### Report of the Committee on Freedom of Association (207th)

#### 207th Report

<table>
<thead>
<tr>
<th>207th Report</th>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1-28</td>
<td>1-7</td>
</tr>
<tr>
<td>Cases not calling for further examination</td>
<td>29-87</td>
<td>7-16</td>
</tr>
<tr>
<td>Case No. 861 (Bangladesh): Complaint presented by the World Federation of Trade Unions and the Trade Unions International of Agricultural, Forestry and Plantation Workers against the Government of Bangladesh</td>
<td>29-33</td>
<td>7-8</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>34</td>
<td>8</td>
</tr>
<tr>
<td>Case No. 972 (Peru): Complaint presented by the Latin-American Central of Workers against the Government of Peru</td>
<td>35-40</td>
<td>8-9</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>41</td>
<td>9</td>
</tr>
<tr>
<td>Case No. 979 (Spain): Complaint presented by the Policemen’s Trade Union Federation against the Government of Spain</td>
<td>42-52</td>
<td>9-11</td>
</tr>
<tr>
<td>A. Allegations of the complainant</td>
<td>44-47</td>
<td>9-10</td>
</tr>
<tr>
<td>B. Reply of the Government</td>
<td>48-50</td>
<td>10</td>
</tr>
<tr>
<td>C. Conclusions of the Committee</td>
<td>51-52</td>
<td>10-11</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>53</td>
<td>11</td>
</tr>
<tr>
<td>Case No. 982 (Costa Rica): Complaint presented by the National Union of Workers in the Construction, Wood and Building Materials Industries against the Government of Costa Rica</td>
<td>54-63</td>
<td>11-12</td>
</tr>
<tr>
<td>Case No.</td>
<td>Description</td>
<td>Paragraphs</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>993 (Morocco)</td>
<td>Complaint presented by the Regional Federation of Trade Unions of Rabat (Moroccan Federation of Labour) against the Government of Morocco</td>
<td>65-69</td>
</tr>
<tr>
<td>1001 (Spain)</td>
<td>Complaint presented by the Workers' Unitary Trade Union Confederation against the Government of Spain</td>
<td>71-78</td>
</tr>
<tr>
<td>1013 (Upper Volta)</td>
<td>Complaint presented by the International Federation of Teachers' Unions against the Government of Upper Volta</td>
<td>80-86</td>
</tr>
<tr>
<td>886 (Canada)</td>
<td>Complaint presented by the Canadian Association of University Teachers and the Canadian Labour Congress against the Government of Canada (British Columbia)</td>
<td>88-98</td>
</tr>
<tr>
<td>905 (USSR)</td>
<td>Complaints presented by the International Confederation of Free Trade Unions and the World Confederation of Labour against the Government of the USSR</td>
<td>100-129</td>
</tr>
<tr>
<td>Case No. 905 (USSR)</td>
<td>Previous examination of the case by the Committee</td>
<td>105-114</td>
</tr>
<tr>
<td>Paragraphs</td>
<td>Pages</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>B. New communications from the WCL and the ICFTU</td>
<td>115-116 24</td>
<td></td>
</tr>
<tr>
<td>C. Observations of the Government</td>
<td>117-121 24-26</td>
<td></td>
</tr>
<tr>
<td>D. Conclusions of the Committee</td>
<td>122-129 26-28</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>130 28</td>
<td></td>
</tr>
<tr>
<td>Case No. 980 (Costa Rica): Complaint presented by the General Confederation of Workers (CGT) against the Government of Costa Rica</td>
<td>131-142 29-31</td>
<td></td>
</tr>
<tr>
<td>A. Allegations of the complainant</td>
<td>133-134 29</td>
<td></td>
</tr>
<tr>
<td>B. Reply of the Government</td>
<td>135-139 29-30</td>
<td></td>
</tr>
<tr>
<td>C. Conclusions of the Committee</td>
<td>140-142 30-31</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>143 31</td>
<td></td>
</tr>
<tr>
<td>Case No. 989 (Greece): Complaints presented by the Confederation of Hospital Workers of Greece, the Workers' and Employers' Centre of Larissa and Chalcidicum, the North Dodecanese Workers' Union, the Construction Workers' Union and the Federation of Hotel Workers of Kos against the Government of Greece</td>
<td>144-148 31-32</td>
<td></td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>149 32</td>
<td></td>
</tr>
<tr>
<td>Cases in which the Committee has reached interim conclusions</td>
<td>150-336 33-77</td>
<td></td>
</tr>
<tr>
<td>Case No. 823 (Chile): Complaints presented by the International Confederation of Free Trade Unions, the World Confederation of Labour, the World Federation of Trade Unions and several other trade union organisations against the Government of Chile</td>
<td>150-196 33-42</td>
<td></td>
</tr>
<tr>
<td>A. Introduction</td>
<td>150-158 33-34</td>
<td></td>
</tr>
<tr>
<td>B. Legislation on trade union organisations and collective bargaining</td>
<td>159-167 35-36</td>
<td></td>
</tr>
<tr>
<td>C. Dissolution of trade union organisations</td>
<td>168-176 37-38</td>
<td></td>
</tr>
<tr>
<td>D. Dismissal of trade unionists</td>
<td>177-183 38-39</td>
<td></td>
</tr>
<tr>
<td>E. Arrest and disappearance of trade unionists</td>
<td>184-196 39-42</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>197 42-43</td>
<td></td>
</tr>
<tr>
<td>Case No. 958 (Brazil): Complaints presented by the National Labour Front, the World Confederation of Labour, the International Con-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
federation of Free Trade Unions, the International Metalworkers' Federation and the World Federation of Trade Unions against the Government of Brazil ................................. 198-219 43-48

A. Allegations of the complainants ............ 200-205 44-45
B. Reply of the Government ...................... 206-211 45-46
C. Conclusions of the Committee ............... 212-219 46-48
Recommendations of the Committee ............. 220 48

Case No. 963 (Grenada): Complaint presented by the World Confederation of Labour against the Government of Grenada ...................... 221-229 49-51

A. Allegations of the complainant ............... 223-224 49
C. The Conclusions of the Committee .......... 227-229 50-51
Recommendations of the Committee .......... 230 51

Case No. 983 (Bolivia): Complaints presented by the International Confederation of Free Trade Unions, the World Confederation of Labour, the World Federation of Trade Unions and other workers' organisations against the Government of Bolivia ............................... 231-251 51-55

A. Previous examination of the case ........... 233-235 52
B. New developments ............................. 236-245 53-54
C. Conclusions of the Committee ............... 246-251 54-55
Recommendations of the Committee .......... 252 55-56

Case No. 991 (Costa Rica): Complaint presented by the Trade Unions International of Agricultural, Forestry and Plantation Workers (UISTABP) against the Government of Costa Rica ................................. 253-261 56-58

A. Allegations of the complainant ............... 255 56
B. Reply of the Government ...................... 256-258 57
C. Conclusions of the Committee ............... 259-261 57-58
Recommendation of the Committee .......... 262 58

Case No. 994 (Colombia): Complaint presented by the Trade Unions International of Food, Tobacco, Hotel and Allied Industries Workers (WFTU) against the Government of Colombia ... 263-273 58-60
### Cases Nos. 997 and 999 (Turkey): Complaints presented by the Trade Unions International of Workers in Commerce, the Trade Unions International of Public and Allied Employees, the World Confederation of Labour, The Trade Unions International of Workers of the Building, Wood and Building Materials Industries and the World Federation of Trade Unions against the Government of Turkey

**A. Introduction**

**B. Allegations of the complainants**

**C. Reply of the Government**

**D. Additional information**

**E. Conclusions of the Committee**

**Recommendations of the Committee**

### Cases Nos. 1001 (Haiti): Complaint presented by the Union of Haitian Workers against the Government of Haiti

**Recommendations of the Committee**

### Case No. 1012 (Ecuador): Complaints presented by the National Federation of Peasant Organisations, the Trade Unions International of Agricultural, Forestry and Plantation Workers and the Permanent Congress of Trade Union Unity of Latin American Workers against the Government of Ecuador

**A. Allegations of the complainants**

**B. Reply of the Government**

**C. Conclusions of the Committee**

**Recommendation of the Committee**

---

<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>265-267</td>
<td>59</td>
</tr>
<tr>
<td>268-270</td>
<td>59</td>
</tr>
<tr>
<td>271-273</td>
<td>59-60</td>
</tr>
<tr>
<td>274</td>
<td>60</td>
</tr>
<tr>
<td>275-314</td>
<td>60-69</td>
</tr>
<tr>
<td>275-278</td>
<td>60-61</td>
</tr>
<tr>
<td>279-286</td>
<td>61-62</td>
</tr>
<tr>
<td>287-291</td>
<td>62-64</td>
</tr>
<tr>
<td>292-301</td>
<td>64-66</td>
</tr>
<tr>
<td>302-314</td>
<td>66-69</td>
</tr>
<tr>
<td>315</td>
<td>69</td>
</tr>
<tr>
<td>316-323</td>
<td>74-75</td>
</tr>
<tr>
<td>324</td>
<td>75</td>
</tr>
<tr>
<td>325-335</td>
<td>75-77</td>
</tr>
<tr>
<td>327-330</td>
<td>75-76</td>
</tr>
<tr>
<td>331-332</td>
<td>76</td>
</tr>
<tr>
<td>333-335</td>
<td>76-77</td>
</tr>
<tr>
<td>336</td>
<td>77</td>
</tr>
</tbody>
</table>
Earlier reports of the Committee on Freedom of Association have been published as follows:

<table>
<thead>
<tr>
<th>Report</th>
<th>Publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3</td>
<td>Sixth Report (1952), App. V</td>
</tr>
<tr>
<td>4-6</td>
<td>Seventh Report (1953), App. V</td>
</tr>
<tr>
<td>7-12</td>
<td>Eighth Report (1954), App. V</td>
</tr>
</tbody>
</table>

**Official Bulletin**

<table>
<thead>
<tr>
<th>Vol.</th>
<th>Year</th>
<th>No.¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXVII</td>
<td>1954</td>
<td>4</td>
</tr>
<tr>
<td>XXXVIII</td>
<td>1955</td>
<td>1</td>
</tr>
<tr>
<td>XXXIX</td>
<td>1956</td>
<td>1</td>
</tr>
<tr>
<td>XXXIX</td>
<td>1956</td>
<td>4</td>
</tr>
<tr>
<td>XL</td>
<td>1957</td>
<td>2</td>
</tr>
<tr>
<td>XLI</td>
<td>1958</td>
<td>3</td>
</tr>
<tr>
<td>XLII</td>
<td>1960</td>
<td>3</td>
</tr>
<tr>
<td>XLIV</td>
<td>1961</td>
<td>3</td>
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<tr>
<td>XLV</td>
<td>1962</td>
<td>1 S</td>
</tr>
<tr>
<td>XLV</td>
<td>1962</td>
<td>2 S II</td>
</tr>
<tr>
<td>XLVI</td>
<td>1962</td>
<td>3 SII</td>
</tr>
<tr>
<td>XLVII</td>
<td>1963</td>
<td>1 S</td>
</tr>
<tr>
<td>XLVII</td>
<td>1963</td>
<td>2 S II</td>
</tr>
<tr>
<td>XLVIII</td>
<td>1964</td>
<td>3 SII</td>
</tr>
<tr>
<td>XLIX</td>
<td>1965</td>
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<tr>
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<td>1965</td>
<td>2 S</td>
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<td>LX</td>
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<td>3 SII</td>
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<tr>
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<td>2 S</td>
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<td>3 SII</td>
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<tr>
<td>LII</td>
<td>1967</td>
<td>1 S</td>
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<tr>
<td>LIII</td>
<td>1967</td>
<td>2 S</td>
</tr>
<tr>
<td>LIV</td>
<td>1967</td>
<td>3 SIII</td>
</tr>
<tr>
<td>LV</td>
<td>1968</td>
<td>1 S</td>
</tr>
<tr>
<td>LVII</td>
<td>1968</td>
<td>2 S</td>
</tr>
<tr>
<td>LX</td>
<td>1969</td>
<td>1 S</td>
</tr>
<tr>
<td>LXII</td>
<td>1969</td>
<td>2 S</td>
</tr>
<tr>
<td>LXIII</td>
<td>1969</td>
<td>4 S</td>
</tr>
<tr>
<td>LXIV</td>
<td>1970</td>
<td>2 S</td>
</tr>
<tr>
<td>LXV</td>
<td>1970</td>
<td>4 S</td>
</tr>
<tr>
<td>LXVI</td>
<td>1971</td>
<td>2 S</td>
</tr>
<tr>
<td>LXV</td>
<td>1971</td>
<td>4 S</td>
</tr>
<tr>
<td>LXVII</td>
<td>1972</td>
<td>S</td>
</tr>
<tr>
<td>LXVIII</td>
<td>1973</td>
<td>S</td>
</tr>
<tr>
<td>LXIX</td>
<td>1974</td>
<td>S</td>
</tr>
</tbody>
</table>

¹ The letter S, followed as appropriate by a roman numeral, indicates a supplement.

² For communications relating to the 23rd and 27th Reports see Official Bulletin, Vol. XLIII, 1960, No. 3.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>146-148</td>
<td>LVIII</td>
<td>1975</td>
<td>Series B, Nos. 1-2</td>
</tr>
<tr>
<td>149-152</td>
<td>LVIII</td>
<td>1975</td>
<td>&quot;</td>
</tr>
<tr>
<td>153-155</td>
<td>LIX</td>
<td>1975</td>
<td>&quot;</td>
</tr>
<tr>
<td>156-157</td>
<td>LIX</td>
<td>1976</td>
<td>&quot;</td>
</tr>
<tr>
<td>158-159</td>
<td>LIX</td>
<td>1976</td>
<td>&quot;</td>
</tr>
<tr>
<td>160-163</td>
<td>LX</td>
<td>1977</td>
<td>&quot;</td>
</tr>
<tr>
<td>164-167</td>
<td>LX</td>
<td>1977</td>
<td>&quot;</td>
</tr>
<tr>
<td>168-171</td>
<td>LX</td>
<td>1977</td>
<td>&quot;</td>
</tr>
<tr>
<td>172-176</td>
<td>LXI</td>
<td>1978</td>
<td>&quot;</td>
</tr>
<tr>
<td>177-186</td>
<td>LXI</td>
<td>1978</td>
<td>&quot;</td>
</tr>
<tr>
<td>187-189</td>
<td>LXII</td>
<td>1978</td>
<td>&quot;</td>
</tr>
<tr>
<td>190-193</td>
<td>LXII</td>
<td>1979</td>
<td>&quot;</td>
</tr>
<tr>
<td>194-196</td>
<td>LXII</td>
<td>1979</td>
<td>&quot;</td>
</tr>
<tr>
<td>197-198</td>
<td>LXII</td>
<td>1979</td>
<td>&quot;</td>
</tr>
<tr>
<td>199-201</td>
<td>LXIII</td>
<td>1980</td>
<td>&quot;</td>
</tr>
<tr>
<td>202-203</td>
<td>LXIII</td>
<td>1980</td>
<td>&quot;</td>
</tr>
<tr>
<td>204-206</td>
<td>LXIII</td>
<td>1980</td>
<td>&quot;</td>
</tr>
</tbody>
</table>
INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva on 23 February 1981 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of Argentinian and Spanish nationality were not present during the examination of the cases relating to Argentina (Case No. 842) and Spain (Cases Nos. 979 and 1001).

2. The Committee recommends the Governing Body to examine the present report at its 215th Session.  

Cases before the Committee

3. The Committee had before it 75 cases in which the complaints had been submitted to the governments concerned for observations. The Committee reached final conclusions in 11 cases and interim conclusions in 10 cases; the remaining cases were adjourned for various reasons.

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1 Earlier reports have been published as indicated in the table following the table of contents.

2 The 207th Report was examined and approved by the Governing Body at its 215th Session (March 1981).
Cases adjourned

4. The Committee adjourned until its next session the cases relating to United Kingdom/Hong Kong (Case No. 1005), Greece (Cases Nos. 1006, 1008, 1019 and 1021), Colombia (Cases Nos. 1009 and 1023), Spain (Case No. 1010), Senegal (Case No. 1011), Dominican Republic (Case No. 1014), Thailand (Case No. 1015), El Salvador (Case No. 1016), Morocco (Cases Nos. 1017 and 1018), Mali (Case No. 1020), Malaysia (Case No. 1022), India (Case No. 1024), Haiti (Case No. 1025), Guatemala (Case No. 1026) and Paraguay (Case No. 1027), concerning which it is still awaiting information or observations from the governments concerned. All these cases concern complaints brought since the last session of the Committee.

5. Not having received the observations or information requested from the Governments in the cases relating to Canada (Case No. 964) and Morocco (Case No. 992), which the Committee already had before it at its last session, it adjourned these cases and requests all the Governments concerned to send their observations at an early date.

6. The Committee has also adjourned the cases relating to Sri Lanka (Cases Nos. 988, 990 and 1003), India (Case No. 995) and Greece (Case No. 996) in respect of which the Governments concerned have stated that their observations will be sent soon.

7. As for the cases relating to Greece (Cases Nos. 968 and 998), Colombia (Cases Nos. 919 and 977), Belgium (Case No. 981) and Brazil (Case No. 1002) the Committee has received the Governments' observations and intends to examine these cases in substance at its next session.

8. As regards the case of Nicaragua (Case No. 1007), relating to the murder of the employer official Mr. Jorge Salazar Arquillo and to the imprisonment of other employer leaders, the Committee regrets that the Government's observations only arrived one day before the present session, a fact which has necessitated the adjournment of this case until its next session.

9. As for Cases Nos. 874 and 900 relating to Spain, the Government has sent certain information in a communication dated 23 January 1981. Regarding Case No. 874, the Government states that the basic Act on strikes is being drawn up. As for Case No. 900, the Government states that contacts with the parties concerned regarding the sharing of trade union assets are being carried out. The Committee takes note of this information and requests the Government to keep it informed of any development in the matter.

10. Regarding the case of Kenya (Case No. 984), the Government sent its observations in a communication dated 13 February 1981. The complaints concern the dissolution of two trade union organisations one of which is the Union of Kenya Civil Servants. In its communication, the Government states that all employees, including those in the public services, enjoy trade union rights. The Government considers that the Constitution and the Recognition Agreement of the organisation in question did not fully take into consideration the conditions which prevail in the country and that these texts contained provisions which could lead to misuse of the trade union. It is for these reasons, and taking into
account the role of the civil service in the running of the affairs of the State, that it was decided to de-register the Union. However, this organisation was not banned. It adds that since the Government has no intention of denying employees or citizens freedom of association, steps are being taken, in consultation with the civil servants, to clear the way for the formation of a new organisation whose constitution would take full account of the country's conditions and would give due recognition to the special role of the civil service. When these consultations are finished, the civil servants will be free to form a new organisation. The Committee intends to examine this case in substance at its next session. In the meantime, it requests the Government to supply information on the development of the consultations which are taking place.

Missions to certain countries

11. During the discussion of the case of Chile (Case No. 823) at the 213th Session of the Governing Body (May-June 1980), it was suggested that a high-level mission be sent to study the questions outstanding before the Committee on Freedom of Association. The Director-General, with the agreement of the Government, appointed Mr. Nicolas Valticos, Assistant Director-General and Adviser for International Labour Standards to carry out this mission, and, accompanied by Messrs. Manuel Araoz and Bernard Gernigon, he did so from 1 to 7 December 1980. The Committee submits to the Governing Body certain interim conclusions in its present report (paragraphs 150 to 197) which are based on the elements collected by the mission during its stay in Chile.

12. In relation to the case of Argentina (Case No. 842) in respect of which the Committee has presented interim conclusions in several previous reports, in June 1980, the Government of Argentina requested the setting up of direct contacts with the ILO. The Director-General appointed Professor Antonio Malintoppi as his representative, who, accompanied by Mr. Agustin Torres Abreu from the Office of the Legal Adviser to the ILO, carried out this direct contacts mission from 7 to 13 December 1980. The representative of the Director-General met, in particular, the Minister of Labour, Mr. Yamil Keston, the Under-Secretaries, Messrs. Rojas and Vásquez Salazar, and several persons working with this Ministry. He also met the Minister of Social Welfare, Mr. Praga. As for the employers' organisations, the representative of the Director-General met with the Civil Supervisor of the Industrial Union of Argentina (UIA) and with a group of leaders from the Federation of Textile Industries. As for the workers' organisations, he had meetings with officials from the National Labour Committee and the Committee of 20, with a group of leaders from the Committee of 25, with representatives from the National Permanent Committee of Free Trade Unionism and with an official from the Latin American Central of Workers (CLAT). He also visited the headquarters of the Association of Textile Workers (AOTT), the Union of Metallurgical Workers (UOM), the Federation of Post and Telecommunications Workers and Employees (FOECYT), the Argentinian Federation of Rural and Dock Workers (PATRE) and the Union of Construction Workers of the Republic of Argentina (VOCR). Amongst the points raised during the mission were the arrested and missing trade unionists, and the harmonisation of the legislation on occupational associations with the ILO.
Conventions. The Committee intends to examine this case in substance at its next session in the light of the information contained in the mission report of the representative of the Director-General and of any development which might take place both as regards the question of detention and disappearance of trade unionists and as regards the legislation.

13. In relation to the case of Uruguay (Case No. 763) in respect of which the Committee has presented interim conclusions in several previous reports, in May 1980 the Government requested the setting up of direct contacts with the ILO to consider in a broader manner the different areas of common interest that have been examined. The Director-General appointed Professor Philippe Cahier as his representative and he carried out this direct contacts mission together with Mr. Manuel Araoz, Chief of the Freedom of Association Branch, on 3 to 11 January 1981. The representative of the Director-General was received by the President of the Republic, Dr. Aparacio Méndez, and met with the Minister of Labour and Social Security, Dr. Carlos A. Maeso, the Under-Secretary of Labour, Mr. Malvasio, the Chief of the Office for Social Affairs - GHQ of the Armed Forces (ESMACO), Mr. Alonzo, and several of his collaborators. He was also received by the Minister of Foreign Affairs, Dr. Adolfo Polle Martinez, by the Minister of the Interior, General Núñez, and by the President of the High Court of the Military, Colonel Dr. Federico Silva Ledesma. As for the employers, he met with the President and officials of the Chambers of Industries and Commerce, and the Chamber of Commercial Products of the country. In addition, he met with trade union leaders from the various tendencies among which can be cited the President and Secretary-General and other leaders of the General Confederation of Workers of Uruguay (CGTU), leaders of seven bodies which were affiliated to the National Labour Convention (CNT) until it was dissolved in 1973, the President and the Secretary-General of the Trade Union Action of Uruguay (ASU), leaders from the CATUD and representatives of the National Committee of Trade Union Rights (CNDS). He also met, without any outside witnesses, five trade unionists in the prison where they had been detained. Among the different areas covered during the mission were the detention and court trials of trade unionists, the closure of trade union premises, dismissals and the adoption of an act on occupational associations. In regard to this act, the Minister of Labour stated that it has already been before the Council of State for its adoption and he was sure that, whatever is the case, it will be adopted in the first half of this year and most probably before 15 May next. The Committee intends to examine this case in substance at its next session in light of the information contained in the mission report of the representative of the Director-General and of any development that the Government might be able to state regarding the adoption of the new legislation and regarding the situation of the persons who are detained or before the courts.

Urgent appeals

14. Regarding the cases relating to Malaysia (Case No. 965) and Peru (Cases Nos. 967 and 974), the Committee observes that, in spite of the time which has elapsed, the observations of the Governments have not been received. The Committee requests these Governments to send their observations urgently.
15. While noting with concern the troubled situation in El Salvador, the Committee must point out that in relation to Cases Nos. 844, 873, 904, 953, 1000 and 1016, it has still not received the observations requested from the Government. As the majority of these complaints refer to violent deaths, mistreatment, arrests of trade union leaders and occupation of trade union premises, the Committee again requests the Government to send its observations as a matter of urgency. As for Cases Nos. 844, 873 and 904, regarding which an urgent appeal was already made to the Government at the November 1980 session, and in accordance with the procedural rule set out in paragraph 17 of its 127th Report approved by the Governing Body, the Committee will present a report at its next session on the substance of the various points raised in these cases even if the Government's observations have not been received. On the other hand, regarding the case of El Salvador (Case No. 973), the Committee is still awaiting the information requested from the complainants. Consequently, the Committee requests the complainants to send it as soon as possible, and in any case, before 20 April 1981. Finally, as regards Case No. 987, which also refers to this country, the Committee regrets that the Government's reply does not refer to the specific allegations presented by the complainants and thus requests the Government to be kind enough to give it more precise details.

16. As regards the case concerning Sudan (Case No. 940), the Committee made an urgent appeal at its November 1980 session for the Government to send its observations. In accordance with the procedural rule referred to in the previous paragraph, the Committee will present a report on the substance of the case at its next session even if the Government's observations have not been received.

17. Regarding Guatemala (Cases Nos. 954, 957, 975, 978 and 1026), the Committee has still not received the observations requested from the Government. As the majority of these cases refer to violent deaths, mistreatment, arrests of trade union leaders and occupation of trade union premises, the Committee regrets that it has not yet received the observations and, by virtue of the very serious nature of the allegations, earnestly requests the Government to send them urgently. As regards Case No. 957, regarding which it already made an urgent appeal to the Government at its November 1980 session, in conformity with the procedural rule referred to in paragraph 15 supra, the Committee will present a report on the substance of this case at its next session even if the Government's observations have not been received.

Effect given to the recommendations of the Committee and of the Governing Body

18. As regards the case concerning Japan (Case No. 792), in a communication of 7 January 1981, the Government states that the appeal is still pending before the Tokyo High Court in the proceedings against Messrs. Makieda and Masuda, leaders of the Japanese Teachers' Union. The Committee notes this information and requests the Government to keep it informed of the outcome of this appeal.
19. As regards the case concerning Colombia (Case No. 871), the Committee requested the Government to inform it of any penalties imposed on those responsible for the death of Mr. Justiniano Lama, an indigenous leader, and as to the sentence pronounced in the case of Mr. Abel del Pino, an official of the National Agrarian Federation. In a communication dated 14 October 1980 (received by the ILO on 19 December), the Government states that Mr. Abel del Pino is at the moment President of the National Agrarian Federation and enjoys full freedom. The Committee notes this information and again requests the Government to inform it of any penalties imposed on those responsible for the death of Mr. Justiniano Lama.

20. As for the case concerning Peru (Case No. 884), in a communication dated 22 December 1980, the Government states that it is studying the possibility of generally reinstating the workers dismissed following the strike in July 1977. The Committee notes this information and requests the Government to keep it informed of any development in this respect.

21. As regards the case relating to Guatemala (Case No. 891), in a communication dated 9 January 1981, the Government states that as for the request for legal personality made by the Trade Union of Workers of the Urban Bus Consortium "La Florida" (FLORIDASA), during the last three years no new petition has been presented and it repeats that the file was abandoned by those concerned themselves. The Committee notes the information submitted by the Government in relation to this point.

22. As regards Sri Lanka (Case No. 913), concerning Mr. Chandrasena's case against the Ceylon Petroleum Corporation for his dismissal, in a communication dated 31 January 1981 the Government states that Mr. Chandrasena has died but that a case is continuing before the Labour Court.

23. As regards a case concerning India (Case No. 922), the Committee asked the Government to keep it informed of the outcome of the proceedings and deliberations in the case of the dismissal of five union members and the forced retirement of a union official. In this respect, in a communication dated 29 December 1980, the Government states that the cases concerning Messrs. Satya Narain and Khalil Mian have been sent to the Industrial Tribunal for adjudication. The Government adds that the cases of the other persons are proceeding through conciliation. The Committee notes this information and that the Government will send more information in this respect.

24. In relation to a case concerning Greece (Case No. 932), the Committee requested the Government, to transmit the text of the verdict concerning Mr. Mavrides accused of having unjustly dismissed trade union leaders. The Committee notes that the Government, in a communication dated 14 January 1981, sent the text of the verdict sentencing Mr. Mavrides to three months' detention and a fine of 20,000 drachmas.

25. As for the case of Morocco (Case No. 934), the Committee asked the Government to send it information on the measures taken concerning the workers arrested or dismissed following the strikes organised in March and April 1979 in the teaching and health sectors. The Committee notes that the Government, in a communication dated 6 February 1981, states that the reinstatement of arrested or dismissed workers is underway.
26. As for Guyana (Case No. 941), the Committee requested the Government to keep it informed of the discussions it is having with the Trades Union Congress regarding the 82 dismissed workers. In a communication of February 1981, the Government states that the 82 dismissed workers were invited to come for interviews for re-employment. Of them 58 turned up for the interview and 55 indicated that they were desirous of being re-employed. The Committee notes the reinstatement of the majority of the dismissed workers.

27. In the case relating to Turkey (Case No. 985), the Committee requested the Government to keep it informed of the results of the judicial inquiry into the death of Kemal Turkler and to transmit the text of any judgement which may be handed down concerning this matter. In a communication dated 27 January 1981, the Government states that a certain number of persons were arrested who were allegedly implicated in the murder of Mr. Kemal Turkler and that it will send the texts of the relevant judgements as soon as they are handed down.

28. Lastly, the Committee notes that the Governments of Paraguay (Case No. 854), Honduras (Cases Nos. 929/938), Colombia (Case No. 948) and Peru (Case No. 960), have not yet responded to the Committee’s request to be kept informed of developments in these cases. Therefore the Committee requests these Governments to be good enough to communicate this information as soon as possible.

CASES NOT CALLING FOR FURTHER EXAMINATION

Case No. 861

COMPLAINT PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS AND THE TRADE UNIONS INTERNATIONAL OF AGRICULTURAL, FORESTRY AND PLANTATION WORKERS AGAINST THE GOVERNMENT OF BANGLADESH

29. The Committee has already examined this case on several occasions in the past, the most recent of which was in November 1980 when it submitted interim conclusions in its 204th Report, paragraphs 308 to 318, approved by the Governing Body at its 214th Session (November 1980). The Government sent its observations on the outstanding issue in a letter dated 14 January 1981.

30. Bangladesh has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

31. After the Committee last examined this case there remained the outstanding issue of the violent incidents at two jute mills, caused according to the complainants by the government-backed Jatiotabadi Sramik Dal Federation, and allegedly involving brutal attacks on hundreds of workers and the looting of their property. The Committee had noted the Government’s statement that the Director of Labour had held an inquiry into the alleged incidents, whose
Reports of the Committee on Freedom of Association

Report appeared to indicate that the right of workers to freely choose their representatives had been safeguarded. Nevertheless, it was noted that the Government had still not furnished further details concerning the alleged violence itself and had not indicated whether an inquiry had been carried out by the appropriate authorities in this regard resulting in punishment or acquittal of the offenders if the facts deemed it necessary. The Governing Body, on the recommendation of the Committee, therefore requested the Government again to supply further details on this specific allegation.

32. The Government, in its letter of 14 January 1981, states that further investigation has been carried out into the alleged incident by the Ministry of Labour and Industrial Welfare. It has been found that the government machinery responsible for law and order acted quickly during the incident of inter-union rivalry for the possession of the union office and that no serious violence affecting the life and property of workers had occurred. The Government goes on to state that the trade unions in the two jute mills are functioning in an atmosphere of peace and activity.

33. In its previous examination of this case, the Committee pointed out that in similar cases, where acts of violence have been committed, the Committee has considered that the situation as it existed (affecting a large number of trade unionists) was serious enough to warrant vigorous action by the authorities to restore order. In this case the question of whether serious violence affected the lives and property of numerous workers is disputed by the Government, but the Committee nevertheless notes the Government's statement that its machinery responsible for law and order acted during the incident which would seem to imply a degree of seriousness. In any event it is noted that investigations into the incident have been carried out by the Ministry of Labour. The Committee notes however that the Government does not mention whether an inquiry was carried out by independent judicial authorities.

34. Nevertheless, in view of the fact that, according to the Government, the trade unions in the two jute mills are now functioning in an atmosphere of peace and activity, the Committee recommends the Governing Body to decide that, in the circumstances, this case does not call for further examination.

Case No. 972

COMPLAINT PRESENTED BY THE LATIN-AMERICAN CENTRAL OF WORKERS AGAINST THE GOVERNMENT OF PERU

35. In a telegram dated 12 June 1980 the Latin-American Central of Workers (CLAT) presented a complaint concerning alleged infringements of the exercise of trade union rights in Peru. The text of this communication was transmitted to the Government, which presented its observations in a letter of 19 September 1980.

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1 See, for example, 139th Report, Case No. 721 (India), para. 510.
36. Peru has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

37. The complainant organisation alleges that, following the general strike of June 1980, which was observed by 26,000 workers of the Social Security Institute, 45 trade union leaders were arrested.

38. In its communication of 19 September 1980, the Government indicates, on the basis of information obtained from the President of the Peruvian Social Security Institute, that the workers who followed the leaders of the Central Union of Workers of the Institute have not been penalised for taking part in the last work-stoppage launched by the Union. In addition, the Government affirms that the 45 trade union leaders referred to in the CLAT complaint have likewise not been imprisoned.

39. In accordance with the established procedure the complainant organisation was informed of the Government's reply on 3 October 1980, and was requested to submit its observations on the matter. Since then, it has not supplied any further information.

40. The Committee thus notes that in its reply the Government has refuted the allegations concerning the arrest of the 45 trade union leaders in the course of a labour dispute at the Social Security Institute and that the complainants have not contested this reply.

41. In these circumstances the Committee recommends the Governing Body to decide that the case does not call for further examination.

Case No. 979

COMPLAINT PRESENTED BY THE POLICEMEN'S TRADE UNION FEDERATION AGAINST THE GOVERNMENT OF SPAIN


43. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

44. USP alleges that the military authorities placed eight members of the National Police under arrest for one month for having
attended a public meeting, convened by the Asturias Provincial Trade Union of USP in Oviedo on 3 March 1980, in which information was given on the proceedings of the First National Congress of USP.

45. USP also states that the eight policemen were notified of their arrest on 20 March 1980 and that they were released on 3 April 1980 after being pardoned.

46. USP also alleges that administrative action is being taken against the national policemen concerned and that they have been suspended.

47. In its communication of 9 August 1980 the complainant alleges that the policemen have received the text of a decision transferring them to another garrison for service reasons.

B. Reply of the Government

48. In its communication of 23 January 1981 the Government states that the public meeting held on 3 March 1980 discussed subjects related to the proceedings of the First National Congress of USP and the question of democracy within the National Police (relinquishment of dependence on the army and organisation of the national police as a civil corps); the chairman then threatened to invade the barracks to enforce the line supported by the meeting.

49. According to the Government the military authorities sentenced the eight national policemen who had attended this public meeting to one month's arrest for a minor breach of military duty, and the policemen did not appeal against this measure. The sanction was based on Royal Legislative Decree 706/77 of 1 April to apply Royal Legislative Decree 10/1977 of 8 February to the National Police; section 2 of the latter decree makes it unlawful to "attend public meetings of a political or trade union nature organised by parties, groups or associations pursuing political or trade union objectives" and "to attend any other public meetings of a political or trade union nature in uniform or in a military capacity".

50. The Government states that the disciplinary sanction against the eight national policemen was suspended when it was found that the facts of the case were not such as to warrant their dismissal from the service. Their transfer was ordered for service reasons unconnected with the case, under section 522 of the Police Regulations, and was not in the nature of a sanction.

C. Conclusions of the Committee

51. The Committee notes that the present complaint refers to sanctions imposed on eight members of the National Police for having attended a public meeting convened by the Provincial Union of USP in Oviedo on 3 March 1980.

52. Having examined the legal texts to which USP and the Government refer, the Committee notes that section 2 of Royal
Legislative Decree 10/1977 of 8 February, which applies to the National Police under Royal Legislative Decree 706/77 of 1 April, prohibits members of the armed forces from joining political or trade union organisations and from attending public meetings of a political or trade union nature. In this connection the Committee wishes to point out that the fact that Article 9(1) of Convention No. 87 stipulates that the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws and regulations does not warrant the assumption that any limitations or exclusions imposed by the legislation of a State as regards the trade union rights of the armed forces and the police are contrary to the Convention; this is a matter which has been left to the discretion of the States Members of the ILO.¹ Accordingly, it is not for the Committee to give an opinion on the sanctions imposed on the members of the National Police in this case for taking part in the public meeting held on 3 March 1980 by the Asturias Provincial Union of the USP.

53. In these circumstances the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 982

COMPLAINT PRESENTED BY THE NATIONAL UNION OF WORKERS IN THE CONSTRUCTION, WOOD AND BUILDING MATERIALS INDUSTRIES AGAINST THE GOVERNMENT OF COSTA RICA

54. The Committee examined this case in November 1980, when it submitted an interim report to the Governing Body.²

55. Since its last examination of the case, the Committee has received a communication from the Government dated 2 December 1980 and another dated 13 January 1981.

56. Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

57. The allegations in this case related to the strike held on 19 May 1980 by the workers of Staves, Barrels and Parquet Inc. (STABAPARI), following repeated demands by the complainant organisation for the application of the collective agreement in

¹ See 145th Report, Case No. 778 (France), paras. 19 and 20.

² See 204th Report, paragraphs 361 to 371, approved by the Governing Body at its 214th Session in November 1980.
force and the dismissal of 25 workers without respecting the terms of that agreement. The complainant also referred to the dismissal of another 60 workers on the day after the agreement putting an end to the strike was signed, and to the failure on the part of the Government and the undertaking to observe that agreement.

58. It further referred to alleged acts of physical assault by the undertaking's manager against workers and to alleged anti-union interference by the Ministry of Labour (officials of the Ministry of Labour had called a meeting in order to induce the workers to give up their trade union organisation and appoint in its place a labour relations board).

59. Regarding the pending questions, the Committee recommended to the Governing Body to request the Government for the text of the judgement in the case against the manager of the undertaking and for its observations on the alleged anti-union interference.

B. Government's reply

60. In its communication of 13 January 1981, the Government states that as the Public Prosecutor had considered that there was no proof to support the allegation of assault made by the complainant against the undertaking's manager and in the absence of charges laid against him by the trade union leaders of the complainant organisation or by anyone else - regarding which the Government sends a certification - the criminal courts did not intervene in the matter.

61. In its communications, the Government also states that the alleged anti-union interference referred to by the complainant in its confused communication of 2 August 1980 does not relate to the labour dispute at the STABAPARI undertaking but concerns a dispute at another undertaking, which terminated in an agreement, signed by the trade union representatives among others, agreeing to the establishment of the labour relations board mentioned in the allegations.

C. Committee's conclusions

62. The Committee notes that the complainant organisation did not bring charges before the courts in relation to the alleged intent of the manager of the STABAPARI undertaking to commit physical assault against workers and that the criminal courts did not intervene in the matter as the Public Prosecutor found there to be no proof in this respect.

63. The Committee also notes that the allegations relating to the alleged anti-union interference referred to by the complainant does not relate to the labour dispute at the STABAPARI undertaking but concern another dispute at another undertaking which terminated in an agreement, signed by the trade union representatives and agreeing to the establishment of the labour relations board mentioned in the allegations.
64. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 993

COMPLAINT PRESENTED BY THE REGIONAL FEDERATION OF TRADE UNIONS OF RABAT (MOROCCAN FEDERATION OF LABOUR) AGAINST THE GOVERNMENT OF MOROCCO

65. In a communication of 15 August 1980, the Regional Federation of Trade Unions of Rabat (Moroccan Federation of Labour) presented a complaint of violation of trade union rights in Morocco. The Government sent its observations in a communication of 17 December 1980.

66. Morocco has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

67. The Regional Federation of Trade Unions of Rabat alleges that three trade union delegates have been dismissed. The complainant organisation explains that, on 5 March 1979, the workers of the farm undertaking SODEA elected their trade union officers at a general assembly and deposited the list with the management of the undertaking and the authorities according to law. On 7 March 1979, however, the management illegally transferred all the trade union officers. The latter, continues the complainant organisation, refused to comply with this decision and referred the matter to the ministry on which the company depends. Yet, before any arbitration could take place the management dismissed three trade union delegates: Lboukili Ahmed, Bouibah Ahmed and Benwakrim Said Mohamed.

68. Parallel with the arbitration procedure initiated with the authorities, the complainant organisation says that it brought a court action against the management of SODEA. One year later, on 6 March 1980, the court of Rabat pronounced the dismissals unwarranted and ordered the management of SODEA to pay financial compensation. The complainant organisation adds that despite this judgement, however, and although the company is a state undertaking, all the approaches made to the Prime Minister, who is at the same time the chairman of the board of the undertaking, failed and the management persisted in its refusal to reinstate the trade union leaders who had been illegally dismissed.

69. In its letter of 17 December 1980 the Government states that the Prime Minister gave instructions to the General Director of SODEA, a photocopy of which it attaches to its communication. In these instructions the Prime Minister requested the General Director to rescind the dismissals of Ahmed Lboukili and Said Mohamed Benwakrim and reinstate them in their former posts, in accordance with the judgement given by the Court of First Instance of Rabat and the social reform measures taken by the King of Morocco. Ahmed Rouibah, continues the Government, has left the country and is working in Japan.
70. In these circumstances, and in the light of the decision of the Court of Rabat requiring the reinstatement of the persons concerned and the measures taken by the Prime Minister, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1001

COMPLAINT PRESENTED BY THE WORKERS' UNITARY TRADE UNION CONFEDERATION AGAINST THE GOVERNMENT OF SPAIN


72. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

73. In its communication of 6 September 1980, the CSUT alleges that the negotiations involved in drafting a ministerial order to regulate the holding of trade union elections in Spain took place without its participation despite the fact that it formed a part of the Mediation, Arbitration and Conciliation Institute which is responsible under law for deciding matters relating to elections. The CSUT also considers that some provisions of the ministerial order are contrary to Convention No. 87.

B. Government's reply

74. The Government states in its communications that the complaint would hardly appear to be receivable since it relates to a future question which had not been decided at the time, i.e. election regulations that were published only on 29 September 1980, or three weeks after the CSUT's communication, and which the complainant was therefore wholly unfamiliar with at the time, as a comparison of the regulations in question with the text of the complaint shows. The Government also states that the CSUT is not one of the most representative trade union organisations, referring on this point to the last report of the Credentials Committee of the International Labour Conference.
C. Committee's conclusions

75. The Committee observes that the Government has questioned the receivability of the complaint and has taken note of its statements in this respect.

76. Having verified that the complaint comes from a workers' organisation and contains allegations concerning the violation of trade union rights, namely the exclusion of an organisation, which claims to be legally constituted, from negotiations involved in drafting election regulations, the Committee considers that the complaint is receivable.

77. As regards the exclusion of the CSUT from negotiations prior to the adoption of the election regulations, the Committee has taken note of the Government's statement that the CSUT is not a representative trade union and has corroborated the reference made in the Third Report of the Credentials Committee of the 66th Session of the International Labour Conference (1980) to a written communication from the Spanish Government stating that the CSUT had obtained only 2.81 per cent of the votes in the last trade union elections.

78. On previous occasions,1 in referring to certain privileges such as priority granted for the purpose of collective bargaining, consultation by governments or the appointment of delegates to international bodies, the Committee considered that it does not run counter to the principles of freedom of association to grant such advantages to trade union organisations deemed to be the most representative on the ground of having the largest membership.

79. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1013

COMPLAINT PRESENTED BY THE INTERNATIONAL FEDERATION OF TEACHERS' UNIONS AGAINST THE GOVERNMENT OF UPPER VOLTA

80. By a communication dated 21 November 1980, the International Federation of Teachers' Unions presented a complaint for violation of trade union rights in Upper Volta. The Government for its part sent its observations in a communication of 31 December 1980.

81. Upper Volta has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

1 See, for example, 105th Report, Case No. 531 (Panama), para. 284.
82. The complaint of the International Federation of Teachers' Unions (FISE) refers to arrests of workers which were made during a labour dispute and the blocking of the payment of wages.

83. FISE transmits the information which it has received from the National Teachers' Union of Upper Volta (SNEAHV), a national organisation affiliated to the Federation and which spearheaded the protest movement. It is alleged that the Government's refusal to negotiate seriously the claims of the school teachers of Upper Volta resulted in a strike which lasted more than 50 days. A peaceful mass demonstration took place on 13, 14 and 15 November 1980 which, it is alleged, led to the arrest of 57 workers. Moreover, in an attempt to break the strike, the Government allegedly blocked the payment of the wages of teaching staff due for October and November 1980.

84. The Government supplies its reply to these allegations in a letter dated 31 December, in which it outlines the current political situation in Upper Volta. It recalls that a Military Committee for the restoration of national progress seized power in the country on 25 November 1980 and suspended the Constitution of the Third Republic. This same Committee set up a new Government on 7 December, which cannot for this reason be held answerable for acts committed by a government which has been overthrown.

85. However, in order to allow the Committee on Freedom of Association to form an opinion, the new Government explains that the National Teachers' Union was obliged to declare a strike of unlimited duration after it had exhausted all the legal means available to obtain the satisfaction of the teachers' demands. Despite sympathy strikes of the Unitary Trade Union of Secondary School and Higher Education Teachers of Upper Volta and other trade unions, and in spite of several attempts at conciliation, the Government of the Third Republic adopted an intransigent attitude and blocked the payment of wages of teachers who were on strike. The new Government confirms that it was at this point that the protest march of 13, 14 and 15 November took place, despite the prohibition of the Government of the Third Republic, and during which arrests were made. However, the new Government points out that all the persons who were arrested were released shortly afterwards.

86. The Government states that the first acts undertaken by the Military Committee for the restoration of the national progress were to order, as an extraordinary measure, the immediate payment of the wages of the teachers on strike for the months of October and November 1980 and to grant complete satisfaction to the claims presented by the SNEAHV with a view to restoring social harmony. The Government includes the decree which revokes the suspension of payment of wages in the appendix to its letter.

87. In these circumstances, the Committee recommends the Governing Body, in the light of the release of the active trade unionists arrested during the teachers' strike and since the wages of the strikers have been paid, to decide that the case does not call for further examination.
CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

Case No. 886

COMPLAINT PRESENTED BY THE CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS AND THE CANADIAN LABOUR CONGRESS AGAINST THE GOVERNMENT OF CANADA (BRITISH COLUMBIA)


89. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

90. The complainants had alleged that the introduction of Bill No. 68 to amend the Notre-Dame University of Nelson Act, 1977, section 7 of which terminated the collective agreements between the University and the Faculty Association of Notre-Dame University (FANDU) and FANDU's certification under the Labour Code of British Columbia as bargaining agent for the University, would deny employees their entitlement to continue employment with the successor employer. The complainants also alleged that Bill No. 68 breached the workers' right to establish and join organisations of their own choosing. The Government had replied that Bill No. 68 had not been passed by the Legislative Assembly; however, according to one of the complainants, a new Bill (No. 82, the Colleges and Provincial Institutes Act) had been introduced to perpetuate the intent of section 7 of Bill No. 68. Furthermore, the complainants had stated that another new Bill (No. 91, Miscellaneous Statutes Amendment Act to amend, inter alia, the Universities Act) provided that the Labour Code of British Columbia would not apply to the relationship of employer and employee between a university and its faculty members, which, according to the complainants, would prohibit the unionisation of university staff and deny them the right to bargain collectively. The Government had replied that university faculty members were not restricted in collective bargaining and it was the practice of universities to recognise voluntary faculty associations for this purpose, thus the withdrawal of certification did not breach Conventions Nos. 87 and 98. The Government also stated that the issue was before the Labour Relations Board and the Supreme Court of British Columbia. The Committee considered that it would be useful to have the decisions taken by these two bodies in order to enable it to reach conclusions with full knowledge of the facts.
91. The Governing Body, on the Committee's recommendation, noted that section 7 of Bill No. 68 had not been adopted by Parliament and requested the Government:

- to send its observations regarding Bill No. 82 (Colleges and Provincial Institutes Act) and

- to supply the texts of the decisions of the Labour Relations Board and the Supreme Court of British Columbia regarding the matters dealt with in the complaint.

