
International Labour Conference, 101st Session, 2012

**General Survey on the fundamental Conventions
concerning rights at work in light of the ILO
Declaration on Social Justice for a Fair Globalization, 2008**

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

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

Report III (Part 1B)

establishing the possibility for the governor to appoint an observer to the general congress of a trade union.

116. With regard to the political activities of organizations, *the Committee is of the view that both legislative provisions which establish a close relationship between trade union organizations and political parties, and those which prohibit all political activities by trade unions, give rise to difficulties with regard to the principles of the Convention*. Noting that the existence of a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country,²⁵⁸ the Committee considers that some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interests of organizations in expressing their point of view on matters of economic or social policy affecting their members or workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other.²⁵⁹

The right to strike

Introduction

117. *Strikes are essential means available to workers and their organizations to protect their interests*, but there is a variety of opinions in relation to the right to strike. While it is true that strike action is a basic right, it is not an end in itself, but the last resort for workers' organizations, as its consequences are serious, not only for employers, but also for workers, their families and organizations and in some circumstances for third parties. In the absence of an express provision in Convention No. 87, it was mainly on the basis of *Article 3* of the Convention, which sets out the right of workers' organizations to organize their activities and to formulate their programmes, and *Article 10*, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed (as was the case for other provisions of the Convention) by the Committee on Freedom of Association as a specialized tripartite body (as of 1952), and by the Committee of Experts (as of 1959, and essentially taking into consideration the principles established by the Committee on Freedom of Association). This position of the supervisory bodies in favour of the recognition and protection of the right to strike has, however, been subject to a number of criticisms from the Employers' group in the Committee on the Application of Standards of the International Labour Conference.

²⁵⁸ Resolution concerning the independence of the trade union movement, 1952 (Preamble).

²⁵⁹ General survey, 1994, paras 130–133.

Employers' group

The Employers' group in the Conference Committee considers that neither the preparatory work for Convention No. 87, nor an interpretation based on the Vienna Convention on the Law of Treaties, offers a basis for developing, starting from the Convention, principles regulating in detail the right to strike.¹

According to the Employer members, the right to strike has no legal basis in the freedom of association Conventions. In their view, Convention No. 87 at most contains a general right to strike, which nonetheless cannot be regulated in detail under the Convention. They consider that when the Committee of Experts expresses its views in detail on strike policies, especially on essential services, it applies a "one-size-fits-all" approach that fails to recognize differences in economic or industrial development and current economic circumstances. They add that the approach of the Committee of Experts undermines tripartism and ask it to reconsider its interpretation of the matter.² In 2011, the Employer members reiterated their position, considering that the observations of the Committee of Experts on the right to strike and essential services are not in conformity with the text, the preparatory work and the history of the negotiation of Convention No. 87.³

In its communication dated 7 July 2011, the International Organisation of Employers (IOE) recalls and develops in detail the long-held views of the Employers' group in relation to the right to strike as set out in the Conference Committee *Record of Proceedings*, particularly those related to the 81st Session of the International Labour Conference (1994) when the last General Survey on freedom of association and collective bargaining was discussed.

¹ *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 57. ² *ibid.* ³ *Committee on the Application of Standards: Extracts from the Record of Proceedings*, General Report, 100th Session, Geneva, June 2011, Part I, General Report, para. 55. Moreover, during the discussion of the 1994 General Survey, the Employer members indicated that "strike was not mentioned either in Convention No. 87 or in Convention No. 98. Furthermore, the Survey placed a great deal of emphasis [...] on the historical aspects of these instruments; this historical method of interpretation however was only of secondary importance since, in the first place, must come the text, the purpose and the meaning of the provisions themselves. There were no concrete provisions and it was not helpful to quote the standards contained in the instruments of other organizations where strikes and collective action were sometimes mentioned in another context and in a very general or only indirect manner. [...] The beginning of the chapter rightly indicated that the right to strike was mentioned during the preparatory work, but adds in paragraph 142 that "[...] during discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted". The Employer members however quoted the following passage: "Several Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association". (31st Conference, 1948, Report VII, p. 87.) A similar conclusion was made in the plenary sitting: "The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organize, but rather a concise statement of certain fundamental principles". (31st Conference, 1948, *Record of Proceedings*, Appendix X, p. 477). Later, Recommendation No. 92 on voluntary conciliation and arbitration dealt with this issue in a neutral manner without regulating the contents. During the plenary sitting, the famous Worker spokesperson, Léon Jouhaux, bitterly complained of the unsatisfactory result of the discussion: he did not explicitly mention the absence of the right to strike, but other delegates did. Moreover, during the adoption of Convention No. 98, two requests presented by Workers' delegates with the aim of including a guarantee of the right to strike were rejected on the basis that it was not covered by the proposed text and that this question should be dealt with at a later stage. (32nd Conference, 1949, *Record of Proceedings*, Appendix VII, pp. 468 and 470; see also ILO: *Industry and Labour*, Vol. II, July–December 1949, pp. 147, and following.) Shortly afterwards, a Government delegate made the same request which the chairman declared unreceivable for the same reasons. [...] Under these circumstances, it was incomprehensible to the Employers that the supervisory bodies could take a stand on the exact scope and content of the right to strike in the absence of explicit and concrete provisions on the subject, and that this absence seemed precisely to be the justification for their position, as is suggested in paragraph 145. The Committee of Experts had put into practice here what was called in mathematics an axiom and in Catholic theology a dogma: that is complete, unconditional acceptance of a certain and exact truth from which everything else was derived" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, paras 117–119, pp. 25/32 and 33).

Workers' group

The Worker members of the Conference Committee contest the position of the Employer members and consider that, although the right to strike is not explicitly mentioned in the Convention, that does not prevent its existence being recognized, particularly on the basis of several international instruments.¹

In the discussion of the 1994 General Survey, they stated that the right to strike is an indispensable corollary of the right to organize protected by Convention No. 87 and by the principles enunciated in the ILO Constitution. In their view, without the right to strike, freedom of association would be deprived of its substance. They added that strike objectives could not be limited only to the conflicts linked to the workplace or the enterprise, particularly given the phenomena of enterprise fragmentation and internationalization. This was the logical consequence of the fact that trade union activities should not be limited to strictly occupational questions. This was the reason why sympathy strikes should be possible, as well as strikes at the sectoral level, the national and the international level. Finally, they considered that by considerably limiting the scope of action of trade unions, by legal or administrative restrictions, governments and employers might find themselves increasingly faced with spontaneous actions.²

