

Protection of Trade Union Rights: Twenty Years' Work by the Committee on Freedom of Association

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TWENTY YEARS have passed since the Governing Body of the International Labour Office, not long after the adoption of the international labour Conventions on freedom of association, decided in November 1951 to set up a Committee on Freedom of Association to examine complaints received alleging infringement of trade union rights. Originally the Committee's terms of reference were confined to a preliminary examination with a view to informing the Governing Body as to whether a complaint was sufficiently well founded to warrant its submission for detailed examination to the Fact-Finding and Conciliation Commission on Freedom of Association.² However, it was not long before the Committee came to the conclusion that while certain complaints did not call for further action it was desirable for certain reservations to be expressed in regard to the law or practice concerning trade unions in the countries in question. It therefore began to examine regularly the substance of the various cases which came before it and to submit its

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² This Commission, established by the Governing Body in January 1950 by arrangement with the United Nations Economic and Social Council, is composed of independent persons and, unlike the Committee on Freedom of Association, may only intervene—in the case of countries which have not ratified the international labour Conventions on freedom of association—after the consent of the government concerned has been secured. Since the establishment of the Committee on Freedom of Association, in view of the development of its activities, the Commission has intervened to examine complaints only in exceptional cases. In practice it has functioned twice, to deal with complaints presented against the Governments of Japan and Greece (the relevant reports were published, respectively, in the *ILO Official Bulletin*, Vol. XLIX, No. 1, Special Supplement, Jan. 1966, and Vol. XLIX, No. 3, Special Supplement, July 1966).

conclusions thereon, drawing the attention of the governments concerned to anomalies which had come to light in each case. This procedure was approved by the Governing Body, and in practice the Committee has recommended that complaints be referred to the Fact-Finding and Conciliation Commission only in exceptional circumstances.

The Committee is composed of nine titular members appointed by the Governing Body and representing, respectively, the Government, Workers' and Employers' groups.¹ It meets in Geneva three times a year and its reports on the various cases are submitted to the Governing Body for approval.

The functions of the Committee are of a quasi-judicial nature and the procedure it follows conforms to the basic principles applicable to litigation. Complaints must be submitted either by workers' or employers' organisations or by governments², and may be presented even against a government which has not ratified the freedom of association Conventions. When a complaint is received it is communicated to the government concerned for its observations, while the complaining organisation is allowed a stipulated period in which to supply further information, which is likewise communicated to the government. In certain cases the Committee may decide that the substance of a government's reply is to be communicated to the complainants for comments, to which the government will subsequently be given the opportunity to reply. Once in possession of all this evidence the Committee examines the arguments of the parties and formulates its conclusions, which may consist in the dismissal of a complaint, in its entirety or in part, or in a statement to the effect that a case of infringement has been made out, in which case it draws the attention of the government concerned to the principles and standards in relation to freedom of association that have been infringed, with a view to its taking steps to remedy the situation.

In dealing with some 700 cases the Committee has been called upon to examine a wide variety of factual and legal situations. In reaching its conclusions it is guided essentially by the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Convention No. 87 has been ratified by seventy-

¹ In order to ensure greater impartiality it has been laid down that representatives or nationals of a State against which a complaint has been made, or persons occupying an official position in a national association of employers or workers which has filed a complaint, are disqualified from participating in the Committee when it is examining the cases in which they are concerned.

² In the case of organisations, complaints are receivable only if they are presented by a national occupational organisation with a direct interest in the matter, by an international organisation of employers or workers having consultative status with the ILO or by another international organisation of employers or workers where the allegations relate to matters directly affecting its affiliated organisations.

seven countries, and Convention No. 98 by ninety countries. In cases involving countries which have not ratified either of these Conventions, the Committee has considered it appropriate that it should, in discharging its responsibility to promote the principles with whose protection it has been entrusted, be guided in its task, among other things, by the provisions of these Conventions.

This has led to the development by the Committee of a series of principles which complement and add greater precision to the standards laid down in the freedom of association Conventions, and whose observance is a concomitant of the implementation of these Conventions even though they are not specifically spelled out therein.

