

250th REPORT

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 23, 24 and 26 February 1987 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it a complaint of infringements of trade union rights in France presented by the Trade Unions International of Textile, Clothing, Leather and Fur Workers (Case No. 1364), as well as a representation made by the General Federation of Labour under article 24 of the Constitution of the ILO, alleging the failure of the Government of France to implement the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Workers' Representatives Convention, 1971 (No. 135).

3. The Government submitted its observations in communications dated 5 August 1986 and 16 January 1987.

Case No. 1364

REPRESENTATION AGAINST THE GOVERNMENT OF FRANCE PURSUANT TO ARTICLE 24 OF THE CONSTITUTION MADE BY THE GENERAL FEDERATION OF LABOUR

COMPLAINT AGAINST THE GOVERNMENT OF FRANCE PRESENTED BY THE TRADE UNIONS INTERNATIONAL OF TEXTILE, CLOTHING, LEATHER AND FUR WORKERS

4. In a letter dated 18 February 1986 the General Confederation of Labour (CGT), acting in accordance with article 24 of the Constitution of the ILO, made a representation alleging the failure of the Government of France to implement the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers' Representatives Convention, 1971 (No. 135) and the Labour Relations (Public Service) Convention, 1978 (No. 151). In two communications dated 21 May and 16 September 1986 the CGT submitted

136. In previous cases, the Committee has considered that the extension of an agreement to an entire sector of activity contrary to the views of the organisation representing most of the workers in a category covered by the extended agreement is liable to limit the right of free collective bargaining of that majority organisation and that this system makes it possible to extend agreements containing provisions which result in a worsening of conditions of work of the category of workers concerned. [See, inter alia, 217th Report, Case No. 1087 (Portugal), para. 223.]

137. However, in the case under consideration the Committee observes that the legislation does contain certain protective clauses, since extension presupposes that the National Collective Bargaining Committee has been consulted and that a representative workers' organisation has signed the text. Under these circumstances, and since the legislation sets objective criteria for determining the representativeness of trade union organisations, the Committee considers that this aspect of the representation does not call for further examination.

V. Repression of the right to strike

138. The allegations referred to the infringement of the right to strike principally by means of excessive recourse to legal proceedings by nationalised and private enterprises, the expulsion of strikers and the use of subcontracting or temporary workers to replace strikers.

139. The Government, noting that Conventions Nos. 87 and 98 contain no allusion to the right to strike, points out that the right is recognised in the Preamble of the French Constitution, which stipulates that it must be exercised within the framework of the laws that govern it. The Council of State has added to this that the right to strike, like any other right, must be limited in order to avoid abuse or its being exercised in defiance of public order. Moreover, in a November 1982 ruling on a case cited by the CGT, the Court of Appeal has stated that trade unions should be deemed liable for events in which they have actually participated if the events constitute a penal offence or cannot be ascribed to the normal exercise of the right to strike.

140. As it has emphasised on numerous occasions, the Committee considers the right to strike to be a legitimate means of defending the workers' interests. [See 244th Report, Case No. 1270 (Brazil), para. 225.] The Committee must therefore consider whether the alleged facts constitute an undue restriction of the exercise of the right to strike.

141. The Committee notes that, where strikers or trade unions have been convicted by the courts in connection with strikes referred to by the complainant organisation, it has been for illegal acts such

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as assault, illegal confinement, criminal offences, impairment of movement of persons and goods, etc. Similarly, the expulsion of strikers occupying a place of work has taken place only under certain guarantees and where their presence is an obstacle to the work of non-strikers. Since it deems strike action to be legitimate only when exercised peacefully and without intimidation or physical constraint, the Committee considers that this aspect of the representation does not call for further examination.

142. As to the replacement of strikers by temporary workers, the Committee notes that under the Act of 25 July 1985 employees of temporary work agencies may not be called in. The Committee also observes that, by an Ordinance of 11 August 1986, the fixed term work contract cannot have as its objective the replacement of a wage earner whose employment contract has been suspended following a collective labour dispute. It therefore considers that this aspect of the case does not call for further examination.

The Committee's recommendations

143. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) Regarding the suppression of facilities previously granted to trade union organisations in the form of trade union premises and means of action, although the alleged facts do not constitute a violation of the Convention the Committee calls upon the competent authorities, in order to avoid detrimental consequences for trade union organisations, to endeavour, whenever it is not possible to allow such organisations to continue using their premises, to offer alternative solutions so that they can continue operating normally.
- (b) Regarding the infringement of the rights of workers' representatives, the Committee, while noting that the judicial or administrative authorities have remedied such situations as have been brought to their notice, calls upon the Government to pay due attention to the provisions of the Workers' Representatives Recommendation, 1971 (No. 143), that relate to the means of ensuring effective protection of workers' representatives.

Geneva, 26 February 1987.

Roberto Ago,
Chairman.