According to the Worker members, possible restrictions on the right to strike in essential services and for certain categories of public servants should be restrictively defined given that they are exceptions to a general rule concerning a fundamental right. They added that the Committee of Experts unanimously, all the Worker members and a large majority of the Government members are of the opinion that effective protection of freedom of association necessarily implies operational rules and principles concerning the modalities of strike action. Finally, they indicated that the Committee of Experts had developed its views on this question in a very cautious, gradual and balanced manner, and that it would be preferable that the general consensus established in this regard was not shaken up.³

¹ *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 74. ² *Record of Proceedings*, ILC, 81st Session, Geneva, 1994, 25, General Report, paras 136–143, pp. 25/38–40. ³ *ibid.*

118. With regard to the views put forward that the preparatory work would not support the inclusion of the right to strike, the Committee would first observe that the absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose. While the Committee considers that the preparatory work is an important supplementary interpretative source when reviewing the application of a particular Convention in a given country, it may yield to the other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years (see Articles 31 and 32 of the Vienna Convention on the Law of Treaties). In addition, and as seen below in response to comments made by both workers' and employers' organizations, the process of determining whether there is compliance with a general right to strike invariably involves consideration of the specific circumstances in which the Committee is called upon to determine the ambit and modalities of the right. The Committee has further borne in mind over the years the considerations set forth by the tripartite constituency and would recall in this respect that the right to strike was indeed first asserted as a basic principle of freedom of association by the tripartite Committee on Freedom of Association in 1952 and has been recognized and developed in scores of its decisions over more than a half century. Moreover, the 1959 General Survey, in which the Committee first raised its consideration in respect of the right to strike in relation to the Convention, was fully discussed by the Conference Committee on the Application of Standards without objection from any of the constituents.

119. The Committee reaffirms that the right to strike derives from the Convention. The Committee highlights that the right to strike is broadly referred to in the legislation of the great majority of countries and by a significant number of constitutions, as well as by several international and regional instruments, which justifies the Committee's interventions on the issue. Indeed, the principles developed by the supervisory bodies have the sole objective of ensuring that this right does not remain a theoretical instrument, but is duly recognized and respected in practice. For all of these reasons, and in light of the fact that the Committee of Experts has never considered the right to strike to be an absolute and unlimited right,²⁶⁰ and that it has sought to establish limits to the right to strike in order to be able to determine any cases of abuse and the sanctions that may be imposed. The view taken concerning the right to strike and the principles developed over time on a tripartite basis, as in many other fields, should give rise to little controversy. The Committee further observes that employers' organizations also sometimes invoke the principles developed by the supervisory bodies concerning strikes and very tangible related matters, particularly with regard to the freedom to work of non-strikers, the non-payment of strike days, access of the management to enterprise installations in the event of a strike, the imposition of compulsory arbitration by unilateral decision of trade unions and protest action by employers against economic and social policy.

120. The affirmation of the right to strike by the supervisory bodies lies within the broader framework of the recognition of this right at the international level, particularly in the International Covenant on Economic, Social and Cultural Rights of the United Nations (Article 8, paragraph 1(d)),²⁶¹ which, to date, has been ratified by 160 countries, most of which are ILO members, as well as in a number of regional instruments, as indicated in paragraph 35 of the present Survey. It is in the context of the Council of Europe that the protection of the right to strike is the most fully developed at the regional level, in light of the abundant case law of the European Committee of Social Rights, the supervisory body for the application of the European Social Charter adopted in 1961 and revised in 1996, which sets out this right.

121. Other ILO instruments also refer to the right to strike, and principally the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes, and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which indicates that the parties should be encouraged to abstain from strikes and lockouts in the event of voluntary conciliation and arbitration, and that none of its provisions may be interpreted as limiting, in any way whatsoever, the right to strike. Certain resolutions also make reference to this right.²⁶²

122. Each year, the Committee examines many individual cases relating to national provisions regulating strikes, most frequently without being challenged by the governments concerned, which generally adopt measures to give effect to the comments of the Committee of Experts. Over the years, the supervisory bodies have specified a

²⁶⁰ During the discussion of the 1994 General Survey, the Employer members felt it important to note "that they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, Part I, General Report, para. 121, p. 25/33).

²⁶¹ The Committee on Economic, Social and Cultural Rights recommends States parties to take the necessary measures with a view to ensuring the full exercise of the right to strike, or relaxing the limitations imposed on this right.

²⁶² See, in particular, the resolution adopted in 1970 by the ILC concerning trade union rights and their relation to civil liberties.

series of elements concerning the peaceful exercise of the right to strike, its objectives and the conditions for its legitimate exercise, which may be summarized as follows: (i) the right to strike is a right which must be enjoyed by workers' organizations (trade unions, federations and confederations); (ii) as an essential means of defending the interests of workers through their organizations, only limited categories of workers may be denied this right and only limited restrictions may be imposed by law on its exercise; (iii) the objectives of strikes must be to further and defend the economic and social interests of workers and; (iv) the legitimate exercise of the right to strike may not result in sanctions of any sort, which would be tantamount to acts of anti-union discrimination. Accordingly, subject to the restrictions authorized, a general prohibition of strikes is incompatible with the Convention, although the supervisory bodies accept the prohibition of wildcat strikes. Furthermore, strikes are often called by federations and confederations which, in the view of the Committee, should be recognized as having the right to strike. Consequently, legislation which denies them this right is incompatible with the Convention.²⁶³

Recognition at the national level

123. Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted. In a very large number of countries, the right to strike is now explicitly recognized, including at the constitutional level.²⁶⁴ The Committee has noted with satisfaction, for example, in relation to the African continent, the recent repeal of provisions prohibiting the right to strike in *Liberia*,²⁶⁵ and the repeal of significant restrictions on the right to strike which remained in the *United Republic of Tanzania*.²⁶⁶ It has also noted with satisfaction the definition of strikes set out in the new Labour Code of *Burkina Faso*,²⁶⁷ under the terms of which a strike is understood as being a concerted and collective cessation of work with a view to supporting occupational demands and ensuring the defence of the material and moral interests of workers.

Modalities

124. In the legislation of several countries, "political strikes" are explicitly or tacitly deemed unlawful.²⁶⁸ The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore

²⁶³ See, for example, *Colombia* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; and *Panama* – CEACR, observation, 2011.

²⁶⁴ See, for example, *Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, The former Yugoslav Republic of Macedonia, Madagascar, Republic of the Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, United States, Uruguay and Bolivarian Republic of Venezuela*.

²⁶⁵ *Liberia* – CEACR, observation, 2009.

²⁶⁶ *United Republic of Tanzania* – CEACR, observation, 2005.

²⁶⁷ *Burkina Faso* – CEACR, observation, 2010.

²⁶⁸ See, for example, *Gabon* – CEACR, direct request, 2004; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members.²⁶⁹ Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities,²⁷⁰ including in cases when such organizations have recourse to strikes.

