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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

REPORT APPROVED BY THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE ON ACT 451/1991 (THE "SCREENING ACT") OF CZECHOSLOVAKIA

INTERNATIONAL LABOUR OFFICE
BUREAU INTERNATIONAL DU TRAVAIL
OFICINA INTERNACIONAL DEL TRABAJO

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Sixteenth item on the agenda

REPORT OF THE DIRECTOR-GENERAL

Sixth Supplementary Report

Report of the Committee set up to examine the representations made by the Trade Union Association of Bohemia, Moravia and Slovakia and by the Czech and Slovak Confederation of Trade Unions under article 24 of the ILO Constitution alleging non-observance by the Czech and Slovak Federal Republic of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

I. Introduction

1. The Trade Union Association of Bohemia, Moravia and Slovakia (OS-CMS), by a letter dated 23 October 1991, and the Czech and Slovak Confederation of Trade Unions (CS-KOS), by a letter dated 11 November 1991, both referring to article 24 of the Constitution of the International Labour Organisation, each made a representation alleging non-observance by the Czech and Slovak Federal Republic of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

2. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) was ratified by Czechoslovakia on 21 January 1964 and is in force for that country.

3. The provisions of the Constitution of the International Labour Organisation concerning the submission of representations are as follows:

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. The procedure to be followed in case of representations is governed by the revised Standing Orders adopted by the Governing Body at its 212th Session in March 1980.

5. In accordance with articles 1 and 2, paragraph 1, of the Standing Orders, the Director-General acknowledged receipt of the representations, informed the Government of the Czech and Slovak Federal Republic and brought the representations before the Officers of the Governing Body.

6. At its 251st Session (November 1991), the Governing Body, on the recommendation of its Officers, decided that the representations were receivable and set up a Committee to examine them, composed of Mr. W. Dejong (Government member, Australia, Chairman), Mrs. L. Sasso-Mazzufferi (Employer member, Italy) and Mr. K. Tapiola (Worker member, Finland).

7. In accordance with article 4, paragraph 1(a) and (c), of the Standing Orders, the Committee invited the Government to make a statement on the representations before 15 January 1992. It also invited the complainant organisations to communicate any additional information before 15 December 1991.

8. The CS-KOS and the OS-CMS supplied additional information in their respective communications dated 15 December 1991.

9. The Government of the CSFR presented its observations in a communication dated 13 January 1992.

10. The Committee held its first meeting in November 1991 and met twice in February 1992 for the discussion and adoption of the present report.

II. Examination of the representations

1. Allegations made by the complainant organisations

11. Both complainant organisations based their respective representations on the adoption on 4 October 1991 and entry into force on 1 November 1991 of Act No. 451/1991 (the Screening Act) which they consider to be in violation of Convention No. 111.

(i) Allegations made by the OS-CMS

12. In its letter dated 23 October 1991, the OS-CMS refers to a statement made by Mr. Alexander Dubcek, President of the Federal Parliament - who refused to sign the Act - that it was a discriminatory law which would deprive about 1 million Czechoslovak citizens of their basic human rights and their trade union rights, that it was contrary to the Constitution of Czechoslovakia and to a great many international obligations incurred by the CSFR.

13. According to the OS-CMS, the draft Act submitted by the Government was considerably extended by numerous amendments in Parliament and adopted by a very slight majority. From an entirely justifiable motion initially, to remove from the public service, through due legal process, former members of the former State Security who had effectively committed violations of human rights, a completely new situation has evolved where a very extensive principle of presumed collective guilt prevails. The OS-CMS points out that under the Act, for a period from 17 October 1991 to 31 December 1996, persons referred to in the Act face a ban on exercising functions in state administration, state media, state and mixed enterprises - and some parts of the private sector. In the view of the OS-CMS, such exclusions are based essentially on those persons' past or present alleged participation in political activities or association with parties or organisations regarded as opposed to the present political order.

14. The OS-CMS refers to the provisions of Article 1, paragraph 1, of the Convention concerning discrimination on the basis of political opinion and recalls the conclusions of the Committee of Experts on the Application of Conventions and Recommendations in its 1963 general survey on Convention No. 111, that the protection of the Convention is not limited to differences of opinion within the framework of established principles but extends to activities expressing or demonstrating opposition to established political principles or the propagation of doctrines aimed at bringing about fundamental changes in state institutions. The OS-CMS considers therefore article 2 of the Act to be contrary to Article 1, paragraph 1, of the Convention and to the above conclusions of the Committee of Experts. The OS-CMS quotes, as examples of flagrant violation of the Convention, the provisions of article 2 of the Act concerning tens of thousands of citizens classified in various categories in the files of the former State Security who do not even know that their names have been entered in the files, and the provisions of the same article concerning former elected officials of the Communist Party, which the OS-CMS considers a typical example of the principle of collective guilt, particularly inadmissible at a time when the activities of that Party are legal, when it participates in the political life of the country and is among the parties with the largest numbers of seats in the Federal Parliament.

15. As regards the argument advanced by some politicians that distinctions or exclusions based on the requirements of the job may be admitted under Article 1, paragraph 2, of the Convention, the OS-CMS points out that in the view of the Committee of Experts, political opinion may be taken into account in connection with the requirements of certain senior administrative posts involving the implementation of government policy; however, the exception provided for in Article 1, paragraph 2, of the Convention must be interpreted strictly so as to avoid any undue limitation of the protection that the Convention is intended to provide.

16. Finally, the OS-CMS points out that the persons covered by the Act are implicated essentially on the ground of their political opinion and not on account of any activities prejudicial to the security of the State within the meaning of Article 1 of the Convention.

17. In a further communication dated 15 December 1991, the OS-CMS supplied a list of ten persons with indications concerning their jobs and dismissals, who were stated to be the first victims of Act No. 451/1991, because of their past activities linked with their membership of the Communist Party.[1]

(ii) Allegations made by the CS-KOS

18. In the statement adopted at its session of 7 November 1991 and forwarded to the ILO by letter dated 11 November 1991, the General Council of the CS-KOS declares itself in favour of purging public life of persons who actively and knowingly took part in the suppression of human and citizens' rights. However, Act No. 451/1991 is in contradiction with the legal order of the CSFR of which international legal standards form a part. The CS-KOS supports the initiative of President Vaclav Havel in his letter of 17 October 1991 addressed to the Federal Parliament and containing principles for the revision of the Act. The CS-KOS requests the ILO to assess the conformity of Act No. 451/1991 with international instruments binding the CSFR and to provide assistance in the search for democratic means in the transformation of society.[2]

19. The CS-KOS further elaborated its standpoint in a subsequent communication to the ILO dated 15 December 1991.

20. The CS-KOS considers that the justified protection against the exercise of state functions by those who took part in suppressing the rights of citizens should be ensured in accordance with internal and also international law. The CS-KOS had stated its position regarding the draft principles of the Act at the Government's request, and subsequently during discussion of the draft text in the tripartite Council of Economic and Social Accord of the CSFR, where the CS-KOS recommended consultation with international organisations and bodies concerned.

