Convention No. 98: Right to Organize and Collective Bargaining, 1949

Iceland (ratification: 1952). **A Government representative (Mr. EGILSSON)** indicated that the labour market system in his country had been developed in cooperation with the social partners over many decades. The present legislation and collective bargaining system had also been built on agreements between the social partners and the Government. Indeed, his Government had always emphasized the need for close consultations with the social partners when amending or adopting legislation relating to the labour market. The social partners benefited from good access to the Government and the Minister of Social Affairs had commenced regular consultation meetings with them. It was the Government's position that it was solely for the social partners to negotiate wages and terms of collective agreements in a free system of collective bargaining, without the interference of the State. The system of collective bargaining was based on the Trade Unions and Industrial Disputes Act, which had been amended on numerous occasions in close consultation with the social partners. The 1996 amendments to the Act had taken duly into account the criticisms made at that time by the Committee of Experts. The social partners could also refer collective disputes to a Mediation and Conciliation Officer who, under certain conditions, could propose a compromise solution when all attempts at reconciliation had been exhausted. In 2000, and again this year, when many of the collective agreements in the private sector expired, the social partners had referred many of the cases to the Mediation and Conciliation Officer.

His Government did not therefore agree with the Committee on Freedom of Association or the Committee of Experts that the collective bargaining machinery in Iceland was unsatisfactory and needed to be changed. Although not perfect, there was general consensus that it had served the labour market very well. It was unfortunate that the social partners in a specific sector had been unable to conclude a collective agreement through the system, but he considered it unlikely that amending the system as a whole

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would make a significant difference. Instead, he encouraged the social partners in the vital fishing sector to consider the special characteristics of their disputes which made it more difficult for them to conclude collective agreements than in other sectors. The Ministries of Social Affairs and of Fisheries would welcome consultations on this subject.

With reference to the industrial dispute in 2001, he pointed out that the negotiations between the parties had begun in December 1999. Following long and exhausting negotiations, including numerous meetings with the Mediation and Conciliation Officer, a strike had been called on 15 March. The strike was then postponed by legislation until 1 April. The strike then resumed and went on for many weeks. Unlike the case in 1998, in which the wages of fishermen had been determined by legislation based on a compromise proposal by the Mediation and Conciliation Officer, the gulf between the parties had been so great in 2001 that no compromise proposal seemed possible. Following a strike of six weeks, accompanied by a lockout, the Government had come to the conclusion that it was an urgent necessity to bring both the strike and the lockout to an end through the stipulation of a reasonable and fair solution. In the Government's view, if no measures had been taken, the damage resulting to the country's economy would have created a huge and lasting burden.

He provided the Conference Committee with extensive information on the importance of fisheries for the Icelandic economy. The fishing industry accounted for over 60 per cent of exports of merchandise and 40 per cent of exports of goods and services combined. The fishing industry, which consisted of both fishing and fish processing, was located throughout the island, but particularly in sparsely populated areas, where many small towns and villages depended largely on the industry. The sector also accounted for a broad range of indirect employment, with the result that most people in the villages concerned depended on the sector in one way or another. Exports of fish, and particularly cod, were also important for employment in many other countries and Icelandic exporters had earned a reputation for high quality and reliability in the sophisticated and delicate process of

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providing cod from the rich but difficult fishing grounds around the country. The failure to honour commitments would harm business relationships. Moreover, while cod could basically be caught all year round, a number of species could only be caught at certain times of the year. For these species, the loss of a fishing season would be a very serious setback to hard-won markets, as well as having serious implications for the remuneration of fishermen and the economy as a whole.

When the strike resumed on 1 April 2001, its effects became increasingly painful and markets were severely damaged. As the strike progressed into May, important seasonal fisheries were jeopardized, with the prospect of the loss of important catches for a full year. This meant that, not only was the Icelandic share of these stocks left for other nations, but the failure of Icelandic vessels to catch their negotiated share of migratory stocks increased the risk of claims by other nations, which could have had consequences, in terms of reduced quotas, for years to come. After six weeks, the strike was therefore beginning to have a significant detrimental macroeconomic impact, as well as severely affecting sensitive regions, and particularly villages.

