

Body, the latter may at any time in accordance with paragraph 4 of article 26 of the Constitution adopt, against the government against which the representation is made and concerning the Convention the effective observance of which is contested, the procedure of complaint provided for in articles 26 and the following articles."

<sup>5</sup> The provisions of the Constitution relating to Commissions of Inquiry are contained in articles 26 to 29 and 31 to 34 of the ILO Constitution. These articles are reproduced in Appendix II. See, further, Chapter 10, paras. 451 to 453.

## CHAPTER 2

### PROCEDURE FOLLOWED BY THE COMMISSION

#### First session

18. The Commission held its first session in Geneva on 25 and 26 November 1985.

19. At the beginning of this session, the members of the Commission made a solemn declaration, in the presence of Mr. Francis Blanchard, Director-General of the International Labour Office, by which they undertook to perform their duties and exercise their powers honourably, faithfully, impartially and conscientiously.

20. The Commission noted that the decision to refer the case to a Commission of Inquiry had been taken by the Governing Body of the International Labour Office, in accordance with article 10 of the Standing Orders concerning the examination of representations under articles 24 and 25 of the Constitution of the ILO, in the course of consideration of the representation made by the World Federation of Trade Unions. The Commission was consequently called upon to examine, in accordance with articles 26 to 28 of the Constitution, the issues raised in the said representation.

21. The Commission took note of the information and documentation submitted in connection with the aforesaid representation. It adopted a series of decisions on the procedural arrangements for the investigation of the questions at issue.

22. The Commission was informed that a number of communications providing information on matters relevant to its work had recently been addressed to the International Labour Office by individuals and organisations in the Federal Republic of Germany. It decided to take cognisance of these communications, and to transmit copies thereof to the Government of the Federal Republic of Germany and to the World Federation of Trade Unions, for their information and to enable them to make such comments thereon as they might wish to present to the Commission. Several other communications addressed to the International Labour Office referred to the situation of persons employed in the private sector. The Commission decided not to take those communications into account, since the representation made by the World Federation of Trade Unions, and therefore the scope of the investigation which the Commission was called upon to make, related to persons employed in the public service.



23. The Commission decided to afford an opportunity to the World Federation of Trade Unions to submit additional information and observations. The organisation was requested to send any such information and observations by 31 January 1986.

24. By virtue of article 27 of the ILO Constitution, all member States, whether or not directly concerned by a matter referred to a Commission of Inquiry, are bound to place at the disposal of the Commission all information in their possession which bears upon the subject-matter of the inquiry. Bearing in mind that the present case related to employment in the public service, the Commission decided to invite the Governments of countries neighbouring upon the Federal Republic of Germany (namely, Austria, Belgium, Czechoslovakia, Denmark, France, the German Democratic Republic, Luxembourg, Netherlands and Switzerland) to communicate such information.

25. An invitation to communicate information to the Commission was also addressed to several organisations having consultative status with the ILO, namely, the International Confederation of Free Trade Unions, the World Confederation of Labour, and the International Organisation of Employers. A similar invitation was addressed to the following organisations in the Federal Republic of Germany: Bundesvereinigung der Deutschen Arbeitgeberverbände (Confederation of German Employers' Associations), Deutscher Gewerkschaftsbund (German Confederation of Trade Unions), Gewerkschaft der Eisenbahner Deutschlands (German Railway Workers' Union), Gewerkschaft Erziehung und Wissenschaft (Educational and Scientific Workers' Union), Gewerkschaft Öffentliche Dienste, Transport und Verkehr (Public Service, Transport and Communication Workers' Union), Deutsche Postgewerkschaft (German Postal Workers' Union), Deutscher Beamtenbund (German Officials' Federation), Verband Bildung und Erziehung (Training and Education Association), Deutscher Lehrerverband (German Teachers' Association).

26. The Commission requested the above-mentioned governments and organisations to submit any information by 31 January 1986. It informed them that any such information would be transmitted to the Government of the Federal Republic of Germany and to the World Federation of Trade Unions.

27. The Commission informed the Government of the Federal Republic of Germany that any additional information and observations which it might wish to submit should be communicated by 15 March 1986.

28. The Commission decided to hold its second session in Geneva from 14 to 25 April 1986, and to proceed to the hearing of witnesses during that session. It adopted rules for the hearing of witnesses, which it communicated to the Government of the Federal Republic of Germany and to the World Federation of Trade Unions.<sup>1</sup>

29. The Commission requested the Government to communicate, by 31 January 1986, the names and descriptions of witnesses whom it

wished the Commission to hear in the course of the second session. The Commission indicated that it would like to hear evidence from persons qualified to speak about the situation in regard to the matters which were the subject of the inquiry both at the federal level and at the level of the Länder. It also informed the Government that it would like to hear evidence from a representative of the German Confederation of Trade Unions and from witnesses appearing on behalf of certain organisations of persons employed in the public sector, such as officials in the public administration, teachers and postal workers. The Commission requested the Government to consult the organisations in question and to take the necessary measures with a view to the attendance of such witnesses.

30. The Commission likewise requested the World Federation of Trade Unions to communicate, by 31 January 1986, the names and descriptions of any witnesses whom it wished the Commission to hear in the course of the second session, together with a brief indication of the matters on which it was desired to adduce the evidence of each of them. The Commission indicated that it would decide, on the basis of these indications, whether to hear the witnesses in question. It requested the organisation to make the necessary arrangements for their attendance before the Commission.

31. The Commission requested the Government of the Federal Republic of Germany to ensure that no obstacle would prevent the attendance before it of persons whom it was proposed to present as witnesses or whom the Commission wished to hear. It also asked the Government for an assurance that all persons appearing before it as witnesses would enjoy full protection against any sanction or prejudice on account of their attendance or evidence before the Commission.

32. The Commission authorised its chairman to deal on its behalf with any questions of procedure that might arise between sessions, with the possibility of consulting the other members whenever he might consider this necessary.

Communications received following the first session on questions of procedure

33. The Chairman of the Commission received a letter dated 31 January 1986 from Dr. Winfrid Haase, representative of the Government of the Federal Republic of Germany on the ILO Governing Body, reading as follows:

(Translation)

I wish to thank you for your letter of 27 November 1985, indicating the outcome of the first session of the Commission of Inquiry.



The Government of the Federal Republic of Germany takes the opportunity, at the beginning of the inquiry, to stress once more that it fully supports the aims of the International Labour Organisation and recognises the Organisation's procedures for supervising the observance of ILO standards by member States. It will collaborate in ensuring that also the present proceedings are carried out in accordance with the Constitution of the International Labour Organisation.

The Government of the Federal Republic of Germany has taken note of the contents of the above-mentioned letter of 27 November 1985 with great interest. Certain basic questions have arisen in this connection, the decisions on which will in the opinion of the Federal Government have considerable significance for the further stages of the procedure.