B. Further developments

92. In its letter of 5 March 1980, CAUT reiterates its allegations that the amendment to the Universities Act, which became law on 7 October 1977, denies labour code protections (including access to a neutral labour board to administer, supervise and regulate the bargaining relationship and to determine the scope of bargaining) to its members. It states that, while it is true that voluntary bilateral negotiations may and do take place, it is also an accurate statement that academic staff cannot compel such bargaining and even if the university consents to such a process it can impose restrictions on the range of negotiable issues. According to CAUT, in other Canadian labour relations statutes where voluntary recognition is contemplated, it is clear that certification is available to the employees if the employer does not respond meaningfully to the request for voluntary recognition.

93. In its letter of 29 April 1980, the Government sends its observations regarding Bill No. 82, together with a copy of the Bill which became law on 27 September 1977. It states that Part V of this Act guarantees to professional employees of a college or provincial institute the right to organise and become certified as a bargaining agent for the purpose of collective bargaining pursuant to the Labour Code. It claims that the amendment to the Universities Act, which states (section 80A) "the Labour Code of British Columbia does not apply to the relationship of employer and employee between a university and its faculty members", does not preclude such faculty members from enjoying freedom of association and the right to organise. According to the Government, it is the practice of universities to recognise faculty associations for the purpose of collective bargaining.

94. The Government also supplies the texts of the decisions of the Labour Relations Board of British Columbia and the text of the appeal before the Supreme Court of British Columbia which concerned a preliminary argument as to jurisdiction. The Board's decision of 26 September 1979 in the case brought by FANDU's successor organisation against the provincial Minister of Education held that the Minister had violated section 5 of the Labour Code of British Columbia in certain public statements. Section 5 reads "No person shall use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing any person to become or refrain from becoming, or to continue or to cease to be, a member of a trade union". It is stated in the judgement that certain of the offending statements were made just before the introduction of Bill No. 68.
C. Conclusions of the Committee

95. This case concerns allegations that certain British Columbian legislation adopted in 1977 - the amendment to the Universities Act withdrawing the application of the Labour Code of British Columbia from faculty members of a university, and the Colleges and Provincial Institutes Act - prohibit the unionisation of university faculty staff and deny them the right to bargain collectively.

96. The Committee notes that the Government maintains its position that faculty members enjoy freedom of association and the right to organise and that, in practice, faculty associations are recognised voluntarily by universities for the purpose of collective bargaining. It also notes that the Colleges and Provincial Institutes Act does not contain the section originally complained of (section 7 terminating certain collective agreements) and gives certification rights to trade unions which represent the staff of colleges and provincial institutes, which do not include universities.

97. The amendment to the Universities Act does exclude faculty staff from the Labour Code which, according to the complainants, would deny them the right to bargain collectively. The Committee would like to recall generally in this connection the principle that employers should recognise organisations that are representative of workers in a particular field of activity for the purposes of collective bargaining. Nevertheless, in the present case, the Committee observes that both the complainants and the Government admit that voluntary bilateral negotiations can and do take place between such workers and their employers. Although both pieces of legislation were passed in 1977, the complainants do not cite examples of actual difficulties in this practice of voluntary collective bargaining. The Committee, while recalling generally the principle that governments should encourage and promote collective bargaining which is recognised as a legitimate means through which workers and their organisations can defend their occupational interests, is of the opinion that this aspect of the case does not call for further examination.

98. On the other hand, the decision of the Labour Relations Board of British Columbia concerning certain aspects of this case (a copy of which was supplied by the Government) contains statements such as "there evolved ... a programme of public coercion the clear purpose of which was to mount intense and irresistible community pressure on the FANDU membership to give up that membership". The Board clearly states that certain statements made by the Minister of Education regarding FANDU "amounted to coercive conduct which could reasonably have the effect of compelling or inducing the Notre-Dame University faculty members to cease to be a member of a trade union". In this connection, the Committee would like to recall the importance of Article 2 of Convention No. 87, ratified by Canada, which provides that workers without distinction whatsoever shall have the right to establish and join organisations of their own choosing and the importance of protection of workers and their organisations against acts of anti-union discrimination.

1 See, for example, 160th Report, Case No. 829 (Italy), para. 88; 202nd Report, Case No. 947 (Greece), para. 241.
The Committee's recommendations

99. In these circumstances, the Committee recommends the Governing Body to adopt the following conclusions:

The Committee considers that the allegations concerning the amendment of the Universities Act do not call for further examination.

The Committee notes that according to the Labour Relations Board of British Columbia coercive conduct aimed at university faculty staff did take place and thus the Committee draws to the attention of the Government the importance of Article 2 of Convention No. 87, ratified by Canada, which provides that workers without distinction shall have the right to establish and join organisations of their own choosing.

The Committee also stresses the importance which it attaches to the protection of workers and their organisations against acts of anti-union discrimination.

Case No. 905

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND THE WORLD CONFEDERATION OF LABOUR AGAINST THE GOVERNMENT OF THE USSR

100. The Committee has already examined this case on two occasions, at its February and November 1979 Sessions, when it presented two interim reports to the Governing Body, which requested the Government to furnish certain additional information.1

101. The initial complaints were presented by the World Confederation of Labour (WCL) and the International Confederation of Free Trade Unions (ICFTU) in May 1978. Additional information was sent by the ICFTU in August 1979. Since the last examination of the case, the WCL has sent a communication dated January 1980, and the ICFTU, for its part, sent information to the ILO on 2 April, 9 June and 3 July 1980. The communications of the complainants were transmitted to the Government for its observations.

102. The Government sent additional information in a communication of 7 November 1980, but the Committee, which received this information with some delay, had to postpone its examination of the substance of the case at its November 1980 Session.

103. The Committee noted that the Government had invited Mr. Nicolas Valticos, Assistant Director-General, Adviser for

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1 See 190th Report, paras. 361 to 388, approved by the Governing Body at its 209th Session (February-March 1979); 197th Report, paras. 592 to 640, approved by the Governing Body at its 211th Session (November 1979).
International Labour Standards, to visit the country in order to obtain information on labour matters and to discuss questions relating to the application of ILO standards. This mission took place from 14 to 22 October 1980. During his visit Mr. Valticos met the President and First Vice-President of the State Labour and Social Affairs Committee of the Council of Ministers, senior officials of the Ministry of Foreign Affairs, and the Vice-President of the All Union Central Council of Trade Unions, among others. He also met regional trade union officials and members of the management and the works committees of the three undertakings which he visited.

104. The USSR has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case by the Committee

105. The allegations of the World Confederation of Labour (WCL) and the International Confederation of Free Trade Unions (ICFTU) concerned measures said to have been taken by the authorities against several persons who had attempted to found in January 1978 an organisation called the "USSR Workers' Free Trade Union Association" and the legal impossibility of founding a trade union organisation independent of the State and of the Party. According to the complainants, the founders or members of the Association had been arrested or interned.

106. The Government contested these allegations, remarking that they were based on inaccurate information the only effect of which could be to distort the truth and mislead public opinion, and that their examination by the ILO was accordingly illegal and inadmissible.

107. More recently, the ICFTU, in its communication of August 1979, referred to the founding of a new organisation called the "Free Inter-occupational Union of Workers" (SMOT) by a group of workers in the USSR.

108. The founder members of the SMOT had published, in an information bulletin which was transmitted by the ICFTU, a statement in which they maintained that there was no organisation in the USSR independent of the State which could directly represent the interests of the workers. According to the SMOT, in the majority of cases of disputes with the administration and the organs of power, the workers were unable to secure recognition of their rights and legitimate interests, since in the majority of these situations of conflict the leaders of the official unions took the side of the administration. The founder members of the SMOT had set themselves to defend the Organisation's members in the event of infringement of their economic, social, cultural, spiritual, religious and political rights within the framework of the Constitution and the international agreements signed by the Government of the USSR. They stated their intention of pursuing, within the framework of the
Constitution in force, the task of the independent trade unions founded in 1977 and 1978, and pointed out that the SMOT was not a political organisation.

109. An information bulletin sent by the ICFTU referred to the announcement of the foundation of the SMOT at a press conference on 28 October 1978. It also referred to the repression allegedly suffered by members of the SMOT, in particular Vladimir Skvirsky, Mark Morozov, Valeriya Novodvorskaya and Mikhail Kukobako, all of whom are said to have been arrested and committed to prisons or psychiatric hospitals between 13 October and 24 November 1978. Other persons, including A.G. Ivanchenko, M.V. Zotov, V. Borissov, L. Volkhonsky, Ye. Nikolayev and A. Yakoreva, are said to have been subjected to harassment: the homes of some of them were searched, and others had SMOT manuscripts confiscated.

110. The ICFTU also alleged that V. Borissov, N. Nikitin and A. Yakoreva had been arrested. The complainant also alleged that V. Skvirsky was being held in the Butyrsky prison on charges of having stolen books from public libraries, although according to the complainants the real motives for his arrest were political: it is alleged that his home was searched and about 40 documents concerning human rights and trade union activities were seized. Mr. Morozov, whose home had been used to announce the foundation of the SMOT at a press conference on 28 October 1978, was said to have been arrested and incarcerated in Lefortovo prison on 1 November 1978 for agitation and anti-Soviet propaganda (section 70 of the Penal Code). Valeriya Novodvorskaya, a founder member of the SMOT, was allegedly arrested in Moscow on 24 November 1978 and was at that time detained in the 26th section of the 15th psychiatric clinic of Moscow, where she had been interrogated about the SMOT by psychiatrists. Mikhail Kukobako is alleged to have been arrested at the end of October 1978 at Bobruysk, apparently for having defended an independent trade union in the USSR. Finally, V. Borissov and A. Yakoreva are said to have been detailed at Militia Station No. 101 in Moscow, V. Borissov having been charged with parasitism.

111. In reply to the allegations of the complainants the Government, in its communications of November 1978 and October 1979, stated that the right of citizens of the USSR to associate in public organisations was embodied in the Constitution, that Soviet legislation guaranteed workers and employees the right to associate to form trade unions and made the State responsible for assisting them in their activities. The Government added that Soviet trade unions were free and that organisations acted on the basis of the rules they themselves had drawn up, independently of the state bodies and of the Party. The Government also mentioned the steady increase in the number of trade unions in the USSR, stating that there were 30 branch-of-activity unions and more than 720,000 first-degree organisations with a total membership of more than 125 million.

112. As regards the "Free Trade Union Association", the Government stated amongst other things in its letter of 10 October 1979 that the list of persons mentioned in the complaints included individuals unquestionably guilty of breaking the law; administrative measures had been taken against them or they had been convicted long before the publication of the list of members of the Association in question, and the measures taken against them were
not connected in any way with trade union activities. According to the Government, a number of the other persons named in the complaints were suffering from mental disorders, and others had retired, had died or were unknown.

113. As regards the "Free Inter-occupational Union of Workers" (SMOT), the Government stated, in its letters of 10 October and 5 November 1979, that the information supplied added nothing as concerns the substance of the case, and that all the persons mentioned had in common was that they had at various times committed criminal offences. According to the Government, V. Skvirsky was sentenced to five years' exile for stealing state property by fraud; N. Nikitin and L. Volkonsky had been sentenced to one-and-a-half and two years' deprivation of freedom respectively for spreading lying inventions causing harm to the interests of society; V. Borissov, who was an invalid and mentally ill, was said to have been twice (in 1964 and 1969) found to be in possession of fire arms, but that, given his mental illness, he was not sentenced by the court, but merely referred for treatment. The Government concluded by stating that the purpose of the allegations of the ICFTU was to distort the true position and present criminals as victims of alleged persecution for trade union activities.

114. At its November 1979 Session the Governing Body, on the recommendation of the Committee:

(a) as concerns the allegations to the effect that it was impossible to establish in the USSR a trade union organisation independent of the State and the Party: (i) drew the Government's attention to the principle that the right of workers to establish organisations of their own choosing implied, in particular, the effective possibility of forming, in a climate of full security, organisations independent both of those which existed already and of any political party; (ii) noted that the Committee of Experts on the Application of Conventions and Recommendations had considered it desirable that the legislation in force be amended in order to recognise clearly the right of workers to establish, should they so wish, an organisation outside the factory, works and local trade union committees;

(b) as concerns the allegations relating to the arrest or internment of founders or members of the "USSR Workers' Free Trade Union Association", took note of the Government's statement to the effect that these measures were not connected in any way with their real or imaginary trade union activities and noted that, according to the Government, certain of the persons referred to in the complaint had been subjected to administrative measures or criminal sentences well before the publication of the list of members of the Association in question;

(c) with regard to the new allegations made by the ICFTU concerning repressive measures said to have been taken against founders or members of the Free Inter-occupational Union of Workers (SMOT): (i) requested the Government to furnish observations and detailed information on the persons on whom it had not yet supplied information, namely Mark Morozov, Valeriya Novodvorskaya, Mikhail Kukobako, A. Yakoreva and
Vsevolod Kouvakin, including the reasons for any such measures as may have been taken, as well as on their present situation in the eyes of the law; and (ii) also requested the Government to supply the dates and texts of the judgements handed down in the cases of Vladimir Skirsky, N. Nikitin and L. Volkhonsky.

B. New communications from the WCL and the ICFTU

115. The WCL, in its communication of 17 January 1980, states that the trade union founded by V. Klebanov, the "USSR Workers' Free Trade Union Association", ceased to exist in February 1979. Referring to the alleged repression of members of SMOT, it mentions a number of persons whose names had already been communicated to the Government in its complaint, as well as that of Anatoly Pozdniakov, who is said to have been arrested on 12 September 1979 and committed to a psychiatric hospital. Valeriya Novodvorskaya, according to the WCL, was interned in a psychiatric hospital in Moscow from 24 November 1978 to 7 February 1979.

116. The ICFTU, in its letter of 2 April 1980, alleges that V. Borisov was arrested on 27 March 1980 and committed to department No. 8 of special psychiatric hospital No. 3 in Leningrad, where he is being subjected to abusive psychiatric treatment for political purposes. Mark Morozov is said to have been arrested on the same day in Vorkuta and sentenced to five years' transportation for his membership of SMOT. In its communication of 9 June the ICFTU alleges that V. Borisov was arrested on 3 June for the third time in a year and taken to an unknown destination. On 3 July the ICFTU mentions the arrest on 26 June 1980 of Vladimir Gershuni and his internment in psychiatric clinic No. 13 in Moscow, followed by his transfer to the Pirogova clinic, also in Moscow.

C. Observations of the Government

117. In its reply of 7 November 1980 the Government reaffirms its statements of November 1978 and October 1979 that it has been repeatedly shown that Convention No. 87 on freedom of association is fully applied in the USSR. The Soviet legislation respecting the activities of trade unions contains no provision contrary to international labour standards; on the contrary, it guarantees more favourable conditions to the workers within the meaning of paragraph 8 of article 19 of the ILO Constitution.

118. As regards the complaints of the ICFTU and the WCL, says the Government, it was already stated that the allegations relating to the so-called persecution to which trade union activity in the USSR is purportedly subject are based on facts which are either inaccurate or deliberately distorted. These remarks apply fully to

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1 According to information in the possession of the Committee, V. Borisov was expelled from the USSR against his will in June 1980.
the persons on whom additional information has been requested. Most of them, according to the Government, were sentenced at different places and at different times, not for membership of the organisation known as SHOT, but for acts punishable under penal law which are entirely unconnected with trade union activity, namely the dissemination of flagrant and slanderous lies about the Soviet political and social regime; conspiracy with a view to committing particularly dangerous crimes against the State; the illegal possession of firearms; threats to, or assaults on, an official or a citizen in the performance of his civic duty; and misappropriation of the property of the State and society.

119. The Government recalls that it already furnished information on certain persons (V. Skvirsky, N. Nikitin, L. Volkhonsky, V. Borissov) in its letter of 3 November 1979. The Government states that Vladimir Borisov has left the territory of the USSR. Mikhail Kukobako and Hark Horozov, on whom additional information was requested, have also committed criminal acts, according to the Government. The Government explains that M. Kukobako, who was working as a docker at Bobruysk, was sentenced by the Regional Court of Mogilev to three years' deprivation of freedom in 1979 for disseminating flagrant and slanderous lies about the social system. Mark Morozov was living in Moscow, where he worked as a high-ranking expert at the Institute of Scientific Research. The penal judges of the Supreme Court of the RSFSR sentenced him in 1979 to five years' exile for agitation and anti-Soviet propaganda. In handing down its sentence, says the Government, the Court took account of the fact that the conduct of M. Horozov during the preliminary investigation and the final hearing had done much to throw light on the crimes he had committed and to establish the true facts of the case; it also showed that he had sincerely repented of his acts. M. Morozov has been exiled to Vorkuta, but has nevertheless resumed his former activities. An inquiry has now been opened into his case.

120. There are, continues the Government, a number of mental patients among the persons allegedly being prosecuted for their membership of the organisation known as SHOT. This is the case, it states, with Anatoly Pozdniakov, on whom information has been requested. This person has been kept under observation for over 15 years by a neuro-psychiatric clinic. In 1979, A. Pozdniakov was prosecuted for having hit the foreman of the workshop where he was working in front of witnesses. While recognising the dangerous nature of his act for society, the court took account of the condition of the accused, who had been examined by the Forensic Psychiatric Commission, and decided to clear him of responsibility and refer him to a psychiatric hospital for treatment.

121. Valeriya Novodvorskaya and Vladimir Gershuni are also mental patients. V. Novodvorskaya lives in Moscow and does not work. She has been hospitalised on a number of occasions and is at present under observation at the district neuro-psychiatric clinic. Because of the aggravation of his mental illness V. Gershuni received treatment in a psychiatric hospital from June to August 1980. During this period he was transferred for a time to a general clinic for an appendicectomy. Vsevolod Kouvakin is living in Moscow, where he is working as legal adviser to a hospital. He has not been sentenced for his so-called participation in the organisation known as SHOT. Albina Yakoreva is a vagrant and is not
working anywhere despite repeated offers of employment. If only for this reason, adds the Government, she cannot be a member of a trade union, still less act as a representative of the occupational interests of the workers. The Government ends by stressing that a number of the persons on whom information was requested, such as M. Morozov, A. Pozdniakov and M. Kukobako, do not in any way regard themselves as members of the SMOT.

D. Conclusions of the Committee

122. In the present case the complainant organisations have in the first place alleged that it is legally impossible to found a trade union organisation independent of the State and the Party in the Soviet Union; secondly, they have referred to alleged repressive measures against the founders and members of two new organisations, the more recent of which, the SMOT, was founded in October 1978.

123. As regards the legislative aspect of the case, the Government states that Soviet trade union legislation contains no provisions conflicting with international labour standards; on the contrary, it guarantees more favourable conditions to the workers within the meaning of paragraph 8 of article 19 of the ILO Constitution. In this connection the Committee must point out, as has already been done on an earlier occasion, that non-compliance of the national legislation with the Convention can be justified as establishing more favourable conditions for the workers within the meaning of article 19, paragraph 8, of the ILO Constitution only in so far as legislative provisions go beyond the provisions of a Convention without contradicting them.

124. As regards Convention No. 87, ratified by the USSR, the Committee must stress that, even though it may be in the interest of the workers to avoid a multiplicity of trade union organisations, the terms of the Convention require that trade union pluralism should always remain possible. In this regard the Committee must recall that the Committee of Experts on the Application of Conventions and Recommendations has considered it desirable that the legislation in force be amended in order to recognise clearly the right of workers to establish, should they so wish, an organisation outside the factory, works and local trade union committees which

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1 Article 19, paragraph 8, of the ILO Constitution reads as follows: "In no case shall the adoption of any Convention or Recomendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation".

exist. In the absence of any new elements of information on this aspect of the case, the Committee can only recall that the right of workers to establish organisations of their own choosing - as guaranteed by Article 2 of the Convention - implies, in particular, the effective possibility of forming, in a climate of full security, organisations independent both of those which exist already and of any political party. The Committee accordingly recommends that the legislative aspect of the case should be called to the attention of the Committee of Experts on the Application of Conventions and Recommendations so that it can take this into account in its regular examination of the application of Convention No. 87.

125. As regards the alleged repressive measures against the founders or members of the SHOT, the Committee notes that there are contradictions between the statements of the complainants and those of the Government, particularly regarding the reasons for them. According to the complainants anyone who wishes to found an independent trade union in the USSR is imprisoned, exiled or committed to a psychiatric hospital. For the Government, however, the measures taken against the persons mentioned by the complainants were taken in respect of acts punishable by normal penal law.

126. In this respect the Committee observes that the Government has furnished general information on the alleged charges against the founders of SMOT, but, as in the case of the first organisation which was founded, the "Workers' Free Trade Union Association", only in some cases does it supply details on the precise facts which led to the prison sentences or the assignments to residence. The Committee keenly regrets that the Government has not sent the texts of the judgements handed down in the case of certain SMOT leaders which the Committee has requested during the previous examination of the case. The Committee also regrets that a suggestion made by the Assistant Director-General and Adviser for International Labour Standards during his mission in the USSR that he should meet certain of the persons who had been arrested was not acted upon. The Committee recalls that in other countries the representatives of the Director-General have been able to meet detained persons whose arrest has been the subject of complaints during missions on the spot.

127. The information communicated by the Government nevertheless indicates that, although certain persons appear to have been sentenced for offences under ordinary law, such as theft or the possession of weapons, others were sentenced under provisions concerning anti-Soviet activities or the dissemination of slander against the regime, the very general nature of which might make it possible to sentence or detain persons for a wide variety of activities, including the foundation of trade union organisations independent of the existing trade union structures. In the absence of sufficient precise information on the facts which led to most of the arrests or sentences, the Committee can only conclude that the information supplied by the Government does not answer all the points raised in the detailed allegations of the complainants.

128. In addition, the Committee notes that one of the founders of SMOT was expelled from the USSR against his will. In this connection, the Committee would like to point out that the granting of freedom to a trade unionist on the condition that he leaves the country, although it be a less severe measure than detention, cannot be considered to be compatible with the exercise of trade union rights.
129. The Committee must also note that a large number of the founders of the SMOT - as was also the case for the "Workers' Free Trade Union Association" - have been, or remain, committed to psychiatric hospitals or clinics. It would also appear from the elements in the possession of the Committee that certain of these measures were taken against the SMOT founders shortly after the announcement of the foundation of the organisation. The Committee must generally stress in this connection that all the necessary safeguards should be provided to prevent such measures from being taken as sanctions or as means of pressure against persons who wish to establish a new organisation independent of the existing trade union structure. It would be highly desirable for the Government to re-examine the situation from this point of view.

The Committee's recommendations

130. In these circumstances the Committee recommends the Governing Body to approve the following conclusions:

The Committee must come to the conclusion that the information does not reply to all the points raised in the detailed allegations of the complainants and, in particular, it keenly regrets that the Government has not supplied the texts of the judgements which had been requested during the previous examination of the case.

As regards the case as a whole, the Committee points out that the right of workers to establish organisations of their own choosing, guaranteed by Article 2 of Convention No. 87, implies in particular the real possibility of forming, in a climate of full security, workers' organisations independent both of those which exist already and of any political party.

Regarding the specific legislative question, the Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations considered it desirable that the legislation be amended in order to recognise clearly the right of workers to establish, should they so wish, an organisation outside the factory, works and local trade union committees which exist.

As for the measures of repression taken against the founders or members of SMOT, the Committee points out, on the one hand, that the granting of freedom to a trade unionist on the condition that he leaves the country cannot be considered to be compatible with the exercise of trade union rights.

The Committee also points out that all the necessary safeguards should be provided to prevent measures of commitment to psychiatric hospitals from being taken as sanctions or as means of pressure against persons who wish to establish a new organisation independent of the existing trade union structure and it invites the Government to re-examine the situation from this point of view.
COMPLAINT PRESENTED BY THE GENERAL CONFEDERATION OF WORKERS (CGT) AGAINST THE GOVERNMENT OF COSTA RICA

131. The complaint is contained in a communication from the General Confederation of Workers (CGT) dated 1 July 1980. The Government replied by a communication of 7 October 1980.

132. Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

133. In its communication of 1 July 1980, CGT alleges that the workers of the Zublin-Carrez undertaking engaged in the construction of a wharf at Puerto Limón were again obliged to resort to strike action on 23 June 1980 because the company had failed to honour the commitments it had entered into in a settlement that had put an end to an earlier strike. Once again, continues the complainant, instead of negotiating seriously with the union, the undertaking is manoeuvring to defeat the workers' struggle, and is even obliging the Government to send in the forces of order to "protect the interests of the workers".

134. CGT alleges that on 1 July 1980 a member of the forces of order cold-bloodedly shot Alvaro Picado, a worker who was on a loading machine, when a group of unarmed workers were attempting to persuade strike-breakers not to enter the workplace, although there had been no clashes either with the forces of order or with the strike-breakers.

B. Reply of the Government

135. In its communication of 7 October 1980 the Government states that the strike which began on 23 June 1980 was declared illegal by the courts. The employer was accordingly entitled to terminate the contracts of employment of the strikers (section 370 of the Labour Code), and the courts had the power to order the police authorities to guarantee the continuation of work (section 381 of the Labour Code). Given the consequences of the illegal strike, the Ministry of Labour and Social Security, with a view to ensuring social peace, decided to act as a mediator; the result of this action was a settlement between the parties on the basis of proposals by the Government concerning reinstatement of the workers, termination of individual contracts and statutory benefits, trade union activity and the establishment of a Labour Relations Board. These proposals were accepted by the parties on 25 July 1980.
136. The Government remarks that the intervention of the police at the workplace was not due to pressure by the employer, but, given the illegal nature of the strike, was the result of a court order to apply section 381 of the Labour Code for the purpose of ensuring that workers who wished to continue work could enter the workplace.

137. As regards the death of the worker Alvaro Picado, the Government states that a detachment of police was at the entrance to the worksite of the harbour installation in order to guarantee that workers who wished to continue work might enter the workplace and to protect the installations which were intended as a public service in accordance with section 369 of the Labour Code, when a group of workers attacked the authorities, throwing stones and other blunt objects. At a certain moment, Alvaro Picado, who was driving a vehicle equipped with a mechanical shovel, pushed with the shovel a loading vehicle against a hut containing a number of policemen. The Government adds that the police fired into the air and warned the strikers to stop the violence. It was then discovered that Alvaro Picado, who was to die later, was lying on the ground with a bullet wound. Faced with this situation, most of the aggressors fled.

138. The Government does not accept the complainant’s accusation of responsibility for the incidents, as the action taken by the Civil Guard was in any case undoubtedly defensive. Furthermore, continues the Government, caches of arms of a type not used by the police were found on the premises, and various witnesses heard exchanges of shots of different calibres.

139. In addition the Government remarks that during the preliminary investigation for homicide the civil guard who was originally held responsible for the death of Alvaro Picado was acquitted for lack of evidence because of the absence of any witness who could testify that the police had opened fire on the victim and because it was not even possible to determine that it was the shots fired by the forces of order that had caused his death.

C. Conclusions of the Committee

140. Although the Government has not explained the precise reasons, the Committee notes that the strike which began on 23 June 1980 in the Zublin-Carrez undertaking was declared illegal and also notes that it was brought to an end when the parties accepted the settlement proposed by the Government. The Committee wishes to point out, as it has done in earlier cases,¹ that the conditions required by law for a strike to be considered lawful must be reasonable, and in any case should not imply a serious limitation on the potential activities of trade unions, such as the requirement that a high proportion of the workers should be in agreement with the strike before it can be considered lawful.

141. As regards the presence of the police at the workplace due to the labour dispute, the Committee notes the statement of the

¹ See, for example, 139th Report, Case No. 722 (Spain), para. 393.
Government that the purpose of this was to ensure that workers who so wished could continue their work and to protect public service installations in accordance with the provisions of the Labour Code respecting illegal strikes. As regards the death of the worker, Alvaro Picado, the Committee observes that the allegations of the complainant and the statement of the Government are contradictory: the complainant states that a member of the forces of order fired on unarmed workers, although there had been no clashes either with the forces of order or with the strike-breakers, whereas the Government states that the workers had committed acts of aggression and that it was not possible to determine whether the shot which caused the victim's death came from the police. As it has already done on similar occasions, the Committee wishes to recall that it has always attached great importance to the institution of an impartial inquiry and the guarantee of due process of law in order to determine responsibilities and apply the corresponding sanctions in cases where disturbances have occurred involving the loss of human lives.

In this sense the Committee observes that a preliminary investigation was carried out and that one of the civil guards was acquitted for lack of evidence.

142. Lastly, given the violence of the incidents which occurred during the strike and which reached their climax with the death of the worker, Alvaro Picado, the Committee, while deploiring these incidents, wishes to stress the desirability of giving the police appropriate instructions whenever they have to intervene in collective labour disputes, in order to avoid serious consequences of this kind.

143. In these circumstances the Committee recommends the Governing Body to deplore the death of the worker Alvaro Picado and the violence of the incidents which took place during the strike, and to draw the attention of the Government to the fact that conditions required by law for a strike to be considered lawful should not constitute a serious limitation on the potential activities of trade union organisations.

Case No. 989


144. By communications dated 2, 4, 5 and 23 August 1980, respectively, the Confederation of Hospital Workers of Greece, the Workers' and Employees' Centre of Larissa and Chalcidicus, the North Dodecanese Workers' Union, the Construction Workers' Union and the Federation of Hotel Workers of Kos presented a complaint for violation of trade union rights in Greece. The Government furnished its observations in a communication dated 10 November 1980.

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1 See, for example, 197th Report, Case No. 916 (Peru), para. 532.
145. Greece has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

146. The complainants allege that Sabina Vassila Kopoulou, a student, was assassinated whilst she was distributing leaflets in protest against dismissals and unemployment in front of the ETMA factory. It is alleged that the victim was crushed under the wheels of a staff vehicle, in full view of the police, and that the management of the undertaking should, in the view of the complainants, be considered as morally responsible for the crime.

147. In its letter of 10 November 1980, the Government encloses the reply which it received from the Ministry of Public Safety on this matter. According to the preliminary investigation undertaken by a public prosecutor of the Court of Summary Jurisdiction, a company vehicle which was transporting workers to the ETMA synthetic silk factory did in fact knock down the young student in question, who was trying to throw leaflets through the right-hand window of the vehicle, as it left the factory and turned right at 4.20 p.m. on 28 July 1980. She was drawn under the vehicle and fatally injured; after being taken to Piraeus hospital by ambulance, she was found to be dead on arrival. The driver of the company vehicle was arrested and brought before the Prosecutor of the Court of Summary Jurisdiction of Athens, where he was charged with manslaughter. According to the Ministry of Public Safety, he has been held under remand at Corydallos prison since 18 August 1980.

148. The Committee notes that the complainants have not presented any proof in support of their allegation that the management of the undertaking should be considered as morally responsible for the crime. The Committee, while deploring the death of the student concerned, notes that the Government immediately took action and that the driver was arrested and charged with manslaughter.

149. In these circumstances, the Committee recommends the Governing Body to request the Government to communicate the text of the judgement which will be handed down in this affair.
CASES IN WHICH THE COMMITTEE HAS REACHED
INTERIM CONCLUSIONS

Case No. 823

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR,
THE WORLD FEDERATION OF TRADE UNIONS AND SEVERAL OTHER
TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF CHILE

A. Introduction

150. The last time the Committee examined this case was at
its May 1980 Session, when it submitted an interim report to the
Governing Body.¹

151. Since the last examination of the case, the complainant
organisations have sent the ILO the following communications: the
World Federation of Trade Unions (WFTU) (communications dated 29
May, 17 and 19 June, 3 July and 18 November 1980 and 23 January
1981); the World Confederation of Labour (WCL) (communications
dated 2 and 26 June 1980); the Latin American Central of Workers
(CLAT) (a communication dated 4 June 1980); the International
Federation of Teachers' Unions (IPTU) (a communication of 18 June
1980); the Miners' Trade Unions International (UITM)
(communications dated 25 June 1980 and 24 January 1981); the
International Federation of Free Trade Unions (ICFTU)
(communications dated 31 October and 13 and 19 November 1980 and 13
and 21 January and 12 February 1981); the Trade Unions
International of Public and Allied Employees (a communication dated
17 November 1980); the Permanent Congress of Trade Union Unity of
Latin American Workers (CPUSTAL) (a communication dated 22 January
1981); and the "Group of Ten" (5 February 1981).

152. For its part, the Government forwarded observations in
communications dated 8 October 1980, the month of November 1980 and
23 and 26 February 1981.

153. Also, when the Governing Body discussed the 202nd Report
of the Committee on Freedom of Association in May 1980, the Workers'
group requested that a high-level mission be sent to Chile to
examine the trade union situation. Following contacts and
Correspondence exchanged with the Government, the Director-General
appointed Mr. Nicolas Valticos, Assistant Director-General, Adviser
for International Labour Standards, Mr. Manuel Araoz, Chief of the
Freedom of Association Branch, and Mr. Bernard Gernigon, official in
the same branch, to carry out that mission, which took place from 1
to 7 December 1980.

154. Before the mission left for Santiago, contacts had been
made with the Permanent Delegation of Chile in Geneva to arrange for

¹ See 202nd Report, paras. 289 to 336, approved by the Governing
Body at its 213th Session (May-June 1980).
it to meet various government authorities, in particular the Minister of Labour and Social Welfare, the Minister of Foreign Affairs, the Minister of the Interior and the Minister of Justice. On its arrival in Santiago the mission was handed a work programme where interviews with the Ministers of Labour and Justice, among others, were scheduled. In the end, the Minister of Labour, Mr. José Piñera, sent his apologies for being unable to receive the members of the mission and was represented by Mr. L.A. Cañas, Under-Secretary of State for Labour. The mission also met Messrs. Enrique Montero, Under-Secretary of State for the Interior; Lautaro Pérez Ruiz, Deputy Under-Secretary of State for Justice; Ramón Suárez, Director of Labour; Jaime Lagos, Director of Bilateral Policy at the Ministry of Foreign Affairs; and Leonel Beraud, President of the Court of Appeal of Santiago.

155. The mission also had talks with the President of the Confederation of Manufacturing and Commerce at the headquarters of this central employers' organisation, and with officials of affiliated organisations, namely the National Chamber of Commerce, the National Mining Company, the Association of Banks and Financial Institutions, the National Agricultural Society, the Chilean Chamber of Building and the Industrial Development Association.

156. As concerns workers' organisations, the mission met the leaders of many legally recognised or de facto organisations belonging to all trade union tendencies and covering many branches of activity: a group of trade unionists who were supporters of leaders in the copper, leather and footwear, banking, coal mining, saltpetre, maritime and electricity sectors; the Chilean Confederation of Employees in the Private Sector (CEPCH); the "Group of Ten", which included representatives of workers in the civil service, agriculture, copper mining, postal services, the maritime sector, the iron and steel industry, metalworking, plastics, the railways and social security; the National Trade Union Confederation of Agricultural Workers; Peasant Workers' Unity (an organisation which had been dissolved in October 1978); the National Confederation of Copper Workers; the "National Trade Union Co-ordinating Body", which included in particular representatives of workers in agriculture, metalworking, building, mining, coal mining and textiles; the Workers' Unitary Front, whose delegation comprised leaders from the textile, ports, teaching, municipal employees', plastics and public works sectors; the Confederation of Unions of Workers in Metalworking, Mining and Associated Branches. Over 50 trade union leaders took part in some of these meetings, most of which were held on trade union premises. The mission also spoke to representatives of the Association of Relatives of Persons Who Are under Arrest or Who Have Disappeared. It also had private talks with persons knowledgeable in social affairs.

157. In addition to these meetings the mission visited the Operations Centre of the El Teniente Copper Mines, where it had talks with the management of the undertaking and the trade unions on working conditions and industrial relations and on certain allegations pending before the Committee on Freedom of Association.

158. All the information collected on the spot was the subject of a detailed mission report, which the Committee fully took into account when examining the allegations before it.
B. Legislation on trade union organisations and collective bargaining

159. On 29 June 1979 the Government promulgated several legislative decrees on trade union rights and the right to collective bargaining, in particular Legislative Decrees Nos. 2756 and 2758 known as the "Labour Plan". Subsequently, certain technical amendments were made to these texts, particularly in November 1979 and May 1980. At its November 1979 and May 1980 Sessions, the Committee noted that this legislation was an important step forward and made a number of comments on these texts, especially on the following points: formation of trade unions, procedure for acquiring legal personality, trade union by-laws, elections of trade union leaders, inspection of trade union accounts, prohibition to intervene in partisan political activities, formation of federations and confederations, trade union rights of public officials, scope and level of collective bargaining, and the right to strike.

160. The mission's report indicates that the new legislation is an improvement over the previous situation where, under Legislative Decree No. 198 adopted in December 1973 immediately after the change of regime, the right to hold trade union elections, the right of collective bargaining and the right to strike had been suspended and the right to hold meetings seriously restricted. Both the Government representatives and the employers' representatives stressed the advance which this legislation represented from the standpoint of freedom of association. It was pointed out that a trade union organisation may acquire legal personality merely by depositing its by-laws, that trade unions can be dissolved only by court order, that there is no governmental control over trade union activities, that the election of new trade union leaders and the approval of trade union by-laws are made by secret ballot, and that workers have the possibility of choosing between organisations of different tendencies.

161. The mission found, however, that the legislation was severely criticised at times, even in trade union circles which do not pursue a policy of systematic opposition to the Government. The workers' representatives - as, to a certain degree, the employers' representatives - stressed in particular that they had not been consulted about the trade union legislation or the labour policy.

162. In the Committee's opinion, such an absence of dialogue - which the mission found far more marked than in 1974 during the visit of the Fact-Finding and Conciliation Commission - can only prejudice the interests of workers, the development of labour relations and social progress in general. The Committee thinks it useful here to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and co-operation between public authorities and employers' and workers' organisations without discrimination of any kind against these organisations. In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek the views, advice and assistance of these organisations, particularly in the preparation and implementation of laws and regulations affecting their interests.
163. The mission's report reveals that the failure to consult the trade union organisations is only one aspect of the diminished role played by the national federations and confederations in labour relations. Major obstacles are placed in the way of their establishment (requirement of at least 20 organisations for constituting a confederation) or their survival (requirement for individual trade unions to renew their membership of federations every two years). Lastly and above all, under the new legislation federations and confederations do not have the right either to bargain collectively or to call work stoppages. The trade union movement is thus deprived, at its highest level, of the rights essential for the protection of the workers' interests. Consequently, the trade unions engaged in collective bargaining - i.e. the plant unions - often find themselves at a disadvantage in negotiating with the management, especially as the right to strike is greatly limited by certain legislative provisions under which enterprises may recruit staff during the strike, as there is voluntary dismissal of workers if they do not recommence work within a period of 60 days, and because an excessive number of enterprises are deemed to be essential enterprises for which work stoppages are prohibited.

164. The report also refers to other obstacles to the free operation of the trade unions which seriously limit their possibilities of effective action, such as the control exercised by the Directorate of Labour over trade union management and the requirement for a sworn official to be present at voting during trade union meetings.

165. A large body of workers is not covered by some of the safeguards granted by the legislation. By reason of the legal impossibility of forming plant unions having less than 25 members, workers in small enterprises, for example, are not in a position to form trade unions for their specific activities and are therefore unable to join organisations having the right of collective bargaining. Lastly, workers in the public sector and in the maritime sector do not come within the scope of the trade union legislation. Specific regulations for these categories of workers are now under study.

166. From a perusal of the mission's report, the Committee has noted that the legislative provisions criticised most severely and most frequently by the trade union organisations are precisely those on which it had commented in November 1979 when analysing the "Labour Plan". The Committee therefore considers that it would be necessary to amend the trade union legislation with a view to more effective application of the principles of freedom of association and hence of greater social justice.

167. In these circumstances, it is regrettable that in the absence of the Minister of Labour, the findings arrived at by the mission could not be the subject of a true exchange of views with the government authorities and that they were unable to inform the mission whether such amendments or a change in government policy in the field of trade union rights could be contemplated in future. The Committee nevertheless trusts that the necessary legislative amendments will be introduced shortly in the light of the recommendations made by it. It would also like to be kept informed of any subsequent developments in this connection.
C. Dissolution of trade union organisations

168. Allegations were previously made regarding the dissolution by the Government of seven trade union organisations in October 1978. According to the Government, the conduct of the dissolved organisations showed that their means of action and objectives coincided with the principles and aims of Marxist doctrine. The organisations in question had brought appeals to the Court of Appeal and the Supreme Court, which dismissed them.

169. In a document of the external committee of the Single Central Organisation of Chilean Workers, attached to the communications of the WFTU and the ICFTU, it was also mentioned that the Supreme Court had dissolved the trade union of the Santiago Union Club on the ground that a trade union cannot exist in a non-profit making institution.

170. More recent allegations related to the action taken by the authorities against the Unitary Workers' Front (FUT).

171. During the mission talks were held with the leaders of several of the federations and confederations dissolved in October 1978. Although these organisations continue to have a de facto existence, their leaders mentioned the great difficulties which they encounter in trying to keep them in operation.

172. For its part, the Government stated in its communication of November 1980 that the dissolution of the organisations in question was decided by law and not by administrative procedure. None of those organisations was engaged in labour activities. On the contrary, according to the Government, their activities were purely political and were carried on only by a few leaders. The government authorities also told the mission that the measures to dissolve those organisations were taken before the "Labour Plan" was promulgated and that dissolution of trade union organisations under the new legislation can be made only by judicial procedure. They also stressed that workers, including those who belonged to the dissolved trade unions, are entitled to form the organisations they wish, provided the law is observed.

173. Regarding the dissolution of the trade union of the Santiago Union Club, the Government explained in its communication of November 1980 that the employer had argued before the courts that the trade union established in 1966, when the former Labour Code was still in force, had no legal existence. Under that Code, industrial trade unions could not be formed in non-profit making establishments. The Directorate of Labour, like the workers themselves, maintained on the contrary that the union had a legal existence. In the end, the court ruled in favour of the complainant and dissolved the organisation in February 1980. The Government pointed out, however, that as of 15 October 1980 no administrative action had yet been taken to strike the organisation from the trade union register and that the workers concerned could at all events form another trade union or transform the existing one in accordance with the new legislation.

174. The case for the Unitary Workers' Front was dismissed by the judge and confirmed by the Santiago Court of Appeal in October 1980.
175. The Committee takes note of the explanations supplied by the Government concerning the dissolution of seven federations and confederations in October 1978. It wishes to point out in this connection that dissolution of trade unions by the Executive in the exercise of legislative powers does not provide safeguards, any more than dissolution by administrative procedure for the rights of the defence. These rights can be guaranteed only by a normal judiciary procedure, which the Committee regards as indispensable. The Committee notes that under the new trade union legislation, workers' organisations can only be dissolved by judicial means. Concerning the liquidation of the funds and assets of the dissolved organisations, the Committee has been guided in cases of this kind by the criterion that, when an organisation is dissolved, its assets should eventually be distributed among its former members or handed over to the organisation that succeeds it. The Committee has also pointed out that the successor organisation should be understood to mean an organisation or organisations pursuing the aims for which the dissolved unions were established, and pursuing them in the same spirit.

176. As regards the trade union of the Union Club, the Committee notes that it was dissolved by judiciary proceedings on the basis of the former provisions of the Labour Code and that the workers concerned may now form an organisation in accordance with the new legislation.

D. Dismissal of trade unionists

177. Various complaints, which were either mentioned in the Committee's 202nd Report or received since then, referred to dismissals of trade unionists in a number of undertakings, especially Hilanderia Andina SA, CTI Fensa Mademsa, the Copper Company of Chile (El Teniente division and Chugucamata centre), the Latacen company, the Jorge Rivet Moulin company and the Chilean and North American Cultural Institute. Other communications recently received state that there have been dismissals of leaders of the public sector workers' organisations, in particular, the National Revenue Employees' Association (ANEP), the Association of Social Security Auxiliaries and trade unionists from the taxation department.

178. From the information supplied by the Government in its communication of November 1980 or in the documents handed to the mission, it appears that the dismissals at Hilanderia Andina SA, CTI Fensa Mademsa and the Chilean and North American Cultural Institute were due to economic or financial reasons. In the last case, the workers filed an appeal with the courts.

179. Regarding the dismissals at the Copper Company of Chile (El Teniente division), the Government stated that, following the

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1 See, in this connection, 24th Report, Case No. 144 (Guatemala), para. 256; 45th Report, Case No. 211 (Canada), para. 108; 110th Report, Case No. 519 (Greece), para. 82; 194th Report, Case No. 900 (Spain), para. 258.
appeal made by the workers, the labour court of Rancagua ordered the company to reinstate the dismissed workers or pay them compensation. The company opted for the second course. The labour court also gave a ruling in favour of the trade union leaders dismissed at the Chuquicamata centre and ordered their reinstatement. The company has complied with the court's decision and paid these leaders compensation corresponding to the period of dismissal. Three of the workers dismissed from the company Jorge Rivet Moulin filed an appeal with the courts which resulted in the payment of compensation. Concerning the dismissals of trade union leaders from the Latacun Company, the Directorate of Labour informed the mission that the workers concerned, after an attempt at conciliation by the Labour Inspectorate had failed, filed an appeal with the labour court, which is now being examined.

180. The mission had an opportunity to meet the trade union leaders of the National Revenue Employees' Association (ANEF) who had been dismissed. According to the trade unionists and, in particular, the President of ANEF, who had been removed from his functions within the National Directorate of Industry and Commerce, these measures were taken because of the trade union activities of the workers concerned. The Minister for Economic Affairs, on the other hand, asserted in a statement to the press that the dismissals were due to a reorganisation of the service in question.

181. The Committee notes that some of the dismissals of trade unionists were due to economic or financial reasons. While the Committee is not competent to judge the advisability or not of dismissals of this nature, in the present instance it observes that there were court proceedings in several cases which resulted in compensation paid to the workers dismissed and even, in one case, to their reinstatement. The Committee therefore considers it appropriate to recall the importance of effective protection against dismissals on account of trade union activities and to point out that in cases of dismissals for economic reasons, measures discriminating against trade unions taken under this pretext should not be authorised.

182. Regarding the dismissals of ANEF leaders, the Committee points out that the lack of legal recognition of the trade union rights of government employees, and the resulting lack of protection for trade union militants, can only encourage the adoption of measures prejudicial to the leaders of de facto organisations existing in this sector.

183. In these circumstances, the Committee requests the Government to take measures to permit the reinstatement of the dismissed trade unionists.

