence of specific rules, the assets of trade unions should be returned to the workers concerned.

For example, the Committee urged the Chilean Government in June 1998 to take the necessary measures for the entry into force without delay of the Act respecting the restitution or compensation of assets confiscated after the 1973 *coup d'état*.⁵⁶ In a communication

⁵⁴ Case No. 1849.

⁵⁵ Case No. 900 (Spain), 194th Report, para. 261; Case No. 1623 (Bulgaria), 286th Report, para. 506.

⁵⁶ Case No. 1941.

dated 24 July the same year, the Government forwarded a copy of the new Act (Act No. 19.568) on the restitution or compensation of confiscated assets. It also indicated that a special office would be responsible for receiving applications for restitution or compensation from natural or legal persons.

The Committee had before it several cases from Central and Eastern Europe following the political, economic and social transformations in those countries during the 1990s. In these cases, it noted a number of positive changes. In a case concerning Poland, in the light of its previous recommendations, the Committee raised questions concerning the final and equitable redistribution of trade union assets between two central trade union organizations, “Solidarnosc” (NSZZ) and the All-Poland Trade Union Alliance (OPZZ).⁵⁷ In a communication dated 9 March 1998, the Government indicated that the compensation and payment of interest to the trade union organizations would commence in September 1998 and that certain assets had already been granted to the NSZZ and the OPZZ. In another communication in October 1998, the Government provided detailed information on developments in the complex issue of the redistribution of trade union assets between the two central organizations.

In another case, in 1998 the Committee noted that the transfer of property to the Latvian Book Industry Trade Union (LGAS) had not yet taken place and asked to be informed of developments in the matter.⁵⁸ On 3 February 2000, the Government indicated that the State Real Estate Agency had, on 1 September 1998, transferred the ownership of the building in Riga covered by the LGAS’s complaint, in accordance with the Law on the Re-establishment of Real Estate Rights of the Latvian Book Industry Trade Union.

Protection against acts of anti-union discrimination

The general principle expressed by the Committee concerning protection against acts of anti-trade union discrimination is that no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present [*Digest*, para. 690]. This

⁵⁷ Case No. 1785.

⁵⁸ Case No. 1869.

protection against anti-union discrimination, as laid out in Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), covers not only hiring and dismissal, but also any discriminatory measures during employment, such as transfers or downgrading [*Digest*, para. 695].

Practices involving the blacklisting [*Digest*, para. 709] or frequent transfers of persons holding trade union office [*Digest*, para. 712] also constitute discriminatory acts. As a sign of the times, the Committee considered it necessary to emphasize that acts of anti-trade union discrimination should not be authorized under the pretext of dismissals based on economic necessity [*Digest*, para. 718].

By way of illustration, in a case concerning the United Kingdom, which demonstrates the novelty of the problems encountered in the light of technological developments, in March 1998 the Committee asked to be kept informed of any progress made in providing express protection in the legislation against blacklisting or other forms of anti-union discrimination.⁵⁹ In May 1998, the Government announced to the Committee the publication of a White Paper containing a proposal to outlaw both discrimination against trade union members and the establishment of blacklists. In September 1999, the Government indicated that the 1998 Data Protection Act now extended to data processed by computer and that the 1999 Employment Relations Act empowered the Government to make regulations prohibiting practices of anti-union discrimination.

With a view to ensuring the effectiveness in practice of the non-discrimination clause laid down in Convention No. 98, government authorities should adopt legislation which explicitly lays down remedies and sufficiently dissuasive sanctions against acts of anti-union discrimination [*Digest*, paras. 697 and 743]. The Committee has also indicated that governments are responsible for preventing such acts and must therefore ensure that workers who consider that they have been prejudiced because of their trade union activities have access to means of redress which are impartial, effective, expeditious and inexpensive [*Digest*, paras. 738, 739 and 741]. In attributing this responsibility to governments, the Committee has based itself on Article 3 of Convention No. 98, which provides that

⁵⁹ Case No. 1618.

“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”.

In this type of case, the Committee has endeavoured in so far as possible to obtain the reinstatement of workers who have been victims of anti-union discrimination [*Digest*, para.755]. Indeed, it has noted several cases of progress in this respect. For example, in a case concerning Costa Rica, the Committee recommended the Government in February 1995 to take the necessary measures to enable the leaders and members of trade union organizations who had been dismissed because of their trade union activities to secure reinstatement in their jobs in their enterprises.⁶⁰ In a communication in June 1995, the Government confirmed that the Constitutional Chamber had cancelled the dismissals of ten workers in an enterprise and had subsequently ordered their reinstatement in their jobs. In addition, the Ministry of Labour and Social Security had endeavoured to obtain compensation for the acts of discrimination by convening all the parties to the dispute in other enterprises.

In a complaint concerning Malaysia which it examined on a number of occasions, the Committee requested information on the reinstatement of 21 workers dismissed for participating in the establishment of a trade union in an enterprise.⁶¹ In a communication in 1997, the Government confirmed the reinstatement of 20 workers in the enterprise, with the other on sick leave.