In brief, *Convention No. 87* guarantees to all workers and employers, without distinction whatsoever and without previous authorisation, the right to establish and join organisations of their own choosing; these organisations are to have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, without interference by the public authorities; they may not be dissolved or suspended by administrative authority; they shall have the right to form federations and confederations, and to affiliate with international organisations of workers and employers; these rights also apply to federations and confederations; the acquisition of legal personality by organisations may not be made subject to conditions restricting the exercise of these rights; in exercising them workers and employers and their respective organisations must respect the law of the land, but in turn the law of the land may not be such as to impair, nor may it be so applied as to impair, the guarantees provided for in the Convention; the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police is to be determined by national laws or regulations.

Convention No. 98 protects workers against acts of anti-union discrimination in respect of their employment; it stipulates, in particular, that workers' organisations shall enjoy adequate protection against interference by employers; it promotes the full development and utilisation of machinery for voluntary collective bargaining; the Convention does not deal with the position of public servants engaged in the administration of the State, and it contains the same provision as Convention No. 87 with respect to the armed forces and the police.

The purpose of this article is to review briefly the most important of the principles enunciated by the Committee with respect to the various problems which arise in relation to freedom of association.¹

¹ In this connection the International Labour Conference requested the Office, in the resolution concerning trade union rights and their relation to civil liberties which it adopted in 1970 (*Official Bulletin*, Vol. LIII, 1970, No. 3, pp. 287-290), to publish in a concise form the decisions taken by the Committee.

The right of workers and employers to establish organisations

Registration

The requirement that occupational organisations must be registered before they can legally exist is one that is very commonly found in national laws and regulations, and as such it has been examined by the Committee in the light of the principle that workers and employers should have the right to establish organisations without prior authorisation. The Committee has accepted registration where it consists solely of a formality in which there is no question of infringing the guarantees laid down by Convention No. 87. The requirements to be complied with for the purposes of registration should not be left to the discretion of the administrative authority, but must be specified in the law. An appeal to the courts should lie against administrative decisions refusing registration, and the judge should be able to deal with the substance of the case in order to determine whether or not the provisions on which such decisions are based infringe the rights accorded to occupational organisations in respect of freedom of association.

Freedom to choose an organisation

The standards laid down by the ILO guarantee the right of workers and employers to establish and join organisations of their own choosing. The application of this principle has given rise to problems in the case of countries which have enacted legislation establishing the system of a single trade union, either for each undertaking or for each branch of activity or at the national level (a single trade union confederation). In this respect the Committee has associated itself with the view expressed by the ILO Committee of Experts on the Application of Conventions and Recommendations¹ to the effect that, while it may be in the interests of workers to avoid a multiplication of the number of trade unions, a unified trade union movement should not be imposed through state intervention by means of legislation. The Committee of Experts pointed out that there is a fundamental difference between a situation in which a trade union monopoly is instituted or maintained by legislation and the situations which exist in certain countries in which all the trade union organisations join together voluntarily in a single federation or confederation,

¹ Under the terms of article 22 of the Constitution of the ILO, applicable to all ratified Conventions, countries which have ratified the freedom of association Conventions are required to submit reports on their application. These reports are examined periodically by the Committee of Experts, composed of independent jurists, which makes observations to the governments concerned if it finds discrepancies in the application by individual States of the Conventions in question. With these observations before it, a tripartite committee set up each year by the International Labour Conference discusses the discrepancies noted with representatives of the governments concerned with a view to their elimination.

deration, without this being the direct or indirect result of legislative provisions applicable to trade unions.

The Committee on Freedom of Association, for its part, has observed that the Convention in no way expresses support either for the idea of trade union unity or for that of trade union pluralism. It is, however, intended to convey, on the one hand, that in many countries there are several organisations among which the workers or the employers may wish to choose freely and, on the other hand, that workers and employers may wish to establish new organisations in a country where no such diversity has hitherto been found. In other words, although the Convention is evidently not intended to make trade union diversity an obligation, it does at least require diversity to remain possible in all cases.