125. With regard to so-called "sympathy" strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful.²⁷¹ It has noted in particular the recognition in *Croatia*²⁷² of the right to call sympathy strikes in national legislation and the recognition of this right for public servants in the current collective agreement. It has also noted with interest the repeal from the Constitution of *Turkey*²⁷³ of the provision which prohibited "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction".

126. Finally, *in the view of the Committee, any work stoppage, however brief and limited, may generally be considered as a strike, and restrictions in this respect can only be justified if the action ceases to be peaceful.*²⁷⁴ "Go-slow strikes" and "work-to-rule" actions are also covered by the principles developed. However, certain countries continue to consider these forms of strike action as unfair labour practices, which can be punished by fines, removal from trade union office and other sanctions.²⁷⁵

Permitted restrictions and compensatory guarantees

127. The right to strike is not absolute and may be restricted in exceptional circumstances, or even prohibited. Over and above the armed forces and the police, the members of which may be excluded from the scope of the Convention in general, other restrictions on the right to strike may relate to: (i) certain categories of public servants; (ii) essential services in the strict sense of the term; and (iii) situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to

²⁶⁹ The Committee on Freedom of Association has considered, in the particular case of a complaint presented by employers, that employers, like workers, should be able to have recourse to protest strikes (or action) against a government's economic and social policies (Case No. 2530 (*Uruguay*), Report No. 348, para. 1190).

²⁷⁰ See, for example, *Swaziland* – CEACR, observation, 2011.

²⁷¹ In its report under art. 19 of the Constitution, the Government of New Zealand indicates that the reason for which it has not ratified Convention No. 87 is related to the fact that "ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty".

²⁷² *Croatia* – CEACR, observations, 1999 and 2004.

²⁷³ *Turkey* – CEACR, observation, 2011.

²⁷⁴ General Survey, 1994, para. 173.

²⁷⁵ See, for example, *Pakistan* – CEACR, observation, 2010 (a work slowdown is considered an unfair labour practice).

meet the requirements of the situation. In these cases, compensatory guarantees should be provided for the workers who are thus deprived of the right to strike.

128. In this context, the Committee has noted with concern the potential impact of the recent case law of the Court of Justice of the European Communities (CJEC) concerning the exercise of the right to strike, and particularly the fact that in recent rulings the Court has found that the right to strike could be subject to restrictions where its effects may disproportionately impede an employer's freedom of establishment or freedom to provide services.²⁷⁶ In a communication dated 29 August 2011, the European Trade Union Confederation (ETUC) drew the Committee's attention to its particular concerns with respect to the impact of recent decisions of the Court of Justice of the European Union (*Viking*, *Laval*, *Ruffert* and *Luxembourg*) on freedom of association rights and the effective recognition of collective bargaining. While the ETUC has asked the Committee to determine whether these decisions are compatible with Conventions Nos 87 and 98, the Committee recalls, as it had when examining similar matters with respect to the *United Kingdom*, that its mandate is limited to reviewing the application of Conventions in a given member State. The Committee nevertheless takes note with interest of recent initiatives of the European Commission to clarify the import of these judgments and looks forward to learning of the progress made in this regard.

Public service

129. Taking into account the importance of ensuring the continuity of the functions of the three branches of the State (the legislative, executive and judicial authorities) and of essential services, ***the Committee of Experts and the Committee on Freedom of Association consider that States may restrict or prohibit the right to strike of public servants "exercising authority in the name of the State"***.²⁷⁷ Decisions implementing this principle at the national level vary. For example, in *Switzerland*,²⁷⁸ although previously all federal officials were denied the right to strike, an ordinance now limits this prohibition to officials exercising authority in the name of the State.

130. Several States prohibit or impose restrictions on the right to strike in the public service which go beyond the framework established by the Committee.²⁷⁹ These restrictions relate in particular to teachers. Nevertheless, the Committee considers that public sector teachers are not included in the category of public servants "exercising authority in the name of the State" and that they should therefore benefit from the right to strike without being liable to sanctions, even though, under certain circumstances, the

²⁷⁶ *United Kingdom* – CEACR, observations, 2010 and 2011. CJEC, 11 December 2007, *International Transport Workers' Federation and Finnish Seaman's Union v. Viking Line ABP*, Case C-438/05, and CJEC, 19 December 2007, *Laval un Partneri v. Svenska Byggnadsarbetareförbundet*, Case C-341/05.

²⁷⁷ See *Digest of decisions and principles of the Freedom of Association Committee*, 2006, para. 541, and General Survey, 1994, paras 158 et seq. For an example of the definition of the category of workers "exercising authority in the name of the State", see, *Denmark* – CEACR, direct request, 2010. See, for example, as regards the prohibition of the right to strike of customs officers, Committee on Freedom of Association, Case No. 2288 (*Niger*), Report No. 333.

²⁷⁸ *Switzerland* – CEACR, direct request, 2011.

²⁷⁹ See, for example, *Albania* – CEACR, observation, 2010; *Bulgaria* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2010; *Estonia* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2010 (in its report under art. 19 of the Constitution, the Government of *Japan* indicates that it is currently examining the issue of whether the right to strike should be granted in the public sector); *Kazakhstan* – CEACR, observation, 2011; *Lesotho* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2010.

maintenance of a minimum service may be envisaged in this sector.²⁸⁰ This principle should also apply to postal workers and railway employees,²⁸¹ as well as to civilian personnel in military institutions when they are not engaged in the provision of essential services in the strict sense of the term.²⁸²

Essential services

131. ***The second acceptable restriction on strikes concerns essential services.*** The Committee considers that essential services, for the purposes of restricting or prohibiting the right to strike, are only those “the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.²⁸³ This concept is not absolute in its nature in so far as a non-essential service may become essential if the strike exceeds a certain duration or extent, or as a function of the special characteristics of a country (for example, an island State). In practice, national legislation fairly frequently has recourse to the concept of essential services to limit or prohibit the right to strike. This may range from a relatively short limitative enumeration to a long list which is included in the law itself. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. However, in certain countries, such as *Bulgaria*,²⁸⁴ the right to strike can be exercised throughout the public service and in all services termed essential for the community.

132. In practice, the manner in which strikes are viewed at the national level varies widely: several States continue to define essential services too broadly,²⁸⁵ or leave too much discretion to the authorities to unilaterally declare a service essential;²⁸⁶ others allow strikes to be prohibited on the basis of their potential economic consequences²⁸⁷ (particularly in EPZs and recently established enterprises),²⁸⁸ or prohibit strikes on the basis of the potential detriment to public order or to the general or national interest.²⁸⁹ Such provisions are not compatible with the principles relating to the right to strike.