E. Arrest and disappearance of trade unionists

184. At various stages in examining this case, the Committee has received allegations relating to the arrest and disappearance of trade unionists or former trade unionists. In March 1979, the Government stated that the Santiago Court of Appeal had appointed one of its judges to hear the cases concerning persons presumed to
have disappeared while on trial before tribunals in its jurisdiction. These cases concerned 36 of the persons mentioned in the complaints.

185. More recently, complaints were lodged concerning action taken against various trade union leaders, the arrest of leaders of the National Federation of Metallurgical Unions (FENSI MET) and the placing under forced residence of persons arrested on May Day 1980 and agricultural trade union leaders at Curicó. Other allegations related to the arrest of Mr. Pedro Enriquez, former Secretary for Youth of the CUT, on 13 November 1980, and of Mr. Álvarez Sepúlveda, a metalworkers' leader, on 18 November 1980.

186. Lastly, communications from several complainant organisations (ICFTU, WFTU, CPUSTAL, UISM) dated January 1981 have reported the arrest of Manuel Bustos and Alamiro Guzmán, Chairman and Secretary-General of the National Trade Union Co-ordinating Committee, respectively, whom the members of the mission had met while in Chile. They were arrested allegedly for having acted as representatives of an unregistered organisation.

187. As regards the missing persons, the President of the Santiago Court of Appeal told the mission that the inquiry was going ahead and that the judge dealing with the case had not yet been able to take a final decision. In this connection, the mission was told that the amnesty law adopted by the Government in April 1978 prevented action being taken against security officers who may have been involved in the disappearances and consequently the cases before the courts could not be concluded.

188. According to the government authorities, the persons placed under house arrest following the celebration of May Day were activists who were not trade union leaders and who had created disturbances and provoked violence in the streets. Likewise, there were no trade union leaders among the seven persons living at Curicó who had been placed under house arrest for disturbance of the peace. Only one of them had been engaged in trade union activities in 1973.

189. As regards the pending trials on which the Committee and Governing Body had requested information in May 1980, the Government stated that the cases against Mr. Bobadilla, President of the National Federation of Textile Workers, and Mr. Guzmán, President of the National Industrial Mining Federation, were dismissed and the dismissals confirmed by the Santiago Court of Appeal. Proceedings had been brought against these leaders for having acted as representatives of organisations without legal personality. The Government also stated that these trade union leaders had enjoyed complete freedom throughout the trial. Regarding Juan Jara, President of the Taxi Drivers' Trade Union, who had been accused, according to the complainants, of having organised a May Day demonstration, the Government stated that the Santiago Court of Appeal had suspended the prison sentence which was warranted by the elements contained in the dossier. Proceedings have now been brought against two other persons whom the complainants said had been arrested, Víctor Muñoz and Gustavo Poblete, the first for being in possession of false identity papers and the second for subversive activities. According to the Government, these two persons are not trade union leaders. Regarding the five leaders of the National Federation of Metallurgical Unions whom the complainants alleged had
been detained for three days and prosecuted, the Government stated that the persons in question were the subject of a complaint by the Ministry of the Interior for having acted as representatives of other persons without the authorisation to do so. They were acquitted by the court of first instance, but given a suspended prison sentence by the Court of Appeal.

190. As regards Mr. Pedro Enriguez, the Ministry of the Interior told the mission that this person had been arrested for engaging in activities against the security of the State, that the inquiry had established that he had used false identity papers, and that he had been placed at the disposal of the criminal judge in Santiago. Lastly, the mission was unable to obtain any information before leaving Chile concerning the arrest of Mr. Álvarez Sepúlveda. Since then, the Government has stated that the person referred to in the allegations, whose real name is Alvaro Sepúlveda, was released three days after his arrest. The Court of Appeal of Santiago, which had before it an appeal of habeas corpus in this connection, has been informed of the release of this person.

191. As regards Mr. Alamiro Guzmán and Manuel Bustos, the Government stated in its communication of 23 February 1981 that the Minister of the Interior, by virtue of the powers accorded to him under Legislative Decree No. 2347 of 1978, appealed to the Court of Appeal of Santiago against these persons for having acted as representatives of workers without the authorisation to do so through a legally non-existing body called "the National Trade Union Co-ordinating Body". The investigating magistrate did not uphold the charges against these persons who were released on bail. The case is continuing before an ordinary civil judicial body which is independent of the executive authorities.

192. The Committee notes, first of all, that no new elements have been produced in the cases pending before the courts concerning the missing trade unionists or former trade unionists. Furthermore, according to the information obtained by the mission from various sources, these cases could not be concluded because the amnesty law adopted by the Government in 1978 did not allow proceedings to be brought against the security officers who might be involved in the disappearances. In these conditions, the Committee must keenly regret that the inquiries undertaken by the judicial bodies were not able to clarify the circumstances of these disappearances. It would like to be kept informed of any subsequent developments in the procedures under way.

193. The Committee takes note of the observations supplied by the Government on the placing under house arrest, detention and sentencing of the persons mentioned by the complainants. It notes that the reply conflicts with the allegations since the complainants claim that these various measures are related to the trade union activities of the persons concerned whereas the Government states that they are the consequence of breaking the law, disturbing the peace or engaging in subversive activities. The Committee however must observe that in most of the cases the Government has not supplied, in support of its statements, detailed information about the precise facts for which the persons mentioned by the complainants are blamed.

194. Regarding the placing of persons under house arrest, the Committee notes that a number of such measures were taken as a
result of a demonstration organised on May Day, which is traditionally a day of trade union action. It also observes that these procedures, to which the Government resorted on several occasions, are of an administrative nature, i.e. without any safeguard for the rights of the defence.

195. In addition, the Committee notes that court proceedings have been brought against various leaders of national federations, at the instigation of the Ministry of the Interior, for having acted as representatives of other persons without the authorisation to do so or as representatives of unregistered organisations. While some have been acquitted, others have on the contrary been given suspended prison sentences. In the Committee's view, such action can only be detrimental to the return to normal trade union life. Furthermore, the Committee cannot help but see a link between these cases and the difficulties imposed by the legislation for establishing and maintaining in existence federations and confederations.

196. Lastly, the Committee notes that Mr. Alvaro Sepúlveda was released three days after his arrest and that the cases concerning Mr. Guzmán and Mr. Bustos, who are now released on bail, are continuing before the courts.

* * *

The Committee's recommendations

197. In these circumstances, the Committee recommends the Governing Body to adopt the present interim report, in particular the following conclusions:

The Committee takes note of the information collected by the ILO mission which visited Chile in December 1980.

As regards the trade union legislation, the Committee regrets that in the absence of the Minister of Labour, the findings arrived at by the mission could not be the subject of a true exchange of views with the government authorities and that they were unable to indicate whether amendments or a change in government policy on trade union matters could be contemplated. It nevertheless trusts that the necessary legislative amendments will be introduced shortly with a view to more effective application of the principles of freedom of association and hence greater social justice. With this in mind, the Committee wishes to underline the interest which organisations of employers and workers have in consultation during the preparation and application of legislation which affects their interests. It requests the Government to keep it informed of any subsequent developments concerning the trade union legislation.

The Committee must also recall that application of a normal judicial procedure is essential in cases where trade union organisations are dissolved, a procedure which was not observed in the case
of seven federations and confederations dissolved in 1978. The Committee notes that the new trade union legislation provides that workers' organisations can only be dissolved by judicial means and that this procedure was followed in the case of the trade union of the Santiago Union Club.

Regarding the dismissals of trade unionists, the Committee wishes to stress the importance of effective protection against acts of anti-union discrimination. As regards more specifically the dismissals in the public sector, the Committee considers that the lack of legal recognition of the trade union rights of government employees can only encourage the adoption of measures prejudicial to the leaders of de facto organisations existing in this sector. Consequently, it requests the Government to take measures to permit the reinstatement of the dismissed trade unionists.

Concerning the disappearance and arrest of trade unionists, the Committee must observe that no new elements have been produced in the cases concerning missing trade unionists or former trade unionists. The Committee keenly regrets that the inquiries undertaken by the judicial bodies have not been able to clarify the circumstances of these disappearances. It requests the Government to keep it informed of any subsequent development in the procedures under way.

As regards the placing of persons under house arrest, the Committee must point out that these measures, some of which were taken as a result of May Day celebrations, are of an administrative nature and consequently the rights of the defence are not safeguarded.

The Committee also considers that the proceedings brought by the Ministry of the Interior against the leaders of national federations can only be detrimental to a return to normal trade union life.

It requests the Government to supply information on the results of the court cases instituted against Mr. Guzmán and Mr. Bustos.

Case No. 958


199. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainants

200. The allegations refer to the strike by the workers of the metallurgy sector of São Paulo from 1 April to 12 May 1980, the primary purpose of which was to obtain wage increases and continuity of employment for a year, and which was declared illegal by the judicial authorities on 14 April 1980.

201. The complainants allege that many people were injured on 18 April as a result of violent intervention by the military police against groups of workers who were gathered together in front of the headquarters of their trade unions. According to the WFTU, several dozens of workers were injured.

202. The complainants add that the authorities removed trade union leaders from office and replaced them by officials appointed by the political authorities; one of the leaders affected was Luis Inácio da Silva. The FMT, for its part, alleges that the authorities placed the metalworkers' unions of São Bernardo and Santo André under control, and the WCL, in its communication of 22 April 1980, alleges that trade unions were arbitrarily dissolved.

203. In its communication of 25 April 1980, the WCL mentions the arrest of 34 persons; 12 of these are said to have been freed a few days later, but at the date of the communication the following trade union leaders were still under arrest: Luis Inácio da Silva, Devanir Ribeiro, Orlando Francelino da Motta, José Cicotti, Djalma de Souza, Ernesto Cencini, Isaias Urbano de Cunha, Edevaldo Santiago de Araujo, José Maria de Almeida, Expedito Soares, Severino Alves da Silva and João Batista dos Santos. The communication from the ICFTU and IMF of 28 April 1980 states that on 21 April about 30 trade unionists were still in prison, including Arnaldo Gonçalves. The communication from the WCL dated 25 April 1980 further alleges that a delegation of agricultural workers who wished to demonstrate their support for the strikers was also arrested, but only for a few hours. In their last communication the ICFTU and IMF state that a delegation of agricultural workers who wished to demonstrate their support for the strikers was also arrested, but only for a few hours. In their last communication the ICFTU and IMF state that a delegation of agricultural workers who wished to demonstrate their support for the strikers was also arrested, but only for a few hours. In their last communication the ICFTU and IMF state that a delegation of agricultural workers who wished to demonstrate their support for the strikers was also arrested, but only for a few hours. In their last communication the ICFTU and IMF state that a delegation of agricultural workers who wished to demonstrate their support for the strikers was also arrested, but only for a few hours.

204. The complainants also allege that 1,507 metalworkers were dismissed on 14 May 1980 - two days after the strike had ended - and stress the need to adopt new labour legislation in conformity with ILO Conventions.
205. In its communication of 5 January 1981, the FNT states that the trade union leaders were to be tried in February under the National Security Act. In its communication of 6 February 1981, the ICPTU and IMP state that these persons are Luís Inácio da Silva, Rubens Teodoro Arruda, Djalma de Souza Bom, Oswar Santos Mendoça, Eribion Simon de Moura, Gilson Luiz Correia de Menezes, Jurandir Batista Magalhães, Nelson Campanholo and Manoel Anísio Gomes (the Trade Union of Metalworkers of São Bernardo do Campo); and José Cicote, José Timóteo da Silva and José Maria de Almeida (the Trade Union of Metalworkers of Santo André).

206. In its communication of 31 October 1980, the Government states that, now that "the charismatic hold" of Luís Inácio da Silva over his followers has been broken and that he and the other trade union leaders have been released, social peace has returned to the category of professional metalworkers of São Paulo.

207. According to the Government, the strike was called on 31 March 1980 after the labour authorities had exhausted all possibilities of negotiation with a view to bringing about conciliation between the metalworkers' unions and the employers of Group 14 of the FIESP.

208. Among the wage claims made, according to the Government, was the demand for a 15 per cent increase over and above the National Consumer Price Index (NCPI), which, if it had been granted, would have involved an adjustment of almost 105 per cent per annum at a time when inflation was running at only 80 per cent. In the course of the negotiations which preceded the strike, the employers repeatedly raised their offers of percentage increases above the NCPI, but their offers were rejected.

209. In its decision of 1 April 1980, states the Government, the Regional Labour Court (RLC) of the second region granted an increase of 6 or 7 per cent (depending on the situation of the workers) in return for higher productivity. This increase was rejected and the strike continued, thus marking contempt for a decision of the labour court; the strike was therefore declared illegal by the RLC on 14 April under section 25 of Act No. 4330 of 1 June 1964, which stipulates that "a strike shall be terminated ... by decision of a labour court", and under section 22 of the same Act, which prohibits strikes "for the purpose of altering the fixed conditions of ... a decision handed down by a labour court". The Government also remarks that no appeal was made against the court decision of 14 April.

210. The Government states that the object of the assumption of control of the trade unions ordered by the Minister was to halt a strike which had deviated from its true purpose and which relegated the legitimate demands of workers to second place; the Government adds that this action was carried out under Section 528 of the Consolidation of Labour Laws, which empowers the labour authority, in the event of a dispute or of circumstances of such a nature as to disrupt the operation of a trade union body, to inter-
veme for the purpose of taking control of such body and to propose or take the necessary steps to ensure that it again functions normally. In application of the law, continues the Government, the trade union leaders were removed from office, a sanction provided for by section 724b of the Consolidation of Labour Laws in the event of a suspension of services or contempt for the decisions of the labour courts at the instigation or orders of the leaders.

211. As regards the arrests and interrogations, the Government states that the leaders mentioned by the WCL were imprisoned for contempt of the BLC's injunction to terminate the strike and for contravention of the National Security Act, under section 36 of which incitement to collective contravention of the Act and incitement to hostility to the armed forces, or the encouragement of hostility between the armed forces and classes of society or civil institutions, are punishable as offences. The Government adds that the orders for the arrest of the above-mentioned trade union leaders were countermanded on 6 and 20 May 1980, that any offences for which they may be responsible are still under examination by the judicial authorities, and that the trials of the leaders are continuing.

C. Conclusions of the Committee

212. The Committee takes note of the Government's statement that the strike was declared illegal by a decision of the judicial authority in application of sections 22 and 25 of Act No. 4330 because it had been continued by the trade union leaders and workers in contempt of the earlier court order making a binding settlement as regards wage increases. The Committee also notes that the strike ended on 12 May 1980 and that there is now social peace in the metallurgical sector.

213. After examining the statements of the Government, the Committee wishes to point out, as it has already done quite recently in the case of similar complaints against the Government of Brazil,¹ that the right to strike is one of the essential means through which workers and their organisations may promote and defend their occupational interests. On the basis of this principle the Committee has considered that the conditions that have to be fulfilled in order to render a strike lawful must be reasonable and, in any event, not such as to place a substantial limitation on the means of action open to trade union organisations.

214. In the present case the Committee observes that the dispute between the workers and the employers of the metallurgical sector of Sao Paulo was referred to the courts, which, on the day following the declaration of the strike, gave a binding decision regulating the disputed wage issues and thus making it unlawful to continue the strike. In this respect, although in some cases the Committee has recognised that the obligation to notify the administrative authorities in advance and to have recourse to conciliation and voluntary arbitration procedures in collective labour disputes may not be regarded as a violation of the principles

¹ See 197th Report, Case No. 927 (Brazil), para. 353.
207th Report

of freedom of association,1 the Committee wishes to draw the attention of the Government to the fact that the imposition of compulsory arbitration, whether by judicial or by administrative authority, may prevent the workers from resorting to strike action - particularly if the penalties for those who do so are serious - thus depriving them of an essential method of promoting and defending the interests of their members.2

215. As regards the placing under control of the trade unions by the authorities, the removal from office of trade union leaders and their replacement by government officials, the Committee notes that section 528 of the Consolidation of Labour Laws authorises such intervention in the event of disputes or circumstances of such a nature as to disrupt the normal operation of a trade union body, and that section 724b of the Consolidation of Labour Laws permits the removal from office of leaders in the event of suspension of services or contempt for decisions of the labour courts.

216. In connection with this aspect of the case the Committee must, however, recall that it has on a number of occasions examined cases concerning the placing under control of the unions by the Brazilian authorities.3 In these cases the Committee has drawn the attention of the Government to the importance which it attaches to the principle that workers' organisations should have the right to elect their representatives and organise their administration and activities in full freedom, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. The Committee has also pointed out that the placing of trade union organisations under control entails a serious danger of restricting this right. Furthermore, the Government does not state whether it has put an end to the control of the trade unions and whether the trade union leaders have been able to resume office. The Committee requests the Government to keep it informed of developments in this respect.

217. As regards the imprisonment of the trade union leaders mentioned by the complainants and the court cases in which they are going to appear, the Committee notes the Government's statement that the orders for the imprisonment of the arrested leaders have been countermanded, but that the latter are still under trial and that the offences for which they might be held responsible as a result of their contempt for the decision of the Regional Labour Court are still under examination. In this connection the Committee must stress that the development of labour relations could be impaired as a result of an inflexible attitude being adopted in the application of excessively severe sanctions to workers who participate in strike

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1 See 139th Report, Case No. 722 (Spain), para. 393.
2 See 197th Report, Case No. 927 (Brazil), para. 356.
3 See 116th Report, Case No. 385, paras. 153 to 193; 143rd Report, Case No. 748, paras. 89 to 104; 158th Report, Case No. 800, paras. 95 to 128, and 197th Report, Case No. 927, paras. 358 and 359.
action, particularly when these are penal sanctions. The Committee also requests the Government to send information on the results of the judicial proceedings against the arrested trade union leaders.

218. In the light of the foregoing considerations the Committee feels that it would be useful, in the interests of the development of harmonious industrial relations in the country, for the Government to amend its legislation in the light of the principles set forth in the foregoing paragraphs.

219. Lastly, the Committee observes that the Government has not referred in its communication to the allegations relating to the arbitrary dissolution of trade unions, or to the physical assaults on workers in front of trade union premises on 18 April, which are alleged to have resulted in injuries to dozens of persons, or to the prohibition on the holding of assemblies announced by the police on 21 April, or to the arrest for a few hours of the delegation of agricultural workers who were supporting the metalworkers' strike, or to the many dismissals which are said to have taken place two days after the strike. The Committee therefore requests the Government to send additional information on each of these points.

The Committee's recommendations

220. In these circumstances the Committee recommends the Governing Body to approve the present interim report, and in particular the following conclusions:

The Committee draws the attention of the Government to the principle that, although the lawfulness of a strike may be made subject to previous recourse to conciliation or voluntary arbitration procedures, the imposition, in the present Brazilian judicial system, of compulsory arbitration resulting in a compulsory award can deprive the workers of the possibility of legally exercising their right to strike action.

The Committee requests the Government to inform it of the results of the court proceedings pending against the trade union leaders mentioned by the complainants.

It also requests the Government to keep it informed of the measures taken to cease the control of the authorities over the unions.

The Committee requests the Government to send additional information on the allegations to which it has not replied, as set forth in the previous paragraph.

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1 See, for example, 116th Report, Case No. 385 (Brazil), para. 168, and 138th Report, Case No. 725 (Japan), para. 170.
COMPLAINT PRESENTED BY THE WORLD CONFEDERATION OF LABOUR AGAINST THE GOVERNMENT OF GRENADA

221. The World Confederation of Labour (WCL) transmitted its complaint of violations of trade union rights in Grenada in communications dated 7 and 9 May 1980; it sent additional information on 21 January 1981 which has been forwarded to the Government for its observations. The Government sent a reply to the initial complaint in a letter dated 14 January 1981.

222. Grenada has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

223. In its communications of 7 and 9 May 1980, the WCL alleges that the Secretary-General of the Progressive Labour and General Workers' Union, Lloyd Roberts, and six other leaders have been arrested. It also states that the former Deputy Secretary-General of this organisation, Stanley Cyrus, has been expelled from the country and that the trade union press has been arbitrarily shut down. According to the WCL, the Government has set up a regime of terror aimed principally at trade unionists, but also at church organisations.

224. In its letter of 21 January 1981, the complainant supplies the names of five trade union leaders and active trade unionists who were arrested and are still in prison: Kenneth Budhlall, Kennedy Budhlall, Evan Bhola, Rodney Nelson and Stanley Cyrus. It states that they are all members of the Progressive Labour and General Workers' Union, the last-named being the Secretary-General of that organisation.

B. The Government's reply

225. The Government, in its letter of 14 January 1981, forwards an unsigned report on the allegations, prepared by the then Acting Labour Commissioner and dated 9 June 1980. This report describes the history of the union in question: it was registered on 14 December 1967, but from 1971 onwards did not despite reminders submit annual financial statements to the Registrar of Trade Unions as was required by law. Discussions with the earlier General Secretary, Mr. Lennie Archibald, revealed that the union had become inactive in 1969 and had no financial members until 1977, around
which time Stanley Cyrus, Kenny Budhlall\(^1\) and Lloyd Roberts had approached Mr. Archibald and had received from him the books of the union. Since then Mr. Archibald has taken no active part in that organisation.

226. The Acting Labour Commissioner also spoke to Lloyd Roberts concerning the activities of the union and his involvement in it. According to the Commissioner's report, Mr. Roberts stated that around 1977 Stanley Cyrus had asked him to associate with that union as a Spanish translator and that he had agreed although he was aware that the movement did not represent any persons in any employment; Mr. Roberts further stated that he was never the Secretary-General of the movement, that he was never harassed by anyone and that he was not associated with any statement made to the WCL. The Commissioner attaches to his report a statement said to be signed by Mr. Roberts, denying that he is Secretary-General of the Union, denying his arrest and any regime of terror against trade unionists and voicing his support for the Government. The statement, however, is not signed.

C. The Conclusions of the Committee

227. This complaint concerns allegations of arrest of certain trade union leaders and active trade unionists of the Progressive Labour and General Workers' Union, namely, Lloyd Roberts, Kenneth Budhlall, Kennedy Budhlall, Even Bhola and Rodney Nelson. A sixth unionist, Stanley Cyrus, is described by the complainant both as the former Deputy Secretary-General of the organisation, now expelled from the country, and as the current Secretary-General still being held in prison. Allegedly, the trade union press has also been closed down by the authorities.

228. The Committee takes note of the Acting Labour Commissioner's report into the allegations but observes that it only goes into one aspect of the allegations, that is, the status and present situation of Mr. Lloyd Roberts. In this regard, the Commissioner reports assertions made to him by Mr. Roberts to the effect that, although associated with the union, he was never its Secretary-General and that he has never been harassed by anyone. However, the evidence presented by the Commissioner, a statement from Lloyd Roberts calling the allegation a blatant lie, is not signed.

229. Despite the paucity of information before it and while noting the Government's denial of the arrest of Mr. Roberts, the Committee considers it important to recall at this stage the principle which it has often stated in the past,\(^2\) that measures of preventive detention of trade unionists may involve a serious

\(^1\) Note that the name sent by the Government does not correspond to those listed by the complainant, i.e. Kenneth and Kennedy Budhlall.

\(^2\) See, for example, 127th Report, Case No. 664 (Colombia), para. 91; 194th Report, Case No. 887 (Ethiopia), para. 87.
interference with trade union activities where no grounds for conviction are subsequently found and which it would seem necessary to justify by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period. In view of this, the Committee would appreciate receiving further details as to the present situation of Lloyd Roberts, as well as the Government's observations on the allegations concerning the arrest of Kenneth Budhlall, Kennedy Budhlall, Evan Bhola, Rodney Nelson and the expulsion of Stanley Cyrus.

230. In these circumstances, the Committee recommends the Governing Body to adopt the present interim report and, in particular, the following conclusions:

The Committee must draw the attention of the Government to the principle concerning the risk of serious interference in trade union activities presented by measures of preventive detention of trade unionists where no grounds for conviction are subsequently found against them.

The Committee requests the Government to supply further details as to the present situation of Lloyd Roberts, as well as its observations on the allegations concerning the arrest of Kenneth Budhlall, Kennedy Budhlall, Evan Bhola, Rodney Nelson and the expulsion of Stanley Cyrus and on the alleged closure of the trade union press.

Case No. 983

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, THE WORLD FEDERATION OF TRADE UNIONS AND OTHER WORKERS' ORGANISATIONS AGAINST THE GOVERNMENT OF BOLIVIA

231. The Committee already examined this case at its session of November 1980 when it presented an interim report to the Governing Body. Since that meeting or shortly before, the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL), the Miners' International Trade Union Federation (MITUF), the World Federation of Trade Unions (WFTU), and the Permanent Congress of Trade Union Unity of Workers of Latin America (CPUSTAL) presented additional allegations in communications dated 29 October and 5 November 1980 and 19, 20, 21 and 22 January 1981 respectively. The Government furnished its observations in communications dated 15 and 17 December 1980 and 23 February 1981.

232. Bolivia has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

See 205th Report, approved by the Governing Body at its 214th Session (November 1980).
A. Previous examination of the case

233. The complaints presented in this case concerned the repression suffered by the trade union movement following the change of government on 17 July 1980. The allegations principally concerned the violent death of certain trade union leaders, including Gualberto Vega and the many detentions of trade union leaders and activists. Thus the external co-ordination secretariat of the Bolivian Central of Workers supplied a list of more than 400 persons who had been arrested, which had been transmitted to the Government for its observations. The allegations also concerned the dissolution by administrative authority of the Bolivian Central of Workers and almost all the trade union organisations. For its part, the ILO denounced the arrests of the members of a humanitarian mission which had been sent to Bolivia and the confiscation of $30,000 which had been destined for assistance to the families of the imprisoned trade unionists.

234. At its session in November 1980, the Governing Body, on the recommendation of the Committee, noted that a representative of the Director-General had visited the country to examine the trade union situation on the spot, jointly with the Government. The Governing Body expressed its concern at the gravity of certain allegations and recalled as a general principle that a truly free and independent trade union movement could only develop where fundamental human rights were respected. Furthermore, the Governing Body urged the Government to supply its observations on the allegations concerning the death of trade union leaders and to communicate information on the precise circumstances of these deaths if it were true that these persons were no longer alive. It also noted that certain persons mentioned by the complainants had been released but that a significant number of other persons had either been restricted to specified towns or exiled.

235. As a consequence, the Governing Body recalled the principles and considerations to which it was committed concerning measures of arrest, restriction to specified towns and exile, and in particular, the importance of appropriate judicial safeguards, and it asked the Government to supply information on the present position of the other trade unionists mentioned in the complaints. It also called the Government's particular attention to Article 4 of Convention No. 87, ratified by Bolivia, according to which workers' organisations shall not be liable to be dissolved by administrative authority and it expressed the hope that the Bolivian trade unions would soon be returned to their previous status, that the proposed new legislation would be in full conformity with Conventions Nos. 87 and 98 and that in revising the trade union legislation the Government would, as it had indicated was its intention, seek the advice and co-operation of the ILO. It requested the Government to supply information on the progress made in the adoption of this legislation and on the evolution of the trade union situation. The Governing Body noted furthermore that the members of the ILO who were arrested during a mission to Bolivia had been released and expelled but, in the absence of observations from the Government on this point, it had requested it to provide information on the alleged confiscation of a sum of money carried by members of the mission.
B. New developments

(a) Information communicated by the Government

236. By a communication dated 15 December 1980, the Government reiterates the denunciation which it had made in October 1980 that the Bolivian trade union movement had departed from its proper course and had become a purely political instrument which was being manipulated against the national interest. The Government goes on to say that this situation had made it necessary for it to take certain steps to restore genuine freedom of action to the trade union organisations. It adds that the Bolivian trade union movement has now been freed of all outside pressure and is being reorganised on the basis of "labour relations agents" democratically elected by workers' committees. The second stage will involve the organisation and establishment of federations pending the establishment of confederations. On this point, the Government gives its assurances that it will communicate periodic information on the trade union situation in Bolivia and that it will take account of the advice and co-operation of the ILO when revising social legislation.

237. By a second communication dated 17 December, the Government announces the liberation on 22 November 1980 of all political prisoners and arrested trade unionists. The order for the release was given by the President of the Republic and was rigorously and solemnly carried out, which according to the Bolivian Government, is proof of the grossly distorted nature of the accounts being circulated outside the country.

(b) New complaints

238. In communications dated 19 and 22 January 1981, the complainants presented new allegations under the pending complaints procedure. These allegations refer essentially to the assassination, on 15 January 1981 at La Paz, of nine opposition leaders, including several trade unionists who were killed by the police, and to new arrests of trade unionists.

239. The complainants note in particular the death of Artemio Camargo, a leader of the Bolivian Central of Workers (BCW) and the Federation of Miners, from injuries received and the arrest of Gregorio Andrade, a peasant leader, Walter Delgadillo, a leader of the BCW and Pablo Copa, a leader of the Federation of Miners during clashes with the police. The ICFTU further alleges that Gloria Ardaya was arrested and it expresses its concern at the fate of the trade unionists held in detention.

240. The WCL also alleges that there has been a new wave of arrests in Bolivia since the end of December. The WCL claims that according to information from various sources, more than 1,000 persons have been arrested since the end of 1980. The military government is said to have used the armed forces to occupy the mining centres and the major factories of La Paz and Cochabamba. The army is alleged to be trying to put certain areas of the country "under arrest". In this connection, the same organisation includes in the annex to its communication a military communiqué entitled
communique No. 03/80, Telamayu, dated 23 October 1980, which orders students and workers in the mines who do not have a fixed place of abode to report to the military authorities with their identification documents before 30 October 1980 or risk imprisonment for suspected clandestine activities. The WCL claims that several concentration camps have been identified: L'Estancia, El Dorado, San-Joaquin, Puerto Cavinas and Madidi in the department of Beni, Cobija and Puerto Rico in the department of Pando, and it encloses a partial list of prisons and other camps. It alleges that the arrests are generally made during the curfew and that the prisoners held at the Ministry of the Interior or the barracks of the military training centre at Irpavi are deprived of the right to any visits and are tortured.

241. The WCL alleges furthermore that the Government has dismissed 3,476 trade union leaders employed in the civil service.

(c) Latest information communicated by the Government

242. Regarding the allegations concerning the death of Gualberto Vega, the Government states that the inquiries carried out have permitted the conclusion to be arrived at that the person in question does not exist and that he does not appear in any identification register. According to the Government, this person is thus imaginary.

243. As regards the dismissals which allegedly took place in the public service, the Government states that the large majority of those concerned themselves ceased to carry out their functions.

244. The Government also states that it is going to revise the general labour law adopted in 1956 which it considers anachronistic and inoperative.

245. As for the allegation concerning the confiscation of a sum of money brought by the members of the ICFTU on mission in Bolivia, the Government gives its assurance that the sum will be given back very soon by its representative.

C. Conclusions of the Committee

246. The Committee notes the Government's statement that on 22 November 1980 there were no more political prisoners and arrested trade unionists in prison. Since then, the Committee has received complaints relating to the death of nine persons, including several trade unionists, and to the arrest of several trade union leaders and active trade unionists.

247. Firstly, the Committee must note with regret that the inquiries carried out by the Government have not led to the identification of Gualberto Vega. According to the allegations coming from several compliant organizations, it would concern Gualberto Vega Yepura, leader of the Federation of Trade Unions of Mine Workers in Bolivia, representative of the Catavi district, who
is said to have died on 17 July 1980 during attacks by the armed forces. Due to the particular seriousness of this allegation, the Committee considers it necessary that the investigations continue with a view to clarifying the facts and it requests the Government to keep it informed on this point.

248. Furthermore, in November 1980, the Committee had expressed the hope that the Bolivian trade unions would be returned to their previous situation and that the proposed new legislation would be in conformity with ILO standards. In this connection, the Committee notes that the Government reiterates its declarations that the Bolivian trade union movement is being organised on the basis of workers' committees and that the Government gives its assurances that account will be taken of the advice and co-operation of the ILO when its social legislation is revised. The Committee can only insist on the importance of the right of workers to be able to establish and join organisations of their own choosing. It wishes to request the Government to continue to furnish information on developments occurring in the legislative situation.

249. In addition, the Committee notes the assurances given by the Government that the sum of money confiscated from the ICFTU delegation will very soon be returned.

250. As concerns the allegations of the WCL that 3,476 trade unionists employed in the civil service were dismissed, the Committee wishes to point out, while noting the very general observations provided by the Government, that the authorities should not, even during times of political upheaval, undertake anti-trade union activities and should not in particular dismiss trade unionists working in the public sector. The Committee therefore requests the Government to take measures with a view to allowing the workers concerned to be reinstated in their jobs.

251. In the absence of comments by the Government on the new allegations concerning the death of nine leaders of the opposition, including Artemio Camargo, and the arrest of trade unionists including Gregorio Andrade, Walter Delgadillo, Pablo Copa and Gloria Ardaya, the Committee requests the Government to furnish detailed information on these aspects of the case.

The Committee's recommendations

252. In these circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body to adopt the present interim report, and in particular the following conclusions:

The Committee would like firstly to express its concern at the gravity of the allegations which continue to be presented to it and to recall that the free and independent trade union movement can only develop where fundamental human rights are respected.

The Committee must note with regret that the inquiries carried out by the Government have not led to the identification of the leader of the Federation of Miners, Gualberto Vega, whose death has been alleged. The Committee requests the Government to continue its
investigations and to keep it informed on this point. As regards the deaths of the trade union leaders including Artemio Camargo, which allegedly occurred on 15 January 1981, the Committee urges the Government to provide information on the circumstances surrounding these deaths.

The Committee also requests the Government to communicate the most exact information available on the fate of Gregorio Andrade, the peasant leader, Walter Delgadillo, leader of the BCW, Pablo Copa, leader of the Federation of Miners, and Gloria Ardaya, who were allegedly arrested in January 1981.

It notes that the sum of money confiscated from the ICFTU delegation will very soon be returned.

Regarding the allegations of dismissals of trade unionists in the public service, the Committee wishes to point out that the authorities should not, even during times of political upheaval, undertake anti-trade union activities. It requests the Government to take measures with a view to allowing the workers concerned to be reinstated in their jobs.

Finally, as regards the revision of the trade union legislation, the Committee requests the Government to continue to keep it informed of progress made in this connection, and it expresses the firm hope that the legislation so amended will be fully in conformity with the provisions of Conventions Nos. 87 and 98, which have been ratified by Bolivia, and will rapidly permit the restoration of freedom of association in the country.

Case No. 991

COMPLAINT PRESENTED BY THE TRADE UNIONS INTERNATIONAL OF AGRICULTURAL, FORESTY AND PLANTATION WORKERS (UISTABP) AGAINST THE GOVERNMENT OF COSTA RICA


254. Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

255. In its communication of 21 August 1980 the UISTABP alleges repression of the banana workers, the militarisation of their work, government intervention in the Union of Workers of El Golfoillo (UTG) and the imprisonment of dozens of workers, including Edwin Oviedo, General Secretary of UTG.
256. In its communication of 16 October 1980 the Government states that at no time has it practised a policy of repression against the banana workers, that the public authorities do not even possess statutory powers to militarise any form of labour and that the Government has not intervened in UTG. As regards the arrest of trade union leaders, continues the Government, the authorities have not arrested citizens for the mere fact of holding trade union office.

257. The Government states that, following talks between the representatives of UTG and the Costa Rica Banana Company on matters related to the collective agreement in force, which failed to result in an agreement on wages and the dismissal of workers, a strike was called - which was later to be declared illegal by the courts - on 10 July 1980, despite the repeated efforts at conciliation by the Ministry of Labour and Social Security, which remained unsuccessful even after the strike had begun. In these circumstances, continues the Government, and pursuant to the Labour Code, the Executive issued a decree on 13 August 1980 to place the plantations under temporary control as they were regarded as a public service under private ownership, and to regulate the conduct of labour-management relations. The Government indicates that the strike was ended by the trade union leaders on 26 August, when the Ministry of Labour and Social Security replied favourably to the proposals made by trade union organisations respecting the Decree of 13 August 1980. These proposals, made by Edwin Oviedo, among others, on 24 August 1980, referred to the continuity of contracts of employment, the undertaking that there would be no reprisals against those who had participated in the strike, the action to be taken as regards the dismissals made before the strike began, etc.

258. The Government reports that there has been full labour and social peace in the banana zone of the South Pacific area of the country since the strike ended.

C. Conclusions of the Committee

259. The Committee notes that the labour dispute in the Banana Company has ended and that the present labour and social situation in the zone is peaceful.

260. The Committee nevertheless wishes to point out that the Government has not given a concrete reply to the allegation of the complainant regarding the arrest of trade union leaders. In this connection the Committee would like to obtain detailed information on any arrests of trade union leaders arising out of the labour dispute and on the present situation of any persons that may have been arrested, in particular on the alleged arrest of Edwin Oviedo, General Secretary of the UTG, even though the Committee has noted that the signature of Mr. Oviedo appears on the document of 24 August 1980 in which the trade union organisations made proposals to the Ministry regarding the Decree of 13 August 1980.
261. The Committee also observes that the Government has not indicated the grounds on which the strike of 10 July 1980 was declared illegal. For its part, the Committee notes that all strikes in public services are unlawful under section 368 of the Labour Code, and that section 369(b) includes in this category of services work performed by employees engaged in ... the care or harvesting of agricultural products. In this respect the Committee would like to draw the attention of the Government to the fact that prohibitions on the right to strike are admissible only to the extent which they apply to civil servants or workers in essential services in the strict sense, i.e., services whose interruption would endanger the existence or well-being of the whole or part of the population. The Committee wishes to recall that the Committee of Experts on the Application of Conventions and Recommendations, in its General Survey on freedom of association and collective bargaining, mentions agriculture as not forming part of essential services in the strict sense of the term.2

262. In these circumstances the Committee recommends the Governing Body to adopt the present interim report and in particular the following conclusions:

The Committee must draw the attention of the Government to the fact that the prohibition of strikes is admissible only to the extent which it applies to the civil service or to essential services in the strict sense.

The Committee requests precise information from the Government on the reasons for the arrests mentioned by the complainants and on the present situation of the arrested trade unionists.

Case No. 994

COMPLAINT PRESENTED BY THE TRADE UNIONS INTERNATIONAL OF FOOD, TOBACCO, HOTEL AND ALLIED INDUSTRIES WORKERS (WFTU) AGAINST THE GOVERNMENT OF COLOMBIA

263. The complaint is contained in a communication from the Trade Unions International of Food, Tobacco, Hotel and Allied Industries Workers (WFTU) dated 20 August 1980. The Government replied by a communication of 9 January 1981.

264. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

1 See, for example, 204th Report, Case No. 952 (Spain), para. 159.

A. Allegations of the complainant

265. In its communication of 20 August 1980 the complainant alleges that over 150 workers of the undertaking "Productos Noel" S.A., of Medellin, including the trade union leaders Luis Efrén Loaiza and Miguel Zea, respectively chairman and a member of the grievances committee, were dismissed during 1980 in flagrant violation of the collective agreement.

266. The complainant adds that the undertaking "Frigorífico Suizo", S.A., of Bogotá has resorted to all kinds of measures - offers of loans, threats, dismissals, etc. - to destroy the trade union of the undertaking.

267. Lastly, the complainant states that the major demands of the workers remained unsatisfied in the negotiation of the claims of the workers of the undertaking "Gaseosas del Tolima", S.A. (Tolima), "Gaseosas del Huila", S.A. (Neiva) and "Cerveceria Andina".

B. Reply of the Government

268. In its communication of 9 January 1981 the Government states that the trade union of the undertaking "Productos Noel", S.A., of Medellin, requested an administrative inquiry into the collective dismissals alleged by the complainant; this was ordered immediately by the labour authorities in order to clarify the case and is not yet completed.

269. As regards the allegation relating to the purported persecution of the trade union in the undertaking "Frigorífico Suizo", S.A., the Government states that the Labour Inspectorate examined four petitions by the trade union of the undertaking relating to this "trade union persecution", and that having made investigations and heard the parties it issued a resolution exonerating the undertaking from the accusations made by the trade union, without the latter seeking any of the means of redress provided for by the law.


C. Conclusions of the Committee

271. The Committee notes that an administrative inquiry into the dismissals in the undertaking "Productos Noel", S.A., during 1980 is under way. The Committee requests the Government to send it the result of the inquiry, specifying the grounds for the dismissals, particularly those of the trade union leaders Luis Efrén Loaiza and Miguel Zea.
272. As regards the attempts by the employer to destroy the union of the undertaking "Frigorifico Suizo", S.A., the Committee notes that this union presented four petitions which were examined by the Labour Inspectorate, and that a resolution on the latter exonerated the undertaking from the accusations made without any appeal having been lodged against it.

273. As regards the absence of a response by the undertakings "Gaseosas del Tolima", S.A., "Gaseosas del Huila", S.A., and "Cerveceria Andina" to the demands of the workers, the Committee notes that collective agreements were concluded in these undertakings shortly after the presentation of the complaint. The Committee accordingly considers that this aspect of the case does not call for further examination.

274. In these circumstances the Committee recommends the Governing Body to approve the present interim report and request the Government to send it the results of the current administrative inquiry into the dismissals which took place in the undertaking "Productos Noel", S.A., during 1980, with special reference to the dismissals of the trade union leaders Luis Efrén Loaiza and Miguel Zea.

Cases Nos. 997 and 999


A. Introduction

275. By communications dated 9 September and 15 October 1980 respectively, the Trade Unions International of Workers in Commerce and the Trade Unions International of Public and Allied Employees presented complaints of violation of trade union rights in Turkey, in Case No. 997.

276. In addition, new complaints were presented in Case No. 999 by the World Confederation of Labour (WCL), the Trade Unions International of Workers of the Building, Wood and Building Materials Industries, and the World Federation of Trade Unions (WFTU) on 17 September, 1 October and 17 October 1980 respectively. The WCL sent additional information in support of its complaint on 24 September and 25 November 1980.

277. The Government sent its observations on the two cases in a communication of 3 December 1980. Since that date, the WCL and the WFTU sent certain additional information, in letters dated 6, 9 and 21 January 1981 respectively, which have been communicated to the Government. It sent its additional observations on 28 January and 6 and 16 February 1981.
278. Turkey has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

B. Allegations of the complainants

279. Since the two cases complement each other on a number of points, the Committee proposes to examine them together. Thus, the Trade Unions International of Workers in Commerce, in its communication of 9 September 1980, refers to the arrest of two officers of the Progressive Union of Workers in Banks, Offices, Stock Exchanges, Educational Institutions, Co-operatives and Insurance Companies of Turkey (BANKSEN), Mehmet Tandogan and Fevzi Karadeniz.

280. The Trade Unions International of Workers in Commerce attaches to its complaint a letter published by BANKSEN and dated 26 August 1980, which explains that, following the murder of Kemal Turkler, President of the Metalworkers' Union and former President of the Confederation of Unions of Progressive Workers (DISK), a million workers launched a general protest strike, during which a number of trade unionists were arrested. Although most of them were subsequently released, Mehmet Tandogan and Fevzi Karadeniz, respectively presidents of sections of BANKSEN in Ankara and Diyarbekir, are alleged to have been detained in a military prison on the orders of the commanders of the state of siege of these two cities on charges of obstructing the operation of certain undertakings.

281. Subsequently the World Confederation of Labour, the World Federation of Trade Unions, the Trade Unions International of Workers of the Building, Wood and Building Materials Industries and the Trade Unions International of Public and Allied Employees refer in their communications to the measures taken following the change of regime which took place in Turkey on 12 September 1980. They protest against the banning of the Confederation of Unions of Progressive Workers (DISK) and many of its affiliated organisations. They add that the premises of these organisations have been closed and their bank accounts frozen and allege that large numbers of trade union officers and active trade unionists have been arrested and a general ban placed on strikes.

282. The WCL attaches to its complaint the list, published in the Turkish Official Gazette of 18 September 1980, of the 35 affiliates of DISK and the 47 other trade union organisations affiliated to a number of confederations, which have been dissolved by the National Security Council consisting of five generals. WCL adds that the Confederation of Unions of Nationalist Workers (MISK) has also been banned; only the TURK IS Confederation, which is close to the Government, can continue its activities, according to the WCL, and its General Secretary, Sadik Side, has become Minister of Social Security.

\[^1\] See in this connection the 204th Report, approved by the Governing Body at its November 1980 Session, Case No. 985 (Turkey), paras. 302-307.
283. The WCL explains the trade union situation with reference to the economic context. In its view, the International Monetary Fund loan of $1,600 million granted to Turkey in 1980 for a period of three years and the resulting constraints, namely rising prices, restrictions on domestic consumption in order to expand the export sector, the abolition of price controls in the private sector and the placing of the economy in private hands, imply the imposition of austerity on the least privileged sectors of the population, a weakening of purchasing power, which is already very low, and the maintenance, if not the spread, of unemployment. For these reasons, alleges the WCL, the right to strike has been abolished and the militant and representative trade unions have been done away with. In this connection, the complainant adds, there should be no illusions as to the 70 per cent wage increase announced by the Turkish Government since the new regime came into power, since the rate of inflation in the country is 100 per cent. The complainant also denounces the privileges enjoyed by multinational companies, the strangle hold exerted by foreign capital and the economic power of the army, which, it says, is extending its activities not only in electronics and construction but even in the automobile industry, petro-chemicals, the food preservation industry and insurance.

284. More specifically, the WCL states that 935 DISK militants were arrested in a single night; furthermore, it claims, a total of 5,000 persons belonging to trade union organisations at all levels have been arrested in Istanbul alone. Among the latter the complainant mentions the names of Abdullah Basturk, Fehmi Isiklar, Mukbul Zirtiloglu and Biza Guven, all DISK officers, and Denizmen, President of the BANKSEN Banking Union. According to the WCL the arrested trade unionists are being held in military prisons, their heads have been shaved and they are wearing prison clothing. The period of preventive arrest is said to have been increased from 30 to 90 days, during which time the prisoners have been unable to communicate with their lawyers.

285. The WFTU, for its part, mentions, in its complaint of 17 October 1980, the prohibition of a strike of 60,000 workers in the steel, textile and glass industries and refers to the statements made by the President of the employers' organisation (TISK) welcoming the general prohibition on strikes which in his opinion would result in export profits of $150 million.

286. The WFTU also alleges that Ahmet Hilal Feyzioğlu, legal adviser to the Metalworkers' Union (MADEN IS), died as a result of torture. The WFTU requests that a commission of inquiry should be sent to Turkey in view of the repeated and extremely serious violations of the freedom of association Conventions.

C. Reply of the Government

287. In a reply to the two cases, dated 3 December 1980, the Government gives very general indications of the reasons which led to the assumption of power by the Turkish armed forces on 12 September 1980. The Government explains that the operation was designed to bring about the necessary conditions for the re-
establishment and revival of a free, democratic regime, based on respect for basic rights and freedoms, and with all the institutions that such a régime implies. Free trade unions and trade union freedoms are, the Government adds, part of the latter.

288. The Government states that the insecurity and disorder prevailing in the country and the incapacity of the existing structures to halt the dangerous escalation of violence, accompanied by serious political, economic and social problems, made the operation necessary and inevitable. The Government gives the assurance that the only wish of the Turkish armed forces is to restore power to a freely elected civil government. The country is at present in a period of transition in preparation for the future. This delicate task of preparation occasionally requires exceptional restrictions of a temporary nature, such as the suspension of the activities of all political parties and associations. These restrictions are not due to the wish to abolish these institutions, but are dictated by the demands of an exceptional situation.