#### I.

When the Governing Body decided on 3 June 1985 to refer the matter to a Commission of Inquiry, it had before it the representation of the World Federation of Trade Unions and the report of the Committee which had examined the representation. The Government of the Federal Republic of Germany considers that this also determines the subject of the present inquiry. The Federal Government considers it problematical continuously to widen the inquiry into ever new cases which have been submitted not by the entity which previously made the representation, but by individuals or organisations not entitled to file a complaint.

An additional factor is that once again - as already in the representations procedure - several of the newly communicated cases have not yet been the subject of a final judgment and in none of the cases is there a definitive decision by the Federal Constitutional Court. The representative of the Government of the Federal Republic of Germany in the Governing Body already drew attention to this fact on 3 June 1985 in regard to the then relevant cases. He then raised the question, whether and how far one could judge the practice of a State in applying a Convention so long as the cases referred to had not been decided by the highest national courts.

#### II.

In your letter you requested the Government of the Federal Republic of Germany to communicate by 31 January 1986 the names and descriptions of witnesses whom it would wish the Commission

to hear at its second session. Elsewhere in the letter reference is made in general terms to the questions which are the subject of the inquiry. For the closer identification of these questions, it is also stated that authoritative information is being sought on the situation both at the federal level and at the level of the Länder. In the rules for the hearing of witnesses which have been transmitted it is stated that statements and evidence may be presented to the Commission only for the purpose of providing factual information bearing on the questions at issue.

The Federal Government is concerned that it may not be able to respond adequately to the request made in your letter so long as details are not available of the specific subjects on which questions are to be put. When the Governing Body considered the preceding representation on 3 June 1985, all speakers pointed out that the matter under examination was extremely complex and would require thorough study. It was precisely the recognition of this fact which led the Governing Body to the decision not to consider the report of the committee which examined the representation as sufficient and to refer the matter to a Commission of Inquiry. The Federal Government concurred in this decision and constantly stressed its readiness for dialogue.

For a fruitful dialogue, it would consequently be of interest to know what questions concerning the case the Commission wishes to deal with. It would also be important to know whether the Commission would wish rather to look into individual cases or to consider general practice. The answer to these questions will determine whether the witnesses should be chosen to speak about individual cases or practice in regard to appointments or as expert witnesses on the legal position.

The Government of the Federal Republic of Germany considers that the session to be held for the hearing of witnesses should be devoted primarily to questions of law rather than to questions of fact. In so far as questions of fact are concerned, the Federal Government refers above all to the facts found by the independent courts, which have not been questioned by any of those concerned. The laws, ordinances and guide-lines as well as the decisions of the highest German courts are also known. Legal practice, in so far as reflected in these judicial decisions, is not contested by the Federal Government.

In the opinion of the Federal Government, the questions of law to be examined concern the following areas:

1. Applicability of Convention No. 111 to the public service, particularly to relations of officials subject to a special obligation of faithfulness. At the sitting of the Governing Body on 3 June 1985, in addition to the Federal Government, also speakers on behalf of the Worker and Employer



groups indicated that this was one of the basic questions concerning Convention No. 111.

2. Applicability of Convention No. 111 in terms of the scope of protection (German measures not discrimination on the ground of political opinion).

3. Interpretation of Article 1, paragraph 2, of Convention No. 111; if officials are covered by the Convention, account ought to be taken of the special relationship of faithfulness at least in the interpretation of this exception clause.

4. Interpretation of Article 4 of Convention No. 111.

### III.

A further question of the Government of the Federal Republic of Germany concerns the role which is to be played in the present inquiry proceedings by the entity which initiated the preceding representations procedure. We have the impression that in the present inquiry the initiator of the preceding representation is to enjoy rights and functions corresponding to those of a complainant (appearance of a representative at the hearings, right to present witnesses, etc.).

According to article 26 of the ILO Constitution, a procedure of complaint may be initiated:

- by a member State of the ILO (article 26, paragraph 1);
- by the Governing Body of its own motion (article 26, paragraph 4);
- on the basis of a complaint by a delegate to the Conference (article 26, paragraph 4).

In the present case the procedure has been initiated by the Governing Body of its own motion.

The Federal Government has no objection to the fact that factual indications for judging the questions at issue may be provided from all competent quarters. This certainly includes also information provided by workers' organisations which play a role at the level of the ILO.

There is however no provision under which an occupational organisation of workers, whose rights in supervisory procedures are expressly defined only in cases of representations under article 24 of the Constitution, is entitled to make a complaint

and consequently to play a role similar to that of a complainant. Also in the present case the Governing Body correctly decided that the Commission should determine its procedure "in accordance with the provisions of the Constitution". The Government of the Federal Republic of Germany considers that it is not compatible with the Constitution of the ILO to permit an occupational organisation to act as if it were a complainant, in addition to the functions which the Governing Body has to exercise of its own initiative.

### IV.

The Federal Government has already pointed out that in its view it would have been preferable to know what specific questions the Commission wishes to consider. Provisionally and subject to the reservations already expressed, several persons are mentioned below who can give comprehensive information on law and administrative practice regarding the duty of faithfulness to the Constitution in the public service of the Federal Republic of Germany:

- (1) Federal Disciplinary Prosecutor Hans Rudolf Claussen, Oberlindau 76-78, 6000 Frankfurt/Main 1.
- (2) Ministerialdirektor (Permanent Secretary) Wilhelm Freundlieb, c/o Federal Ministry of Posts and Telecommunications, Adenauerallee 81, Postfach 80001, 5300 Bonn 1.
- (3) Ministerialdirigent (Assistant Secretary) Dr. Peter Frisch, c/o Ministry of Interior of Lower Saxony, Lavesallee 6, 3000 Hannover.
- (4) Ministerialdirigent (Assistant Secretary) Dr. Matthias Metz, c/o Bavarian State Ministry of Finance, Odeonsplatz 4, 8000 Munich 22.

The Government of the Federal Republic of Germany is in contact with an additional expert witness from the educational administration and will shortly provide particulars concerning him. I would in addition like to reserve the right to designate further expert witnesses once the questions concerning the determination of the subject of the inquiry have been decided.

The Federal Government has already repeatedly expressed its views on the legal issues involved. It wishes expressly to recall those views, but reserves the possibility - in accordance with the invitation in your letter of 27 November 1985 - to submit further views by 15 March 1986.



At the same time, I wish to inform you that I have been instructed to appear before the Commission as representative on behalf of the Government of the Federal Republic of Germany. I assume that advisers to the Government's representative may also attend the sittings of the Commission and speak on particular questions. I will communicate the names of these advisers in due course.

34. By letter of 28 February 1986, the Chairman addressed the following reply to Dr. Haase:

I wish to thank you for your letter of 31 January 1986, in which you informed me that you had been designated to act as representative of your Government at the hearings of witnesses during the second session of the Commission of Inquiry established to examine the observance by the Federal Republic of Germany of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and referred to a number of questions arising out of my letter of 27 November 1985.

I confirm that, at the proposed hearings, you may be accompanied by advisers, and shall be glad to be informed of their names in due course.

I have carefully considered the questions raised in your letter, and have also consulted the other members of the Commission in this connection.