21. The text of Act No. 451/1991 as adopted by the Federal Assembly differs essentially from the Government's draft. The General Council of the CS-KOS made its position known through the statement referred to above. The General Council also stated in an open letter to the deputies of the Federal Assembly that the Act does not cover the real situation, does not guarantee positive changes and makes the position of the CSFR more difficult before world opinion and that it is not possible to build democracy by non-democratic means.

22. The CS-KOS refers to relevant provisions of the International Covenants on human rights which, like Convention No. 111, constitute part of Czechoslovak legislation and prevail over Act No. 451/1991, according to Constitutional Act No. 23/1991 introducing the Charter of Fundamental Rights and Freedoms.

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1 The OS-CMS communicated a further list of 27 persons by letter dated 13 January 1992, i.e. after the date fixed by the Committee for the supply of additional information.

2 The Committee notes that a letter dated 12 November 1991 was received from the International Confederation of Free Trade Unions, by which it wished to associate itself with the representation made by the CS-KOS.

23. The CS-KOS also refers to relevant provisions of the Charter: article 1 (principle of freedom and equality in dignity and rights); article 3 (fundamental rights and liberties guaranteed to all without differences on account, in particular, of political or other views); article 10, paragraph 3 (right to protection against unauthorised collection, publication or other abuse of personal data); article 21 (access to elected and other public offices on equal conditions). Article 6 of Constitutional Law No. 23/1991 requires harmonisation of laws and regulations with the Charter not later than 31 December 1991 and provisions contrary to the Charter become ineffective on that date. Since the Constitutional Court of the CSFR is not active, (see paragraph 100 below) Act No. 451/1991 is already being used in practice and is estimated to concern more than 1 million Czechoslovak citizens.

24. The CS-KOS made a number of points on the question of Act No. 451/1991 being in breach of Convention No. 111. The Act does not make any difference between persons who really took part in suppressing civil and political rights and those who belonged to a certain group but who themselves were nevertheless subjected to the same plight. The Act creates a fiction of irrefutable legal assumption of guilt and brings the inquisitorial principle into relation with citizens; it derives from the non-legal principle of collective guilt and disregards the principles of individualisation of guilt and presumption of innocence, of inadmissibility of retroactivity, of showing proof of guilt and illegal behaviour and of prescription of criminal offences. The Act bears no similarity to legal standards of other countries concerning the prohibition to perform certain functions. It does not relate present behaviour to the performance of functions and prohibits such performance not because of active participation in the violation of human rights but only because of reasons such as belonging to a certain group; being listed in the files of the Secret State Security without regard to the distress of a citizen who "succumbed" to the pressure of security organs; or membership of certain bodies of the totalitarian political system. Every citizen over 18 years of age has a right to apply to the relevant body for a certificate or findings regulated by Act No. 451/1991. There is no provision against unauthorised requesting of certificates or findings on individuals even in respect of functions not covered by the Act.

25. The CS-KOS considers it a task of the trade unions of the CSFR to further the principles laid down in ILO instruments, including the conclusions made in the surveys on the application of Convention No. 111 carried out in 1963 and 1988 by the Committee of Experts on the Application of Conventions and Recommendations. A number of provisions of Act No. 451/1991 is in breach of those conclusions and also of other ILO instruments not ratified by the CSFR.

2. The Government's statement

(i) The Government's observations

26. By letter of the Federal Minister of Labour and Social Affairs dated 13 January 1992, the Government of the CSFR presented its comments on the representations, as summarised below.

27. The original draft of Act No. 451/1991 (the Screening Act) was put forward by the Government after preliminary consultation with the ILO.

28. In presenting the draft, the Government strove to meet the growing demands of society for the purification of the public institutions of persons who took part in suppressing human rights and civil freedoms in the period from 25 February 1948 to 17 November 1989.

29. The Government draft was considerably amended during discussions in the Federal Assembly. Following the accepted procedure for adopting new labour regulations, the Minister of Labour and Social Affairs sent the text of the Act to the ILO on 18 October 1991, for consideration from the point of view of ILO Conventions.

30. On 17 October 1991, before the Act came into force, President Vaclav Havel sent a letter to the Federal Assembly proposing that the Act be amended. This letter was published, inter alia, in Czechoslovak newspapers. At the President's request, the Czechoslovak Government's Office worked out a draft amendment to Act No. 451/1991, thus giving an appropriate legal form to the principles contained in the President's letter. A copy of this letter is attached to the Government's statement (see paragraphs 32 to 42 below).

31. The Government also draws attention to the existence of an internal standard of a superior legal force, established by Constitutional Act No. 23/1991 introducing the Charter of Fundamental Rights and Freedoms. According to article 2 of this Act, all international conventions on human rights and fundamental freedoms ratified by the CSFR are given priority over national law and according to article 6 of the Act, the laws and regulations must be brought into harmony with the Charter by 31 December 1991 while all provisions contrary to the Charter cease to have effect as from that date. In the light of these facts, the current situation and the contradictions mentioned in the representations appear to be a question of harmony or contradiction between the standards of the superior and inferior legal force, i.e. a question solvable by the court. A solution to the current situation lies within the responsibility of the Constitutional Court, or potentially of the Federal Assembly. In individual cases it is also the responsibility of other independent courts in Czechoslovakia in the process of application of the law.

(ii) <u>President Vaclav Havel's letter</u>
(see paragraph 30 above)

32. In this letter addressed to the President of the Federal Assembly, Mr. Alexander Dubcek, the President of the CSFR, Mr. Vaclav Havel, stated his views on Act No. 451/1991 and suggested the principles for its revision. The main points of the letter are given below.

33. President Havel first expressed agreement that this law - extraordinary and exceptional as it may be - is necessary because many people linked with the totalitarian regime who had for years taken an active part in crushing human rights in the land, have not admitted their part of responsibility and have not spontaneously renounced their state and public functions and are hindering, in many institutions, the formation of a true democratic order. At the same time, President Havel reached the view that in its present form the law in question gives rise to many problems due to the fact that it is based on the principle of collective guilt and collective responsibility, that it restricts the rights of certain persons according to their past or recent affiliation to an institution of a defined group, that it gives undue weight to certain records of the former State Security or the absence of such records, making it a criterion of a person's ability to carry out certain functions and significantly restricts, obstructs, and in some cases negates the right to appeal, to defend oneself or to determine the exact degree of personal responsibility. Consequently, to the extent that the State indeed has the right to lay down conditions for the exercise of functions that are its own, President Havel considers that the legal provisions in question are contrary to their spirit to the established foundations of a democratic legal order. The possibility cannot be excluded therefore that the

constitutional Court as soon as convened, or a competent international institution may give a ruling that the Act is contrary to international standards accepted by Czechoslovakia or to its Charter of Fundamental Rights and Freedoms which forms an integral part of its Constitution.

