International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores

TRIPARTITE MEETING OF EXPERTS ON THE RIGHT TO STRIKE

Compilation of documents for Employers

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1. CEACR General Survey 2012 (the right to strike, paras 117 – 161)

The Right to Strike

Introduction

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

Employers' group

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

According to the Employer members, the right to strike has no legal basis in the freedom of association Conventions. In their view, Convention No. 87 at most contains a general right to strike, which nonetheless cannot be regulated in detail under the Convention. They consider that when the Committee of Experts expresses its views in detail on strike policies, especially on essential services, it applies a "one-size-fits-all" approach that fails to recognize differences in economic or industrial development and current economic circumstances. They add that the approach of the Committee of Experts undermines tripartism and ask it to reconsider its interpretation of the matter. [2] In 2011, the Employer members reiterated their position, considering that the observations of the Committee of Experts on the right to strike and essential services are not in conformity with the text, the preparatory work and the history of the negotiation of Convention No. 87. [3]

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

[1] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 57. [2] ibid. [3] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, General Report, 100th Session, Geneva, June 2011, Part I, General Report, para. 55. Moreover, during the discussion of the 1994 General Survey, the Employer members indicated that "strike was not mentioned either in Convention No. 87 or in Convention No. 98. Furthermore, the Survey placed a great deal of emphasis […] on the historical aspects of these instruments; this historical method of interpretation however was only of secondary importance since, in the first place, must come the text, the purpose and the meaning of the provisions themselves. There were no concrete provisions and it was not helpful to quote the standards contained in the instruments of other organizations where strikes and collective action were sometimes mentioned in another context and in a very general or only indirect manner. […] The beginning of the chapter rightly indicated that the right to strike was mentioned during the preparatory work, but adds in paragraph 142 that "[…] during discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted". The Employer members however quoted the following passage: "Several

Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association". (31st Conference, 1948, Report VII, p. 87.) A similar conclusion was made in the plenary sitting: "The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organize, but rather a concise statement of certain fundamental principles". (31st Conference, 1948, *Record of Proceedings*, Appendix X, p. 477). Later, Recommendation No. 92 on voluntary conciliation and arbitration dealt with this issue in a neutral manner without regulating the contents. During the plenary sitting, the famous Worker spokesperson, Léon Jouhaux, bitterly complained of the unsatisfactory result of the discussion: he did not explicitly mention the absence of the right to strike, but other delegates did. Moreover, during the adoption of Convention No. 98, two requests presented by Workers' delegates with the aim of including a guarantee of the right to strike were rejected on the basis that it was not covered by the proposed text and that this question should be dealt with at a later stage. (32nd Conference, 1949, *Record of Proceedings*, Appendix VII, pp. 468 and 470; see also ILO: *Industry and Labour*,Vol.II, July–December 1949, pp. 147, and following.) Shortly afterwards, a Government delegate made the same request which the chairman declared unreceivable for the same reasons. […] Under these circumstances, it was incomprehensible to the Employers that the supervisory bodies could take a stand on the exact scope and content of the right to strike in the absence of explicit and concrete provisions on the subject, and that this absence seemed precisely to be the justification for their position, as is suggested in paragraph 145. The Committee of Experts had put into practice here what was called in mathematics an axiom and in Catholic theology a dogma: that is complete, unconditional acceptance of a certain and exact truth from which everything else was derived" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, paras 117–119, pp. 25/32 and 33).

Workers' group

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

In the discussion of the 1994 General Survey, they stated that the right to strike is an indispensable corollary of the right to organize protected by Convention No. 87 and by the principles enunciated in the ILO

Constitution. In their view, without the right to strike, freedom of association would be deprived of its substance. They added that strike objectives could not be limited only to the conflicts linked to the workplace or the enterprise, particularly given the phenomena of enterprise fragmentation and internationalization. This was the logical consequence of the fact that trade union activities should not be limited to strictly occupational questions. This was the reason why sympathy strikes should be possible, as well as strikes at the sectoral level, the national and the international level. Finally, they considered that by considerably limiting the scope of action of trade unions, by legal or administrative restrictions, governments and employers might find themselves increasingly faced with spontaneous actions. [2]

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

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

118. With regard to the views put forward that the preparatory work would not support the inclusion of the right to strike, the Committee would first observe that the absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose. While the Committee considers that the preparatory work is an important supplementary interpretative source when reviewing the application of a particular Convention in a given country, it may yield to the other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years (see Articles 31 and 32 of the Vienna Convention on the Law of Treaties). In addition, and as seen below in response to comments made by both workers' and employers' organizations, the process of determining whether there is compliance with a general right to strike invariably involves consideration of the specific circumstances in which the Committee is called upon to determine the ambit and modalities of the right. The Committee has further borne in mind over the years the considerations set forth by the tripartite constituency and would recall in this respect that the right to strike was indeed first asserted as a basic principle of freedom of association by the tripartite Committee on Freedom of Association in 1952 and has been recognized and developed in scores of its decisions over more than a half century. Moreover, the 1959 General Survey, in which the Committee first raised its consideration in respect of the right to strike in relation to the Convention, was fully discussed by the

Conference Committee on the Application of Standards without objection from any of the constituents.

119. The Committee reaffirms that the right to strike derives from the Convention. The Committee highlights that the right to strike is broadly referred to in the legislation of the great majority of countries and by a significant number of constitutions, as well as by several international and regional instruments, which justifies the Committee's interventions on the issue. Indeed, the principles developed by the supervisory bodies have the sole objective of ensuring that this right does not remain a theoretical instrument, but is duly recognized and respected in practice. For all of these reasons, and in light of the fact that the Committee of Experts has never considered the right to strike to be an absolute and unlimited right, [1] and that it has sought to establish limits to the right to strike in order to be able to determine any cases of abuse and the sanctions that may be imposed. The view taken concerning the right to strike and the principles developed over time on a tripartite basis, as in many other fields, should give rise to little controversy. The Committee further observes that employers' organizations also sometimes invoke the principles developed by the supervisory bodies concerning strikes and very tangible related matters, particularly with regard to the freedom to work of non-strikers, the non-payment of strike days, access of the management to enterprise installations in the event of a strike, the imposition of compulsory arbitration by unilateral decision of trade unions and protest action by employers against economic and social policy.

120. The affirmation of the right to strike by the supervisory bodies lies within the broader framework of the recognition of this right at the international level, particularly in the International Covenant on Economic, Social and Cultural Rights of the United Nations (Article 8, paragraph 1(d)), [2] which, to date, has been ratified by 160 countries, most of which are ILO members, as well as in a number of regional instruments, as indicated in paragraph 35 of the present Survey. It is in the context of the Council of Europe that the protection of the right to strike is the most fully developed at the regional level, in light of the abundant case law of the European Committee of Social Rights, the supervisory body for the application of the European Social Charter adopted in 1961 and revised in 1996, which sets out this right.