As regards the scope of the inquiry with which the Commission is charged, I confirm that the matter referred to the Commission by the Governing Body of the International Labour Office concerns the issues raised in the representation made by the World Federation of Trade Unions. The Commission is accordingly called upon to examine whether, contrary to the provisions of Convention No. 111, there exist in the Federal Republic of Germany discriminatory practices on the basis of political opinion against public servants and persons seeking employment in the public service, by virtue of the provisions concerning the duty of faithfulness to the Constitution. The Commission would not be prepared to consider any allegations or information going beyond those issues. Indeed, for this reason, the Commission decided at its first session not to take account of several communications addressed to the International Labour Office which referred to the situation of persons employed in the private sector.

The question of the scope of the inquiry needs to be distinguished from the nature of the information to be gathered and examined in the course of the inquiry. The Commission's mission is not to review the findings and conclusions of the Governing Body committee which examined the representation of the WFTU, but to undertake its own inquiry into the above-mentioned

allegations. Consequently, the Commission's work is not limited to examining only the documentation submitted during the earlier examination by the Governing Body committee. It must inform itself fully on law and practice in the Federal Republic of Germany in regard to the matters at issue. In this respect, the Commission has followed the practice of earlier ILO Commissions of Inquiry, as recalled in the report of the Commission which dealt with the case concerning Poland (ILO Official Bulletin, Vol. LXVII, 1984, Series B, Special Supplement, paragraphs 53 and 476). It was for these reasons that the Commission decided at its first session to seek information from various Governments and employers' and workers' organisations, to take into consideration communications received from a number of individuals and organisations in the Federal Republic of Germany, in so far as relevant to the issues before it, and to proceed to the hearing of witnesses.

In your letter you also refer to the fact, on which you had already commented at the sitting of the Governing Body in June 1985, that a number of cases referred to in the documentation and communications before the Commission have not yet been the subject of a final judgement and that in none of these cases there is a definitive decision by the Federal Constitutional Court. The Commission will take these observations into account when it deliberates on its findings at the conclusion of the procedure, in order to decide what weight can be given to the information and documents submitted to it, and will bear in mind whether or not cases have been the subject of a final judgement. There would, however, be no justification for the Commission to exclude the material in question from consideration. The Commission is not called upon to pronounce upon individual decisions of the administrative and judicial authorities in the Federal Republic of Germany. Its task is to examine whether legislation and administrative practice are compatible with the obligations assumed by the Government of the Federal Republic under Convention No. 111. Information concerning individual cases constitutes evidence of administrative practice and of the practical effect of legal provisions, and as such is admissible.

Your letter also seeks clarification as to the nature of the questions to be dealt with at the forthcoming hearings of witnesses.

As may be seen from rule 5 of the rules enclosed with my letter of 27 November 1985, the main purpose of the hearings is to enable the Commission to inform itself fully of facts relevant to the inquiry. It would hope that the witnesses will provide information serving in particular to clarify the effect of the relevant legal provisions and the manner in which those provisions are applied in practice. While the evidence may cover both law and practice, it should relate to the situation in the Federal Republic of Germany (as indicated previously, both at the



federal level and at the level of the Länder). It appears that the persons mentioned in your letter as provisionally selected to appear as witnesses would be eminently qualified to provide relevant evidence on the issues before the Commission.

While the main purpose of the hearings is as indicated above, the Government is entitled to make submissions on questions concerning the scope and interpretation of Convention No. 111. As you mention in your letter, the Government has already on a number of occasions, especially in connection with the examination of the representation of the WFTU, expressed its views on these aspects. It would be helpful to the Commission, and might save time at the hearings, if any further submissions on questions relating to the interpretation of the Convention could be addressed to the Commission in writing.

It has not been the practice of previous ILO Commissions of Inquiry to communicate in advance of hearings the questions which they wished witnesses to answer, and also in the present case the Commission does not propose to do so. The questions which the Commission may wish to put to the witnesses presented by your Government will depend partly on any further information which your Government may submit in answer to my letter of 27 November 1985, on the initial statements which the witnesses themselves may have made and on evidence given by preceding witnesses, including those presented by the WFTU. The Commission therefore does not propose to communicate in advance the specific questions which it may consider appropriate to put to particular witnesses. However, in order to assist your Government and its witnesses in preparing for the hearings, it intends to draw up an indicative list of issues which it would appear desirable for the Government's witnesses to cover in their evidence. The list will be sent to you as soon as practicable.

I have noted the questions relating to the personal scope and the scope of protection of Convention No. 111 enumerated in your letter. The Commission has already taken note of the earlier statements made by the Government on these matters, particularly in its reply to the representation of the WFTU and in your statement before the Governing Body in June 1985. As already indicated, it will be pleased to consider any further submissions which your Government may wish to communicate. The views expressed will be fully examined by the Commission when it deliberates on its conclusions.

It appeared from the Government's reply to the representation of the WFTU that it based its position on the argument that the existing law and practice in the Federal Republic of Germany were in conformity with Convention No. 111 because the measures taken to enforce the duty of faithfulness to the free, democratic basic order owed by public servants were wholly consistent with the provisions of Article 1, paragraph 2, and Article 4 of the Convention.

In your statement in the Governing Body on 3 June 1985, you also presented observations concerning the scope of the protection afforded by the Convention in respect of the expression of political opinions. In your letter of 31 January 1986, you refer to an additional issue, namely the question of the applicability of Convention No. 111 to the public service. The Commission would appreciate receiving your Government's written observations on the last-mentioned question.

I have taken note of your Government's comments concerning the role of the WFTU under the rules for the hearing of witnesses. It appears desirable, in the first instance, to draw a distinction between the conditions in which the Governing Body may decide to refer a matter to a Commission of Inquiry and the procedure to be followed by such a Commission once it has been established. The former question is governed by express provisions. The latter is not, and it has therefore been the constant practice, followed also in the present case, to leave it to the Commission to determine its procedure.

You will recall that the decision to refer the present case to a Commission of Inquiry was taken by the Governing Body in application of article 10 of the Standing Orders concerning the procedure for the examination of representations, by virtue of which, when a representation within the meaning of article 24 of the Constitution is communicated to the Governing Body, the latter may at any time, in accordance with paragraph 4 of article 26 of the Constitution, adopt the procedure provided for in article 26 and the following articles (that is, refer the matter to a Commission of Inquiry). The possibility that the Governing Body might consider it appropriate to establish a Commission of Inquiry to examine matters raised in a representation was envisaged when the original ILO Constitution was drawn up in 1919, and was advanced in favour of including in article 26 the power for the Governing Body itself to initiate proceedings before a Commission of Inquiry (see ILO Official Bulletin, Vol. I, 1919-1920, pp. 62-64).

The Commission's main concern, in drawing up the rules for the hearing of witnesses, was to establish arrangements which would enable it to obtain full and clear information on the matter referred to it.