133. In still other countries, such as *Colombia*,²⁹⁰ it is left to the higher judicial authorities to determine, on a case-by-case basis, the essential nature of a service, even where there is a general definition in law in this respect. Finally, in other cases, the

²⁸⁰ See, for example, *Germany* – CEACR, observation, 2010.

²⁸¹ *ibid.*

²⁸² See, for example, *Angola* – CEACR, direct request, 2010.

²⁸³ General Survey, 1994, para. 159.

²⁸⁴ *Bulgaria* – CEACR, observation, 2008 (removal of the prohibition of strikes in the energy, communications and health sectors).

²⁸⁵ See, for example, *Chile* – CEACR, observation, 2010.

²⁸⁶ See, for example, *Zimbabwe* – CEACR, observation, 2011.

²⁸⁷ See, for example, *Australia* – CEACR, observation, 2010; *Benin* – CEACR, observation, 2001; and *Chile* – CEACR, observation, 2010.

²⁸⁸ See, for example, *Bangladesh* – CEACR, observation, 2010 (prohibition of strikes for three years from the date of commencement of production in a new establishment); and *Panama* – CEACR, observation, 2011 (denial of the right to strike in enterprises less than two years old).

²⁸⁹ See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2001; and *Zambia* – CEACR, observation, 2011.

²⁹⁰ *Colombia* – CEACR, observation, 2010 (ruling on appeal for cassation of the Labour Chamber of the Supreme Court of Justice of 3 June 2009 (Case No. 40428)).

determination of essential services is the outcome of a joint decision by the parties through an agreement between the social partners, such as in *Cyprus*.²⁹¹ In this context, the Committee has noted with satisfaction several cases of interesting progress, including the repeal in *Guatemala*²⁹² of the prohibition of strikes or the suspension of work by workers in enterprises or services the interruption of which would, in the opinion of the Government, seriously affect the national economy; the removal in *Turkey*²⁹³ of the imposition of compulsory arbitration to prevent a strike in EPZs and; the repeal in *Cyprus*²⁹⁴ of provisions granting the Council of Ministers discretionary power to prohibit strikes in the services that it considers essential.

Activities not considered as essential services

134. When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private sectors in numerous services, including the following: the banking sector,²⁹⁵ railways,²⁹⁶ transport services and public transport,²⁹⁷ air transport services and civil aviation,²⁹⁸ teachers and the public education service,²⁹⁹ the agricultural sector,³⁰⁰ fuel distribution services³⁰¹ and the hydrocarbon, natural gas and petrochemical sector,³⁰² coal production,³⁰³ maintenance of ports and airports,³⁰⁴ port services and authorities³⁰⁵

²⁹¹ *Cyprus* – CEACR, observation, 2006.

²⁹² *Guatemala* – CEACR, observation, 2002.

²⁹³ *Turkey* – CEACR, observation, 2005.

²⁹⁴ *Cyprus* – CEACR, observation, 2008.

²⁹⁵ See, for example, *Botswana* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Mexico* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Sao Tome and Principe* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

²⁹⁶ See, for example, *Azerbaijan* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Costa Rica* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

²⁹⁷ See, for example, *Azerbaijan* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; *Guinea* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Jersey)* – CEACR, observation, 2011.

²⁹⁸ See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2011.

²⁹⁹ See, for example, *Canada* – CEACR, observation, 2010 (British Columbia and Manitoba); *Germany* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

³⁰⁰ See, for example, *Chile* – CEACR, observation, 2010.

³⁰¹ See, for example, *Ecuador* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; and *Mozambique* – CEACR, observation, 2011.

³⁰² See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2010.

³⁰³ See, for example, *Turkey* – CEACR, observation, 2010.

³⁰⁴ See, for example, *Nigeria* – CEACR, observation, 2011.

and loading and unloading services for ships,³⁰⁶ postal services,³⁰⁷ municipal services,³⁰⁸ services for the loading and unloading of animals³⁰⁹ and of perishable foodstuffs,³¹⁰ EPZs,³¹¹ government printing services,³¹² road cleaning and refuse collection,³¹³ radio and television,³¹⁴ hotel services³¹⁵ and construction.³¹⁶

Activities considered as essential services

135. When examining concrete cases, the ILO supervisory bodies have considered that essential services in the strict sense of the term may include air traffic control services,³¹⁷ telephone services³¹⁸ and the services responsible for dealing with the consequences of natural disasters, as well as firefighting services, health and ambulance services, prison services, the security forces and water and electricity services. The Committee has also considered that other services (such as meteorological services and social security services) include certain components which are essential and others that are not.

Negotiated minimum service

136. In situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, consideration might be given to ensuring that users' basic needs are met or that facilities operate safely or without interruption, the introduction of a negotiated minimum service, as a possible alternative to a total prohibition of strikes, could be appropriate. In the view of the Committee, the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (or essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an

³⁰⁵ See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Dominica* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2010; *Guyana* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010.

³⁰⁶ See, for example, *Costa Rica* – CEACR, observation, 2010; *Grenada* – CEACR, direct request, 2010; and *Guyana* – CEACR, observation, 2011.

³⁰⁷ See, for example, *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; and *Russian Federation* – CEACR, observation, 2011.

³⁰⁸ See, for example, *Russian Federation* – CEACR, observation, 2011.

³⁰⁹ See, for example, *Mozambique* – CEACR, observation, 2011; and *Nigeria* – CEACR, observation, 2011.

³¹⁰ See, for example, *Dominica* – CEACR, observation, 2010; and *Mozambique* – CEACR, observation, 2011.

³¹¹ See, for example, *Mozambique* – CEACR, observation, 2011.

³¹² See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; and *Nigeria* – CEACR, observation, 2011.

³¹³ See, for example, *Nigeria* – CEACR, observation, 2011.

³¹⁴ See, for example, Committee on Freedom of Association, Case No. 1884 (*Swaziland*), Report No. 306.

³¹⁵ See, for example, Committee on Freedom of Association, Case No. 2120 (*Nepal*), Report No. 328.

³¹⁶ See, for example, Committee on Freedom of Association, Case No. 2326 (*Australia*), Report No. 338.

³¹⁷ See, for example, *Nigeria* – CEACR, observation, 2010.

³¹⁸ See, for example, *Kyrgyzstan* – CEACR, direct request, 2011.

acute crisis threatening the normal conditions of existence of the population; and (iii) in public services of fundamental importance.

137. However, such a service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities.³¹⁹ Moreover, a minimum service may always be required, whether or not it is in an essential service in the strict sense of the term, to ensure the security of facilities and the maintenance of equipment.