121. Other ILO instruments also refer to the right to strike, and principally the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of any form of forced or compulsory labour as a punishment for having

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

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

participated in strikes, and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which indicates that the parties should be encouraged to abstain from strikes and lockouts in the event of voluntary conciliation and arbitration, and that none of its provisions may be interpreted as limiting, in any way whatsoever, the right to strike. Certain resolutions also make reference to this right. [3]

122. Each year, the Committee examines many individual cases relating to national provisions regulating strikes, most frequently without being challenged by the governments concerned, which generally adopt measures to give effect to the comments of the Committee of Experts. Over the years, the supervisory bodies have specified a series of elements concerning the peaceful exercise of the right to strike, its objectives and the conditions for its legitimate exercise, which may be summarized as follows: (i) the right to strike is a right which must be enjoyed by workers' organizations (trade unions, federations and confederations); (ii) as an essential means of defending the interests of workers through their organizations, only limited categories of workers may be denied this right and only limited restrictions may be imposed by law on its exercise; (iii) the objectives of strikes must be to further and defend the economic and social interests of workers and; (iv) the legitimate exercise of the right to strike may not result in sanctions of any sort, which would be tantamount to acts of anti-union discrimination. Accordingly, subject to the restrictions authorized, a general prohibition of strikes is incompatible with the Convention, although the supervisory bodies accept the prohibition of wildcat strikes. Furthermore, strikes are often called by federations and confederations which, in the view of the Committee, should be recognized as having the right to strike. Consequently, legislation which denies them this right is incompatible with the Convention. [4]

Recognition at the national level

123. Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted. In a very large number of countries, the right to strike is now explicitly recognized, including at the constitutional level. [5] The Committee has noted with

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

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

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

satisfaction, for example, in relation to the African continent, the recent repeal of provisions prohibiting the right to strike in *Liberia*, [6] and the repeal of significant restrictions on the right to strike which remained in the *United Republic of Tanzania*. [7] It has also noted with satisfaction the definition of strikes set out in the new Labour Code of *Burkina Faso*, [8] under the terms of which a strike is understood as being a concerted and collective cessation of work with a view to supporting occupational demands and ensuring the defence of the material and moral interests of workers.

Modalities

124. In the legislation of several countries, "political strikes" are explicitly or tacitly deemed unlawful. [9] The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. [10] Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, [11] including in cases when such organizations have recourse to strikes.

125. With regard to so-called "sympathy" strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take

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Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, United States, *Uruguay* and *Bolivarian Republic of Venezuela.*

[6] *Liberia* – CEACR, observation, 2009.

[7] *United Republic of Tanzania* – CEACR, observation, 2005.

[8] *Burkina Faso* – CEACR, observation, 2010.

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

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

[11] See, for example, *Swaziland* – CEACR, observation, 2011.

such action, provided that the initial strike they are supporting is itself lawful. [12] It has noted in particular the recognition in *Croatia* [13] of the right to call sympathy strikes in national legislation and the recognition of this right for public servants in the current collective agreement. It has also noted with interest the repeal from the Constitution of *Turkey* [14] of the provision which prohibited "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction".

126. Finally, ***in the view of the Committee, any work stoppage, however brief and limited, may generally be considered as a strike, and restrictions in this respect can only be justified if the action ceases to be peaceful***. [15] "Go-slow strikes" and "work-to-rule" actions are also covered by the principles developed. However, certain countries continue to consider these forms of strike action as unfair labour practices, which can be punished by fines, removal from trade union office and other sanctions. [16]

Permitted restrictions and compensatory guarantees

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

128. In this context, the Committee has noted with concern the potential impact of the recent case law of the Court of Justice of the European Communities (CJEC) concerning the exercise of the right to strike, and particularly the fact that in recent rulings the Court has found that the right to strike could be subject to restrictions where its effects may disproportionately impede an employer's freedom of establishment or freedom to provide services. [17] In a communication dated 29 August 2011, the European Trade Union

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

[13] *Croatia* – CEACR, observations, 1999 and 2004.

[14] *Turkey* – CEACR, observation, 2011.

[15] General Survey, 1994, para. 173.

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

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

Confederation (ETUC) drew the Committee's attention to its particular concerns with respect to the impact of recent decisions of the Court of Justice of the European Union (*Viking*, *Laval*, *Ruffert* and *Luxembourg*) on freedom of association rights and the effective recognition of collective bargaining. While the ETUC has asked the Committee to determine whether these decisions are compatible with Conventions Nos 87 and 98, the Committee recalls, as it had when examining similar matters with respect to the *United Kingdom*, that its mandate is limited to reviewing the application of Conventions in a given member State. The Committee nevertheless takes note with interest of recent initiatives of the European Commission to clarify the import of these judgments and looks forward to learning of the progress made in this regard.

Public service

129. Taking into account the importance of ensuring the continuity of the functions of the three branches of the State (the legislative, executive and judicial authorities) and of essential services, ***the Committee of Experts and the Committee on Freedom of Association consider that States may restrict or prohibit the right to strike of public servants "exercising authority in the name of the State"***.[18] Decisions implementing this principle at the national level vary. For example, in *Switzerland*,[19] although previously all federal officials were denied the right to strike, an ordinance now limits this prohibition to officials exercising authority in the name of the State.

130. Several States prohibit or impose restrictions on the right to strike in the public service which go beyond the framework established by the Committee.[20] These restrictions relate in particular to teachers. Nevertheless, the Committee considers that public sector teachers are not included in the category of public servants "exercising authority in the name of the State" and that they should therefore benefit from the right to strike without being liable to sanctions, even though, under certain circumstances, the maintenance of a minimum service may be envisaged in this sector.[21] This principle should also apply to postal workers and railway employees,[22] as well as to civilian personnel in military

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

[19] *Switzerland* – CEACR, direct request, 2011.

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

[21] See, for example, *Germany* – CEACR, observation, 2010.

[22] ibid.

institutions when they are not engaged in the provision of essential services in the strict sense of the term. [23]

Essential services

131. The second acceptable restriction on strikes concerns essential services. The Committee considers that essential services, for the purposes of restricting or prohibiting the right to strike, are only those "the interruption of which would endanger the life, personal safety or health of the whole of part of the population". [24] This concept is not absolute in its nature in so far as a non-essential service may become essential if the strike exceeds a certain duration or extent, or as a function of the special characteristics of a country (for example, an island State). In practice, national legislation fairly frequently has recourse to the concept of essential services to limit or prohibit the right to strike. This may range from a relatively short limitative enumeration to a long list which is included in the law itself. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. However, in certain countries, such as *Bulgaria*, [25] the right to strike can be exercised throughout the public service and in all services termed essential for the community.