Although aware of the importance of the principle of the freedom of collective bargaining without interference by the State, such a long strike was greater than the Icelandic economy could bear. The Government had therefore reached the view that the dispute had become deadlocked and that there was no foreseeable end in sight. Further efforts were made to give the parties concerned opportunities to agree upon a new collective agreement, after which a court of arbitration established by legislation, following further mediation efforts, decided upon a collective agreement covering a period of 18 months. It should also be noted that a small number of trade unions were not on strike and some organizations of shipowners had not imposed a lockout. These parties were not bound by the Act and concluded a collective agreement, in which they agreed voluntarily to the terms laid down by the court of arbitration. The decision had now expired and the parties were free to negotiate a new collective agreement. It was therefore strongly hoped

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that the parties would fulfil their declared intention of negotiating a mutually acceptable agreement.

In conclusion, he emphasized that his Government was willing to do its best to facilitate a settlement, as it had in the past. Actions such as those of 2001 were only taken by his Government in a situation of true national emergency.

The Employer members expressed appreciation for the information provided by the Government representative and indicated that it was sometimes necessary to explain the economic reasons for measures that were taken. They also appreciated that this case arose out of the complex nature of collective bargaining in Iceland. They recalled that the case concerned Article 4 of the Convention, which provided that "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements." Moreover, the description of the facts by the Committee of Experts in the present case was somewhat abbreviated. It was therefore necessary to refer to the decisions of the Committee on Freedom of Association and previous general surveys to shed more light on the situation. The circumstances relating to the collective bargaining situation in Iceland were not those commonly found in most other countries. Bargaining was not straightforward. Wages were determined on the basis of a sharing system based on the price of fish. Three different categories of workers were represented by three unions in a very comprehensive bargaining environment. Furthermore, fish products accounted for over 50 per cent of all exported goods and 40 per cent of foreign currency earnings. The negotiations that had taken place over a period of months had resulted in a six-week strike and had affected the national currency and given rise to inflation and a deterioration in the economic situation. The federal mediator had come to the view that the dispute could not be resolved by further negotiations. The Government had therefore adopted legislation requiring

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compulsory arbitration to resolve the dispute at an important time in the fishing season. It should be recalled in this respect that the legislation in question was ad hoc and applied only to this particular dispute. The Committee of Experts, in the same way as the Committee on Freedom of Association, had viewed this as an infringement of the principle of free and voluntary collective bargaining. However, in the view of the Employer members, the Committee of Experts had failed to see the difference between a relatively rigid principle and the language of the Convention, which took into account national conditions. Moreover, they recalled the principle set forth in the 1994 General Survey, in which the Committee of Experts had stated that "there comes a time in bargaining where, after protracted and fruitless negotiations, the authorities might be justified to step in when it is obvious that the deadlock in bargaining will not be broken without some initiative on their part".

The Employer members recalled that it was the Government which exercised responsibility for the economy and for the health and welfare of its citizens. Clearly fishing was a very significant activity and the legislation in question applied only to this particular dispute. The Government had waited quite a long time before taking action. While the Government clearly needed to bear in mind the need to foster collective bargaining in accordance with national conditions, it should be recalled that not all collective bargaining succeeded and that there were times when governments had to take action.

The Worker members recalled that this was the first occasion on which the Conference Committee had discussed the case of Iceland. However, the Committee of Experts had made eight comments on the application of the Convention since 1992 and the case had also been examined by the Committee on Freedom of Association. Since 1978, the Government had intervened on 12 occasions on matters relating to collective bargaining in the various sectors. Moreover, changes in the national legislation respecting fishing had been frequent over the past ten years. It had not been possible to conclude any collective agreements between fishermen and fishing vessel owners since 1995.

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Bill No. 80/1938 provided that wages and conditions of work could be determined by collective bargaining. However, this rule did not appear to be possible in the fishing sector. In practice, fishermen did not have the right to negotiate their wages and conditions of work. The legislative interventions of the Government related, on the one hand, to the right to strike and lock out and, on the other, the imposition of compulsory arbitration. The observation made by the Committee of Experts clearly showed that this was not arbitration in the strict meaning of the term. The members of the arbitration board were appointed by the Supreme Court of the country and the parties to the conflict were not involved in the arbitration process. In practice, the measures taken by the Government to avoid social problems in the fishing sector had, on the contrary, given rise to serious conflicts.

