The Committee notes these indications. It has already pointed out that the mandatory principles for the selection and deployment of personnel laid down in the Resolution of 6 November 1970 are not limited in scope to Party offices or policy-making functions in Government but extend to supervisory personnel "in all spheres of the society", and that in view of the position of the Communist Party as the guiding force not only in society but also in the State under Article 4 of the national Constitution, previously referred to by the Government, these principles have a bearing on the observance of the Convention.

The Committee also notes that according to the programme proclamation of the Government of Czechoslovakia published in Rudé Právo on 25 June 1986, the Government's programme is conceived so as to ensure the consequent fulfilment of the conclusions and resolutions of the congress of the Communist Party of Czechoslovakia; having presented the Government's programme to the Federal Assembly, the President of the Federal Government referred to present-day tasks in the policy concerning cadres as an inseparable part of the implementation of the conclusions of the congress of the Communist Party of Czechoslovakia in the economic field and in other sectors.

The Committee must point out that under Article 3(d) of the Convention, the member State must pursue a policy of equality of opportunity and treatment in respect of employment under the direct control of a national authority. As regards other employment, the State is also bound, under Article 3(c) and (e) of the Convention, to modify any administrative practices which are inconsistent with the policy of equality and to ensure observance of the policy in the activities of placement services under the direction of a national authority. In this connection, the Committee recalls the role of National Committees under Act No. 70 of 1958 in the placement of workers and in enforcing the provisions governing the employment of workers.

The Committee again expresses the hope that the Government will supply particulars concerning the jobs, both in employment under the direct control of a national authority and in employment coming under Act No. 70 of 1958, for which the selection and deployment of personnel is made on the basis of the principles reflected in the Resolution of 6 November 1970, and concerning the criteria and procedures applied in this connection and any measures taken or contemplated by Government authorities to ensure observance of a policy of equal opportunity and treatment.

3. With regard to the comments received in February 1988 from the ICFTU on the application of the Convention, the Committee is raising a question in a request addressed directly to the Government.

Federal Republic of Germany (ratification: 1961)

1. In the years up to 1983, the Committee had examined the compatibility with the Convention of the measures taken in application of the provisions on the duty of faithfulness to the free democratic basic order of public servants and applicants for employment in the public service. Subsequently, it deferred further comment on this

question, while it was being examined, first, under the representations procedure provided for in article 24 of the ILO Constitution and, then, by a Commission of Inquiry established by the Governing Body under article 26 of the Constitution.

2. The report of the Commission of Inquiry was presented in February 1987 (see ILO Official Bulletin, Vol. LXX, 1987, Series B, Supplement 1). The Commission of Inquiry concluded that the measures taken in respect of employment in the public service in application of the duty of faithfulness to the free democratic basic order had in various respects not remained within the limits of the restrictions authorised by Article 1, paragraph 2, of Convention No. 111 on the basis of the inherent requirements of particular jobs. It concluded further that, as exemplified by the cases brought to its attention, those measures did not fall within the exception provided for in Article 4 of the Convention (concerning activities prejudicial to the security of the State). The Commission of Inquiry recommended that the existing measures in this matter be re-examined by the various authorities in the Federal Republic of Germany, with due regard to the conclusions stated by it, and that action be taken to ensure that only such restrictions on employment in the public service were maintained as corresponded to the inherent requirements of particular jobs within the meaning of Article 1, paragraph 2, of the Convention or could be justified under the terms of Article 4. The Commission of Inquiry recommended that, in such re-examination, account be taken of a number of more specific considerations mentioned by it, and that detailed information on all relevant developments be given in the annual reports on the Convention to be presented under article 22 of the ILO Constitution.

3. In a communication of 7 May 1987, in pursuance of article 29, paragraph 2, of the Constitution, the Government of the Federal Republic of Germany informed the Director-General of the ILO of its position with regard to the recommendations of the Commission of Inquiry (see document GB.236/4/6). While reaffirming its desire to support the ILO's procedures for the supervision of the application of standards and to promote dialogue with the supervisory bodies, the Government indicated its disagreement with the conclusions reached by the Commission of Inquiry. It expressed agreement with the minority opinion of one member of the Commission, and referred more particularly to the provisions of Article 5, paragraph 1, of the International Covenant on Civil and Political Rights and to the judgements of the European Court of Human Rights of August 1986 in the Glasenapp and Kosiek cases. The Government indicated that it saw no cause to depart from its previously stated legal position (namely, that legislation and practice in the matter were in conformity with the Convention), and that it did not intend to refer the questions at issue to the International Court of Justice.