As I have already mentioned, and as you yourself emphasise in your letter, the Commission's mandate is determined by the issues raised in the WFTU representation. The Commission must examine, by means of its own investigation, whether the allegations made in the representation are founded. As the initiator of these allegations, the WFTU has a duty to substantiate them. That explains why the Commission invited the WFTU to supply further information and also to present witnesses at the proposed hearings. The presence of a representative of



the WFTU at those hearings is desirable, so that, as stated in rule 2 of the rules for the hearings, he may "be responsible for the general presentation of their witnesses and evidence". These arrangements are of a practical nature, to permit the hearings to be carried through in an effective manner and to enable the Commission to obtain, in so far as possible, clarification of any conflicting evidence adduced before it. They are in line with the practice followed by earlier Commissions of Inquiry, including the Commission established to examine the observance of certain Conventions by Chile, which was set up by the Governing Body of its own motion in the absence of a representation and of any specific initiator of the allegations examined (see Report of that Commission, 1975, paragraphs 17, 18, 27, 29, 31 and 32).

I wish to point out that, although rule 9 of the rules for the hearing of witnesses provides for the possibility for the representative of the WFTU to put questions to witnesses, according to rule 10 all questioning of witnesses will be subject to control by the Commission. The Commission will carefully consider any such questions to ensure that they remain strictly within the scope of the inquiry and are relevant to the clarification of the issues. It may of course itself seek additional explanations from witnesses on points on which clarification appears to it to be desirable.

I hope that the foregoing explanations will help to dispel the doubts or reservations to which you drew my attention in your letter. The Commission remains open to any further observations which your Government may wish to communicate. It would also be glad to receive you, in private, prior to the opening of the hearings to provide any further clarification which you might desire to have.

I note that your Government has not yet indicated the names of witnesses on behalf of the German Confederation of Trade Unions and other organisations of persons employed in the public sector. I assume that particulars concerning these witnesses will be communicated in due course.

I should also be glad to hear from you regarding the assurances requested from your Government in the last paragraph of my letter of 27 November 1985.

35. Further to the above-mentioned letter of 28 February 1986, an indicative list of issues to be covered by the Government's witnesses in their evidence was approved by the Commission and communicated to the Government by letter of 14 March 1986. The Commission emphasised that the list was of an indicative and non-exhaustive nature and that it was not intended to limit in any way the freedom of the Commission at the forthcoming hearings to ask witnesses whatever questions it might consider appropriate.

36. By letter dated 17 January 1986, the General Secretary of the World Federation of Trade Unions informed the Commission that, in accordance with the rules for the hearing of witnesses, it had designated as its representative, to act on its behalf before the Commission, Mr. Pierre Kaldor, independent lawyer, of Asnières, France. It also communicated the names and brief particulars of 12 witnesses proposed by the WFTU to appear before the Commission at its second session.

37. By a letter of 5 February 1986 addressed to the WFTU on behalf of the Commission, it was noted that the WFTU proposed to present a total of 12 witnesses. Having regard to the relatively full documentation already available to the Commission on the cases of a number of these persons and in view of the limited time available for the hearings to be held on the occasion of the Commission's second session, the request was made that the number of witnesses be somewhat reduced. This would be on the understanding that, in respect of any of the witnesses originally proposed who would not be called to give evidence, the WFTU would be given the opportunity to submit written particulars of their circumstances and relevant documentation or to supplement such information as might already be in the Commission's possession. Such additional material was to be communicated to the Commission by 15 March 1986.

38. By letter of 21 February 1986, the WFTU informed the Commission that, having considered the above-mentioned request, it proposed to present six witnesses at the Commission's second session, whose names it indicated. In several subsequent communications, the WFTU and Mr. Kaldor communicated the names of persons who would attend as advisers to Mr. Kaldor.

39. By a communication of 27 March 1986, the Government of the Federal Republic of Germany supplied the full list of the representatives designated to appear on its behalf at the Commission's second session, as well as the names of witnesses due to appear on behalf of the Government and of witnesses designated to appear on behalf of certain trade unions of workers in the public sector.

40. By a letter of 11 April 1986, Dr. Haase communicated a statement worded as follows (translation): "On behalf of the Government of the Federal Republic of Germany, I give the assurance that all persons who appear before the Commission need fear neither sanctions nor prejudice, if their statements are truthful and do not violate penal provisions of the Federal Republic of Germany. Persons in the service of the Federation or of Länder will not suffer any prejudice on account of truthful evidence or statements given or made by them before the Commission in the framework of authorisations granted to give evidence."



Communications received following  
the first session on the substance  
of the case

41. With its previously mentioned letter of 17 January 1986, the WFTU communicated a publication by the "Arbeitsausschuss der Initiative 'Weg mit den Berufsverboten'", Hamburg, of June 1985, containing a review of recent judicial decisions by Martin Kutscha and the text of a judgment of the Administrative Court of Münster of 24 October 1984. The WFTU also referred to a Parliamentary debate which was to take place at the end of January 1986 and in which the Government of the Federal Republic of Germany was to express its views about "Berufsverbote",<sup>2</sup> and to the discussions and findings of the Committee on the Application of Conventions and Recommendations of the International Labour Conference in 1981, 1982 and 1983.

42. By letter of 31 January 1986, the Government of the German Democratic Republic indicated that the treatment of the representation made by the WFTU was being followed with attention in the German Democratic Republic, and that it valued the efforts of the WFTU in seeking to defend the rights of working people everywhere in the world. It also emphasised its declared policy to ensure the basic rights of workers in law and practice, including the right to work, irrespective of nationality, race, philosophical or religious beliefs, social origin or status. By letter of 16 April 1986, the Government of Czechoslovakia stated that, in its view, all the essential aspects of the matter had been effectively dealt with in the report on the representation of the WFTU submitted to the Governing Body in February 1985. The conclusions in that report, that existing practices went beyond what was provided in Article 1, paragraph 2, and Article 4 of Convention No. 111, should be maintained. The Government also transmitted a statement by the Central Council of Trade Unions of Czechoslovakia.

43. The Governments of Austria, Belgium, Denmark, France, Netherlands and Switzerland, as well as the International Organisation of Employers, informed the Commission that they had no particular information on the matters before the Commission.

44. The Commission received communications containing information and comments from the following organisations in the Federal Republic of Germany: Bundesvereinigung der Deutschen Arbeitgeberverbände (Confederation of German Employers' Associations), Deutscher Gewerkschaftsbund (German Confederation of Trade Unions), which stated that its comments were much in agreement with those of its member unions to which the Commission had also written, Gewerkschaft der Eisenbahner Deutschlands (German Railway Workers' Union), Gewerkschaft Erziehung und Wissenschaft (Educational and Scientific Workers' Union), Deutsche Postgewerkschaft (German Postal Workers' Union), Deutscher Beamtenschaft (German Officials' Federation), and Deutscher Lehrerverband (German Teachers' Associations).

45. By letter of 30 January 1986, the International Confederation of Free Trade Unions informed the Commission that it was generally in agreement with the conclusions reached by the Committee set up by the Governing Body to examine the representation made under article 24 of the ILO Constitution, and stated that it had no information on the issues referred to the Commission other than that contained in the submission to be made by its affiliate, the Deutscher Gewerkschaftsbund, and its affiliated organisations.