138. The Committee emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services.³²⁰ Moreover, any disagreement on minimum services should be resolved, not by the government authorities, as is the case in certain countries,³²¹ but by a joint or independent body which has the confidence of the parties, responsible for examining rapidly and without formalities the difficulties raised and empowered to issue enforceable decisions. However, in practice, the legislation in certain countries continues to determine unilaterally and without consultation the level at which a minimum service is to be provided and to require that a specific percentage of the service is provided during the strike.³²² Others authorize the public authorities to determine minimum services at their discretion, without consultation,³²³ or require the judicial authorities to issue an order for this purpose.³²⁴

139. In this context, the Committee has noted several interesting cases of progress, including the establishment and tripartite composition of the Guarantees Commission, which is entrusted with determining minimum services in *Argentina*,³²⁵ the amendment of the Law on Strikes in *Montenegro*,³²⁶ which now provides that, when determining the minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees; the introduction in *Guatemala*³²⁷ of a minimum service in essential public services determined with the participation of the parties and the judicial authorities; and the decision in *Peru*³²⁸ that in the case of disagreement on the number and occupation of the

³¹⁹ General Survey, 1994, para. 161.

³²⁰ See, for example, *Republic of Moldova* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

³²¹ See, for example, *Cambodia* – CEACR, direct request, 2011; and *Cape Verde* – CEACR, direct request, 2011.

³²² See, for example, *Bulgaria* – CEACR, observation, 2011 (in the railways); and *Romania* – CEACR, observation, 2011 (in the field of transport).

³²³ See, for example, *Armenia* – CEACR, direct request, 2011; *Chad* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

³²⁴ See, for example, *Mauritius* – CEACR, direct request, 2011.

³²⁵ *Argentina* – CEACR, observation, 2011. In contrast, in *Mexico*, the National Banking Commission responsible for ensuring that the indispensable number of agencies remain open during a strike is not a tripartite body.

³²⁶ *Montenegro* – CEACR, direct request, 2011.

³²⁷ *Guatemala* – CEACR, observation, 2002.

³²⁸ *Peru* – CEACR, direct request, 2011.

workers who are to continue working, the labour authority shall designate an independent body for their determination.

Situations of acute national or local crisis

140. ***The third restriction on the right to strike relates to situations of acute national or local crisis.*** As general prohibitions of strikes resulting from emergency or exceptional powers constitute a major restriction on one of the essential means available to workers, the Committee considers that they are only justified in a situation of acute crisis, and then only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural, sanitary or humanitarian disaster, in which the normal conditions for the functioning of society are absent.³²⁹

Compensatory guarantees for workers deprived of the right to strike

141. When the right to strike is restricted or prohibited in certain enterprises or services considered essential, or for certain public servants exercising authority in the name of the State, the workers should be afforded adequate protection so as to compensate for the restrictions imposed on their freedom of action. Such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties, in which workers and their organizations could be associated.³³⁰ Such arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

Restrictions on strikes during the term of a collective agreement

142. The legislation in certain countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law or by collective agreement must be observed. In other systems, collective agreements are seen as a social peace treaty of fixed duration during which strikes and lockouts are prohibited. The Committee considers that both these options are compatible with the Convention. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements. If legislation prohibits strikes during the term of collective agreements, this restriction must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements.³³¹

143. *EPZs.* A number of countries establish a special system of industrial relations in EPZs which specifically or indirectly prohibits strikes in such zones.³³² In the view of the Committee, such prohibitions are incompatible with the principles of non-discrimination which must prevail in the implementation of the Convention. It has

³²⁹ General Survey, 1994, para. 152.

³³⁰ *Switzerland* – CEACR, direct request, 2011.

³³¹ General Survey, 1994, paras 166–167.

³³² See, for example, *Pakistan* – CEACR, observation, 2011 (information provided by the International Trade Union Confederation); and *Panama* – CEACR, observation, 2011.

therefore noted with satisfaction, among other measures, the repeal in *Turkey*³³³ of the provision under which compulsory arbitration was imposed for a ten-year period in EPZs for the settlement of collective labour disputes; and the repeal in *Namibia*³³⁴ of the provision which prohibited any employee from taking action by calling, or participating in a strike in an EPZ, under the threat of a disciplinary penalty or dismissal.

Prerequisites

Exhaustion of prior procedures (conciliation, mediation and voluntary arbitration)

144. A large number of countries require advance notice of strikes to be given to the administrative authorities or to the employer and/or establish an obligation to have recourse to prior conciliation and voluntary arbitration procedures in collective disputes before a strike may be called.³³⁵ In the view of the Committee, such machinery should, however, have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.³³⁶ With regard to the duration of prior conciliation and arbitration procedures, the Committee has considered, for example, that the imposition of a duration of over 60 working days as a prior condition for the exercise of a lawful strike may make the exercise of the right to strike difficult, or even impossible. In other cases, it has proposed reducing the period fixed for mediation.³³⁷ The situation is also problematic when legislation does not set any time limit for the exhaustion of prior procedures and confers full discretion on the authorities to extend such procedures.³³⁸

Advance notice, cooling-off periods and the duration of strikes

145. In a large number of countries, there is a requirement to comply with a notice period or a cooling-off period before calling a strike.³³⁹ In so far as they are conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, such provisions may be seen as measures taken to encourage and promote the development of voluntary bargaining. Again, however, the period of advance notice should not be an additional obstacle to bargaining, and should be shorter if it follows a compulsory prior mediation or conciliation procedure which itself is already lengthy. For example, the Committee has considered that advance notice of 60 days is excessive.³⁴⁰

³³³ *Turkey* – CEACR, observation, 2005.

³³⁴ *Namibia* – CEACR, observation, 2003.

³³⁵ See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Libya* – CEACR, observation, 2011; and *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2010.

³³⁶ General Survey, 1994, para. 171.

³³⁷ *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011.

³³⁸ See, for example, *Kiribati* – CEACR, observation, 2011.

³³⁹ See, for example, *Burundi* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

³⁴⁰ *United Republic of Tanzania* – CEACR, observation, 2011.

146. Finally, in certain cases, the advance notice must be accompanied by an indication of the duration of the strike, under the threat that workers may be liable to sanctions if they participate in a strike the duration of which is not specified in the notification.³⁴¹ The Committee considers that workers and their organizations should be able to call a strike for an indefinite period if they so wish.³⁴²

Quorum and majority required to call a strike

147. Certain countries provide that, to be able to call a strike, it must be so decided by two-thirds³⁴³ or three-quarters³⁴⁴ of workers. In general, the Committee considers that requiring a decision by over half of the workers involved in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises.³⁴⁵ In the Committee's view, if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.³⁴⁶ For example, the observance of a quorum of two-thirds of those present may be difficult to reach and could restrict the right to strike in practice.³⁴⁷ In this context, it has noted with satisfaction, among other measures, the legislative amendment in *Latvia*³⁴⁸ which reduced the quorum required to declare a strike from three-quarters to one half of the members of a trade union or a company participating in the respective meeting. Similarly, in *Guatemala*,³⁴⁹ the requirement to obtain the votes of two-thirds of the members of a trade union to decide whether or not to call a strike has been removed and it is now sufficient to obtain a vote in favour of half plus one of the members constituting the quorum of the respective assembly.

