

Freedom of Association

**Digest of decisions and principles
of the Freedom of Association Committee
of the Governing Body of the ILO**

Fifth (revised) edition

INTERNATIONAL LABOUR OFFICE GENEVA

Importance of the right to strike and its legitimate exercise

(See also para. 131)

520. While the Committee has always regarded the right to strike as constituting a fundamental right of workers and of their organizations, it has regarded it as such only in so far as it is utilized as a means of defending their economic interests.

(See the 1996 *Digest*, para. 473; 336th Report, Case No. 2324, para. 282; and 338th Report, Case No. 2407, para. 491.)

521. The Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.

(See the 1996 *Digest*, para. 474; and, for example, 302nd Report, Case No. 1809, para. 381; 304th Report, Case No. 1863, para. 356; 307th Report, Case No. 1850, para. 120; 308th Report, Case No. 1900, para. 183; 311th Report, Case No. 1934, para. 126; 324th Report, Case No. 2072, para. 587; 327th Report, Case No. 1581, para. 111; 328th Report, Case No. 2116, para. 368; 332nd Report, Case No. 2258, para. 522; and 335th Report, Case No. 2305, para. 505.)

522. The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests.

(See the 1996 *Digest*, para. 475; and, for example, 299th Report, Case No. 1687, para. 457; 300th Report, Case No. 1799, para. 207; 306th Report, Case No. 1884, para. 695; 308th Report, Case No. 1934, para. 131; 310th Report, Case No. 1928, para. 176; 316th Report, Case No. 1930, para. 365; 327th Report, Case No. 1581, para. 111; 330th Report, Case No. 2196, para. 304; 335th Report, Case No. 2257, para. 466; 336th Report, Case No. 2340, para. 645; and 337th Report, Case No. 2365, para. 1665.)

523. The right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87.

(See 311th Report, Case No. 1954, para. 405.)

524. It does not appear that making the right to call a strike the sole preserve of trade union organizations is incompatible with the standards of Convention No. 87. Workers, and especially their leaders in undertakings, should however be protected against any discrimination which might be exercised because of a strike and they should be able to form trade unions without being exposed to anti-union discrimination.

(See the 1996 *Digest*, para. 477; 334th Report, Case No. 2258, para. 454; and 336th Report, Case No. 2153, para. 173.)

525. The prohibition on the calling of strikes by federations and confederations is not compatible with Convention No. 87.

(See the 1996 *Digest*, para. 478; and 306th Report, Case No. 1884, para. 686.)

**Objective of the strike (strikes on economic and social issues,
political strikes, solidarity strikes, etc.)**

526. The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.

(See the 1996 *Digest*, para. 479; 304th Report, Case No. 1851, para. 280; 314th Report, Case No. 1787, para. 31; 320th Report, Case No. 1865, para. 526; 326th Report, Case No. 2094, para. 491; 329th Report, Case No. 2094, para. 135; and 331st Report, Case No. 1937/2027, para. 104.)

527. Organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living.

(See the 1996 *Digest*, para. 480; 305th Report, Case No. 1870, para. 143; 320th Report, Case No. 1865, para. 526, and Case No. 2027, para. 876; 336th Report, Case No. 2354, para. 682; and 337th Report, Case No. 2323, para. 1039.)

528. Strikes of a purely political nature and strikes decided systematically long before negotiations take place do not fall within the scope of the principles of freedom of association.

(See the 1996 *Digest*, para. 481; 303rd Report, Case No. 1810/1830, para. 61; and 329th Report, Case No. 2094, para. 135.)

529. While purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies.

(See the 1996 *Digest*, para. 482; 300th Report, Case No. 1777, para. 71; 304th Report, Case No. 1851, para. 280, and Case No 1863, para. 356; 314th Report, Case No. 1787, para. 31; 320th Report, Case No. 1865, para. 526; and 333rd Report, Case No. 2251, para. 985.)

530. In one case where a general strike against an ordinance concerning conciliation and arbitration was certainly one against the government's policy, the Committee considered that it seemed doubtful whether allegations relating to it could be dismissed at the outset on the ground that it was not in furtherance of a trade dispute, since the trade unions were in dispute with the government in its capacity as an important employer following the initiation of a measure dealing with industrial relations which, in the view of the trade unions, restricted the exercise of trade union rights.

(See the 1996 *Digest*, para. 483.)

531. The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.

(See the 1996 *Digest*, para. 484; 300th Report, Case No. 1777, para. 71; and 320th Report, Case No. 1865, para. 526.)

532. The solution to a legal conflict as a result of a difference in interpretation of a legal text should be left to the competent courts. The prohibition of strikes in such a situation does not constitute a breach of freedom of association.

(See the 1996 *Digest*, para. 485.)

533. If strikes are prohibited while a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined; this type of mechanism not only allows the inevitable difficulties which may occur regarding the interpretation or application of collective agreements to be resolved while the agreements are in force, but also has the advantage of preparing the ground for future rounds of negotiations, given that it allows problems which have arisen during the period of validity of the collective agreement in question to be identified.

(See 330th Report, Case No. 2208, para. 601.)

534. A general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful.

(See the 1996 *Digest*, para. 486; 303rd Report, Case No. 1810/1830, para. 61; 307th Report, Case No. 1898, para. 325; 320th Report, Case No. 1963, para. 235; 333rd Report, Case No. 2251, para. 985; and 338th Report, Case No. 2326, para. 445.)

535. The fact that a strike is called for recognition of a union is a legitimate interest which may be defended by workers and their organizations.

(See the 1996 *Digest*, para. 487; and 302nd Report, Case No. 1809, para. 381.)

536. A ban on strikes related to recognition disputes (for collective bargaining) is not in conformity with the principles of freedom of association.

(See the 1996 *Digest*, para. 488; and 321st Report, Case No. 2066, para. 336.)

537. Protest strikes in a situation where workers have for many months not been paid their salaries by the Government are legitimate trade union activities.

(See 304th Report, Case No. 1850, para. 216.)

538. A ban on strike action not linked to a collective dispute to which the employee or union is a party is contrary to the principles of freedom of association.

(See the 1996 *Digest*, para. 489; and 307th Report, Case No. 1898, para. 325.)

539. Provisions which prohibit strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer are contrary to the principles of freedom of association on the right to strike; workers and their organizations should be able to call for industrial action in support of multi-employer contracts.

(See the 1996 *Digest*, para. 490.)

540. Workers and their organizations should be able to call for industrial action (strikes) in support of multi-employer contracts (collective agreements).

