

The Government indicates that differences of views remain as to the content of some of the terms used in national legislation. The Government states its interest in clearing up these differences of opinion by continuing its dialogue on the basis of trusting and constructive co-operation with the ILO bodies. It adds that the competent state bodies are continuing to examine this issue.

The Committee takes due note of these indications. It observes that the Conference Committee in 1987, having heard the detailed explanations provided by the Government representative, noted with the Committee of Experts, that certain legislative, administrative and other provisions in force in the field of employment and education raised questions concerning the implementation of a policy giving effect to the Convention. The Conference Committee expressed the hope that the Government would re-examine these questions in the light of the comments of the Committee of Experts with a view to taking appropriate measures in order to ensure full compliance of legislation and administrative practice with the provisions of the Convention. The Conference Committee expressed the hope that the Government would soon be able to indicate measures taken or envisaged to this end.

Having examined the Government's indications in its report, the Committee notes the absence of information on any concrete action taken or contemplated to give effect to the Convention on the various points recalled above. It hopes that the continued examination of these issues by the competent state bodies will soon give rise to the adoption of the necessary changes, and that the Government will supply full information on the action taken.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Federal Republic of Germany (ratification: 1961)

1. The Committee has noted the information provided by the Government to the Conference Committee in 1988, in its report presented in November 1988, and in a supplementary report communicated in March 1989. It has also taken note of the discussion in the Conference Committee in 1988 and of that Committee's conclusions, in which the Committee associated itself with the hope expressed by the Committee of Experts that the Government would review the situation in consultation with workers' and employers' organisations and would adopt appropriate measures to overcome the existing difficulties, having due regard to the recommendations of the ILO Commission of Inquiry, the comments of the supervisory bodies and the dialogue in the Conference Committee. The Committee has also noted a communication from the World Federation of Trade Unions concerning certain proceedings before the Federal Administrative Court. During the Committee's session, comments were received from the German Confederation of Trade Unions, expressing concern at the position of the federal Government. Matters mentioned in this communication will be further considered by the Committee at its next session.

2. The Committee draws attention to the following developments:

(a) The Committee notes with interest from the Government's report that, following a change of government in the Land of

Schleswig-Holstein, the practice of systematic inquiry from the authority for the protection of the Constitution in regard to all applicants for employment in the public service (Regelanfrage) was abolished in July 1988.

(b) In its observations of 1988, the Committee had noted that two cases concerning admission to the public service for the purpose of preparatory service of teachers had been referred to the Federal Constitutional Court by the Federal Labour Court. The Committee notes that, following the withdrawal of the appeals to the Federal Labour Court, these references have lapsed.

(c) The Committee notes that in a number of other cases judgements have been rendered since its examination of the situation in 1988. In its previous observations, the Committee had noted a judgement of the Oldenburg Labour Court of August 1987, in which, following a review of the provisions of Convention No. 111 and the conclusions of the ILO Commission of Inquiry, the Court had ruled in favour of an applicant for employment in the public service. However, on appeal, that judgement was reversed by the Land Labour Court in June 1988. A number of other courts, including the Federal Administrative Court, have similarly ruled against the admission of applicants for employment in the public service or for dismissal of serving officials. In the various judgements available to the Committee, the courts have declined to apply the criteria stated in the report of the Commission of Inquiry as governing the application of Article 1, paragraph 2, of Convention No. 111 (in respect of the inherent requirements of particular jobs). They have consistently taken the view that neither the provisions of Convention No. 111 nor the conclusions and recommendations of the ILO Commission of Inquiry have direct binding force in the domestic law of the Federal Republic of Germany; this point has also been stressed by the Government in its report.

(d) The Committee notes that in October 1988 discussions concerning the implementation of Convention No. 111 took place between the federal authorities and representatives of the Confederation of German Employers' Associations, the German Officials' Federation, the German Salaried Employees' Union, the German Confederation of Trade Unions, the German Postal Workers' Union and the Educational and Scientific Workers' Union. The Government indicates in its supplementary report that these discussions revealed differences of opinion among the organisations concerned with respect to the compatibility with Convention No. 111 of the practice in the Federal Republic regarding the duty of faithfulness in the public service. In the light of those differences, the Government has once more set out in detail, in the supplementary report, its arguments for considering the existing law and practice in the matter to be in conformity with the Convention and for not accepting the conclusions of the Commission of Inquiry. The Government has stressed, in particular, its view that the differentiation in the application of the provisions relating to the duty of faithfulness according to the functions involved, which had been recommended by the Commission of Inquiry, is not possible and is not being seriously demanded by anyone in the Federal Republic. The Government has also communicated a decision by the Petitions

Committee of the Federal Diet, adopting a position corresponding to that of the federal Government.