The problem in the case of Iceland was as follows. The price of fish determined the wages of fishermen. The fishing sector was structured according to a system of quotas. The quotas were attributed to individual vessels which were owned by companies. Some 85 per cent of the quotas were attributed to individual vessels which were also owned by the enterprises which bought the fish. These companies both determined the price of the fish and set the wages of the fishermen. Although technical in nature, this was a serious case of violation of the right to organize and collective bargaining as set out in the Convention. Since the end of the 1980s, the quota system had been preventing any collective bargaining. The difficulties encountered had led the Government to adopt Bill No. 34/2001, which had had the effect of determining the wages and conditions of work of fishermen through the imposition of a process of compulsory arbitration. In 1996, the Government had amended the Trade Unions and Industrial Relations Act to provide for the intervention of a conciliation and mediation officer from the beginning of the arbitration process, with the possibility for the officer to table a compromise proposal. This amendment to the Act had considerably extended the powers of conciliation and mediation officers. Despite the intervention of the conciliation and mediation officer in both 1998 and 2001, the parties had been unable to reach agreement. The Committee of Experts and the

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Committee on Freedom of Association considered that the imposition by law of a process of compulsory arbitration was in violation of Article 4 of the Convention, which set forth the principle of free and voluntary negotiation.

The Worker members expressed great concern at this case of the violation of the right to collective bargaining in the fishing sector. The Government had resorted to the argument of the essential importance of the fishing sector in the national economy. This was false. The system of quotas did not make it possible for the whole fleet to fish every day. The quotas had to be respected. But, when a strike was called, it was impossible to fulfil the quotas. The Committee of Experts did not consider that the stoppage of work during the above disputes endangered the life, personal safety or health of the population. The legislative intervention in the strikes was not therefore justified. The Worker members called upon the Government to undertake not to intervene in the current negotiations between fishermen and employers, and in general not to intervene in future negotiations and collective disputes in the fishing sector. They also called for a detailed report to be supplied to the Committee of Experts so that it could examine the progress achieved and, in particular, the current collective bargaining process.

The Worker member of Iceland (Mr. NORDDAHL) regretted that the Government representative had put forward more or less the same arguments that had been rejected by the Committee on Freedom of Association. Although he had argued that fishing was one of the main sources of foreign currency in the Icelandic economy, it had been even more important in the previous century. Indeed, fishing had been declining and other heavy industries had been taking over. It therefore needed to be borne in mind that, even when fishing had been much more important, legislative interventions in the process of free negotiations had not been deemed so important as they appeared to be at the present time. If legislative interventions were justifiable for fishermen, why was this not considered to be the case for other categories of workers relating to the fishing industry? Should the arguments put forward by the Government representative also apply in other countries in

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which a single industry was the main source of income in foreign currency? If these arguments were accepted, the labour market situation would be radically changed in many small and developed countries, thereby emptying the Convention of its substance.

He added that the social partners in the fishing industry as a whole and in its related sectors had managed to negotiate collective agreements without such interventions. He therefore believed that the repeated legislative interventions, in breach of the Convention, were in themselves the main cause of deadlock in the negotiations between fishermen and their employees. The Government had to understand that it was not appropriate in a democratic country which was a member of the ILO to deprive workers and employers of their fundamental rights as set forth in the Convention. The disputed legislation had now expired, negotiations between the social partners had begun and the dispute had been referred to the Mediation and Conciliation Officer, who had recently postponed negotiations without there being a solution in view. He therefore called upon the ILO and the Conference Committee to keep a close watch on the current situation and any related developments.

