

Notes

N.B. References below to statements made during the hearing of witnesses indicate the sitting and page of the Record of Hearings (German version).

- ¹ See Chapter 2, paras. 34 and 56.
- ² Meister, II/13-14; Bitterwolf, III/19-20; Däubler, VI/6-7; Ratz, VII/6-7; Paech, XII/11.
- ³ Cases of Julia Glasenapp, Rolf Kosiek, Rüdiger Quaer and Ulrich Eigenfeld - see Chapter 6.
- ⁴ See Jean Zarras: Le contrôle de l'application des conventions internationales du travail, Sirey, Paris, 1937, pp. 220-221; Nicolas Valticos: Droit international du travail, 2nd edition, Dalloz, Paris, 1983, p. 607.
- ⁵ See Chapter 6.
- ⁶ See ILO Official Bulletin, Vol. LXI, 1978, Series A, No. 3, Supplement, Appendix III.
- ⁷ *ibid.*, Appendices V and VI.
- ⁸ ILO Official Bulletin, Vol. LXVI, 1983, Series B, No. 1, p. 177, para. 28.
- ⁹ ILO, Official Bulletin, Vol. LXV, No. 2, Apr. 1962, Supplement II.
- ¹⁰ ILO, Official Bulletin, Vol. LXVI, 1983, Series B, Special Supplement.
- ¹¹ See the report concerning Portugal, *op. cit.*, paras. 754-760, and the report concerning the Dominican Republic and Haiti, *op. cit.*, paras. 508-511 and 544-545.
- ¹² ILO, Official Bulletin, Vol. LX, 1977, Series B, No. 3, p. 15, para. 78.
- ¹³ ILO, Official Bulletin, Vol. LIV, 1971, No. 4, p. 8, para. 47.
- ¹⁴ See A.A. Cançado Trindade: The application of the rule of exhaustion of local remedies in international law, Cambridge University Press, 1983, Chapter 4.
- ¹⁵ *ibid.*, p. 181.
- ¹⁶ BVerfGE 39, pp. 359-360.

¹⁷ See Chapter 6, paras. 250-252.

¹⁸ Bitterwolf had been convicted of insult to the Bavarian Minister President; however, according to the Bavarian Administrative Court, that did not suffice to impair his suitability for appointment; see Chapter 6, para. 347.

¹⁹ See Chapter 5, paras. 214 to 220.

²⁰ See Chapter 4, para. 102.

²¹ Paech, I/25, XI/24-25; Däubler, V/21.

²² See Chapter 6 and Ortman, VII/13-14, 21; Metz, VIII/11; Frisch, IX/14-16; Ziegler, XIII/10-12.

²³ Bitterwolf, III/3; Ratz, VI/16; see also Chapter 6, paras. 351, 357, 360 and 362.

²⁴ See, for example, the decision of the Federal Constitutional Court of 22 May 1975, BVerfGE 39, pp. 352-354; also Chapter 6, paras. 349 and 359.

²⁵ See Chapter 6, paras. 265 to 268.

²⁶ For example, Baden-Württemberg: Engel; Rhineland-Palatinate: Barthel, Burkart; Schleswig-Holstein: Bürger, Könings.

²⁷ For example, Baden-Württemberg: Lipps; Rhineland-Palatinate: Lachmann.

²⁸ For example, Lower Saxony: Eckartsberg, Klüver, Müller, Schön, Wilhelmer; Rhineland-Palatinate: Fronemann, Jung.

²⁹ For example, Baden-Württemberg: Groeneveld; Lower Saxony: Eckartsberg, Flessner, Klüver, Lange, Lepa, Marks, Pannemann, Paulus, Schultze-Kranert.

³⁰ For example, Lower Saxony: Lammers, Müller, M. Schacht-schneider, Schön.

³¹ Claussen, X/5-6; see also Freundlieb, XI/13.

³² See case descriptions in Chapter 6.