132. In practice, the manner in which strikes are viewed at the national level varies widely: several States continue to define essential services too broadly, [26] or leave too much discretion to the authorities to unilaterally declare a service essential; [27] others allow strikes to be prohibited on the basis of their potential economic consequences [28] (particularly in EPZs and recently established enterprises), [29] or prohibit strikes on the basis of the potential detriment to public order or to the general or national interest. [30] Such provisions are not compatible with the principles relating to the right to strike.

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[23] See, for example, *Angola* – CEACR, direct request, 2010.

[24] General Survey, 1994, para. 159.

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

[26] See, for example, *Chile* – CEACR, observation, 2010.

[27] See, for example, *Zimbabwe* – CEACR, observation, 2011.

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

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

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

133. In still other countries, such as *Colombia*, [31] it is left to the higher judicial authorities to determine, on a case-by-case basis, the essential nature of a service, even where there is a general definition in law in this respect. Finally, in other cases, the determination of essential services is the outcome of a joint decision by the parties through an agreement between the social partners, such as in *Cyprus*. [32] In this context, the Committee has noted with satisfaction several cases of interesting progress, including the repeal in *Guatemala* [33] of the prohibition of strikes or the suspension of work by workers in enterprises or services the interruption of which would, in the opinion of the Government, seriously affect the national economy; the removal in *Turkey* [34] of the imposition of compulsory arbitration to prevent a strike in EPZs and; the repeal in *Cyprus* [35] of provisions granting the Council of Ministers discretionary power to prohibit strikes in the services that it considers essential.

Activities not considered as essential services

134. When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private sectors in numerous services, including the following: the banking sector, [36] railways, [37] transport services and public transport, [38] air transport services and civil aviation, [39] teachers and the public education

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

[32] *Cyprus* – CEACR, observation, 2006.

[33] *Guatemala* – CEACR, observation, 2002.

[34] *Turkey* – CEACR, observation, 2005.

[35] *Cyprus* – CEACR, observation, 2008.

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

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

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

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

service,[40] the agricultural sector,[41] fuel distribution services[42] and the hydrocarbon, natural gas and petrochemical sector,[43] coal production,[44] maintenance of ports and airports,[45] port services and authorities[46] and loading and unloading services for ships,[47] postal services,[48] municipal services,[49] services for the loading and unloading of animals[50] and of perishable foodstuffs,[51] EPZs,[52] government printing services,[53] road cleaning and refuse collection,[54] radio and television,[55] hotel services[56] and construction.[57]

Activities considered as essential services

135. When examining concrete cases, the ILO supervisory bodies have considered that essential services in the strict sense of the term may include air traffic control services,[58] telephone services[59] and the services responsible for

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[40] See, for example, *Canada* – CEACR, observation, 2010 (British Colombia and Manitoba); *Germany* CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[41] See, for example, *Chile* – CEACR, observation, 2010.

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

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

[44] See, for example, *Turkey* – CEACR, observation, 2010.

[45] See, for example, *Nigeria* – CEACR, observation, 2011.

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

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

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

[49] See, for example, *Russian Federation* – CEACR, observation, 2011.

[50] See, for example, *Mozambique* – CEACR, observation, 2011; and *Nigeria* – CEACR, observation, 2011.

[51] See, for example, *Dominica* – CEACR, observation, 2010; and *Mozambique* – CEACR, observation, 2011.

[52] See, for example, *Mozambique* – CEACR, observation, 2011.

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

[54] See, for example, *Nigeria* – CEACR, observation, 2011.

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

[56] See, for example, Committee on Freedom of Association, Case No. 2120 (Nepal), Report No. 328.

[57] See, for example, Committee on Freedom of Association, Case No. 2326 (Australia), Report No. 338.

[58] See, for example, *Nigeria* – CEACR, observation, 2010.

[59] See, for example, *Kyrgyzstan* – CEACR, direct request, 2011.

dealing with the consequences of natural disasters, as well as firefighting services, health and ambulance services, prison services, the security forces and water and electricity services. The Committee has also considered that other services (such as meteorological services and social security services) include certain components which are essential and others that are not.

Negotiated minimum service

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

137. However, such a service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. [60] Moreover, a minimum service may always be required, whether or not it is in an essential service in the strict sense of the term, to ensure the security of facilities and the maintenance of equipment.

138. The Committee emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. [61] Moreover, any disagreement on minimum services should be resolved, not by the government authorities, as is the case in certain countries, [62] but by a joint or independent body which has the confidence of the parties, responsible for examining rapidly and without formalities the difficulties raised and empowered to issue enforceable decisions. However, in practice,

[60] General Survey, 1994, para. 161.

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

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

the legislation in certain countries continues to determine unilaterally and without consultation the level at which a minimum service is to be provided and to require that a specific percentage of the service is provided during the strike. [63] Others authorize the public authorities to determine minimum services at their discretion, without consultation, [64] or require the judicial authorities to issue an order for this purpose. [65]

139. In this context, the Committee has noted several interesting cases of progress, including the establishment and tripartite composition of the Guarantees Commission, which is entrusted with determining minimum services in *Argentina*; [66] the amendment of the Law on Strikes in *Montenegro*, [67] which now provides that, when determining the minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees; the introduction in *Guatemala* [68] of a minimum service in essential public services determined with the participation of the parties and the judicial authorities; and the decision in *Peru* [69] that in the case of disagreement on the number and occupation of the workers who are to continue working, the labour authority shall designate an independent body for their determination.

Situations of acute national or local crisis

140. The third restriction on the right to strike relates to situations of acute national or local crisis. As general prohibitions of strikes resulting from emergency or exceptional powers constitute a major restriction on one of the essential means available to workers, the Committee considers that they are only justified in a situation of acute crisis, and then only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural, sanitary or humanitarian disaster, in which the normal conditions for the functioning of society are absent. [70]

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

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

[65] See, for example, *Mauritius* – CEACR, direct request, 2011.

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

[67] *Montenegro* – CEACR, direct request, 2011.

[68] *Guatemala* – CEACR, observation, 2002.

[69] *Peru* – CEACR, direct request, 2011.

[70] General Survey, 1994, para. 152.

Compensatory guarantees for workers deprived of the right to strike

141. When the right to strike is restricted or prohibited in certain enterprises or services considered essential, or for certain public servants exercising authority in the name of the State, the workers should be afforded adequate protection so as to compensate for the restrictions imposed on their freedom of action. Such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties, in which workers and their organizations could be associated. [71] Such arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

Restrictions on strikes during the term of a collective agreement

142. The legislation in certain countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law or by collective agreement must be observed. In other systems, collective agreements are seen as a social peace treaty of fixed duration during which strikes and lockouts are prohibited. The Committee considers that both these options are compatible with the Convention. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements. If legislation prohibits strikes during the term of collective agreements, this restriction must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements. [72]

143. *EPZs.* A number of countries establish a special system of industrial relations in EPZs which specifically or indirectly prohibits strikes in such zones. [73] In the view of the Committee, such prohibitions are incompatible with the principles of non-discrimination which must prevail in the implementation of the Convention. It has therefore noted with satisfaction, among other measures, the repeal in *Turkey* [74] of the provision under which compulsory arbitration was imposed for a ten-year period in EPZs for the settlement of collective labour disputes; and the repeal in *Namibia* [75] of the provision which prohibited any employee from

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[71] *Switzerland* – CEACR, direct request, 2011.