The Committee has nevertheless not remained impervious to the problems to which trade union pluralism may give rise as regards the representation of the workers in collective labour relations. It has accordingly found it acceptable for the law of a country to draw a distinction between the most representative trade union organisations and other trade union organisations, provided that such distinction does not have the result of according to the most representative organisations privileges extending beyond the privilege of priority in representation for such purposes as collective bargaining or consultation by governments or for the purpose of nominating delegates to international bodies. Minority organisations should not be deprived of the essential means whereby they may defend the occupational interests of their members, organise their administration and activities and formulate their programmes.

It is also necessary to provide for a series of safeguards if the system is adopted of certifying the most representative union in a given unit as the exclusive bargaining agent for that unit. The Committee has pointed out that in several countries such safeguards were designed to ensure: (a) that certification is made by an independent body; (b) that the representative organisation is to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organisation which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organisation other than the certificated organisation to demand a new election after a fixed period has elapsed since the previous election.

Lastly, as concerns the various types of union security measures instituted not in virtue of legislation but as a result of collective agreements or established practice, the Committee has always declined to examine the allegations made, basing its reasoning on the fact that at the time of the adoption of Convention No. 98 it was made clear by the International Labour Conference that this instrument should not be interpreted as authorising or prohibiting arrangements to that effect, such questions being matters for regulation in accordance with national practice. The Committee has pointed out that according to this statement the

countries in question—and more particularly those countries having trade union pluralism—would in no way be bound under the provisions of the Convention to permit union security clauses either by law or as a matter of custom, while other countries which allow such clauses would not be placed in the position of being unable to ratify the Convention.

Free functioning of organisations

Election to and removal from trade union office

The Committee has often had occasion to stress the importance it attaches to the right of organisations to elect their leaders in full freedom. Upholding this principle, the Committee has condemned interference by the authorities in the electoral process, whether in the form of a requirement that the list of candidates be approved, that a public official be present at the elections or that the results of the ballot be officially approved. In cases where a country's legislation lays down that all trade union leaders must belong to the occupation in which the organisation functions, the Committee has drawn attention to the danger that the guarantees provided for in Convention No. 87 may be set aside, and that the dismissal of a worker who is a trade union official may, by causing him to lose his status as a union official, infringe the freedom of action of the organisation and its right to elect its representatives in full freedom, and may even leave the way open for acts of interference by the employer.

It should not be permissible for trade union officials to be removed from office for breaches of the law by decision of the administrative authorities. In the opinion of the Committee, it is of great importance that measures for the dismissal, suspension or disqualification of such officials should not become enforceable except on the basis of a firm sentence on the part of the competent judicial authority, or, in any case, after the period allowed for the submission of an appeal has elapsed without such an appeal having been made.

Trade union administration and activities

Non-interference by the authorities in the internal affairs of trade unions is one of the most important principles of Convention No. 87. The Committee has nevertheless been called upon on several occasions to examine complaints involving a problem of this kind. As with the removal from office of trade union leaders, the Committee has criticised the interference of the administrative authorities, pointing out that while the Convention does not prevent supervision or control of the internal acts of a trade union to verify whether those acts violate national laws or regulations (which, in their turn, must not violate the principles of freedom of association), in order to guarantee an impartial and objective

procedure it is of the utmost importance that this control should be exercised by the relevant judicial authority.

As regards trade union funds, in particular, the Committee has referred to the opinion expressed by the Committee of Experts to the effect that measures of supervision over the administration of trade unions may be useful if they are employed only to prevent abuses and to protect the members of the trade union themselves against mismanagement of the funds. Nevertheless, to provide a certain measure of guarantee against interference the official appointed to exercise supervision should enjoy some degree of independence of the administrative authorities and should himself be subject to the control of the judicial authorities.