Prior approval and supervision of strike ballots

148. The Committee considers that the requirement set out in law to obtain prior approval of a strike by a higher level trade union organization³⁵⁰ is an impediment to the freedom of choice of the organizations concerned to organize their activities. Furthermore, it considers that the control or supervision of the strike ballot by the

³⁴¹ See, for example, *Burundi* – CEACR, direct request, 2011; *Bulgaria* – CEACR, observation, 2011; *Egypt* – CEACR, direct request, 2011; *Georgia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

³⁴² See, for example, *Chad* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

³⁴³ See, for example, *Armenia* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; and *Mexico* – CEACR, observation, 2011.

³⁴⁴ See, for example, *Bangladesh* – CEACR, observation, 2010; and *Plurinational State of Bolivia* – CEACR, observation, 2010.

³⁴⁵ See, for example, *Armenia* – CEACR, direct request, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Mauritius* – CEACR, direct request, 2011.

³⁴⁶ General Survey, 1994, para. 170.

³⁴⁷ See, for example, *Czech Republic* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

³⁴⁸ *Latvia* – CEACR, observation, 2007.

³⁴⁹ *Guatemala* – CEACR, observation, 2002.

³⁵⁰ Such approval is required, for example, in *Egypt* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

administrative authority³⁵¹ constitutes an act of interference in trade union activities that is incompatible with the Convention, unless the trade unions so request, in accordance with their own rules.

The course of the strike

Picketing, occupation of the workplace, access to the enterprise and freedom of work

149. Strike action is often accompanied by the presence, at the entry to the workplace, of strike pickets aimed at ensuring the success of the strike by persuading the workers concerned to stay away from work. In the view of the Committee, in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. Restrictions on strike pickets and workplace occupations can only be accepted where the action ceases to be peaceful. It is however necessary in all cases to guarantee respect for the freedom to work of non-striking workers and the right of the management to enter the premises. In practice, while certain countries establish very general rules which are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets³⁵² or the occupation of the workplace during a strike.³⁵³ ***The Committee considers that, in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances.***

150. Several complaints have been presented by employers' organizations to the Committee on Freedom of Association concerning issues relating to the right to strike. The principal subjects have consisted of the management being prevented from having access to the premises of the enterprise during the strike, the conditions relating to the payment of wages to striking workers, the freedom of work of non-striking workers and the modalities governing compulsory arbitration by unilateral decision of trade union organizations. The Committee has considered that the requirement by law of the closing down of the enterprise, establishment or business in the event of a strike could be an infringement of the freedom of work of non-strikers and could disregard the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of directors and managerial staff to enter the installations of the enterprise and to exercise their activities), and accordingly raises problems of compatibility with the Convention. It has also considered that a stable labour relations system should take account of the rights and obligations of both workers' organizations and of employers and their organizations.³⁵⁴ In this context, the Committee has noted with satisfaction, for example, the amendment of the legislation in *Panama*,³⁵⁵ which now provides that the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their

³⁵¹ Such supervision is carried out, for example, in *Angola* – CEACR, direct request, 2010; *Bahamas* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 1997; *Swaziland* – CEACR, observation, 2010; and *United Republic of Tanzania* – CEACR, observation, 2011.

³⁵² See, for example, *United Republic of Tanzania* – CEACR, observation, 2011.

³⁵³ See, for example, *Burkina Faso* – CEACR, observation, 2010 (prohibition under the penalty of penal sanctions); *Côte d'Ivoire* – CEACR, direct request, 2010; *Mauritania* – CEACR, direct request, 2011 (prohibition under penalty of penal sanctions); and *Senegal* – CEACR, observation, 2011.

³⁵⁴ Committee on Freedom of Association, Case No. 1931 (*Panama*), Report No. 310, paras 497 and 502.

³⁵⁵ *Panama* – CEACR, observation, 2011.

purpose is not to recommence productive activities (the access of non-striking workers to the enterprise is not, however, mentioned).

Requisitioning of strikers and hiring of external workers

151. Although certain systems continue to retain fairly broad powers to requisition workers in the case of a strike,³⁵⁶ the Committee considers that it is desirable to limit powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, namely: (i) in the public service for public servants exercising authority in the name of the State; (ii) in essential services in the strict sense of the term; and (iii) in the case of an acute national or local crisis.

152. The Committee also recalls that the maintaining of the employment relationship is a normal legal consequence of recognition of the right to strike. However, in some countries with the common law system strikes are regarded as having the effect of terminating the employment contract, leaving employers free to replace strikers with new recruits.³⁵⁷ ***The Committee considers that provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike, particularly where striking workers are not able in law to return to their employment at the end of the dispute.*** The legislation should provide for genuine protection in this respect.³⁵⁸

Compulsory arbitration

153. Another means of denying the right to strike or seriously restricting its exercise consists of the imposition of compulsory arbitration, which makes it possible to prohibit virtually all strikes or to end them quickly. In such cases, collective labour disputes are resolved by a final judicial award or an administrative decision that is binding on the parties concerned, with strike action being prohibited during the procedure and once the award has been issued. The Committee considers that recourse to compulsory arbitration to bring an end to a collective labour dispute and a strike is only acceptable under certain circumstances, namely: (i) when the two parties to the dispute so agree; or (ii) when the strike in question may be restricted, or even prohibited, that is: (a) in the case of disputes concerning public servants exercising authority in the name of the State; (b) in conflicts in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation.³⁵⁹ Accordingly, the existence of protracted disputes and the failure of conciliation are not per se elements which justify the imposition of compulsory arbitration.³⁶⁰ However, the Committee also recognizes that there comes a time in bargaining where, after protracted and fruitless negotiations, the public authorities might be justified to step in when it is obvious that the deadlock will not be broken without some initiative on their part.³⁶¹

³⁵⁶ See, for example, *Angola* – CEACR, direct request, 2010; *Burkina Faso* – CEACR, observation, 2011; and *Djibouti* – CEACR, observation, 2010.

³⁵⁷ *United Kingdom* – CEACR, observation, 2011.

³⁵⁸ General Survey, 1994, para. 139.

³⁵⁹ General Survey, 1994, para. 257.