289. Finally, the Government refers to various declarations of principles on trade union activities and to the Government's intentions as to how the situation should develop. In particular, it says that the Head of State, General Kenan Evren, in a press conference on 16 September 1980, explained that the trade unions will continue their activities in accordance with democratic principles, but that those who wish to exploit the workers and convert them to their own ideology and who attempt to abuse trade union rights will be given no opportunity to achieve their ends. The government programme of 21 September 1980 states that the legislation on collective bargaining, strikes, trade unions and labour will be reviewed and the necessary amendments made in order to restore social peace.

290. In this general context, the Government adds, the main developments of concern to trade union activities since 12 September 1980 may be summarised as follows:

(a) strikes and lockouts have been suspended until further notice. This decision should not in any way be interpreted as a denial of the right to strike, but is motivated by the concern to restore much-needed social peace and is accompanied by a series of measures to safeguard the rights of workers during strikes. They have been granted a wage increase of the order of 70 per cent, and dismissals against the workers' will and without misconduct on their part have been forbidden;

(b) in order to safeguard public order, the activities of the DISK (Confederation of Unions of Revolutionary Workers) and the MISK (Confederation of Unions of Nationalist Workers) and their affiliated unions have been suspended pending a decision on their future by the judicial authorities. It should be noted that the activities of these organisations, which are under judicial investigation, go beyond trade union action properly speaking;

(c) in order to safeguard the financial interests of the unions whose activities have been suspended for over a month and to ensure that their property and assets are properly administered, an Act providing for the employment of trustees by the competent labour courts has just been promulgated;
(d) workers who were taking part in collective bargaining which was interrupted following the suspension of the activities of the union which was conducting it will be entitled to the 70 per cent wage increase mentioned above;

(e) the officials of the trade unions whose activities have been suspended were invited to place themselves under the surveillance of the authorities. Following the preliminary investigation, those against whom no charges were found were released on 11 October 1980. The others were brought before the court mainly on charges of common offences under existing legislation;

(f) the Confederation of Trade Unions of Turkish Workers (TURK IS), the major workers' organisation from the point of view of the number of its members, and its affiliated unions are continuing to function normally.

291. The Government concludes by stating its resolute adherence to the principles of freedom of association and its determination to work towards the establishment of conditions favourable to the full and effective enjoyment of trade union rights under a democratic régime based on the rule of law.

D. Additional information

(a) sent by the complainants

Allegations relating to the prohibition of strikes and collective bargaining

292. Since then in communications dated 6 and 21 January 1981, the WCL refers to the prohibition of the right to strike and of collective bargaining to explain that the Government is preparing the introduction of "compulsory arbitration". According to the WCL, trade unions will be authorised to function again (and to carry out collective bargaining) and those which do not arrive at an agreement with the employers will have to go before a Superior Arbitration Council whose decisions are final. It states that 350,000 workers covered by collective agreements signed before 12 September 1980 had to decide within three days from 1 January 1981 whether to accept the wage increases provided for in the agreements or whether to make use of the provisions in the new financial law.

Allegations relating to arrests of trade union leaders and active trade unionists and to the dissolution of the DISK

293. Moreover, the WCL states that about 100\(^1\) trade union leaders and active trade unionists of the DISK and its affiliate

\(^{1}\) The names of the trade union leaders and active trade unionists who have been arrested and their qualifications and places of detention are listed in the annex.
Organisations have been arrested by order of the Istanbul Court Martial and have been kept in prison for four months without being able to contact their lawyers. They have allegedly been charged with setting up and participating in an illegal organisation aimed at the domination by one class over the other social classes. The civil court of Bakirkoy (Istanbul) is, according to the WCL, in the process of dealing with a preliminary investigation into the dissolution of the DISK.

294. As regards this last point, on 9 January the WFTU confirmed that the authorities had opened the case of the members of the Executive Committee of DISK who were arrested in May 1980.

Another question

295. Furthermore, the WFTU stated that it is sending a mission to Turkey to make contact with the defence lawyers of the trade unionists before the courts and to contact the appropriate authorities at the Ministry of Labour and to follow the developments in the court cases.

(b) sent by the Government

Arrest of trade unionists

296. On 28 January 1981, the Government states as regards the judicial action taken against the trade unionist Mr. Mehmet Tandogan, Chairman of the 4th Region of BANKSEN arrested on 23 July 1980 at Ankara and charged with inciting the staff of certain banks to go on an illegal strike by the court which upheld the charge and ordered his arrest, that he was released on 17 December 1980. As regards the trade unionist Mr. Ferzi Karandeniz, Chairman of the 9th Region of BANKSEN, he has been detained since 24 July 1980 at Diyarbakiz for having incited and forced the members of his trade union not to go back to work as a sign of protest against the murder of Kemal Türkler and was brought before the appropriate court which had ordered his arrest.

Right to strike and collective bargaining

297. On 6 February 1981, the Government adds that since the change of regime there has been no legislative interference to limit or prohibit trade union activities and that the suspension of strikes until further notice is the only temporary restriction in this connection. This restriction was undertaken, according to the Government, in conformity with the provisions of Act No. 1402 on the State of Emergency which was adopted in 1971.

298. As regards the conclusion of collective agreements still pending, the Government states that an Act providing for the institution of a High Arbitration Commission under the chairmanship of the Chairman of the Court of Appeal and made up of two employers' representatives and two workers' representatives has just been adopted. This High Commission is responsible for taking decisions on the conclusion of collective bargaining and for resolving possible disputes. Also, the collective negotiations touching
around 450,000 workers could be concluded. This machinery is not aimed at replacing the present system of collective bargaining, but is considered to be a form of appeal in exceptional circumstances explains the Government.

**Suspension of the activities of the DISK and the MISK**

299. On this point, the Government states that very serious indications apparently proved the existence of structural ties and co-operation between certain illegal clandestine organisations responsible for terrorist acts and some trade unions, as well as of the infiltration by terrorist groups into certain trade union structures. This seems to have led the Government to suspend the DISK's activities. The Government states that the same apparently happened to the MISK which was infiltrated by the extreme right and which explains why its affairs are now within the jurisdiction of the courts. The Government claims that the DISK leaders whose names are listed by the complainants were arrested following a decision by the appropriate court and were accused of contravening sections 141, 142 and 146 of the Penal Code, the provisions of Act No. 1402 of the State of Emergency and those of Act No. 6136 on firearms.

300. On 16 February 1981, the Government states that the list published in the Official Turkish Gazette dated 18 September 1980 does not show the trade union organisations whose activities have been suspended. It does contain the names of all trade unions which exist in Turkey and the names of the confederations of which they are members. In addition, the Government states that the activities of the Petrol Workers' Trade Union (PETROL-IS), an affiliate of TURK-IS, were suspended on 18 October 1980, but that this decision was repealed on 9 January 1981 since which time this trade union has carried out its activities normally.

301. Furthermore, the number of trade unionists who have been charged since 12 September 1980 has reached 1,744, 577 of whom have been brought before the courts, 83 of whom have been arrested and the rest released, in accordance with the decision of the court of first instance. However, the Public Prosecutor has appealed this decision to a superior court which held, in their absence, that 223 persons out of those who had been released were to be arrested again. On the other hand the Government states that the period of preventive arrest of 30 days can be extended by judicial decision for periods of 20 days which must not exceed a total of 90 days.

**E. Conclusions of the Committee**

302. The Committee notes that the complaints contain particularly serious allegations referring to the death, arrest and imprisonment of trade unionists, the banning of a very large number of trade unions, in particular two of the Turkish trade union confederations, the Confederation of Unions of Progressive or Revolutionary Workers (DISK) and the Confederation of Unions of Nationalist Workers (MISK), to the freezing of their assets and the suspension of the right to strike. The Committee notes the explanations given by the Government regarding the reasons for these measures.
303. Before examining the various questions raised by the complainants, the Committee wishes to express its concern at the gravity of certain allegations and to recall the importance which it attaches to the development of freedom of association in respect of human rights and civil liberties.

304. The Committee notes that the Government has supplied no information on the alleged death from ill-treatment of Ahmet Hilmi Feyzioglu, legal adviser to the Metalworkers' Union. In this regard, given the seriousness of the allegation, the Committee can only urgently request the Government to state whether it is true that this person is no longer alive, to undertake as soon as possible an independent judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties, and to communicate the results of the inquiry.

305. Regarding the present situation of the imprisoned officers of BANKSEN whom the complainants mention by name, the Government states that they have been charged with incitement to an illegal strike and brought before the courts. One of them, Mehmet Tandogan, was released on 17 December 1980 and the other Ferzi Karadeniz, has been in detention since 24 July 1980.

306. On this point, the Committee notes with concern that a trade unionist had been imprisoned for six months for reasons connected with a strike and that another is still in prison after eight months for the same reason. The Committee must point out that measures of imprisonment for such reasons involve a serious risk of abuse and grave danger for freedom of association. While noting that one of the two trade unionists to whom the complainants refer has been released, the Committee requests the Government to review the situation as regards the other trade unionists.

307. As for the arrest of about 100 trade union leaders and active trade unionists whose names are listed in the annex, the Committee notes that, according to the Government, they have been charged with common offences, in particular, contraventions of sections 141, 142 and 146 of the Penal Code, the provisions of Act No. 1402 on the State of Emergency and those of Act No. 6136 on firearms.

308. The above-mentioned sections of the Penal Code provide for penalties of up to 15 years solitary confinement with hard labour for those who create the domination by one class over the other social classes and who form associations aimed at reversing the fundamental social and economic order of the country. Those who had several such associations will receive the death sentence. The sentence to solitary confinement will be tripled for those who have committed these crimes in trade unions or workers' associations (section 141 of the Penal Code). Section 142 sentences those who are involved in propaganda for the establishment of domination by one class over the other social classes and for the reversal of the fundamental social and economic order of the country to up to 10 years' solitary confinement with hard labour. Where these acts are committed through the means of publications, the sentence is doubled. Where trade unionists commit these acts, the sentence is tripled. Section 146 provides for the death sentence for those who attempt a coup d'état against the National Assembly set up under the Constitution. Moreover, Act No. 1402 of 1971 on the State of
Emergency provides for imprisonment of persons who participate in illegal meetings or strikes. Finally, the arrested trade unionists, and others, also face prosecution under the Act on firearms.

309. The Committee notes with deep concern that the imprisoned trade union militants and leaders face extremely heavy penalties and that these penalties can be exacerbated for the mere fact that they are trade unionists. On this point the Committee wishes to stress, as it has already done in earlier cases, that although the fact of exercising trade union activity or holding trade union office does not give immunity from the application of normal penal law, such provisions which discriminate against trade unionists constitute a serious impediment to the exercise of trade union rights.

310. Regarding the period of preventive arrest which can be raised from 30 to 90 days, the Committee must in any case point out the importance which should be attached to the principle that any person who is arrested should enjoy the guarantees of due process of law in conformity with the International Covenant on Civil and Political Rights, in other words, in particular, that all detainees must be allowed the necessary facilities for the preparation of their defence and should be able to communicate with the counsel of their own choice. The Committee requests the Government to continue to supply information on the development of the situation of the persons imprisoned at present, in particular, on all measures of release which might be taken, and in the case of sentences, to send the judgements concerned together with the reasons adduced therefor.

311. As regards the suspension of the Confederation of Unions of Progressive or Revolutionary workers (DISK) and the Confederation of Unions of Nationalist Workers (HISK) and the trade union organisations affiliated to them, the Committee wishes to stress the principle that trade union organisations must not be liable to be dissolved by administrative authority. The Committee wishes to lay particular emphasis on this point in the present case, inasmuch as the measures in question affect two of the three Turkish trade union confederations and thus have serious consequences for the defence of the occupational interests of a large number of workers in the country.

312. The complainants also mention the general suspension of the right to strike and the right to collective bargaining. In this connection it appears that collective bargaining had been frozen for some months and that recently adopted legislation once again allows the development of it and the intervention of a High Arbitration Commission of a tripartite structure to control any disputes on hand in case of failure of negotiations. The Committee cannot comment fully on this point without having at its disposal the text of the legislation in question. It accordingly requests the Government to communicate this text.

313. Nevertheless, the Committee wishes to recall here and now that if, in the interests of a policy of economic stabilisation, a government considers that wages are to be fixed or increased by unilateral decision of the authorities and may not be determined freely by means of collective bargaining, such a restriction must be applied as an exceptional measure and limited to what is strictly indispensable; it must not be applied beyond a reasonable period and must be accompanied by appropriate guarantees to safeguard the workers' standard of living.
314. Regarding the suspension of the right to strike, the Committee wishes to recall further that measures of this type constitute a major restriction on one of the essential means whereby the workers and their organisations can promote and defend their interests and that they should be imposed solely as temporary measures in a situation of acute national crisis.

The Committee's recommendations

315. In these circumstances, and as regards the case as a whole, the Committee recommends the Governing Body to adopt the present interim report and in particular the following conclusions:

The Committee first of all wishes to express its grave concern at the seriousness of the allegation and in general to recall that a genuinely free and independent trade union movement can develop only if basic human rights are respected.

The Committee notes that the imprisoned trade union leaders and active trade unionists face extremely heavy penalties and that these penalties can be worsened by the mere fact that they are trade unionists. It considers that such provisions which involve discriminatory treatment against trade unionists constitute a serious impediment to the exercise of trade union rights.

The Committee requests the Government to continue to supply information on the development of the situation of the persons imprisoned at present, in particular, on all measures of release which might be taken and in the case of sentences, to send the judgements concerned together with the reasons adduced therefor.

The Committee urgently requests the Government to state whether it is true that Hilmi Feyzioglu is no longer alive and stresses the importance of carrying out a judicial inquiry at an early date and communicating to it the results thereof.

Moreover, the Committee trusts that the suspended confederations and organisations will be re-established in their former situation and that the new general trade union legislation which is envisaged will be in full conformity with the principles of freedom of association and collective bargaining.

The Committee notes that in the meanwhile an Act setting up a High Arbitration Commission has just been adopted. It requests the Government to communicate this text so as to be able to evaluate the situation in full knowledge of the facts.

Nevertheless, the Committee wishes to recall here and now that the suspension of collective bargaining and of strikes constitutes a major restriction on one of the essential means whereby the workers and their organisations can promote and defend their interests.
# Reports of the Committee on Freedom of Association

## ANNEX

### THOSE UNDER DETENTION

<table>
<thead>
<tr>
<th>Name</th>
<th>Qualifications</th>
<th>Place of Detention</th>
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<tbody>
<tr>
<td>1. BASTURK, Abdullah</td>
<td>President of DISK</td>
<td>DAVUTPASA prison</td>
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<tr>
<td></td>
<td>President of GENEL-IS (Public Services Union) affiliated to DISK.</td>
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<tr>
<td></td>
<td>(150,000 members)</td>
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<tr>
<td>2. ISIKLAR, Fehmi</td>
<td>General Secretary of DISK member of the metalworkers' union affiliated to DISK</td>
<td>DAVUTPASA prison</td>
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<tr>
<td></td>
<td>(MADEN-IS)</td>
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<tr>
<td></td>
<td>Formerly Head of the Workers' Committee of the PDP of Ecevit</td>
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<tr>
<td>3. GUVEN, Siza</td>
<td>Member of the Management Committee of DISK.</td>
<td>DAVUTPASA prison</td>
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<tr>
<td></td>
<td>Formerly President of the textile workers' union (TEKSTIL) affiliated to DISK</td>
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<tr>
<td>4. ZIRTILOGLU, Mukbil</td>
<td>Member of the Management Committee of DISK.</td>
<td>DAVUTPASA prison</td>
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<td></td>
<td>Formerly President of the hotel-restaurant workers' union (GLEYIS)</td>
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<td>5. CELEBI, Suleyman</td>
<td>Member of the Management Committee of DISK.</td>
<td>DAVUTPASA prison</td>
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<tr>
<td></td>
<td>Member of the Management Committee of textile workers' union (TEKSTIL)</td>
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<tr>
<td>6. NEBIOGLU, Kemal</td>
<td>Former member of the Management Committee of DISK.</td>
<td>DAVUTPASA prison</td>
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<td></td>
<td>Formerly President of the food workers' union GIDA-IS affiliated to DISK</td>
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<td>7. DOGRULAR, Sadik</td>
<td>Member of the Management Committee of KERAMIK-IS (ceramic workers' union)</td>
<td>METRIS prison</td>
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<td></td>
<td>affiliated to DISK</td>
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<tr>
<td>8. UNAL, Esmail Hakki</td>
<td>Member of the Executive Board of DISK.</td>
<td>DAVUTPASA prison</td>
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<td></td>
<td>Member of the Management Committee of public services union (GENEL-IS)</td>
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<td></td>
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<td>9. TUNCAY, Demirhan</td>
<td>Member of the Executive Board of DISK.</td>
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<tr>
<td></td>
<td>President of the food workers' union (DIGA-IS) affiliated to DISK.</td>
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<td></td>
<td>Active member of the PDP of Ecevit</td>
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<td>10. BUDAK, Bidvan</td>
<td>Member of the Executive Board of DISK.</td>
<td>METRIS prison</td>
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<tr>
<td></td>
<td>President of the textile workers' union affiliated to DISK (TEKSTIL)</td>
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<tr>
<td>11. KARADUMAN, Huseyin</td>
<td>General Secretary of the Management Committee of textile workers' union (TEKSTIL) affiliated to DISK</td>
<td>METRIS prison</td>
</tr>
<tr>
<td>12. USTA, Azmi</td>
<td>Member of the Management Committee of textile workers' union (TEKSTIL)</td>
<td>METRIS prison</td>
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<td></td>
<td>affiliated to DISK</td>
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<tr>
<th>No.</th>
<th>Name</th>
<th>Position and Affiliations</th>
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<tr>
<td>13</td>
<td>YALNIZ, Durmus Ali</td>
<td>President of the rubber workers' union (LASTIK-IS) affiliated to DISK.</td>
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<td></td>
<td></td>
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<td>14</td>
<td>KUCUK, Celal</td>
<td>General Secretary of the rubber workers' union (LASTIK-IS) affiliated to DISK.</td>
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<td>DAVUTPASA prison</td>
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<td>15</td>
<td>AKMAN, Kenan</td>
<td>Former President of the rubber workers' union affiliated to DISK (LASTIK-IS).</td>
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<td></td>
<td></td>
<td>Member of Parliament from the PBP of Ecevit for the Kocaeli region.</td>
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<td>Member of the Executive Board of DISK</td>
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<td>16</td>
<td>KUAS, Niyazi</td>
<td>Member of the Management Committee of the rubber workers' union (LASTIK-IS) affiliated to DISK</td>
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<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
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<td>17</td>
<td>TUT, Erdogan</td>
<td>Member of the Management Committee of the rubber workers' union (LASTIK-IS) affiliated to DISK</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>18</td>
<td>BEKIROGULLARI, M.</td>
<td>Member of the Executive Board of rubber workers' union (LASTIK-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>19</td>
<td>OZKAN, Osman</td>
<td>Member of the Executive Board of rubber workers' union (LASTIK-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>20</td>
<td>SAHIN, Burhan</td>
<td>President of the graphical workers' union (BASIN-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DAVUTPASA prison</td>
</tr>
<tr>
<td>21</td>
<td>AKTULGALI, Mustafa</td>
<td>Former member of the Management Committee of DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>President of the ceramic workers' union (KEBAMIK-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>22</td>
<td>KOC, Aksin</td>
<td>President of the office workers' union (FINDIK-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>23</td>
<td>ERCAN, Sevki</td>
<td>President of the transport workers' union (NAKLIYAT-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>24</td>
<td>HALIZ, Duzgun</td>
<td>President of the health workers' union (DEVRIMCI SAGLIK-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DAVUTPASA prison</td>
</tr>
<tr>
<td>25</td>
<td>ARIKAN, Yasar</td>
<td>President of glass workers' union (HUR CAN-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>26</td>
<td>DAGDELEN, Alpaslan</td>
<td>President of the paper workers' union (TUMKA-IS) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>27</td>
<td>DUMEN, Ayhan</td>
<td>President of the military ship-building workers' union (ASTE-I) affiliated to DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>28</td>
<td>ERDEM, Ergun</td>
<td>President of the Discipline Committee of DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>METRIS prison</td>
</tr>
<tr>
<td>29</td>
<td>CANTEKIN, Ismet</td>
<td>Member of the Executive Board of DISK.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Regional Director of DISK for the Bursa Region.</td>
</tr>
</tbody>
</table>
30. **MIHLACI, Mehmet**  
Member of the Management Committee of the food workers' union (GIDA-IS) affiliated to DISK.  
Member of the Executive Board of DISK  

31. **AYVAZ, Ibrahim**  
Member of the Executive Committee of KERAMIK-IS (ceramic workers' union) affiliated to DISK  

32. **YEMEN, Mehmet**  
Member of the Executive Committee of KERAMIK-IS (ceramic workers' union) affiliated to DISK  

33. **ERGUL, Nazmi**  
Member of the Executive Committee of KERAMIK-IS (ceramic workers' union) affiliated to DISK  

34. **DURUK, Remzi**  
Chief T. union representative at AKCIMENTO Cement Factory (affiliated to DISK)  

35. **ALGUL, Hasan**  
Regional T. union representative of metalworkers' union for Levent Region (affiliated to DISK)  

36. **DEMIRCI, Mustafa**  
Regional T. union representative of metalworkers' union for Istanbul (affiliated to DISK)  

37. **YAKIN, Seref**  
Regional T. union representative for metalworkers' union for Istanbul (affiliated to DISK)  

38. **KAHRAMAN, Seref**  
Chief trade union representative at BIMAK factory - metalworkers' union affiliated to DISK  

39. **CAN, Belgüzar**  
Member of Executive Board of DISK and member of Management Committee of GENEL-IS (public service workers' union)  

40. **AYKUT, Ali**  
Member of the Executive Committee of TEKSTIL affiliated to DISK  

41. **AKMAN, Kemal**  
Regional Director for the food workers' union (GIDA-IS) for Sisli (affiliated to DISK)  

42. **DOGAN, Hakki**  
Chief trade union representative for metalworkers' union affiliated to DISK  

43. **SAYIN, Selahattin**  
Member of the Executive Committee of DISK and President of gas, electricity, waterworkers' union (TSK GEW-IS) affiliated to DISK  

44. **ATAY, Mehmet**  
President of Istanbul section of office workers' union (SOSTAL-IS) affiliated to DISK  

45. **YASAROGLU, Ali**  
Member of Executive Board of hotel-restaurant workers' trade union (OLYTIS) affiliated to DISK  

46. **OLMEZ, Hikmet**  
General Secretary of shoe and leather workers' union (ILARICI DERI-IS) affiliated to DISK
47. ERTAS, Peridun  
President of glass workers' union (HUR CAM-IS) affiliated to DISK  

48. ILKAN, Ruhit  
Chief trade union representative of hotel-restaurant workers' trade union (OLEYIS) affiliated to DISK  

49. ALTAN, Cemil  
President of Istanbul section of public service union (GENEL-IS) affiliated to DISK  

50. ATEŞ, Alev  
President of woodworkers' trade union (ASIS) affiliated to DISK  

51. KONAC, Vehbi  
Member of Management Committee of food workers' union (GIDA-IS) affiliated to DISK  

52. GELİK, Kemal  
Regional Director of ceramic workers' trade union (KERAMIK-IS) for Eskisehir province, affiliated to DISK  

53. CALISKAN, Tabsin  
Chief trade union representative of the metalworkers' union (MAĐEN-IS) for UZEL factory, affiliated to DISK  

54. AKAR, Kemal  
Regional Director of hotel-restaurant workers' union for Istanbul (OLEYIS) affiliated to DISK  

55. DEMİROK, Nizamettin  
Regional Executive Committee member of hotel-restaurant workers' union (OLEYIS) for Istanbul affiliated to DISK  

56. KURHAN, Mustafa  
Secretary of Regional Committee of hotel-restaurant workers' union (OLEYIS) affiliated to DISK  

57. AKPINAR, Naci  
Member of the Executive Board of textile workers' union (TEKSTIL) affiliated to DISK  

58. FEVERCI, Karadeniz  
Chairman of the Regional Committee of the bank trade union BANKSEN  

59-90.  

(Militants of DISK affiliated unions at different military prisons).
Case No. 1004

COMPLAINT PRESENTED BY THE UNION OF HAITIAN WORKERS AGAINST THE GOVERNMENT OF HAITI

316. By communications dated 12 September and 20 October 1980, the Union of Haitian Workers, the headquarters of which is in New York, presented a complaint of infringement of trade union rights in Haiti. For its part the Government furnished its observations in a communication dated 10 November 1980.

317. Haiti has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

318. The complaint of the Union of Haitian Workers concerns the disappearance of an active trade unionist. The complainant alleges in its two communications that Rémy Alexis, a member of the "Association of Haitian Chauffeurs-Guides" trade union, was secretly kidnapped whilst he was at the local headquarters of the above-mentioned association, where his car remained parked. Inquiries undertaken to clarify the situation have proved fruitless. Rémy Alexis worked at Port-au-Prince. The complainant goes on to say that, although Mr. Alexis's car was parked in the courtyard of the Association of Chauffeurs-Guides between 1 and 15 April 1980, no member of the office was able to give any information as concerns the date and time when the vehicle was driven to this place.

319. The complainant adds that, over and above this particular case, the total absence of freedom of association constitutes a major obstacle to trade unions in Haiti: workers' organisations which operate within the country cannot maintain contact with the international unions or groups of affiliated trade unions which would be able to provide them with support; affiliation of any kind is prohibited under the policy of the Government.

320. In its reply, the Government states that it has reported the facts concerning the disappearance of Rémy Alexis to the steering committee of the Association of Chauffeur-Guides of Haiti of which the missing trade unionist was a member. Attached to its reply the Government supplies the explanations given by this association on 29 October 1980 indicating that the latter was informed of the disappearance of the missing trade unionist by members of his family and that it knew nothing of the circumstances in which Mr. Alexis had disappeared. Indeed, no member of the association had witnessed the disappearance, which could not have taken place at the local headquarters of the organisation without the knowledge of the trade union officials. However, although the association hopes that the competent authorities which are pursuing their inquiries will be able to clarify the situation, it maintains that the affair can in no way be connected with any infringement of trade union rights.

321. The Government for its part states that it has informed the Ministry of the Interior and National Defence of the complaint and that it will transmit any reply which it receives on the case. The Government has not noted any instance of discrimination against this active trade unionist on account of his trade union activities.
322. The Committee notes that, although the Association of Chauffeurs-Guides of Haiti of which the victim was a member states that it knows nothing of the circumstances of the disappearance, it affirms that it is not a trade union matter. However, since the Government has indicated that it will transmit any report which is received from the Ministry of the Interior and National Defence on the matter, the Committee wishes to be kept informed of any development in the situation which may occur.

323. Further, the Committee notes that the Government does not provide any information on the allegation that the trade union organisations operating within the country may not remain in contact with international trade unions or groups of affiliated unions.

324. In the circumstances, the Committee recommends the Governing Body to adopt the present interim report, and in particular the following conclusions:

The Committee requests the Government to keep it informed of any development in the situation concerning the disappearance of Rémy Alexis.

The Committee also requests the Government to furnish its observations on the allegations concerning the difficulties encountered by the trade unions as regards their affiliation and contacts with international trade union organisations.

Case No. 1012

COMPLAINTS PRESENTED BY THE NATIONAL FEDERATION OF PEASANT ORGANISATIONS, THE TRADE UNIONS INTERNATIONAL OF AGRICULTURAL, FORESTRY AND PLANTATION WORKERS AND THE PERMANENT CONGRESS OF TRADE UNION UNITY OF LATIN AMERICAN WORKERS AGAINST THE GOVERNMENT OF ECUADOR

325. The complaint is contained in communications sent on 1 and 2 December 1980 by the National Federation of Peasant Organisations (FENOC), on 5 December 1980 by the Trade Unions International of Agricultural, Forestry and Plantation Workers, and on 9 December 1980 by the Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL). The Government replied in communications dated 5 and 31 January 1981.

326. Ecuador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainants

327. The complainants allege that on 30 November 1980 a large force of the national police evicted the National Federation of
Reports of the Committee on Freedom of Association

Peasant Organisations (FENOC) and the Ecuadorian Central of Class Organisations (CEDOC) from the building in which their trade union premises are located, and add that on the next day a large number of workers of Quito and peasants from various provinces drove out the forces of order and thus recovered the building. According to FENOC the pretext for the eviction was that the new building had been sold.

328. The complainants add that when the premises were recovered it was found that doors and walls had been damaged and that furniture, documents and other property of FENOC and CEDOC had been destroyed or had disappeared.

329. In its communication of 1 December 1980 FENOC referred to the denial of legal recognition to one of the wings of CEDOC, whose President is Emilio Velasco, and FENOC, which is led by Mesias Tamames.

330. Lastly, the Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL) alleges in its communication of 9 December 1980 that Emilio Velasco, President of CEDOC, is in prison.

B. Reply of the Government

331. In its communications the Government states that the eviction of FENOC and one of the wings of CEDOC was the result of legal action by the owner of the building for failure to pay the rent and that the police were present in order to protect the official who was to carry out the eviction, since there is no judicial police force in Ecuador.

332. The arrest of Mr. Emilio Velasco, adds the Government, took place in other circumstances, following a complaint from the owners of a country estate that Mr. Emilio Velasco was inciting and leading an invasion of the estate. According to the Government, Emilio Velasco was not at any time imprisoned and he was released as soon as the Ministry of the Interior and Police heard of his arrest.

C. Conclusions of the Committee

333. The Committee notes that, according to the Government, the eviction of FENOC and one of the wings of CEDOC from their headquarters was the result of legal action by the owner of the building for non-payment of rent and that the police intervened to protect the official carrying out the eviction. Nevertheless, the Committee observes that the Government has transmitted no documentary evidence of the eviction order, nor has it remarked in detail on the state in which the premises were alleged to have been left after the eviction, nor on the destruction or disappearance of documents and other property. For this reason, the Committee, before taking a decision as to the substance of the case, must request the Government to send it additional information in this connection, together with the text of the above-mentioned court order.
334. As regards the allegation relating to the denial of legal recognition to the wing of CEDOC of which Emilio Velasco is President and to PENOC, led by Mesías Tamamez, given the general nature of the allegations and the fact that this question has already been dealt with in an earlier case, the Committee refers to the comments it made at that time.¹

335. As regards the arrest of Emilio Velasco, President of one of the wings of CEDOC, the Committee notes that this arrest appears to be unconnected with his trade union activities and that he was released as soon as the Ministry of the Interior and Police learned of his arrest and that he was not imprisoned at any time; the Committee accordingly considers that this aspect of the case does not call for further examination.

336. In these circumstances the Committee recommends the Governing Body to approve the present interim report and in particular to request the Government to send it the text of the eviction order of the court and detailed information on the allegations concerning the disappearance of trade union documents and on the condition in which the trade union premises were left following the eviction.


¹ See 172nd Report, Case No. 865 (Ecuador), paras. 74 to 76.
Reports of the Committee on Freedom of Association (208th, 209th and 210th)

**208TH REPORT**

<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-19</td>
<td>1-5</td>
</tr>
<tr>
<td>20-58</td>
<td>5-14</td>
</tr>
<tr>
<td>20-37</td>
<td>5-10</td>
</tr>
<tr>
<td>22-27</td>
<td>5-7</td>
</tr>
<tr>
<td>28-31</td>
<td>7-8</td>
</tr>
<tr>
<td>32-36</td>
<td>8-9</td>
</tr>
<tr>
<td>37</td>
<td>9-10</td>
</tr>
<tr>
<td>38-45</td>
<td>10-11</td>
</tr>
<tr>
<td>40</td>
<td>10</td>
</tr>
<tr>
<td>41-42</td>
<td>10-11</td>
</tr>
<tr>
<td>43-44</td>
<td>11</td>
</tr>
<tr>
<td>45</td>
<td>11</td>
</tr>
<tr>
<td>46-51</td>
<td>11-12</td>
</tr>
</tbody>
</table>
A. Allegations of the complainant .......... 48  12
B. The Government's reply .................. 49  12
C. The Committee's conclusions .............. 50  12
Recommendation of the Committee .......... 51  12

Case No. 1023 (Colombia): Complaint presented by the World Federation of Trade Unions against the Government of Colombia .......... 52-58  12-14
A. Allegations of the complainant .......... 55  13
B. Reply of the Government .................. 56  13
C. Conclusions of the Committee .............. 57  13
Recommendations of the Committee .......... 58  14

Cases in which the Committee has reached definitive conclusions ......................... 59-246  14-55

Case No. 874 (Spain): Complaints presented by the International Confederation of Free Trade Unions and the Trade Union Confederation of Workers' Commissions against the Government of Spain .......................... 59-86  14-20
A. Previous examination of the case ........ 61-66  14-15
B. Further allegations ...................... 67  15
C. The Government's reply ................... 68-77  16-18
D. The Committee's conclusions .............. 78-85  18-20
Recommendations of the Committee .......... 86  20

Case No. 977 (Colombia): Complaints presented by the National Federation of Workers in the Service of the State and the National Union of National Public Works Employees against the Government of Colombia .................. 87-96  20-23
A. Allegations of the complainants .......... 89  21
B. Reply of the Government ................... 90-92  21
C. Conclusions of the Committee .............. 93-95  21-22
Recommendations of the Committee .......... 96  22-23

Case No. 981 (Belgium): Complaint presented by the Cartel of Independent Trade Unions of Belgium against the Government of Belgium .. 97-117  23-27
A. The complainant's allegations .......... 99  104  23-24
B. The Government's reply ...................... 105-110 24-26
C. The Committee's conclusions .................. 111-116 26-27
Recommendations of the Committee ................. 117 27

Case No. 1002 (Brazil): Complaints presented by the Trade Unions International of Public and Allied Employees and the World Federation of Trade Unions against the Government of Brazil .................. 118-127 27-29
A. Allegations of the complainants ............. 120-121 28
B. The Government's reply ...................... 122-123 28
C. The Committee's conclusions .................. 124-126 28-29
Recommendations of the Committee ................. 127 29

Case No. 1005 (United Kingdom): Complaint presented by the Public Service International against the Government of United Kingdom/Hong Kong .................. 128-139 29-32
A. The complainant's allegations ............... 130-131 30
B. The Government's reply ...................... 132-134 30-31
C. The Committee's conclusions .................. 135-138 31-32
Recommendations of the Committee ................. 139 32

Case No. 1008 (Greece): Complaint presented by the Panhellenic Union of Merchant Marine Engineers against the Government of Greece .................. 140-153 32-35
A. Allegations of the complainant ............... 142-146 33
B. The Government's reply ...................... 147-149 34
C. The Committee's conclusions .................. 150-152 34-35
Recommendations of the Committee ................. 153 35

Case No. 1012 (Ecuador): Complaints presented by the National Federation of Peasant Organisations, the Trade Union International of Agricultural, Forestry and Plantation Workers and the Permanent Congress of Trade Union Unity of Latin American Workers against the Government of Ecuador .................. 154-162 36-37
A. Previous examination of the case by the Committee .................. 156-158 36
B. Reply of the Government ...................... 159 36

iii
C. Conclusions of the Committee ............. 160-161 37
Recommendations of the Committee ............. 162 37
Cases in which the Committee requests to be kept informed of the evolution ................. 163-246 38-55

Case No. 967 (Peru): Complaint presented by the Federation of Municipal Workers of Peru against the Government of Peru ............. 163-173 38-40
A. Allegations of the complainant ............. 165 38
B. Reply of the Government .................... 166 38
C. Conclusions of the Committee ............. 167-172 38-39
Recommendations of the Committee ............. 173 39-40

Case No. 968 (Greece): Complaint presented by the Union of Metalworkers, Employees and Technicians of Piraeus and the Islands against the Government of Greece ............. 174-193 40-43
A. Previous examination of the case ............. 176-180 40-41
B. The Government's reply ..................... 181 41
C. The Committee's conclusions ............. 182-192 41-43
Recommendations of the Committee ............. 193 43

Case No. 990 (Sri Lanka): Complaint presented by the Sri Lanka Independent Employees Union against the Government of Sri Lanka ............. 194-203 44-46
A. The complainant's allegations ............. 196-197 44
B. The Government's reply ..................... 198-199 44-45
C. The Committee's conclusions ............. 200-202 45
Recommendations of the Committee ............. 203 46

Case No. 1006 (Greece): Complaint presented by the World Federation of Trade Unions against the Government of Greece ............. 204-214 46-48
A. Allegations of the complainant ............. 206-207 46-47
B. Reply of the Government ..................... 208-210 47
C. Conclusions of the Committee ............. 211-213 47-48
Recommendations of the Committee ............. 214 48

Case No. 1011 (Senegal): Complaint presented by the World Federation of Teachers' Unions against the Government of Senegal ............. 215-236 49-53
<table>
<thead>
<tr>
<th>Cases</th>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case No. 1015 (Thailand): Complaint presented by the Bank Labour Union Group against the Government of Thailand</td>
<td>237-246</td>
<td>53-55</td>
</tr>
<tr>
<td>A. Allegations of the complainants</td>
<td>239-240</td>
<td>53</td>
</tr>
<tr>
<td>B. Reply of the Government</td>
<td>241</td>
<td>53-54</td>
</tr>
<tr>
<td>C. Conclusions of the Committee</td>
<td>242-245</td>
<td>54</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>246</td>
<td>54-55</td>
</tr>
<tr>
<td>Cases in which the Committee has reached interim conclusions</td>
<td>247-431</td>
<td>55-98</td>
</tr>
<tr>
<td>Case No. 919 (Colombia): Complaints presented by the World Federation of Trade Unions, the World Confederation of Labour, the Latin American Central of Workers and several other trade union organisations against the Government of Colombia</td>
<td>247-262</td>
<td>55-58</td>
</tr>
<tr>
<td>A. Previous examination of the case</td>
<td>250-254</td>
<td>55-56</td>
</tr>
<tr>
<td>B. Reply of the Government</td>
<td>255-257</td>
<td>56-57</td>
</tr>
<tr>
<td>C. Conclusions of the Committee</td>
<td>258-261</td>
<td>57-58</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>262</td>
<td>58</td>
</tr>
<tr>
<td>Case No. 940 (Sudan): Complaint presented by the World Federation of Trade Unions against the Government of Sudan</td>
<td>263-273</td>
<td>58-60</td>
</tr>
<tr>
<td>A. Previous examination of the case</td>
<td>265-268</td>
<td>59</td>
</tr>
<tr>
<td>B. Reply of the Government</td>
<td>269</td>
<td>59</td>
</tr>
<tr>
<td>C. Conclusions of the Committee</td>
<td>270-272</td>
<td>60</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>273</td>
<td>60</td>
</tr>
<tr>
<td>Case No. 957 (Guatemala): Complaint presented by the Permanent Congress for Trade Union Unity of the Workers of Latin America against the Government of Guatemala</td>
<td>274-289</td>
<td>60-64</td>
</tr>
<tr>
<td>A. Allegations of the complainant</td>
<td>276-281</td>
<td>61</td>
</tr>
<tr>
<td>B. Observations of the Government</td>
<td>282</td>
<td>61-62</td>
</tr>
<tr>
<td>Case No. 958 (Brazil): Complaints presented by the National Labour Front, the World Confederation of Labour, the International Confederation of Free Trade Unions, the International Metalworkers' Federation and the World Federation of Trade Unions against the Government of Brazil</td>
<td>290-309</td>
<td>64-68</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------------------------------</td>
<td>--------</td>
<td>------</td>
</tr>
<tr>
<td>A. Previous examination of the case</td>
<td>292-296</td>
<td>64-65</td>
</tr>
<tr>
<td>B. Further allegations</td>
<td>297-298</td>
<td>65</td>
</tr>
<tr>
<td>C. The Government's reply</td>
<td>299-302</td>
<td>65-66</td>
</tr>
<tr>
<td>D. The Committee's conclusions</td>
<td>303-308</td>
<td>66-67</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>309</td>
<td>67-68</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case No. 984 (Kenya): Complaints presented by the Organisation of African Trade Union Unity and the Public Services International against the Government of Kenya</th>
<th>310-323</th>
<th>68-71</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Allegations of the complainants</td>
<td>312-313</td>
<td>68-69</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>314-316</td>
<td>69</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>317-322</td>
<td>69-70</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>323</td>
<td>71</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cases Nos. 988 and 1003 (Sri Lanka): Complaints presented by the Ceylon Federation of Labour, the World Federation of Trade Unions and several other trade union organisations against the Government of Sri Lanka</th>
<th>324-341</th>
<th>71-77</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. The complainants' allegations</td>
<td>326-329</td>
<td>72-73</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>330-333</td>
<td>73-74</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>334-340</td>
<td>74-76</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>341</td>
<td>76-77</td>
</tr>
</tbody>
</table>
Cases Nos. 997 and 999 (Turkey): Complaints presented by the World Confederation of Labour, the World Federation of Trade Unions, the Trade Unions International of Workers in Commerce, the Trade Unions International of Public and Allied Employees, the Trade Unions International of Workers of the Building, Wood and Building Materials Industries and the Trade Unions International of Chemical, Oil and Allied Workers against the Government of Turkey

A. Imprisonment, death and disappearance of trade unionists

B. Suspension of trade union confederations and organisations and restrictions on trade union activities

Recommendations of the Committee

Case No. 1007 (Nicaragua): Complaint presented by the International Organisation of Employers against the Government of Nicaragua

A. The complainant's allegations

B. Reply of the Government

C. Conclusions of the Committee

Recommendations of the Committee

Case No. 1017 (Morocco): Complaint presented by the United Trade Unions of Casablanca against the Government of Morocco

A. Allegations of the complainant

B. Reply of the Government

C. Conclusions of the Committee

Recommendations of the Committee

Case No. 1025 (Haiti): Complaint presented by the World Confederation of Labour against the Government of Haiti

A. The complainant's allegations

B. The Government's reply

C. The Committee's conclusions

Recommendations of the Committee
### 209TH REPORT

**Introduction** .................................................. 1-4 99

**Case No. 763 (Uruguay): Complaints presented by the World Federation of Trade Unions, the World Confederation of Labour, the International Confederation of Free Trade Unions, and various other trade union organisations against the Government of Uruguay**

Complaint concerning the observance by Uruguay of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), presented by a number of delegates to the 61st Session of the International Labour Conference (1976) under article 26 of the Constitution of the ILO .................................................. 5-82 99-115

I. Occupational Associations Act ............ 18-34 102-106
II. Arrests and detentions ....................... 35-64 106-111
III. Other allegations ............................... 65-81 111-114

**Recommendations of the Committee** ............ 82 114-115

### 210TH REPORT

**Introduction** .................................................. 1-4 116

**Case No. 842 (Argentina): Complaints presented by the World Federation of Trade Unions, the World Confederation of Labour, the International Confederation of Free Trade Unions and several other trade union organisations against the Government of Argentina**
Complaint concerning the observance by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), presented by a number of delegates to the 63rd (1977) Session of the International Labour Confederation under article 26 of the Constitution of the ILO

A. Act on occupational associations of workers

B. Various restrictions on trade union activities

C. Arrest or disappearance of trade unionists and former trade unionists...

Recommendations of the Committee

<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-51</td>
<td>116-128</td>
</tr>
<tr>
<td>16-29</td>
<td>118-122</td>
</tr>
<tr>
<td>30-41</td>
<td>122-124</td>
</tr>
<tr>
<td>42-50</td>
<td>125-126</td>
</tr>
<tr>
<td>51</td>
<td>127-128</td>
</tr>
</tbody>
</table>
Earlier reports of the Committee on Freedom of Association have been published as follows:

<table>
<thead>
<tr>
<th>Report</th>
<th>Publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3</td>
<td>Sixth Report (1952), App. V</td>
</tr>
<tr>
<td>4-6</td>
<td>Seventh Report (1953), App. V</td>
</tr>
<tr>
<td>7-12</td>
<td>Eighth Report (1954), App. II</td>
</tr>
</tbody>
</table>

**Reports of the International Labour Organisation to the United Nations (Geneva, ILO)**

<table>
<thead>
<tr>
<th>Vol.</th>
<th>Year</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>13-14</td>
<td>XXXVII</td>
<td>1954</td>
</tr>
<tr>
<td>15-16</td>
<td>XXXVIII</td>
<td>1955</td>
</tr>
<tr>
<td>17-18</td>
<td>XXXIX</td>
<td>1956</td>
</tr>
<tr>
<td>19-24</td>
<td>XXXXI</td>
<td>1956</td>
</tr>
<tr>
<td>25-26</td>
<td>XL</td>
<td>1957</td>
</tr>
<tr>
<td>27-28</td>
<td>XLI</td>
<td>1958</td>
</tr>
<tr>
<td>29-45</td>
<td>XLII</td>
<td>1960</td>
</tr>
<tr>
<td>46-57</td>
<td>XLIII</td>
<td>1961</td>
</tr>
<tr>
<td>58</td>
<td>XLV</td>
<td>1962</td>
</tr>
<tr>
<td>59-60</td>
<td>XLVI</td>
<td>1963</td>
</tr>
<tr>
<td>61-65</td>
<td>XLVII</td>
<td>1963</td>
</tr>
<tr>
<td>66</td>
<td>XLVIII</td>
<td>1964</td>
</tr>
<tr>
<td>67-68</td>
<td>XLIX</td>
<td>1965</td>
</tr>
<tr>
<td>69-71</td>
<td>XLI</td>
<td>1965</td>
</tr>
<tr>
<td>72</td>
<td>XLII</td>
<td>1966</td>
</tr>
<tr>
<td>73-77</td>
<td>XLIII</td>
<td>1966</td>
</tr>
<tr>
<td>78</td>
<td>XLIV</td>
<td>1966</td>
</tr>
<tr>
<td>79-81</td>
<td>XLV</td>
<td>1967</td>
</tr>
<tr>
<td>82-84</td>
<td>XLVI</td>
<td>1967</td>
</tr>
<tr>
<td>85</td>
<td>XLVII</td>
<td>1968</td>
</tr>
<tr>
<td>86-88</td>
<td>XLVIII</td>
<td>1968</td>
</tr>
<tr>
<td>89-92</td>
<td>XLIX</td>
<td>1969</td>
</tr>
<tr>
<td>93</td>
<td>L</td>
<td>1969</td>
</tr>
<tr>
<td>94-95</td>
<td>S</td>
<td>1970</td>
</tr>
<tr>
<td>96-100</td>
<td>LI</td>
<td>1970</td>
</tr>
<tr>
<td>101</td>
<td>LI</td>
<td>1971</td>
</tr>
<tr>
<td>102-103</td>
<td>LI</td>
<td>1971</td>
</tr>
<tr>
<td>104-106</td>
<td>LI</td>
<td>1972</td>
</tr>
<tr>
<td>107-108</td>
<td>LI</td>
<td>1973</td>
</tr>
<tr>
<td>109-110</td>
<td>LI</td>
<td>1973</td>
</tr>
<tr>
<td>111-112</td>
<td>LI</td>
<td>1974</td>
</tr>
<tr>
<td>113-116</td>
<td>LIII</td>
<td>1974</td>
</tr>
<tr>
<td>117-119</td>
<td>LIV</td>
<td>1974</td>
</tr>
<tr>
<td>120-122</td>
<td>L</td>
<td>1974</td>
</tr>
<tr>
<td>123-125</td>
<td>LV</td>
<td>1974</td>
</tr>
<tr>
<td>126-133</td>
<td>LVI</td>
<td>1974</td>
</tr>
<tr>
<td>134-138</td>
<td>LVII</td>
<td>1974</td>
</tr>
</tbody>
</table>

¹ The letter S, followed as appropriate by a roman numeral, indicates a supplement.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>146-148</td>
<td>LVIII</td>
<td>1975</td>
<td>Series B, Nos. 1-2</td>
</tr>
<tr>
<td>149-152</td>
<td>LVIII</td>
<td>1975</td>
<td>&quot; &quot; No. 3</td>
</tr>
<tr>
<td>153-155</td>
<td>LIX</td>
<td>1976</td>
<td>&quot; &quot; No. 1</td>
</tr>
<tr>
<td>156-157</td>
<td>LIX</td>
<td>1976</td>
<td>&quot; &quot; No. 2</td>
</tr>
<tr>
<td>158-159</td>
<td>LIX</td>
<td>1976</td>
<td>&quot; &quot; No. 3</td>
</tr>
<tr>
<td>160-163</td>
<td>LX</td>
<td>1977</td>
<td>&quot; &quot; No. 1</td>
</tr>
<tr>
<td>164-167</td>
<td>LX</td>
<td>1977</td>
<td>&quot; &quot; No. 2</td>
</tr>
<tr>
<td>168-171</td>
<td>LX</td>
<td>1977</td>
<td>&quot; &quot; No. 3</td>
</tr>
<tr>
<td>172-176</td>
<td>LXI</td>
<td>1978</td>
<td>&quot; &quot; No. 1</td>
</tr>
<tr>
<td>177-186</td>
<td>LXI</td>
<td>1978</td>
<td>&quot; &quot; No. 2</td>
</tr>
<tr>
<td>187-189</td>
<td>LXII</td>
<td>1978</td>
<td>&quot; &quot; No. 3</td>
</tr>
<tr>
<td>190-193</td>
<td>LXII</td>
<td>1979</td>
<td>&quot; &quot; No. 1</td>
</tr>
<tr>
<td>194-196</td>
<td>LXII</td>
<td>1979</td>
<td>&quot; &quot; No. 2</td>
</tr>
<tr>
<td>197-198</td>
<td>LXII</td>
<td>1979</td>
<td>&quot; &quot; No. 3</td>
</tr>
<tr>
<td>199-201</td>
<td>LXIII</td>
<td>1980</td>
<td>&quot; &quot; No. 1</td>
</tr>
<tr>
<td>202-203</td>
<td>LXIII</td>
<td>1980</td>
<td>&quot; &quot; No. 2</td>
</tr>
<tr>
<td>204-206</td>
<td>LXIII</td>
<td>1980</td>
<td>&quot; &quot; No. 3</td>
</tr>
<tr>
<td>207</td>
<td>LXIV</td>
<td>1981</td>
<td>&quot; &quot; No. 1</td>
</tr>
</tbody>
</table>
INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 26 and 28 May 1981 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of Spanish, Canadian and Belgian nationality were not present during the examination of the cases relating to Spain (Case No. 874), Canada (Case No. 964) and Belgium (Case No. 981).