With regard to the political activities of trade unions, the Committee has declared itself against a general ban on such activities embodied in the legislation. It has nevertheless drawn attention on many occasions to the principles enunciated in the ILO resolution on the independence of the trade union movement, adopted in 1952, to the effect that the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers, and that accordingly when trade unions decide, in accordance with the law and practice of their respective countries and with the wishes of their members, to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or action should not be of such a nature as to compromise the continuance of the trade union movement or of its social or economic functions irrespective of political changes in the country.

Federations, confederations and international affiliation

The right of trade unions and federations to establish such organisations of higher degree as they think fit may be restricted in various ways. The Committee has objected to legislation which requires a minimum number of trade unions or federations for the establishment of such organisations, makes the federation of unions based in different provinces subject to ministerial authorisation, prohibits organisations of public officials from adhering to federations or confederations covering industrial and agricultural workers or permits the formation of only one central trade union organisation in a country. The normal principle is for the government to leave it to the organisations concerned to draw up their own rules for their affiliation to higher-degree organisations.

As regards affiliation to international occupational organisations, the Committee has raised objections to interference by the authorities which might restrict this right, and has stressed the principle that the right normally carries with it the right for representatives of national

organisations to be in contact with and to participate in the work of the international organisations to which their organisations are affiliated, and that they should accordingly be afforded every facility to this end.

Suspension and dissolution of organisations

The principle that employers' and workers' organisations should not be liable to suspension or dissolution by administrative authority has been reaffirmed by the Committee in numerous cases, and this principle has also been invoked in situations where trade unions have been dissolved by the executive branch of the government of a country in the exercise of legislative functions or of full powers vested in it by law, or where the legal personality of an organisation has been suspended by administrative authority. The Committee has taken the view that in such cases the organisation concerned has not been able to avail itself of the right of defence which normal judicial procedure alone can guarantee.

Where suspension or dissolution measures are issued by administrative authority there may be a danger that they will appear to be arbitrary, even though they are issued only temporarily or for a limited time and as a preliminary to subsequent court action. The Committee has accordingly expressed the view that it is not sufficient for the law to grant the right of appeal against such administrative decisions, but that the latter should not take effect until the expiry of the statutory period for lodging an appeal or until the confirmation of such decisions by a judicial authority.

Protection against acts of anti-union discrimination

Referring to the principles embodied in Convention No. 98 with regard to the protection that workers should enjoy against acts of anti-union discrimination in respect of their employment, the Committee has expressed the view that this protection should extend, *inter alia*, to dismissal, demotion, transfer and compulsory retirement. In one case the Committee took the view that legislation which allows an employer to dismiss any worker on condition that he pays the compensation prescribed by law for cases of unjustified dismissal, even if the true reason is the worker's trade union membership or activities, does not appear to offer sufficient protection.

The Committee has considered that the existence in the legislation of provisions prohibiting acts of anti-union discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice. It has referred in this connection to the observation made by the Committee of Experts to the effect that it may often be difficult, if not impossible, for a worker to furnish proof of such an act of which he has been the victim. Furthermore, having regard to

the fact that excessively lengthy proceedings may be tantamount to a denial of justice, the Committee has drawn attention to the importance which it attaches to expeditious proceedings, in the absence of which the wronged employee will feel a growing sense of injustice, with consequent harmful effects on industrial relations.

Trade union officials, in particular, need special protection to allow them to perform their duties in full independence with the assurance that they will not suffer prejudice on account of the mandate which they hold. One way of ensuring such protection, in the Committee's view, is to provide that these officials may not be dismissed either during their term of office or for a certain time thereafter, except, of course, for serious misconduct.

Collective bargaining

Collective bargaining, as one of the fundamental trade union rights, has been examined from various angles by the Committee, with special emphasis on the problems arising in connection with the voluntary character that collective bargaining should have in accordance with the terms of Convention No. 98. This aspect has been dealt with from the standpoint both of the relations between the bargaining parties and of the position of the State.

As regards relations between the parties, the Committee has taken the view that, since under the terms of the Convention a government is not under the obligation to make collective bargaining compulsory, refusal by an employer to bargain with a particular union is not to be regarded as an infringement of trade union rights. What is more, the question as to whether one party adopts an amenable attitude or an uncompromising attitude towards the demands of the other party is a matter for negotiation between the parties within the law of the land.