³³ For example, in Hamburg (Scheer), Hessen (Bastian, Brück, Elsinger, Mende, Momberger, Repp) and North Rhine-Westphalia (Hütter); see also Chapter 6, para. 284.

³⁴ See, for example, the decisions of the Lower Saxony Disciplinary Court in the Eckartsberg case, concluding that objectively he had violated the duty of faithfulness (Chapter 5, para. 228, Chapter 6, para. 369), of the Baden-Württemberg Administrative Court in the Fronemann case (Chapter 6, para. 334; that decision was reversed by the Federal Administrative Court merely on a point of procedure, *ibid.*, para. 335) and of the court of first instance in the Jung case in Rhineland-Palatinate (Chapter 5, para. 230, Chapter 6, para. 382).

³⁵ See Chapter 7, para. 395, section I.

³⁶ See Chapter 3, para. 85.

³⁷ See Chapter 3, para. 86.

³⁸ ILO Official Bulletin, Vol. 17, 1932, pp. 117-123.

³⁹ See Chapter 7, para. 395, section III.

⁴⁰ Such difficulties were noted, for example, by the Human Rights Committee when it considered the second periodic report of the Federal Republic of Germany on the implementation of the Covenant in April 1986 - see UN documents CCPR/C/SR.664 and CCPR/C/SR.667. See also, in regard to corresponding provisions in the European Convention on Human Rights, Frowein/Peukert: Europäische Menschenrechtskonvention, Engel, Kehl, 1985, pp. 338-340.

⁴¹ According to Article 18 of the Basic Law of the Federal Republic of Germany, a person may, by decision of the Federal Constitutional Court, be deprived of his basic rights, to the extent determined by the Court, if he misuses specified freedoms (freedom of expression, of teaching, of assembly, of association, etc.) to fight against the free democratic basic order. In none of the cases brought to the attention of the Commission have any measures been taken with a view to invoking this article.

⁴² See Chapter 7, para. 395, section IV.

⁴³ See Chapter 3, para. 75.

⁴⁴ *ibid.*

⁴⁵ See Chapter 7, para. 396, point 6.

⁴⁶ See, more particularly, the Convention against Discrimination in Education, Article 1, the International Convention on Elimination of All Forms of Racial Discrimination, Article 1, and the Convention on the Elimination of All Forms of Discrimination against Women, Article 1. While both the International Covenants on Human Rights contain general non-discrimination clauses, neither of them contains a definition of "discrimination". The Covenant on Civil and Political Rights, for example, provides in Article 2 that the rights recognised

in the Covenant shall be respected and ensured "without distinction of any kind, such as ... political or other opinion ..."

⁴⁷ See Chapter 7, para. 396, point 7.

⁴⁸ Report III (Part IV), International Labour Conference, 47th Session, 1963, Part Three, p. 226, para. 108.

⁴⁹ *ibid.*, p. 198, para. 29.

⁵⁰ See Chapter 7, para. 398.

⁵¹ See Chapter 7, para. 395, section V.

⁵² According to Article 14 of Convention No. 111, the English and French texts are the authoritative versions.

⁵³ See, for example, the judgement of the European Court of Human Rights of 26 April 1979 in The Sunday Times case, Series A, No. 30, paras. 59 and 62, and the Advisory Opinion of the Inter-American Court of Human Rights of 13 November 1985 regarding compulsory membership in an association prescribed by law for the practice of journalism, paras. 46 and 79. For a general review of the practice under relevant international instruments, see Human Rights Quarterly, Vol. 7, No. 1, Feb. 1985, pp. 52 to 56.

⁵⁴ See paras. 77 to 80.

⁵⁵ See Chapter 3, para. 82.

⁵⁶ Report III (Part 4A), International Labour Conference, 63rd Session, 1977, p. 11, para. 31. The same point has been emphasised by the Court of Justice of the European Communities in considering cases relating to freedom of movement of workers under Article 48 of the Treaty of Rome - see Judgement No. 149/79 of 17 December 1980 (Belgian Railways Case) and Judgement No. 66/85 of 3 July 1986 (Lawrie-Blum v. Land Baden-Württemberg).