34. President Havel's most serious concern is that the application of the Act as it stands could give rise to new injustices and inequities and might, at the dawn of the edification of a new democratic system, create a troublesome precedent.

35. For these reasons, President Havel calls on the authorities concerned to consider the possibility of reviewing the Act and of preparing a draft amendment to be submitted to the Federal Assembly.

36. President Havel makes a number of suggestions for amendments to the Act. A revision and simplification of the procedures should be made. The procedure of inquiry before the commission of the Federal Ministry of the Interior should be abolished. The required certificate should be delivered to, and presented by, the individual citizen concerned personally, within fixed time-limits, together with the affidavit referred to in article 4(3) of the Act. The confidential nature of the certificate would thus be ensured and the persons not meeting the requirement should then have their functions or employment contracts terminated. Officials having been issued an adverse certificate and who are convinced of being wronged should have the right to appeal to the court but be required to prove their case and eventually obtain redress. An appeal might be lodged, for example, by those who consider that their certificate does not take account of the particular circumstances of their case, or does not reflect the truth wholly and faithfully; those who had been compelled to a collaboration with the State Security under threat of death or of prosecution against third parties, while not really helping the Secret Police; those who had committed themselves for democracy and fought against violations of human rights, thereby redeeming past failings or errors. One could even imagine that in the 1950s somebody might have been prompted by an opposition group to enter an official organ as a way of getting access to information on moves against law and ethics under preparation by the authorities, in order to give advance warning to persons likely to be under threat.

37. The law should lay down the principle of the right to an objective hearing in each case. Review of individual cases could be carried out by special committees set up at the regional and district tribunals and composed of carefully selected magistrates of complete integrity. The same magistrates could also examine cases of people who honestly admitted not to comply with the requirement prescribed by the Act in article 2, paragraph 1(d) to (h), but who are in fact disproportionately penalised (for instance, citizens listed on the People's Militia registers without their knowledge; or persons in Party functions who clearly resisted totalitarian power). Conversely, an organ having good grounds to doubt the veracity of a citizen's affidavit may be called upon to present the facts to the competent tribunal.

38. It is presumed that the principles proposed above, if taken into account in a revised law, would alleviate the main problems posed by the law and would also simplify its application.

39. The President submits to the consideration of the deputies the possibility of a re-examination of the classification of citizens not meeting the requirements for exercising specific functions, reducing certain categories and enlarging some others. He is not sure, for example, as regards the People's Militia, whether the law should not deal only with those having been [illegible] functions for more than one year; or as regards the State

Security, only with units assigned to combat the enemy of the interior; or that the law should necessarily apply to members of Screening Committees after 1948. Forty-three years have since passed and over such a long period of time, even very serious offences have been prescribed. On the other hand, the law generally spares persons who in their writings and publications, have supported lawlessness, have glorified political trials and systematically created a climate of fear in society. President Havel also submits for consideration, in case the law is revised, the question of whether the right of the Ministries of the Interior and of Defence to grant exemptions should not be abolished and be replaced by the right given to them to appeal to the same tribunals dealing with citizens' appeals.

40. Since a law cannot be amended without coming into force by being recorded in the Official Gazette, President Havel states that he will sign the text when it is transmitted to him with the other required signatures, and has no intention to delay its promulgation and therefore the possibility of its revision.

41. President Havel requests that his letter be regarded as a legislative initiative from his part to amend the law.

42. President Havel further requests the Federal Assembly to place soon on its agenda the election of members of the Constitutional Court, as problems exist and will arise which can only be solved by the Constitutional Court.

3. The Committee's conclusions

43. The Committee had available to it, for its assessment of Act No. 451/1991 and of the allegations of the complainant organisations, the comments of the Government but also the benefit of the views of the President of the CSFR, Mr. Vaclav Havel, as expressed in his letter of 17 October 1991 to the Federal Assembly to propose a revision of the Act. Reference is made also by one complainant organisation to the views of the President of the Federal Assembly of the CSFR, Mr. Alexander Dubcek, in a statement circulated by the CTK official news agency. The Committee wishes to stress the value it attaches to opinions from such eminent sources which testify to the exceptional importance of the debate involved.

44. From the information supplied by the complainants and the Government, the following main points have emerged regarding the circumstances of adoption of Act No. 451/1991, the objections made to its principles and provisions, and the legal and practical status of this "screening law".

1. There is concurrence of the views expressed that it was necessary and justified to remove from public institutions persons who took part in suppressing human rights and that this should be done by due legal process. The Government consulted the ILO before putting forward the original draft. However, as a result of numerous amendments made in Parliament, Act No. 451/1991 differs substantially from the original draft submitted by the Government.

2. The central objection to Act No. 451/1991 is that it is based on a presumption of collective guilt, applied extensively in disregard of other principles of law such as non-retroactivity, burden of proof of guilt and presumption of innocence, right of appeal and of defence. Under the terms of the "screening law", from its entry into force until 31 December 1996, people are excluded from exercising a wide range of functions and occupations mainly in public institutions but also in the private sector, if they had been employed in the past, in specified

functions, activities, or in association with or membership of certain groups or bodies of the former political system, in a period of over 40 years from 25 February 1948 to 17 November 1989. Furthermore, the proof of such action or association may not be entirely reliable and may not even be refuted by the persons against whom it is directed, who incur the risk of being disproportionately penalised, without the possibility of any mitigating circumstances being entertained, including such situations as persons subjected to threat or pressure, persons having redeemed past failings or errors or persons acting on behalf of an opposition group who sought to obtain information by getting inside organs of the former system.

3. For these reasons, the complainant organisations hold that the "screening law" is in violation of the Constitution of the CSFR and of international obligations which are part of its legal order, and specifically, is in violation of Convention No. 111, in light of conclusions of the Committee of Experts to which they refer. The OS-CMS quotes a statement by the President of the Federal Assembly, Mr. Alexander Dubcek, on the discriminatory and unconstitutional nature of Act No. 451/1991. In his letter of 17 October 1991 forwarded with the Government's statement and to which the CS-KOS refers, President Vaclav Havel expresses the view that the legal provisions in question are contrary in their spirit to the established foundations of a democratic legal order. He refers therefore to the possibility of a ruling by the Constitutional Court of the CSFR when convened, or by a competent international institution, that Act No. 451/1991 is contrary to international standards accepted by the CSFR or to its Charter of Fundamental Rights and Freedoms which forms an integral part of its Constitution.

