

303RD 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 14, 15 and 21 March 1996 under the chairmanship of Professor Max Rood.

2. The Committee examined a representation for the non-observance by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made under article 24 of the ILO Constitution by the Confederation of Turkish Trade Unions (TÜRK-İS). Furthermore, it examined jointly with this representation, a complaint presented by the Confederation of Progressive Trade Unions of Turkey (DISK) (Case No. 1830).

3. The Committee submits a report on these cases for the Governing Body's approval.

Cases Nos. 1810 and 1830

Representation made by the Confederation of Turkish Trade Unions (TÜRK-İS) under article 24 of the ILO Constitution alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

*Complaint against the Government of Turkey
presented by
the Confederation of Progressive Trade Unions
of Turkey (DISK)*

Allegations: Violation of the trade union rights of workers and their organizations, restrictions on freedom of assembly and demonstration, denial of the trade union rights of public servants and restrictions on the right to strike, restrictive trade union legislation, representativity criteria violating collective bargaining, anti-union discrimination, interference by the authorities in trade union affairs

4. By a communication dated 4 July 1994, the Confederation of Turkish Trade Unions (TÜRK-İS), referring to article 24 of the ILO Constitution, sent the Director-General a representation alleging non-observance by the Government of Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Subsequently, TÜRK-İS submitted additional information on this matter in its communication of 12 December 1994.

of the workers in the undertaking (section 12). In view of the numerous and serious specific allegations presented by DISK, which relate to a large number of sectors of economic activity in which workers are not covered by a collective agreement due to the disputes over the question of trade union representativity, the Committee strongly urges the Government to amend its legislation so as to bring it in line with the requirements of Conventions Nos. 87 (Article 2) and 98 (Article 4).

58. *Maintenance of the ban on belonging to more than one trade union (section 22 of the Act on trade unions).* The Committee notes that the Government merely indicates that this prohibition aims at avoiding proliferation of rival trade unions. The Committee nevertheless considers that, if workers are employed in several occupational activities, they should be able to join the trade union of their choice covering these diverse activities.

59. *Maintenance of the limit on the amount of trade union dues (section 23).* The Committee notes that the Government merely points out that this measure aims to protect the workers. The Committee considers that it should be up to the constitutions of the trade unions to make a decision in this matter.

60. *Maintenance of the requirement of ten years of effective service in the branch applicable to candidates for trade union elections (section 14).* The Committee regrets that the Government has not provided information on the measures it plans to take in this respect. The Committee draws attention to the importance it attaches to the principles under which workers' and employers' organizations have the right to freely elect their representatives. Noting the specific allegations submitted by DISK in this respect, the Committee expresses the firm hope that this provision, which is extremely prejudicial to the interests of the trade unions, will be raised in the near future.

61. *Banning of political strikes, sympathy strikes and strikes which are prejudicial to society or destroy national wealth, excessive limitation on strike pickets together with extremely heavy penalties of imprisonment for the trade unions (article 53 of the Constitution and sections 25 and 47, 70, 72, 73 and 79 of the Act on collective agreements, strikes and lockouts).* The Committee concludes that the excessive restrictions on the right to strike imposed on workers constitute a serious violation of the principles of freedom of association. It considers that these limitations would be justifiable only if the strike were to lose its peaceful character. In any case, the general banning of sympathy strikes is abusive, and workers should be able to carry out such actions provided the initial strike that they are supporting is legal. Only the banning of political strikes may be considered acceptable since purely political strikes do not fall within the scope of the principles of freedom of association. [See *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 481.]

62. *Maintenance of the ban on strikes beyond essential services in the strict sense of the term (sections 29 and 30 of Act No. 2822), compulsory arbitration and 60 days' waiting clauses accompanied by penalties of imprisonment for offenders (article 54 of the Constitution, sections 23, 37 and 75 of Act No. 2822).* The Committee considers that these restrictions on the exercise of the right to strike are much too broad. It insists, in particular, that compulsory arbitration may be imposed only for essential services in the strict sense of the term, i.e. those whose interruption would be likely to endanger the life, personal safety or health of the whole or part of the population. In addition, the general ban on strikes in banks and transport is not in conformity with the principles of

freedom of association, and should therefore be lifted. Furthermore, it should be possible to impose sanctions for strike action solely in cases in which the action is not in conformity with the principles of freedom of association, and such sanctions should not be disproportionate with the severity of the offence involved; and this is not the case when the strikers expose themselves to penalties of up to two years or even three years in prison.

63. Severe restrictions on freedom of association resulting from the Act of 1985 on export processing zones. The Committee regrets that the Government has merely confirmed the information submitted by the complainants about this allegation. It calls attention to the importance it attaches to the respect of freedom of association throughout Turkish territory and urges the Government to remove in the near future these restrictions which are incompatible with the application of Conventions Nos. 87 and 98.

64. The Committee also notes with concern that the Government limits itself to confirming that the TÛMHABER-SEN trade union was dissolved by court order on the grounds that the amendment to the national legislation following ratification of Conventions Nos. 87 and 151 had not so far been carried out and that no law yet existed to grant this association legal personality. The Committee draws attention to the fact that by ratifying Conventions Nos. 87 and 151 in July 1993, the Government undertook to ensure that the acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of the Conventions on freedom of association and protection of the right to organize, and this applies also to public service trade unions. The Committee strongly urges the Government to take the necessary measures to grant the TÛMHABER-SEN trade union, as well as the other unions of civil servants, legal personality.

65. Moreover, the Committee profoundly regrets that the Government restricts itself to pointing out that the anti-union reprisal measures are a matter for the courts. It draws attention to the fact that, in cases of dismissal of trade unionists on the grounds of their membership of or their activities in a trade union, governments have repeatedly been requested to take the necessary measures to allow trade union officers and members who have been dismissed on grounds of their legitimate trade union activities to be reinstated in their jobs and to apply the pertinent legal sanctions to the undertakings in question. In this respect, the Committee notes with interest that the Labour Act will be amended to allow reinstatement. It calls on the Government to keep it informed of developments in the situation in this respect. Furthermore, in the opinion of the Committee, governments should take the necessary measures to allow their labour inspectors to enter freely and without advance warning the establishments under their supervision, and to carry out the verification or inspections they deem necessary to ensure that the legal provisions — in the matter of anti-union discrimination in particular — are strictly observed [see *Digest*, op. cit., paras. 753 and 756]. The Committee strongly urges the Government to take the necessary measures to guarantee workers effective protection against acts of anti-union discrimination in conformity with the international undertakings it made in ratifying Convention No. 98 in June 1970.

66. Finally, in general, the Committee considers that Turkish trade union legislation is too detailed and that it covers numerous questions which should be in the competence of the constitutions of workers' and employers' organizations themselves. The