4. The Committee of Experts has taken note of the above-mentioned documents, and of the further information and comments provided by the Government of the Federal Republic in its report for the period 1986-87. It has also noted the comments and documents communicated by the German Confederation of Trade Unions (DGB), the World Federation of Trade Unions, the World Federation of Teachers'

Unions, and the International Federation of Free Teachers' Unions, and the Government's observations on the comments of the DGB.

5. The principal developments in the matter may be summarised as follows:

(a) The Government of the Federal Republic has maintained the position stated in its communication of 7 May 1987, and has not taken any steps with a view to modification of existing legal provisions or practice. In a statement to the Committee on Petitions of the Federal Diet dated 14 July 1987, the Federal Minister of the Interior reiterated that the Federal Government did not accept the recommendations of the Commission of Inquiry; he stated the view that those recommendations had no binding force either in international law or in domestic law, but were merely non-mandatory recommendations. A similar position has been adopted by the Governments of various Länder, for example, by the Government of Bavaria in a statement to the Bavarian Diet of 15 June 1987 and by the Minister of the Interior of Lower Saxony in a statement to the Diet of Lower Saxony of 11 December 1987.

(b) A number of new judgements have been given by the courts in the Federal Republic. In a decision of 21 August 1987, the Oldenburg Labour Court, in considering the application of the provisions on the duty of faithfulness in a case concerning employment of a salaried employee in the public service, observed that, in so far as possible, national legislation and even the national constitution should be interpreted in a manner which would ensure respect of obligations under international law. After reviewing the provisions of Convention No. 111 and the conclusions of the Commission of Inquiry, the court proceeded to an examination of the facts in the light of the requirements of the particular job, and ruled in favour of the applicant. A contrary position has been adopted by administrative courts in a series of cases concerning the employment of officials. In particular, in judgements of 20 January 1987 and 15 September 1987, the Federal Administrative Court observed that, under article 29 of the ILO Constitution, a report of a Commission of Inquiry cannot establish obligations under international law for the Federal Republic of Germany, to be observed in the application and interpretation of domestic law. The Court considered that recommendations of a Commission of Inquiry could have no direct effect on domestic law, but would merely have the consequence that, if they were accepted by the government concerned, the latter would have to introduce the requisite legislative or other measures. While admitting that courts were bound to respect international law requirements, if domestic law left room for interpretation, the Federal Administrative Court ruled that there was no such possibility in regard to the duty of faithfulness of officials deriving from Article 33, paragraph 5, of the Basic Law. In application of this view of the legal position, the courts have ordered the dismissal of officials or upheld refusals of appointment in a series of cases, including cases which had been taken into consideration by the Commission of Inquiry. They have maintained a strict view of the requirements of the duty of

faithfulness. In particular they have declined to apply the test required by Article 1, paragraph 2, of the Convention (as indicated by the Commission of Inquiry in paragraph 585 of its report), namely, that suitability for admission to or continued employment in the public service should in each instance be judged by reference to the functions of the specific post concerned and the implications of the actual conduct of the individual for his ability to assume and exercise those functions.

(c) A substantial number of other cases are still pending before the courts.

(d) In its report, the Commission of Inquiry noted decisions by the Federal Labour Court in October 1986 that the authorities of Baden-Württemberg must provide an opportunity for preparatory training for teachers, even when there were doubts as to an applicant's faithfulness to the Constitution. While noting that, with respect to Bavaria, the same issue remained to be ruled upon by the Federal Labour Court, the Commission of Inquiry supposed that this particular problem would secure a solution. The Committee of Experts notes from the Government's report that the Federal Labour Court decided in May 1987 to suspend its consideration of the cases concerning Bavaria in order to obtain a ruling from the Federal Constitutional Court on the compatibility of the relevant Bavarian legislation with Article 12 of the Basic Law. As observed by the Commission of Inquiry, this issue of access to the public service for the purpose of training does not affect the broader question of employment in the public service once training has been completed.

6. The Government observes in its report that decisions by and proceedings before independent courts in the Federal Republic must abide by the legal provisions in force. It considers that there can exist no violation of Convention No. 111 or other international law so long as the relevant constitutional and legislative provisions do not violate the Convention, which even the majority of the Commission of Inquiry did not claim to be the case. The Government also observes that in a democratic State ruled by law, the Government has no means of annulling or overriding the decisions of independent courts. It refers in this connection to the arguments presented to the Commission of Inquiry concerning the need for exhaustion of domestic remedies, including recourse to the Federal Constitutional Court.

7. In the light of the preceding indications, the Committee of Experts feels it appropriate to make the following comments:

(a) The Committee notes that the Government did not accept the recommendations of the Commission of Inquiry. The ILO Constitution does not make the results of an inquiry subject to the consent of the State concerned. The Government's position therefore does not affect the validity of the conclusions of the Commission of Inquiry. The ILO Constitution provides an opportunity for an appeal to the International Court of Justice (which is then free to review any of the findings or recommendations), but the Government chose not to avail itself of that possibility.