3. Having regard to these developments, the Committee considers it appropriate to make the following comments:

(a) While the consultation of employers' and workers' organisations on measures to ensure the observance of the Convention is always desirable, and was indeed recommended by the ILO supervisory bodies, the fact that such consultations may have revealed differences of opinion does not absolve the Government from its obligation, under article 19 of the ILO Constitution and the provision of Convention No. 111, to make that Convention effective in law and practice.

(b) As the Committee already noted in 1988, ILO supervisory bodies are not called upon to pronounce upon the merits of the decisions of courts within the Federal Republic 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 decisions of the courts, whether national legislation and practice are compatible with the Convention. The fact that the courts consider Convention No. 111 and the conclusions of ILO supervisory bodies not to have any direct binding effect in domestic law does not absolve the Government from its obligation to make the provisions of the Convention effective. Under the Convention, it is incumbent upon the Government 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 (Articles 1 and 2) 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)).

(c) The ILO Commission of Inquiry, after an exhaustive examination of the situation with respect to exclusions from public service in application of the provisions on the duty of faithfulness, indicated in what respects that situation was not compatible with the requirements of Convention No. 111, and formulated recommendations on measures to be taken to eliminate the existing difficulties. The Commission of Inquiry recommended that, if the requisite changes could not be brought about by other means, appropriate legislative action should be taken (paragraph 588 of its report).

(d) The Committee notes that the Government maintains the position that the existing law and practice regarding the duty of faithfulness in the public service are consistent with Convention No. 111. It has taken note of the restatement of the Government's arguments and of its reasons for disagreeing with the conclusions of the Commission of Inquiry. The Committee of Experts recalls that article 29 of the ILO Constitution empowers a government which does not accept the recommendations of a commission of inquiry to refer the matter to the International Court of Justice, in which case the Court may affirm, vary or reverse any of the commission's findings or recommendation (Article 32). In the present case, the Government decided not to avail itself of this possibility.

4. The Committee accordingly once more expresses the hope that the Government will take the necessary measures to secure the

observance of Convention No. 111 in regard to the matters examined in the ILO inquiry. The Commission of Inquiry, in paragraph 586 of its report, drew attention to certain policies, practices and decisions already to be found in the Federal Republic of Germany which might provide guidance to the requisite action.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Ghana (ratification: 1961)

The Committee notes the Government's report for the period ending June 1988.

1. In its previous comments, the Committee noted that under section 32 of the Civil Service Act, 1960, the President may dismiss any civil servant if he is satisfied that it is in the public interest to do so and that under regulation 60(i) of the Civil Service (Interim) Regulations, 1960, there shall be no appeal against a decision of this sort taken by the President. In its report, the Government states that the issue of channels of appeal available to dismissed civil servants is still receiving due attention. The Committee wants to hope that the necessary action will be soon taken, both as regards legal grounds for dismissal and regarding channels of appeal, to ensure that no civil servant is discriminated in his employment on the basis of his race, colour, sex, religion, political opinion, national extraction or social origin, and that the Government will indicate the specific measures taken or under consideration to this end.

2. The Committee notes the Government's statement in its report that steps are being taken to reconstitute the "National Advisory Committee on Labour" to finalise examination of the Committee's outstanding comments. The Committee however previously noted the indication given by the Government to the Conference Committee in 1986 that the "National Labour Advisory Committee" had been reconstituted in July 1985, and was examining outstanding comments of the Committee. Recalling the obligations of the Government under Article 3(f) of the Convention to indicate in regular reports action taken in pursuance of a policy to promote equality and eliminate discrimination, the Committee hopes that the Government will soon be able to provide the details called for in a direct request which the Committee is again addressing to the Government.

Islamic Republic of Iran (ratification: 1964)

The Committee notes the statement made by the Government in its report that it considers the provisions of the Convention to be among the most important international labour standards and that it is committed to their full implementation. It notes the information provided and the discussion which took place on this case in the Conference Committee in 1988.

The Committee notes the interim report on the situation of human rights in the Islamic Republic of Iran transmitted to the General Assembly of the United Nations (A/43/705); it notes paragraphs 52