46. The Commission received communications from a number of individuals and organisations in the Federal Republic of Germany, some of which provided information on recent developments in cases of exclusion or attempted exclusion from the public service already known to the Commission, while others gave information on further cases of this kind. The Commission decided to take these communications into consideration.

47. In accordance with the decision taken by the Commission at its first session, copies of all information and documentation received were transmitted to the Government of the Federal Republic of Germany and to the WFTU.

48. By letter of 27 March 1986, the Government of the Federal Republic of Germany communicated a statement of its position in regard to the alleged violation of Convention No. 111 and a legal opinion by Professor Karl Doehring, Professor of Public Law and International Law at the University of Heidelberg and Director at the Max-Planck Institute for Foreign Public Law and International Law.

Second session

49. The Commission held its second session in Geneva from 14 to 25 April 1986. During this session it devoted 15 sittings to hearing evidence and statements on behalf of the WFTU and the Government of the Federal Republic of Germany.<sup>3</sup>

50. The rules for the hearings, which had been adopted at the first session of the Commission, were as follows:

- (1) The Commission will hear all witnesses in private sittings. The information and evidence presented to the Commission therein is to be treated as fully confidential by all persons whom the Commission permits to be present.
- (2) The Government of the Federal Republic of Germany and the World Federation of Trade Unions will each be requested to designate a representative to act on their behalf before the Commission. The representatives will be expected to be present throughout the hearing of witnesses and will be responsible for the general presentation of their witnesses and evidence.
- (3) Witnesses may not be present except when giving evidence.



- (4) The Commission reserves the right to consult the representatives in the course of or upon the completion of the hearings in respect of any matter on which it considers their special co-operation to be necessary.
- (5) The opportunity to furnish evidence and to make statements is given only for the purpose of providing to the Commission factual information bearing on the case before it. The Commission will give witnesses all reasonable latitude to furnish such information, but it will not entertain any information or statements which are of a purely political character not relevant to the issues referred to it.
- (6) The Commission will require each witness to make a solemn declaration identical to that provided for in the Rules of Court of the International Court of Justice. This declaration reads: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth".
- (7) Each witness will be given an opportunity to make a statement before questions are put to him. If a witness reads a statement, the Commission would like to receive six copies.
- (8) The Commission or any member of the Commission may put questions to witnesses at any stage.
- (9) The representatives present in accordance with the rules laid down in paragraph 2 above will be permitted to put questions to the witnesses, in an order to be determined by the Commission.
- (10) All questioning of witnesses will be subject to control by the Commission.
- (11) Any failure on the part of a witness to reply satisfactorily to a question put will be noted by the Commission.
- (12) The Commission reserves the right to recall witnesses, if necessary.

51. During the hearings, the Government of the Federal Republic of Germany was represented by the following persons: Dr. Winfrid Haase, representative of the Government of the Federal Republic on the ILO Governing Body and before the Commission; Mr. Alfred Breier, Chief of the Public Service Law Division in the Federal Ministry of the Interior; Dr. Rudolf Echterhölter; Mr. Ralf Krafft, Public Service Law Division of the Ministry of the Interior; Dr. Horst Weber, of the Federal Ministry of Labour and Social Affairs, Deputy Government representative on the ILO Governing Body; Dr. Reinhard-W. Hilger, of the Permanent Mission of the Federal Republic of Germany in Geneva; Mr. Diethelm Gerhold, of the Public Service Law Division of the Ministry of the Interior; and Mr. Ulrich Nitzschke, of the Ministry of External Affairs.

52. The WFTU was represented by Mr. Pierre Kaldor, assisted by Mr. Lucien Labrune, Permanent Representative of the WFTU in Geneva; Mr. Horst Heichel, Adviser of the WFTU; and Mr. Detlef Nehr Korn, Adviser of the "Initiative 'Weg mit den Berufsverboten'", Hamburg; and with the technical assistance on certain days of Professor Gerhard Stuby, of the University of Bremen, and the following advocates: Mr. Hans Schmitt-Lermann, Mr. Dieter Wohlfahrth, Mr. Klaus Dammann, and Mr. Helmut Stein.

53. The Commission heard the following witnesses:

Witnesses presented by the WFTU: Professor Norman Paech, Professor of Public Law at the University for Economics and Politics, Hamburg; Mr. Hans Meister, former telecommunications technician in the Federal Postal Service; Mr. Gerhard Bitterwolf, former teacher; Mr. Herbert Bastian, clerk in the Federal Postal Service; Mrs. Charlotte Niess-Mache, Senior Councillor in the Ministry for Environmental Protection, North Rhine-Westphalia; Professor Wolfgang Däubler, Professor of Labour, Commercial and Economic Law at the University of Bremen.

Witnesses presented by the Government: Dr. Matthias Metz, Chief of the Personnel Department of the Ministry of Finance, Bavaria; Dr. Peter Frisch, Chief of the Office for the Protection of the Constitution, Ministry of the Interior, Lower Saxony; Mr. Hans Rudolf Claussen, Federal Disciplinary Prosecutor; Mr. Wilhelm Freundlieb, Chief of the Department for Personnel Matters, Federal Ministry of Posts and Telecommunications; Mr. Wolfgang Ziegler, Chief of the Legal Department of the Ministry of Education and Sport, Baden-Württemberg; Professor Karl Doehring.

Witnesses appearing on behalf of trade unions: Mr. Günter Ratz, Chief of the Department for Administrative, Civil and Penal Law, German Postal Workers' Union (DPG); Mr. Heinrich Ortmann, Legal Adviser in the Central Office of the Educational and Scientific Workers' Union (GEW); Mr. Gerhard Halberstadt, Member of the Federal Committee responsible for the public service, German Salaried Employees' Union (DAG); Mr. Alfred Krause, Federal Chairman of the German Officials' Federation (DBB).

54. At the beginning of the hearings, the Chairman made the following statement:

On behalf of the Commission, I wish to welcome the representatives of the Government of the Federal Republic of Germany and of the World Federation of Trade Unions. The Commission appreciates the arrangements made, in response to its invitation, for the representation of the Government and of the WFTU before it and for the presentation of witnesses. It trusts that the present hearings will make a substantial contribution to the Commission's efforts to inform itself fully on the situation in the Federal Republic of Germany with regard to the matters which have been referred to it for examination.



The Commission has taken careful note of the detailed comments presented by the Government of the Federal Republic of Germany concerning the interpretation of the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the relationship of national law and practice to these international standards. It appreciates the contribution which these comments can make to the understanding and evaluation of the situation, and will take them fully into account when it deliberates on the conclusions to be formulated on the matters before it.

Before proceeding to the hearing of the witnesses, the Commission considers it appropriate to recall the framework within which it is called upon to exercise its functions.

The allegations before the Commission were originally made in a representation submitted to the International Labour Office by the World Federation of Trade Unions in June 1984 under article 24 of the Constitution of the International Labour Organisation. The Governing Body of the International Labour Office appointed a tripartite committee to examine the representation. In June 1985 the Governing Body had before it the report of that committee. After hearing a statement by the representative of the Government of the Federal Republic of Germany, the Governing Body decided, in application of article 10 of the Standing Orders concerning the procedure for the examination of representations, to refer the matter to a Commission of Inquiry, in accordance with article 26, paragraph 4, of the Constitution.