In another case, the Committee renewed the request it made in 1997 to the Government of Guatemala to grant legal personality to the Trade Union of Workers in the General Labour Inspectorate (STIGT), to carry out an investigation into the dismissal of a member of the STIGT and to revoke changes in the functions of 18 inspectors.⁶² In 1997, the Government informed the Committee that an agreement had been concluded with the members of the STIGT and that the trade union was now affiliated to the General Trade Union of Officials of the Ministry of Labour and Social Insurance. It also forwarded a letter from a member of the STIGT who had been dismissed in which he indicated that he had not

⁶⁰ Case No. 1678.

⁶¹ Case No. 1552.

⁶² Case No. 1823.

suffered any act of anti-union discrimination. Finally, it added that the 18 inspectors had been reinstated in their previous duties.

In relation to a complaint concerning Morocco, the Committee requested information in June 1998 concerning the judicial action taken by the workers in a company in Casablanca and El Jadidale, who had been dismissed or suspended due to their legitimate trade union activities.⁶³ In October 1998, the Government indicated that 33 employees had been reinstated in their jobs. Three other cases had been resolved amicably through conciliation procedures before a judge, and in a similar number of cases the decision had been in favour of the employees, who had therefore received their statutory compensation for termination of employment. Seven cases were still pending before the Court of Appeal, while the others were currently before the courts of first instance.

In another case relating to transfers for trade union activities in a hotel in Bucharest, Romania, the Committee drew the Government's attention in 1991 to the need to ensure adequate protection against acts of interference by employers in workers' organizations.⁶⁴ The Committee also expressed the hope that legislation would be adopted in the near future which was in conformity with the principles of freedom of association. In September 1991, the Committee noted with interest that section 48 of the Act on trade unions provided for dissuasive penalties against any person preventing the right to join a trade union. In a further communication in 1992, the Government forwarded a copy of the judicial decision maintaining the two employees of the hotel in their former jobs, as well as the collective agreement of 1992 concluded between the company managing the hotel and the two unions in the enterprise.

Protection against acts of interference

Article 2 of Convention No. 98 provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. In short, this Article guarantees the total independence of workers'

⁶³ Case No. 1877.

⁶⁴ Case No. 1571.

organizations from employers and their organizations in the exercise of their activities [*Digest*, para. 759].

As in the case of acts of anti-union discrimination, the Committee has considered that legislation making express provision for appeals and establishing sufficiently dissuasive sanctions is indispensable to ensure the effectiveness of the protection against acts of interference set out in Convention No. 98 [*Digest*, para. 764].

In a case in 1975 concerning Jamaica relating to allegations of anti-trade union practices and acts of interference by employers in the activities of the trade union, the Committee suggested that the Government might have recourse to an appropriate mechanism, such as referring the examination of complaints of this nature to impartial bodies.⁶⁵ In May 1975, the Government provided the Committee with a copy of Act No. 14 of April 1975 in respect of labour relations and occupational disputes. Section 4 of the Act provides for court action and a fine not exceeding \$2,000 for any person guilty of anti-trade union discrimination and interference.

The Committee has also been called upon to examine a number of complaints relating to acts of interference in the context of the creation of solidarist organizations. Following the examination of complaints on this question,⁶⁶ the Government of Costa Rica adopted legislation which improved the situation of trade unions in this respect (on this issue, see below a more detailed analysis in the context of the results of a direct contacts mission to Costa Rica).

Collective bargaining

The Committee has always considered that “the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof” [*Digest*, para. 782]. The right of negotiation covers all

⁶⁵ Case No. 790.

⁶⁶ Amongst others, Case No. 1734.

workers, including public service workers, with the exception of those engaged in the administration of the State [Digest, para. 793].

For example, the Committee emphasized to the Government of the Russian Federation in 1993 that the deduction of trade union dues and their transfer to trade unions was a matter which should be dealt with through collective bargaining between the parties concerned.⁶⁷ In a communication in November 1994, the Government stated that the Minister of Labour had consulted with the representatives of the administrative authorities, employers and trade unions of the various regions of the country. The parties had agreed that the deduction of trade union dues from workers' wages could be carried out with their written consent.

In accordance with the Collective Bargaining Recommendation, 1981 (No. 163), the Committee has also recalled that employers, and governmental authorities acting in the capacity of employers, should recognize the representative organizations of workers for collective bargaining purposes [Digest, paras. 819 and 821]. Furthermore, where the law of a country draws a distinction between the most representative trade union and other trade unions, such a distinction should not have the effect of preventing minority unions from functioning and having the right to make representations on behalf of their members and to represent them in cases of individual grievances [Digest, para. 829].

In a case concerning Barbados relating to an alleged violation of Convention No. 98 by reason of the non-recognition of the complainant trade union as the representative of the employees of the Barbados National Bank, the Committee requested the Government to inform it of the measures taken to lead to voluntary collective bargaining in accordance with Article 4 of the Convention.⁶⁸ The National Union of Public Workers informed the Committee in October 1986 that agreement had been reached with the Barbados National Bank concerning the grant of recognition to the union in respect of the Bank's staff. The Government also confirmed that this agreement had indeed been concluded.

The voluntary negotiation of collective agreements implies the autonomy of the bargaining partners and, in parallel, must not

⁶⁷ Case No. 1683.