³⁶⁰ *Kiribati* – CEACR, observation, 2011.

³⁶¹ General Survey, 1994, para. 258.

154. In practice, several countries continue to authorize recourse to compulsory arbitration, either automatically, or at the discretion of the public authorities,³⁶² or at the request of one of the parties (sometimes following the exhaustion of compulsory prior conciliation and mediation procedures).³⁶³ ***In the view of the Committee, systematic recourse to this type of procedure is tantamount in practice to a general prohibition of strikes, which is incompatible with the Convention.*** Moreover, arbitration imposed by the authorities at the request of only one of the parties is, in general, contrary to the principles of collective bargaining. Nevertheless, many countries continue to authorize recourse to compulsory arbitration in situations which go beyond the framework established by the Committee,³⁶⁴ particularly in cases in which disputes continue for more than a certain period.³⁶⁵

155. Other countries provide that when the conciliation attempt between the parties to the dispute has not been successful, the dispute may be referred to a specific body responsible for drawing up a report or recommendations which, after a certain period has elapsed, may become enforceable if the parties to the dispute have not challenged them.³⁶⁶ The Committee considers that this type of provision may be compatible with the Convention, on condition that the period referred to above is sufficiently long to allow the parties the necessary time for reflection.

156. The issue of arbitration is also broadly developed in Chapter 2 below on Convention No. 98.

Sanctions

157. The principles developed by the supervisory bodies in relation to the right to strike are only valid for lawful strikes, conducted in accordance with the provisions of national law, on condition that the latter are themselves in conformity with the principles of freedom of association. They do not cover the abusive or unlawful exercise of the right to strike, which may take various forms and may give rise to certain sanctions. If the strike is determined by a competent judicial authority to be unlawful on the basis of provisions that are in conformity with freedom of association principles, proportionate

³⁶² See, for example, *Botswana* – CEACR, observation, 2011; *Dominica* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *Kuwait* – CEACR, observation, 2011; *Mali* – CEACR, observation, 2011; *Mauritius* – CEACR, direct request, 2011; *Panama* – CEACR, observation, 2010; *Sri Lanka* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Anguilla)* – CEACR, direct request, 2011.

³⁶³ See, for example, *Canada* – CEACR, observation, 2010 (when the work stoppage exceeds 60 days); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (from the end of the period of strike notice); *Côte d'Ivoire* – CEACR, direct request, 2010; *Egypt* – CEACR, observation, 2004; *Fiji* – CEACR, observation, 2010; *Georgia* – CEACR, observation, 2010 (after 14 days); *Haiti* – CEACR, observation, 2010; *Malta* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Panama* – CEACR, observation, 2011; *Romania* – CEACR, observation, 2011; and *Uganda* – CEACR, observation, 2010.

³⁶⁴ See, for example, *Burundi* – CEACR, direct request, 2011 (the possibility of recourse to the Administrative Court in the context of disputes appears to have resulted in a system of compulsory arbitration); *Egypt* – CEACR, observation, 2011 (sections 179, 187, 193 and 194 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (art. 326(12) of the Constitution); *Ghana* – CEACR, direct request, 2010 (section 160(2) of the Labour Act); *Mauritania* – CEACR, observation, 2011 (sections 350 and 362 of the Labour Code); *Mozambique* – CEACR, observation, 2011 (section 189 of the Labour Act); *Panama* – CEACR, observation, 2011 (sections 452 and 486 of the Labour Code); *Sao Tome and Principe* – CEACR, observation, 2010 (section 11 of Act No. 4/92); *Togo* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010 (sections 29, 30 and 32 of Act No. 2822); and *Uganda* – CEACR, direct request, 2011 (sections 5(1) and (3) of the Labour Disputes Act).

³⁶⁵ See, for example, *Nicaragua* – CEACR, observation, 2011 (after 30 days of strike); and *Romania* – CEACR, observation, 2011 (after 20 days).

³⁶⁶ See, for example, sections 242–248 of the Labour Code of *Congo*.

disciplinary sanctions may be imposed against strikers (such as reprimands, withdrawal of bonuses, etc).³⁶⁷ The question of determining whether or not a strike is lawful is therefore essential. In the view of the Committee, responsibility for declaring a strike illegal should not lie with the government authorities, but with an independent body which has the confidence of the parties involved.³⁶⁸ In this context, the Committee has noted with satisfaction, for example, that in *Colombia*³⁶⁹ the legality or unlawful nature of a collective labour suspension or stoppage shall be the subject of a judicial ruling in a priority procedure. It should be noted that the non-payment of wages corresponding to the period of strike is a mere consequence of the absence of work, and not a sanction. Therefore, salary deductions for days of strike do not raise problems of compatibility with the Convention. Ultimately, the payment of wages to striking workers is a matter appropriate to negotiation between the parties concerned.

Penal sanctions

158. Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions.³⁷⁰ However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property). The concern expressed by the Committee to ensure that sentences of imprisonment are on no account imposed on strikers is also supported by the supervisory bodies of the United Nations, and particularly the Committee on Economic, Social and Cultural Rights, which has considered that the imposition of such sanctions constitutes non-compliance with the obligations of the State party to the Covenant.³⁷¹ Despite these principles, several States continue to maintain specific penal sanctions for strike action,³⁷² including imprisonment,³⁷³ in violation of the principles established by the Committee.

³⁶⁷ *Kiribati* – CEACR, observation, 2011; *Madagascar* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Syrian Arab Republic* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011.

³⁶⁸ Certain systems are not in conformity with the Convention on this point: see, for example, *Fiji* – CEACR, observation, 2010; *Peru* – CEACR, direct request, 2011 (this responsibility lies with the labour administrative authority); and *Uganda* – CEACR, direct request, 2011 (the responsibility for declaring a strike illegal lies with the Government).

³⁶⁹ *Colombia* – CEACR, observation, 2009.

³⁷⁰ It should be noted that Art. 1 of the Abolition of Forced Labour Convention, 1957 (No. 105), prohibits forced or compulsory labour as a punishment for having participated in strikes.

³⁷¹ Committee on Economic, Social and Cultural Rights of the United Nations, *Concluding observations: Syrian Arab Republic*, 24 September 2001 (E/C.12/1/Add.63), para. 21. In particular, the Committee on Economic, Social and Cultural Rights expressed “concern about the restrictions in practice reported by the ILO with regard to the right to strike, such as the imposition of sanctions, including imprisonment, which constitutes non-compliance with the State party’s obligation regarding article 8 of the Covenant”.