2. The Committee recommends the Governing Body to examine the present report at its 216th Session.

Cases before the Committee

3. The Committee had before it 75 cases in which the

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1 Earlier reports have been published as indicated in the table following the table of contents.

2 The 208th, 209th and 210th Reports were examined and approved by the Governing Body at its 216th Session (May 1981).

3 These include the cases relating to Uruguay (Case No. 763) and Argentina (Case No. 842) which are dealt with in the 209th and 210th Reports.
Reports of the Committee on Freedom of Association

Complaints had been submitted to the governments concerned for observations. The Committee reached final conclusions in 18 cases and interim conclusions in 14 cases; the remaining cases were adjourned for various reasons.

**Cases adjourned**

4. The Committee adjourned until its next session the cases relating to Chile (Case No. 1028), France (Case No. 1030), Nicaragua (Case No. 1031), Ecuador (Case No. 1032), Brazil (Case No. 1034), India (Case No. 1035), Colombia (Case No. 1036), Sudan (Case No. 1037) and United Kingdom (Case No. 1038) concerning which it is still awaiting information or observations from the governments concerned. All these cases concern complaints brought since the last session of the Committee.

5. Not having received the observations or information requested from the governments in the cases relating to Chile (Case No. 823), Spain (Case No. 900), Grenada (Case No. 963), Bolivia (Case No. 983), Colombia (Cases Nos. 994 and 1009), Greece (Cases Nos. 1019 and 1021), Malaysia (Case No. 1022) and Paraguay (Case No. 1027), which the Committee already had before it at its last session, it adjourned these cases and requests all the governments concerned to send their observations at an early date.

6. As for the cases relating to Greece (Case No. 996), Haiti (Case No. 1004), Spain (Case No. 1010), India (Case No. 1024) and Jamaica (Case No. 1033), the Committee has received the governments' observations and intends to examine these cases in substance at its next session. In Case No. 1004 concerning Haiti, the Office has also asked the Government for certain additional information.

7. The Committee also adjourned its examination of Case No. 974 concerning Peru in which it is still awaiting the communication by the complainants of comments which were asked from them in view of the Government's observations. In Case No. 1014, relating to the Dominican Republic, the Committee decided to transmit the substance of the Government's reply to the complainants for their comments.

**URGENT APPEALS**

8. Regarding the cases relating to India (Case No. 995), Morocco (Cases Nos. 992 and 1018) and Mali (Case No. 1020), the Committee observes that, in spite of the time which has elapsed, the observations of the governments concerned have not been received. The Committee requests these governments to send their observations urgently. As regards the case of Malaysia (Case No. 965) concerning which an urgent appeal has already been made to the Government, the Committee observes that despite the time which has elapsed, the observations of the Government have not been received. The Committee wishes to point out in this regard that, in conformity with the procedural rules set out in paragraph 17 of its 127th
Report approved by the Governing Body, it will present a report at its next session on the substance of the case even if the Government's observations have not been received at that date.

CONFERENCE CONTACTS

9. The Committee has observed that it has before it a great number of cases relating to El Salvador (Cases Nos. 844, 873, 904, 953, 987, 1000 and 1016) which, for the most part, raise extremely serious questions, in particular concerning violent deaths of trade unionists, mistreatment, arrests of trade union leaders and occupation of trade union premises. Despite several urgent appeals addressed by the Committee, the Government has supplied certain incomplete information regarding only a few of the cases, and not regarding the others. In these circumstances, the Committee considers that in these cases, it would be useful to have recourse to the procedure contained in the 164th Report of the Committee, according to which, the Chairman of the Committee would make contact with the representatives of the government concerned in order to have an exchange of views regarding the cases in question.

10. The Committee also considers that this procedure should likewise be applied to the cases relating to Guatemala (Cases Nos. 954, 957, 975, 978, and 1026) in relation to which the Government has not yet sent its response, despite repeated appeals.

11. Finally, the Committee considers that this procedure ought to be applied in the cases relating to Turkey (Cases Nos. 997, 999 and 1029) and in each case where the Chairman considers it appropriate.

Effect given to the recommendations of the Committee and of the Governing Body

12. As regards the case concerning Japan (Case No. 792), in a communication of 13 May 1981, the Government again states that the appeal is still pending before the Tokyo High Court in the proceedings against Messrs. Makieda and Masuda, leaders of the Japanese Teachers' Union. The Committee requests the Government to keep it informed of the outcome of this appeal.

13. As regards Case No. 909 concerning Poland, the Committee was informed that the Director-General, accompanied by Messrs. Valticos, Assistant Director-General and Adviser for International Labour Standards, and Gernigon, Deputy Chief of the Freedom of Association Branch, visited Poland from 11 to 14 May 1981. Exchanges of view took place with the government authorities and workers' and employers' organisations, in particular, regarding the draft trade union Act. The bill, which in its broad lines satisfies the ILO's Conventions on freedom of association and collective bargaining, was examined by the Office and comments, made in light of the principles stated by the supervisory bodies, were sent to the Government on some provisions of a relatively minor importance. The
Committee notes this information with interest. It also notes that the Committee of Experts on the Application of Conventions and Recommendations, during its March 1981 Session, requested the Government to supply information on the developments which will take place regarding the legislation.

14. With regard to Case No. 929 relating to Honduras, in a communication of 6 March 1981 the Government states that José A. Espinoza is free and that no judicial action is pending against him by virtue of Amnesty Decree No. 11 of 4 September 1980. The Committee also notes with interest the Government's information according to which Alberto Cordova Turcios, Antonio de Jesus Hernandez, Jorge Rodriguez Calderon, Hector Hernandez Morales and others have been acquitted of the charges which had been brought against them, in particular that of the murder of José Pedro Zavala, a worker in the Bemis Handal SA textile undertaking. The Committee recalls that in this matter the information supplied by the complainants and by the Government on the development of events in the Bemis Handal textile undertaking on 6 March 1979 were to a large extent contradictory. According to the complainants, the forces of order allegedly provoked the fire, whereas according to the Government the violence was due to persons who did not belong to the factory. Consequently, the Committee asks the Government to send it the results of the inquiry into the violent death of the worker José Pedro Zavala during the events at the Bemis Handal textile undertaking on 6 March 1979, in particular on the possible guilt of the forces of order in the matter.

15. As concerns Cases Nos. 930 and 962 relating to Turkey, the Government states in a communication of 16 February 1981 that in the judicial action brought against certain trade unionists regarding the events mentioned by the complainants in Case No. 930 a final decision has still not been arrived at. The Government also adds that a judgement has still not been handed down against Mr. G. Gazioglu as the cases concerning him remain suspended because his present whereabouts are unknown. As for Case No. 962, the Government states that the judicial actions against the DISK leaders have also not terminated. It adds that the final decision of the Bakirköy court is not yet known. The Committee notes this information and asks the Government to keep it informed of any development in these matters.

16. As regards Case No. 931 concerning Canada, the Government states that the policy of progressive discipline was applied moderately to the trade unionists who had participated in the 1978 strike. Regarding Mr. Jean-Claude Parrot, President of the Canadian Union of Postal Workers, the Government indicates that his appeal was dismissed by the Ontario Court of Appeal and it adds that Mr. Parrot served his jail sentence from 30 January to 22 March 1980. The Government also points out that the cases of several other trade union leaders are still pending before the Supreme Court of Canada. The Committee notes this information and asks the Government to keep it informed of the outcome of the appeals by the leaders of the Canadian Union of Postal Workers.

17. As concerns Case No. 948 relating to Colombia, the Committee can only note that the Government, in a communication of 11 March 1981, states that the Director-General of Labour dismissed the appeal brought by the complainant and confirmed the collective
accord signed by the Cano Isaza and Co. undertaking, Graphic Arts, "El Espectador" and the non-unionised workers of the undertaking. The Government states nevertheless that the complainant can bring an action before the ordinary Labour Court.

18. As for Case No. 971 concerning the Dominican Republic, the Government points out that the deaths which occurred during the drivers' strike were provoked by groups mixed in the crowd and that it is very difficult to find those responsible. However, the Government adds that certain persons were immediately arrested but that no specific charge has been brought against them. It states that despite this, the investigations to find the guilty parties remain open and it will immediately inform the Committee of their outcome. The Committee asks the Government to so inform it.

19. Lastly, the Committee notes that the Governments of Paraguay (Case No. 854), Colombia (Case No. 871), India (Case No. 922) and Turkey (Case No. 985) have not yet responded to the Committee's request to be kept informed of developments in these cases. Therefore the Committee requests these Governments to be good enough to communicate this information as soon as possible.

CASES NOT CALLING FOR FURTHER EXAMINATION

Case No. 964

COMPLAINT PRESENTED BY THE CANADIAN LABOUR CONGRESS AGAINST THE GOVERNMENT OF CANADA (NOVA SCOTIA)


21. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 98); it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

22. In its letter of 30 April 1980, the CLC alleges that Bill No. 98 of the Provincial Government of Nova Scotia, which amends the Trade Union Act, 1972, contravenes Articles 2, 8, 10 and 11 of Convention No. 87 and Article 4 of Convention No. 98. The Bill became law on 28 December 1979.

23. The complainant explains that the passage of the Bill developed out of an attempt in 1978 by its affiliate, the United Rubber Workers, Local 1028 (URW), to create a union in the plants of the Michelin Tire Canada Limited in two Nova Scotia towns.
Michelin Company argued against the Local's application for certification stating that the appropriate bargaining unit was all the employees at the two plants. The Labour Relations Board dismissed Michelin's argument and found that one individual plant in one town was an appropriate unit for collective bargaining. The URW lost the consequent representation vote but re-applied for certification in October 1979. The Government of Nova Scotia then introduced Bill No. 98, having retroactive effect so as to render without basis the URW's application.

24. According to the complainant, the offending section 24A of Bill No. 98 provides that employers with more than one business location can only be certified for collective bargaining purposes on a multi-location or multi-plant basis; that is, a union must organise all employees of a company within Nova Scotia before an application for certification can be made to the Nova Scotia Labour Relations Board. The complainant states that with the passage of the new provision the labour law of Nova Scotia is contrary to the present situation in the other Canadian jurisdictions which are moving towards the certification of individual units where multi-unit organisation is not possible; it cites a decision of the Canada Labour Relations Board concerning the certification of banks by branch basis, and decisions of the Ontario and British Columbia Boards, in support of this claim.

25. According to the complainant, the new provision violates Article 2 of Convention No. 87 in that the workers are prohibited from creating bargaining units of their own choosing; the new provision could also have the effect of imposing a union on the operations of a company, for example, where an employer has two plant operations, one with 100 employees the other with 30, and a union signs up 80 employees in the larger plant it would become certified as the bargaining agent for both plants, thus limiting the freedom of association of the employees in the smaller plant. To support this allegation, the complainant cites the views of the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations to the effect that, while it may be in the interests of workers to avoid a multiplication of trade unions, a unified trade union movement should not be imposed through state intervention by means of legislation.

26. The CLC claims that Article 8 of the Convention is violated because the new provision impairs the guarantees of freedom of association provided for in Article 2. (Article 8 reads "The law of the land shall not be such as to impair, nor shall it be applied as to impair, the guarantees provided for in this Convention"). The CLC states that Article 10 (which reads "In this Convention the term organisation means any organisation of workers and employers for furthering and defending the interests of workers and employers") is violated because the inability to form small and representative bargaining units severely restricts the ability of a trade union to further and defend the interests of its members. Article 11 (which reads "Each Member of the ILO for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely their right to organise") is violated, according to the CLC, because the new provision attempts to prevent the unionisation of large multi-plant operations in Nova Scotia by forcing unions to disperse their
recruiting campaign over a number of plants during an organising drive. The complainant also refers to Article 4 of Convention No. 98 as being infringed by the new provision because it will not promote voluntary negotiations and the reaching of collective agreements.

27. In its letter of 23 December 1980, the complainant makes the general allegation that the Michelin Company, aided by the Nova Scotia Government through the retroactive amendment to the Trade Union Act, is preventing unionising of its plants in this Province. It encloses a letter from its affiliate stating that the URW's appeal of the dismissal of its certification application to the Supreme Court was rejected in October 1980. The URW's letter states that since 1970, when Michelin started constructing plants in Nova Scotia, the Nova Scotia Government has taken various anti-union actions. For example, when the Building Trades Union workers threatened to strike at one Michelin plant construction site, strikes were outlawed in that county; in 1973, the Operating Engineers Union applied for certification of the operating engineers at the same plant, but an Order in Council was introduced to prevent carving out of a bargaining unit with retroactive effect resulting in the dismissal of the application; in 1978 the URW filed unfair labour practices charges against Michelin in which it was successful, but immediately after the Nova Scotia Labour Relations Board decision was handed down its chairman was replaced.

B. The Government's reply

28. By letter of 19 August 1980, the Government transmits the Nova Scotia Government's reply to the allegations. The Provincial Government disagrees with the complainant's interpretation of Bill No. 98, a copy of which it supplies. It states that the legislation applies solely to employers who are engaged in manufacturing at interdependent plants and permits an application to be made to the Labour Relations Board for a determination as to whether all the plants owned by such an employer are the appropriate unit for collective bargaining. The definition of interdependent manufacturing location in the new provision is "a manufacturing location of an employer in the Province, the continued operation of which is primarily dependent on the continued normal operation of another manufacturing location(s) of the employer in the Province". Moreover, the Government states that all jurisdictions recognise various factors to be considered in determining the appropriate bargaining unit, for example section 24(14) of the Nova Scotia Trade Union Act provides that regard shall be had to the community of interest of the workers in such matters as work location, hours of work, working conditions and methods of remuneration.

29. The Government also states that Article 2 of Convention No. 87 has not been violated; the concept of trade union unity as opposed to trade union pluralism has not been raised by the legislation. The right of workers to establish and join organisations of their own choosing remains enshrined in section 12 of the Nova Scotia Trade Union Act: "Every employee has the right to be a member of a trade union and to participate in its activities".
The Government continues that in consequence of this argument, there is also no violation of Article 8 of the Convention. The Government sees Article 10 of the Convention as a definition section which cannot be the subject of "violations" as substantive Articles may be. As regards the allegation that Article 11 of the Convention has been infringed, the Government states that the wishes of the majority of the workers can be freely canvassed and their wishes are paramount because the legislation requires a mandatory vote of all employees to determine their wishes with respect to certification, and their vote is normally taken within five days after receipt by the Labour Relations Board of the application for certification by the union. The Government goes on to state that manufacturing done by one employer is in many instances part of an over-all chain of activity and that the employer and the workers in such an interdependent manufacturing operation are part of a single workplace community. Thus the bargaining entity is the collective entity rather than many fragmented parts of the activity, even where factors require a physical separation of parts of the activity. Fragmentation would preclude the rule by the majority of the workers. The Government points out that the Trade Union Act provides various safeguards to ensure the free choice of representative trade unions: certification is made by an independent body; the representative organisation is to be chosen by a majority vote of the employees in the unit concerned; the right of an organisation which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period.

30. Lastly, the Government states that the rights provided for in Article 4 of Convention No. 98 are ensured by section 28 of the Trade Union Act, which has not been affected by the new provision. According to the Government, the total legislation in Nova Scotia is directed towards bringing the employers and trade unions together on a mutually co-operative basis.

31. By letter of 9 March 1981, the Government transmits the Provincial Government's reply to the complainant's additional allegations. It points out that the statements regarding Michelin and lobbying are irrelevant and that the Trade Union Act contains the fundamental freedoms and principles necessary to ensure the rights enshrined in the ILO Conventions. The Government points out that the legislation and its application to the employer concerned are the subject of an appeal before the courts.

C. Conclusions of the Committee

32. This case concerns the adoption by the Government of Nova Scotia of an amendment to the Trade Union Act which reads as follows:

24A(2). An employer claiming to be engaged in manufacturing and carrying on its operation at two or more interdependent manufacturing locations in the Province may make application to the Board for a determination that the unit appropriate for collective bargaining is the unit consisting of all employees of the employer at all such interdependent manufacturing locations, subject only to the exclusion of such positions as the Board may determine would otherwise normally be excluded.
33. According to the complainant, this amendment, adopted following a series of anti-union actions for the benefit of a particular employer in the Province, would constitute a violation of the workers' right to establish organisations of their own choosing and of the right to free collective bargaining. On the other hand, the Government considers that the new legislation does not touch on trade union unity and states that freedom of association and collective bargaining remain guaranteed in the Trade Union Act.

34. As regards the right to establish organisations of their own choosing, the Committee notes that the provisions of the Trade Union Act on the free establishment of organisations have not been amended and that the right in question is recognised in section 12 of that Act. Therefore it does not appear that the new legislation imposes a system of trade union unity.

35. As for the right to bargain collectively, the Committee notes that the legislative amendment in question aims at allowing an employer who owns several interdependent industrial establishments to request the Labour Relations Board to decide whether all the establishments in question constitute an appropriate collective bargaining unit. In this regard the complainant considers that in permitting the formation of too large a bargaining unit, section 24A prohibits unions from organising the workers and thus interferes with the conclusion of collective agreements.

36. Thus the problem raised by the adoption of the amendment is essentially one of the level of collective bargaining. The most appropriate procedure for preserving the independence of the parties involved in collective negotiation would of course be to allow them to decide by common agreement as to the level on which it should take place. Nevertheless, it appears that in many countries this question is left up to a body apart from the parties themselves. The Committee considers that in such cases the body concerned should be truly independent. In the present case, the decision to determine the level of collective bargaining still rests with the Labour Relations Board, a body made up of independent members who must take an oath of office before a judge (section 15(11) of the Trade Union Act). Moreover, the Board may request the opinion of the Supreme Court regarding a question of law (section 18(2)). (It should be noted that the complainant's affiliate union did lodge an appeal against the Board's decision to dismiss its certification request, which it lost, and that the Government states that the legislation in question and its application to one particular employer is the subject of an appeal before the Courts.) It therefore does not appear that the possibility open to employers under the new legislation of requesting the Labour Relations Board for a determination of the level of collective bargaining within an enterprise constitutes an infringement of the right to free collective bargaining.

The recommendations of the Committee

37. In these circumstances, the Committee, while recalling that to preserve the independence of the parties involved in collective negotiation it would be desirable to allow them to decide
 Reports of the Committee on Freedom of Association

by common agreement as to the level on which it should take place, recommends the Governing Body to decide that this case does not call for further examination.

Case No. 991

COMPLAINT PRESENTED BY THE TRADE UNIONS INTERNATIONAL
OF AGRICULTURAL, FORESTRY AND PLANTATION WORKERS
AGAINST THE GOVERNMENT OF COSTA RICA

38. The Committee examined this case at its meeting in February 1981 when it presented an interim report to the Governing Body which requested certain information from the Government. The Government furnished additional information in a communication dated 3 April 1981.

39. Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1948 (No. 98).

A. Previous examination of the case

40. The allegations concerned the labour dispute which occurred in the Costa Rica Banana Company during the months of July and August 1980. At its examination of the case during its meeting of February 1981, the Committee left pending the question of the arrest of dozens of trade union leaders, including the alleged arrest of Edwin Oviedo, General Secretary of the Union of Workers of El Golfitlo. The Government replied that the authorities had never arrested citizens for the mere fact of holding trade union office. The Committee recommended the Governing Body to ask the Government to provide precise information on the reasons for the arrests mentioned by the complainant and on the present situation of the arrested trade unionists.

B. Reply of the Government

41. In its communication of 3 April 1981, the Government states that as a result of the disturbances which occurred during the banana conflict, several citizens were arrested, including workers in the banana company, trade union leaders and other individuals for having committed various offenses which resulted in a breach of the peace (riot, disobedience, contempt, public incitement, etc.). The Government repeats that the trade union

militants, amongst others, were not arrested because of their trade union status but because they had committed punishable acts. The Government goes on to say that all the persons arrested were quickly released and now enjoy absolute liberty pending a decision by the courts on their alleged guilt.

42. As regards the trade union leader Edwin Oviedo, the Government states that he was arrested on charges of obstruction of public services, riot, disobedience and contempt; however, since there was insufficient evidence upon which to base a judgement of innocence or guilt, he has now been released and enjoys absolute liberty.

C. Conclusions of the Committee

43. As concerns the arrest of the trade union leader Edwin Oviedo, the Committee notes that as a result of insufficient evidence upon which to convict him of the offences with which he was charged, he has been released and now enjoys absolute liberty.

44. As concerns the other leaders arrested as a result of the dispute in the banana company, the Committee notes the statement by the Government that they have been released pending an investigation by the courts of the allegation that they committed offences punishable under ordinary law.

The Committee's recommendations

45. In these circumstances, and since the complainant has furnished no precise information on the reasons for the arrests and the identity of the persons arrested, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 998

COMPLAINT PRESENTED BY THE GREEK PURSERS' UNION—PIRAEUS AGAINST THE GOVERNMENT OF GREECE

46. By a communication dated 17 September 1980, the Greek Pursers' Union—Piraeus, presented a complaint concerning alleged infringements of trade union rights in Greece. The Government sent its observations on 3 February 1981.

47. Greece has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. Allegations of the complainant

48. The complainant alleges that after all the members of the Greek Pursers' Union participated in strikes on all the passenger ships of the Karageorgis Line Co., on 21, 22 and 23 August 1980, in accordance with the provisions of Law 330/76 for the non-payment of overtime work, the Ministry of Merchant Marine illegally dismissed the strikers by ordering the Harbour Masters of Patros and Rhodes to sign them off the ships' articles.

B. The Government's reply

49. The Government stated in its communication that according to the case law, a strike does not break an employment contract, but only suspends it, and that since the member pursers did not come aboard their ships, their records were marked, but these marks do not infringe upon their rights. Thus in the Government's view the strikers were not dismissed, only their records were marked since they did not show up for work. Finally, the Government adds that in order to avoid further misunderstandings, it gave the necessary instructions to delete the comments made in the strikers' records.

C. The Committee's conclusions

50. The Committee notes that the strike only suspended the working contracts, and that therefore the comments introduced in the sailors' records did not lead to dismissals. It notes with interest that these comments were subsequently stricken from the strikers' records.

The Committee's recommendation

51. In these circumstances the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1023

COMPLAINT PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS AGAINST THE GOVERNMENT OF COLOMBIA

53. Considering that the statements by the parties are contradictory and in accordance with the procedure of the Committee on Freedom of Association, the Director-General requested the complainant organisation, in a letter dated 8 April 1981, to furnish no later than 15 May 1981 appropriate comments on the observations made by the Government. The Committee has to date received no such comments.

54. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

55. In its communication of 2 February 1981, the World Federation of Trade Unions (WFTU) alleges that Mr. Angelino Garzón, Secretary-General of the National Federation of State Workers and Secretary for International Relations of the Confederation of Colombian Workers was arrested, along with other labour leaders.

B. Reply of the Government

56. In its communication of 11 March 1981, the Government points out that inquiries were made in the Department of the Public Prosecutor with the Procurator responsible for the Armed Forces, whose report - a copy of which is provided by the Government - indicates that "relevant inquiries in the Brigade of Military Institutes showed that [citizen Angelino Garzón] has not been deprived of his liberty by members of the Armed Forces".

C. Conclusions of the Committee

57. The Committee notes that the complainant has referred to the arrest of several trade union leaders, although it provides the name and details of the trade union functions of only one of these, Angelino Garzón. The Committee also notes that the complainant has provided no details on the circumstances of and motives for the alleged arrests; the complainant has neither exercised the right to communicate additional information to the Committee nor furnished any comments on the reply of the Government which the Director-General transmitted on 8 April 1981. Furthermore, the Committee notes that the competent authorities indicated in a report that Angelino Garzón "has not been deprived of his liberty by members of the Armed Forces".
The Committee's recommendations

58. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

Case No. 874

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND THE TRADE UNION CONFEDERATION OF WORKERS' COMMISSIONS AGAINST THE GOVERNMENT OF SPAIN

59. The Committee already examined this case at its May 19771 and November 19782 Sessions, and on both occasions submitted an interim report to the Governing Body. Since then, the Committee has received a communication from the Trade Union Confederation of Workers' Commissions dated 27 June 1979. Observations were received from the Government in communications dated 5 October 1979, 25 February and 5 May 1980, and 23 January and 11 May 1981.

60. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

61. The International Confederation of Free Trade Unions (ICFTU) alleged that Royal Legislative Decree No. 17 of 4 March 1977 on labour relations, while recognising the principle that workers have the right to strike, contained provisions contrary to freedom of association which restricted this right in practice and even denied it altogether. The ICFTU also alleged that the Royal Legislative Decree maintained the provisions relating to the registration and approval of collective agreements by the government authorities.

62. For its part, the Government mentioned the transitional nature of Royal Legislative Decree No. 17/1977 and referred to other --------------

1 See 168th Report, paras. 257 to 263, approved by the Governing Body at its 203rd Session (May-June 1977).

2 See 187th Report, paras. 469 to 484, approved by the Governing Body at its 208th Session (November 1978).
legislation modifying the scope and application of some of its terms and to the provisions of the draft Constitution concerning strikes, labour disputes and collective agreements.

63. After examining Royal Legislative Decree No. 17/1977 on labour relations, the Committee considered that some of its provisions relating to the exercise of the right to strike might raise problems regarding their consistency with the principles of freedom of association. It pointed out in particular that certain conditions required for calling a strike (section 3(1) and (2)) and for proceeding with it (section 5) might substantially limit the action of workers and the trade unions representing them in disputes of this kind.

64. The Committee took note of the prohibition on strikes by workers performing services in strategic sectors for the purpose of disrupting production (section 7(2)) and of the power conferred on the Government, acting on the recommendation of the Ministry of Labour and having regard to the duration and consequences of a strike, the attitudes of the parties and any serious prejudice to the national economy, to order work to be resumed within such period as it may determine, either for a maximum of two months or permanently on the basis of compulsory arbitration (section 10). The Committee considered that these provisions gave the government authorities wide discretionary powers to decide whether a labour dispute was to be submitted to compulsory arbitration for a ruling, thus preventing strike action, and pointed out that, though strikes might well be limited and even prohibited in public services and essential sectors because of the serious harm which a work stoppage might cause to the national community, this principle would be rendered meaningless if strikes in undertakings not performing essential services in the strict sense were declared illegal.

65. The Committee also noted that Royal Legislative Decree No. 17/1977 had not repealed the provisions allowing the authorities to refuse to approve collective agreements if they infringe a statutory provision or legislation stipulating that collective agreements are not to contain provisions that may cause serious prejudice to the national economy. The Committee mentioned the implications of the principle of voluntary negotiation.

66. The Committee recommended the Governing Body to express the hope that the legislation being prepared would take into account the principles mentioned and to request the Government for information on the development of the situation.

B. Further allegations

67. In its communication of 27 June 1979, the Trade Union Confederation of Workers' Commissions alleged that the Spanish State had infringed Convention No. 98 since, on approving the agreement which terminated the strike called by the workers' representatives during the negotiation of the eighth collective agreement with the National Telephone Company, which was to become effective on 1 January 1979, the Directorate-General of Labour proceeded unilaterally, without consulting any of the employers or workers concerned, to delete or modify fundamental clauses contained in the agreement.
C. The Government's reply

68. In its communication of 5 October 1979, the Government, after stressing the strictly transitional character of Royal Decree No. 17/1977 and referring to the provisions of the new Spanish Constitution relating to strikes, collective agreements and labour disputes, stated that the complex subject of labour relations was being approached in the light of the Constitution. In actual fact, the Government added, strikes are constantly taking place outside the conditions stipulated by Royal Legislative Decree No. 17/1977 in nearly every sector of production, in which various trade union organisations have participated or participate directly.

69. In its communication of 5 May 1980, the Government stated that the Workers' Statute recognising the right to strike was approved by law on 10 March 1980. The Government added that regulation of this right required, in accordance with the Constitution, a specific law; this would have the character of a basic law and would repeal the provisions of Royal Legislative Decree No. 17/1977 still in force. The Government specified that the bill would take into account the ILO doctrine on the subject and, in its communication of 23 January 1981, stated that the basic law was under preparation.

70. The Government attached to its communication of 11 May 1981 a copy of the ruling given by the Spanish Constitutional Court on 8 April 1981 on the petition for repeal of Royal Legislative Decree No. 17/1977 on the ground of unconstitutionality.

71. In its ruling, the Constitutional Court states that section 3 of Royal Legislative Decree No. 17/1977 is not unconstitutional provided that the right of workers to strike is understood to mean that it may be exercised by them personally, by their representatives and by the trade union organisations established in the places covered by the strike. However, the provisions of the section requiring that the decision to call a strike must be taken in each workplace (subsection 1), that the meeting of the workers' representatives must be attended by a given percentage (subsection...
2(a) and that the decision to call a strike must be supported by 25 per cent of the workers (subsection 2(b)) were declared unconstitutional by the Court.

72. The Court also ruled that the first paragraph of section 5 ("Only workers in the workplace who are affected by the dispute may be elected to membership of the strike committee") is not unconstitutional when the strike is limited to a single workplace but is unconstitutional when the strike extends to more than one workplace.

73. The ruling of 8 April 1981 adds that subsection 7 of section 6 is unconstitutional in assigning to the employer the sole right to designate the workers responsible during the strike for ensuring the upkeep of premises, machinery or plant.

74. The ruling states that paragraph 1 of section 10 is unconstitutional in empowering the Government to order the resumption of work but is not unconstitutional in empowering it to institute compulsory arbitration provided the requirement of impartial arbitrators is observed.

75. The ruling also states that paragraph 2 of section 10 which empowers the competent organ of government to order the necessary steps for ensuring the operation of essential public services, is not unconstitutional, provided the exercise of this power is subject to the jurisdiction of the courts of justice and to appeal to the Constitutional Court.

76. Furthermore, the ruling states that the term "directly" in subparagraph (b) of section 11 ("A strike shall be unlawful if ... (b) it is intended to manifest solidarity or support, except where it is directly related to the occupational interests of the persons beginning or continuing it") is unconstitutional.

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1 Section 6, subsection 7. The strike committee shall guarantee that the necessary services are maintained during the strike to ensure the safety of persons and property, the upkeep of premises, machinery, plant and raw materials and any other action required for the subsequent resumption of the undertaking's work. It shall be the duty of the employer to designate the workers responsible for performing such services.

2 Section 10, paragraph 1. The Government, acting on the recommendation of the Ministry of Labour and having regard to the duration and consequences of a strike, the attitudes of the parties and any serious prejudice to the national economy, may order work to be resumed within such period as it may determine, either for a maximum of two months or permanently on the basis of compulsory arbitration. Failure to comply with this order shall render the party concerned liable to the provisions of sections 15 and 16.

3 Section 10, paragraph 2. Where a strike is called in an undertaking responsible for providing any kind of public or recognised essential service and the attendant circumstances are particularly serious, the competent organ of government may order the necessary steps to be taken to ensure the operation of such service. The Government may also take appropriate action for the purpose.
77. Lastly, the Government states that section 164 of the Spanish Constitution provides that the rulings of the Constitutional Court "declaring a law or regulations with force of law to be unconstitutional, as well as any rulings not limited to a subjective appraisal of a right, shall be fully effective for all". The same section of the Constitution also stipulates that, except where the ruling provides otherwise, whatever part of the law that is not declared unconstitutional shall remain in force.

D. The Committee's conclusions

78. The Committee takes note of the Government's statements, in particular that it is in the process of preparing a basic law to regulate the exercise of the right to strike, which will repeal the provisions of Royal Legislative Decree No. 17/1977, that the bill will take into account the ILO doctrine on the subject and that in actual fact strikes are constantly taking place outside the conditions provided for by Royal Legislative Decree No. 17/1977 in nearly every sector of production. The Committee has taken note with interest of the ruling given by the Constitutional Court on 8 April 1981 on the petition for repeal of Royal Legislative Decree No. 17/1977 on the ground of unconstitutionality and the fact that the ruling declares unconstitutional some of the provisions of sections 3, 5 and 10 which had been objected to by the Committee.

79. The Committee observes, in particular, that in relation to section 3 of Royal Legislative Decree No. 17/1977 (conditions for calling a strike), the Constitutional Court's ruling of 8 April 1981 recognises that trade union organisations are entitled to exercise the right to strike and declares unconstitutional the provisions requiring that the decision to strike must be adopted in each workplace, that meetings of workers' representatives must be attended by at least 75 per cent of the representatives and that the decision to call a strike must be supported by at least 25 per cent of the workers.

80. In relation to section 5 of Royal Legislative Decree No. 17/1977 (concerning the conduct of the strike and the function and membership of the strike committee), the Committee observes that the first paragraph ("Only workers in the workplace who are affected by the dispute may be elected to the membership of the strike committee") is unconstitutional when the strikes include more than one workplace.

81. The Committee notes that the Constitutional Court has declared unconstitutional section 6, subsection 7, in assigning to the employer the exclusive right to designate the workers responsible during the strike for ensuring the upkeep of premises, machinery or plant. The Committee also notes that the term "directly" in subparagraph (b) of section 11 of Royal Legislative Decree No. 17/1977 ("A strike shall be unlawful if ...(b) it is intended to manifest solidarity or support, except where it is directly related to the occupational interests of the persons beginning or continuing it") is unconstitutional.

82. The Committee observes, however, that the Government may still, in the event of a strike, order work to be resumed by
establishing compulsory arbitration, in accordance with the provisions of the first paragraph of section 10 ("... on the recommendation of the Ministry of Labour and having regard to the duration and consequences of a strike, the attitudes of the parties and any serious prejudice to the national economy"), although the Constitutional Court has ruled that such an order is subject to observance of the requirement of impartial arbitrators and has declared unconstitutional the power conferred on the Government to order work to be resumed within such period as it may determine, for a maximum of two months. In this respect, the Committee considers that the first paragraph of section 10, as examined by the competent judicial authority with respect to its constitutionality, and subsection 2 of section 7 (to which the ruling of the Constitutional Court does not refer) under which strikes by workers performing services in strategic sectors for the purpose of disrupting production are deemed to be unlawful or unwarranted, still allow the government authorities in some cases discretion to submit a labour dispute to compulsory arbitration, which might prevent strike action. Accordingly, considering that in normal circumstances recourse to compulsory arbitration or prohibition of strikes should be permissible only in the case of public services or essential services in the strict sense, the Committee considers that, in the interest of a harmonious development of labour relations and freedom of action by trade union organisations, it would be well for the future basic law on strikes, now being prepared, to specify what services are really essential services, i.e. whose interruption could endanger the existence or well-being of the whole or part of the population.

83. The Committee also notes that, according to the Constitutional Court, the second paragraph of section 10 empowering the competent organ of government to order the necessary steps to be taken to ensure the operation of essential public services "is not unconstitutional provided that the exercise of this power is subject to jurisdiction of the courts of justice and to appeal to the Constitutional Court". The Committee observes that the Court's reference to this paragraph would seem to limit its scope to essential public services and consequently to attach a restrictive interpretation to those services, unlike the tenor of the section in question which refers to "any kind of public or recognised essential service".

84. Concerning the allegation relating to the procedure for approving collective agreements and the restrictions on collective bargaining, in respect of wages in particular, the Committee has examined the law on the Workers' Statute of 10 March 1980 and observes with interest that the law merely attributes to the labour authority registration functions, thus eliminating the requirement for approval of collective agreements. The Committee also observes that, at its meeting in March 1981, the Committee of Experts on the Application of Conventions and Recommendations noted that the provisions restricting collective bargaining in respect of wages were no longer effective.

85. The Committee observes that the Government has not replied to the allegation concerning the deletion or modification of

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certain clauses by the General Directorate of Labour in the text of
the agreement terminating the strike held during the negotiation of
the eighth collective agreement with the National Telephone Company.
In view of the time elapsed since the complaint was submitted, and
having corroborated that the law on the Workers' Statute eliminates
the procedure for approval of collective agreements and establishes
a system for encouraging and promoting voluntary bargaining
procedures and that, consequently, the parties may, if they have not
already done so, modify the terms of the agreement to which the
complainant referred, the Committee considers that this aspect of
the case does not call for further examination.

The Committee's recommendations

86. In these circumstances, the Committee recommends the
Governing Body to approve this report, and in particular the
following conclusions:

The Committee takes note of the ruling given by the
Constitutional Court on 8 April 1981 on the petition for repeal of
Royal Legislative Decree No. 17/1977 on the ground of
unconstitutionality and observes that some of the criteria adopted
by the Court in its ruling concur with those mentioned by the
Committee in its last report on this case in relation to sections 3
and 5 and, in certain respects, in relation to the first paragraph
of section 10 of Royal Legislative Decree No. 17/1977.

The Committee notes a basic law on strikes is now being pre­
pared, which will repeal the provisions of Royal Legislative Decree
No. 17/1977 which are still in force, and that the bill will take
into account the ILO doctrine on the subject.

The Committee considers that in the interest of a harmonious
development of labour relations it would be well for the future
basic law on the right to strike to specify the essential services
where this right may be restricted or prohibited.

The Committee notes with interest that the procedure for
approval of collective agreements has been eliminated and that the
provisions restricting collective bargaining in respect of wages are
no longer effective.

Case No. 977

COMPLAINTS PRESENTED BY THE NATIONAL FEDERATION OF
WORKERS IN THE SERVICE OF THE STATE AND THE
NATIONAL UNION OF NATIONAL PUBLIC WORKS
EMPLOYEES AGAINST THE GOVERNMENT OF COLOMBIA

87. The complaint is contained in a communication from the
National Federation of Workers in the Service of the State
(Penaltrase-CITE) and the National Union of National Public Works
Employees (Sindeopnales) of 9 June 1980. The Government replied by
a communication of 13 February 1981.
88. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainants

89. The complainants allege that the members of the trade union organisation of the National Transport Institute (INTRA) have been persecuted as trade unionists, that they have been threatened with loss of membership, that over 60 workers have been dismissed, and finally that the members of the basic trade union executive, Victor Quintero Dueñas, Gabriela Castrillón Restrepo, Gustavo Orejarena Acevedo, Alfonso Morales Caicedo and Humberto Correa Amaya, have been dismissed en bloc.

B. Reply of the Government

90. The Government sends a communication from the Director-General of the National Transport Institute (INTRA) in reply to a request for information, and the text of the resolution of 4 May 1977 denying legal personality to the "Union of Workers of the National Transport Institute", essentially because the rules of the organisation conferred upon the general assembly a series of powers ("adoption of statements of claims, election of bargaining agents, conciliators and arbitrators, calling of strikes") which were contrary to the provisions of the legislation.

91. In his reply the Director-General of INTRA states that he has received no notification of the existence of any legally recognised trade union in the Institute, from which he infers that there is no trade union persecution.

92. The Director-General of INTRA also remarks that public employees do not enjoy the right to present statements of claims, conclude collective labour agreements or promote disputes of interests, that Decrees Nos. 1950 of 1973 and 219 of 1978 permit the free appointment and removal from office of public employees and that these powers have not been used against former officials merely because they had formed an association, but because, in order to carry out its work effectively, INTRA must be free to select employees and subordinate staff who are loyal to the moral principles governing this administration, principles which have at no time been held by the said officials, as is obvious from the posters that they have affixed in public places.

C. Conclusions of the Committee

93. The Committee takes note of the Government's statements that there is no legally recognised trade union in INTRA, and that
public employees do not enjoy the right to conclude collective agreements or promote disputes of interests. The Committee also notes that by resolution of 4 May 1977 the Union of Workers of INTRA was refused legal personality because the rules of the organisation went beyond the limits imposed by the legislation governing public employees as regards collective bargaining and disputes of interests.

94. In this respect the Committee must draw the Government's attention to the fact that Convention No. 87 applies to all workers, including public officials, and that the scope of Convention No. 98, although it does not extend to public officials in the state administration, nevertheless covers all persons employed by the State or in the public sector who do not act as instruments of public authority, including public employees in the transport sector. Consequently, the Committee draws the attention of the Government to the necessity of changing the legislation so as to allow public employees in the transport sector to benefit fully from the guarantees provided for by Conventions Nos. 87 and 98, in particular the right of their trade union organisations, as is the case for all other workers' organisations, to organise their activities and formulate their programmes and to bargain collectively.

95. As regards the dismissals of more than 60 workers and the members of the executive of the Union of Workers of INTRA (Victor Quintero Dueñas, Gabriela Castrillón Restrepo, Gustavo Orejarena Acevedo, Alfonso Morales Caicedo and Humberto Correa Amaya), the Committee observes that neither the complainant (which referred to trade union persecution) nor the Government (which stated that the persons who were dismissed did not hold the moral principles obtaining in INTRA, as was obvious from the posters that they had affixed in public places) specified the reasons for the dismissals in sufficient detail. Nevertheless, in view of the fact that the Union of Workers of INTRA was unable to obtain legal personality because its rules were not in conformity with certain provisions which excessively limit the trade union rights of public employees and that this resulted in the present case in their leaders being denied the protection granted by legislation to trade union leaders, the Committee feels that it would be useful, for the harmonious development of labour relations, for the Government to reconsider the position of the above-mentioned leaders with a view to reinstating them in their employment, in so far as their dismissals were not based on grounds other than the promotion and defence of the workers' interests.

Recommendations of the Committee

96. In these circumstances the Committee recommends the Governing Body to approve the following conclusions:

The Committee draws the attention of the Government to the necessity of amending the legislation so as to ensure that the public employees in the transport sector and their organisations, as is the case for all other workers' organisations, may benefit fully from the guarantees provided for by Conventions Nos. 87 and 98, in particular the right to organise their activities and formulate their programmes and to bargain collectively.
The Committee requests the Government to reconsider the position of the trade union leaders who were dismissed, with a view to reinstating them in their employment, in so far as their dismissals were not based on grounds other than the promotion and defence of the workers' interests.

Case No. 981

COMPLAINT PRESENTED BY THE CARTEL OF INDEPENDENT TRADE UNIONS OF BELGIUM AGAINST THE GOVERNMENT OF BELGIUM


98. Belgium has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

99. The complaint concerns an alleged attempt by the Government to set up a monopoly of "political trade unions" in the public service. The complainant recalls that it had in the past presented a complaint (Case No. 655) against a Bill to organise the relationships between the public authorities and the unions of those workers under these authorities, a Bill which became law on 19 December 1974.1

100. In the present case, the complainant alleges that a Bill of 3 December 1979 relating to the grant and payment of a trade union bonus to members of the public sector staff who belong to the so-called "representative" organisations gives an advantage to the members of these organisations to the detriment of the members who belong and subscribe to other trade union organisations. Since the complaint was presented, the Bill became law on 1 September 1980.

101. The complainant refers mainly to two grievances it has with the Act in question. The first concerns the grant of a trade union bonus to certain members of the staff which would constitute a violation of trade union freedom as the workers would always let themselves be influenced by the granting of financial advantages however small they were. In this connection it explains that where the bonus exists the trade union organisations which are not included have practically no chance of survival. According to it,

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1 See in this connection the previous conclusions of the Committee in its 130th Report, paras. 17 to 26, 143rd Report, paras. 7 to 44 and 158th Report, paras. 44 to 75.
the bonus represents an efficient means of pressure. The second grievance raised is that of the retroactive effect, to 1978, of the Act of 1 September 1980.

102. In addition, the complainant explains that the new Act makes express reference, in section 7, to the Act of 19 December 1974. This latter Act, which has still not been applied, provided that the criterion for recognition of a representative organisation was membership of an organisation sitting on the National Labour Council. According to the Act of 29 May 1952, this Council shall be made up of representatives of organisations representing the workers designated by the King from amongst the nominations put forward by the inter-occupational organisations federated at the national level. It adds that although the Cartel of Independent Trade Unions satisfies the criteria of the Act, its request to join the Council has always been refused for different reasons, the division of seats on the National Labour Council having remained unchanged since its creation.1

103. Moreover, the complainant sets out the reasons given by the Government during the drawing up of the Act in 1980. The Government justified the grant of the bonus on the ground that the most representative organisations have more responsibility than the others because of their close collaboration with the administrative and political authorities, particularly their participation in the collective agreement, the efficient co-management of certain services, the advice that they give in numerous consultative bodies. The Government claimed that this bonus would only be partial compensation of special efforts that the most representative organisations require from their members so as to be able to carry out the tasks entrusted to them.