⁶⁸ Case No. 1264.

entail recourse to measures of compulsion [*Digest*, paras. 844 and 845]. The Committee has also emphasized that a legal provision allowing the employer to modify unilaterally the content of a previously concluded collective agreement, or requiring that it be renegotiated, is contrary to the principles of free and voluntary collective bargaining [*Digest*, para. 848].

In a complaint filed against Venezuela concerning the unilateral modification of working hours in a banking institution, the Committee recalled in February 1990 the importance that it attaches to the right of workers to participate in the determination of their working conditions.⁶⁹ In October of the same year, the Government indicated that the bank in question had withdrawn its unilateral decision to change the work schedule.

More specifically, in relation to collective agreements, the Committee holds that “the *suspension or derogation by decree* – without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98” [*Digest*, para. 876].

The Committee requested the Government of Sweden, for example, to ensure that the 1993 Act amending the Security of Employment Act of 1982 was amended so that collective agreements concluded prior to its entry into force were not overridden.⁷⁰ Taking into account the Committee’s recommendations, the Swedish Government reported in April 1995 that the amendments to the Security of Employment Act, which repealed the transitional rules in the 1993 Act overriding the clauses of collective agreements concluded prior to its entry into force, had been adopted and had taken effect in January 1995.

In relation to legislation extending collective agreements, the Committee has pointed out that such action constitutes undue intervention in the collective bargaining process and that, for this reason, it should only be taken in cases of emergency and for brief periods of time [*Digest*, para. 881].

⁶⁹ Case No. 1501.

⁷⁰ Case No. 1760.

In a case concerning Canada (Yukon), the Committee regretted that the Public Sector Compensation Act, 1994, resulted in the extension of collective agreements in the education sector for a period of three years and the freezing of remuneration.⁷¹ The Committee urged the Government to refrain from taking such measures in future which did not give priority to collective bargaining and which destabilized the labour relations climate. In January 1997, the Government announced the adoption of new legislation limiting the effect of the 1994 Act to two years and providing for a return to collective bargaining in the education sector from July 1996.⁷² It added that this action reflected its commitment to give priority to collective bargaining.

Direct contacts missions

Several direct contacts and similar missions have been carried out in the field of freedom of association by ILO officials and persons from outside the ILO representing the Director-General following the filing of a complaint with the Committee. Substantial progress has been achieved through these missions, which consist of a diplomatic formula focusing on information gathering and dialogue.⁷³

Indeed, several cases of progress which have been mentioned in this publication were noticed after an ILO mission visited the countries concerned. This was the case in particular with the recognition of the “Dignité” trade union centre in Côte d’Ivoire, the Serikat Buruh Sejahtera trade union (SBSI) in Indonesia and the Korean Confederation of Trade Unions (KCTU) in the Republic of Korea. It was also the case in Belarus with the lifting of the suspension of activities of the

⁷¹ Case No. 1806.

⁷² This reduction in the duration of restrictions on collective bargaining to two years by Canada is also in line with the recommendations of the Committee, which had already found that a period of restraint on collective bargaining of three years was too long. See 272nd Report, Case No. 1491, para. 74; and 292nd Report, Case No. 1722, para. 554(b).

⁷³ See the first section of this publication on developments relating to the direct contacts method.

Free Trade Union of Belarus as well as the registration of the Congress of Democratic Trade Unions of Belarus.

Two other recent examples illustrate the usefulness of ILO missions on the spot. In June 2000, two months after a direct contacts mission had visited the country, amendments to the Colombian legislation were adopted, which led to the repeal or modification of a considerable number of provisions which were contrary to the principles of Conventions Nos. 87 and 98. Following this mission, Colombia ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). The Colombian authorities also increased their financial contribution for the project which attempts to protect trade unionists under threat. In addition, “a tripartite committee for conflict resolution”, with the objective of resolving the complaints submitted to the Committee on Freedom of Association, has been set up.

In Guatemala, during a direct contacts mission in April 2001 as well as shortly after, the Congress adopted two decrees which addressed most of the issues on trade union legislation which the ILO supervisory bodies had been commenting upon. In addition, a special unit of the Public Prosecutor’s Office on criminal acts against trade unionists (threats, murders) was set up following the mission’s recommendations.

Other missions which took place in the context of the special procedure on freedom of association have also had a considerable impact in the case of Poland, Costa Rica and Nigeria.

The Committee examined Case No. 909 on Poland at its sessions in May and November 1979. It noted that at that time significant work was being undertaken on the amendment of the legislation relating to trade union rights with a view to bringing it into line with the standards of Convention No. 87. In November 1979, the Committee proposed that the adoption of the necessary

amendments to the Trade Unions 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 between the Government and the ILO. Missions took place in May and October 1980.