The Commission wishes to emphasise that its task is not to review the work of the tripartite committee of the Governing Body that examined the original representation, but to undertake de novo a full examination of the issues raised in the representation. It is on that basis that the Commission took a series of decisions at its first session with a view to obtaining more complete information on the matters before it, including the decision to proceed to hearings of witnesses.

The Commission wishes to emphasise that the purpose of the present hearings is to enable it to obtain more complete information on the situation in the Federal Republic of Germany on the matters referred to it. These hearings are thus aimed at advancing the fact-finding aspect of the Commission's task. They should not be regarded as in the nature of adversary judicial proceedings.

The Governing Body, when it decided to establish the present Commission of Inquiry, resolved to refer to it the matter raised in the previously mentioned representation of the WFTU. It follows that the scope of the inquiry is determined by the allegations made in that representation. Those allegations were

to the effect that, contrary to the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), there exist in the Federal Republic of Germany discriminatory practices on the basis of political opinion against public servants and persons seeking employment in the public service, by virtue of the provisions concerning the duty of faithfulness to the free democratic basic order. That is the matter which the Commission is called upon to examine, and to which the evidence and statements to be presented at the present hearings should be related.

Since the question before the Commission concerns the alleged existence of discrimination in employment on the basis of political opinion, various aspects of a political nature require consideration in the inquiry. However, as the Commission has stated in paragraph 5 of the rules for the hearings of witnesses, it will not entertain information or statements of a purely political character not relevant to the issues referred to it. The Commission trusts that it will be able to count on the support and collaboration of all those appearing before it in ensuring that the evidence and statements presented remain within the limits of the issues under examination.

The Commission deems it desirable to give some indication also on the extent to which it considers that information concerning the position in countries other than the Federal Republic of Germany may have relevance to its work. The Commission recognises the usefulness which a comparison of the laws and practices of other States may have in considering certain issues arising under international instruments. This may also be the case in the present proceedings, particularly when considering the objective necessity of restrictions imposed in purported application of the limitation clauses contained in Convention No. 111. On the other hand, the Commission wishes to emphasise that it is not part of its functions to make any pronouncement upon, or even to examine, whether any State other than the Federal Republic of Germany is or is not observing the provisions of ILO Convention No. 111. Within the range of supervision procedures established by the International Labour Organisation, there are other bodies which have the mandate to examine the degree of compliance with ratified Conventions by all States concerned. In the present case, in accordance with the terms of article 26 of the Constitution under which it has been appointed, the Commission is competent to examine only whether the Federal Republic of Germany is ensuring the effective observance of Convention No. 111.

The Commission wishes to stress that its function is not to review individual decisions taken by national administrative or judicial authorities with a view to granting relief to the individuals concerned or pronouncing upon their rights. It should be borne in mind that, in contrast to certain other



international instruments, the provisions of Convention No. 111 are not formulated in terms of individually guaranteed rights, but place upon States which have ratified it an obligation to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. In this context, the examination of the facts of individual cases is relevant and justified in so far as it throws light on the question whether the legal provisions in force and the policies and practices followed by the public authorities in the Federal Republic of Germany are consistent with the obligations assumed under Convention No. 111.

On page 8 of the comments by the Government of the Federal Republic recently presented to the Commission, reference is made to communications stated to have been addressed to the ILO concerning two named cases. The Commission wishes to make clear that submissions concerning those cases have not been received with reference either to the original representation under article 24 of the Constitution or the present inquiry by the Commission. Copies of all communications which have been received with reference to the inquiry have been transmitted to the Government of the Federal Republic of Germany and to the WFTU.

I wish to draw special attention to paragraph 1 of the rules for the hearing of witnesses, according to which the information and evidence presented to the Commission during the hearings is to be treated as confidential by all persons whom the Commission permits to be present. The Commission counts upon the representatives to ensure that this condition will be observed.

The persons permitted to be present, apart from the members of the Commission and its secretariat, are the persons designated to represent the Government of the Federal Republic of Germany and the WFTU respectively. The Commission has recently received notification of certain modifications in the persons designated by the WFTU. A list of the persons concerned will be prepared and made available to all concerned shortly. As indicated in the rules adopted by the Commission, witnesses will be permitted to be present only when giving evidence.

In the letter which I addressed to the Government of the Federal Republic of Germany on 27 November 1985, I indicated that the Commission wished the Government to ensure that no obstacle would prevent the attendance before it of persons whom it was proposed to present as witnesses or whom the Commission would wish to hear. The Commission also requested an assurance from the Government that all persons appearing before it as witnesses would enjoy full protection against any sanction or prejudice on account of their attendance or evidence before the Commission. Today the Commission has received a letter from Dr. Haase in the following terms: [Text as set out in paragraph 40 above.]

55. Following the statement by the Chairman, Dr. Haase handed to the Commission a statement on behalf of the Government of the Federal Republic of Germany in the following terms:

(Translation)

I.

The Government of the Federal Republic of Germany is protesting against the fact that the World Federation of Trade Unions is being given a role similar to that of a complainant in these proceedings.

As can be seen from the rules for the hearing of witnesses transmitted to the Federal Government, particularly rules 2, 4 and 9, the World Federation of Trade Unions is to be accorded the same legal status in the proceedings as the Government of the Federal Republic of Germany. The Federal Republic and the World Federation of Trade Unions have each, on an equal footing, been requested to appoint a representative (rule 2). Also the representative of the World Federation of Trade Unions can be consulted before, after or during the hearing of all witnesses (rule 4); like the representative of the Federal Republic he can also put questions to all witnesses (rule 9).

Furthermore, in rule 2, reference is made to the witnesses on both sides as in adversary proceedings. In an inquiry initiated ex officio, there can be only witnesses of the Commission. But that is not all. As the Federal Government learnt to its great surprise from the letter of the International Labour Office of 2 April 1986, the World Federation of Trade Unions is even to be given the right to make a final statement, although this has not even been provided for in the rules of procedure and also cannot be justified by the need for clarification of factual matters, and although the Federal Government, in its communication of 31 January 1986, had already, on the basis of detailed explanations, raised strong objections to the participation in the proceedings previously contemplated for the World Federation of Trade Unions.

The World Federation of Trade Unions in all documents of the Commission is thus treated like a complainant; only the formal concept "complainant" has been replaced by the expression "World Federation of Trade Unions".

The Government of the Federal Republic of Germany has made it quite clear in its statements that a participation in this inquiry of the World Federation of Trade Unions, in particular in



a role similar to that of a complainant, is contrary to the Constitution of the ILO. There is no relevant "established practice" from earlier Commissions of Inquiry, because this is the first procedure of its kind. Moreover, an unconstitutional practice could never be legally recognised. The Federal Republic also cannot recognise any practical needs for this procedure. The Commission of Inquiry in its communication of 28 February 1986 has itself pointed out that for its inquiry the statements and the explanations of the earlier representation procedure are not decisive. Therefore, also for reasons of usefulness, the participation of the initiator of the earlier representation cannot arise. Moreover, considerations of usefulness could in no case warrant departure from binding constitutional provisions.