104. On the first point, the complainant states that the Cartel, although it should also be considered as a representative organisation according to the Trade Union Act of 20 June 1955 (still applicable as the executory decrees of the 1974 Act have not yet been adopted), has no right to the new trade union bonus set up even if its members sit on various consultative bodies. On the second point, the complainant notes that for sitting on the different committees, the participants receive exemptions from service and their full salaries, and the so-called "political" trade union organisations receive certain subsidies from the State.

B. The Government's reply

105. After drawing the general picture of the trade union situation in the public sector, the Government explains that the

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1 See 158th Report, Case No. 655, para. 58, where the Committee on Freedom of Association, for its part, considered that such a system might mean that sufficiently representative organisations, and even the most representative organisation in the public sector might be excluded from the general negotiating committees on the ground that they were not affiliated to a trade union organisation represented on the National Labour Council.
trade union bonus is written into the two collective agreements for the public sector dated 28 October 1977 and 26 May 1978 and derives from what had already existed for some decades in the private sector as advantages reserved to trade unions. It states that these advantages, in very general use, are a form of union security clauses.

106. According to the Government, the Bill was submitted to the Council of State for its opinion on 18 July 1979. The Council considers that the grant of a trade union bonus only to members of the public sector staff who are affiliated to the most representative trade union organisations is not contrary to the constitutional and legal principle of freedom of association, on the condition that the amount of the bonus is not such as to make the granting of it, in fact, a pressure or constraint on the person in deciding his membership of such a trade union organisation.

107. The Government also states that although the Council of State, in the decree given regarding the Bill in question, did not deal with the principle of equality and non-discrimination, one can, following its previous case law on the matter, come to the conclusion that this regulating is not contrary to the constitutional principles which govern the subject. Equality before the law is not infringed when an advantage is given to all persons who are in the same situation, even more when they form a set category objectively determined stated the Council of State in a decree of 3 February 1967 handed down in another matter. The Government claims that such is the case of the trade unionists and explains that the members of the most representative trade union organisations can be considered as an objectively determined category: their organisations must, in effect, so as to be categorised as most representative organisations, satisfy the criteria of representativity determined beforehand and objectively in a general way by the legislator. The Government also refers to the Belgian jurisprudence to state as regards the distinction which operates between the trade unions that there is no violation of freedom of association if the trade union organisations are considered to be on an equal footing in so far as each of them has genuinely contributed to the development of the economic life and social peace and has taken part in collective bargaining. It adds that the exclusion of the small trade unions can be justified if they do not have it in their power to bring about efficient aid in the realisation of these objectives.

108. The Government explains that the Act has decided for each sector (teaching, administration of the State, army) which shall be the most representative trade union organisations whose members shall receive the bonus. It states that its intention is that the division shall be between the members of organisations which are the closest to the "base". In principle, priority shall be given, among the staff members of the administrations and other services of the State, to those who are members of trade union organisations qualified to sit on committees of the sector, and if there are none, to traditional trade union organisations. According to the Government, it is incorrect to claim that the three traditional trade union organisations will ipso facto benefit from the bonus; others could benefit from it if they satisfy the conditions laid down. The Government points out that it cannot be maintained that this system was an attempt to set up a monopoly for the benefit of certain so-called "traditional" trade unions because they were represented on the National Labour Council.
109. Nevertheless, the Government admits that as it claims it was impossible to supervise the internal representativity for the years 1977, 1978 and 1979, it had to provide for a transition period and adopt criteria of external representativity, that is in particular, the fact of having been affiliated to an organisation sitting on the National Labour Council. Consequently, for the three years referred to, only the members of the three traditional trade union organisations can be taken into consideration in the granting of the bonus.

110. Finally, it states that the amount of the bonus will be fixed so as not to pressure or restrain those involved and this will be under the control of the courts and tribunals and the Council of State. For each of the years 1977 and 1978, the amount has been fixed at 700 Belgian francs which, according to the Government, does not constitute a real means of pressure.

C. The Committee's Conclusions

111. In the present case, the complainant alleges an attempt to set up a monopoly of "political trade unions" in the public sector by the grant of a trade union bonus to certain staff members in the public sector who are members of the so-called "representative" organisations to the detriment of staff members who are affiliated and subscribing to other trade union organisations. The Government considers that the granting of the bonus in question does not imply any discrimination in favour of the traditional trade union organisations.

112. Generally, the Committee has always considered that the possibility for a government to grant an advantage to one particular organisation or withdraw that advantage from it entails the risk that one trade union will enjoy an unfair advantage or disadvantage in relation to others which thereby constitutes an act of discrimination; by doing this, the government may either directly or indirectly influence the choice of workers regarding the organisation to which they intend to belong. In the present case, the Committee notes that the advantage has not been granted to the organisation itself but to the paying members. However, the grant of a bonus could equally influence the workers' decision to join one particular trade union, yet the freedom of choice of those concerned in the matter is a right expressly stated in Convention No. 87.

113. The International Labour Conference, referring to the question of the representative character of trade unions during the discussion of the draft of Convention No. 98 on the Right to Organise and Collective Bargaining, admitted to a certain extent that distinctions can sometimes exist between the various unions concerned according to how representative they are on the condition that the decision as to the most representative organisations be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse.

1 See, for example, 58th Report, Case No. 231 (Argentina), paras. 551 and 552.
114. In the present case, the retroactive effect of the grant of the bonus does not seem to have been operated according to these principles in that for the years 1977 to 1979 it was only given to staff members of the so-called "traditional" organisations according to the Government's own statement.

115. On the other hand, the criteria which will now be applied appear to satisfy the principles of objective determination at least for certain sectors since it seems that members of any representative trade union organisation in a particular sector will be entitled to receive the bonus even if it is not an organisation belonging to the "traditional organisations". Nevertheless, the Committee notes that in other sectors the staff receive the bonus only if they belong to staff associations affiliated to an organisation represented on the National Labour Council.

116. Finally, the Committee notes that the amount of the bonus, which is raised to 700 Belgian francs per person per year, does not seem to constitute a real means of pressure leading to the conclusion that the public authorities intended, through the advantages granted to certain workers, to influence unduly the workers' choice as regards the organisation to which they intend to join. As for the future, the Committee considers that it is important that the amount of the bonus in question does not exceed a symbolic level.

Recommendations of the Committee

117. In these circumstances, the Committee recommends the Governing Body to adopt the above conclusions and, in particular, to draw the Government's attention to the importance which it attaches to the fact that any advantage granted by the law to workers who belong to a particular trade union must not exceed a symbolic level, so as to ensure that in no case can an advantage be of such a nature as to influence unduly the workers' choice as regards the organisation to which they intend to belong.

Case No. 1002

COMPLAINTS PRESENTED BY THE TRADE UNIONS INTERNATIONAL OF PUBLIC AND ALLIED EMPLOYEES AND THE WORLD FEDERATION OF TRADE UNIONS AGAINST THE GOVERNMENT OF BRAZIL

118. The complaints are contained in communications of the Trade Unions International of Public and Allied Employees and the World Federation of Trade Unions dated 15 and 26 September 1980, respectively. The Government replied in a communication dated 25 February 1981.

119. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. Allegations of the complainants

120. The complainants allege that on 15 August 1980, Mr. José Antonio Nania, Vice-President of the San Pablo Hospital Employees' Association, was notified that his contract of employment was terminated "without due grounds".

121. According to the complainants, despite the mention of "without due grounds" in the notice of termination, this measure was really taken because of Mr. Nania's participation, as representative of his association, in a meeting held by the Trade Unions International of Public and Allied Employees last July in Lima.

B. The Government's reply

122. In its communication of 25 February 1981 the Government states that section 566 of the Consolidation of Labour Laws provides that trade unions may not be formed by government employees or employees of quasi-governmental institutions, thus expressly excluding public employees from the right to organise. The Government also states that Mr. Nania's status as a public employee debarred him from the exercise of trade union activities as a leader, such as participation in the trade union meeting held in Lima, which he attended without the prior authorisation of the competent authority.

123. The Government further states that the dismissal of Mr. Nania was due above all to repeated neglect of his duties, which he justified by the assistance he was lending to the San Pablo Hospital Employees' Association. It adds that Mr. Nania's post did not entitle him to trade union immunity or to the temporary job security which is granted to trade union leaders under the Consolidation of Labour Laws.

C. The Committee's conclusions

124. While noting that the dismissal of Mr. Nania was due to repeated neglect of his duties, the Committee observes that the notice of dismissal expressly states that the dismissal was made "without due grounds" and that the notice is dated 15 August 1980. The Committee further observes that the legislation excludes public employees from the right to organise and hence to carry on trade union activities and grants special protection against dismissal only to trade union leaders who are not public employees.

125. The Committee must draw the attention of the Government to the fact that exclusion of any category of workers - with the exception of the armed forces and the police - from the right to organise is contrary to the principles of freedom of association and that, in accordance with the provisions of Convention No. 98, which has been ratified by Brazil, the safeguards provided for by the Convention, in particular protection against acts of anti-union dis-
crimination such as dismissal, must be extended also to persons employed by the State or in the public sector who do not act as agents of the public authority. The Committee draws attention to the fact that the same position has for many years been taken by the Committee of Experts on the Application of Conventions and Recommendations.

126. In view of the different treatment established by the legislation in trade union matters for persons who are public employees and for those who are not, the Committee does not rule out the possibility that the trade union function and activities of Mr. Nania may have had a decisive influence in his dismissal. The Committee also considers that a harmonious development of labour relations and freedom of action by occupational organisations would be advanced if Mr. Nania were to be reinstated in his former job and requests the Government to consider the possibility of taking steps to this end.

The Committee's recommendations

127. In these circumstances, the Committee recommends the Governing Body to approve the present report, in particular the following conclusions:

The Committee requests the Government to consider the possibility of taking steps for the reinstatement of Mr. Nania in his employment.

The Committee draws the attention of the Government to the fact that the right to organise should apply to all public servants and that protection against acts of anti-union discrimination should also be extended to persons employed by the State or in the public sector who do not act as agents of the public authority.

Case No. 1005

COMPLAINT PRESENTED BY THE PUBLIC SERVICE INTERNATIONAL AGAINST THE GOVERNMENT OF UNITED KINGDOM/HONG KONG

128. The complaint of the Public Service International (PSI) is contained in a letter dated 5 November 1980. The Government sent its observations in a communication dated 15 April 1981.

129. The United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84) in respect of Hong Kong. It has declared applicable to Hong Kong the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) with modifications, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Labour Relations (Public Service) Convention, 1978 (No. 151) applicable without modifications.
A. The complainant's allegations

130. The PSI is of the view that there is a lack of negotiating procedures for public service workers in Hong Kong. It explains that the principal forum for discussion in Hong Kong for these workers is the Senior Civil Service Council, a central consultative council only, on which the staff are represented by merely three staff associations; its main emphasis is on establishing procedures to enable staff associations to represent their views to management. According to the complainant, a Staff Relations Division has been recently set up in the Civil Service with the object of ensuring that appropriate staff consultative machinery and procedures are established and made use of effectively by departments and staff associations. The PSI also refers to the recent establishment of a Standing Commission on Civil Service Salaries and Conditions of Service whose main targets, according to an official press release, should be "to advise the Governor on the principles governing the Civil Service grade and salary structure, and on ways of carrying out regular reviews of individual grades. The Commission would oversee such reviews and, after discussion between staff and management, advise the Governor on points at issue ... where staff and the official side cannot agree, the Commission will advise on procedures to ensure that the staff can represent their views to the Commission before it formulates its advice."

131. The complainant states that these procedures are far removed from Convention No. 98 which calls for measures to be taken to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

B. The Government's reply

132. The Government states that the public sector in Hong Kong is extremely complex, including not only the Civil Service but other functions similar to those of local authorities, public corporations and nationalised industries in the United Kingdom. This has resulted in a proliferation of public sector trade unions (for example, in 1980 there were 143 civil service staff unions) which raises practical problems in any consultations or negotiations between the trade union representation and the Government. According to the Government, there is a need for rationalisation of the trade union structure to be brought about by the unions' own initiative.

133. It explains that the Government of Hong Kong has taken measures appropriate to Hong Kong's conditions to promote and encourage consultation and voluntary negotiation between Civil Service staff unions and the Administration: the Senior Civil Service Council was set up under an agreement with the three main staff unions existing at the time; individual unions may achieve representation on Departmental Consultative Councils; in 1979 the independent Standing Commission on Civil Service Salaries and
Conditions of Service was appointed and it takes full account in formulating advice and recommendations of the views of Civil Service staff unions.

134. The Government states that, in September 1980, the Standing Commission submitted a report to the Governor making certain recommendations on how to improve the consultative machinery within the Civil Service: the establishing and strengthening, at departmental level, of machinery for consulting staff to improve staff-management communication; proposals to set up a new central council to represent junior civil servants in addition to the Senior Civil Service Council; a joint review of this latter body; the establishment of staff complaint and grievance procedures in all departments. According to the Government, these recommendations have now been accepted by the Hong Kong Government and steps are in hand to implement them.

C. The Committee's conclusions

135. The complainant in this case alleges a lack of negotiating procedures for civil servants in Hong Kong. The Government, on the other hand, claims that the three types of standard-setting bodies - the Senior Civil Service Council, the Departmental Consultative Councils or Staff Relations Division of the Civil Service, having staff union representation, and the independent Standing Commission on Civil Service Salaries and Conditions of Service - take full account of the civil servants' unions' views. The Government also states that recent recommendations by the Standing Commission to improve the consultative machinery within the Civil Service will be implemented.

136. The Committee notes that the complainant relies on the phrase "by means of collective agreements" in Article 4 of Convention No. 98, declared applicable without modification to Hong Kong, as justification for its claim that negotiating procedures are insufficient and purely consultative in nature. The Committee would point out that Article 7 of Convention No. 151, also declared applicable without modification to Hong Kong, states that negotiations of terms of conditions of employment can be carried out through "such other methods as will allow representatives of public employees to participate in the determination of these matters". The discussion during the adoption of this latter Convention left these alternative methods deliberately vague. But the accompanying Recommendation No. 159, in Article 2(2), states that "Where methods other than negotiation are followed to allow representatives of public employees to participate in the determination of terms and conditions of employment, the procedure for such participation and for final determination of these matters should be determined by national laws or regulations or other appropriate means".

137. The Committee is not called upon to express a view on systems of collective agreements in force in different countries except in so far as such a system may impair the right of trade

1 See 64th Session of the ILC, 1978, PV.25, page 8.
unions to assume freely the defence of the workers.\footnote{See, for example, 23rd Report, Case No. 111 (USSR), para. 187; 27th Report, Case No. 143 (Spain), para. 169.} In the present case, in view of the considerations set out in the previous paragraph, the Committee is of the opinion that the system operating in Hong Kong has deficiencies, in particular the lack of a representative consultative or negotiating body for junior civil servants. It notes, however, that the Hong Kong Government has accepted independent recommendations to rectify this specific situation, as well as recommendations to strengthen, at departmental level, the machinery for consulting staff to improve staff-management communication and to review jointly the Senior Civil Service Council.

138. The Committee would hope that in implementing these recommendations the Government will take full account of the principles set out in Convention No. 151 concerning the negotiation of terms of conditions of employment for public employees. It considers that the Committee of Experts on the Application of Conventions and Recommendations should be informed of the conclusions in this case.

The Committee's recommendations

139. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

As regards the deficiencies in the consultative machinery within the civil service, the Committee hopes that the Government, in implementing the independent recommendations to improve the procedures, will take full account of the principles set out in Convention No. 151 concerning the negotiation of terms of conditions of employment for public employees.

The Committee draws to the attention of the Committee of Experts on the Application of Conventions and Recommendations the conclusions in this case.

Case No. 1008

COMPLAINT PRESENTED BY THE PANHELLENIC UNION OF MERCHANT MARINE ENGINEERS AGAINST THE GOVERNMENT OF GREECE

140. The complaint of the Panhellenic Union of Merchant Marine Engineers (PEMEN) is contained in communications dated 8 October and 7 November 1980. The Government sent its comments in a letter dated 27 March 1981.

141. Greece has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. Allegations of the complainant

142. The complainant, the PEMEN, which states that it represents 14,000 members, explains that it has lodged an appeal before the Council of State against the decisions of the Minister of the Merchant Marine ratifying collective agreements concerning conditions of work on commercial vessels during the period 1979-80 and against the decision of the Council of Ministers authorising the Minister of the Merchant Marine to extend the application of these agreements.

143. The PEMEN states that the collective agreements were signed between the Union of Greek Shipowners (BEE) and the Association of Shipowners of Mediterranean cargo vessels, on the one hand, and the trade unions representing seafarers of various specialities grouped within the Panhellenic Maritime Federation (PNO), on the other hand, covering the rate of salaries, the terms of work, the sickness, salary and rest allowances for seafarers working on commercial vessels of 4,500 dwt, and Mediterranean cargo ships. The PEMEN states that it did not sign these agreements because it did not agree with their contents. It also points out that the Panhellenic Diesel Engineers' Union (PEMEKEN) which, according to the PEMEN, only has 100 members and only joined the PNO well after the PEMEN did, participated in the negotiation of the collective agreement concerning amendments to the basic wage of engineers working on cargo vessels in the Mediterranean.

144. The PEMEN explains that it had, in vain, invited the various shipowners' associations to take part in a settlement of their differences but that, in the absence of any result, the trade union executive was forced, on 29 May 1980, to declare a 48-hour strike warning for the cargo ships running into a port or in port for the period of 1 to 31 July 1980. The strike warning was notified to the Ministry of the Merchant Marine and to various employers' unions, in accordance with section 26 of Act No. 330/76. However, the Ministry allegedly retaliated by adopting Decisions Nos. 70.114/3643 and 70.114/3722 of 18 and 21 June 1980 ratifying the collective agreements, as amended. These decisions were published in the Official Journal on 3 and 12 July 1980.

145. The complainant explains that, in fact, on the very eve of the strike, that is, 30 June 1980, the Ministry of the Merchant Marine was authorised by the Council of Ministers to extend to the PEMEN's members (who had not signed them) the collective agreements in question. The complainant attaches copies of the various ministerial decisions and the decision of the Council of Ministers and states that this latter decision was adopted with a view to making the union executive's 48-hour strike warning look irrational and also to forcing the union to call off this action. In addition, the Council of Ministers asked the Ministry of the Merchant Marine to fix the amount of overtime to be paid to PEMEN's members which, according to the complainant, has not been done.

146. Finally, the PEMEN complains of violation of the legal provisions concerning publication of ministerial decisions, violation of the basic principles of collective agreements, lack of preamble and of reasoning in the ministerial decisions and in the Council of Ministers' decision and excess of power.
B. The Government's reply

147. In its communication of 27 March 1981, the Government confirms that the PEMEN has lodged an appeal to annul the above-mentioned ministerial decisions before the Council of State which has not as yet handed down its decision.

148. It explains that by virtue of Act No. 3276 of 1944 on collective agreements in the maritime sector, the agreements were arrived at between the most representative employers' and workers' organisations following free negotiations and were confirmed by decision of the Minister of the Merchant Marine. The collective agreements confirmed by the Minister are therefore compulsory for all seafarers who belong to one of these categories and the Government adds that the PEMEN and the PEMEKEN (against which the complainant complains of having bargained without being representative) are affiliated to the PNO. This latter organisation, according to its constitution, shall engage in questions of general interest (for example, the rate of salary increases), while its affiliated organisations shall be involved in specific questions of interest to the branch of activity concerned of the workers which they cover (for example, the payment of overtime of engineers). The Government states that the Ministry of the Merchant Marine does not recognise the PEMEKEN as the most representative trade union of engineers, but does allow it the right to conclude collective agreements concerning its own members, as it does for the PEMEN concerning this union's own members.

149. The Government also points out that if as regards a specific question the PEMEN does not conclude a collective agreement, the Minister of the Merchant Marine is authorised by section 2 of Act No. 304 of 1947 to make a determination, after approval by the Council of Ministers, on the questions at issue through collective agreements. Moreover, under article 23 of the Greek Constitution, the competent authorities (in the present case, the Minister of the Merchant Marine) must take the appropriate measures to ensure freedom of association and the free exercise of the rights associated with it. Finally, the Government states that every occupational association is independent and enjoys the protection of the State in the carrying out of its occupational objectives against any interference by another association or by a moral or physical person which does not belong to it, in accordance with section 5 of Act No. 330 of 1976.

C. The Committee's conclusions

150. The Committee notes that the question raised concerns problems identical to those which it has already examined in Case No. 947 relating to a complaint against Greece presented by the same complainant organisation and in which it reached definitive conclusions.1

1 See 202nd Report, paras. 232 to 242, approved by the Governing Body at its 213th Session (May-June 1980).
151. The Committee observes that, in fact, the amended collective agreements concerning conditions of work in the merchant marine have been extended by ministerial decision to the members of the PEMEN, an organisation which did not sign them. Nevertheless, it notes that the PEMEN is affiliated to the PNO which, according to the Government, negotiates questions of general interest, whereas the PEMEN is responsible for negotiating specific questions of interest to its branch of activity. As the PEMEN had not concluded a collective agreement, the law authorises the Minister, with the approval of the Council of Ministers, to make a determination on the questions at issue through collective agreements. In accordance with this procedure, the Minister took the decision to extend the scope.

152. During the examination of Case No. 947, the Committee stated that the endorsement by the Ministry of the Merchant Marine - and the consequent extension - of a collective agreement signed by the PNO and the EEE does not appear to constitute an infringement of the principles of collective bargaining. The same applies to the ratification of amendments to collective agreements made in the same fashion. Nevertheless, as the Committee has previously pointed out, in so far as the PEMEN appears to represent the majority of engineers in the merchant marine, it would be desirable for this organisation to be represented in any negotiations concerning problems specific to this category of personnel which it represents.

The Committee's recommendations

153. In these circumstances, the Committee recommends the Governing Body to adopt the following conclusions:

The Committee considers that the extension of the amended collective agreements to all personnel in the merchant marine does not constitute an infringement of the principles of collective bargaining since the amended collective agreements in question were signed by the Penhellenic Maritime Federation (PNO), to which the complainant organisation is affiliated, and the competent employers' organisations. However, it would be desirable for the PEMEN to be represented in any negotiations concerning problems specific to the category of personnel which it represents.
154. The Committee has examined this case at its February 1981 Session to which it has presented its interim report.¹

155. Ecuador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case by the Committee

156. The allegations referred to the eviction of one of the wings of the Ecuadorian Central of Class Organisation (CEDOC), and the National Federation of Peasant Organisations (FENOC), by the National Police, from the building in which their trade union premises were located. The complainants have indicated that, when on the day following the eviction, when they recovered the premises, they found that doors and walls had been damaged, and that the furniture, documents and other property of FENOC and CEDOC had been destroyed or had disappeared.

157. The Government replied that the eviction was the result of legal action by the owner of the building for failure to pay the rent, and that the police were present in order to protect the official who was to carry out the eviction.

158. The Committee recommended to the Governing Body to ask the Government to send it the texts of the eviction order of the court, as well as additional information regarding the disappearance of trade union documents and the material state of the trade union premises following eviction.

B. Reply of the Government

159. In its communication of 20 April 1980, the Government sent a copy of the court's eviction order issued by the Judge Quinto de Inguilllado de Pichincha, which was transmitted to the Commander General of the National Police, ordering an official to carry out the eviction, together with the police forces who accompanied him when the furniture and the household goods of the building were being removed. The building housed the trade union premises of one of the wings of CEDOC and FENOC.

¹ See 207th Report, paras. 325 to 336, approved by the Governing Body at its 215th Session (March 1981).
C. Conclusions of the Committee

160. As regards the eviction of the trade union premises of one of the wings of CEDOC and FENOC, the Committee notes the Government's statement which indicates that the eviction was carried out as a result of legal action by the owner of the building for failure to pay the rent, and as a result of the court's order issued by the Judge Quinto de Inquilinato. The Committee notes also that the police were present in order to protect the official who was carrying out the eviction. On the other hand, the Committee also notes that in its communication of 1 December 1980, FENOC indicated that the building which served as the trade union's premises was recovered on the day following the eviction and that, since the last examination of the case, FENOC has sent no new information which would indicate any change in the situation. In these circumstances, and given that the eviction does not seem to be related to trade union activities, the Committee considers that this aspect of the case does not call for further examination.

161. As regards the allegation relating to disappearance or destruction of documents and other trade union property, and to the material state of the trade union's premises following eviction, the Committee remarks that the Government has not sent the requested specific information. In this respect, the Committee draws the Government's attention to the fact that the International Labour Conference in its Resolution concerning Trade Union Rights and Their Relation to Civil Liberties (adopted in 1970, at the 54th meeting of the Conference), declared that the right to protection of trade union goods constitutes one of the essential civil liberties for the normal exercise of trade union rights. Consequently, the Committee hopes that the Government will do the necessary in order that the organisations who had suffered wrong-doing as a result of the eviction will be able to recover their disappeared documents and belongings and, if pertinent, they can obtain compensation for the damages which could have been caused to their property.

The Committee's recommendations

162. In the circumstances, the Committee recommends the Governing Body to adopt the following conclusions:

The Committee draws the Government's attention to the fact that the right to protection of trade union goods constitutes one of the civil liberties essential for the normal exercise of trade union rights.

The Committee hopes that the Government will do what is necessary in order that the organisations who had suffered wrong-doing as a result of the eviction will be able to recover their disappeared documents and property and, if pertinent, they can obtain compensation for the damages which could have been caused to their property.
CASES IN WHICH THE COMMITTEE REQUESTS TO BE KEPT INFORMED OF THE EVOLUTION

Case No. 967

COMPLAINT PRESENTED BY THE FEDERATION OF MUNICIPAL WORKERS OF PERU AGAINST THE GOVERNMENT OF PERU


164. Peru has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

165. The Federation of Municipal Workers of Peru alleges that, during the strike in Lima, of May 1980, called for professional reasons - a salary increase, reinstatement of some of its members, full application of the collective agreement in force and payment of salaries for the days on strike - the police disrupted by violent means a peaceful meeting at the trade union premises, whereby killing three workers and seriously wounding others.

B. Reply of the Government

166. In its communication of 17 March 1981, the Government denies the accusations made against it. It remarks that according to the Ministry of Interior's report (which the Government has appended to its communication) drawn up by the Civil Guard (Emergency Squadron), at the time of the incident, the workers in question were far from conducting a peaceful meeting. Instead it was of violent and agitated, purely political character, bearing no relation to trade union matters, thereby causing disorder and disturbing public peace. The Government also states that one worker, and not three, as alleged by the complainant, was killed, and that he was shot by a gun of small calibre, not by the kind of gun carried by the Civil Guard (which is of different calibre).

C. Conclusions of the Committee

167. In the first place, as regards the violent incidents which occurred on the occasion of the meeting at the trade union premises during a strike, the Committee deplores the seriousness of the incident, particularly regarding the loss of life.
168. The Committee notes that there is a clear contradiction between the complainant's allegations and the Government's reply concerning the developments and outcome of the events. It does not consider it has sufficient information at its disposal to enable it to decide if any violations of trade union rights took place.

169. The Committee would also wish, in general, to draw the attention of the Government to the fact that intervention by security forces should be limited to the maintenance of public order.

170. The Committee observes that the report supplied by the Government, concerning the investigation of the incidents in question, was drawn up by the Civil Guard, i.e. conducted by the Ministry of the Interior itself. In this respect, the Committee would wish, in general, to recall the principle, as it has already done on previous occasions, that in cases in which the dispersal of public meetings by the police for reasons of public order or other similar reasons, has involved a loss of life, it has attached special importance to the circumstances being fully investigated by an immediate and independent special inquiry and to the regular legal procedure being followed to determine the justification and responsibility for the action taken by the police. In this case it seems that no independent judicial investigation took place.

171. The Committee can only express its concern at these incidents. In cases involving the loss of life of trade unionists the Committee has stressed the need to carry out a full and impartial inquiry in order to elucidate the facts and determine responsibility.

172. The Committee would request the Government, as it has already done on other occasions, to institute as soon as possible, if it has not already done so, an independent judicial inquiry with a view to elucidating the facts in full and determining responsibilities given that, according to the Government, the inquiry was carried out by the Ministry of the Interior. The Committee asks the Government to inform it of the results of the judicial inquiry.

Recommendations of the Committee

173. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

\[\text{Recommendations of the Committee}\]

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1 See for example, 149th Report, Case No. 793 (India), para. 138.

2 See for example, 147th Report, Case No. 756 (India), para. 162.

3 See for example, 194th Report, Cases Nos. 901 and 914 (Nicaragua), para. 278; Case No. 924 (Guatemala), para. 370.

4 See for example, 207th Report, Cases Nos. 997 and 999 (Turkey), para. 304.
The Committee, first of all, deplors the seriousness of the incidents (especially the loss of human life), which occurred during a meeting at the trade union premises.

Moreover, it draws the attention of the Government to the importance of conducting a full and impartial inquiry in such cases, and lastly, the Committee requests the Government, to institute as soon as possible, if it has not done so already, an independent judicial inquiry with a view to elucidating the facts in full, determining responsibilities, and to inform the Committee of the results of this inquiry.

In general, the Committee would wish to recall the principle that intervention by security forces should be limited to the maintenance of public order.

Case No. 968

COMPLAINT PRESENTED BY THE UNION OF METALWORKERS, EMPLOYEES AND TECHNICIANS OF PIRAEUS AND THE ISLANDS AGAINST THE GOVERNMENT OF GREECE

174. The Committee already examined this case at its meeting in November 1980 when it presented an interim report to the Governing Body. The Government communicated its observations in a letter dated 3 February 1981.

175. Greece has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

176. The complaint involved in the present case concerns the dissolution of a trade union organisation by a decision of the Piraeus Court of 30 May 1980 (Decision No. 270/80) at the request of pre-existing rival trade union organisations.

177. The complainant explained that its organisation had a total of 500 members and was founded in answer to the desire of the workers for a trade union which would truly campaign for their demands and vital interests. The complainant pointed out that the union was duly registered after Decision No. 283/79 of the Court of First Instance of Piraeus and was able during the first six months of its life to solve the most urgent problems confronting the workers.

178. However, the Labour Centre of Athens, the Pan-Hellenic Federation of Metalworkers, the Marine Mechanics' Union "Anagennisis" and other trade union organisations, had accused it of being a pyramid type organisation which did not accord with the
structure of the unions in the western world but allegedly followed the Soviet pattern, and had obtained its dissolution by court decision. According to the complainant, the rival organisations claimed that the factory committees provided in the constitution of the Trade Union of Metalworkers, Employees and Technicians of Piraeus were actually local unions whose mission was to keep watch on the owners, contrary to article 17 of the Greek Constitution which protects private property. The complainant also adds that the rival organisations accused it of seeking the overthrow of the Greek trade union system and of the social peace which the above-mentioned organisations had contributed to maintaining in the country for 70 years.

179. In its reply, the Government confirmed that legal recognition had been granted to the complainant organisation by a decision of the Court of First Instance of Piraeus and that several older trade union organisations had lodged third party opposition to this decision with the same court, which then revoked its original decision and forbade the registration of the said union in the special register of trade union associations held by the Court of First Instance. As concerns this last-mentioned decision, the Government added that the trade union in question could take its case to the Court of Appeal.

180. At its meeting in May 1980, the Governing Body, on the recommendation of the Committee, noted that the prohibition of the registration of the Union of Metalworkers, Employees and Technicians of Piraeus and the Islands had been pronounced by a court of law and that the complainant organisation had the right to appeal against this decision to prohibit registration. The Committee, in reminding the Government of the suspensive effect which should be applied to the decision of the Court of First Instance until the statutory period for appeal had expired, requested the Government to supply a copy of the judgement of the court and of any judgement on appeal pronounced in the intervening period.

B. The Government's reply

181. The Government provides a copy of the judgement of the Court of First Instance prohibiting the registration of the Union of Metalworkers. It also points out that it was the rival organisations which took the case to the Court of Appeal in order to seek acceptance of all the grounds for complaint which they had invoked in lodging their third party opposition, and to request the definitive dissolution of the Union of Metalworkers. The case was heard on 15 January 1981 although the judgement has not yet been published. The Government adds that it will communicate this decision as soon as it is published.

C. The Committee's conclusions

182. The Committee has examined the decision of the Court of First Instance annulling the registration of the complainant organisation on the ground that the latter has infringed the provisions of section 281 of the Civil Code.
183. In lodging third party opposition, the rival organisations also claimed that the organisation whose prohibition they were seeking had been established in opposition to the Constitution and current legislation respecting trade union organisations, that it had led to confusion and was detrimental to their own trade union interests. They sought a ruling which stipulated that co-existence between the Union of Metalworkers and the rival organisations and their simultaneous operation were illegal and unauthorised.

184. By Decision No. 270/80, the Court overturned its previous Decision No. 283/79 and rejected the complaints whereby the said organisation was contrary to the Constitution and current trade union legislation. It recalled that the simultaneous creation and operation within the same city of more than one organisation pursuing the same objective, including the same occupational objective, was not contrary to the constitutional right of freedom of association in Greece.

185. However, the Court accepted the complaint alleging that the Union of Metalworkers had misused the right to freedom of association by exceeding the limits prescribed by section 281 of the Civil Code. In this connection, the Court pointed out that the constitution of the complainant organisation stipulated that all employees and wage earners without exception in metallurgical undertakings may be become members of the said organisation, irrespective of their own occupation, nationality, sex, religion, political or philosophical opinions, and whether they have a fixed-term contract or a contract without limit of time. The Court concluded that all persons who are already members of the trade union organisations which lodged the appeal seeking the annulment of the Union of Metalworkers, most of which were metallurgical employees or wage earners, could therefore become members of this organisation.

186. The Court concluded that the establishment of the new trade union in violation of the provisions of section 281 of the Civil Code is improper, since it is detrimental to the existence and harmonious operation of pre-existing organisations.

187. However, the two parties were ordered to pay costs, on the ground that, in the view of the Court, reasonable doubt exists as to the outcome of a possible appeal.

188. The Committee notes that section 281 of the Civil Code upon which the Court based its decision to annul the registration of the complainant trade union concerns abuse of right. Section 281 stipulates that the exercise of a right is prohibited if it clearly constitutes a breach of the limits prescribed by honesty or morality or by the social or economic objective of the said right.

189. However, the Committee notes that the grounds upon which the decision to annul the said organisation were based do not appear to contain any concrete elements to substantiate the claim that the new trade union organisation exercised its right to freedom of association by undertaking activities which clearly constituted a breach of the limits prescribed by honesty, morality or the social and economic objectives of the right of association, which could justify the annulment of the registration.
190. Consequently, the Committee is of the opinion that the annulment in question of the new trade union for the reasons set out above is not compatible with the workers' right to establish, without distinction whatsoever and without previous authorisation, organisations of their own choosing, a right guaranteed in Convention No. 87, ratified by Greece, and which became part of the national law by virtue of the Greek Constitution in force.

191. The Committee would also draw attention to the principle to which reference has often been made \(^1\) that an annulment of the registration of a trade union should take place only where serious acts have been committed and have been duly proved.

192. The Committee therefore requests the Government to re-examine the situation and inform it of any measures which might be taken, in particular, informing the competent judicial bodies of the points raised in paragraph 190 above, to ensure that the complainant organisation remains included in the special register of occupational associations and unions, in accordance with the provisions of Legislative Decree No. 890 of 27 May 1971 which regulates such matters, since no serious acts appear to have been committed by the organisation.

**Recommendations of the Committee**

193. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

The Committee is of the opinion that the annulment of the registration of the new trade union for the reasons set out above is not compatible with the rights of workers to establish organisations of their own choosing under the terms of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Greece, and which has become part of the Greek national law.

It also draws the attention of the Government to the fact that the refusal to register or the annulment of registration should take place only where serious acts have been committed and have been duly proved. It therefore requests the Government to supply information on the present situation of the complainant organisation and on any measures which might be taken to ensure that it remains registered, as no serious acts appear to have been committed by it.

\(^1\) See 149th Report, Case No. 709 (Mauritius), para. 106.
COMPLAINT PRESENTED BY THE SRI LANKA INDEPENDENT EMPLOYEES UNION AGAINST THE GOVERNMENT OF SRI LANKA


195. Sri Lanka has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

196. In its letter of 5 August 1980, the SLIEU alleges that during the general strike that was going on at that time, the government-owned employer, the Co-operative Wholesale Establishment, ordered that union to vacate the premises which it had been occupying in the corporation's building since 1963. The union was only given eight hours to move out. It claims that while its working committee was trying to make alternative arrangements, the management illegally broke into the union's office, removed files and all other documents pertaining to its members' industrial action and took away its furniture and other equipment. One of the files contained information on alleged malpractice by the employer concerning which parliamentary investigations were pending.

197. To its second letter, the complainant annexes copies of two letters dated 16 May 1980 addressed to it by the management: the first letter announces the withdrawal of recognition by the management because the union had not supplied particulars of its office bearers, and the second prohibits the president of the union from entering the corporation's premises. Other annexed documents relate to the union's request to present its information to the Parliamentary Subcommittee into malpractices in certain government establishments, and to its complaints presented to the police, the Inspector General of Police and the President of Sri Lanka concerning the illegal break in. In this last letter, the union states that the management broke into its offices to remove the files relating to the alleged malpractice.

B. The Government's reply

198. The Government states that the complainant's office was situated in the premises of the Co-operative Wholesale Establishment, the State's largest trading organisation. During the period when the Essential Services Order was in force, for reasons of security, it was decided to withdraw the facility afforded to
trade unions to have their offices within government departmental or state corporation premises. Accordingly, the complainant was asked to hand back to the authorities the premises used by it to house the union office.

199. According to the Government, as the union did not comply with this request, and in view of the fact that this office contained some belongings of the Co-operative Wholesale Establishment as well, the door of the union office was opened by senior officials of the Establishment in the presence of the Honorary General Secretary of the union and police officers. It states that the union's belongings were kept in safe custody in the Deputy General Manager's office until the Additional General Manager of the Establishment instructed the General Secretary of the union to take over the belongings.

C. The Committee's conclusions

200. This case concerns allegations of illegal entry into union premises by the government-owned employer and the seizure of union documents and equipment. The complainant alleges that the purpose of the entry was to remove files containing information to be presented by the union to a Parliamentary Subcommittee into malpractices in certain government establishments, and that the entry was carried out to impede the smooth functioning of the union's activities.

201. In the past, the Committee has referred to Article 2 of Convention No. 98, ratified by Sri Lanka, and the Resolution on Trade Union Rights and their relation to Civil Liberties (adopted at the 54th Session of the International Labour Conference, 1970) when stating that the right to adequate protection of trade union property is one of those civil liberties which is essential for the normal exercise of trade union rights. In the present case, the Committee notes the Government's statement that the facilities were removed for reasons of security and that the union's property was removed under the supervision of various authorities, including a union official, and was kept in safe custody until returned to the union.

202. The Government has not explained what were the reasons of security on which it relied for removing the facilities at such short notice. However, the Committee notes that the complainant has lodged formal complaints against the illegal entry and seizure of goods with the police, the Inspector General of Police and the President of the country; it hopes that the investigation of these complaints will take due account of the union's right to adequate protection of its property and of the fact that the property has been returned. The Committee would like to be kept informed of the outcome of the investigation.

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1 See, for example, 97th Report, Case No. 519 (Greece), para. 18.
The Committee's recommendations

203. In these circumstances, the Committee recommends the Governing Body to approve its conclusions, in particular the following:

While noting the Government's statement that facilities were removed for reasons of security, the Committee considers that there was a breach of the principle based on Article 2 of Convention No. 98, ratified by Sri Lanka, and the 1970 Resolution on Trade Union Rights and their relation to Civil Liberties, that the right to adequate protection of trade union property is one of those civil liberties which is essential for the normal exercise of trade union rights.

The Committee notes that the complainant has lodged formal complaints with the authorities and hopes that the investigation of these complaints will take due account of this principle and of the fact that the property has been returned. The Committee would like to be kept informed of the outcome of the investigation.

Case No. 1096

COMPLAINT PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS AGAINST THE GOVERNMENT OF GREECE

204. In communications dated 6 November and 19 December 1980 respectively, the World Federation of Trade Unions (WFTU) presented complaints alleging the violation of trade union rights in Greece. It furnished additional information on 9 April 1981 in support of its complaint. The Government communicated its comments in a letter dated 2 April 1981.

205. Greece has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

206. In its communications of 6 November and 19 December 1980, the WFTU states that after the workers of the Public Electricity Company were called out on strike by their trade union federation (GENOP) at the end of October and the beginning of November 1980, both the President and Secretary-General of this federation, Tassos Amaleos and Constantine Maniatis were sentenced to five months' imprisonment and fined 100,000 drachmas each. The complainant organisation alleges that the electricity company dismissed 200 of the strikers and took disciplinary action against the workers. Ninety trade unionists were allegedly summoned to appear in court for having decided to go on strike.
207. In its last communication, the WFTU points out that the two trade union leaders who were sentenced to five months' imprisonment and a heavy fine subsequently lodged an appeal, which was upheld by the court on 19 March 1981. However, the WFTU adds that the workers who were dismissed as a result of the November strike have not been reinstated in their work and alleges that other court cases are under way against GENOP officials.

B. Reply of the Government

208. The Government replied to the complaint in a letter dated 2 April 1981. As regards the sentence passed by the Court of the first instance of Athens on 29 October 1980, the Government points out that the strike which was set in motion by GENOP on 23 and 24 October 1980 was contrary to the legal procedure set forth in sections 34 (subsection 2), 36 and 37 (subsections 1 and 2) of Act No. 330 of 1976 on occupational associations and unions and the protection of freedom of association. However, the County Court of Athens, composed of three members, subsequently discharged the two trade unionists in an appeal upheld on 19 March 1981.

209. The Government transmits the comments made by the Public Electricity Company on the other allegations. The management of the company confirms that proceedings were instituted ex officio against the union leaders as soon as the company had informed the public prosecutor of the strike which had been called by the occupational associations. The Government states that 102 workers holding fixed-term contracts, and not 200 as the WFTU erroneously alleges, were dismissed in accordance with the relevant statutory provisions and the company's staff regulations. The Government explains that the dismissed workers remained on strike after the criminal and civil courts had declared the strike action illegal and had failed to fulfil their basic occupational responsibilities. The attitude of these workers forced the management of the company to undertake the disciplinary measures in question. Some of the workers were brought before the Disciplinary council for having taken part in an illegal strike.

210. The Government concludes by denying that there has been a violation of freedom of association in the present case. It maintains that trade union activity in the Public Electricity Company has not been obstructed since the trade union organisations are given all the necessary facilities to carry out their activities. It quotes as an example the periods of authorised leave of absence which are granted to members of the governing councils of the 85 trade union organisations which represent its workers to allow them to carry out their trade union activities.

C. Conclusions of the Committee

211. Two of the complaints referred to in the present case before the Committee concern sentences passed on two GENOP officials following a strike which took place in the Public Electricity
Company. The other complaints refer to the dismissal of a considerable number of workers who had taken part in this strike. The sentences and dismissals in question were based upon a failure to observe the procedure set forth in Act No. 330/76 respecting the declaration of strikes in undertakings of public interest and in the staff regulations of this public undertaking. The two trade union officials who were taken to court were sentenced to two years' imprisonment without remission, although the accused were subsequently acquitted on appeal.

212. The Committee has already examined the provisions of Act No. 330/76 upon which the measures referred to in the allegations of the complainants are based. As regards sections 32 ff. of this Act, which regulate the right to strike and make it subject to certain conditions, the Committee was of the opinion that these restrictions were no greater than those which it had considered acceptable in other cases.

213. In the present case, the Committee notes with interest that the two trade union leaders sentenced to imprisonment without remission by the Court of the first instance were subsequently acquitted on appeal. However, as regards the dismissal of 102 strikers, the Committee believes it important to point out that harmonious labour relations can only be developed if there is a peaceful social climate. It therefore believes it necessary to suggest to the Government that steps be taken, in the light of the above-mentioned points, with a view to re-examining the situation of the dismissed workers.

Recommendations of the Committee

214. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

The Committee notes with interest that two trade union leaders who were sentenced to imprisonment for having launched a strike in a public undertaking without due respect to the relevant legal procedure, have now been acquitted.

As regards the dismissal of the strikers, the Committee believes it necessary to suggest to the Government that in order to restore the social peace which is necessary to the development of harmonious labour relations, measures should be taken with a view to re-examining the situation of the workers who were dismissed and requests the Government to keep it informed of any measures taken in this direction.

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1 See 160th Report, Cases Nos. 834 and 851, paras. 154-202, and 197th Report, Case No. 921, paras. 227-246.
Case No. 1011

COMPLAINT PRESENTED BY THE WORLD FEDERATION OF TEACHERS' UNIONS AGAINST THE GOVERNMENT OF SENEGAL


216. Senegal has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainants

217. The complaint of FISE concerns dismissals and other alleged disciplinary sanctions imposed on teachers as a result of a labour dispute.

218. FISE transmits the information which it has received from the Single Democratic Union of Teachers of Senegal (SODES), a Senegalese organisation affiliated to the Federation and which spearheaded the protest movement.

219. It appears from this information that after having legally given a strike warning one month before, SODES began a strike on 13 March 1980 which affected school examinations. SODES adds that after a pretence at negotiation, the Government launched a campaign of systematic repression. Nine members of the Executive Committee, out of the 12 persons suspended, were allegedly dismissed from office for having called on militants to carry out the strike affecting school examinations; 19 officials of the union who were suspended for withholding examination results were also allegedly dismissed from office; it is also alleged that 38 other strikers were suspended and 500 teachers penalised by being transferred to posts in the most remote areas of the country. FISE also adds that the militants and members of the Executive Committee of SODES were prohibited from leaving the country, thereby preventing them from fulfilling their trade union duties at the international level.

220. Furthermore, on 25 October 1980, the Executive Committee of SODES, after having given due notice in accordance with the law, convened a meeting of information to be held in Dakar. The Government allegedly prohibited the holding of this meeting. The Executive Committee decided nevertheless to hold the meeting but to transfer it to its own headquarters. However, as the meeting was about to open, it is alleged that the police intervened without any warning. Several persons were injured, some quite seriously and several persons taken away for questioning. The latter, including the Secretary-General, Mr. Mamadou N'Doye and the Secretary for Pedagogical Training, Mr. Madior Diouf, were released the same day but ordered to appear on 28 October 1980 on a charge, in the words of the police inspector, of "inciting the crowds to occupy the public thoroughfare".
221. FISE concludes that the arbitrary acts of the Government violate the provisions of Conventions Nos. 87 and 98 and the UNESCO-ILO Recommendation of 1966.

B. The Government's reply

222. The Government counters the allegations by maintaining that it is an error for FISE and SUDES to base their complaint against administrative sanctions on the above-mentioned Conventions and Recommendations in circumstances in which these sanctions were applied to state officials guilty of serious professional misconduct.

223. The Government explains that SUDES is a trade union of public officials and that the exercise of its trade union rights is subject to the laws and regulations currently in force in Senegal.