Following these missions, the Committee was able to note that the leaders of certain trade union organizations, against whom measures had been taken, were at liberty and that some of them were engaged in trade union activities. The Committee also noted with satisfaction the adoption of an amendment to the Trade Unions Act, 1949, relating to the registration of trade unions. Following this amendment, a significant number of trade unions acquired legal personality by registering with a judicial authority, without the need to register with the Central Council of Trade Unions. The Supreme Court of Poland had also found, in November 1980, that trade unions had the exclusive competence to draw up their constitutions, and that the Warsaw Voidava Court had exceeded its powers in introducing amendments to the constitution of a trade union which had applied for registration. **It was during the direct contacts mission, led by the ILO Director-General of the time, Mr. Blanchard, that the independent trade union, Rural Solidarnosc, was registered.**

Nevertheless, these improvements only constituted a stage in the more radical historic changes that were to transform the countries of Central and Eastern Europe, and particularly Poland. Even though the impact of the Committee on Freedom of Association cannot be doubted in retrospect, the improvements noted above with the first direct contacts missions were fragile. Indeed, the Committee had to re-examine the situation with regard to trade unions right up to the collapse of the communist system. The positive developments noted in August 1980 rapidly deteriorated, to the point of the proclamation of martial law on 13 December 1981. In February 1982, the Committee once again examined the case of Poland,⁷⁴ when it noted massive arrests and internments of trade unionists, sentences for participating in strikes, the deaths of workers during conflicts with the security forces, dismissals and pressure exercised on the members of Solidarnosc, as well as the general

⁷⁴ In the context of Case No. 1097 which became one of the cases examined by a commission of inquiry in 1984.

suspension of trade union activities. It was at this period that the trade union Solidarnosc was prohibited. A direct contacts mission, led by Mr. N. Valticos, visited the country in May 1982, in the difficult context of the application of martial law. The Amnesty Act was nevertheless proclaimed on 21 July 1983, although this relative period of calm did not prevent the holding of a commission of inquiry instituted under article 26 of the Constitution of the ILO.⁷⁵ In 1989, the trade union Solidarnosc was finally reinstated in its rights and prerogatives.

With the means at its disposal, the Committee on Freedom of Association unceasingly accompanied Poland in the historic transformations which it was experiencing. This is an exemplary case in which the Committee, relayed in its functions by the various supervisory mechanisms of the ILO, was able to inspire and encourage deep-rooted changes in a political system.

In the case of Costa Rica, the International Confederation of Free Trade Unions (ICFTU) had been submitting allegations to the Committee on Freedom of Association since 1988 concerning the institutionalization, under an Act of 1984, of solidarist associations⁷⁶ and the worrying development by the latter of anti-trade union practices.⁷⁷ The institutionalization and practices of these solidarist associations in general raised several issues relating to anti-trade union discrimination, interference by employers and collective bargaining.

⁷⁵ ILO, "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, in *Official Bulletin*, Special Supplement, Vol. LXVII, 1984, Series B.

⁷⁶ Under the terms of the 1984 Act on solidarist associations, and as indicated in the Government's reports, these are associations of workers (which include among their members higher managerial staff and administrative personnel in the confidence of employers), the establishment of which, frequently at the initiative of the employer, is subject to the contribution of the latter, since they are financed according to mutual benefit principles by both workers and employers for economic and social purposes of material well-being, combination and cooperation.

⁷⁷ Case No. 1483.

The case concerning Costa Rica raised issues concerning the interference of solidarist associations in trade union activities, including in collective bargaining through direct agreements concluded between groups of workers and employers. It also raised the problem of acts of anti-trade union discrimination, such as dismissals and other prejudicial acts to encourage affiliation to solidarist associations and, at the same time, discourage membership of trade union organizations, as well as inequality of treatment between solidarist associations and trade union organizations under the law.

In practice, the Committee noted a certain decline in the number of trade union organizations in the country, and particularly in the banana sector. These problems had been examined together with the Committee of Experts on the Application of Conventions and Recommendations since 1993, as well as the Conference Committee on the Application of Standards. Direct contacts missions took place in 1991 and 1993.

Following the mission of November 1993 in Costa Rica, the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations both noted several improvements in the legislation, including the repeal of the provisions in the Penal Code envisaging sentences of imprisonment or fines for public servants participating in strikes, as well as the adoption of an Act several weeks after the direct contacts mission in November, which abolished any inequality of treatment in favour of solidarist associations in relation to trade union organizations.

The new Act prohibits solidarist associations from discharging trade union functions, and particularly collective bargaining. It also provides effective protection against all forms of anti-trade union discrimination by declaring null and void acts which prevent, limit or constrain the exercise of the collective rights of workers, their trade unions or groups of workers. Penalties for punishable offences committed by employers, workers and their respective organizations, in violation of the ILO Conventions ratified by Costa Rica, and of the provisions of the national legislation, also guarantee a certain effectiveness in practice.

Another direct contacts mission visited Nigeria in relation to Cases Nos. 1793 and 1935. The first complaint had been examined on numerous occasions by the Committee between 1994 and 1999. It concerned allegations of the arrest and detention of trade union leaders, the dissolution of the executive councils of several workers' organizations, interference by the Government in the organization and functioning of trade unions and restrictions on their international affiliation. Another complaint was filed in 1997 (Case No. 1935).

In the light of the 309th Report of the Committee on Freedom of Association, the Governing Body decided to apply the procedure envisaged in article 26(4) of the Constitution of the ILO and institute a commission of inquiry to examine the allegations in these two cases. However, in June 1998, the Governing Body delayed the commencement of the Commission of Inquiry's work by 60 days to allow Nigeria to receive a direct contacts mission. The mission visited the country during the month of August 1998.