(b) Article 28 of the ILO Constitution empowers a Commission of Inquiry to make recommendations to correct any shortcomings which

may have been found in the observance of a ratified Convention. The reference here to "recommendations" may be explained by the fact that (as also recognised by the Commission of Inquiry, in paragraph 588 of its report) there are generally various ways in which the situation can be brought into conformity with the Convention concerned. In the present case, for example, one Land has abrogated the guide-lines which governed the implementation of the relevant legislative provisions; other Länder amended their corresponding guide-lines and adapted their practice accordingly; and the Federal Government had at an earlier stage sought to change the situation by presenting a bill to the Federal Parliament. While, therefore, a Government retains considerable freedom in choosing the means of ensuring compliance with a ratified Convention, that fact cannot diminish its obligation, under article 19 of the ILO Constitution, to make the provisions of the Convention effective.

(c) The Government's observations concerning the relevance of Article 5, paragraph 1, of the International Covenant on Civil and Political Rights, the significance of the judgements of the European Court of Human Rights, and the exhaustion of local remedies were fully examined by the Commission of Inquiry (paragraphs 455 to 468, 506 to 509 and 524 to 526 of its report). The Committee of Experts agrees with the conclusions of the Commission of Inquiry on those matters. It would further point out that Article 5, paragraph 1, of the Covenant provides (inter alia) that nothing in that Covenant may be interpreted so as to permit the limitation of the rights and freedoms recognised in it "to a greater extent than is provided for in the present Covenant." It would therefore be in direct contradiction to the terms of this provision to seek to read the paragraph into ILO Convention No. 111 with a view to limiting the provisions of that Convention to a greater extent than is provided for in the Convention itself.

(d) The Committee recognises that the Government cannot annul or override the decisions rendered by the courts of the Federal Republic. Nor is it the function of ILO supervisory bodies to pronounce upon the merits of those decisions in ruling upon the interpretation or effect of domestic law or on the effect in domestic law of international standards. However, it remains necessary for the Committee to examine, in the light of the decisions of the courts, whether national legislation and practice are compatible with the Convention under consideration.

(e) Already in its observations of 1983, on the basis of information concerning practice and a number of judicial decisions then available, the Committee of Experts had considered that Convention No. 111 was not fully observed, because persons were excluded from public employment on grounds which did not relate to the inherent requirements of particular jobs, within the meaning of Article 1, paragraph 2, of the Convention. The Commission of Inquiry, on the basis of much more complete information, reached the same conclusion with respect to those federal and Länder authorities which follow a strict approach in applying the provisions on the duty of faithfulness. No measures

have been taken by the authorities concerned to modify their practice, and the courts have upheld the legality of that practice in terms of the existing legislation. The Committee of Experts would accordingly draw attention to the obligation incumbent upon the Government, under Article 2 of the Convention, to pursue a national policy to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination (as defined in Article 1), and, more particularly, to enact such legislation as may be calculated to secure the acceptance and observance of that policy (Article 3(b)) and to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the said policy (Article 3(c)). The Committee of Experts recalls that, in paragraph 588 of its report, the Commission of Inquiry recommended that, if the requisite changes could not be brought about by other means, appropriate legislative action be taken.

(f) The Committee would observe that, while the duty of faithfulness is considered to be one of the "traditional principles governing service as officials" referred to in Article 33, paragraph 5, of the Basic Law, the definition of that duty is laid down in ordinary legislation and the conditions for its implementation have been established by administrative guide-lines. As developments in various parts of the Federal Republic show, a variety of means may thus be available to resolve the existing difficulties.

(g) The Committee of Experts accordingly hopes that the Government will once more review the whole situation, in consultation with the organisations representing the workers concerned, with due regard to the provisions of the Convention and the considerations set out in the report of the Commission of Inquiry, and that it will adopt appropriate measures to overcome the existing difficulties in the implementation of the Convention.

Greece (ratification: 1984)

With reference to the observations made in 1986 and 1987, the Committee takes note of a further communication from the Pan-Hellenic Association of Women Telephone Operators dated 30 July 1987, confirming former allegations with regard to certain discriminatory practices on grounds of sex allegedly carried out by the Government concerning women telephone operators employed by the Greek Telecommunications Agency (OTE).

According to the Association, these practices result from the integration of the women operators into the administrative and technical staff of the Agency and concern their conditions of promotion and supervision.

In the observation it made in 1987, the Committee requested the Government, inter alia, to supply information concerning promotions that had occurred among the women workers in question since their integration and to communicate the new wage scale applying to the whole staff of the Greek Telecommunications Agency. The Committee