This has not, however, prevented the Committee from emphasising the importance it attaches to employers, including governmental authorities in their capacity as employers, recognising for collective bargaining purposes the organisations representative of the workers employed by them.

As regards the intervention of the State in the collective bargaining process, the most notorious problems arise in connection with the effects of legislation upon agreements and the impact of government economic policy measures upon the autonomy of the parties.

In cases falling within the former category, the Committee has considered that a legal provision which supersedes or modifies the conditions of work laid down in collective agreements or prevents the workers from negotiating such conditions as they wish in future collective agreements constitutes an infringement of the right of the persons concerned to bargain collectively through their trade unions.

Restrictions upon collective bargaining imposed in pursuance of a specific economic policy constitute a problem of special importance which the Committee has considered with particular attention. As a rule the Committee has been opposed to requirements that the prior approval of the authorities be obtained before a collective agreement can come into force, and it has also criticised provisions which permit the refusal of an agreement on the ground that it is incompatible with the general policy of the government, considering that they infringe the principle of voluntary collective bargaining.

The Committee has also pointed out, however, that objections to the requirement that prior approval be obtained do not signify that ways could not be found of persuading the parties to have regard voluntarily in their negotiations to considerations relating to the economic or social policy of the government and the safeguarding of the general interest. Thus, instead of making the validity of collective agreements subject to governmental approval, it might be provided that every collective agreement would normally come into force a reasonable length of time after being filed with the competent authority; if the public authority considered that the terms of the proposed agreement were manifestly in conflict with the economic policy objectives recognised as being desirable in the general interest, the case could be submitted for advice and recommendation to an appropriate consultative body, on which the workers' and employers' organisations were represented, and this body could indicate to the parties the considerations of general interest that might call for further examination by them of the agreement in question, provided always, however, that the final decision in the matter rested with the parties to the agreement.

The Committee has not remained unaware of the grave problems that can arise in certain circumstances in the economic sphere, and for this reason has stated that it would be difficult to lay down an absolute rule concerning voluntary collective bargaining because, in certain circumstances, governments might feel that the economic position of their countries called at certain times for stabilisation measures during the application of which it would not be possible for wage rates to be fixed freely through the medium of collective bargaining. The Committee has added, however, that such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards.

Right to strike

Among the cases which most frequently come before the Committee are those relating to the right to strike. Even though the international labour Conventions do not refer specifically to this question, the Com-

mittee has pointed out that the right to strike is one of the essential means whereby workers and their organisations may promote and defend their occupational interests, that this right is generally recognised and that allegations relating thereto are not outside the Committee's competence in so far as they concern the exercise of trade union rights.

While upholding the principle of the right to strike, the Committee has agreed that it is permissible for certain temporary restrictions to be placed upon the exercise of this right. Such restrictions may consist in a requirement of prior notification to the authorities or the exhaustion of the existing procedures for negotiation, conciliation and arbitration before a strike may be called. It is also in order to prohibit strike action in breach of a collective agreement.

The Committee has agreed that in specified cases the legislation can prohibit recourse to strike action on a permanent basis, and in doing so it has referred in particular to the civil service and essential services. Nevertheless, where such a ban exists it must be accompanied by guarantees to safeguard to the full the interests of the workers, consisting of adequate, impartial and speedy conciliation and arbitration procedures in which the parties can take part at every stage and in which the awards are binding on both parties and are fully and promptly implemented. With regard to essential services, the Committee has made it clear that it intends to refer only to services which are essential in the strict sense of the term. It would not, therefore, be appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing between those which are genuinely essential because their interruption may cause public hardship and those which are not essential according to this criterion.

The Committee has also held to be normal restrictions on the right to strike in certain occupations of an establishment or service to the extent necessary to comply with statutory safety requirements.

On the other hand, where legislation—in normal times—has directly or indirectly placed a ban on strikes in all activities, the Committee has endorsed the opinion of the Committee of Experts to the effect that such a ban may constitute an important restriction of the potential activities of trade unions, which would not be in conformity with the generally recognised principles of freedom of association.