(See the 1996 *Digest*, para. 491.)

541. The Committee has stated on many occasions that strikes at the national level are legitimate in so far as they have economic and social objectives and not purely political ones; the prohibition of strikes could only be acceptable in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population.

(See the 1996 *Digest*, para. 492.)

542. A declaration of the illegality of a national strike protesting against the social and labour consequences of the government's economic policy and the banning of the strike constitute a serious violation of freedom of association.

(See the 1996 *Digest*, para. 493.)

543. As regards a general strike, the Committee has considered that strike action is one of the means of action which should be available to workers' organizations. A 24-hour general strike seeking an increase in the minimum wage, respect of collective agreements in force and a change in economic policy (to decrease prices and unemployment) is legitimate and within the normal field of activity of trade union organizations.

(See the 1996 *Digest*, para. 494.)

544. A general protest strike demanding that an end be brought to the hundreds of murders of trade union leaders and unionists during the past few years is a legitimate trade union activity and its prohibition therefore constitutes a serious violation of freedom of association.

(See the 1996 *Digest*, para. 495.)

Types of strike action

545. Regarding various types of strike action denied to workers (wild-cat strikes, tools-down, go-slow, working to rule and sit-down strikes), the Committee considers that these restrictions may be justified only if the strike ceases to be peaceful.

(See the 1996 *Digest*, paras. 496 and 497; and 306th Report, Case No. 1865, para. 337.)

546. The Committee has considered that the occupation of plantations by workers and by other persons, particularly when acts of violence are committed, is contrary to Article 8 of Convention No. 87. It therefore requested the Government, in future, to enforce the evacuation orders pronounced by the judicial authorities whenever criminal acts are committed on plantations or at places of work in connection with industrial disputes.

(See 323rd Report, Case No. 2021, paras. 324 and 325.)

Prerequisites

547. The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations.

(See the 1996 *Digest*, para. 498; 300th Report, Case No. 1799, para. 207; 318th Report, Case No. 2018, para. 514; 325th Report, Case No. 2049, para. 520; 327th Report, Case No. 2118, para. 635; and 333rd Report, Case No. 2251, para. 995.)

548. The legal procedures for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike.

(See the 1996 *Digest*, para. 499; and 316th Report, Case No. 1989, para. 189.)

549. Legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called cannot be regarded as an infringement of freedom of association, provided recourse to arbitration is not compulsory and does not, in practice, prevent the calling of the strike.

(See the 1996 *Digest*, para. 500; 307th Report, Case No. 1899, para. 83, and Case No. 1898, para. 324; 309th Report, Case No. 1912, para. 364; 324th Report, Case No. 2092/2101, para. 731; and 336th Report, Case No. 2369, para. 212.)

550. In general, a decision to suspend a strike for a reasonable period so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts, does not in itself constitute a violation of the principles of freedom of association.

(See 338th Report, Case No. 2329, para. 1274.)

551. The Committee has emphasized that, although a strike may be temporarily restricted by law until all procedures available for negotiation, conciliation and arbitration have been exhausted, such a restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage.

(See the 1996 *Digest*, para. 501.)

552. The obligation to give prior notice to the employer before calling a strike may be considered acceptable.

(See the 1996 *Digest*, para. 502; 325th Report, Case No. 2049, para. 520; and 333rd Report, Case No. 2251, para. 996.)

553. The requirement that a 20-day period of notice be given in services of social or public interest does not undermine the principles of freedom of association.

(See the 1996 *Digest*, para. 504; and 309th Report, Case No. 1912, para. 365.)

554. The legal requirement of a cooling-off period of 40 days before a strike is declared in an essential service, in so far as it is designed to provide the parties with a period of reflection, is not contrary to the principles of freedom of association. This clause which defers action may enable both parties to come once again to the bargaining table and possibly to reach an agreement without having recourse to a strike.

(See the 1996 *Digest*, para. 505.)

555. With regard to the majority vote required by one law for the calling of a legal strike (two-thirds of the total number of members of the union or branch concerned), non-compliance with which might entail a penalty by the administrative authorities, including the dissolution of the union, the Committee recalled the conclusions of the Committee of Experts on the Application of Conventions and Recommendations that such legal provisions constitute an intervention by the public authorities in the activities of trade unions which is of such a nature as to restrict the rights of these organizations, contrary to Article 3 of the Convention.

(See the 1996 *Digest*, para. 506.)

556. The requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises.

(See the 1996 *Digest*, para. 507.)

557. The requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult, especially in the case of unions which group together a large number of members. A provision requiring an absolute majority may, therefore, involve the risk of seriously limiting the right to strike.

(See the 1996 *Digest*, para. 508; and 316th Report, Case No. 1989, para. 190.)

558. The Committee requested a government to take measures to amend the legal requirement that a decision to call a strike be adopted by more than half of the workers to which it applies, in particular in enterprises with a large union membership.

(See the 1996 *Digest*, para. 509.)

559. The obligation to observe a certain quorum and to take strike decisions by secret ballot may be considered acceptable.

(See the 1996 *Digest*, para. 510; 316th Report, Case No. 1989, para. 190; and 332nd Report, Case No. 2216, para. 912.)

560. The observance of a quorum of two-thirds of the members may be difficult to reach, in particular where trade unions have large numbers of members covering a large area.

(See the 1996 *Digest*, para. 511; 332nd Report, Case No. 2216, para. 912; and 333rd Report, Case No. 2251, para. 987.)

561. A provision requiring the agreement of the majority of the members of federations and confederations, or the approval by the absolute majority of the workers of the undertaking concerned for the calling of a strike, may constitute a serious limitation on the activities of trade union organizations.

(See the 1996 *Digest*, para. 512.)

562. The Committee has considered to be in conformity with the principles of freedom of association a situation where the decision to call a strike in the local branches of a trade union organization may be taken by the general assembly of the local branches, when the reason for the strike is of a local nature and where, in the higher-level trade union organizations, the decision to call a strike may be taken by the executive committee of these organizations by an absolute majority of all the members of the committee.

(See the 1996 *Digest*, para. 513.)

563. The obligation to hold a second strike vote if a strike has not taken place within three months of the first vote does not constitute an infringement of freedom of association.

(See the 1996 *Digest*, para. 514.)