[72] General Survey, 1994, paras 166–167.

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

[74] *Turkey* – CEACR, observation, 2005.

[75] *Namibia* – CEACR, observation, 2003.

taking action by calling, or participating in a strike in an EPZ, under the threat of a disciplinary penalty or dismissal.

Prerequisites

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

144. A large number of countries require advance notice of strikes to be given to the administrative authorities or to the employer and/or establish an obligation to have recourse to prior conciliation and voluntary arbitration procedures in collective disputes before a strike may be called.[76] In the view of the Committee, such machinery should, however, have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.[77] With regard to the duration of prior conciliation and arbitration procedures, the Committee has considered, for example, that the imposition of a duration of over 60 working days as a prior condition for the exercise of a lawful strike may make the exercise of the right to strike difficult, or even impossible. In other cases, it has proposed reducing the period fixed for mediation.[78] The situation is also problematic when legislation does not set any time limit for the exhaustion of prior procedures and confers full discretion on the authorities to extend such procedures.[79]

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

145. In a large number of countries, there is a requirement to comply with a notice period or a cooling-off period before calling a strike.[80] In so far as they are conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, such provisions may be seen as measures taken to encourage and promote the development of voluntary bargaining. Again, however, the period of advance notice should not be an additional obstacle to bargaining, and should be shorter if it follows a compulsory prior mediation or conciliation procedure which itself is already

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

[77] General Survey, 1994, para. 171.

[78] *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011.

[79] See, for example, *Kiribati* – CEACR, observation, 2011.

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

lengthy. For example, the Committee has considered that advance notice of 60 days is excessive. [81]

146. Finally, in certain cases, the advance notice must be accompanied by an indication of the duration of the strike, under the threat that workers may be liable to sanctions if they participate in a strike the duration of which is not specified in the notification. [82] The Committee considers that workers and their organizations should be able to call a strike for an indefinite period if they so wish. [83]

Quorum and majority required to call a strike

147. Certain countries provide that, to be able to call a strike, it must be so decided by two-thirds [84] or three-quarters [85] of workers. In general, the Committee considers that requiring a decision by over half of the workers involved in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises. [86] In the Committee's view, if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level. [87] For example, the observance of a quorum of two-thirds of those present may be difficult to reach and could restrict the right to strike in practice. [88] In this context, it has noted with satisfaction, among other measures, the legislative amendment in *Latvia* [89] which reduced the quorum required to declare a strike from three-quarters to one half of the members of a trade union or a company participating in the respective meeting. Similarly, in *Guatemala*, [90] the requirement to obtain the votes of two-thirds of the members of a trade union to decide whether or not to call a strike has been removed and it is now sufficient to obtain a vote in

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[81] *United Republic of Tanzania* – CEACR, observation, 2011.

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

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

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

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

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

[87] General Survey, 1994, para. 170.

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

[89] *Latvia* – CEACR, observation, 2007.

[90] *Guatemala* – CEACR, observation, 2002.

favour of half plus one of the members constituting the quorum of the respective assembly.

Prior approval and supervision of strike ballots

148. The Committee considers that the requirement set out in law to obtain prior approval of a strike by a higher level trade union organization [91] is an impediment to the freedom of choice of the organizations concerned to organize their activities. Furthermore, it considers that the control or supervision of the strike ballot by the administrative authority [92] constitutes an act of interference in trade union activities that is incompatible with the Convention, unless the trade unions so request, in accordance with their own rules.

The course of the strike

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

149. Strike action is often accompanied by the presence, at the entry to the workplace, of strike pickets aimed at ensuring the success of the strike by persuading the workers concerned to stay away from work. In the view of the Committee, in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. Restrictions on strike pickets and workplace occupations can only be accepted where the action ceases to be peaceful. It is however necessary in all cases to guarantee respect for the freedom to work of non-striking workers and the right of the management to enter the premises. In practice, while certain countries establish very general rules which are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets [93] or the occupation of the workplace during a strike. [94] ***The Committee considers that, in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances.***

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

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

[93] See, for example, *United Republic of Tanzania* – CEACR, observation, 2011.

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

150. Several complaints have been presented by employers' organizations to the Committee on Freedom of Association concerning issues relating to the right to strike. The principal subjects have consisted of the management being prevented from having access to the premises of the enterprise during the strike, the conditions relating to the payment of wages to striking workers, the freedom of work of non-striking workers and the modalities governing compulsory arbitration by unilateral decision of trade union organizations. The Committee has considered that the requirement by law of the closing down of the enterprise, establishment or business in the event of a strike could be an infringement of the freedom of work of non-strikers and could disregard the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of directors and managerial staff to enter the installations of the enterprise and to exercise their activities), and accordingly raises problems of compatibility with the Convention. It has also considered that a stable labour relations system should take account of the rights and obligations of both workers' organizations and of employers and their organizations. [95] In this context, the Committee has noted with satisfaction, for example, the amendment of the legislation in *Panama*, [96] which now provides that the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their purpose is not to recommence productive activities (the access of non-striking workers to the enterprise is not, however, mentioned).

Requisitioning of strikers and hiring of external workers

151. Although certain systems continue to retain fairly broad powers to requisition workers in the case of a strike, [97] the Committee considers that it is desirable to limit powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, namely: (i) in the public service for public servants exercising authority in the name of the State; (ii) in essential services in the strict sense of the term; and (iii) in the case of an acute national or local crisis.

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

[96] *Panama* – CEACR, observation, 2011.

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

152. The Committee also recalls that the maintaining of the employment relationship is a normal legal consequence of recognition of the right to strike. However, in some countries with the common law system strikes are regarded as having the effect of terminating the employment contract, leaving employers free to replace strikers with new recruits. [98] ***The Committee considers that provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike, particularly where striking workers are not able in law to return to their employment at the end of the dispute.*** The legislation should provide for genuine protection in this respect. [99]

Compulsory arbitration

153. Another means of denying the right to strike or seriously restricting its exercise consists of the imposition of compulsory arbitration, which makes it possible to prohibit virtually all strikes or to end them quickly. In such cases, collective labour disputes are resolved by a final judicial award or an administrative decision that is binding on the parties concerned, with strike action being prohibited during the procedure and once the award has been issued. The Committee considers that recourse to compulsory arbitration to bring an end to a collective labour dispute and a strike is only acceptable under certain circumstances, namely: (i) when the two parties to the dispute so agree; or (ii) when the strike in question may be restricted, or even prohibited, that is: (a) in the case of disputes concerning public servants exercising authority in the name of the State; (b) in conflicts in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation. [100] Accordingly, the existence of protracted disputes and the failure of conciliation are not per se elements which justify the imposition of compulsory arbitration. [101] However, the Committee also recognizes that there comes a time in bargaining where, after protracted and fruitless negotiations, the public authorities might be justified to step in when it is obvious that the deadlock will not be broken without some initiative on their part. [102]

154. In practice, several countries continue to authorize recourse to compulsory arbitration, either automatically, or at the discretion of the public authorities, [103]

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[98] *United Kingdom* – CEACR, observation, 2011.