Following the mission in Nigeria, the Committee on Freedom of Association noted several improvements in both law and practice, particularly with regard to Case No. 1793. Despite the persistence of a number of problems in relation to Articles, 2, 3, 4, 5 and 6 of Convention No. 87, the Committee was able to note with satisfaction the release of all the detained trade unionists and the holding of elections on 27 January 1999, in which the members of the Nigerian Labour Congress were able to choose their representatives freely.

Subsequently, the Committee noted the repeal of Decrees Nos. 9 and 10 of August 1994, which had dissolved the executive councils of three trade unions, and of Decree No. 24 of August 1996, which prohibited the participation in any trade union activities of members of academic and non-academic staff unions and associations. By means of the Trade Unions (Amendment) Decrees Nos. 1 and 2 of 1999, the Government of Nigeria adopted several changes, including the restructuring of trade unions, the redefinition of the term "member of a trade union" to include persons either elected or appointed by a trade union to represent workers' interests, the reinsertion of the possibility for appeal to an

appropriate court against administrative decisions to cancel registration and, finally, the deletion of the penalty of up to five years' imprisonment in cases of unauthorized international affiliation.

In short, although certain problems persist, the Committee was able to note, following the direct contacts mission, the adoption of several positive measures resulting in increased observance of freedom of association in Nigeria.

A withdrawal of a complaint was also the result of a mission in Argentina [Cases Nos. 1455, 1456, 1496 and 1515]. In November 1989, the Government of Argentina requested the ILO to send a direct contacts mission to carry out an in-depth examination of the issues raised by the complainant organizations. The direct contacts mission took place in March 1990. At its session in May in 1990, the Committee decided on requests for the suspension of the proceedings and for withdrawal of the complaints presented by the complainants. The Committee observed that the Government supported these requests and that, according to the report of the direct contacts mission, the requests had been made freely. The Committee further noted that, according to the documents signed by the complainant organizations and the Ministry of Labour and Social Security, the parties had decided to set up special committees to examine the issues raised in the complaints and to propose solutions. The Committee therefore decided to accede to the requests for the suspension of the procedure or withdrawal of the complaints and welcomed the fact that discussions between the parties concerned on the issues brought before the Committee before the arrival of the mission had resulted in an agreement motivated by the desire of the parties to seek a solution to the problems raised directly between themselves.

The success of these missions could be explained largely by the mandate they held. Apart from the essential role of collecting information, they often had to seek, with the parties concerned, solutions to the various problems, which would be in conformity with ILO principles in the field of freedom of association and which could be implemented without major difficulties in the countries concerned.

CONCLUSION

Created in 1951, the supervisory mechanism which is the Committee on Freedom of Association has demonstrated undoubted effectiveness over the years. The cases of progress noted in many fields related to the exercise of freedom of association bear witness to this effectiveness. In addition to ensuring that trade unionists enjoy the legal safeguards traditionally recognized in a State which respects the rule of law, and which are set forth in all the major international human rights instruments, the Committee has succeeded in a significant number of cases in obtaining the release of imprisoned trade unionists and the reduction or setting aside of manifestly unjust or disproportionate sentences.

It has also ensured the application of the right of workers and employers, without distinction whatsoever, and without previous authorization, to establish and join organizations of their own choosing. It has given particular attention to the exercise in practice of the right of organizations to elect their representatives in full freedom, to formulate their rules and programmes and to organize their administration. Within this safety net envisaged by Convention No. 87, the Committee has focused on the recognition and exercise of the right to strike. This attention has been particularly necessary in view of the significant increase noted in the 1980s in restrictions relating to the exercise of the right to strike. Furthermore, the Committee has also had occasion to request the immediate re-registration of organizations which had been dissolved by administrative authority.

In the context of the guarantees set out in Convention No. 98, the Committee has tried to have acts of anti-trade union discrimination and interference remedied, and has emphasized the need for expeditious, impartial and objective procedures for workers who consider that they have been the victims of such practices. The Committee has also recalled the preventive obligation of establishing sufficiently dissuasive penalties in law to prevent such acts.

Finally, it has watched over the promotion of voluntary collective bargaining undertaken in good faith. In the same way as with the right to strike, the Committee's action to protect workers against acts of anti-trade union discrimination also has expanded significantly since the 1980s.

In short, starting out from the basic instruments respecting freedom of association, namely Conventions Nos. 87 and 98, the Committee on Freedom of Association has worked for the effective application of the rights of workers and employers and their organizations. As recalled by the Director-General of the ILO, Juan Somavia, beyond promoting standards, one of the ILO's most important functions is to supervise their application in practice.⁷⁸ Indeed, the Committee on Freedom of Association is particularly well suited to examining compliance in practice with the obligations contracted by States in view of the fact that its work is based on the complaints filed by the main actors of labour relations, which are workers' and employers' organizations.