Recourse to compulsory arbitration

564. Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

(See the 1996 *Digest*, paras. 515 and 553; 302nd Report, Case No. 1845, para. 512; 303rd Report, Case No. 1810/1830, para. 62; 307th Report, Case No. 1890, para. 372; 310th Report, Case No. 1931, para. 506; 314th Report, Case No. 1948/1955, para. 75; 333rd Report, Case No. 2281, para. 631; 335th Report, Case No. 2303, para. 1376; and 338th Report, Case No. 2329, para. 1275.)

565. In as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term.

(See the 1996 *Digest*, para. 518.)

566. A provision which permits either party unilaterally to request the intervention of the labour authority to resolve a dispute may effectively undermine the right of workers to call a strike and does not promote voluntary collective bargaining.

(See the 1996 *Digest*, paras. 519 and 863; 300th Report, Case No. 1839, para. 86; and 310th Report, Case No. 1930, para. 348.)

567. The right to strike would be affected if a legal provision were to permit employers to submit in every case for compulsory arbitral decision disputes resulting from the failure to reach agreement during collective bargaining, thereby preventing recourse to strike action.

(See the 1996 *Digest*, para. 520.)

568. The Committee considers that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association.

(See the 1996 *Digest*, para. 521.)

569. In order to gain and retain the parties' confidence, any arbitration system should be truly independent and the outcomes of arbitration should not be pre-determined by legislative criteria.

(See 299th Report, Case No. 1768, para. 110.)

Cases in which strikes may be restricted or even prohibited, and compensatory guarantees

A. Acute national emergency

(See also paras. 198, 606, 609, 620, 636 and 637)

570. A general prohibition of strikes can only be justified in the event of an acute national emergency and for a limited period of time.

(See the 1996 *Digest*, para. 527; 316th Report, Case No. 1985, para. 320; 327th Report, Case No. 1581, para. 111; 333rd Report, Case No. 2288, para. 829, and Case No. 2251, para. 993; 336th Report, Case No. 2340, para. 645; and 337th Report, Case No. 2244, para. 1268.)

571. Responsibility for suspending a strike on the grounds of national security or public health should not lie with the Government, but with an independent body which has the confidence of all parties concerned.

(See 335th Report, Case No. 2303, para. 1377; and 338th Report, Case No. 2366, para. 1279.)

B. Public service
(See also paras. 588, 589 and 590)

572. Recognition of the principle of freedom of association in the case of public servants does not necessarily imply the right to strike.

(See the 1996 *Digest*, para. 531; and 304th Report, Case No. 1719, para. 413.)

573. The Committee has acknowledged that the right to strike can be restricted or even prohibited in the public service or in essential services in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees.

(See the 1996 *Digest*, para. 533; 300th Report, Case No. 1791, para. 345; 302nd Report, Case No. 1849, para. 203; and 318th Report, Case No. 2020, para. 318.)

574. The right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State.

(See the 1996 *Digest*, para. 534; 304th Report, Case No. 1719, para. 413; 338th Report, Case No. 2363, para. 731, and Case No. 2364, para. 975.)

575. Too broad a definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers. The prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State.

(See the 1996 *Digest*, para. 535.)

576. The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) 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).

(See the 1996 *Digest*, paras. 526 and 536; and, for example, 306th Report, Case No. 1882, para. 427; 309th Report, Case No. 1913, para. 305; 316th Report, Case No. 1934, para. 210; 320th Report, Case No. 2025, para. 405; 326th Report, Case No. 2135, para. 266; 329th Report, Case No. 2157, para. 191; 330th Report, Case No. 2212, para. 749; 333rd Report, Case No. 2251, para. 993; 335th Report, Case No. 2257, para. 466; 336th Report, Case No. 2383, para. 759; and 337th Report, Case No. 2244, para. 1268.)

577. Public servants in state-owned commercial or industrial enterprises should have the right to negotiate collective agreements, enjoy suitable protection against acts of anti-union discrimination and enjoy the right to strike, provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population.

(See the 1996 *Digest*, para. 532; and 338th Report, Case No. 2348, para. 997.)

578. Officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition.

(See the 1996 *Digest*, paras. 537 and 538; and 336th Report, Case No. 2383, para. 763.)

579. The prohibition of the right to strike of customs officers, who are public servants exercising authority in the name of the State, is not contrary to the principles of freedom of association.

(See 304th Report, Case No. 1719, para. 413.)

580. Action taken by a government to obtain a court injunction to put a temporary end to a strike in the public sector does not constitute an infringement of trade union rights.

(See the 1996 *Digest*, para. 539.)

C. Essential services

(See also para. 576)

581. To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.

(See the 1996 *Digest*, para. 540; 320th Report, Case No. 1989, para. 324; 324th Report, Case No. 2060, para. 517; 329th Report, Case No. 2195, para. 737; 332nd Report, Case No. 2252, para. 883; 336th Report, Case No. 2383, para. 766; 338th Report, Case No. 2326, para. 446, and Case No. 2329, para. 1275.)

582. 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.

(See the 1996 *Digest*, para. 541; 320th Report, Case No. 1963, para. 229; 321st Report, Case No. 2066, para. 340; 330th Report, Case No. 2212, para. 749; 335th Report, Case No. 2305, para. 505; and 338th Report, Case No. 2373, para. 382.)

583. The principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an “essential service” in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

(See the 1996 *Digest*, para. 542; 308th Report, Case No. 1923, para. 221; 314th Report, Case No. 1787, para. 32; 320th Report, Case No. 1963, para. 229; 328th Report, Case No. 2120, para. 540; and 336th Report, Case No. 2340, para. 645.)

584. It would not appear to be appropriate for all state-owned undertakings to be treated on the same basis in respect of limitations of the right to strike, without distinguishing in the relevant legislation between those which are genuinely essential and those which are not.

(See the 1996 *Digest*, para. 543.)

585. The following may be considered to be essential services:

- the hospital sector (see the 1996 *Digest*, para. 544; 300th Report, Case No. 1818, para. 366; 306th Report, Case No. 1882, para. 427; 308th Report, Case No. 1897, para. 477; 324th Report, Case No. 2060, para. 517, and Case No. 2077, para. 551; 329th Report, Case No. 2174, para. 795; 330th Report, Case No. 2166, para. 292; and 338th Report, Case No. 2399, para. 1171);
- electricity services (see the 1996 *Digest*, para. 544; 308th Report, Case No. 1921, para. 573; 309th Report, Case No. 1912, para. 365; 318th Report, Case No. 1999, para. 165; and Case No. 1994, para. 458);
- water supply services (see the 1996 *Digest*, para. 544; and 326th Report, Case No. 2135, para. 267);
- the telephone service (see the 1996 *Digest*, para. 544; 314th Report, Case No. 1948/1955, para. 72; and 318th Report, Case No. 2020, para. 318);
- the police and the armed forces (see 307th Report, Case No. 1898, para. 323);
- the fire-fighting services (see 309th Report, Case No. 1865, para. 145; and 321st Report, Case No. 2066, para. 336);
- public or private prison services (see 336th Report, Case No. 2383, para. 767);
- the provision of food to pupils of school age and the cleaning of schools (see 324th Report, Case No. 2037, para. 102);
- air traffic control (see the 1996 *Digest*, para. 544; and 327th Report, Case No. 2127, para. 191).