224. It points out that 12 members of the former National Committee of SUDES and 18 militants of the trade union who were guilty of professional misconduct were removed from office in compliance with the disciplinary procedures set forth in Act No. 61.33 of 15 January 1963 respecting the general regulations applicable to public officials. The Government explains that the suspension of an official from his work is a conservatory measure provided for by these regulations and adds that the formalities stipulated by the law in this matter were duly respected. The transfers referred to in the complaint were made for administrative reasons. Finally, no special restrictions have been placed on travel abroad by members of the Executive Committee of SUDES. However, the Government points out that, as in all countries, the officers in question must, like everyone else, obtain an exit visa prior to travel. It admits that the granting of exit visas for those members of SUDES who were subject to disciplinary measures in July, August and September 1980 was postponed on a purely exceptional and conservatory basis. Their prolonged absence from the country could have prevented the disciplinary proceedings instituted against these persons from being held normally and the conclusion of such proceedings within the time limits imposed by regulations currently in force.

225. The Government adds, moreover, that SUDES had presented a series of claims in eight points, the two most important of which concern an increase from 20 to 50 per cent in the teaching allowance and the extension to all teachers (primary, secondary, vocational training and higher education teachers) of the compensatory housing allowance of CFA 25,000 francs per month previously reserved to primary teachers.

226. As concerns the wage claim contained in the first point, the Government states that it has made considerable efforts on behalf of the teachers and education in general, which absorbs 33 per cent of the national current budget. Teachers are the only state officials who receive a teaching allowance equal to 20 per cent of their indidual wage and which they continue to receive even after their retirement.
227. As regards the second point, the Government states that in the past only primary school teachers received the housing allowance which was inherited from the colonial regulations. This allowance is a major burden for the state budget and in the interests of equity and in the light of the economic and financial situation resulting from the world economic crisis, the Government believes that no further increase in budgetary expenditure can be considered. Any claim which would accentuate the wage difference existing between teachers and other state officials with similar qualifications is, in its view, an unreasonable one.

228. The Government explains that the above-mentioned arguments were communicated to the SUDES officials who, despite the willingness expressed by the Government, continue to maintain that the latter refuses to negotiate with them. Towards the end of the 1979-80 school year they undertook a trial of strength with the authorities by launching strike appeals which in particular urged teachers to refuse to disclose to the authorities the results which had been obtained by students in their examinations and to sabotage the marking of the end-of-year examinations and competitions by awarding fanciful marks.

229. The Government concludes that it was for these reasons of a professional nature that the officials were brought before disciplinary boards and penalised. The officials in question have already made use of the guarantees provided for by the legislation respecting disciplinary measures (respite, subpoena of witnesses, institution of civil actions) and the other appeal procedures provided for by the national laws remain at their disposal.

C. The Committee's conclusions

230. The complainants in the present case state that teachers who are guilty of simply having taken part in a legal strike following a labour dispute were dismissed, suspended or transferred to other posts. On the other hand, the Government maintains that disciplinary action was taken against state officials who were guilty of serious professional misconduct by refusing to disclose to the school authorities the results obtained by the students in their examinations and by sabotaging the marking of the various end-of-term examinations and competitions by awarding fanciful marks.

231. However, the Government admits that these events took place within the context of a labour dispute.

232. In the view of the Committee, the action undertaken by the SUDES officials who were persuaded, as part of a labour dispute, to sabotage the marking of various examinations and competitions by awarding fanciful marks to the students, clearly exceeds the limits of what can be defined as normal trade union activity.

233. However, the Committee believes that if the initial grievance concerning wage claims and conditions of work had been dealt with in constructive negotiations between the parties concerned, in accordance with the principles of freedom of association, the tensions which were created in the present case might perhaps have been avoided.
234. As concerns the allegations that teachers who participated in a strike were suspended or transferred to other posts and the refusal to grant exit visas to those SUDES members who were involved in disciplinary proceedings, the Committee would like to stress that although it takes note of the statement of the Government that this refusal was quite exceptional and was simply intended to ensure that the disciplinary proceedings could be held normally, one of the basic principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, transfer, demotion and other prejudicial measures - and that this protection is particularly desirable in the case of trade union officials because, in order to perform their trade union duties in full independence, they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has also indicated that a policy of transfer of persons holding trade union office may harm the efficiency of trade union activities.¹

235. As regards the allegation that the holding of a trade union meeting of information in October 1980 was banned, the Committee notes that the Government has not furnished any information on this aspect of the case. However, the Committee has already stressed in a previous case concerning Senegal that freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential element of trade union rights and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.²

The Committee's recommendations

236. In these circumstances, the Committee recommends the Governing Body to adopt the following conclusions as concerns the case as a whole.

The Committee notes that although some of the acts undertaken by the complainants seem to have exceeded the limits of what can genuinely be defined as normal trade union activity, tensions could perhaps have been avoided if the initial grievance respecting wage claims and conditions of work had been dealt with according to the principles of freedom of association in constructive negotiations between the parties concerned.

As regards the allegations of suspensions, transfers, the refusal to grant exit visas to trade union leaders and militants because of their participation in a strike and the alleged ban on the holding of a trade union meeting of information, the Committee believes that, in the interest of re-establishing a favourable

¹ See, for example, 142nd Report, Case No. 745 (Japan), para. 133, and 197th Report, Case No. 920 (United Kingdom/Antigua), para. 132.

² See 139th Report, Case No. 698, para. 459.
climate for harmonious labour relations, it would be desirable if
measures were taken with a view to re-examining the situation of
those workers who have been penalised.

The Committee requests the Government to keep it informed of
measures taken in this connection.

Case No. 1015

COMPLAINT PRESENTED BY THE BANK LABOUR UNION GROUP
AGAINST THE GOVERNMENT OF THAILAND

237. In a letter dated 12 September 1980, the Bank Labour
Union Group (BLUG) presented a complaint to the ILO concerning
alleged infringements of the exercise of trade union rights in
Thailand. BLUG sent additional information on 12 January 1981. The
Government presented its observations in a letter of 26 February
1981.

238. Thailand has not ratified the Freedom of Association and
Protection of the Right to Organise Convention, 1948 (No. 87), nor
the Right to Organise and Collective Bargaining Convention, 1949
(No. 98).

A. Allegations of the complainants

239. The original complaint referred to the Government's
delay in registering the Bank of Thailand Trade Union (BTTU), whose
application was submitted to the Department of Labour and the
Ministry of the Interior of Thailand, by 14 employees of the Bank of
Thailand (members of BLUG), for the purpose of organising their own
union.

240. Supplementary information sent by BLUG indicates that
their application which was submitted on 23 June 1980 remained
unanswered. Moreover, the Labour Congress of Thailand notified the
BTTU that it fully supports their demand. After BLUG transmitted a
number of additional letters to the Ministry of Labour and Ministry
of the Interior requesting information on the matter, the Government
responded by issuing the Royal Decree of 20 September 1980
(B.E.2523), which excluded the Bank of Thailand from the application
of the Labour Relations Act, 1975 (on the basis that damage to the
nation's economy can be brought about by possible strikes). BLUG
was notified of the Government's decision not to allow BTTU's
formation on 2 October 1980.

B. Reply of the Government

241. In its communication of 26 February 1981, the Government
confirms that, the Registrar was unable to register the BTTU's
application as a consequence of the Royal Decree dated 20 September 1980, regulating the non-enforcement of the Labour Relations Act of 1975 in the case of the Bank of Thailand. The Government observes that the reason for the issuance of the Royal Decree is that the Bank of Thailand is authorised and empowered to control and regulate the activities of all commercial banks on behalf of the Ministry of Finance and to act as the official Central Bank of the Government. Therefore, in order for it to perform its crucial duty properly, according to the law, the Bank of Thailand should not come under the Labour Relations Act of 1975, which guarantees the right of association to employees of other private or state enterprises.

C. Conclusions of the Committee

242. The Committee notes that this case concerns the issuance of the Royal Decree, which excludes the Bank of Thailand from the scope of the Labour Relations Act, 1975, resulting in a situation whereby the trade union formed by 14 of its employees could not be registered. This, in fact, denies these workers the right to organise.

243. The Committee takes note of the Government's statement that the reason for issuance of the Royal Decree is that the Bank of Thailand is empowered to act as the official Central Bank of the Government.

244. In particular, the Committee notes the observations supplied by the Government, namely, the importance of the unique functions performed by the employees of the Bank of Thailand, which could justify their exclusion from the Labour Relations Act. Nevertheless, the Committee would point out, as it has already done in other cases, that workers, without distinction whatsoever, which include both public servants and the employees of state enterprises should have the right to establish organisations of their own choosing.

245. In these circumstances, and given the importance the Committee attaches to this principle, it considers that it would be useful if the Government were to keep it informed of the measures, legislative or other, it may contemplate taking to recognise the right to organise of employees of the Bank of Thailand.

Recommendations of the Committee

246. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

The Committee points out that workers, without distinction whatsoever, which include both public servants and the employees of

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1 See for instance, Fourth Report, Case No. 5 (India), para. 25; 24th Report, Case No. 144 (Guatemala), para. 243; 85th Report, Case No. 335, (Peru), para. 452.
state enterprises, should have the right to establish organisations of their own choosing.

Consequently, whilst noting the observations supplied by the Government regarding the functions performed by the employees of the Bank of Thailand, the Committee requests the Government to keep it informed of any measures, legislative or other, it may contemplate taking to recognise the right to organise of these workers.

CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Case No. 919

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, THE LATIN AMERICAN CENTRAL OF WORKERS AND SEVERAL OTHER TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF COLOMBIA

247. This case was examined by the Committee in May 1979 and November 1980, when it presented interim reports.¹

248. Since it last examined the case the Committee has received a communication from the Government dated 13 February 1981.

249. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

250. When the case was last examined in November 1980 the following matters remained pending: the death of the trade union leader Pedro Pablo Bello, the arrest and sentencing of trade union leaders and workers, the allegations of ill-treatment suffered by some of the detainees, and the new allegations made by the National Federation of Workers in the Service of the State (FENALTRASE) in its communication of 21 September 1979.

251. As concerns the death of Pedro Pablo Bello, a trade union official in the agricultural sector, the complainants alleged that he met his death in the course of repressive action against the peasants and indigenous population. The Government replied that it

¹ See 194th Report, paras. 323 to 359, approved by the Governing Body at its 210th Session (May-June 1979), and 204th Report, paras. 319 to 333, approved by the Governing Body at its 214th Session (November 1980).
had not been established that this death was connected with trade union activities, still less that governmental authorities were involved. The Committee recommended the Governing Body to request the Government to indicate whether an inquiry had been conducted into the death of Pedro Pablo Bello, and, if so, to communicate its findings.

252. As concerns the arrest and sentencing of trade union leaders and workers, the complainants alleged that the Government carried out anti-union repression on the pretext of rebellion or the illegal carrying of firearms. The Government replied that the persons concerned were arrested and sentenced because they were acting outside the law and because of their probable links with a subversive movement. The Government added that some of the persons arrested had been sentenced for the illegal carrying of firearms, others remained under arrest and the rest had been released. In a later communication the Government sent information on some of these persons. The Committee requested the Government to supply the text of the sentences pronounced on various trade union leaders, with the reasons adduced therefor, additional information on the facts which led to the arrest of other leaders and workers, and the text of any judgements that might have been given in this connection.

253. As regards the allegations relating to ill-treatment inflicted on arrested trade unionists by the armed forces, the Government denied the accusations and stated that they were unfounded. The Committee recommended the Governing Body to request the Government to indicate whether inquiries had been initiated in connection with the alleged ill-treatment of the persons specifically named by the complainants.

254. As regards the new allegations contained in the communication of the National Federation of Workers in the Service of the State (FENALTRASE) dated 21 September 1979, the Government sent a communication setting forth the legal principles relating to the status of official employees in the public sector. The Committee requested the Government to supply concrete information on the various matters raised by FENALTRASE (dismissal or suspension of trade union leaders - a list of whom was sent by the complainant along with information on some of the dismissals - on account of their trade union activities, and prevention of many leaders from continuing their trade union functions following the sanctions; interference by the armed forces with the trade union organisations, resulting in acts of physical aggression against workers in the Judiciary, the arrest of union leaders in the National University and the detention of union leaders and active trade unionists, principally in the Ministry of Finance).

B. Reply of the Government

255. In its communication of 13 February 1981 the Government states that it has no information on the domicile of Mr. Pedro Pablo Bello or any indications making it possible to establish where the alleged events occurred; although it has written to the Trade Union Confederation of Workers of Colombia it has so far received no reply.
256. As regards the trade union leaders who were sentenced, the Government states that Manuel Castillo Ruiseco and Obdulia Prada de Torres are at present being tried by the Military Court of Summary Jurisdiction, which passes judgement on presumed members of the "Revolutionary Armed Forces of Colombia" (FARC) and which has not yet rendered judgement. The Government also states that Salvador Correa Alfaro, José Heriberto Higueta David, Jesús Hernández Rodriguez and Hipólito Valderrama Ortiz were put on trial as presumed members of the FARC and that they have now been released.

257. As regards the arrest of the trade union officials and workers mentioned by the complainants, the Government states that Máximo Eduardo Cruz Puentes and José Luis Lozano Laguna were prosecuted for their membership of FARC and that they are at present at liberty; that Elena Isaac Hurtado, Olga López Jaramillo de Roldán and Saturnino Sepúlveda Niño were prosecuted for their presumed links with the "M-19" subversive movement and that they are at present at liberty; and that Jorge Elieser Díaz Russi, Jorge Tulio Legro Tafur, Marghot Clemencia Pizarro, Alfonso Moya Roaero, Hernando Solano Bareño, Alvaro Quijano Rojo and Henry Vicente Rivera García are at present being tried by the Military Court of Summary Jurisdiction for their membership of the "M-19" subversive group. The Government adds that it has not been possible to obtain information on the alleged imprisonment of Humberto Galeano and Sofía de Panchón.

C. Conclusions of the Committee

258. As regards the death of the agricultural trade union leader Pedro Pablo Bello, the Committee notes that the Government has no indications making it possible to establish where the alleged events occurred. The Committee suggests that contacts should be re-established with the Trade Union Confederation of Workers of Colombia (CSTC) in order to collect the information necessary for the conduct of an inquiry into the reasons for the death of this leader of the CSTC and the circumstances in which it took place.

259. As regards the persons who were sentenced or imprisoned, the Committee notes that Salvador Correa Alfaro, José Heriberto Higueta David, Jesús Hernández Rodriguez, Hipólito Valderrama Ortiz, Máximo Eduardo Cruz Puentes, José Luis Lozano Laguna, Elena Isaac Hurtado, Olga López Jaramillo de Roldán and Saturnino Sepúlveda Niño have been released. The Committee also notes that the Government has been unable to obtain information on the alleged imprisonment of Humberto Galeano and Sofía de Panchón and that the following trade unionists are at present being tried for presumed membership of or links with subversive groups: Manuel Castillo Ruiseco, Obdulia Prada de Torres, Jorge Elieser Díaz Russi, Jorge Tulio Legro Tafur, Marghot Clemencia Pizarro, Alfonso Moya Roaero, Hernando Solano Bareño, Alvaro Quijano Rojo and Henry Vicente Rivera García.

260. The Committee notes that the trade union leaders Hipólito Valderrama Ortiz and Antonio Ruiz Munetón are at liberty, although it must again remark that the Government does not specify
whether an inquiry has been initiated into their alleged ill-treatment during the period of their preventive arrest. In this connection the Committee wishes to draw the attention of the Government to the importance which it attaches to the fact that preventive detention should be accompanied by a set of safeguards and limitations to ensure that it cannot be used for purposes other than that for which it is designed and in particular to give protection against ill-treatment.

261. Lastly, the Committee observes that the Government has not replied to the allegations in the communication of 21 September 1979 from PENALTRASE, nor to the allegations relating to the detention of Alfonso Prada and Humberto Serna.

**Recommendations of the Committee**

262. In these circumstances the Committee recommends the Governing Body to approve the following conclusions:

The Committee requests the Government to carry out an inquiry into the death of the agricultural trade union leader Pedro Pablo Bello and to communicate its results.

The Committee notes that some of the arrested trade unionists have been released.

The Committee requests the Government to communicate the text of any judgements which may be rendered on the following trade union leaders or workers who are at present being prosecuted: Manuel Castillo Ruiseco, Odulía Prada de Torres, Jorge Eliesar Díaz Russi, Jorge Tulio Legro Tafur, Marghot Clemencia Pizarro, Alfonso Moya Romero, Hernando Solano Bareno, Alvaro Quijano Rozo and Henry Vicente Rivera García, with the reasons adduced therefor.

The Committee draws the attention of the Government to the importance which it attaches to the fact that preventive detention should be accompanied by a set of safeguards and limitations to ensure that it cannot be used for purposes other than that for which it was designed and in particular to give protection against ill-treatment.

The Committee once again requests the Government to reply to the allegations in the communication of 21 September 1979 from PENALTRASE and to send information on the detention of Alfonso Prada and Humberto Serna.

**Case No. 940**

COMPLAINT PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS AGAINST THE GOVERNMENT OF SUDAN

263. The Committee has already examined this case, at its March 1980 Session, when it presented an interim report to the
Since then, the complainant has supplied no new information. The Government, for its part, has sent its observations in a communication dated 13 April 1981.

264. Sudan has not ratified the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), but it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

265. In its communication of August 1979, the WFTU stated that the Government was violating its international obligations by carrying out mass arrests of trade union leaders, thus exercising pressure on them and preventing them from continuing their activity as representatives of the workers.

266. The complainant stated that those arbitrarily arrested include trade union leaders Gassem Amin, Saoudi Darraj, Mahjoub Sayed Ahmed, Ali El Mahi, Mokhtar Abdallah and Hassan Gassem El-Sayed. It claimed to have reason to believe that the lives of these persons were in real danger. It stated that other trade unionists were also imprisoned.

267. In its reply of February 1980, the Government stated that the arrests of the listed trade unionists had nothing to do with their trade union activities, but were due to political activities they undertook against the State away from the trade union sphere. It went on to state that some of them have been released from detention for human considerations and others will follow when the reasons for their detention are over. Lastly, it declared that it is always keen to give full consideration to trade unions and the basic freedoms and rights of all citizens.

268. At its March 1980 Session, the Committee noted that some of the trade union leaders have been released and requested the Government to supply further information on the situation of the six detainees mentioned by the complainant.

B. Reply of the Government

269. In its reply of 13 April 1981, the Government states that four of the arrested persons have already been released from detention, and that their arrests had nothing to do with their trade union activities, but were due to unlawful political activities they undertook against the State.

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1 See 199th Report, paras. 305-312, approved by the Governing Body at its 212th Session (February-March 1980).
C. Conclusions of the Committee

270. The Committee notes from the Government's communication that four of the arrested persons have been released from detention. However, the Committee regrets the lack of specificity in the Government's reply as regards the allegations, e.g. the reply neither indicates the names of the trade union leaders who have been released, nor if the ones which the complainant mentioned by name have been tried or sentenced.

271. In this respect, the Committee would wish to recall the importance which it has attached to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the Government considers have no relation to their trade union functions.¹

272. Hence, the Committee would ask once again the Government to supply it with relevant information relating to the present situation of each of the trade union leaders mentioned by the complainant.

Recommendations of the Committee

273. In these circumstances, the Committee recommends the Governing Body to adopt the present interim report and in particular the following conclusions:

The Committee takes note of the Government's observation that four of the arrested persons have already been released from detention.

The Committee regrets that the Government does not reply specifically concerning the persons set free, and would ask the Government to supply relevant information, relating to the present situation of each of the trade union leaders mentioned by the complainant.

Case No. 957

COMPLAINT PRESENTED BY THE PERMANENT CONGRESS FOR TRADE UNION UNITY OF THE WORKERS OF LATIN AMERICA AGAINST THE GOVERNMENT OF GUATEMALA

274. The complaint is contained in communications from the Permanent Congress for Trade Union Unity of the Workers of Latin America (CPOSTAL) dated 17 April and 7 May 1980. The Government sent observations in a communication of 16 June 1980.

¹¹⁴⁷th Report, Cases Nos. 698 and 749, para. 85 (Senegal); Case No. 766, para. 361 (Yemen Arab Republic), Case No. 744, para. 372 (Central African Republic).
275. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

276. CPUSTAL alleges that freedom of association and the most basic human rights have been violated in Guatemala; in particular, it denounces the repression, persecution and murder of workers and trade union leaders.

277. The complainant alleges that Rodolfo Ramirez, General Secretary of the Autonomous Trade Union Federation of Guatemala (FASGUA) and his wife were murdered on 15 April 1980, together with Máximo Velásquez Melgar, Secretary of the Union of the Hemp Sack Factory, who was treacherously murdered as he was leaving his work. CPUSTAL adds that the bodies of Ricardo Garcia and Arnulfo Gómez, leaders of the Coca-Cola Workers' Union, who had been kidnapped on 1 May 1980, were found on 5 May. The complainant also refers to the kidnapping and deaths of peasants and workers, whose corpses were subsequently found, stating the names of some of the persons concerned, and to the murder on 1 May of 22 workers, among whom were Judhit González, Edgar González and Manuel de Jesús Flores.

278. CPUSTAL also alleges the arrest of Guillermo Hernández, Secretary of the Union of Industria Centroamericana de Sanitarios (INCESA), the trade union leaders Hugo Rolando Tello González and Guillermo Hernández Gómez - whose whereabouts are unknown - and the workers Efrai M Nájera and Margarito Tzul.

279. The complainant adds that on 15 April 1980 the army savagely suppressed the assembly of the Coca-Cola workers as they were discussing a wage problem; 27 workers disappeared, but it is denied that they have been arrested. Furthermore, states the complainant, on 29 April 1980 an armed band of 80 persons attacked, sacked and destroyed the premises of the CNT in Guatemala City, capturing and carrying off 18 workers and beating up the watchman of the premises, Miguel Angel Olayo, with the butts of their weapons.

280. CPUSTAL also alleges that leaflets were widely distributed ordering 30 major trade union leaders to leave the country within 30 days, failing which they would be killed.

281. Lastly, the complainant alleges that on 29 March 1980 the headquarters of the FASGUA trade union organisation in Escuintla was attacked with machine-gun fire.

B. Observations of the Government

282. In its communication of 16 June 1980, the Government states that on the day when the General Secretary of FASGUA was murdered by persons unknown, the Government gave precise
instructions to the Detective Section of the National Police to investigate the case. The Government adds that it has not been possible to clarify the circumstances surrounding the death of this trade union leader and that of his wife because the murderers left no traces; the police are, however, continuing with their investigations.

C. Urgent appeals

283. The Committee had to postpone its examination of the present case at its May 1980 meeting because it had not received the observations which it had requested of the Government.1 Subsequently, the Director-General addressed a pressing appeal to the President of the Republic of Guatemala, stating the need for the Government to reply in detail to the Committee's request for information. As the allegations referred to violent deaths, mistreatment and arrests of trade union leaders, the Committee included the case under the heading "Urgent appeals" in the reports on its November 1980 and February 1981 sessions, earnestly requesting the Government to send its observations on the allegations urgently.2 Since the Committee had had to postpone its examination of the case from its May 1980 session, it informed the Government at its last session that, in conformity with the procedure in force, it could present a report on the substance of the case at its next session even if the Government's observations had not yet been received. The Committee has still not received these observations.

D. Conclusions of the Committee

284. In these circumstances, the Committee considers it necessary to recall the considerations which it set forth in its first report3 and which it has had occasion to repeat at various times, namely that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact, and the Committee is confident that, if it protects governments against unreasonable accusations, governments on their side will recognise the importance of formulating for objective examination detailed replies to detailed factual charges.

285. While noting the Government's communication of 16 June 1980, the Committee regrets that it has not received the detailed information which it requested.

286. The Committee deeply deplores the deaths and murders of the trade union leaders and workers mentioned by the complainant and

1 See 202nd Report, para. 4.
2 See 204th Report, para. 12, and 207th Report, para. 17.
3 Para. 31.
expresses its concern at the seriousness of the remaining allegations, which refer, in particular, to the ill-treatment and arrests of many trade union officials and workers, threats, violent interference in trade union meetings and attacks on trade union property and premises.

287. The Committee wishes to draw the attention of the Government to the fact that a free and independent trade union movement can develop only under a regime which guarantees fundamental human rights¹ and requests the Government to adopt a policy for the taking of special measures to fully guarantee the right to personal safety, adequate protection against unjustified arrest and detention, the right of assembly and demonstration for trade union purposes, and the protection of trade union premises and property.

288. The Committee requests the Government to inform it of developments in the situation, particularly with respect to the arrested trade union leaders.

Recommendations of the Committee

289. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, in particular the following conclusions:

The Committee keenly regrets that, despite repeated requests, the Government has not replied in detail to the allegations of the complainant, and that the Committee has accordingly been obliged to examine the case without having received detailed observations from the Government.

The Committee deeply deplores the deaths and murders of trade union leaders and workers and expresses its concern at the seriousness of the allegations.

The Committee draws the attention of the Government to the fact that a free and independent trade union movement can develop only under a regime which guarantees fundamental human rights and requests the Government, in view of the deaths which have occurred and the seriousness of the allegations, to adopt a policy for the taking of special measures to fully guarantee the right to personal safety, protection against unjustified arrest and detention, the right of assembly and demonstration, and the protection of trade union premises and property.

The Committee requests the Government to send its observations on the allegations made, in particular, as to the death of trade unionists mentioned in the complaint and as to the present situation of the arrested workers and trade union leaders.

As is indicated in the introduction, the Committee empowers its Chairman to make contact with the government representatives at

¹ See, for example, 7th Report, Case No. 56 (Uruguay), para. 68, and 207th Report, Cases Nos. 997 and 999 (Turkey), para. 315.
the next session of the International Labour Conference with a view to discussing the questions pending in the present case.

Case No. 958


290. The Committee examined this case at its February 1981 Session and presented an interim report to the Governing Body. Subsequently, the Committee has received a communication from the World Federation of Trade Unions (WFTU) dated 13 March 1981. The Government replied in a communication dated 18 May 1981.

291. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

292. The allegations referred to the strike by the workers of the metallurgy sector of Sao Paulo from 1 April to 12 May 1980, the primary purpose of which was to obtain wage increases and continuity of employment for a year, and which was declared illegal by the judicial authorities on 14 April 1980, and to the events which occurred during and after the strike: intervention by the authorities in trade unions, removal from office of trade union leaders and their replacement by civil servants, arrests of trade union leaders and the prosecution under the National Security Act of union leaders.

293. The Committee, having noted that the declaration of the strike's illegality was a consequence of a compulsory arbitration award that settled the disputed wage questions and imposed the termination of the work stoppage, drew the Government's attention to the principles of freedom of association in this respect.

294. Referring to the intervention by the authorities in trade unions and the replacement of leaders, the Committee recalled the principle of the right of organisations to elect their representatives and to organise their administration and activities in full freedom and asked the Government to inform it of the measures taken to cease the control of the authorities over the unions.

' See 207th Report, paragraphs 198 to 220, approved by the Governing Body at its 215th Session (March 1981).
295. The Committee also noted the Government's statement that the orders for the imprisonment of the arrested leaders have been countermanded, but that the latter were still under trial and that the offences for which they might be held responsible as a result of their contempt for the decision of the Regional Labour Court were still under examination. In this connection the Committee stressed that the development of labour relations could be impaired as a result of an inflexible attitude being adopted in the application of excessively severe sanctions to workers who participate in strike action particularly when these are penal sanctions. The Committee thus requested the Government to send information on the results of the judicial proceedings against the arrested trade union leaders.

296. Lastly, the Committee requested the Government to send information on the allegations concerning which it had not replied (the arbitrary dissolution of trade unions, the physical assaults on workers in front of trade union premises on 18 April 1980, which are alleged to have resulted in injuries to dozens of persons, the prohibition on the holding of assemblies announced by the police on 21 April, the arrest for a few hours of the delegation of agricultural workers who were supporting the metalworkers' strike, and the many dismissals - 1,507 according to the complainants - which are said to have taken place two days after the strike).

B. Further allegations

297. In its communication of 13 March 1981, the WFTU alleges that the Military Court of Sao Paulo has sentenced 11 trade union leaders from the metallurgical sector to many years' imprisonment; they had been accused of threatening national security in violation of Act No. 6620 of 17 December 1978 by participating in and leading the metalworkers' strike in support of their socio-economic claims. Nevertheless, according to the WFTU, the actions of the workers' struggle could not have endangered national security; the strike was peaceful, negotiations were going on with the employers and the civil authorities and there were not even any strike pickets.

298. The WFTU states that the convicted trade unionists have lost all civil rights for ten years and thus will be unable to carry out their activities and that they are released pending a new appeal before the Supreme Military Court.

C. The Government's reply

299. In its communication of 18 May 1981, the Government states that Luis Inácio da Silva and the other leaders were brought to trial and sentenced for inciting collective disobedience of the laws, not only for having called for participation in the strike which had been declared illegal, but also for having committed injurious acts against persons and property and for having physically injured the workers who were not involved in the strike.
According to the Government, the accused went beyond their alleged claimed objectives, openly challenging the Government, the national institutions and the established authorities, endangering social peace and national prosperity, stirring up insecurity in the community and causing serious prejudice to the country's economy, thus infringing the provisions of Act No. 6620/78 which defines offences against national security.

The Government also states that except for José Gicote and José Timóteo da Silva, who were acquitted, the accused were sentenced under section 36, paragraph II, of Act No. 6620/78 ("inciting collective disobedience of the laws") to the following prison terms: Djalma de Souza Bon, Luis Inácio da Silva, Emílio Simões de Maura and Rubens Teodoro de Arruda - 3 years 6 months; José Maria de Almeida, Osmar Santos de Mendonça, Juraci Batista Magalhães, Manoel Anísio Gomes and Gilson Luiz Correia de Menezes - 2 years 6 months; Nelson Coanpholo and Wagner Lima Alves - 2 years. The Government adds that those convicted are at liberty pending the decision of the judicial appeal and that, if the sentences are confirmed, they would still be able to appeal to the Federal Supreme Court.

Lastly, as concerns the allegation relating to intervention by the authorities in the trade unions, the Government states that, by a decision of 12 February 1981, the Minister of State for Labour suspended the controls still existing over trade unions and named joint managements, made up of members of the various occupational categories so as to call elections within the next 180 days.

D. The Committee's conclusions

The Committee notes that under section 36, paragraph II, of Act No. 6620/78 ("inciting collective disobedience of the laws") Djalma de Souza Bon, Luis Inácio da Silva, Emílio Simões de Maura and Rubens Teodoro de Arruda were sentenced by a military court to 3 years and 6 months' imprisonment; José Maria de Almeida, Osmar Santos de Mendonça, Juraci Batista Magalhães, Manoel Anísio Gomes and Gilson Luiz Correia de Menezes to 2 years and 6 months' imprisonment; and Nelson Coanpholo and Wagner Lima Alves to 2 years' imprisonment. The Committee notes that José Gicote and José Timóteo da Silva were acquitted and that the convicted trade union leaders are free pending the decision at second instance of the Supreme Military Court.

The Committee, while noting the Government's statements concerning injurious acts against persons and property and the use of physical violence against workers by the convicted trade union leaders, observes that it has not specified the concrete charges which are said to be brought against each one of them and that the principal reason for the convictions appears to have been the incitement to take part in the strike declared illegal on 14 April 1980.

On the other hand, the Committee notes that the strike basically supported wage claims and that its illegality was
proclaimed as a consequence of the non-submission to the compulsory arbitration award which had decided the disputed wage questions thus imposing a duty on the workers to resume work. In these circumstances, the Committee, which has on several occasions considered that recourse to compulsory arbitration as a restriction on the right to strike is only admissible in the public service or in essential services in the strict sense (which is not the case of the metallurgical sector) considers that proceeding with the strike in question — although it had been declared illegal — does not appear to go beyond the normal scope of trade union activities and should not therefore be considered as constituting an offence, even more so in view of Article 1 of Convention No. 98, ratified by Brazil, which establishes that protection against acts of anti-union discrimination shall apply against any act calculated to prejudice a worker by reason of his participation in union activities.

306. Consequently, while again drawing the Government’s attention to the principle that the harmonious development of labour relations could be impaired as a result of the application of excessively severe sanctions to workers who participate in strikes, the Committee hopes that the final judgement which will be handed down in the case concerning the convicted trade union leaders will take full account of the generally recognised principles on freedom of association. The Committee requests the Government to inform it of the outcome of the judicial decision on appeal.

307. The Committee notes with interest that by a decision of 12 February 1981, the Minister of State for Labour suspended the controls still existing over trade unions and that elections will take place within 180 days. The Committee requests the Government to indicate whether the leaders who had been removed from office can take up their functions again at the present time normally.

308. Finally, the Committee regrets that the Government has still not sent the observations requested on certain allegations and accordingly requests the Government to send information on the arbitrary dissolution of trade unions, physical assaults on workers in front of trade union premises on 18 April 1980 which are alleged to have resulted in injuries to dozens of persons, the prohibition on the holding of assemblies announced by the police on 21 April 1980, the arrest for a few hours of the delegation of agricultural workers who were supporting the metalworkers’ strike, and many dismissals — 1,507 according to the complainants — which are said to have taken place two days after the strike.

The recommendations of the Committee

309. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, in particular the following conclusions:

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1 See, for example, 207th Report, Case No. 991 (Costa Rica), para. 261.

2 See, for example, 116th Report, Case No. 385 (Brazil), para. 168, and 138th Report, Case No. 725 (Japan), para. 170.
The Committee draws the Government's attention to the fact that the harmonious development of labour relations could be impaired as a result of the application of excessively severe sanctions to workers who participate in strikes.

The Committee hopes that the final judgement which will be handed down in the case concerning the convicted trade union leaders will take full account of the generally recognised principles on freedom of association and requests the Government to inform it of the outcome of the judicial decision on appeal.

The Committee requests the Government to indicate whether the leaders who had been removed from office can take up their functions again at the present time normally, and to send information on the allegations concerning which it has not yet replied as set out in the preceding paragraph.

**Case No. 984**

**COMPLAINTS PRESENTED BY THE ORGANISATION OF AFRICAN TRADE UNION UNITY AND THE PUBLIC SERVICES INTERNATIONAL AGAINST THE GOVERNMENT OF KENYA**

310. The complaint of the Organisation of African Trade Union Unity (OATUU) was transmitted in communications dated 21 July and 22 December 1980; the Public Services International (PSI) sent allegations relating to this complaint in communications dated 29 August and 15 September 1980. The Government replied in communications dated 13 February and 15 May 1981.

311. Kenya has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Labour Relations (Public Service) Convention, 1978 (No. 151); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. **Allegations of the complainants**

312. In its telegram of 21 July 1980, the OATUU states that the Kenyan Government had dissolved the Union of Civil Servants and the Union of University Workers, the former being one of the largest and best organised unions in the country. In its letter of 22 December 1980, this complainant explains that the Government has closed the union offices, seized union properties (cars, buildings, houses), forced the union to declare redundant over 100 workers and has distributed an illegal (contrary to the Trade Union Act and Trade Disputes Act) circular de-recognising the union and cancelling the check-off system.

313. In its letters of 29 August and 15 September 1980, the PSI alleges violations of Convention No. 98 in respect of its affiliate, the Union of Kenya Civil Servants, which has 75,000
members. It states that during August 1980, the Government withdrew recognition from the Union thereby preventing it from any form of representation, either by negotiation or by consultation, with the Government as employer. According to the PSI, the assets of the Union were frozen which resulted in the Union having to terminate the employment of more than 100 full-time staff as it could not pay their wages. It also alleges that the Government withdrew check-off facilities.

B. The Government's reply

314. The Government replies that it does not in any way intend to remove trade union rights or freedom of association from its people. It states that such rights are enjoyed by all employees, including those in the public service such as local government, the teaching service, para-statal corporations like the railways, posts and telecommunications and Kenya Airways.

315. The Government replies in the following terms: the Constitution and Recognition Agreement of the Union of Kenya Civil Servants did not take full account of the conditions prevailing in the country, in that the documents contained provisions which could lead to the misuse of the Union. Due to this, and to the role of the civil service as the Government's machinery for running the affairs of the State, it was decided to de-register the Union; it was not banned. The Government states that steps are being taken, in consultation with the civil servants, to clear the way for the formation of a new organisation whose Constitution would take full account of the conditions pertaining to the country and would also give due recognition to the special role of the civil service. On completion of these consultations, the civil servants will be free to form a new organisation to look after their welfare and to elect leaders of their own choice to run the organisation.

316. In its letter of 15 May 1981, the Government adds that the civil servants have now submitted a proposed constitution of a Kenya Civil Servants' Association which is to be formed to replace the de-registered union. The Government is currently examining the proposed constitution and, as soon as it is cleared, the civil servants will be able to form the new association.

C. The Committee's conclusions

317. This case concerns the de-registration of the Union of Kenya Civil Servants and the alleged dissolution of the Union of University Workers, as well as the freeze and seizure of the civil servants' union's assets.

318. As regards the de-registration of the Union of Kenya Civil Servants, the Committee notes the Government's statement that this was done because of its Constitution and Recognition Agreement did not take account of the conditions in the country which could lead to misuse of the Union - although the Government does not
specify which provisions of the Constitution are involved - but that steps are being taken in consultation with the workers concerned to enable the formation of a new organisation to represent them. The Committee also notes that de-registration has the legal effect of dissolving a union after which its funds shall be disposed of according to its rules; there is an appeal to the High Court on the substance of the case (sections 20(1) and 18, respectively, of the Trade Unions Act, 1962). In these circumstances, it must recall the principle that workers' and employers' organisations should not be liable to be dissolved by administrative authority. As consultations are under way between the parties concerned, the Committee would hope that these discussions will take due account of the principle that workers and their organisations should have the right to draw up their constitutions and rules without interference from public authorities such as would restrict this right. It requests the Government to inform it of the outcome of the steps being taken towards the establishment of a new civil servants' organisation.

319. The dissolution of the Union of University Workers referred to by one of the complainants raises the same restriction of freedom of association as the case of de-registration outlined above. The Committee notes that the Government has made no comment on this allegation and it would therefore request it to send its observations thereon.

320. Regarding the interference with the union assets, which appears to be a legal consequence of de-registration, the Committee would point out the general principle that workers' organisations should have the right to organise their administration in full freedom, especially in view of the ILO Resolution Concerning Trade Union Rights and their Relation to Civil Liberties which states that the right to protection of the property of trade union organisations is essential for the normal exercise of trade union rights. The Committee trusts that the consultations under way for the free formation of a new civil servants' union will take account of this principle.

321. In addition, the Committee recalls the importance of the principle that when an organisation is dissolved, its assets should be provisionally sequestrated and eventually distributed among its former members or handed over to the organisation that succeeds it.

322. Finally, the Committee notes that the de-registration was accompanied by a further measure which could prejudice the interests of the workers, that is, the withdrawal of the check-off system. The Committee hopes that, during the consultations which are taking place, an agreement can be reached whereby such measures which could lead to financial difficulties for trade union organisations would be avoided.

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1 See, for example, 201st Report, Case No. 842 (Argentina), para. 61; 202nd Report, Case No. 928 (Malaysia), para. 190.

The Committee's recommendations

323. In these circumstances, the Committee recommends the Governing Body to adopt the present interim report, in particular the following conclusions:

As regards the de-registration of the civil servants' union, the Committee notes that all the parties concerned are involved in consultations to lead to the establishment of a new organisation to represent these workers and that these consultations have resulted in the submission to the Government of a proposed constitution of a Kenya Civil Servants' Association which is currently under examination. In this connection it draws to the attention of the Government the principle that workers' organisations should not be dissolved by administrative authority and should be free to draw up their own constitutions without external interference. It requests the Government to inform it of the outcome of the examination of the constitution of the new organisation which is currently underway.

As the Government makes no comment on the allegation that the Union of University Workers has been dissolved by administrative authority, the Committee would also request it to send its observations thereon.

Concerning the alleged interference with union assets and withdrawal of the check-off system which accompanied the de-registration, the Committee would draw the Government's attention to the principle that workers' organisations shall have the right to organise their administration in full freedom, and to the consideration that measures which could lead to financial difficulties for trade unions should be avoided. Furthermore, it recalls that when an organisation is dissolved the assets should be distributed among its former members or handed over to the organisation which succeeds it. It hopes that the consultations under way will take account of these principles and consideration.

Cases Nos. 988 and 1003

Complaints presented by the Ceylon Federation of Labour, the World Federation of Trade Unions and several other trade union organisations against the Government of Sri Lanka

324. The Ceylon Federation of Labour (CFL) presented its complaint, constituting Case No. 988, in a letter dated 29 July 1980. New complaints were presented by the World Federation of Trade Unions (WFTU) on 17 September, the Trade Unions International of Workers in the Building, Wood and Building Materials Industries (UITBB) on 25 September, the Industrial and General Workers' Union of Ceylon (IGWU) on 2 and 16 October and the Trade Unions International of Public and Allied Employees (TUIPAE) on 4 December 1980 and 16 January and 13 April 1981, constituting Case No. 1003. The Government sent its observations on the two cases in a communication dated 20 April 1981.
325. Sri Lanka has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

326. In its letter of 29 July 1980, the CFL alleges violation of trade union rights by the Government's actions following the general strike called on 11 July 1980, in particular, the passage of special regulations to make strikes illegal, refusal to negotiate with striking unions on the false ground that the strike was political, mass termination of services of strikers and victimisation by seeking to re-employ them as new entrants, and the seizure of trade union funds and the closure of trade union premises.

327. The CFL explains that the general strike was called in order to obtain wage increases (which, although demanded in March, had still not been discussed either by the Government or the Employers' Federation of Ceylon and the withdrawal of punishments imposed on workers who had participated in a lunch-hour picket and a half-day walk-out and picket on 5 June 1980. According to the complainant, on 5 June the Government had organised a counter-picket as an excuse for government thugs to attack the workers' picket; during the violence a government employee and union official, Mr. D. Somapala, had been killed. The immediate reason for calling the general strike had been the illegal and unexplained suspension of 12 railway employees by the government-run railways management on 4 July 1980. According to the CFL, on 16 July the Government invoked the provisions of the Public Security Act to declare a state of emergency and under the said Act issued regulations outlawing strikes in any sector of the public service or of the economy. Under special emergency regulations the Government further decreed that a person illegally engaging in a strike would be deemed to have vacated his employment. The complainant quotes various government-owned newspapers stating that the emergency regulations provided for restrictions on trade unions' bank accounts, that the Government had seized the funds of the striking unions to create a special fund for the strikers' families and that it had refused to negotiate a settlement of the strike with the Health Services Joint Council.

328. In its communication, the WFTU calls on the Government and private employers to re-employ unconditionally the 100,000 workers dismissed for their participation in the general strike. It also decries the Government's declaration of a state of emergency which enabled it to outlaw strikes in almost every sector of the economy where wage labour prevails, to close down trade union offices and attempt to confiscate union funds. The WFTU alleges that between 200 and 300 persons were arrested for addressing strikers, distributing leaflets and putting up posters; it claims that a number of trade unionists are still in remand.

329. The UITBB confirms in its complaint the Government's closure of trade union offices, freezing of their bank assets and dismissal of a great number of workers (including more than 8,000 construction workers and several thousand building workers) in
retaliation against the workers' strike action. The IGWU, for its part, alleges that the Government has withheld the strikers' earned wages for the month of July up to 17 July and that many private employers have not paid the cost-of-living gratuities, payable once a year in the month of September, as punishment for the strike action. This complainant further states that union offices remain sealed, the Government is contemplating legal action to eject strikers from their quarters (given by the State under the terms of their employment) and has removed the check-off facility. The TUIPAE states that although the general strike was called off on 9 August and the state of emergency on 16 September 1980, nearly 40,000 workers in public administrations and state enterprises have been the victims of lock-outs or dismissals. On 11 November the locked-out employees started a picketing campaign and the Government, according to this complainant, brought the police into action against the demonstration and made arrests. It lists five trade union leaders who were allegedly taken into custody and brought before the courts in connection with the general strike: Messrs. Gunasena Mahanama, Alavi Moula, Vasudeva Nanayakkara, Karunaratna Bandara and I.G.D. Dharmasekara. Moreover, the TUIPAE lists 18 trade unions whose offices have remained sealed since 18 July 1980, and states that the freeze of trade union funds has restricted and hindered the legal exercise of trade union activities. Lastly, it alleges a violation of Convention No. 98, Article 4, by the Government's continuing refusal to negotiate with the public employees' representatives and their trade unions.

B. The Government's reply

330. In its letter of 20 April 1981, the Government states that it has introduced no law to make strikes illegal or to take away the fundamental rights enshrined in the Constitution or Sri Lanka guaranteeing freedom of association. However, having apprehended a politically motivated agitation, that would have, if left unchecked, caused severe hardships to the community and jeopardised the Government's development efforts, it had to invoke temporarily the Public Security Law for the purpose of maintaining the essential services such as the supply and distribution of food, health services, water supply, gas, electricity, transport and public services. It states that since under the Regulations in force employees who deliberately kept away from work were deemed to have vacated their posts, negotiations with them could not take place as they were, ipso facto, no longer employees.

331. According to the Government, at no time had trade union funds been seized or confiscated. For security reasons it was decided to withdraw the facility accorded to unions to occupy space within government buildings to house their offices; union offices located outside such premises were, however, not affected.

332. The Government declares that no person has been arrested for participating in legitimate trade union activities; however, some persons engaged in acts of violence, vandalism and sabotage were arrested under the normal criminal law and their cases are being dealt with by the law courts.
Reports of the Committee on Freedom of Association

333. The Government states that the large majority of private sector employees were covered by procedures for the settlement of disputes laid down in collective agreements and by striking had violated their obligation to observe such procedures without resorting to strikes. It further states that public servants, who had made up the majority of strikers, are not, in any case, covered by Convention No. 98. Finally, it states that all action taken by the Government has been lawful and legitimate as has been borne out by various court decisions.

C. The Committee's conclusions

334. This case concerns alleged victimisation of workers during and after a general strike which lasted from 11 July to 9 August 1980, in particular, the passing of state of emergency regulations outlawing strikes; mass dismissal of strikers and refusal to re-employ over 40,000 of them; arrests of workers, including 5 named union leaders; closure of union offices and freezing of union bank accounts; withholding of wages and other benefits due and removal of the check-off facility; and the Government's refusal to negotiate with the public employees' unions. One of the complainants also refers to the death of a trade union leader on 5 June 1980 during events leading up to the general strike.

335. The Committee notes that the Government makes no comment on the allegations concerning the death of the trade union leader, Mr. D. Somapala on 5 June 1980, nor of the alleged mass dismissals of strikers and refusal to re-employ thousands of them, nor regarding withholding of wages due and removal of the check-off facility. It would accordingly request the Government to send its observations on the alleged death of the trade union leader, Mr. D. Somapala, and on the other allegations.