The success of the Committee on Freedom of Association can be verified in practice through the rise in the number of cases of progress noted over recent years. However, this success is based more generally on the outcome of the joint action of the various components of the ILO's supervisory system which act in parallel with the Committee on Freedom of Association, namely the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards, in which governments are called upon to make practical commitments to fulfilling their international obligations. Reference should also be made to the other means available to the ILO to supervise the effective recognition of standards on freedom of association, such as the direct contacts method, the institution of commissions of inquiry and the action, however sporadic, of the Fact-Finding and Conciliation Commission on Freedom of Association, as well as programmes of technical assistance.

⁷⁸ *op. cit.*, note 5 of the Introduction.

The constitutional objectives of the ILO establish the principle of freedom of association as an essential means of preserving lasting peace and a prerequisite for sustained progress. The Committee on Freedom of Association, as a special supervisory mechanism, has its origins precisely in the objectives of the ILO and the need to safeguard freedom of association in practice. These institutional objectives can also be promoted and achieved through other means. The Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference in 1998, is based on this principle and enshrines, in direct continuity with the historic mission of the ILO, the fundamental right of freedom of association and collective bargaining.

The success of the Committee can therefore be explained in the light of two factors. In the first place, its success must be placed within the overall supervisory structure of the ILO, a system in which the action of the technical bodies, whose members are selected in view of their independence and expertise, is balanced by the activities of representative bodies grouping together delegates of governments, workers and employers.

The ILO has long been the only international organization to maintain the concept of development which is not based on its purely economic content, but is also, more particularly, founded on human and social factors, irrespective of the level of development of the country or its system of social organization. As early as 1930, the first Director-General of the ILO, Albert Thomas, proclaimed that social objectives must prevail over economic considerations. Adopting a similar point of view, the President of the United States, Franklin Roosevelt, emphasized in 1941 at the International Labour Conference that “economic policy can no longer be an end in itself. It is merely a means for achieving social objectives”.

This commitment from its earliest times is all the more urgent and necessary today in view of the transformations in the economic and social situation caused by the globalization of the economy and the intensification of international competition. All the speeches of the Director-General, Juan Somavia, confirm this obligation to give a human and social face to an increasingly globalized economy.

Secondly, the successes of the Committee have their origins in the quasi-jurisdictional procedures framing this supervisory mechanism, anchored in an institutional philosophy based on persuasion rather than repression. In the light of international labour standards, which create obligations for States in their capacity as Members of the ILO, or by virtue of ratified Conventions, the Committee undertakes an analysis of the cases brought before it based on criteria that are objective, and not arbitrary, with a view to making recommendations which invariably call for dialogue and cooperation.

Moreover, based on the development of its case law, the Committee is able to breathe life into the provisions of Conventions, supplement and update them, taking into account the new conditions arising out of developments in each country, the employment market, demography and technological changes. This method therefore ultimately ensures a flexible approach in relation to practical problems, which are unlikely to disappear with time, and indeed are liable to take on new forms in view of the transformations in the economic and social situation caused by globalization. **The methods of the Committee on Freedom of Association therefore have the advantage of being able to address and resolve, in cooperation with member States, the social problems which are bound to arise with the globalization of the economy.**

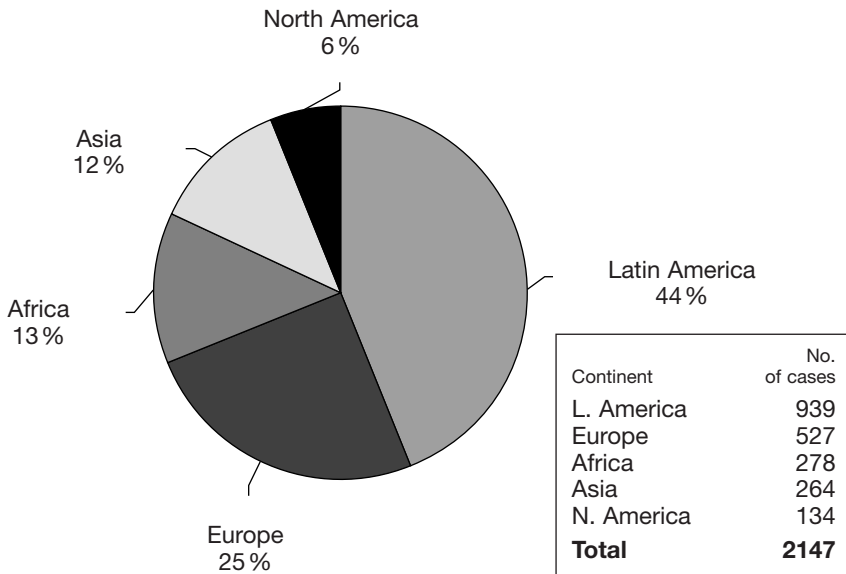
In this context, it can only be hoped that the rise in the number of cases of progress in the field of freedom of association will continue and accelerate. These cases of progress are the product of the general structure of the ILO, conceived from the very beginning as an approach to economic development which gives fundamental importance, today more than ever, to the human and social aspects of development, as well as the patient and practical work of the Committee on Freedom of Association.

In this respect, the question of the strengthening of the ILO's supervisory machinery can only contribute in the long term to the improved observance and promotion of fundamental social rights. To quote the Director-General, "the ILO's mission is to improve the situation of human beings in the world of work". The Committee on Freedom of Association has amply played its part in

pursuing this objective for the past 50 years and it will undoubtedly endeavour to continue doing so and even intensify its actions in the years to come.