586. The principle that air traffic control is an essential service applies to all strikes, whatever their form – go-slow, work-to-rule, sick-out, etc. – as these may be just as dangerous as a regular strike for the life, personal safety or health of the whole or part of the population.

(See 327th Report, Case No. 2127, para. 191.)

587. The following do not constitute essential services in the strict sense of the term:

- radio and television (see the 1996 *Digest*, para. 545; 302nd Report, Case No. 1849, para. 204; 306th Report, Case No. 1865, para. 332, and Case No. 1884, para. 688);
- the petroleum sector (see the 1996 *Digest*, para. 545; 302nd Report, Case No. 1849, para. 204; 306th Report, Case No. 1865, para. 332; 337th Report, Case No. 2355, para. 630, and Case No. 2249, para. 1478);
- ports (see the 1996 *Digest*, para. 545; 318th Report, Case No. 2018, para. 514; 320th Report, Case No. 1963, para. 229; and 321st Report, Case No. 2066, para. 340);
- banking (see the 1996 *Digest*, para. 545; 303rd Report, Case No. 1810/1830, para. 62; and 309th Report, Case No. 1937, para. 450);
- computer services for the collection of excise duties and taxes (see the 1996 *Digest*, para. 545);

- department stores and pleasure parks (see the 1996 *Digest*, para. 545);
- the metal and mining sectors (see the 1996 *Digest*, para. 545);
- transport generally (see the 1996 *Digest*, para. 545; 302nd Report, Case No. 1849, para. 203, and Case No. 1695, para. 248; 303rd Report, Case No. 1810/1830, para. 62; 316th Report, Case No. 1989, para. 191; 317th Report, Case No. 1971, para. 56);
- airline pilots (see 329th Report, Case No. 2195, para. 737);
- production, transport and distribution of fuel (see 307th Report, Case No. 1898, para. 325);
- railway services (see 308th Report, Case No. 1923, para. 221);
- metropolitan transport (see the 1996 *Digest*, para. 545);
- postal services (see the 1996 *Digest*, para. 545; 307th Report, Case No. 1898, para. 325; 316th Report, Case No. 1985, para. 321; and 318th Report, Case No. 2020, para. 318);
- refuse collection services (see 309th Report, Case No. 1916, para. 100; and 338th Report, Case No. 2373, para. 382);
- refrigeration enterprises (see the 1996 *Digest*, para. 545);
- hotel services (see the 1996 *Digest*, para. 545; 324th Report, Case No. 1890, para. 58; 326th Report, Case No. 2116, para. 356; and 328th Report, Case No. 2120, para. 540);
- construction (see the 1996 *Digest*, para. 545; and 338th Report, Case No. 2326, para. 446);
- automobile manufacturing (see the 1996 *Digest*, para. 545);
- agricultural activities, the supply and distribution of foodstuffs (see the 1996 *Digest*, para. 545; and 308th Report, Case No. 1900, para. 183);
- the Mint (see the 1996 *Digest*, para. 545; and 306th Report, Case No. 1865, para. 332);
- the government printing service and the state alcohol, salt and tobacco monopolies (see the 1996 *Digest*, para. 545);
- the education sector (see the 1996 *Digest*, para. 545; 310th Report, Case No. 1928, para. 172, and Case No. 1943, para. 226; 311th Report, Case No. 1950, para. 457; 320th Report, Case No. 2025, para. 405; 327th Report, Case No. 2145, para. 302, and Case No. 2148, para. 800; 329th Report, Case No. 2157, para. 191; and 330th Report, Case No. 2173, para. 297);
- mineral water bottling company (see 328th Report, Case No. 2028, para. 475.)

588. While the Committee has found that the education sector does not constitute an essential service, it has held that principals and vice-principals can have their right to strike restricted or even prohibited.

(See 311th Report, Case No. 1951, para. 227.)

589. Arguments that civil servants do not traditionally enjoy the right to strike because the State as their employer has a greater obligation of protection towards them have not persuaded the Committee to change its position on the right to strike of teachers.

(See 277th Report, Case No. 1528, para. 288; and 311th Report, Case No. 1950, para. 458.)

590. The possible long-term consequences of strikes in the teaching sector do not justify their prohibition.

(See 262nd Report, Case No. 1448, para. 117; and 327th Report, Case No. 2145, para. 303.)

591. The refuse collection service might become essential if the strike affecting it exceeds a certain duration or extent so as to endanger the life, personal safety or health of the population.

(See 309th Report, Case No. 1916, para. 100.)

592. By linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service “essential”, and thus the right to strike should be maintained.

(See 320th Report, Case No. 1963, para. 230.)

593. Within essential services, certain categories of employees, such as hospital labourers and gardeners, should not be deprived of the right to strike.

(See 333rd Report, Case No. 2277, para. 274; and 338th Report, Case No. 2403, para. 601.)

594. The exclusion from the right to strike of wage-earners in the private sector who are on probation is incompatible with the principles of freedom of association.

(See the 1996 *Digest*, para. 476.)

*D. Compensatory guarantees in the event of the prohibition of strikes
in the public service or in essential services*

595. Where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services.

(See the 1996 *Digest*, para. 546; and, for example, 300th Report, Case No. 1818, para. 367; 306th Report, Case No. 1882, para. 429; 310th Report, Case No. 1943, para. 227; 318th Report, Case No. 1999, para. 166; 324th Report, Case No. 2060, para. 518; 327th Report, Case No. 2127, para. 192; 330th Report, Case No. 2166, para. 292; 333rd Report, Case No. 2277, para. 274; 336th Report, Case No. 2340, para. 649; and 337th Report, Case No. 2244, para. 1269.)