Trade union rights and civil liberties

In a great many of the cases examined by the Committee questions have arisen in connection with the exercise of fundamental human freedoms, including freedom of peaceful assembly, freedom of opinion, freedom from arbitrary arrest, the right to a fair trial by an independent

and impartial tribunal, freedom from inhuman treatment and freedom from arbitrary interference with privacy. The Committee has frequently stressed the importance it attaches to respect for various civil liberties in connection with the complaints that have come before it, and has stated in more general terms that a genuinely free and independent trade union movement can develop only under a régime which guarantees fundamental human rights. The Committee has been guided in reaching its conclusions by the basic principles on the subject as enunciated, in particular, in the Universal Declaration of Human Rights. The International Labour Conference has placed the full weight of its authority behind the Committee's findings in adopting in 1970 the resolution concerning trade union rights and their relation to civil liberties, in which are enumerated those civil liberties, as defined in the Universal Declaration, which are considered essential for the normal exercise of trade union rights.¹

As regards the right of assembly, the Committee has insisted that the right to hold meetings on their own premises is a fundamental right of all trade unions, and in a number of cases it has condemned requirements that prior authorisation be obtained for the holding of such meetings or that representatives of the public authorities be present. The right to hold public meetings and demonstrations, especially on Labour Day, also constitutes an important trade union right, which nevertheless does not release organisations from the obligation to comply with the general formalities uniformly applicable to all meetings of this kind. It rests with the authorities, who are responsible for the maintenance of public order, to decide in the exercise of their corresponding powers whether meetings, including trade union meetings, may in certain special circumstances endanger public order and security and to take adequate preventive measures.

Freedom of opinion has also been examined by the Committee, which has maintained that the full exercise of trade union rights calls for a free flow of information, opinions and ideas and that to this end workers and employers and their organisations should enjoy such freedom at their meetings, in their publications, and in the course of their trade union activities. Control of publications and revocation of publishing licences by administrative authority constitute serious interference with such activities, from which the public authorities should refrain. Never-

¹ The civil liberties in question are the following:

- (a) the right to freedom and security of person and freedom from arbitrary arrest and detention;
- (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;
- (c) freedom of assembly;
- (d) the right to a fair trial by an independent and impartial tribunal;
- (e) the right to protection of the property of trade union organisations.

theless, it is only in so far as trade union organisations do not allow their occupational demands to assume a clearly political aspect that they can legitimately claim that there should be no interference with their activities.

With regard to allegations concerning the arrest of trade unionists, the Committee has adopted the viewpoint that the onus is upon the governments concerned to furnish proof that the arrest had no connection with trade union activities. On many occasions where governments have replied to allegations that trade union leaders or workers have been arrested for trade union activities by stating that the persons in question were in reality arrested for subversive activities, for reasons of internal security or for common law crimes, the Committee has followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests and the exact grounds for them, particularly in connection with the legal or judicial proceedings instituted and the outcome of such proceedings. With this end in view it has repeatedly requested the texts of any judgments delivered, together with the grounds adduced therefor. If in certain cases the Committee has reached the conclusion that the allegations did not call for further examination, this was because it had received information from the governments concerned showing sufficiently clearly and precisely that the arrests were occasioned by activities outside the trade union sphere which were either prejudicial to public order or of a political nature.

In any event, the Committee has always insisted that when trade unionists are arrested, even if they are charged with political or criminal offences, they should be given a fair trial as speedily as possible by an independent and impartial judicial authority.

With respect to allegations relating to ill-treatment said to have been meted out to workers, the Committee has not failed to emphasise the importance it attaches to the right of trade unionists, like all other persons, to enjoy the guarantees afforded by due process of law in accordance with the principles enunciated in the Universal Declaration of Human Rights.