[99] General Survey, 1994, para. 139.

[100] General Survey, 1994, para. 257.

[101] *Kiribati* – CEACR, observation, 2011.

[102] General Survey, 1994, para. 258.

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

or at the request of one of the parties (sometimes following the exhaustion of compulsory prior conciliation and mediation procedures). [104] ***In the view of the Committee, systematic recourse to this type of procedure is tantamount in practice to a general prohibition of strikes, which is incompatible with the Convention.*** Moreover, arbitration imposed by the authorities at the request of only one of the parties is, in general, contrary to the principles of collective bargaining. Nevertheless, many countries continue to authorize recourse to compulsory arbitration in situations which go beyond the framework established by the Committee, [105] particularly in cases in which disputes continue for more than a certain period. [106]

155. Other countries provide that when the conciliation attempt between the parties to the dispute has not been successful, the dispute may be referred to a specific body responsible for drawing up a report or recommendations which, after a certain period has elapsed, may become enforceable if the parties to the dispute have not challenged them. [107] The Committee considers that this type of provision may be compatible with the Convention, on condition that the period referred to above is sufficiently long to allow the parties the necessary time for reflection.

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

Sanctions

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

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

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

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

[107] See, for example, sections 242–248 of the Labour Code of *Congo*.

conformity with freedom of association principles, proportionate disciplinary sanctions may be imposed against strikers (such as reprimands, withdrawal of bonuses, etc). [108] The question of determining whether or not a strike is lawful is therefore essential. In the view of the Committee, responsibility for declaring a strike illegal should not lie with the government authorities, but with an independent body which has the confidence of the parties involved. [109] In this context, the Committee has noted with satisfaction, for example, that in *Colombia* [110] the legality or unlawful nature of a collective labour suspension or stoppage shall be the subject of a judicial ruling in a priority procedure. It should be noted that the non-payment of wages corresponding to the period of strike is a mere consequence of the absence of work, and not a sanction. Therefore, salary deductions for days of strike do not raise problems of compatibility with the Convention. Ultimately, the payment of wages to striking workers is a matter appropriate to negotiation between the parties concerned.

Penal sanctions

158. Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions. [111] However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property). The concern expressed by the Committee to ensure that sentences of imprisonment are on no account imposed on strikers is also supported by the supervisory bodies of the United Nations, and particularly the Committee on Economic, Social and Cultural Rights, which has considered that the imposition of such sanctions constitutes non-compliance with the obligations of the State party to the Covenant. [112]

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

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

[110] *Colombia* – CEACR, observation, 2009.

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

[112] Committee on Economic, Social and Cultural Rights of the United Nations, *Concluding observations: Syrian Arab Republic*, 24 September 2001 (E/C.12/1/Add.63), para. 21. In particular, the Committee on Economic, Social and Cultural Rights expressed "concern about the restrictions in practice reported by the ILO with regard to the right

Despite these principles, several States continue to maintain specific penal sanctions for strike action, [113] including imprisonment, [114] in violation of the principles established by the Committee.

159. Other types of sanctions are sometimes imposed, such as fines, the closure of trade union premises, the suspension or deregistration of the trade union concerned, [115] or the removal from office of trade union officers. [116] The Committee considers that such sanctions should be possible only where the prohibition of strike action is in conformity with the Convention and the sanctions are proportionate to the seriousness of the fault committed. In any case, a right of appeal should exist against sanctions imposed by the authorities. Finally, certain systems are characterized by specific features and convict strikers on the basis of more general provisions of penal legislation, such as the offence of "obstruction of business"; [117] or provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the

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to strike, such as the imposition of sanctions, including imprisonment, which constitutes non-compliance with the State party's obligation regarding article 8 of the Covenant".

[113] See, for example, *Barbados* – CEACR, observation, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burkina Faso* – CEACR, observation, 2010; *Chile* – CEACR, observation, 2010; *Congo* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Guatemala* – CEACR, observation, 2010; *Guyana* – CEACR, observation, 2011; *Kiribati* – CEACR, observation, 2011; *Republic of Moldova* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Ukraine* – CEACR, observation, 2011.

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

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

[116] *Pakistan* – CEACR, observation, 2010.

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

settlement of an industrial dispute; [118] or provide for penal sanctions in the case of a work slowdown. [119] In the view of the Committee, such sanctions are not compatible with the Convention. In this context, it has noted with satisfaction, among other measures, the removal of penal sanctions for strike action in the *Republic of Moldova*, [120] *Guatemala* [121] and the *Syrian Arab Republic*. [122]

160. It has also noted with satisfaction the adoption of provisions in *Colombia* [123] providing that any person who prevents a lawful assembly or engages in reprisals on grounds of strike action, assembly or legitimate association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law.

Dismissal for strike action and reinstatement of strikers

161. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its lawful exercise should not result in striking workers being dismissed or discriminated against. [124] In the view of the Committee, dismissal for strike action in the case of a lawful strike constitutes serious discrimination based on the exercise of lawful trade union activities, in violation of Convention No. 98. It considers that, if the right to strike is to be effectively guaranteed, workers who participate in a lawful strike should be able to return to work once the strike has ended and the fact of making their return to work subject to certain time limits or the consent of the employer is an obstacle to the effective exercise of this right. [125]

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

[119] See, for example, *Pakistan* – CEACR, observation, 2010.

[120] *Republic of Moldova* – CEACR, observation, 2011.

[121] *Guatemala* – CEACR, observation, 2002.

[122] *Syrian Arab Republic* – CEACR, observation, 2002.

[123] *Colombia* – CEACR, observation, 2010.

[124] General Survey, 1994, para. 179.

[125] See Chapter 2 below on Convention No. 98.