A Worker member of the United States (Mr. GACEK) associated himself with the statement made by the Worker member of Iceland, adding that the AFL-CIO took a special interest in this matter as the United States was currently one of the largest overseas markets for Icelandic fish. As United States workers were also consumers, they were particularly concerned with the production of imported goods truly respecting core labour standards. Since Iceland enjoyed a history and tradition of social democracy, constructive social dialogue and high trade union density, he hoped that the current non-compliance with Convention No. 98, as reported by the Committee of Experts, would be corrected rapidly. The Government had argued that some legislative intrusion in the voluntary collective bargaining process had been necessary to protect the fundamental public interest, as the fishing industry was so vital to the Icelandic nation. But in Case No. 2170 the Committee on Freedom of Association had essentially rejected that assertion in finding that an impasse

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and subsequent work stoppage in the Icelandic fishing industry did not "endanger the life, personal safety or health of the whole or part of the population".

The speaker understood the complexity of the issue as the fish price was a variable factor. Act No. 34/2001 flew in the face of that very reality by having implied a fixed regime and a fixed duration. In his view, the problem was that the fishing quotas, the fishing vessels and the processing factories were owned by the same interests in a number of cases and in reality these interests had little incentive to resolve an impasse by conceding more in the share of catch value knowing that an arbitration regime would be imposed anyway. The Government of Iceland should give a little more credit to the good sense of the fishermen. The Icelandic fishermen could not and would not sacrifice their livelihoods by making demands that liquidated the company's profits. Nor could they afford to maintain and sustain a strike of absolutely indefinite duration. Unfortunately, the imposition by legislative fiat of compulsory arbitration was likely to exacerbate labour conflict because it created a disincentive to a voluntary outcome based on both negotiation and the use of powerful but legitimate economic pressure.

The speaker concluded by saying that the integrity of Convention No. 98 and the cause of constructive labour relations would be better served by referring to the good sense of the parties and asked for the Committee's continued vigilance in this case.

The Worker member of Germany (Mr. VON SEGGERN) stated that all social development in the world was based on the respect for the principles enshrined in Conventions Nos. 87 and 98. The Government's position was not acceptable. The economic argument made by one of the richest countries in the world would encourage poorer countries to use any kind of pretext to justify non-compliance with ILO Conventions. He recalled that the violations alleged were not only of marginal or temporary nature. Workers in the fishing sector were completely deprived of the exercise of free and voluntary collective bargaining. That right had been violated for a very long

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period of time. Since 1995 no free collective bargaining concerning the terms and conditions of employment of fishermen had taken place. Despite having promised to the ILO to consult with social partners on measures envisaged in regard to the fishing sector, the Government had not taken up the issue with the employers' and workers' organizations until today. The speaker further recalled that the Government in the 1970s had already interfered in collective bargaining in other sectors. Hence, as long as the practice continued in the fishing sector, there was a risk of renewed use of it in other sectors. In conclusion, he stated that European workers did not appreciate fish from Iceland, which had been brought on the market under conditions violating the fundamental rights of their Icelandic colleagues. He urged the Government to take finally the appropriate measures to ensure free and voluntary collective bargaining.

The Employer member of Iceland (Ms. STEFANSDOTTIR) stated that the employers of Iceland had not asked for an intervention by the Government. The vessel owners had repeatedly stated that they should be free to conclude agreements without interference by the Government. The issue of determination of fishermen's wages was a special one as wages were based on a share system and depended on the price of fish. In this case, the dispute was about the foundations of the share system, that is, how the income from the sale of the fish was divided between the crew and the vessel owner. She added that the vessel owners were dissatisfied with the system because it did not take account of the high investment costs incurred for the purchase of new boats and the introduction of technology in the sector. She noted that a mechanism had been established by law to settle prices between the parties outside the marketplace and had served to settle numerous disputes.

The speaker added that one element raising difficulties in this case was that fishermen were members of three different trade unions with different collective agreements which were interlinked among them by identical rules on how to share the catch value between vessel owners and fishermen. The speaker emphasized that fishermen within the country

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had very good salaries and were among the highest paid workers in the country. In 2000, their salaries were 70 per cent higher than the average male worker. She also emphasized that the intervention by the Government was not only directed against the workers but also against employers. She recalled that in 1998 a collective dispute had ended by an Act similar to the one issued in 2001 after the employers had turned down the mediator's proposals.