Freedom from arbitrary interference with privacy has been at issue in cases involving forced entry into and searching of trade union premises. In this respect the Committee, while recognising that trade unions, like other associations or persons, cannot claim immunity from search of their premises, has emphasised the importance which it attaches to the principle that such a search should only be made following the issue of a warrant by the ordinary judicial authority after that authority has been satisfied that reasonable grounds exist for supposing that evidence exists on the said premises material to a prosecution for an offence under the law and provided that such search is restricted to the purposes in respect of which the warrant was issued.

Conclusions

If the activities of the Committee on Freedom of Association are appraised against the background of its twenty years of existence, it may be stated that one of its main achievements is to have succeeded in gaining recognition for the international validity of principles of freedom of association. The influence of the Committee is above all a moral one, deriving from the objectiveness of its conclusions and the publicity given to such problems when they are referred to a body with international standing. The weight of public opinion is one of the most valuable weapons in its armoury. It should be stressed, however, that even when the Committee performs functions of a jurisdictional nature, its primary objective is to give guidance to the parties so that legislation or practice may be brought into line with the commonly accepted principles relating to freedom of association.

There is no doubt that while in some cases the Committee's recommendations have had positive and immediate effects, in others there have been no apparent effects. But to appreciate to the full what the Committee has accomplished it is necessary to take account also of the indirect effects of its action, which may be preventive in character or consist in the preparation of the ground for the adoption of measures in the more distant future. Experience has shown that the complaints procedure has upon occasion incited the parties to remedy a situation in order to avoid attention being focused on the problem to which it has given rise at the international level, or to reach a settlement after a complaint has been filed but before the Committee's examination is completed; there may also be cases where a government refrains from taking certain measures affecting freedom of association because of the possibility that the Committee might be asked to intervene.

As regards the second type of effect, which generally tends to lead to amendment of the legislation, it should be considered in connection with the procedure followed once the Committee has adopted its conclusions. If these conclusions contain recommendations as to changes in the legislation addressed to a government which has ratified the freedom of association Conventions, the Committee of Experts on the Application of Conventions and Recommendations normally carries on the task of supervising the implementation of these recommendations. This does not prevent the Committee on Freedom of Association from keeping the situation under review, bearing in mind the nature or urgency of certain matters. If the government concerned has not ratified the freedom of association Conventions, the Committee has recently been authorised to make regular inquiries as to the effect given to its recommendations. This has been done in response to the request made to the Governing Body in 1970 by the International Labour Conference to undertake all efforts

with a view to strengthening the ILO machinery for securing the observance by member States of ILO principles concerning freedom of association and trade union rights.¹

This same preoccupation is reflected in some of the new measures taken to speed up the Committee's work. Mention has to be made in this connection of the dragging out of the procedure due to excessive dilatoriness on the part of some governments in sending all the information necessary for the examination of the cases in which they are involved. It should be stressed that the setting up of the Committee has made it incumbent upon all States to report on their activities in the trade union field. But it is worth adding in this connection a reference to the statement made by the Committee itself in its first report, to the effect that the purpose of the whole procedure was to promote respect for trade union rights in law and in fact, and that the Committee was confident that, if it protected governments against unreasonable accusations, governments on their side would recognise the importance for the protection of their own good name of formulating for objective examination detailed factual replies to such factual charges as might be put forward.

The function of the ILO in regard to trade union rights is to contribute to the effectiveness of the general principle of freedom of association as one of the primary safeguards of peace and social justice. It was in these terms that the Committee described at the outset of its work the general context within which it was to be called upon to act. Not long afterwards the action taken by the Committee enabled Paul Ramadier, a former Prime Minister of France, who for ten years was Chairman of the Committee, to remark that the Committee had succeeded in laying down the principle that freedom of association was a kind of customary rule in common law, outside or above the scope of any Conventions or even of membership of one or other of the international organisations.² Twenty years of uninterrupted work have merely confirmed the accuracy of this judgment, which sums up one of the most outstanding contributions made by the Committee to the promotion of a fundamental aspect of human rights.

¹ Resolution concerning trade union rights and their relation to civil liberties, para. 14.

² ILO: *Minutes of the 121st Session of the Governing Body*, fifth sitting, 5 March 1953, p. 39.