## II.

Accordingly, the Federal Government must request the Commission not to have the World Federation of Trade Unions participate in the proceedings as contemplated, since its attendance during the private hearings is not legitimate.

The Federal Republic must reserve all its rights in case this request is not met. It has always stressed that it is ready to co-operate closely and to enter into full dialogue in all procedures provided for in the ILO Constitution. Such participation, however, is obviously dependent on strict observance of the relevant rules of procedure in the Constitution. Such strict observance of the rules is also in the interests of the ILO, because otherwise the acceptability of the supervisory machinery would be seriously impaired.

The Federal Government's readiness so far to continue the proceedings has been based on its wish not to lend itself to the reproach that it is impeding the Commission in clarifying the facts. It still has this wish. The Federal Government must, however, make its further attitude dependent on account being taken of its basic objections. It can only accept such questions as are put by the Commission and legitimate participants in the procedure. Questions by the WFTU cannot be accepted. The Federal Government would understand it if individual witnesses, whom it always regards as witnesses of the Commission of Inquiry, would act accordingly. Should the Commission, however, in the light of suggestions by the World Federation of Trade Unions, consider any further clarification to be called for, the Federal Government would set aside its objections if the Commission took up these suggestions in the form of questions of its own.

In any case, a final statement by the World Federation of Trade Unions would not be acceptable.

## III.

The Federal Government has gained the impression through this procedure that the far-reaching lack of detailed rules of procedures in the field of supervision of the application of standards leads to great uncertainties, questions and inconsistencies which might throw discredit on this important instrument for the guarantee of human rights in the world of labour. In that respect also the Government of the Federal Republic of Germany must reserve its right to express its position at a later date.

56. After the Commission had deliberated on the foregoing objection, the Chairman made the following statement:

The Commission has taken note of the objection raised by the Government of the Federal Republic of Germany to the role of the representative of the World Federation of Trade Unions provided for in the rules for the hearing of witnesses adopted by the Commission. The Government claims that the provisions in question grant to the WFTU a status equivalent to that of a complainant and that such a situation is not in conformity with the ILO Constitution.

The Commission considers that this objection is not founded. The provisions of the ILO Constitution must be read as a whole. An organisation such as the WFTU has the right to make a representation under article 24 of the Constitution, and the Governing Body, when seized of such a representation, is entitled, under article 26, paragraph 4, to refer the matters raised in the representation to a Commission of Inquiry. The preparatory work of the ILO Constitution shows that one of the reasons for inserting in article 26 a provision authorising the Governing Body to establish a Commission of Inquiry of its own motion was that it was considered desirable that such a possibility should exist where a representation had been received under article 24 - see ILO Official Bulletin, Vol. I, 1919-20, pp. 62 to 64. This possibility is moreover specifically referred to in article 10 of the Standing Orders concerning the procedure for the examination of representations. There can thus be no doubt that the reference to a Commission of Inquiry of the matter raised in the WFTU representation, in accordance with article 26, paragraph 4, of the Constitution represents a valid exercise of the powers bestowed upon the Governing Body by that provision.

The International Labour Organisation has established no general rules of procedure for Commissions of Inquiry. It has been the constant practice of the Governing Body to leave it to such Commissions to decide their own procedure. Also in the present case the Governing Body decided, "in conformity with established practice, that the Commission should determine its



own procedure, in accordance with the provisions of the Constitution".

In establishing the rules for the hearing of witnesses, the Commission has followed closely the practice of earlier Commissions. It has been the constant practice of such Commissions to provide for the representation, at any hearings of witnesses, of the initiator of the allegations under examination, with rights corresponding to those provided for in the rules adopted in the present case. In particular, when Commissions of Inquiry have been established in application of article 26, paragraph 4, of the Constitution following the receipt of a complaint by a delegate to the International Labour Conference, the initiators of the complaint have always been accorded rights of representation of this nature. The Commission can see no reason why, as regards the representation at hearings of witnesses of the initiator of the allegations under examination by a Commission of Inquiry, any distinction should be made between cases in which, acting under article 26, paragraph 4, of the Constitution, the Governing Body has referred to a Commission allegations of non-observance of a ratified Convention made by a Conference delegate under that paragraph, and cases where, acting under the same provision, the Governing Body has referred to a Commission similar allegations submitted by an occupational organisation under article 24 of the Constitution. In both cases the mandate of the Commission is to examine whether the allegations concerned are founded, and the hearings of witnesses decided upon by the Commission represent one of the measures taken to inform itself fully on the matters at issue. The Commission recalls that in the case concerning Chile, in which the Commission of Inquiry had been established by the Governing Body of its own motion in response to a resolution adopted by the International Labour Conference, corresponding rights of representation at the hearing of witnesses were accorded to three international trade union organisations having consultative status with the ILO, even in the absence of a representation and of any specific initiator of the allegations examined.

The Commission concludes that, in providing for the representation of the WFTU in the manner set out in the rules for the hearing of witnesses, it has acted in accordance with the authority given to it by the Governing Body and consistently with the ILO Constitution.

This situation reflects the tripartite principle which characterises the structure and therefore also the procedures of the International Labour Organisation.

The Commission wishes to recall that, although rule 9 of the rules for the hearing of witnesses provides for the possibility for the representatives to put questions to witnesses, according to rule 10 all questioning of witnesses will be subject to

control by the Commission. The Commission will carefully consider any questions put to ensure that they remain strictly within the scope of the inquiry and are relevant to the clarification of the issues.

The Commission proposes to confine the present hearings to the taking of evidence from the witnesses.

The Commission feels confident that, if all concerned will bear in mind the importance of remaining within the Commission's mandate, the present hearings can take place in a constructive spirit which will enable it to obtain a proper understanding of the important questions brought before it and facilitate the task of the Commission in carrying out impartially and objectively the mandate entrusted to it by the Governing Body.

57. The Government's representative requested the Commission to take cognisance of the communications addressed to the ILO by lawyers acting for Dr. Kosiek and for members of the National Democratic Party of Germany (NPD), to which reference had been made in the written comments submitted by the Government and also in the opening statement by the Chairman of the Commission. After the Commission had considered this request, the Chairman made the following statement:

At the first sitting, the representative of the Government of the Federal Republic of Germany requested the Commission to take cognisance of the communications received by the International Labour Office respecting the two cases mentioned on page 8 of the Government's comments.

The Commission recalls that, in deciding whether to take into consideration the numerous communications which have been addressed to it by individuals and organisations in the Federal Republic of Germany, it has based itself on the test of whether the information provided was relevant to the issues before it. As I indicated at the opening of the present hearings, the matter which the Commission is called upon to examine is whether, contrary to Convention No. 111, there exist in the Federal Republic of Germany discriminatory practices on the basis of political opinion against public servants and persons seeking employment in the public service, by virtue of the provisions concerning the duty of faithfulness to the free democratic basic order. In considering the request by the Government of the Federal Republic of Germany, the test to be applied is whether the information in question is relevant to that issue.