4. In this connection, Constitutional Act No. 23/1991 introducing the Charter of Fundamental Rights and Freedoms also provides for the precedence of ratified international human rights instruments over other national legislation (article 2) and the harmonisation of all laws and regulations with the Charter, all contrary provisions ceasing to have effect by 31 December 1991 (article 6). The Government refers in its statement to this internal standard of superior legal force and considers that a solution to the situation concerning Act No. 451/1991 lies within the responsibility of the Constitutional Court, or potentially the Federal Assembly and in individual cases, within the responsibility of other independent courts in the CSFR in the process of application of the law. By his letter of 17 October 1991, President Vaclav Havel put forward a legislative initiative to amend the law and also suggested that the Federal Assembly proceed soon with the election of members of the Constitutional Court (see also paragraph 100 below).

5. In the meantime, according to the complainant organisations, Act No. 451/1991 is already being applied; persons have been dismissed in pursuance thereof, and it is estimated that the Act will concern more than one million Czechoslovak citizens.

Contents of Act No. 451/1991 and related legislation[1]

45. The Committee notes that Act No. 451/1991 (text reproduced in the Appendix to this report) requires, for the exercise of functions specified in its article 1, that the persons concerned had not been in any of the circumstances specified in its articles 2 and 3, thereby establishing exclusions in respect of employment and occupation of persons failing to comply with this requirement.

46. The Committee notes that the exclusions in respect of employment and occupation established under the Act are broadly directed at two categories of persons, comprising those who, during the period of 25 February 1948 to 17 November 1989, had been:

- members or associates in various ways of the National Security Corps and of the State Security; and students, teachers or trainees at former USSR institutions on state and public security and ideology (article 2, paragraph 1(a), (b), (c), (e) and (h), and paragraph 2; and article 3, paragraph 1, of the Act);

- members and officials of organs of the political and ideological apparatus of the former regime: Committees of the Communist Party from district or higher levels and organs for the management of Party work, except persons who held functions only from 1 January 1968 to 1 May 1969; People's Militias; Action Committees of the National Front after 25 February 1948, Screening Committees after 25 February 1948, or Screening and Normalisation Committees after 21 August 1968 (article 2, paragraph 1(d) to (g); article 3, paragraph 1(d) and (e).

47. The Committee notes that under article 1 of the Act, the exclusions referred to above apply to:

1. functions filled by election, appointment or assignment in:

   (a) the state administration of the CSFR and of the two federated Republics;

   (b) the Czechoslovak Army and Federal Ministry of Defence, at the ranks of colonel and general and also the functions of military attachés;

   (c) the Federal Security Intelligence Service, Federal Police Force and Palace Guard Police Force - these organs, together with the Federal Ministry of the Interior, being subject to supplementary exclusions based on past functions or connections in the security and ideology fields stipulated in article 3 of the Act;

   (d) the Offices of the Federal President, of the Federal and National Assemblies and Governments, of the Constitutional and Supreme Courts

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1 The Committee also had before it the texts of Constitutional Act No. 23/1991 introducing the Charter of Fundamental Rights and Freedoms; Act No. 119/1990 concerning judicial rehabilitation; Act No. 455/1991 concerning concession-based trades and its Appendix 3; Act No. 324/1991 concerning the service of police officers of the Federal Police Force and of [illegible] the Labour Code of Czechoslovakia; and Act No. [illegible] concerning the association of citizens, as amended by Act No. [illegible].

at federal and national levels; and the Presidium of the Czechoslovak and the Slovak Academies of Science;

(e) state radio and television institutions and press agencies at the federal and national levels;

(f) state and mixed enterprises with state majority shareholding; state organisations; international trade agencies, state railways and financial and banking institutions, at the levels of heads of organisations and of leading executives directly under their management; at higher schools, for elected academic officers and functions subject to approval by the academic senate;

2. judiciary and legal professions (judge, assessor, prosecutor and investigator; state notary and arbiter; and candidates and nominees to those functions);

3. certain concession-based trades; reference is made in the Act to Act No. 455/1991, Appendix 3, which covers a wide range of activities from those dealing with arms and ammunition, medical equipment, radiation sources and explosives to funerals, antique and taxi businesses.

Under article 23 of the Act, the exclusions will cease to apply on 31 December 1996 as the Act will cease to be effective on that date.

48. Under articles 5, 14, 15 and 16 of the Act, the persons concerned must produce proof of their not belonging to any of the categories referred to in articles 2 and 3 before being appointed to, or under penalty of dismissal from, the functions listed in article 1 of the Act.

49. Under article 4 of the Act, the proof that a person had not been a member or associate of the National Security Corps or an agent or collaborator listed in the files of the State Security (article 2, paragraph 1(a), (b), (c) and (e)) must be produced by the person concerned by means of a certificate issued by the Federal Ministry of the Interior, or alternatively (article 2, paragraph 1(e)) by a statement issued by the commission established under article 11 of the Act. Conditions for application for and issue of certificates are governed by articles 6 to 9 of the Act.

50. In all other cases listed under article 2, paragraph 1(d) to (h) of the Act, the persons concerned must submit an affidavit that they had not been in any of the circumstances specified for the purposes of exclusion.

51. All affidavits but only one type of certificate (referring to "conscious collaboration" with the State Security under article 2, paragraph 1(c) and paragraph 2 of the Act) may be submitted for verification to the commission established under article 11 of the Act (see appeals procedures below).

Bearing of the Act No. 451/1991 on the observance of Convention No. 111

52. The Committee notes that the issues raised in relation to Act No. 451/1991 involve many aspects and provisions of Convention No. 111.

53. The main substantive issue raised is that of determining whether Act No. 451/1991 establishes discrimination on the basis of political opinion, given the definition of the term "discrimination" in Article 1, paragraph 1 a) of Convention No. 111, and that of the terms "employment and occupation" in

Article 1, paragraph 3 of the Convention. The relevant provisions of the Convention read as follows:

Article 1, paragraph 1

1. For the purpose of this Convention the term "discrimination" includes -

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

Article 1, paragraph 3

3. For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

54. In determining the issue of discrimination, account must be taken of Article 1, paragraph 2, concerning the inherent requirements of a particular job, and of Article 4 concerning measures regarding activities prejudicial to the security of the State. The relevant provisions of the Convention read as follows:

Article 1, paragraph 2

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

55. To the extent that Act No. 451/1991 may be found to involve discrimination under the terms of the Convention, the question will consequently arise of the observance of several other provisions of Convention No. 111, including those of Article 2 concerning the obligation for a ratifying State to declare and pursue a national policy in furtherance of the aims of the Convention; and of Article 3(a),(b),(c) and (d) concerning legislative and other measures to be taken by a ratifying State in implementing the national policy. The relevant provisions of the Convention read as follows:

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity

and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice -

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority.