596. As regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.

(See the 1996 *Digest*, para. 547; and, for example, 300th Report, Case No. 1818, para. 367; 306th Report, Case No. 1882, para. 429; 308th Report, Case No. 1897, para. 478; 310th Report, Case No. 1943, para. 227; 318th Report, Case No. 2020, para. 318; 324th Report, Case No. 2060, para. 518; 330th Report, Case No. 2166, para. 292; 333rd Report, Case No. 2277, para. 274; 336th Report, Case No. 2340, para. 649; and 337th Report, Case No. 2244, para. 1269.)

597. The reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of awards handed down by the compulsory arbitration tribunal. Any departure from this practice would detract from the effective application of the principle that, where strikes by workers in essential services are prohibited or restricted, such prohibition should be accompanied by the existence of conciliation procedures and of impartial arbitration machinery, the awards of which are binding on both parties.

(See the 1996 *Digest*, para. 548.)

598. In mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned.

(See the 1996 *Digest*, para. 549; 310th Report, Case No. 1928, para. 182, and Case No. 1943, para. 240; 318th Report, Case No. 1943, para. 117; 324th Report, Case No. 1943, para. 26; 327th Report, Case No. 2145, para. 306; 328th Report, Case No. 2114, para. 406; 333rd Report, Case No. 2288, para. 829; 335th Report, Case No. 2305, para. 507; and 336th Report, Case No. 2383, para. 773.)

599. The appointment by the minister of all five members of the Essential Services Arbitration Tribunal calls into question the independence and impartiality of such a tribunal, as well as the confidence of the concerned parties in such a system. The representative organizations of workers and employers should, respectively, be able to select members of the Essential Services Arbitration Tribunal who represent them.

(See the 1996 *Digest*, para. 550; and 328th Report, Case No. 2114, para. 406.)

600. Employees deprived of the right to strike because they perform essential services must have appropriate guarantees to safeguard their interests; a corresponding denial of the right of lockout, provision of joint conciliation procedures and where, and only where, conciliation fails, the provision of joint arbitration machinery.

(See the 1996 *Digest*, para. 551; 306th Report, Case No. 1882, para. 428; 308th Report, Case No. 1902, para. 703; and 309th Report, Case No. 1913, para. 306.)

601. Referring to its recommendation that restrictions on the right to strike would be acceptable if accompanied by conciliation and arbitration procedures, the Committee has made it clear that this recommendation does not refer to the absolute prohibition of the right to strike, but to the restriction of that right in essential services or in the public service, in relation to which adequate guarantees should be provided to safeguard the workers' interests.

(See the 1996 *Digest*, para. 552.)

602. Regarding the requirement that the parties pay for the conciliation and mediation/arbitration services, the Committee has concluded that, provided the costs are reasonable and do not inhibit the ability of the parties, in particular those with inadequate resources, to make use of the services, there has not been a violation of freedom of association on this basis.

(See 310th Report, Case No. 1928, para. 182.)

603. The Committee takes no position as to the desirability of conciliation over mediation as both are means of assisting the parties in voluntarily reaching an agreement. Nor does the Committee take a position as to the desirability of a separated conciliation and arbitration system over a combined mediation-arbitration system, as long as the members of the bodies entrusted with such functions are impartial and are seen to be impartial.

(See 310th Report, Case No. 1928, para. 182.)

**Situations in which a minimum service may be imposed to guarantee
the safety of persons and equipment (minimum safety service)**

(See also para. 607)

604. Restrictions on the right to strike in certain sectors to the extent necessary to comply with statutory safety requirements are normal restrictions.

(See the 1996 *Digest*, para. 554; and 310th Report, Case No. 1931, para. 496.)

605. In one case, the legislation provided that occupational organizations in all branches of activity were obliged to ensure that the staff necessary for the safety of machinery and equipment and the prevention of accidents continued to work, and that disagreements as to the definition of “necessary staff” would be settled by an administrative arbitration tribunal. These restrictions on the right to strike were considered to be acceptable.

(See the 1996 *Digest*, para. 555.)

**Situations and conditions under which
a minimum operational service could be required**

606. The establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance.

(See the 1996 *Digest*, para. 556; 316th Report, Case No. 1985, para. 324; 320th Report, Case No. 2057, para. 780; 329th Report, Case No. 2174, para. 795; 333rd Report, Case No. 2251, para. 990; 336th Report, Case No. 2300, para. 383; 337th Report, Case No. 2355, para. 630; and 338th Report, Case No. 2364, para. 975.)

607. A minimum service could be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption.

(See 299th Report, Case No. 1782, para. 324; and 300th Report, Case No. 1791, para. 346.)

608. Measures should be taken to guarantee that the minimum services avoid danger to public health and safety.

(See 309th Report, Case No. 1916, para. 100.)

609. A certain minimum service may be requested in the event of strikes whose scope and duration would cause an acute national crisis, but in this case, the trade union organizations should be able to participate, along with employers and the public authorities, in defining the minimum service.

(See the 1996 *Digest*, para. 557; 308th Report, Case No. 1923, para. 222; 316th Report, Case No. 1985, para. 324; 337th Report, Case No. 2249, para. 1478; and 338th Report, Case No. 2364, para. 975.)

610. A minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population; in addition, workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities.

(See the 1996 *Digest*, para. 558; 308th Report, Case No. 1923, para. 222; 317th Report, Case No. 1971, para. 57; and 330th Report, Case No. 2212, para. 751.)

611. The Committee has pointed out that it is important that the provisions regarding the minimum service to be maintained in the event of a strike in an essential service are established clearly, applied strictly and made known to those concerned in due time.

(See the 1996 *Digest*, para. 559; 308th Report, Case No. 1921, para. 573; and 330th Report, Case No. 2212, para. 751.)

612. The determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing

that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services.

(See the 1996 *Digest*, para. 560; 299th Report, Case No. 1782, para. 325; 302nd Report, Case No. 1856, para. 436; 308th Report, Case No. 1923, para. 222; 320th Report, Case No. 1963, para. 231, and Case No. 2044, para. 453; 324th Report, Case No. 2078, para. 617; 325th Report, Case No. 2018, para. 88; and 338th Report, Case No. 2373, para. 381.)

613. As regards the legal requirement that a minimum service must be maintained in the event of a strike in essential public services, and that any disagreement as to the number and duties of the workers concerned shall be settled by the labour authority, the Committee is of the opinion that the legislation should provide for any such disagreement to be settled by an independent body and not by the ministry of labour or the ministry or public enterprise concerned.