She observed that the collective agreements in the sector had now expired and negotiations had started between the parties and she trusted that the parties would be able to conclude collective agreements without interference. She concluded by saying that, given the situation in other sectors in Iceland where collective agreements had been negotiated without problems, the criticisms made by the Committee of Experts were unfounded.

The Government member of Argentina (Mr. CORRES) expressed the hope that the Government of Iceland would in the future guarantee full exercise of freedom of association to a sector as important to international competition as fishing.

The Government representative of Iceland noted that his country took pride in the management system which applied in the fishing sector as it was the most efficient from an economic point of view and the most environmentally friendly. Although the system, which had been developed for the last 20 years, was not perfect, efforts were made to solve existing problems. Fishing was the only sector in which Iceland, a small country of 300,000 inhabitants, counted on a global scale. This was because of the highly efficient nature of the system in place. Five thousand fishermen in Iceland produced 2 per cent of the total cuts of fish in the world. Elsewhere, 200,000 fishermen would be necessary to produce the same units. This demonstrated why fishermen in Iceland were so well paid, their average income ranging between 50,000 and 150,000 euros. The objective of the management system was to increase the value of the fish and the income of the fishermen

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and to protect society. He urged the parties to negotiate and conclude an agreement during the forthcoming round of negotiations so that any discussion about governmental intervention would become purely academic.

The Worker members pointed out that there had been an almost complete negation of the right to collective bargaining in the fishing sector in Iceland for almost ten years. While that fundamental right appeared not to be applicable in the fishing sector, a legal tradition and well-defined structures in respect of bargaining existed in other economic sectors. The arguments of the Government continued to be the same, despite the fact that the Committee on Freedom of Association and the Committee of Experts had noted that public interference through legislation in collective disputes and collective bargaining was not permissible. The economic arguments brought by the Government were well known, but it had been shown that they had no bearing on the fundamental right to collective bargaining.

The Worker members therefore requested the Government to undertake that it would not intervene in the ongoing negotiations between fishermen and their employers and, more generally, that it undertake to abstain from interfering in all ongoing and future collective negotiations.

The Worker members also requested that the Government be asked to provide a detailed report to the next session of the Committee of Experts for an examination of the progress made and also to examine in the future whether collective bargaining in the fishing sector is taking place in conformity with the Convention.

The Employer members observed that the factual basis of this case, which concerned the *effective recognition* of the right to collective bargaining and not the right itself, was clear and there was agreement on the facts. They noted that the only consensus reached in this case was that the Government should foster national negotiations appropriate to national conditions. He recalled that the position of the Committee of

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Experts on compulsory arbitration in the context of Article 4 was reflected in paragraph 259 of the 1994 General Survey on Freedom of Association and Collective Bargaining according to which "the parties should be given every opportunity to bargain collectively, during a sufficient period, with the help of independent facilitators (mediator, conciliator, etc.) and machinery and procedures designed with the foremost objective of facilitating collective bargaining". They concluded by suggesting that the Committee of Experts should take a fresh look at the issue in the context of Article 4 of Convention No. 98.

The Committee took note of the information provided by the Government representative and the discussion that followed. The Committee noted that the comments of the Committee of Experts referred to the adoption of legislation which imposed compulsory arbitration in the fishing sector, thus interfering with the process of free and voluntary collective bargaining. The Committee observed that the question of the intervention of the public authorities in collective bargaining in this and other sectors had emerged on various occasions. The Committee also noted the wish expressed by the social partners of Iceland that the Government abstain in the future from all forms of interference in the collective bargaining process. The Committee took due note of the Government's statement according to which it was open to consultations with the social partners in order to examine the problems which existed in the fishing sector, which represented a branch of great importance for the country. The Committee expressed the hope that the Government would carry out a revision of the mechanisms and procedures in the area of collective bargaining and their implementation in practice in the fishing sector in full consultation with the social partners concerned, in order to improve the mechanisms of free and voluntary negotiation in conformity with Article 4 of the Convention. The Committee requested the Government to send detailed information on the measures adopted in this respect in its next report to the Committee of Experts.

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