...

The requirements of Convention No. 111 as regards protection against discrimination on the basis of political opinion

56. As noted earlier, the complainant organisations referred to the conclusions of the Committee of Experts on the Application of Conventions and Recommendations as regards the relevant requirements of Convention No. 111 and more especially as regards protection against discrimination on the basis of political opinion. The conclusions recalled below are drawn from the Committee of Experts' latest general survey of 1988 on discrimination and incorporate the Committee's earlier comments, either general or concerning individual countries, as well as comments of other ILO supervisory bodies, where appropriate.[1] In assessing the conformity of Act No. 451/1991 with Convention No. 111, the Committee will be guided by these conclusions and by findings of ILO supervisory bodies in other cases not directly referred to in the general survey in connection with the conclusions quoted below.

57. As regards the contents and scope of the protection afforded by the Convention in this field, paragraph 57 of the above-mentioned general survey provides the following indications:

Nature and manifestation of opinions - "... the Convention implies [protection] in respect of activities expressing or demonstrating opposition to the established political principles - since the protection of opinions which are neither expressed nor demonstrated would be pointless".

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[1] "Equality in employment and occupation", ILC, 75th Session, 1988, Report III (Part 4B). It may be noted that the essential points of these conclusions as regards the issue under consideration were given in the Office's reply of 6 September 1991 to the request of the Government of the CFSR for preliminary consultation on the original draft of the Act.

"... even if certain doctrines are aimed at fundamental changes in the institutions of the State, this does not constitute a reason for considering their propagation beyond the protection of the Convention in the absence of the use or advocacy of violent methods to bring about that result."

Collective advocacy of opinions - "the protection of freedom of expression is aimed not merely at the individual's intellectual satisfaction at being able to speak his mind, but rather - and especially as regards the expression of political opinions - at giving him an opportunity to seek to influence decisions in the political, economic and social life of his society. For his political views to have an impact, the individual generally acts in conjunction with others. Political organisations and parties constitute a framework within which the members seek to secure wider acceptance of their opinions. To be meaningful, the protection of political opinions must therefore extend to their collective advocacy within such entities."

58. As regards the question of the inherent requirements of a particular job in relation to political opinion, the general survey of 1988 provides the following indications:

(paragraph 126)

Concept of "a particular job" - "It appears from the preparatory work and the text of the Convention as ultimately adopted, that the concept of "a particular job" refers to a specific and definable job, function or task. Any limitation within the context of this exception must be required by the characteristics of the particular job, and be in proportion to its inherent requirements. Certain criteria may be brought to bear as inherent requirements of a particular job, but they may not be applied to all jobs in a given occupation or sector of activity, and especially in the public service, without coming into conflict with the principle of equality of opportunity and treatment in occupation and employment."

Consideration of political opinions - "although it may be admissible, in the case of certain higher posts which are directly concerned with implementing government policy, for the responsible authorities generally to bear in mind the political opinions of those concerned, the same is not true when conditions of a political nature are laid down for all kinds of public employment in general or for certain other professions: for example, when there is a provison that those concerned must make a formal declaration of loyalty and remain loyal to the political principles of the regime in power".

(paragraph 105)

Security checks - "the security measures adopted with respect to candidates for employment in the public service may also affect the observance of the principle laid down in the Convention. Such administrative security checks, generally limited to employment in confidential positions or in posts that are sensitive from the point of view of state security, are not commented on specifically in the reports supplied by governments. Nevertheless, from the information available it appears that in some countries such security checks are applicable without distinction to all posts in the administration. Such inquiries should not be permitted or carried out except where justified by the inherent occupational requirements of the post in question. Moreover, any person who is denied access to a particular post for security reasons

ought to have the right to appeal against the decision. It is of the utmost importance that an appellate remedy should be available to persons who are wrongfully denied access to a post for security reasons that are based on unlawful grounds of discrimination, such as national extraction, social origin, religion or political opinion."

59. Concerning measures regarding activities prejudicial to the security of the State, paragraphs 135 to 137 of the General Survey of 1988 provide the following indications concerning the substantive conditions and the procedural guarantee laid down in Article 4 of the Convention:

Substantive conditions

Activities covered - "Article 4 of the Convention excludes, first of all, any measures taken not because of individual activities but by reason of membership of a particular group or community; such measures could not be other than discriminatory. Secondly, the exception provided for in Article 4 refers to activities qualifiable as prejudicial to the security of the State, whether such activities are proved or whether concurring and precise presumptions justify suspecting such activities. Therefore, the expression of opinions or religious, philosophical or political beliefs is not a sufficient base for the application of the exception ..." (see also nature and manifestation of opinions, under paragraph 57 above).

Measures within the meaning of Article 4 - "... measures intended to safeguard the security of the State within the meaning of Article 4 of the Convention must be sufficiently well defined and delimited to ensure that they do not become discrimination based on political opinions or religion."

"The application of measures intended to protect the security of the State must be examined in the light of the bearing which the activities concerned may have on the actual performance of the job, tasks or occupation of the person concerned. Otherwise, there is a danger, and even likelihood, that such measures entail distinctions and exclusions based on political opinion or religion, which would be contrary to the Convention."

Procedural guarantee

"In addition to these substantive conditions intended to guarantee that measures adopted in practice are not discriminatory within the meaning of the 1958 instruments, there is also a procedural guarantee: the right of the person affected by the measures described in Article 4 of the Convention, 'to appeal to a competent body established in accordance with national practice'. Existence of a right of appeal, while constituting a necessary condition for the application of the exception to the principle of the Convention, is however not sufficient in itself. Bearing on the observance of the substantive conditions mentioned in the preceding paragraphs, the right of appeal cannot be considered as a guarantee in accordance with the provisions of Article 4 of the Convention, unless these substantive conditions have been met. In a previous survey, the Committee already stated that 'enforcement through the courts will not suffice to guarantee the application of the standards embodied in the 1958 instruments in this respect if the provisions which the courts have to apply are themselves incompatible with these standards'.

"Appeals may follow the normal procedural rules of judiciary or administrative courts. In certain cases, special procedures, often established under emergency legislation, are provided for the examination of measures taken. Compliance with Article 4 of the Convention must be examined on a case-by-case basis so as to ascertain that certain minimum conditions are met. There must be an appeals "body" which is separate from the administrative or governmental authority, and which offers a guarantee of objectivity and independence. This body must be "competent" to hear the reasons for the measures taken against the person in question, and to afford him or her the opportunity to present his or her case in full."

Assessment of Act No. 451/1991 in relation to the requirements of Convention No. 111

60. The Committee has taken careful note of the conclusions of the ILO supervisory bodies, which are recalled above, concerning the requirements of Convention No. 111 relevant to the issues raised by the representations. It proposes to examine Act No. 451/1991 in relation to these requirements.