³⁷² See, for example, *Barbados* – CEACR, observation, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burkina Faso* – CEACR, observation, 2010; *Chile* – CEACR, observation, 2010; *Congo* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Guatemala* – CEACR, observation, 2010; *Guyana* – CEACR, observation, 2011; *Kiribati* – CEACR, observation, 2011;

159. Other types of sanctions are sometimes imposed, such as fines, the closure of trade union premises, the suspension or deregistration of the trade union concerned,³⁷⁴ or the removal from office of trade union officers.³⁷⁵ The Committee considers that such sanctions should be possible only where the prohibition of strike action is in conformity with the Convention and the sanctions are proportionate to the seriousness of the fault committed. In any case, a right of appeal should exist against sanctions imposed by the authorities. Finally, certain systems are characterized by specific features and convict strikers on the basis of more general provisions of penal legislation, such as the offence of “obstruction of business”;³⁷⁶ or provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the settlement of an industrial dispute;³⁷⁷ or provide for penal sanctions in the case of a work slowdown.³⁷⁸ In the view of the Committee, such sanctions are not compatible with the Convention. In this context, it has noted with satisfaction, among other measures, the removal of penal sanctions for strike action in the *Republic of Moldova*,³⁷⁹ *Guatemala*³⁸⁰ and the *Syrian Arab Republic*.³⁸¹

Republic of Moldova – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Ukraine* – CEACR, observation, 2011.

³⁷³ See, for example, *Angola* – CEACR, direct request, 2010 (section 27 of Act No. 23/91 on strikes); *Azerbaijan* – CEACR, observation, 2010 (section 233 of the Penal Code); *Bahamas* – CEACR, observation, 2010 (sections 74(3), 75(3), 76(2)(b) and 77(2) of the Industrial Relations Act); *Bangladesh* – CEACR, observation, 2010 (sections 196(2)(e) and 291, 294 to 296 of the Labour Act); *Barbados* – CEACR, observation, 2011 (section 4 of the Better Security Act, 1920); *Benin* – CEACR, observation, 2010 (with regard to seafarers: Ordinance No. 38 PR/MTPTPT of 18 June 1968); *Chile* – CEACR, observation, 2010 (section 11 of Act No. 12927 on the internal security of the State); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (section 326 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (Decree No. 105 of 7 June 1967); *Fiji* – CEACR, observation, 2010 (sections 256(a) and 250 of the Employment Relations Act); *Guyana* – CEACR, observation, 2011 (section 19 of the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Bill, 2006); *Libya* – CEACR, direct request, 2011 (section 176 of the Labour Code); *Madagascar* – CEACR, observation, 2011 (section 258 of the Labour Code); *Netherlands (Aruba)* – CEACR, observation, 2011 (section 374(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964); *Nigeria* – CEACR, observation, 2011 (section 30 of the Trade Union Act, as amended by section 6(d) of the Trade Union (Amendment) Act); *Pakistan* – CEACR, observations, 2011 (Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act) and 2010 (Essential Services Act); *Philippines* – CEACR, observation, 2011 (sections 264(a) and 272(a) of the Labour Code); *Syrian Arab Republic* – CEACR, observation, 2011 (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949 issuing the Penal Code); *Serbia* – CEACR, direct request, 2011 (section 167 of the Penal Code); *Seychelles* – CEACR, observation, 2011 (section 56(1) of the Industrial Relations Act); *Tajikistan* – CEACR, direct request, 2011 (section 160 of the Criminal Code); *Trinidad and Tobago* – CEACR, observation, 2011 (for teachers and employees of the Central Bank); *Tunisia* – CEACR, observation, 2011 (section 388 of the Labour Code); *Turkey* – CEACR, observation, 2010 (sections 70, 71, 72, 73 (except for subsection 3, repealed by the Constitutional Court), 77 and 79 of Act No. 2822); *Ukraine* – CEACR, observation, 2011 (section 293 of the Penal Code); *Uganda* – CEACR, direct request, 2011 (section 29(3) of the Labour Disputes (Arbitration and Settlement) Act); *Zambia* – CEACR, observation, 2011 (section 107 of the Industrial and Labour Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (sections 109 and 112 of the Labour Act).

³⁷⁴ See, for example, *Pakistan* – CEACR, observation, 2010 (section 64(7) of the Industrial Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (section 107 of the Labour Act).

³⁷⁵ *Pakistan* – CEACR, observation, 2010.

³⁷⁶ Committee on Freedom of Association, Case No. 2602 (Republic of Korea), Report No. 359, paras 342–370.

³⁷⁷ See, for example, *Bangladesh* – CEACR, observation, 2010 (section 301 of the Labour Act).

³⁷⁸ See, for example, *Pakistan* – CEACR, observation, 2010.

³⁷⁹ *Republic of Moldova* – CEACR, observation, 2011.

³⁸⁰ *Guatemala* – CEACR, observation, 2002.

³⁸¹ *Syrian Arab Republic* – CEACR, observation, 2002.

160. It has also noted with satisfaction the adoption of provisions in *Colombia*³⁸² providing that any person who prevents a lawful assembly or engages in reprisals on grounds of strike action, assembly or legitimate association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law.

Dismissal for strike action and reinstatement of strikers

161. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its lawful exercise should not result in striking workers being dismissed or discriminated against.³⁸³ In the view of the Committee, dismissal for strike action in the case of a lawful strike constitutes serious discrimination based on the exercise of lawful trade union activities, in violation of Convention No. 98. It considers that, if the right to strike is to be effectively guaranteed, workers who participate in a lawful strike should be able to return to work once the strike has ended and the fact of making their return to work subject to certain time limits or the consent of the employer is an obstacle to the effective exercise of this right.³⁸⁴

Dissolution and suspension of organizations by administrative authority

162. *The dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should therefore be accompanied by all the necessary guarantees. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution.* However, certain countries continue to allow the dissolution of workers' and employers' organizations by administrative authority, which is a serious and direct violation of the Convention.³⁸⁵ With regard to the distribution of trade union assets in the event of dissolution, these should be used for the purposes for which they were acquired. The authorities and all of the organizations concerned should cooperate so that all trade unions are able to carry out their activities in full independence and on an equal footing.³⁸⁶

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

163. *In order to defend the interests of their members more effectively, workers' and employers' organizations should have the right to form federations and confederations of their own choosing,* which should themselves enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes. International solidarity of workers and employers also requires that their national federations and confederations be able to group together and act freely at the international level.³⁸⁷

³⁸² *Colombia* – CEACR, observation, 2010.

³⁸³ General Survey, 1994, para. 179.

³⁸⁴ See Chapter 2 below on Convention No. 98.

³⁸⁵ See, for example, *Nigeria* – CEACR, observation, 2011.

³⁸⁶ General Survey, 1994, paras 180 et seq.

³⁸⁷ General Survey, 1994, paras 189 et seq.