The Commission has seen the letters received by the ILO relating to the two cases mentioned by the Government. As far as concerns the case of Dr. Kosiek, the Office received a letter from his lawyer, Dr. Wingerter, dated 17 September 1985. That letter requested a copy of the report of the Governing Body committee which had examined the representation of the WFTU, but



did not provide any information on the substance of his client's case.

The Commission has, however, obtained the public documents of the Council of Europe in the two cases which are at present pending before the European Court of Human Rights concerning exclusion from the public service in the Federal Republic of Germany. Since they are public documents, the Commission will take them into account, in so far as the information contained in them is relevant to the issues before it.

The ILO has also received two letters from Dr. Huber, a lawyer who has represented a number of persons in proceedings in the Federal Republic of Germany, dated 27 July 1984 and 29 August 1984. They gave information on various cases concerning exclusion from the public service, but without reference to the proceedings under article 24 of the ILO Constitution which had been initiated shortly before. No subsequent communication has been received requesting that the information in question be taken into consideration in the present proceedings. However, the information contained in the two letters is relevant to the issues before the Commission. The Commission has therefore decided to take cognisance of the letters in question. Copies thereof will be provided to the Government and to the WFTU.

58. At the conclusion of the hearings, the Chairman made the following statement:

The Commission has now come to the end of the hearing of witnesses. It once more wishes to thank both the Government of the Federal Republic of Germany and the World Federation of Trade Unions for the arrangements made by them to enable the Commission to receive this evidence. It also expresses its appreciation to the representatives who have participated in these hearings for their collaboration.

The evidence given has covered a wide range of questions, both of fact and of law in the Federal Republic of Germany. Should the Government or the WFTU consider it desirable to provide further explanations or comments on any of these matters, the Commission would be glad to receive those explanations or comments in writing by 30 June 1986.

The Commission would also wish to be kept informed of any new developments relevant to its work, particularly any further judicial decisions either in cases which have already been brought to its attention or which bear on questions of law relevant to its inquiry.

The Commission considers that it would be appropriate, as a further stage in its inquiry, to undertake a visit to the Federal Republic of Germany, in particular in order to inform itself more

fully of the policies and practice of the authorities in various parts of the country in applying the provisions relating to the duty of faithfulness to the free democratic basic order of persons in the public service and of the effects of such policies and practice.

The Commission wishes to carry out such a visit from 4 to 13 August 1986. The Commission's secretariat will communicate to the Government the programme which the Commission would wish to follow.

The Commission would appreciate it if the Government of the Federal Republic of Germany would confirm its willingness to receive the Commission and to provide the necessary facilities to enable it to carry out its mission. The Commission wishes in particular to receive an assurance that it will enjoy complete freedom of movement and be free to meet and speak with anyone whom it may wish to see.

59. Both the Government of the Federal Republic and the WFTU availed themselves of the opportunity to present further comments. The Government communicated a statement by letter of 30 June 1986. The WFTU communicated a statement by letter of 24 June 1986. By letter of 27 June 1986, the Working Group of the "Initiative 'Weg mit den Berufsverboten'", Hamburg, at the request of the WFTU, communicated a series of documents containing statements by various authorities, non-governmental organisations and trade union bodies, as well as documents relating to a number of individual cases. The Commission received a letter dated 9 June 1986 from the legal representative of the Deutsche Kommunistische Partei (DKP), submitting comments on behalf of the Chairman of this party. Communications continued to be received from various organisations and individuals in the Federal Republic of Germany. Copies of these communications were transmitted to the Government of the Federal Republic of Germany and to the WFTU.

#### The Commission's visit to the Federal Republic of Germany

60. By letter of 19 June 1986, the Government indicated its willingness to receive the Commission and to make the necessary arrangements to enable it to carry out its mission, and stated that the Commission would be able to carry out its proposed programme without any hindrance. In acknowledging the receipt of this communication, the Commission confirmed, in response to a request by the Government, that it intended to maintain the confidentiality of the procedure during the visit, and that it would bring to the Government's attention any relevant new factual or other elements which might be communicated to it in the course of the visit, with a view to giving the Government an opportunity to present comments thereon.



61. The Commission, accompanied by its secretariat, stayed in the Federal Republic of Germany from 4 to 13 August 1986. On 5 August, it was received by Mr. Manfred Baden, Secretary of State at the Federal Ministry of Labour and Social Affairs, in Bonn, and then had discussions with representatives of competent federal ministries. On 6 August, the Commission had discussions with representatives of the authorities of North Rhine-Westphalia, in Düsseldorf, and with Professor Christian Tomuschat, Director of the Institute of International Law at the University of Bonn, member of the United Nations International Law Commission. On 7 August, the Commission had discussions with representatives of the authorities of Hessen, in Wiesbaden. On 8 August, the Commission had discussions, in Mainz, with representatives of the authorities of Rhineland-Palatinate and with representatives of the Rhineland-Palatinate sections of the Deutscher Gewerkschaftsbund (DGB) and of the Gewerkschaft Erziehung und Wissenschaft (GEW). On 9 August, Professor Parra-Aranguren met Mr. Willi Rothley, lawyer and member of the European Parliament.

62. On 11 August, the three members followed separate programmes. The Chairman had discussions, in Stuttgart, with representatives of the authorities of Baden-Württemberg, with Mr. Dieter Wohlfarth and Mr. Hans Schmitt-Lermann, lawyers practising respectively in Stuttgart and in Munich, and with representatives of the Baden-Württemberg section of the GEW. Professor Schindler had discussions, in Hannover, with representatives of the authorities of Lower Saxony, with Mr. Heinz Reichwaldt and Mr. Detlef Fricke, lawyers, and with representatives of the Lower Saxony section of the GEW. Professor Parra-Aranguren had discussions, in Saarbrücken, with representatives of the authorities of Saarland.

63. On 12 August, in Wiesbaden, the Commission had discussions with Professor Erhard Denninger, Professor of Law at the University of Frankfurt-on-Main. The members of the Commission also undertook a preliminary review of the conclusions to be drawn from the information at their disposal.

64. In the course of the visit, the Commission received a number of additional documents, both from authorities and during non-official contacts. Copies of relevant documents were communicated to the Government of the Federal Republic.

65. By letter of 18 November 1986, the Government communicated its final comments.

### Third session

66. The Commission held its third session in Geneva from 18 to 26 November 1986. The session was devoted to deliberation on the substance of the case and the preparation of the Commission's report.

### Notes

<sup>1</sup> See paragraph 50 below.

<sup>2</sup> The record of this debate is contained in the record of the proceedings of the Lower House of the Federal Parliament (Bundestag), tenth electoral period, 194th sitting, 30 January 1986, pp. 14563-14571.

<sup>3</sup> A record of the hearings has been placed in the ILO Library. Page references to that record in the present report are to the German version.