61. The Committee has recorded earlier in this report, that the motivation at the origin of the Act was to remove from public institutions persons who took part in suppressing human rights, but that the Act as adopted has essentially diverged from its original intended purpose. The Committee considers that human rights violations, where amenable to law in a democractic legal system, should as criminal offences be dealt with by due process of law and that in any event, the effects of judicial convictions or administrative sanctions on that ground, in regard to employment and occupation, should not be deemed to fall outside the scope of Convention No. 111 if the definition and penalisation of such offences were to infringe in any way the protection that the Convention is intended to provide.

62. For these reasons, and while keeping in mind the circumstances leading to the adoption of Act No. 451/1991, the Committee considers that its provisions should be assessed only by their own terms against the relevant requirements of Convention No. 111.

63. The Committee observes at the outset that the exclusions established by Act No. 451/1991 are based on past association or collaboration with organs and institutions of the State and party apparatus of the former political regime, with marked emphasis on questions of security and ideology. Such exclusions appear therefore to be based essentially on political or ideological opinions or on action linked thereto.

64. The Committee notes, however, that an exclusion may be deemed an inherent requirement of a particular job, pursuant to Article 1, paragraph 2, of the Convention, or a measure regarding activities prejudicial to the security of the State, pursuant to Article 4 of the Convention. The question as to whether or not the exclusions imposed by Act No. 451/1991 constitute discrimination by the terms of Convention No. 111 must therefore be examined in relation to these provisions of the Convention.

65. In endeavouring to determine the above issue the Committee is fully aware of the complexity of the task of evaluating such a wide range of situations as covered by Act No. 451/1991. The Committee intends in so doing to be guided by the conclusions of the ILO supervisory bodies. The Committee's own conclusions are not meant to be regarded as definitive pronouncements on each particular situation but rather as general comments concerning the principles to be observed in relation to the issues involved.

Inherent requirements of a particular job

66. The following criteria may be drawn from the relevant conclusions of ILO supervisory bodies (see paragraph 58 above) regarding any exclusion made in pursuance of Article 1, paragraph 2, of Convention No. 111:

- Any exclusion based on the inherent requirements of a particular job should be in proportion to such requirements and should refer to a specific and definable job, function or task and not apply to an entire occupation or sector of activity, especially in the public service.

- Political opinions may accordingly constitute a condition laid down for certain higher posts directly concerned with implementing policy but not for all kinds of public employment in general or for certain other professions.

- Security checks should be limited to employment in confidential positions or in posts that are sensitive from the point of view of state security. An appellate remedy is of the utmost importance to persons who are wrongfully denied access to a post for security reasons that are based on unlawful grounds of discrimination.

67. To begin with the types of exclusions which would appear to be in line with the above criteria, it may be considered that among the functions covered by article 1 of Act No. 451/1991, those which entail particularly strict requirements of state security and of confidentiality may reasonably be subject to exclusions based on political opinion, given especially the context of recent and current events of history in Czechoslovakia. The exclusions imposed should nevertheless be in proportion to the inherent requirements of the particular jobs in question.

68. Accordingly, the exclusions established by Act No. 451/1991 may be considered on the whole to be justified as regards the military functions at the ranks of colonel and general in the Army and Ministry of Defence and military attachés, the Federal Security Intelligence Service, the Palace Guard Police Force and most functions in the Federal Ministry of the Interior (article 1, paragraph 1(b),(c), and paragraph 2; article 3 of the Act). These exclusions may also be deemed acceptable as regards the Federal Police Force, although their application in this public service should be in proportion and be limited to particular functions, as in the case of the military functions mentioned above, and not as a blanket requirement for all functions in the service.

69. Regarding the functions in the Offices of the Federal President and of the federal and national assemblies and the Offices of the Constitutional and Supreme Courts covered by article 1, paragraph 1(d), of the Act, each ground for exclusion should be examined to ensure that it is in proportion to the requirements of security and confidentiality inherent to each particular job in the categories of functions concerned.

70. As regards functions in the Presidium of Academies of Science, covered by article 1, paragraph 1(d), the principle of proportionality should be strictly observed in applying any of the exclusions laid down in the Act in relation to the inherent requirements of these functions which would appear in most cases to be of a different nature than the requirements of the other categories of functions dealt with above.

71. Regarding functions covered by article 1, paragraph 1(f) and paragraph 3, of the Act, consideration of political opinions would appear to be justified for the exercise of functions of heads and leading executives in

state industrial, commercial and financial undertakings and institutions when the functions in question involve the implementation of policies in important and sensitive fields, especially in the present circumstances of the country.

72. The Committee is not clear as to the nature and requirements of the functions of elected academic officers and of functions subject to approval by the academic senate in higher schools; nor is it clear as to the fields of learning covered by such schools. As a general rule, the Committee is of the view that consideration of political opinion is justified only where the opinions are in conflict with the obligations normally attached to teaching duties (e.g. objectivity and respect for the truth), or are in conflict with or prejudice the aims and principles professed by the schools to which the officers belong (e.g. the case of an institution for religious studies).

73. As regards functions in other "state organisations" that may be covered by the same provisions of article 1, paragraph 1(f), of the Act, any exclusions should only be applied in strict observance of the relevant criteria defined by the ILO supervisory bodies in accordance with the requirements of Convention No. 111.

74. The exclusions concerning functions in the state administration in general (article 1, paragraph 1(a), of the Act) are too extensive to be considered inherent requirements of particular jobs and such exclusions should be limited to senior or sensitive posts involving the implementation of government policies or confidentiality requirements.

75. The same restrictive approach should be followed regarding any exclusions for political reasons from the exercise of functions in the state media institutions (article 1, paragraph 1(e), of the Act).

76. As regards the judicial and legal professions (article 1, paragraph 4, of the Act), exclusions should be admissible under the Act only in cases where the past political record of the persons concerned is likely or is found to reflect upon their moral integrity and repute, or to endanger the confidentiality and impartiality of prosecution and adjudication and perhaps, the legal reliability of state notaries.

77. Finally, as regards the "conditions of reliability" required for practising certain concession-based trades (article 1, paragraph 5, of the Act referring to Appendix 3 of Act No. 455/1991), any exclusions such as established under article 2 of the Act should only apply to those trades listed in Act No. 455/1991, Appendix 3 (for example, in the arms and ammunition or explosive businesses, or in work on radiation sources or medical equipment) where requirements of public security and safety may be deemed to be put in jeopardy by the past political record of the persons concerned and not to trades, also listed under Act No. 455/1991, where such requirements are not involved (for example, auctioneers and antiques business).