2. Digest for decision and principles of CFA (Chapter 10 on the right to strike, paras 520-676)

520. While the Committee has always regarded the right to strike as consti- tuting 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 Conven- tion No. 87. Workers, and especially their leaders in undertakings, should how- ever 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 neces- sary, 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 restric- tion 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 interrup- tion 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 Com- mittee 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 Gov- ernment, 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 substan- tial 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 con- cerned), non-compliance with which might entail a penalty by the administrative authorities, including the dissolution of the union, the Committee recalled the con- clusions of the Committee of Experts on the Application of Conventions and Rec- ommendations 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 justi- fied 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 interven- tion 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 offi- cials 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 essen- tial 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 consti- tute 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 con- ciliation 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 impar- tial 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 Serv- ices 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 Tri- bunal 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-arbitra- tion 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 situa- tions 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 main- tained in the event of a strike in essential public services, and that any disagree- ment 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 indispen- sable 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 dif- ficulties 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 them- selves 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 under- ground 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 govern- ment, 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 popula- tion 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 per- form 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 accord- ance 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 exer- cise 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 interven- tion 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 prohib- ited 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 manage- ment 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 discrimina- tion 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 par- ticipated 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 com- mencement (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 over- time 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 prin- ciples 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 cancel- lation of a fine of this kind is subject to the provision that no further strike con- sidered 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 connec- tion 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.)

REPORT OF THE 3RD MEETING OF THE IOE INDUSTRIAL RELATIONS POLICY WORKING GROUP

ON THE TOPIC OF STRIKE ACTION

Geneva, 17 March 2014

Chair: Ms Renate Hornung-Draus, IOE Regional Vice-President for Europe and Managing Director, BDA

At the third meeting of the IR Policy Working Group on 17 March, 22 participants, mostly from European countries, discussed strike action, its regulation and the economic consequences on business and the business environment.

It emerged that the large diversity of regulations among countries influences the manner in which workers use this kind of action to put pressure on employers.

The discussion initially focused on two aspects of strike action: essential services and illegal strikes. However, the debate developed to cover more than these two aspects.

Differences were noted regarding:

- whether the strike is established as a right,
- whether it is a collective or individual right,
- whether it is considered a breach to the employment contract,
- whether the law or court pronunciations regulate strike actions,
- whether penalties are foreseen for unions taking illegal strikes,
- and whether a definition of essential services exists in the country.

Participants from the UK, Norway, Belgium and Sweden intervened with practical examples of how strikes take place in their national context. A tour-de-table of all other participants followed, with a very good exchange of questions and comments.

Chris Syder (Confederation of British Industry CBI – UK) explained that in the UK there are clear rules on union recognition, but strike action is not recognised as an individual or collective right. Unlike in other European countries, in the UK there is no peace obligation during the validity of a collective agreement. Simply stated, there are technical requirements for unions to be able to call a strike, and, in the absence of respect of these requirements, significant economic penalties can be imposed on the union.

If an employee is a union member and the union follows the procedural rules for calling a strike, then the individual employee can take part. The union needs a ballot threshold to declare the strike, and has to notify the employer of the strike action it intends to take. However, the ballot threshold is not particularly high, which means that minority unions, or a minority within the union, can also call a strike and in some cases realise their demands by means of strike actions that paralyse important services, such as public transport (for instance the 48-hour strike of the London underground service in February 2014).

There is not really a debate at national level on the definition of essential services, considering also that strike action is rarely opted for in a sector like health.

Henrik Munthe (Confederation of Norwegian Enterprise NHO - Norway) spoke about the Norwegian system and its similarities to other Nordic countries. The right to strike is a collective right with peace obligation during the validity of a collective agreement. Only two situations allow for strike action: 1. in the event of renegotiation of the collective agreement (where mediation does not facilitate parties' agreement), and 2. if there is no collective agreement in force and workers aim to establish the first collective agreement. A sympathy strike is legal only in the event of negotiation of a new collective agreement in a company. These kinds of strikes (for example at the Atea company in 2010) can be really powerful as they are able to mobilise many workers and strongly pressurise employers to accept the collective agreement being demanded.

Annick Hellebuyck (Fédération des Entreprises de Belgique FEB – Belgium) clarified that in Belgium there is no law on the right to strike and there is no real focus on this matter at national level. A 1981 decision of the Court of Cassation recognised that all strike actions are possible as this is an individual right; the workers can decide to stop working and do not receive their salary. Employers may defend their company only by denouncing the workers for abuses of process (*abus de droit*). Some limitations to strike actions are determined by means of collective agreement, for instance, the peace obligation during the validity of the agreement. The main problem in Belgium lies in the fact **that trade unions do not have legal personality**; thus, they cannot be sued in case of illegal strikes for the economic damages they cause to employers. This increases the strength of the unions in the country (Belgian unions have a high level of membership also due to their direct participation in the system of allocating unemployment allowances).

Despite the liberal rules concerning strike action in Belgium, the Committee on Social rights of the European Social Charter (a Committee of Experts at the Council of Europe) considered that the possibility available to the employer to request the Court to stop picketing in specific cases was not in line with article 6 – on the right to strike – of the Charter. However, the same Committee also stated that the right to strike should not be an absolute right and therefore pickets cannot be violent or intimidating. Such a pronouncement, although not legally binding, has re-opened the debate at national level on the issue of the legal personality of trade unions.

Niklas Beckman (Confederation of Swedish Enterprise - Sweden) shared some elements of the Swedish national system: the right to strike is established in the Constitution and is a collective right with peace obligation during the validity of a collective agreement. An attempt to conciliate has to be undertaken before the strike is declared. Sympathy strikes are allowed, even while the collective agreement is in force.

The debate on strike action gained new momentum in Sweden after the ECJ decision on the **Laval case**. The unions brought the same case before the ILO Committee of Experts (claiming violation of C. 87) and the Council of Europe (claiming violation of article 6 of the European Social Charter). Concerning the latter, while the Committee on Social Rights considered that Swedish legislation was not in line with the EU Charter, the executive body of the Council of Europe – the Committee of Ministries - delivered a more neutral opinion that is politically favourable to employers and to Sweden.

In the recent national discussions on the issue, the Swedish Employers tried to introduce a principle of proportionality for strike action, and to forbid sympathy strikes during the validity of the collective agreement.

The table below brings together key points from the subsequent tour-de-table.