Appendix I.

Complaints examined by the Committee on Freedom of Association
(1951-2001)



Appendix II.

Number of cases presented before
the Committee on Freedom of Association since 1951

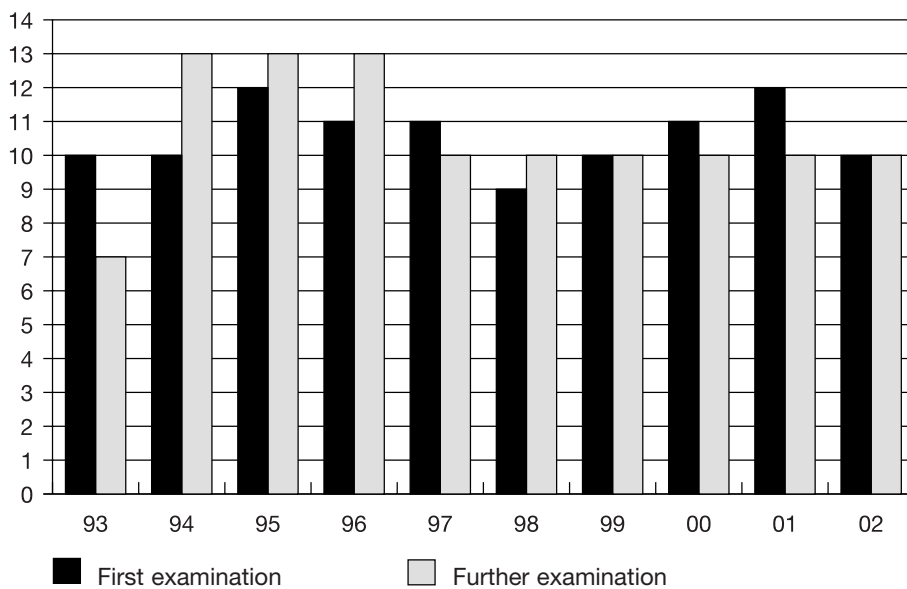
– Number of cases presented before the Committee :	2216
– Number of countries against which complaints have been filed :	147

1	Argentina	101	18	Paraguay	40
2	Greece	99	19	France	39
3	Colombia	94	20	Honduras	34
4	Peru	92	20	United States	34
5	Spain	86	21	Portugal	31
6	United Kingdom	80	22	Japan	29
7	Canada	79	23	Bolivia	28
8	Chile	64	24	Mexico	26
9	India	63	24	Turkey	26
9	Morocco	63	25	Pakistan	24
10	Guatemala	59	25	Panama	24
11	Costa Rica	56	25	South Africa	24
12	Nicaragua	54	26	Philippines	20
13	Dominican Republic	49	27	Democratic Republic of the Congo	19
14	Brazil	48	28	Denmark	17
14	Venezuela	48	29	Cuba	15
15	Ecuador	46	29	Haiti	15
16	Uruguay	43	30	Australia	13
17	El Salvador	42			

List of the 30 countries against which the greatest number of
complaints have been filed

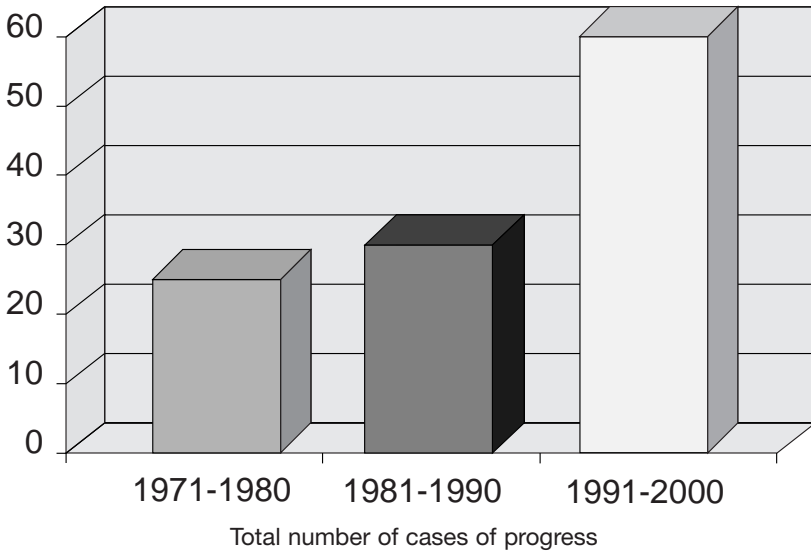
Appendix III.

Average time in months for examination of cases (per year)



Appendix IV.

Committee on Freedom of Association: Cases of progress



Appendix V.