Measures regarding activities prejudicial to the security of the State

78. In accordance with the substantive criteria elicited by ILO supervisory bodies (see paragraph 59 above), measures regarding activities prejudicial to the security of the State under Article 4 of the Convention should be directed at individual activities - proven or justifiably suspected - and not be motivated by membership of a particular group or community or by expression or demonstration of opinions opposed to established political principles and institutions without the use or advocacy of violent methods to change them. Such measures should be sufficiently well defined and delimited

and should be applied in the light of the bearing of the activities in question on the performance of the job, task or occupation by the persons concerned.

79. By applying the above criteria to the exclusions laid down in Act No. 451/1991, the Committee has reached the view that these exclusions, which cover a very broad range of functions and are based on the past record - however reprehensible - of persons for their association or collaboration with the former political regime, cannot be regarded ipso facto as measures within the meaning of Article 4 of the Convention. Such measures should be applied only to persons who are actually engaged in or justifiably suspected of activities prejudicial to the security of the State, the definition of which must be consonant with the criteria recalled above (for example, collaboration with foreign intelligence or espionage service, as stipulated in article 4, paragraph 4, of the Act).

Duration of exclusion measures

80. The Committee takes due note of the fact that the exclusions laid down by Act. No. 451/1991 will cease to apply after 31 December 1996 when the Act itself will lapse. In the view of the Committee, the duration of the exclusions would not have any decisive impact on the damages in respect of employment and occupation for the persons affected. The effects of such exclusions, whether or not justified by the terms of Convention No. 111, are likely to last long after their enforcement and perhaps permanently. The duration of the exclusions consequently does not constitute a significant element in the assessment of their conformity with the requirements of Convention No. 111.

General conclusions on exclusions

81. The preceding considerations have shown that in respect of Article 1, paragraph 2, of the Convention, the exclusions established by Act No. 451/1991 may be deemed inherent requirements of particular jobs only in a certain number of cases as referred to in paragraphs 67 to 77 above. These exclusions as such cannot be regarded as measures concerning activities prejudicial to the security of the State within the meaning of Article 4 of the Convention. The Committee is bound therefore to conclude that, to the extent indicated, the exclusions imposed by Act No. 451/1991 constitute discrimination on the basis of political opinion by the terms of Convention No. 111.

Appeals procedure

82. The relevant conclusions of the ILO supervisory bodies (see paragraphs 58 and 59 above) have stressed the importance of appropriate appeals procedure to be made available to persons who have been the subject of exclusions as a result of security checks or of measures regarding activities prejudicial to the security of the State.

83. The Committee notes that under article 11 of Act No. 451/1991, an independent commission of 15 members shall be established in order to ascertain the circumstances which constitute grounds for exclusion, as specified in article 2, paragraph 1 [illegible] of the Act. Of the 15 members of the commission, three each are appointed and revoked by the Presidium of the Federal Assembly including the chairman and vice-chairman of the commission and by the Presidiums of the two National Councils, from among

[illegible]

blameless citizens not members of these assemblies. Of the six remaining members of the commission, who must have completed university-level legal education, two (including the commission's secretary) are appointed and revoked by the Federal Minister of the Interior, one each by the Federal Minister of Defence and the Ministers of the Interior of the federated republics from among the staff of these ministries; and one member by the Director of the Federal Security Intelligence Service. The commission's procedure is set by article 12 of the Act and includes hearing of persons concerned and of witnesses and experts, in accordance with relevant provisions of criminal procedure.

84. The Committee notes that of the 15 members of the commission, five members are government officials appointed and revoked by their responsible ministers and one member by the head of a federal security agency. While the nine members appointed by the legislative assemblies from among citizens thus outnumber the six government members, the Committee observes that by the terms of article 11 of the Act, the commission is established under the auspices of the Federal Ministry of the Interior which is also responsible for its functioning. The Committee notes further that article 12 of the Act provides that the commission can sit if attending members include the chairman and vice-chairman and seven other members and that government members may thus outnumber citizen members of the commission at sittings.

85. The Committee wishes to point out that according to the ILO supervisory bodies, the appeals body should be separate from the administrative or governmental authority and offer a guarantee of objectivity and independence. The committee considers that the composition and functioning of the commission established by Act No. 451/1991 do not fully meet the relevant requirements of the Convention.

86. The Committee notes that under article 18 of the Act, persons contesting statements issued by the commission may request an examination by the district court of their permanent residence. It recalls in this connection the suggestion made by President Vaclav Havel to abolish the procedure before the commission and to entrust appellate functions to committees composed of magistrates of complete integrity. The Committee considers that this suggestion entirely meets the requirements of the Convention.

87. The Committee further notes that under article 13 of the Act, while affidavits submitted by the persons concerned regarding their own situation may be queried before the commission by other persons and organisations, the certificates issued by the Federal Ministry of the Interior may only be contested by the persons concerned in the case specified in article 2, paragraph 1(c) of the Act (conscious collaborator of the State Security). It follows therefore that certificates concerning the cases specified in article 2, paragraph 1(a) and (b) of the Act (membership of National Security Corps and service in the State Security) and perhaps, although the Act is not clear, also the case specified in article 2, paragraph 1(e) (official of the Communist Party in the political guidance sector of the National Security Corps) are not liable to appeal by the persons concerned.

88. The Committee considers that the absence of a right to appeal in the cases mentioned above is in breach of the relevant requirements of the Convention. It recalls that the complainant organisations have stressed the arbitrariness of these certificates which put irrefutable reliance on records kept by the State Security without any concern for circumstances of particular cases, including those of persons subject to threat and pressure. President Vaclav Havel himself gave attention to this question and suggested that a

revised law should grant to the persons concerned the right of appeal to the court concerning certificates issued to them.

89. Finally, the Committee recalls that, as pointed out by the ILO supervisory bodies, the right of appeal cannot be considered a guarantee unless the substantive conditions have been met. Consequently, appropriate appeals procedures can only contribute to the observance of the Convention in so far as the provisions for protection against discrimination are adequate or as the appellate body, for example a constitutional court, is empowered to overrule provisions that are in breach of such protection.

Other matters

90. The Committee notes that under article 13, paragraph 3 of the Act, a person subject to any exclusion specified in article 2, paragraph 1(d) to (h) (members and officials of organs of the political and ideological apparatus of the former regime) may produce proof that after having ceased to be in the position giving ground for such exclusion, that person had been penalised for acts specified by Act No. 119/1990 concerning judicial rehabiliation and had been rehabilitated in accordance with that Act, and may obtain a statement of the commission of review mentioned above that the exclusion has been lifted.

91. The Committee notes that the acts for which persons who had been penalised may be rehabilitated under Act No. 119/1990 consist mostly in offences based on opinions or other manifestations of opposition to the State and established political and ideological principles. It considers this procedure for the lifting of exclusions to be consistent with the Convention's requirements regarding protection against discrimination on the basis of political opinion, without detracting in any way from the need to ensure also consistency with these requirements of the exclusions established by Act No. 451/1991.