Algeria	Despite the fact that the right to strike is included in the Constitution, and a specific procedure is to be followed to declare legal strike action, wildcat strikes occur very often.
Australia	As in Germany, strike action in Australia is a breach of the employment contract and workers do not get their salary. So unless the law has been complied with, the employee will be exposed to economic sanctions. The law limits the possibility of strike action. It is not a "right to strike" but a "**protected industrial action**". The key limitations are that strike action can only be used for pursuing a collective agreement (creating a new one or renegotiating it). Once the agreement is adopted there can be no strike at all during its life, not even with respect to new claims. Secondly, it cannot be a strike action for any general governmental, economic or social issue, but only for elements that can be included in a collective agreement. Strike action cannot be taken at national level. Thirdly, there is a series of formal requirements to be able to call a strike: A) the process of (good faith) bargaining (objectively established process of bargaining on both sides) must have been exhausted; B) a majority secret ballot. There are two other restrictions on strikes in Australia: sympathy strikes are not allowed and the employer of the supply chain cannot be the target of the strike action. Lack of respect for these requirements involves severe penalties that could wipe out the union. Severe penalties are also foreseen in the case of strikers preventing other workers from working. Strike action can also be taken if there is a "serious and imminent threat to health and safety", in which case no formalities have to be respected. As regards essential services, once a union is allowed to strike, there are few options left to the employers or public authorities acting as employers in the public sector: there is a law providing that if there is a serious risk to the national economy, or a part of it, the ministry can seek an injunction from the court to stop the strike. The essential services laws are decided at provincial rather than at national level.
Denmark	There is a slight difference from other Nordic countries, such as that whenever one of the two parties wants to put an end to the collective agreement, it can demonstrate its wish through strike action or lockout.
Germany	There is no legally defined right to strike, or a law regulating strike action. Strike is considered a breach of the employment contract. It is tolerated only if it occurs under certain circumstances (not during peace obligation and in the event of negotiation failure) and regulated at provincial level. Due to the legislative void on strike action, the courts have filled in the gap with some decisions during the 80s and 90s that are really challenging for employers. The legal uncertainty related to court decisions that can change over time is perceived as problematic for employers. For instance sympathy strikes have been considered legal after a court decision.
Japan	Sympathy strikes are allowed and take place mostly in state-owned companies, because the courts are potentially stricter towards strikers in the private sector and tend to strictly follow the rules.

Panama	The right to strike is recognised by the Constitution. The system is similar to other South American countries, whereby the right to strike is a collective right. The procedure to call for a legal strike is defined by law. Prior conciliation has to be undertaken, but if negotiation fails, then the union can organise a general assembly to see if there is a majority of support. This ballot is based on three possible calls, the third of which can approve the organisation of a strike with only the majority of those present (this can be a minority of workers in the end). A very challenging element was included in Panama's legislation: the obligation for employers to close the company in case of a legal strike or, as a penalty, to pay the salary to strikers. The national employers' organisation presented a complaint on this issue to the ILO CFA (case N. 1931 - 1999), and, following the CFA recommendations, the labour code was reformed. Since 2013, the employer can keep the company open even in the event of strike, and only the owners, the managers and the workers who are not part of the union are able to enter the premises (not the non-striking workers). Concerning essential services, minimum activities are defined by law. In the event of lack of services, which can provoke important economic consequences, compulsory arbitration is demanded. However, according to the Constitution and the laws, public services cannot have unions (only associations with no right to collective agreement, and only to present demands).
Spain	The right to strike is foreseen in the Constitution; however, some regulations related to strike action are prior to the adoption of the Constitution. Therefore, case law applies, ranging from decision of the Constitutional Court, or to lower level courts. Even though the regulation does not foresee political strikes as such, some strikes with other apparent objectives end up being political and there are few means to halt them.
Switzerland	Social partners negotiate the duty of peace within the system of sectoral or branch-wide collective agreements. Lack of compliance with peace obligation through strike action implies a breach of the employment contract. Generally speaking, strike action is not widespread, and the system is mostly based on social partnership. Sympathy strikes are not allowed.

25 August 2014

OUTCOME OF THIS MEETING

The large diversity of regulations among countries raised the need for a questionnaire to be issued to participants in order to understand their system and allow the IOE to provide employers' organisations with a policy guidance paper with an overall assessment of strike action in various countries and the difficulties for business organisations.

A better understanding of these elements is potentially beneficial to employers for two reasons:

- When lobbying at national level to negotiate strike regulation they will be able to propose the mechanisms which best suit their needs.
- It will provide a concrete basis for setting the employers' strategy in the context of the discussion on C. 87 and C. 98 in the ILO and the determination elaborated by the Committee of Experts on the Application of Conventions and Recommendations. Employers will then be better prepared to demonstrate to the Experts individual points from the CEACR reports that are creating new policies concerning strike regulations.

Next meeting

The next meeting will take place on **3 June, from 14.30 to 17.30 in ILO Room VII (to be confirmed)**.

Given the rich debate in March, the next meeting will continue the discussion on **illegal strikes and essential services** with a wider angle and including other regions.

A brief IOE presentation will explain the challenges and common points which emerged from the first meeting and will introduce the questionnaire (referred to above) to all participants.

Presentations from South American and African countries will follow.

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25 August 2014

4th MEETING OF THE IOE INDUSTRIAL RELATIONS POLICY WORKING GROUP - STRIKE ACTION

REPORT OF THE 3 JUNE 2014 MEETING IN GENEVA

Chair: Ms Renate Hornung-Draus, IOE Regional Vice-President for Europe and Managing Director, BDA

At the 4th meeting of the IR Policy Working Group, more than 30 participants from different regions continued the debate of the previous session on **strike action**; its regulation and economic consequences on business and the business environment.

The earlier intense debate had confirmed **the great variety of right to strike regulations, which need to be understood in the social and historical context of each country.**

This discussion has never been more relevant, considering the developments in the Committee on the Application of Standards (CAS) of the 2014 International Labour Conference (ILC) where the Workers' Group blocked the adoption of conclusions in most of the 25 individual cases discussed by the Committee. The Workers opposed the Employers' request to introduce in the CAS conclusions the following sentence in cases dealing with C87 and the right to strike: "*The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in C87*", as had been achieved in the 2013 CAS. The impasse demonstrated – and many governments endorsed this position – the need to solve the issues at stake as a matter of urgency. The Employers will continue to advocate for the organisation of a tripartite ILO discussion on the right to strike and the modalities for its exercise, which would reveal the inconsistencies between national regulations on the right to strike.

Against this background, the meeting started with a brief IOE presentation (link) which explained the challenges of comparing national legislations on strike action with **the non-binding opinions elaborated by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)**.

Further debate revealed significant discrepancies between these opinions and national legislation on the following elements related to strike action:

- Legal basis and definition
- Pre-requisite
- Restrictions
- Effects
- Essential services

Participants from Mauritius and Mexico presented their national realities on strike action in more detail, focusing especially on the illegality aspect.

Mr. Pradeep Dursun (Mauritius Employers' Federation – MEF, presentation (link) presented the remedies established to avoid illegal strikes potentially paralysing the economy of this island with a small population (1.3 million) and a low unionisation rate (12% in the private sector). In order to call for a lawful strike the (recognised) union has to follow a procedure that includes: engagement in collective bargaining (involving both parties), voluntary dispute resolution through the CCM (Commission for Conciliation and Mediation), valid ballot in the presence of a supervising officer, and prior notice to the Minister and the employer (10 days before the strike). Social peace clauses apply: the union cannot call for strike action if a collective bargaining agreement is in force. The concept of essential services is not defined according to the rigid views of the CEACR, but minimum services are foreseen for specific sectors. Sympathy strikes are not lawful. The employment contract may be broken only in the case of an illegal strike. Workers are not to be paid wages during the course of permitted strike. The Employment Relations Tribunal has the competence to declare if a strike is unlawful. In case of acute national crisis (danger to life, health, and safety), the Prime Minister has the power to call on the Tribunal for the establishment of minimum services or to ask the Supreme Court to prohibit the strike. This kind of legislation is considered quite responsive to employers' needs. Illegal strikes were quite popular in the 1970s and were affecting sectors like the sugar industry, public transport and the port, but are not very common today.