List of cases of progress for the 1971/2000 period

- Case n° 503 (Argentina)
Case n° 631 (Turkey)
Case n° 654 and 666 (Portugal)
Case n° 658, 678, 679,
684,697,704,722, 735, 780, 803 and
812 (Spain)
Case n° 672, 768, 802, 819, 822 and
847 (Dominican Republic)
Case n° 709 (Mauritius)
Case n° 734 (Colombia)
Case n° 737, 738, 739, 740, 741, 742,
743 and 744 (Japan)
Case n° 757 (Austria)
Case n° 763 (Uruguay)
Case n° 774 (Central African
Republic)
Case n° 790 (Jamaica)
Case n° 793 (India)
Case n° 800 (Brazil)
Case n° 814 (Bolivia)
Case n° 815 (Ethiopia)
Case n° 818 (Canada/Quebec)
Case n° 823 (Chile)
Case n° 839 (Jordan)
Case n° 842 (Argentina)
Case n° 851 (Greece)
Case n° 861 (Bangladesh)
Case n° 884 (Peru)
Case n° 885 (Ecuador)
Case n° 887 (Ethiopia)
Case n° 899 (Tunisia)
Case n° 909 (Poland)
Case n° 950 (Dominican Republic)
Case n° 997, 999, 1029 (Turkey)
Case n° 1011 (Senegal)
Case n° 1019 (Greece)
Case n° 1020 (Mali)
Case n° 1024 (India)
Case n° 1034 (Brazil)
Case n° 1040 (Central African
Republic)
Case n° 1041 (Brazil)
Case n° 1051 (Chile)
Case n° 1054 (Morocco)
Case n° 1068 (Greece)
Case n° 1082 (Greece)
Case n° 1097 (Poland)
Case n° 1098, 1132, 1254, 1257, 1290,
1299 and 1316 (Uruguay)
Case n° 1109 (Chile)
Case n° 1115 (Morocco)
Case n° 1131 (Burkina Faso)
Case n° 1135 (Ghana)
Case n° 1153 (Uruguay)
Case n° 1179 (Dominican Republic)
Case n° 1181 (Peru)
Case n° 1225 (Brazil)
Case n° 1227 (India)
Case n° 1241 (Austria)
Case n° 1264 (Barbados)
Case n° 1266 (Burkina Faso)
Case n° 1273, 1441, 1494 and 1524
(El Salvador)
Case n° 1279 (Portugal)
Case n° 1309 (Chile)
Case n° 1326 (Bangladesh)
Case n° 1327 (Tunisia)
Case n° 1335 (Malta)
Case n° 1354 (Greece)
Case n° 1405 (Burkina Faso)
Case n° 1413 (Bahrain)
Case n° 1419 (Panama)
Case n° 1420 (United-States/Porto
Rico)
Case n° 1428 (India)
Case n° 1431 (Indonesia)
Case n° 1449 (Mali)
Case n° 1455, 1456, 1496 et 1515
(Argentina)
Case n° 1459 (Guatemala)
Case n° 1467 (United-States)
Case n° 1468 (India)
Case n° 1476 (Panama)
Case n° 1483 (Costa Rica)

Case n° 1487 (Brazil)	Case n° 1705 (Paraguay)
Case n° 1492 (Romania)	Case n° 1710 (Chile)
Case n° 1493 (Cyprus)	Case n° 1726 (Pakistan)
Case n° 1501 (Venezuela)	Case n° 1727 (Turkey)
Case n° 1524 (El Salvador)	Case n° 1742 (Hungary)
Case n° 1526 (Canada/Quebec)	Case n° 1751 (Dominican Republic)
Case n° 1530 (Nigeria)	Case n° 1752 (Myanmar)
Case n° 1544 (Ecuador)	Case n° 1760 (Sweden)
Case n° 1547 (Canada)	Case n° 1777 (Argentina)
Case n° 1551 (Argentina)	Case n° 1784 (Peru)
Case n° 1552 (Malaysia)	Case n° 1785 (Poland)
Case n° 1559 (Austria)	Case n° 1788 (Romania)
Case n° 1569 (Panama)	Case n° 1793 and 1935 (Nigeria)
Case n° 1570 (Philippines)	Case n° 1806 (Canada/Yukon)
Case n° 1571 (Romania)	Case n° 1823 (Guatemala)
Case n° 1577, 1582 and 1583 (Turkey)	Case n° 1826 (Philippines)
Case n° 1581 (Thailand)	Case n° 1844 (Mexico)
Case n° 1584 (Greece)	Case n° 1849 (Belarus)
Case n° 1594 et 1647 (Côte d'Ivoire)	Case n° 1869 (Latvia)
Case n° 1599 (Gabon)	Case n° 1870 (Congo)
Case n° 1602 (Spain)	Case n° 1877 (Morocco)
Case n° 1607 (Canada/ Newfoundland)	Case n° 1889 (Brazil)
Case n° 1618 (United Kingdom)	Case n° 1891 (Romania)
Case n° 1621 (Sri Lanka)	Case n° 1894 (Mauritania)
Case n° 1622 (Fiji)	Case n° 1899 (Argentina)
Case n° 1639 (Argentina)	Case n° 1920 (Lebanon)
Case n° 1678 (Costa Rica)	Case n° 1940 (Mauritius)
Case n° 1682, 1711 and 1716 (Haiti)	Case n° 1941 (Chile)
Case n° 1683 (Russia)	Case n° 1944 (Peru)
Case n° 1692 (Germany)	Case n° 1967 (Panama)
Case n° 1698 (New Zealand)	Case n° 2000 (Morocco)
	Case n° 2016 (Brazil)