(See the 1996 *Digest*, para. 561; 299th Report, Case No. 1782, para. 325; 308th Report, Case No. 1923, para. 222; 320th Report, Case No. 2044, para. 453; and 330th Report, Case No. 2212, para. 751.)

614. A definitive ruling on whether the level of minimum services was indispensable or not – made in full knowledge of the facts – can be pronounced only by the judicial authorities, in so far as it depends, in particular, upon a thorough knowledge of the structure and functioning of the enterprises and establishments concerned and of the real impact of the strike action.

(See the 1996 *Digest*, para. 562; 302nd Report, Case No. 1856, para. 437; and 304th Report, Case No. 1866, para. 114.)

Examples of when the Committee has considered that the conditions were met for requiring a minimum operational service

615. The ferry service is not an essential service. However, in view of the difficulties and inconveniences that the population living on islands along the coast could be subjected to following a stoppage in ferry services, an agreement may be concluded on minimum services to be maintained in the event of a strike.

(See the 1996 *Digest*, para. 563; 330th Report, Case No. 2212, para. 749; and 336th Report, Case No. 2324, para. 282.)

616. The services provided by the National Ports Enterprise and ports themselves do not constitute essential services, although they are an important public service in which a minimum service could be required in case of a strike.

(See the 1996 *Digest*, para. 564; 318th Report, Case No. 2018, para. 514; 320th Report, Case No. 1963, para. 231; and 321st Report, Case No. 2066, para. 340.)

617. Respect for the obligation to maintain a minimum service of the underground railway's activities to meet the minimal needs of the local communities is not an infringement of the principles of freedom of association.

(See 320th Report, Case No. 2057, para. 780.)

618. In relation to strike action taken by workers in the underground transport enterprise, the establishment of minimum services in the absence of agreement between the parties should be handled by an independent body.

(See the 1996 *Digest*, para. 565; and 320th Report, Case No. 2057, para. 780.)

619. It is legitimate for a minimum service to be maintained in the event of a strike in the rail transport sector.

(See the 1996 *Digest*, para. 567.)

620. In view of the particular situation of the railway services of one country, a total and prolonged stoppage could lead to a situation of acute national emergency endangering the well-being of the population, which may in certain circumstances justify government intervention, for instance by establishing a minimum service.

(See 308th Report, Case No. 1923, para. 221.)

621. The transportation of passengers and commercial goods is not an essential service in the strict sense of the term; however, this is a public service of primary importance where the requirement of a minimum service in the event of a strike can be justified.

(See the 1996 *Digest*, para. 566; 320th Report, Case No. 2044, para. 453; 324th Report, Case No. 2078, para. 616; 325th Report, Case No. 2018, para. 88; and 330th Report, Case No. 2212, para. 749.)

622. The maintenance of a minimum service could be foreseen in the postal services.

(See the 1996 *Digest*, para. 568; 304th Report, Case No. 1866, para. 113; and 316th Report, Case No. 1985, para. 324.)

623. The imposition of a minimum service is permissible in the refuse collection service.

(See 309th Report, Case No. 1916, para. 100.)

624. The Mint, banking services and the petroleum sector are services where a minimum negotiated service could be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied.

(See 309th Report, Case No. 1865, para. 149; and 337th Report, Case No. 2355, para. 630.)

625. Minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration.

(See 330th Report, Case No. 2173, para. 297.)

626. The decision adopted by a government to require a minimum service in the Animal Health Division, in the face of an outbreak of a highly contagious disease, does not violate the principles of freedom of association.

(See 331st Report, Case No. 2209, para. 734.)

Non-compliance with a minimum service

627. Even though the final decision to suspend or revoke a trade union's legal status is made by an independent judicial body, such measures should not be adopted in the case of non-compliance with a minimum service.

(See the 1996 Digest, para. 569.)

Responsibility for declaring a strike illegal

628. 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.

(See the 1996 *Digest*, para. 522; and, for example, 304th Report, Case No. 1851, para. 280; 309th Report, Case No. 1916, para. 102; 311th Report, Case No. 1954, para. 405; 314th Report, Case No. 1948/1955, para. 72; 320th Report, Case No. 2007, para. 282; 326th Report, Case No. 2111, para. 474; 329th Report, Case No. 2195, para. 736; 330th Report, Case No. 2208, para. 599; 333rd Report, Case No. 2281, para. 634; and 337th Report, Case No. 2355, para. 631.)

629. Final decisions concerning the illegality of strikes should not be made by the government, especially in those cases in which the government is a party to the dispute.

(See the 1996 *Digest*, para. 523; 305th Report, Case No. 1870, para. 143; 307th Report, Case No. 1899, para. 83; and 316th Report, Case No. 1934, para. 210.)

630. It is contrary to freedom of association that the right to declare a strike in the public service illegal should lie with the heads of public institutions, which are thus judges and parties to a dispute.

(See the 1996 *Digest*, para. 524.)

631. With reference to an official circular concerning the illegality of any strike in the public sector, the Committee has considered that such matters are not within the competence of the administrative authority.

(See the 1996 *Digest*, para. 525.)

**Back-to-work orders, the hiring of workers
during a strike, requisitioning orders**

632. The hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association.

(See the 1996 *Digest*, para. 570; 302nd Report, Case No. 1849, para. 217; 306th Report, Case No. 1865, para. 336; 307th Report, Case No. 1899, para. 81; 311th Report, Case No. 1954, para. 406; 327th Report, Case No. 2141, para. 322; 333rd Report, Case No. 2251, para. 998; and 335th Report, Case No. 1865, para. 826.)

633. If a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights.

(See the 1996 *Digest*, para. 571; 306th Report, Case No. 1865, para. 336; 318th Report, Case No. 2005, para. 183; and 333rd Report, Case No. 2251, para. 998.)

634. Whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or personal safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category of staff in the event of a strike whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association.

(See the 1996 *Digest*, para. 572; 320th Report, Case No. 2044, para. 452; 329th Report, Case No. 2195, para. 737; 332nd Report, Case No. 2252, para. 883; and 333rd Report, Case No. 2281, para. 634.)

635. 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, constitutes a serious violation of freedom of association.

(See the 1996 *Digest*, para. 573; 308th Report, Case No. 1921, para. 575; 320th Report, Case No. 2044, para. 452; and 333rd Report, Case No. 2288, para. 831.)

636. The employment of the armed forces or of another group of persons to perform duties which have been suspended as a result of a labour dispute can, if the strike is lawful, be justified only by the need to ensure the operation of services or industries whose suspension would lead to an acute crisis.