92. The Committee notes that Act No. 451/1991 (article 2, paragraph 3; article 3, paragraph 2) authorises the Federal Ministers of Defence and of the Interior, the Director of the Federal Security Intelligence Service and the Director of the Federal Police Force, to waive in justified circumstances the exclusion established in article 2, paragraph 1(a), and article 3, paragraph 1(a), of the Act (regarding members of the National Security Corps detailed to the State Security), if its application should interfere with an important security interest of the State and the waiver is not contrary to the purpose of the Act. The Committee considers that this power to make exception would lead to discriminatory treatment which is at the discretion of the Government and administrative authorities concerned without being subject to review by an appeal body. The Committee would point out that President Vaclav Havel, in his letter of 17 October to the Federal Assembly, suggested that this power to grant exemption might be replaced by the right given to the authorities concerned to appeal to the same tribunals dealing with citizens' appeals.

93. The Committee further notes that article 21 of Act No. 451/1991 provides that publishers of periodical press and licensed operators of radio and television and newscasting programmes may apply for the necessary certificate or commission's statement, on their own behalf or following a previous written consent, on behalf of a member of their staff who takes part in the shaping of the intellectual contents of the communication media in question. The same possibility is granted to the presidents or equivalent level representatives of political parties, of political movements and those of associations including professional organisations and governed by Law No. 83/1990 on the association of citizens) on their own behalf or on behalf

of a member of the leadership of the organisation concerned, subject to that member's previous written consent.

94. It would appear to the Committee that these provisions imply a possibility of indirectly imposing conditions of a political nature for the functions and positions in question in media organs and also in associations other than political parties and political movements. On that understanding, the Committee considers that such a possibility should be removed or made subject to the relevant requirements of the Convention, as examined above.

95. Lastly, the Committee notes that, under article 8 of the Act, any citizen over 18 years of age is entitled to apply for a certificate or statement regarding his/her situation in respect of article 2, paragraph 1(a), (b) and (c), of the Act (member or collaborator of the state security). The Committee is concerned with the risk - pointed out by the CS-KOS - that this provision of the Act should lead to abuse and even more extensive discrimination on the basis of political opinion, by indirectly enabling employers to demand a certificate or statement from persons applying for or occupying a job not subject to the requirements of Act No. 451/1991. The Committee considers that appropriate provisions should be made to eliminate this possibility.

Other obligations involved under Convention No. 111

96. Referring to indications given in paragraph 55 of this report, the Committee considers that, to the extent that the conclusions contained in the preceding paragraphs 60 to 95 have pointed to aspects of Act No. 451/1991 which are found to be in breach of the Convention in respect of Articles 1 and 4, the obligations under the provisions of Articles 2 and 3 of the Convention as regards a national policy and implementing measures in furtherance of the aims of the Convention, have also not been applied.

97. In view of the circumstances of the case, the Committee would particularly stress the obligations incumbent upon the ratifying State, under Article 3(a) to (d) of the Convention, to seek the cooperation of employers' and workers' organisations in implementing the policy aiming at the elimination of discrimination in employment and occupation; to enact legislation in support of such policy; to repeal and modify statutory provisions and administrative practices inconsistent with the policy and to apply it to employment under the direct control of a national authority.

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98. On concluding its examination of the representations, the Committee feels confident that notwithstanding the difficulty and gravity of the problems involved, a satisfactory solution will eventually be reached. The Committee considers that the necessary elements conducive to such a solution already exist.

99. In the first place, the exceptional quality of the democratic debate that is taking place on the issues raised by Act No. 451/1991 augurs well for future developments, given especially the weight of concurring views expressed from the highest sources in the land, on the need to remedy the situation.

100. Furthermore, the Government itself points out in its statement that the Constitution of the CSFR requires laws and regulations to comply with ratified international human rights instruments and with the Charter of Fundamental Rights and Freedoms, and that a solution to the current situation

lies within the responsibility of the Constitutional Court. The Committee has subsequently been informed that the Constitutional Court has now been appointed by President Vaclav Havel from nominees proposed by the Federal Assembly.

101. The Committee notes that right of access to the Court is given in particular to the President of the CSFR and the Federal Government. The Committee trusts accordingly that the executive authorities which have responsibility for national compliance with international commitments will refer the matter to the Constitutional Court at the earliest date, for a ruling on the constitutionality of Act No. 451/1991 with due regard to the provisions of Convention No. 111. The Committee emphasises the need for prompt action in view of the fact that according to the complainant organisations Act No. 451/1991 is already in application and has caused dismissals.

102. As regards the question of a revision of the Act, the Committee notes the legislative initiative already taken by President Vaclav Havel in his letter of 17 October to the Federal Assembly, which contained essential orientations for a revision of Act No. 451/1991. It notes the Government's statement that a draft amendment to the Act has been prepared, on the basis of the principles outlined in the President's letter.

103. The Committee further notes that the Government consulted the International Labour Office on the original draft of the Act and also on the Act as adopted, but that the Office declined to offer an opinion on the latter, in view of the representations by then made. The Committee accordingly trusts that the Government will take account of the conclusions made in this report in the preparation of new or revised provisions on the matter. The Committee expresses the hope that the Government will seek the cooperation of the Office, if necessary, to assist it in this task.

104. The recommendations that follow are made by the Committee in light of the above considerations.

III. The Committee's recommendations

105. Having arrived at the conclusions laid out in this report on the issues raised in the representations, the Committee recommends the Governing Body:

1. To approve the present report and in particular the conclusions and recommendations made in it.

2. To invite the Government of the CSFR, taking into account the conclusions made in this report:

   (i) to refer the matter to the Constitutional Court of the CSFR at the earliest date, for a ruling on Act No. 451/1991, with due regard to the provisions of Convention No. 111;

   (ii) to take the necessary measures, in consultation with employers' and workers' organisations, to repeal or modify Act No. 451/1991, in conformity with the requirements of Convention No. 111;

   (iii) to take the necessary measures to enable any persons unjustly affected by the Act to obtain redress;

(iv) to have appropriate consultation with and recourse, if necessary, to cooperation of the International Labour Office, in carrying out the above recommendations;

(v) to provide complete information in the reports due, by virtue of article 22 of the Constitution, on the measures taken in accordance with the above recommendations, in order to enable the Committee of Experts on the Application of Conventions and Recommendations to follow up the matters as from its session of March 1993.

3. To declare closed the procedure initiated as a result of the representations made by the OS-CMS and the CS-KOS.

Geneva, 28 February 1992. (Signed) William Dejong, Chairman

Lucia Sasso-Mazzufferi

Kari Tapiola.

POINT FOR DECISION:

Paragraph 105.