Mr. Carvajal Bustamante (Confederación de Cámaras Industriales de México – CONCAMIN, presentation (link) explained how the right to strike is regulated by the 1917 Constitution and by the 1931 federal labour law. Strike action is undertaken on a collective basis by a recognised trade union that: a) presents a list of demands to the employer with 6 days' notice (10 for the public sector), b) has the support of the majority of workers c) aims at re-establishing the balance between the different factors of production (for instance, where a specific economic situation has affected the equilibrium between salaries and the cost of living, or significant currency devaluation) or at signing/revising the collective agreement or the 'agreement by law' ("*contrato ley*" – meaning collective agreement is applicable *erga omnes* to the workers of the sector) or at revising the salary scale. Solidarity strikes are allowed. If the basic requirements to call a strike are respected, the strike "exists" and it is up to the unions to request the tribunal to declare and control the reasons for the strike. The employer has to pay a salary for the strike days. The strike can also be declared "inexistent" if prior requirements have not been respected. The employer can request the authorities to declare the illegality of the strike and give an order for strikers to "get back to work". Illegal strikes are also declared in cases of violent acts by workers against the company, or the employer, and in case of war. There is no definition of essential services according to the rigid views of the CEACR, but there is a list of public services, where, in case of strike, the State resumes the management of the service awarded to a provider. A strike is terminated if there is agreement among the parties, or an arbitral award is reached, or the strike has been declared "inexistent". In 90% of cases, conciliation and agreement is reached between the parties.

It is interesting to note from the intense debate that **strikers can be entitled to their salary during the days of strike according to the law of a few countries**:

- Bolivia,
- Costa Rica,
- Ecuador,
- Mexico

Whereas, in Australia it is forbidden to pay strikers.

However, it is **current practice** in many jurisdictions to conclude **agreements** to terminate the strike that result in **foreseeing a salary for strikers**. This happens in Chile, Ivory Coast and Sri Lanka.

Participants from Costa Rica and Canada provided the definition of essential services in their countries and the courts interventions on the topic.

Ms. Shirley Saborío (Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado UCCAEP, presentation (link) clarified how the Costa Rican Constitution recognised the right to strike and to lockout (art. 61), except for public services. All conflicts in public services have to be submitted to the Labour Tribunal for resolution (art. 375 Labour Code of 1943). Essential services are defined today as: "those services where the workers are absolutely essential to maintain their operations and whose suspension would cause serious or immediate damage to the public health or economy, such as clinics and hospitals, hygiene, cleaning and lighting services", a definition that differs from the CEACR's rigid views. In this respect the Constitutional Tribunals have referred to the CEACR comments and illegal strikes in essential services still remain. For instance, in 2012, a 22-day strike of anaesthetists took place, and, as a consequence, 17 persons died and 3000 operations were cancelled. The strike was declared illegal; however, no striker was dismissed. The essential services issue is under current reform, with a new law that could classify essential services in three different ways:

1. Essential public services with strike ban (e.g. health, safety, transport, water supply. In these cases the strikers can be replaced with other staff).
2. Essential public services with minimum service plan (e.g. water control, electricity and telecommunications. Minimum services are decided by agreement between the parties or through the intervention of a judge).
3. Services of high importance (e.g. loading and unloading at docks of perishable products).

Mr. Guy François Lamy (Quebec Employers' Council - CEC) explained that the differentiation of legislative competences between the federation and the provinces is at the core of the Canadian industrial relations system. The Canadian Constitution recognises freedom of association, but does not refer to the right to strike. There is no definition of essential services at federal level. Some essential services are defined at provincial level, with a limitation to strike action and the obligation for the parties to ensure a minimum service. In the case of strikes able to cause high economic damage to the country (e.g. La Poste, Air Canada), the government can adopt a "back to work" order. Recently, the Supreme Court was referred a case decided by the Appeal Court at the provincial level where unions pleaded that strike limitation in essential services is restricting constitutionally-recognised freedom of association guarantees. Given the previous Court pronouncements on the same issue, which excluded the right to strike from the freedom of association guarantees, trade unions in this case adduced the "social evolution" theory, and said the right to strike had evolved and was perceived by Canadians today as part of their freedom of association guarantees. The Supreme Court is expected to rule on this issue in the coming months.

Other notable realities:

India	Strikes are legal if the employer receives 2 weeks' notice (4 weeks for public utility services). Workers providing essential services (as declared by the government) are not allowed to go on strike. Strikes are also not allowed when a collective agreement is in force. A Court decision related to an illegal strike in Mumbai was released after 28 years. The Employers' Federation of India is taking the lead in promoting the values of competitiveness, fairness and inclusiveness.
Chile	In Chile, strike action in public services is not allowed in theory, but occurs in practice. This obliges the government to negotiate or renew the collective agreement with these services every time there is a strike.
Sri Lanka	The CEACR published observations on "go slow action" in Sri Lanka, and considered it a form of strike action. This view contrasted with national jurisprudence which defined strike action as a work stoppage.
UK	In a landmark case brought by the RMT (a transport union) against the UK in the European Court of Human Rights, the Court recently ruled that the UK's laws banning sympathy strikes do not violate the right to freedom of association under the European Convention on Human Rights (Article 11 guarantees the right to freedom of peaceful assembly and of association with others). The Court said that the statutory ban on sympathy strike had *interfered* with the right to freedom of association according to Article 11. However, it considered the ban justified in its legitimate aim of protecting other rights and freedoms, including those of the employer, the wider interests of the domestic economy and the public, who were potentially affected by the disruption of the service.

OUTCOME OF THIS MEETING

This meeting confirmed differences between right to strike regulations.

The country cases presented also showed that the opinions developed by the CEACR cannot be seen as the cornerstone of a large number of national regulations, nor are they reflected in common elements across the regulations. In none of the countries discussed is the concept of essential services defined in line with CEACR views.

On the basis of responses to questionnaires to be issued to members, the IOE will provide an overview of the correlation, or lack thereof, between national regulations and the right to strike as defined by the CEACR.

The IOE will provide a global discussion and information gathering platform for its members on the right to strike, thus preparing employers to anticipate and contribute to eventual right to strike debate at national and international level. This outcome will also have the effect of making the ILO more receptive and responsive to business realities and perspectives in specific national contexts.

Next meeting

25 August 2014

The next meeting will take place on **7 November 2014**, from 14.30 to 17.30, at IOE premises and will deal with **dispute resolution mechanisms** such as **conciliation and arbitration procedures**. A presentation from an expert will open the debate.

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