(See the 1996 *Digest*, paras. 528 and 574; 321st Report, Case No. 2066, para. 340; 324th Report, Case No. 2077, para. 551; and 328th Report, Case No. 2082, para. 475.)

637. Although it is recognized that a stoppage in services or undertakings such as transport companies, railways and the oil sector might disturb the normal life of the community, it can hardly be admitted that the stoppage of such services

could cause a state of acute national emergency. The Committee has therefore considered that measures taken to mobilize workers at the time of disputes in services of this kind are such as to restrict the workers' right to strike as a means of defending their occupational and economic interests.

(See the 1996 *Digest*, paras. 530 and 575; 317th Report, Case No. 1971, para. 56; 335th Report, Case No. 1865, para. 826; and 337th Report, Case No. 2249, para. 1478.)

638. The requisitioning of railway workers in the case of strikes, the threat of dismissal of strike pickets, the recruitment of underpaid workers and a ban on the joining of a trade union in order to break up lawful and peaceful strikes in services which are not essential in the strict sense of the term are not in accordance with freedom of association.

(See the 1996 *Digest*, para. 576.)

639. Where an essential public service, such as the telephone service, is interrupted by an unlawful strike, a government may have to assume the responsibility of ensuring its functioning in the interests of the community and, for this purpose, may consider it expedient to call in the armed forces or other persons to perform the duties which have been suspended and to take the necessary steps to enable such persons to be installed in the premises where such duties are performed.

(See the 1996 *Digest*, para. 577.)

Interference by the authorities during the course of the strike

640. In one case where the government had consulted the workers in order to determine whether they wished the strike to continue or be called off, and where the organization of the ballot had been entrusted to a permanent, independent body, with the workers enjoying the safeguard of a secret ballot, the Committee emphasized the desirability of consulting the representative organizations with a view to ensuring freedom from any influence or pressure by the authorities which might affect the exercise of the right to strike in practice.

(See the 1996 *Digest*, para. 578.)

641. The intervention of the army in relation to labour disputes is not conducive to the climate free from violence, pressure or threats that is essential to the exercise of freedom of association.

(See 333rd Report, Case No. 2268, para. 765.)

Police intervention during the course of the strike

642. The Committee has recommended the dismissal of allegations of intervention by the police when the facts showed that such intervention was limited to the maintenance of public order and did not restrict the legitimate exercise of the right to strike.

(See the 1996 *Digest*, para. 579.)

643. The use of police for strike-breaking purposes is an infringement of trade union rights.

(See 304th Report, Case No. 1863, para. 361.)

644. In cases of strike movements, the authorities should resort to the use of force only in grave situations where law and order is seriously threatened.

(See the 1996 *Digest*, para. 580; and, for example, 299th Report, Case No. 1687, para. 456; 302nd Report, Case No. 1825, para. 492; 304th Report, Case No. 1863, para. 361; 306th Report, Case No. 1884, para. 695; 308th Report, Case No. 1773, para. 446, and Case No. 1914, para. 669; 311th Report, Case No. 1954, para. 407; 324th Report, Case No. 1865, para. 412; 332nd Report, Case No. 2252, para. 888; and 333rd Report, Case No. 2153, para. 211.)

645. While workers and their organizations have an obligation to respect the law of the land, the intervention by security forces in strike situations should be limited strictly to the maintenance of public order.

(See the 1996 *Digest*, para. 581; 302nd Report, Case No. 1849, para. 211; and 324th Report, Case No. 2093, para. 437.)

646. While workers and their organizations are obliged to respect the law of the land, police intervention to enforce the execution of a court decision affecting strikers should observe the elementary guarantees applicable in any system that respects fundamental public freedoms.

(See 306th Report, Case No. 1891, para. 571.)

647. The authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order.

(See the 1996 *Digest*, para. 582; 320th Report, Case No. 1865, para. 524; 324th Report, Case No. 2093, para. 437; 325th Report, Case No. 2068, para. 314; 335th Report, Case No. 2228, para. 901; 336th Report, Case No. 2153, para. 175; and 338th Report, Case No. 2364, para. 976.)

Pickets

648. The action of pickets organized in accordance with the law should not be subject to interference by the public authorities.

(See the 1996 *Digest*, para. 583.)

649. The prohibition of strike pickets is justified only if the strike ceases to be peaceful.

(See the 1996 *Digest*, para. 584.)

650. The Committee has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued work.

(See the 1996 *Digest*, para. 585; and 320th Report, Case No. 1963, para. 232.)

651. Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries.

(See the 1996 *Digest*, para. 586; and, for example, 299th Report, Case No. 1640/1646, para. 152, and Case No. 1687, para. 456; 304th Report, Case No. 1851, para. 282; 305th Report, Case No. 1879, para. 204; 306th Report, Case No. 1865, para. 337; 307th Report, Case No. 1863, para. 344; 310th Report, Case No. 1931, para. 496; 314th Report, Case No. 1787, para. 33; 316th Report, Case No. 2000, para. 638; and 320th Report, Case No. 1963, para. 232.)

652. The exercise of the right to strike should respect the freedom to work of non-strikers, as established by the legislation, as well as the right of the management to enter the premises of the enterprise.

(See 300th Report, Case No. 1811/1816, para. 307.)

653. The requirement that strike pickets can only be set up near an enterprise does not infringe the principles of freedom of association.

(See the 1996 *Digest*, para. 587.)

Wage deductions

654. Salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles.

(See the 1996 *Digest*, para. 588; 304th Report, Case No. 1863, para. 363; and 307th Report, Case No. 1899, para. 83.)

655. In a case in which the deductions of pay were higher than the amount corresponding to the period of the strike, the Committee recalled that the imposition of sanctions for strike action was not conducive to harmonious labour relations.

(See the 1996 *Digest*, paras. 589 and 595.)

656. Obliging the employer to pay wages in respect of strike days in cases where the employer is declared “responsible” for the strike, apart from potentially disrupting the balance in industrial relations and proving costly for the employer, raises problems of conformity with the principles of freedom of association, as such payment should be neither required nor prohibited. It should consequently be a matter for resolution between the parties.

(See 318th Report, Case No. 1931, para. 366.)

657. Failure to reply to a statement of claims may be deemed an unfair practice contrary to the principle of good faith in collective bargaining, which may entail certain penalties as foreseen by law, without resulting in a legal obligation upon the employer to pay strike days, which is a matter to be left to the parties concerned.

(See 318th Report, Case No. 1931, para. 369.)