⁵⁷ See para. 459 above.

⁵⁸ See paras. 489 to 497.

⁵⁹ Frisch, IX/25.

⁶⁰ For example, cases of Herbert Bastian (Chapter 6, paras. 275 to 279), Hans Meister (Chapter 6, para. 298), Hans Peter (Chapter 6, paras. 310 and 311), Helga Lange, Uwe Scheer (Chapter 6, para. 327).

⁶¹ For example, cases of Klaus Lipps (Chapter 6, paras. 339 and 340), Rüdiger Quaer.

⁶² Meister, II/16; Däubler, V/25; Claussen, X/24.

⁶³ See Chapter 7, para. 395, section V, and para. 397, section IV.

⁶⁴ Claussen, X/25.

⁶⁵ See the study submitted to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1982 by Mrs. Nicole Questiaux, E/CN.4/Sub.2/1982/15, para. 41, and Human Rights Quarterly, Vol. 7, No. 1, Feb. 1985, pp. 91-98 and 105-112. For corresponding statements in regard to ILO Conventions relating to freedom of association, see the reports of the Commissions of Inquiry which examined the observance of Conventions Nos. 87 and 98 by Greece and Poland, ILO, Official Bulletin, Vol. LIV, 1971, No. 2, Special Supplement, para. 110; ibid., Vol. LXVII, 1984, Series B, Special Supplement, para. 479.

⁶⁶ See Chapter 7, para. 395, section V.

⁶⁷ Freundlieb, XI/6-7; Doebling, XIV/21; Krause, XV/19.

⁶⁸ See paras. 532 to 535.

⁶⁹ For example, Judge Simon, judge of the Federal Constitutional Court, in a judgement of 8 March 1983, NJW 1983, pp. 1540-1541; Mrs. Eike Weissenfels, judge of the Labour Court, Nuremberg, in a legal opinion communicated to the Commission.

⁷⁰ Deutscher Bundestag, 10. Wahlperiode, 194. Sitzung, 30 January 1986, p. 14569.

⁷¹ Däubler, V/7-10; Ortman, VIII/14; Paech, XI/19; Halberstadt, XIV/5-6; Krause, XV/26-27.

⁷² E.W. Böckenförde, C. Tomuschat and D.C. Umbach (eds.): Extremisten und öffentlicher Dienst, Nomos, Baden-Baden, 1981, p. 656.

⁷³ See Chapter 7, para. 395, section V.

⁷⁴ Däubler, V/19; Ratz, VI/20; Claussen, X/9-10, 18.

⁷⁵ See Chapter 7, para. 395, section VI.

⁷⁶ Claussen, X/16; Freundlieb, XI/11.

⁷⁷ See, in particular, the judgement of the Federal Administrative Court of 29 October 1981 in the case concerning Hans Peter, and the judgement of the Administrative Court, Hannover, of 21 December 1983 in the case concerning Karl-Otto Eckartsberg (reversed on other grounds, not affecting this finding).

⁷⁸ Reference may also be made to the view taken by the Federal Disciplinary Court in a series of recent decisions; see Chapter 5, para. 232.

⁷⁹ Corfu Channel Case (Merits), ICJ Reports 1949, p. 22; Case concerning military and paramilitary activities in and against Nicaragua, ICJ Reports 1986, pp. 112 and 114, paras. 215 and 218.

⁸⁰ cf., e.g., as to the International Covenant: Thomas Buergenthal, State obligations and permissible derogations, in: Louis Henkin, (ed.), the International Bill of Rights, Columbia University Press, New York 1981, p. 89; as to the European Convention: Lawless case, judgement of the European Court of Human Rights of 1 July 1961, Publications of the European Court of Human Rights, Series A, 1960-61, p. 45, paras. 6 and 7; Frowein/Peukert, Europäische Menschenrechtskonvention, Engel, Kehl, 1985, p. 339.