Sanctions

A. In the event of a legitimate strike

(See also paras. 57, 77, 269 and 853)

658. Imposing sanctions on unions for leading a legitimate strike is a grave violation of the principles of freedom of association.

(See 302nd Report, Case No. 1849, para. 207.)

659. The closure of trade union offices, as a consequence of a legitimate strike, is a violation of the principles of freedom of association.

(See 302nd Report, Case No. 1849, para. 215.)

660. No one should be penalized for carrying out or attempting to carry out a legitimate strike.

(See the 1996 *Digest*, para. 590; and, for example, 302nd Report, Case No. 1849, para. 211; 307th Report, Case No. 1890, para. 372; 310th Report, Case No. 1932, para. 515; 311th Report, Case No. 1934, para. 127; 316th Report, Case No. 1934, para. 211; 318th Report, Case No. 1978, para. 218; 321st Report, Case No. 2056, para. 137; 324th Report, Case No. 2072, para. 587; 326th Report, Case No. 2091, para. 154; 331st Report, Case No. 1937/2027, para. 105; and 333rd Report, Case No. 2164, para. 608.)

661. The dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98.

(See the 1996 *Digest*, para. 591; 306th Report, Case No. 1904, para. 596; 326th Report, Case No. 2116, para. 356; 333rd Report, Case No. 2164, para. 608; 334th Report, Case No. 2267, para. 658, and Case No. 2211, para. 678; and 338th Report, Case No. 2046, para. 104.)

662. When trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against.

(See the 1996 *Digest*, para. 592; 306th Report, Case No. 1904, para. 596; 318th Report, Case No. 1978, para. 218; 326th Report, Case No. 2116, para. 356; and 334th Report, Case No. 2267, para. 658.)

663. Respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action. It is irrelevant for these purposes whether the dismissal occurs during or after the strike. Logically, it should also be irrelevant that the dismissal takes place in advance of a strike, if the purpose of the dismissal is to impede or to penalize the exercise of the right to strike.

(See the 1996 *Digest*, para. 593; 305th Report, Case No. 1870, para. 144; 308th Report, Case No. 1934, para. 132; and 327th Report, Case No. 2141, para. 324.)

664. The Committee could not view with equanimity a set of legal rules which: (a) appears to treat virtually all industrial action as a breach of contract on the part of those who participate therein; (b) makes any trade union or official thereof who instigates such breaches of contract liable in damages for any losses incurred by the employer in consequence of their actions; and (c) enables an employer faced with such action to obtain an injunction to prevent the commencement (or continuation) of the unlawful conduct. The cumulative effect of such provisions could be to deprive workers of the capacity lawfully to take strike action to promote and defend their economic and social interests.

(See the 1996 *Digest*, para. 594.)

665. The announcement by the government that workers would have to do overtime to compensate for the strike might in itself unduly influence the course of the strike.

(See the 1996 *Digest*, para. 596.)

666. The use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association.

(See the 1996 *Digest*, para. 597; 311th Report, Case No. 1954, para. 406; 329th Report, Case No. 2195, para. 738; and 333rd Report, Case No. 2281, para. 633.)

B. Cases of abuse while exercising the right to strike

667. The principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike.

(See the 1996 *Digest*, para. 598; 320th Report, Case No. 2007, para. 281; 332nd Report, Case No. 2187, para. 719; and 338th Report, Case No. 2363, para. 734.)

668. Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike.

(See the 1996 *Digest*, para. 599; and, for example, 303rd Report, Case No. 1810/1830, para. 62; 304th Report, Case No. 1851, para. 281; 310th Report, Case No. 1930, para. 354; 311th Report, Case No. 1950, para. 460; 320th Report, Case No. 2048, para. 718; 329th Report, Case No. 2195, para. 738; 331st Report, Case No. 1937/2027, para. 105; 332nd Report, Case No. 2252, para. 886; 336th Report, Case No. 2153, para. 174; and 338th Report, Case No. 2363, para. 734.)

669. The Committee considered that some of the temporary measures taken by the authorities as a result of a strike in an essential service (prohibition of the trade union's activities, cessation of the check-off of trade union dues, etc.) were contrary to the guarantees provided for in Article 3 of Convention No. 87. The Committee drew the Government's attention to the fact that the measures taken by the authorities to ensure the performance of essential services should not be out of proportion to the ends pursued or lead to excesses.

(See the 1996 *Digest*, para. 600.)

670. Fines which are equivalent to a maximum amount of 500 or 1,000 minimum wages per day of abusive strike may have an intimidating effect on trade unions and inhibit their legitimate trade union activities, particularly where the cancellation of a fine of this kind is subject to the provision that no further strike considered as abusive is carried out.

(See 306th Report, Case No. 1889, para. 175.)

C. In cases of peaceful strikes

(See also para. 77)

671. The authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association.

(See the 1996 *Digest*, para. 601; 299th Report, Case No. 1687, para. 457; 302nd Report, Case No. 1825, para. 493; 304th Report, Case No. 1712, para. 378; 320th Report, Case No. 2048, para. 716; and 327th Report, Case No. 1581, para. 111.)

672. No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.

(See the 1996 *Digest*, para. 602; 302nd Report, Case No. 1825, para. 493; 304th Report, Case No. 1712, para. 378; 306th Report, Case No. 1884, para. 686; 308th Report, Case No. 1773, para. 446; 320th Report, Case No. 2007, para. 283; and 332nd Report, Case No. 2234, para. 782, and Case No. 2252, para. 886.)

673. The peaceful exercise of trade union rights (strike and demonstration) by workers should not lead to arrests and deportations.

(See the 1996 *Digest*, para. 603.)

D. Large-scale sanctions

674. Arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve.

(See the 1996 *Digest*, para. 604; 304th Report, Case No. 1719, para. 414; 326th Report, Case No. 2105, para. 445; and 338th Report, Case No. 2364, para. 977.)

Discrimination in favour of non-strikers

675. Concerning measures applied to compensate workers who do not participate in a strike by bonuses, the Committee considers that such discriminatory practices constitute a major obstacle to the right of trade unionists to organize their activities.

(See the 1996 *Digest*, para. 605; and 326th Report, Case No. 2105, para. 446.)

Closure of enterprises in the event of a strike

676. The closure of the enterprise in the event of a strike, as provided for in the law, is an infringement of the freedom of work of persons not participating in a strike and disregards the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of employers and managerial staff to enter the installations of the enterprise and to exercise their activities).

(See 310th Report, Case No. 1931, para. 497.)