336. Regarding the passage of state of emergency regulations, the Committee notes that according to the complainants the sectors in which strikes were banned covered all sectors of the economy, whereas according to the Government the ban on strikes was introduced temporarily to maintain essential services such as the supply and distribution of food, health services, water supply, gas, electricity, transport and public services. In the light of these conflicting statements, the Committee merely wishes to recall that it has considered that the right to strike could be restricted or even prohibited in the civil service or in essential services in the strict sense of the term, i.e. services whose interruption would endanger the existence or well-being of the whole or part of the population.¹ On this criterion, it has, for instance, been of the opinion that the hospital sector is an essential service;² it has

¹ See, for example, 204th Report, Case No. 961 (Greece), para. 67; 207th Report, Case No. 991 (Costa Rica), para. 261.

² See, for example, 199th Report, Case No. 510 (Greece), para. 117; 202nd Report, Case No. 949 (Malta), para. 276.
also stated that general dock work, aircraft repairs and all transport services did not appear to be essential in character.\(^1\) In the present case, the Committee notes the fact that the state of emergency was called off on 16 September 1980, which presumably rescinded the regulations in question. It therefore limits itself to drawing the Government’s attention to the above-mentioned principles.

337. As concerns the allegation of arrests of workers, in particular the five trade union leaders, Messrs. Gunasena Mahanama, Alavi Moulana, Vasudeva Nanayakkara, Karunarathna Bandara and I.G.D. Dharmasekara, the Committee notes that according to the complainants they are before the courts in connection with the general strike, whereas according to the Government no person was arrested for participating in legitimate trade union activities, but some were before the courts for having engaged in acts of violence, vandalism and sabotage. In view of the apparently conflicting nature of these statements, the Committee would ask the Government to inform it of the outcome of the court cases, providing copies of the judgements handed down, so that it may formulate its conclusions on this aspect of the case in full knowledge of the facts.

338. Regarding the closure of union offices, the Committee would recall that in the past it has referred to Article 2 of Convention No. 98, ratified by Sri Lanka, and the Resolution on Trade Union Rights and their relation to Civil Liberties (adopted at the 54th Session of the International Labour Conference, 1970) when stating the principle that the right to protection of trade union property is one of those civil liberties which is essential for the normal exercise of trade union rights,\(^2\) and this protection should be adequate.\(^3\) While noting the Government’s explanation that only union offices housed in government premises had been closed and that this was only done for security reasons, the Committee would ask the Government to consider reopening its premises for use by trade unions, in particular the 18 unions listed by one of the complainants which have been sealed since 18 July 1980. As regards the alleged freezing of union bank accounts, the Committee takes note of the Government’s firm statement that at no time had any union funds been seized or confiscated.

339. As concerns the Government’s continuing refusal to negotiate with the public employees’ unions involved in the general strike, the Committee notes its claim that, as those workers were deemed by the regulations then in force to have vacated their posts, they are no longer employees and consequently there is no basis for negotiating with them. In this connection, the Committee would draw the Government’s attention to the principle that trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the unions represent. If the unions still exist to represent past or present employees, the Committee considers that it is irrelevant whether some of their members have been deemed to be non-employees.

\(^1\) See 118th Report, Cases Nos. 589 and 594 (India), paras. 90-92.

\(^2\) See, for example, 131st Report, Case No. 672 (Dominican Republic), para. 118; 144th Report, Case No. 723 (Colombia), para. 59.

\(^3\) See 97th Report, Case No. 519 (Greece), para. 18.
340. As regards the Government's statement that the large majority of strikers were public servants who are, in any case, not covered by Convention No. 98, the Committee considers it necessary to point out that this Convention does apply both to the private sector and to nationalised undertakings and public bodies, it being possible under Article 6 of the Convention to exclude from such application only public servants engaged in the administration of the State. The Committee would further point out that in this connection the Committee of Experts on the Application of Conventions and Recommendations has stated that, while the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of persons employed by the State or in the public sector, who do not act as agents of the public authority (even though they may be granted a status identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. The distinction to be drawn, according to that Committee, would appear to be basically between civil servants employed in various capacities in government ministries or comparable bodies, on the one hand, and other persons employed by the Government, by public undertakings or by independent public corporations.\(^1\)

The recommendations of the Committee

341. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, in particular the following conclusions:

The Committee requests the Government to send its observations on the alleged death of the trade union leader, Mr. D. Somapala, and on the other allegations concerning the mass dismissal of strikers and refusal to re-employ thousands of them, the withholding of wages and other benefits due and the removal of the check-off facility.

Regarding the Government's passage in July 1980 of state of emergency regulations prohibiting the recourse to strikes, the Committee, whilst noting that the stage of emergency was lifted in September 1980, wishes to recall that the right to strike is one of the essential means through which workers and their organisations may promote and defend their occupational interests, and would draw the Government's attention to the principle that restrictions as regards the right to strike in essential services should be limited to essential services in the strict sense of the term, i.e. those whose interruption would endanger the existence or well-being of the whole or part of the population.

As concerns the allegation of arrests of workers, in particular the trade union leaders, Messrs. Gunasena Mahanama, Alavi Moulaya, Vasudeva Nanayakkara, Karunarathna Bandara and I.G.D. Dharmasekara, in view of the conflicting nature of the reasons given

\(^1\) See, for example, 116th Report, Case No. 598 (Ecuador), para. 377; 121st Report, Case No. 635 (Costa Rica), para. 81; 143rd Report, Case No. 764 (Colombia), para. 87.
for the arrests, the Committee would ask the Government to inform it of the outcome of these court cases, providing copies of the judgements handed down.

The Committee, noting that the right to protection of trade union property is one of those civil liberties which is essential for the normal exercise of trade union rights, would ask the Government to consider reopening the union offices previously housed in government premises for use by trade unions, in particular the 18 unions listed by one of the complainants which have been sealed since 18 July 1980.

While noting the Government's statements that it will not negotiate with various employees because they vacated their posts during the general strike and were mostly public servants who are not covered by Convention No. 98, the Committee would ask the Government to reconsider its position in this respect, having regard both to the principle that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association and to the fact that Convention No. 98 does apply both to the private sector and to nationalised undertakings and public bodies, it being possible to exclude from such application only public servants engaged in the administration of the State, that is, those acting as agents of the public authority.

Cases Nos. 997 and 999

Complaints presented by the World Confederation of Labour, the World Federation of Trade Unions, the Trade Unions International of Workers in Commerce, the Trade Unions International of Public and Allied Employees, the Trade Unions International of Workers of the Building, Wood and Building Materials Industries and the Trade Unions International of Chemical, Oil and Allied Workers against the Government of Turkey

342. The Committee already examined these cases at its February 1981 Session when it submitted an interim report to the Governing Body.1 Since then, the World Confederation of Labour (WCL) has supplied additional information in support of its complaint in a communication dated 1 April 1981. For its part, the Trade Unions International of Chemical, Oil and Allied Workers (ICPS) has also submitted allegations in a communication dated 9 March 1981. The Government, in turn, supplied its observations in letters dated 7 and 11 May 1981. In addition, the WCL supplied information on 6 May 1981, which has been transmitted to the Government.

343. Turkey has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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344. The complaints in question related principally to the imprisonment and violent death of trade unionists, the restrictions imposed on the trade union activities of the Confederation of Unions of Progressive Workers (DISK) and the Confederation of Unions of Nationalist Workers (MISK) and numerous trade union organisations affiliated to them, and the general abolition of the right to strike and the right of collective bargaining.

A. Imprisonment, death and disappearance of trade unionists

345. In their various communications, the complainants alleged that a large number of trade unionists had been arrested following the change of regime which took place in Turkey on 12 September 1980. They communicated the names of nearly 100 trade unionists who had been arrested, together with their position and trade union functions and the place of detention, usually in military prisons, while specifying that most of them were held in custody and forbidden to communicate with their lawyers. The period of remand in custody without trial had been increased from 30 to 90 days. The trade unionists had been arrested by order of the Istanbul military court and charged with establishing and participating in an illegal organisation whose aim is to achieve the domination of one class over the others. Lastly, the complainant organisations stated that Ahmed Hilmi Feyzioglu, legal adviser to the Metalworkers' Union (MADEN-IS), had been tortured to death.

346. In its replies, the Government indicated that the armed forces had assumed power in order to re-establish and revive a free, democratic regime based on respect for fundamental rights and freedoms. More specifically, the Government stated that the insecurity and disorder prevailing in the country and the incapacity of the existing structures to halt the escalation of violence had made the operation necessary and inevitable. It acknowledged that the DISK leaders mentioned by the complainants had been arrested by decision of the competent tribunal. It added that they were accused of infringing sections 141, 142 and 146 of the Penal Code, the provisions of Act No. 1402 on the state of emergency and those of Act No. 6136 on firearms, and were being held in custody for a period of 30 days, renewable by decision of the competent magistrate for successive 20-day periods, up to 90 days at most. According to the Government, certain trade union leaders had been charged with instigating illegal strikes, in particular, and had been brought before the courts.

347. In its conclusions of February 1981, the Committee pointed out that imprisonment for participating in a strike involved a serious risk of abuse and grave danger for freedom of association and requested the Government to review the situation regarding detention on such grounds. Concerning the trade union leaders and militants who, according to the Government, had been charged with common law offences, in particular attempts to achieve the domination of one class over the others, the formation of associations aimed at reversing the social order, attempted coups d'état, infringement of the Act on firearms, etc., and who were being held in custody, the Committee stressed the importance it
attaches to the principle that any person arrested should enjoy the guarantees of due process of law, be allowed the necessary facilities for preparing his defence and be able to communicate with the counsel of his own choice.

348. On the issues as a whole the Committee, at its February 1981 Session, noted that the imprisoned trade union militants and leaders faced extremely heavy penalties, which might be made even heavier merely because they were trade unionists, and pointed out that penal provisions discriminating against trade unionists constitute a serious impediment to the exercise of trade union rights. It requested the Government to supply information on the development of the situation of the persons imprisoned, in particular on any measures of release which might be taken and, in the event of any sentences, to transmit the relevant judgements together with the reasons adduced therefor.

349. The Committee also urgently requested the Government to state whether it was true that Mr. Hilmi Feyzioglu was no longer alive and to transmit the findings of any judicial inquiry concerning his possible death.

350. Since the Committee's last session, the WCL has sent a communication dated 1 April 1981 stating that 126 death sentences were demanded in a single day by the military prosecutors at Ankara, Izmir and Istanbul. The military Government, adds the WCL, has a tendency to call anyone opposed to its policy an "extremist" or a "subversive" so as to be able to pronounce death sentences. It requests the ILO to approach the Turkish authorities with a view to ensuring that due processes of law are observed and draws attention again to the fact that the trade unionists arrested have not yet been able to communicate with their lawyers.

351. In a communication dated 9 March 1981 the ICPS, for its part, stresses that seven leaders of the Petroleum, Chemical and Petrochemical Workers' Union (PETKIM-IS), five leaders of the Ceramic Workers' Union (KERAMIK-IS), seven leaders of the Rubber Workers' Union (LASTIK-IS), two leaders of the Glass Workers' Union (HUBCAM-IS) and the President of the Paper Workers' Union (TUMKA-IS) have been arrested. The unions to which they belong are all affiliated to the DISK. The names of most of the imprisoned trade unionists mentioned by the ICPS are given in the annex to the Committee's 207th Report on Cases Nos. 997 and 999. The ICPS also gives the names of the leaders of the Petroleum, Chemical and Petrochemical Workers' Union who have been arrested, viz. Mustafa Karadayi, Kemal Deriner, Kadir Guler, Esref Okusus, Niyazi Kizilay, Dervis Serin and Adil Sismek. The ICPS also alleges that a number of trade unionists are missing, but without specifying their names.

352. In a communication dated 7 May 1981, the Government, for its part, states that 113 trade unionists were released on 24 April, but does not mention any of their names. It acknowledges that there are 195 trade unionists under arrest at present.

353. Regarding the death on 2 October 1980 of Mr. Ahmet Hilmi Feyzioglu, barrister at the Bar of Bursa and legal adviser to the Metalworkers' Union (MADEN-IS), the Government supplies the following particulars: Mr. Feyzioglu, who apparently was using the union's premises as living quarters, was taken in custody when the
union was closed down and brought to the Criminal Investigation Department. On 2 October 1980, according to the Government, he threw himself out of a window of a room on the 5th floor, when he was waiting in the presence of another accused, by the name of Necati Kartal, after being questioned. He died the same day of the wounds caused by the fall. The public prosecutor immediately opened an inquiry into the circumstances of his death, as is always done in such cases. An autopsy was made, a panel of experts convened and witnesses heard. The inquiry concluded, on 13 October 1980, that the cause of death was suicide. The panel of experts and the forensic pathologist specified in their reports that the corpse showed no signs of trauma other than those caused by the fall and no sign of ill treatment prior to death. The case was therefore filed by the public prosecutor. Mr. Peyzioglu's relatives appealed against this decision to the assize court of Bilecik. On 23 December the court, after reviewing the case, confirmed the decision of the public prosecutor of Bursa.

354. Lastly, the Government denies that heavier sentences will be imposed on the accused merely because they are trade unionists.

355. In a letter dated 11 May 1980 the Government, in reply to the allegations made by the ICPS that trade unionists are missing, also states that no one in Turkey has disappeared involuntarily. This does not rule out the possibility that some persons may have preferred voluntarily "to disappear" abroad in order to evade legal proceedings.

356. At the same time, in a communication of 6 May 1981, which was transmitted to the Government so that it could make its observations, the WCL, given the worrisome situation presently existing in Turkey, requested an action from the ILO, in whatever form it considered appropriate, in order to send a representative or a mission to Turkey to intervene with the Turkish authorities, and to make inquiries regarding the situation concerning: the treatment of prisoners, development of the trials, the trade union rights and liberties, their leaders and members.

357. The Committee, for its part, expresses its deep concern at the seriousness of the allegations of which it was informed and, in particular, as concerns the circumstances of the death of Mr. Hilmi Peyzioglu, legal adviser to the MADEN-IS trade union, which occurred during his detention at the Criminal Investigation Department. It can only deplore this lamentable occurrence and urge the Government to take the strictest possible measures to see that such events do not occur again.

358. Furthermore, since the trade unionists arrested have not yet been able, according to the WCL, to communicate with their lawyers, the Committee recalls the importance which it attaches to the need in every case, including cases where trade unionists are charged with political or criminal offences which the Government considers to be foreign to their trade union activities, for the persons in question to be judged by an independent judicial authority in the presence of their counsel. As it has pointed out
in other cases, the Committee considers that the individuals concerned should be presumed innocent until proved guilty and that it is incumbent upon the Government to show that the measures taken by it were in no way occasioned by the trade union activities of the persons concerned.

359. The Committee also observes that the Government has announced the release of 113 trade unionists. However, it has provided no information about the fate of 92 persons whose names are given in the annex to the 207th Report on Cases Nos. 997 and 999.

360. The Committee recalls that the leaders detained in the Denizpasa, Metris and other military prisons belong, according to the WCL and the ICPS, to unions of workers in the public service, the metal trades, textiles, the hotel and catering industry, the food industry, agriculture, the rubber industry, the graphic arts, ceramics, transport, health, glass making, paper manufacturing, military shipbuilding, cement works, gas, electricity and water, the footwear and leather industry, the wood industry, banking, the petroleum, chemical and petrochemical industry, and the office employees' union, all of which are affiliated to the DISK.

361. Since, according to the WCL, 126 death sentences have been demanded by the military prosecutors, the Committee expresses its deep concern about the trial of the DISK leaders and the heavy sentences, including the death penalty, to which the trade unionists are liable. Consequently, it requests the Government to transmit its observations on the subject and to supply as precise information as possible on the situation of each of the persons whose names were communicated by the WCL and the ICPS and which are given in the annex to the 207th Report and in paragraph 351 of this report.

362. With regard to the allegations concerning the disappearance of trade unionists, and in the absence of any information about the identity of the missing persons, the Committee takes note of the Government's reply that no one has disappeared involuntarily.

363. The Committee notes besides that more than once, the WCL had asked for a representative or a mission to be sent to Turkey in order to intervene with the Turkish authorities, and to make inquiries regarding the situation on the treatment of prisoners, development of the trials, the trade union rights and liberties, their leaders and members.

B. Suspension of trade union confederations and organisations and restrictions on trade union activities

364. The complainant organisations alleged that the military authorities had suspended the activities of the Confederation of Unions of Progressive Workers (DISK) and the Confederation of Unions of Nationalist Workers (MISK) and numerous trade union organisations affiliated to them and had frozen their assets. In addition, the main trade union activities, including collective bargaining and the right to strike, had been suspended.

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1 See, for example, 149th Report, Case No. 709 (Mauritius), para. 101.
365. In its reply, the Government stated that the measures taken were intended to safeguard public order since information available to it had revealed the existence of organic links and co-operation between certain illegal, clandestine organisations responsible for terrorist acts and certain unions. The Government confirmed that, in order to safeguard the financial interests and ensure the administration of the trade unions whose activities had been suspended, an Act providing for the appointment of trustees by the courts had been promulgated. Lastly, the Confederation of Trade Unions of Turkish Workers (TÜRK-IS), which according to the Government is, by reason of its membership and the number of affiliated trade unions, the major workers' organisation, was continuing to function normally. It claimed that no legislative action had been taken to limit or prohibit trade union activities, with the single temporary exception of the suspension of strikes until further notice. In connection with collective bargaining, the Government added, workers who were taking part in collective bargaining, which was interrupted following the suspension of their union's activities, would initially be granted a wage increase of 70 per cent. Subsequently, an Act providing for the establishment of a High Arbitration Commission composed of employers and workers and responsible for taking decisions on the conclusion of collective bargaining and resolving possible disputes, would be adopted. This machinery, the Government explained, was not intended to replace the existing system of collective bargaining but was designed as a form of appeal in exceptional circumstances.

366. At its February 1981 Session, the Committee first recalled that a genuinely free and independent trade union movement can develop only if basic human rights are respected. It also expressed the firm hope that the suspended confederations and organisations would be reinstated and that the new general trade union legislation would be in full conformity with the principles of freedom of association and collective bargaining. Further, it recalled that the suspension of strikes and collective bargaining constitutes a major restriction on one of the essential means whereby workers and their organisations can promote and defend their interests. In this connection, it noted that an Act establishing a High Arbitration Commission had just been adopted and requested the Government to supply this text so as to enable it to make an informed appraisal of the situation.

367. In its communication of 7 May 1981, the Government states that the future of the suspended organisation depends on the outcome of the judicial proceedings and maintains that the new trade union legislation will be consistent with the principles set forth in the international instruments existing in this field. It stresses the temporary nature of the restrictions on the exercise of certain trade union rights, rendered necessary by a severe national crisis. The Government transmits the text of the Act establishing the High Arbitration Commission, which is entitled Act Respecting The Re-entry Into Force Of Collective Agreements Expired In Cases Of Social Necessity.

368. The Committee takes note of the information supplied by the Government. However, it must note with regret that the trade union confederations and organisations, namely the DISK and the MİSK and their affiliated unions, are still suspended. In this connection, the Committee reiterates that the suspension by
administrative authority of trade union organisations constitutes a serious restriction of the right of workers' organisations to elect their leaders in full freedom and to organise their administration and activities.\(^1\) The Committee has taken note of the Government's statement that the future of these organisations depends on the outcome of the judicial proceedings under way. In this respect, it considers that the Government should give priority to lifting the measures of suspension so long as the judicial authorities have not taken a decision on the alleged contraventions. On this point the Committee recalls that dissolution of trade union organisations by the courts must be based solely on serious and duly proved grounds. More particularly as regards the suspension of the right to strike, the Committee considers that this restriction should not be extended beyond a reasonable period.

369. The complainants had also reported the suspension of collective bargaining. During the Committee's previous examination of these cases, the information supplied by the Government seemed to indicate that collective negotiations had been frozen for a certain period but that recently adopted legislation again permitted the development of collective bargaining and the intervention of a High Arbitration Commission for settling disputes pending where negotiations had failed. On examining the Act respecting the re-entry into force of collective agreements expired in cases of social necessity, the Committee has noted the tripartite nature of the High Commission's membership. However, it appears that the law is applicable in instances and places where strikes are prohibited. A case may be laid before the High Commission, which is empowered to take a final decision on collective disputes arising from differing interpretations of the provisions of a collective agreement, by a workers' organisation or an employers' organisation party to the agreement or by the Regional Directorate of Labour. In the general context of suspension of the right to strike now existing in Turkey - which conflicts with the exercise of trade union rights when extended beyond a reasonable period - the Committee trusts that the Government will not resort to this procedure to obtain, through compulsory arbitration, restrictive interpretations of the provisions of collective agreements negotiated by the two sides of industry.

The Committee's recommendations

370. In these circumstances, the Committee recommends the Governing Body to approve this interim report and in particular the following conclusions:

As regards the cases as a whole, the Committee first wishes to express its concern at the seriousness of the allegations which continue to be brought to its knowledge.

\(^1\) See 81st Report, Case No. 385 (Brazil), para. 141; 143rd Report, Case No. 748 (Brazil), para. 101; 114th Report, Cases Nos. 574, 588 and 593 (Argentina), para. 227; and 165th Report, Case No. 842 (Argentina), para. 146.
While noting with interest that 113 imprisoned trade unionists have been released, the Committee notes with concern that there are still 195 trade unionists under arrest. Furthermore, since 126 death sentences have been demanded by the military prosecutors, according to the complainants, the Committee expresses its deep concern about the trial of the trade union leaders and the heavy sentences, including the death penalty, to which the trade unionists are liable.

The Committee notes with regret that the Government has not supplied any detailed information about the situation of the trade unionists whose names were mentioned by the complainants. Consequently, it requests the Government to supply as precise information as possible about the situation of those whose names are given in the annex to the 207th Report concerning these cases and in paragraph 351 above.

The Committee also deplores the circumstances of the death of Mr. Hilmi Feyzioglu, legal adviser to the MADEV-IS trade union, which occurred during his detention at the Criminal Investigation Department, and urges the Government to take the strictest possible measures to ensure that such events do not occur again.

Concerning the suspension of the DISK and the MISK and trade union organisations affiliated to them, the Committee notes with regret that these organisations are still under government control. In this connection, the Committee recalls that it had expressed the hope that the suspended confederations and organisations would be reinstated. It therefore firmly trusts that the Government will give priority to lifting the measures of suspension since the judicial authorities have not taken a decision on the alleged contraventions and requests the Government to keep it informed of the situation and any measures taken to give effect to the recommendation it made previously.

Lastly, the Committee calls the Government's attention to the concerns it has expressed about the suspension of the right to strike and the restrictions which apparently still exist in connection with collective bargaining. It expresses the firm hope that the new legislation on freedom of association announced by the Government will enable trade union activities in the country to return to normal shortly and requests the Government to supply any information on the development of the trade union situation.

Finally, the Committee notes that the World Confederation of Labour requests that a representative or a mission be sent to Turkey in order to make inquiries regarding the situation concerning the treatment of prisoners, development of the trials, the trade union rights and liberties, their leaders and members. The Committee empowers its Chairman to contact the representatives of the Government of Turkey at the next session of the International Labour Conference so as to discuss the questions pending in these cases and in particular with a view to the possibility of a direct contacts mission to Turkey.
Case No. 1007

COMPLAINT PRESENTED BY THE INTERNATIONAL ORGANISATION OF EMPLOYERS AGAINST THE GOVERNMENT OF NICARAGUA


372. Nicaragua has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

373. The International Organisation of Employers (IOE) alleges that on 17 November 1980, Mr. Jorge Salazar Argüello, Vice-President of the Managing Board of Private Enterprises (COSEP), while unarmed, was shot down by the police during an ambush, a few moments after presiding over a meeting of COSEP. According to the complainant, which categorises this event as murder, no serious argument has been advanced in support of the accusations made by the Government against Mr. Salazar (transporting of weapons, membership in an insurgent movement whose aim was to re-establish the Somoza regime, and procurement of aid from abroad for this purpose).

374. Whilst referring to violations in Nicaragua of civil liberties which are essential for the exercise of trade union rights, the complainant gives particular emphasis to the events relating to the death of Mr. Salazar. According to the complainant, the right to a fair trial before an independent judicial body was not applied in Mr. Salazar's case; for instance, the court which convicted eight alleged members of participating in a counter-revolutionary plot, and absolved others, decided to "close definitively the case in favour of Jorge Salazar Argüello because of his death", without resolving either the doubt over what really happened on 17 November 1980, or the question of his leadership of the plot. The alleged proofs come from statements of journalists and detainees (the latter obtained in prison), from verbal testimony by one member of the police, and from written testimony by a civil servant who did not appear at the trial.

375. With reference to the exercise of free speech, the complainant argues further that the Government had decided that the murder of Mr. Salazar was to be categorised as having occurred during "an armed conflict" and could not be reported by any media (press, radio, etc.), without a prior veracity check by government services as provided for in Decree No. 511 of 10 September 1980.

376. In its communication of 20 November 1980 the International Organisation of Employers cites the imprisonment of various
leaders of private enterprises. The IOE indicates that the arrests and detentions which occurred after the change of regime have not ceased, and that section 51 of the Decree on Rights and Guarantees of the Nicaraguans denies the right of habeas corpus for certain crimes ("alleged or real crimes committed during the Samoza period").

377. The IOE also alleges that the Government tolerates and favours the pressure brought by the FSLN (National Sandinista Liberation Front) to force the major independent trade unions to join the single central trade union. The IOE refers, in an appendix, to the provisions of draft labour law on professional associations, which would establish that trade union policy should be oriented towards avoiding the proliferation of trade union organisations; prohibit the formation of other trade unions if there already existed one in a particular industry or economic activity; establish a Single Central Organisation of Workers for urban workers and rural workers; and would establish trade unions only for workers, whereas Convention No. 87 also guarantees to employers the right of association.

378. As far as the employers and independent professions are concerned, the IOE alleges that the FSLN, with the Government's support, is trying to divide up the COSEP in organising small and medium-sized undertakings, and is doing the same with independent professions. In particular, the IOE points out that the preliminary draft of the law on regulation of professional activities (proposed by the FSLN and published jointly by the Government and the FSLN) confers extremely wide powers on the bodies which would be created (National Council of Professions and National Confederation of National Associations), and thus limits the freedom of action of those engaged in independent professions. According to the IOE, the Government is hostile towards COSEP and its members.

379. Finally, the IOE alleges that under Decree No. 530 of 24 September 1980, the negotiation and approval of collective agreements require the Ministry of Labour's approval.

B. Reply of the Government

380. In its communication of 30 January 1980, the Government states that the death of Mr. Salazar is in no way related to the fact that he was the Vice-President of COSEP, and his death could not be considered as murder without the elements of premeditation, treason or profit, and it should also not be qualified as homicide since his death resulted from an armed conflict between the members of the Security Services of the State and an armed group of which he was a member and which was conspiring against the Government.

381. The Government adds that the death of Mr. Salazar cannot be considered as a violation of Convention No. 87, which was plainly demonstrated by the statements of witnesses and of detainees. These persons had confessed to planning a coup d'état and to conspiracy plans which they tried to carry out in co-ordination with some members of the former Samoza Guard. The Government further argues that Mr. Salazar's activities could in no way be regarded as trade union activities, since they were obviously conspiratorial and constituted a crime against the security of the State.
382. The Government states that the detainees could in no way be considered trade union leaders, as the IOE claims, and that these persons did not belong to any trade union (even if this were possible in Nicaragua there are no employers' professional associations, but only organisations formed and regulated by the Civil Code). These persons were conspiring against peace, the security of the State and the life of government officials.

383. Consequently the Government rejects the accusations of violation of Convention No. 87 and of murder.

384. The Government sent a copy of the indictment and the text of the judgement (presently under appeal), as well as a copy of the statements to the judicial authorities and to the police linking the following persons to conspiratorial activities aiming at the overthrow of the Government and assassination of government officials: Jorge Salazar, Dora María Lau de Lacayo, Leonardo Ramón Sommarriba, Alejandro Salazar Elizondo, Nestor Moncada Lau, Luis Adolfo Valle Lau, Mario Hannon Talavera, Jaime Francisco Castillo and Gabriel Lacayo Benard.

C. Conclusions of the Committee

385. Before treating the questions raised by the complainant, the Committee wishes to express its concern over the gravity of certain allegations related to the death of a leader of COSEP, which the Committee profoundly deplores, and to the arrest of several employers who are leaders of private undertakings.

386. In the Committee's opinion, the fact that the COSEP does not have the status of a trade union organisation in the eyes of the Nicaraguan legislation does not dispense the Government from the obligations arising from its ratification of Convention No. 87, in particular, to respect the freedom of the employers in Nicaragua to establish organisations of their own choosing, to organise their administration and activities and to formulate their programmes without interference from the public authorities which would restrict this.

387. The Committee notes the information submitted by the Government regarding Mr. Salazar, and in particular the fact that the First Criminal Tribunal of Managua "definitely closes the case in favour of Mr. Salazar because of his death". The Committee nevertheless notes that the Government in its communication accuses Mr. Jorge Salazar Argüello of having conspired against the Government in an armed group. It also observes that if such information refers to the alleged conspiratorial activities, it does not contain sufficient details regarding the motives and circumstances of the activities carried out by the police which resulted in the death of Mr. Salazar, in relation to which, according to the information available to the Committee, the Government has formally admitted that he was not armed at that moment. In this respect, the Committee notes that the report of the interrogation by the public prosecutor of the Assistant Director of the State Security Services does not contain a reply to question No. 45 concerning the circumstances of Mr. Salazar's death. The
Reports of the Committee on Freedom of Association

Committee also notes that the text of the decision sent by the Government does make a reference to the judicial proceedings carried out by the Second Criminal Tribunal to investigate Mr. Salazar’s death, which includes testimony regarding his death, but the Committee has not received a report of these proceedings. In these circumstances the Committee, as it has done on previous occasions in considering allegations relating to death of trade unionists, can only urgently request the Government, if it has not done so already, to undertake as soon as possible an independent judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties, and to communicate the results of this inquiry.

388. In reference to arrests and detentions of the other leaders, the Committee has examined the text of the Court’s decisions depriving them of their liberty for different time periods for their participation in conspiratorial activities, and it has also noted that they have already appealed. The Committee requests the Government to send it the text of the judicial decision of the appeal, so that it can take a decision on the allegations with full knowledge of the facts.

389. As regards Decree No. 530 of 24 September 1980, which requires approval of collective bargaining agreements by the Ministry of Labour, the Committee draws the Government’s attention to the fact that the requirement of approval or acknowledgement by a government authority to make an agreement valid is not in full conformity with the principle of voluntary collective bargaining, established under Convention No. 98. In similar cases, the Committee has recommended the establishment of procedures such as the creation of consultative bodies, designed to ensure that the parties to collective bargaining have regard voluntarily in their negotiations to considerations relating to the economic or social policies of the Government, and the safeguarding of national interests, which in any case should utilise persuasion and not entail recourse to measures of compulsion, while conserving the freedom of both parties as regards the final decision.

390. Finally, the Committee observes that the Government has not replied to the allegations concerning the draft labour law on trade unions; and to the alleged FSLN pressures on the major independent trade unions to force them to join a single trade union; and to the limitation on freedom of information by prohibiting the publication of information on the death of Mr. Salazar Argüello; the alleged efforts of the FSLN, with the Government’s support, to divide up the COSEP; the preliminary draft of the law on regulation of professional activity and the hostility of the Government towards COSEP and its members. The Committee asks the Government to send it information regarding these allegations.

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1 See, for example, 207th Report, Cases Nos. 997 and 999 (Turkey), para. 304.

2 See, for example, 129th Report, Case No. 654 (Portugal), para. 161.

3 See, for example, 132nd Report, Case No. 691 (Argentina), para. 28.
Recommendations of the Committee

391. In these circumstances the Committee recommends the Governing Body to approve this interim report, and in particular the following conclusions:

The Committee deplores the death of the Vice-President of COSEP, Mr. Jorge Salazar Argüello, and expresses its concern over the gravity of the allegations.

The Committee draws the Government's attention to the fact that the obligations which arise to respect trade union rights does not depend on the legal form chosen by the employers of Nicaragua for their organisation.

The Committee asks the Government to undertake as soon as possible, if it has not done so already, an independent judicial inquiry on the death of Jorge Salazar Argüello, with a view to elucidating the facts in full and determining responsibility, and to communicate the results of this inquiry.

The Committee asks the Government to supply it with the texts of the judicial decisions of the appeal concerning the arrested and detained leaders in question.

The Committee draws the Government's attention to the fact that submission of collective bargaining agreements for prior approval to the Ministry of Labour is not in full conformity with the principle of voluntary collective bargaining, and that in similar cases the Committee has recommended the establishment of procedures which would utilise means of persuasion rather than compulsion, so that both parties can take account voluntarily of the economic and social policy of the Government.

The Committee requests the Government to communicate additional information regarding the allegations to which it has not yet replied (draft law on trade unions, pressures on the major independent trade unions to force them to join a single central trade union, attempts by the FSLN to divide up COSEP, the preliminary draft of the law on regulation of professional activity, and the Government's hostility towards COSEP and its members).

Case No. 1017

COMPLAINT PRESENTED BY THE UNITED TRADE UNIONS OF CASABLANCA AGAINST THE GOVERNMENT OF MOROCCO


393. Morocco has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. Allegations of the complainant

394. The United Trade Unions of Casablanca alleges that the transnational corporation, American Cheving-Gum, has violated the trade union rights of its employees. The complainant organisation explains that on 3 September 1980, the American Cheving-Gum had illegally dismissed four of the officials of the United Trade Unions of Casablanca, including its Secretary-General. It also alleges that there existed no grounds for these dismissals, since the Union had not even presented a list of claims, and thus were arbitrary as well as illegal. As a consequence of these dismissals, the workers of the undertaking had called a solidarity strike, which was in its 15th week at the time of the complaint, and still continuing. The striking workers had opposed the management's attempts to replace the dismissed workers.

395. The complainant further alleges that four of the striking workers had been arrested, namely Mr. Saassaa Salah, Mr. Gharid Mohamed, Mr. Khlikhel Mohamed, and Mr. Zouhir Mohamed. While Mr. Saassaa had received a suspended sentence of two months' imprisonment, Messrs. Gharid and Khlikhel obtained suspended sentences of four months' imprisonment, and Mr. Zouhir's trial was scheduled for 2 January 1981. The United Trade Unions of Casablanca requests that the ILO should intervene in order to ensure that the Government of Morocco respects the principles contained in Conventions Nos. 87 and 98, that it annuls the sentences and judicial proceedings against the strikers in question, and that those who were unjustly dismissed are reinstated.

B. Reply of the Government

396. The Government states in its communication that the workers in question were dismissed for reasons of lack of discipline and for not respecting the right of others to work. It adds that out of a total number of 216 workers, 114 workers participated in the strike called on 17 September 1980. As soon as the conflict erupted, officials of the labour inspectorate had taken the necessary steps to reconcile the conflicting parties, and had reached the following agreement: two of the dismissed workers will be transferred to the Moroccan Labour Union for a period of 6-12 months during which time they will be receiving their salaries. Following this measure they will either be reinstated in their previous positions or compensated, depending on the forthcoming decision of the Arbitration Committee. The other two workers will be dismissed with compensation of 45,000 DH. Lastly, an advance on salaries will be granted to all workers who went on strike.

C. Conclusions of the Committee

397. With regard to the four dismissed trade unionists mentioned by the complainant, the Committee takes note of the Government's statement that two of the four dismissed workers will
be transferred to the Moroccan Labour Union and will continue to receive their salaries, but that the two others will not be reinstated.

398. The Committee notes that a contradiction exists between the complainant's allegations and the Government's reply as regards the cause of the dismissals. It does not consider it has sufficient information at its disposal to enable it to decide if any violations of trade union rights took place.

399. However, the Committee would wish, in general, to draw the attention of the Government to the principle concerning protection against acts of anti-union discrimination, according to which workers' representatives in the undertaking should enjoy effective protection against any acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives, on union membership, or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed agreements.1

400. Moreover, the Committee notes that under sections 8 and 10 of the Recommendations of 1958 of the Supreme Council on Collective Agreements the dismissal of a worker cannot take place without prior consultation with the trade union office of the undertaking.

401. In this regard, the Committee has considered that the existence of basic provisions prohibiting acts of anti-union discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice. Thus, for example, it may often be difficult, if not possible, for a worker to furnish proof of an act of anti-union discrimination of which he has been the victim. Hence the importance of Article 3 of Convention No. 98 which provides that machinery appropriate to national conditions shall be established, where necessary to ensure respect for the right to organise.2

402. As regards the four allegedly detained trade unionists, the Committee notes that the Government's observations do not contain any mention of them whatsoever. In this respect the Committee would request the Government to supply data concerning these allegations, and to provide the texts of the judgements as well as information on the present situation of these people.

**Recommendations of the Committee**

403. In these circumstances, the Committee recommends the Governing Body to approve the present interim conclusions and in particular the following:

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1 See for example, 135th Report, Case No. 646 (Costa Rica), para. 135.

2 See for example, 111th Report, Case No. 546 (Colombia), para. 77.
The Committee draws the attention of the Government to the principle that workers should enjoy adequate protection against all acts of anti-union discrimination, such as dismissal, particularly in the case of trade union officials.

The Committee notes that under the existing provisions workers cannot be dismissed without prior consultation with the trade union office of the undertaking; nevertheless it would wish to remind the Government that such provisions alone are not sufficient, unless accompanied by effective procedures ensuring their application in practice.

The Committee notes that the Government’s observations do not contain reference to the allegedly detained workers; it would request the Government so supply data concerning these allegations, and to provide the texts of the judgements as well as information on the present situation of the workers in question.

Case No. 1025

COMPLAINT PRESENTED BY THE WORLD CONFEDERATION OF LABOUR AGAINST THE GOVERNMENT OF HAITI

404. The World Confederation of Labour (WCL) presented a complaint of violation of trade union rights in Haiti in a letter dated 27 January 1981. The Government sent its observations in a communication of 12 March 1981. Since then, the WCL sent additional information in support of its complaint on 30 March 1981. This information was transmitted to the Government which has not yet supplied detailed observations on this further information.

405. Haiti has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

406. The WCL states that the Ministry of Labour has refused legal recognition of the Autonomous Confederation of Haitian Workers (CATH), set up in conformity with the legal requirements, and that several of its leaders have been arrested or deported from the country after having been mistreated.

407. The complainant further states that the General Secretary of CATH, Mr. Yves Richard, was arrested, taken to the Presidential Palace, questioned, beaten and then expelled to
Curacao. Several journalists and trade union and political leaders have suffered the same treatment, in particular, Joseph Lafontant, Sylvio Claude, Harold Isaac, Gregorie Eugène and Jean Dominique. Thousands of workers, adds the complainant, are now in prison or have sought refuge in embassies and in the Dominican Republic.

408. According to the complainant, the headquarters of CATH was broken into by the Haitian police, its equipment and documentation was stolen and its bank accounts were frozen.

409. Finally, the complainant alleges that 48 workers have been dismissed without reason from the national brewery, six from the "Textile Look" factory and three from the "Dress Martin" establishment.

410. In its letter of 30 March 1981, the WCL adds that, on 22 December 1980, the trade unionist Simeon Jean Baptiste was shot dead by government forces while attending a trade union meeting. It also encloses a statement by Mr. Yves Richard, General Secretary of CATH, describing his arrest on 22 December and the poor prison conditions, and requesting the release of 45 named CATH members who are in prison.

B. The Government's reply

411. The Government states, as regards the allegation of refusal to recognise CATH, that on 2 June 1980 the Ministry of Social Affairs wrote to that organisation pointing out certain procedural problems with its request for registration, such as non-compliance with section 285 of the Labour Code which requires the lodging of a complete list of its affiliated trade unions, and requesting compliance before registration could be granted. This letter, a copy of which the Government supplies, was never replied to, and thus the Government maintains that the organisation was never legally formed.

412. Concerning the allegation of arrest of political and trade union leaders, the Government explains that Mr. Yves Richard was detained for political and subversive activities quite distinct from the exercise of trade union activities. As for Messrs. Joseph Lafontant, Sylvio Claude, Harold Isaac, Gregorie Eugène and Jean Dominique, the Government states that, as far as it is aware, they have no connection with the Haitian trade union movement; as for the thousands of workers alleged to be in prison or to have taken refuge in embassies or neighbouring countries, the Government also states that there is no evidence that this was done because of attempts to limit their trade union rights.

413. The Government points out that the cases of the 48 dismissed workers have been submitted to the Labour Court in accordance with the provisions of the Labour Code; some of the workers who had complained decided freely to reject judicial action and accepted severance pay from their employers. According to the Government, none of these workers belonged to a legally recognised union.

414. On 28 April 1981, the Government stated that the questions raised in the WCL's communication dated 30 March 1981 were
the responsibility of the Ministry of the Interior and National Defence and it pointed out that it would not fail to send the relevant information subsequently.

C. The Committee's conclusions

415. This case concerns allegations of non-recognition of a trade union organisation, arrests, maltreatment and expulsion of trade union leaders and members, interference with trade union premises and bank accounts and unjustified dismissal of 48 workers.

416. As regards the recognition of a trade union organisation, the Committee notes the Government's explanation that this could not be done because the organisation concerned had not complied with certain legal formalities set out in the Labour Code. The Committee notes that these formalities (section 285 of the Code) do not appear to be onerous and that the organisation seems to have continued its activities even without the advantages that are commensurate with registration under the Code.

417. Concerning the alleged arrests, maltreatment and expulsion of trade union leaders and members, the Committee notes the Government's statement that none of the leaders were connected to trade unions in Haiti, and that no measures had been taken against them for trade union activities. The Committee would recall that, in the past, it has expressed its view with regard to the application of measures which, although of a political nature and not intended to restrict trade union rights as such, might, nevertheless, affect the exercise of such rights. In the present case, it is important to point out that measures of preventive detention may involve a serious interference with trade union activities which it would seem necessary to justify by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period; especially where there are allegations of ill-treatment of detainees, the Committee has stressed the importance of carrying out an inquiry into the facts in order to establish responsibilities and of taking appropriate action, in particular, to give precise instructions and apply effective sanctions so as to ensure that no detainee is subjected to ill-treatment.

418. In relation to the allegation of interference with trade union premises and bank accounts, the Committee notes that the Government has not commented thereon. Nevertheless it considers it important to recall that the occupation of trade union premises and

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See, for example, 129th Report, Case No. 385 (Brazil), para. 69.

2 See, for example, 194th Report, Case No. 887 (Ethiopia), para. 87; 207th Report, Case No. 963 (Grenada), para. 229.

3 See, for example, 172nd Report, Case No. 824 (Benin), para. 57; 194th Report, Case No. 919 (Colombia), para. 355.
the freeze of union bank accounts may constitute a serious interference by the authorities in trade union activities, as it has stated in the past, and consequently may run counter to the principle that trade unions have the right to organise their activities and to the legal exercise thereof without hindrance by the public authorities. Furthermore, the International Labour Conference, in its 1970 Resolution concerning Trade Union Rights and their Relation to Civil Liberties, placed special emphasis on the right to protection of trade union property. The Committee would appreciate receiving any observations that the Government might wish to make in this respect.

419. As for the dismissal of 48 workers, the Committee notes the Government's statement that those who so wished have had their cases reviewed by the Labour Court in accordance with the provisions of the Labour Code, and those who decided to reject judicial action have freely accepted severance pay from their employers. The Committee requests the Government to supply information on the specific reasons behind the dismissals and on the results of the appeals brought by some of the dismissed workers.

The Committee's recommendations

420. In these circumstances, the Committee recommends the Governing Body to adopt the present interim report and, in particular, the following conclusions:

Regarding the allegations concerning the death of Mr. Simeon Jean Baptiste and the imprisonment of 45 trade unionists mentioned by the complainant, the Committee requests the Government to supply its observations.

Regarding the non-recognition of a trade union organisation, the Committee notes that this organisation did not comply with the normal legal formalities provided for in the legislation and, in any case, apparently carried on its activities without registration.

As regards the alleged arrests, maltreatment and expulsion of trade union leaders and members, the Committee would draw the Government's attention to the principles that measures of preventive detention may involve a serious interference with trade union activities and that there should be an inquiry and appropriate action taken where there are allegations of ill-treatment of detainees.

As regards the alleged interference with trade union premises and freezing of bank accounts, the Committee notes that the Government makes no comment, and while drawing its attention to the importance of the right to protection of trade union funds and property, would ask it to send any observations that it might have in this respect.

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1 See, for example, 120th Report, Case No. 620 (Panama), para. 43; 204th Report, Case No. 962 (Turkey), para. 257.
Regarding the alleged dismissal of 48 workers the Committee requests the Government to supply information on the specific reasons behind the dismissals and on the results of the appeals brought by some of the dismissed workers.

Case No. 1029

COMPLAINT PRESENTED BY THE PUBLIC SERVICES INTERNATIONAL AGAINST THE GOVERNMENT OF TURKEY

421. By a communication dated 16 February 1981, the Public Services International presented its complaint of violations of trade union rights in Turkey, and the Government for its part forwarded its observation on 1 April 1981.

422. Turkey has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

423. The Public Services International (PSI) alleges that following the coup d'Etat of 12 September 1980, the Turkish Government withdrew many of the basic human rights both collectively and individually from trade unionists in that country, in particular, as regards the Public Service Union (GENEL-IS) - a PSI affiliate, which has been stopped by the authorities from carrying out any trade union functions by the arrest and imprisonment of its leaders, and in particular by the detention of the President of the Confederation of Unions of Progressive Workers (DISK), and of GENEL-IS, Mr. Abdullah Bastürk. Additionally, because of his imprisonment, he has been prevented from attending constitutional Executive Board meetings, and all attempts to communicate with him, including a mission to Turkey by the PSI President, General Secretary and a senior Executive Board member, have failed. The PSI expresses its deepest concern for his safety and well being and declares its total opposition to the restrictions and penalties now imposed upon trade unions, their leaders and members. It sharply condemns the Government for violating and indeed defying the principles enshrined in the ILO Conventions, particularly as regards the ones contained in Convention No. 98, which Turkey has ratified.

B. Reply of the Government

424. In its communication of 1 April 1981, the Government states that the allegations do not differ in substance from those already examined by the Committee, contained in Case No. 999, and to which the Government has already replied. The Government adds that
Mr. Bastürk is being detained and charged with contraventions of sections 141, 142 and 146 of the Penal Code, the provisions of Act No. 1402 on the State of Emergency, those of Act No. 6136 on firearms, and those of Acts Nos. 274 and 275 on trade unions and strikes.

C. Conclusions of the Committee

425. The Committee has already examined the general trade union situation in Turkey in Case No. 999, which included the detention of Mr. Bastürk, and in which it has reached interim conclusions.¹

426. The Committee notes that Mr. Bastürk is charged with offences related in particular to trade union activities and strikes. In this regard, it must point out² that preventive detention of trade unionists on the ground that breaches of the law may take place in connection with a strike involves a serious danger of infringement of trade union rights.

427. Moreover, keeping in mind the fact that under section 146 of the Turkish Penal Code Mr. Bastürk faces the possibility of a death sentence, the Committee stresses the importance³ which should be attached to the principle that all arrested persons should be subject to normal judicial procedure in accordance with the principle enshrined in the Universal Declaration of Human Rights. It also emphasises the importance of fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the Government considers have no relation to their trade union functions.⁴

428. The Committee would also wish to remind the Government that in cases involving the arrest, detention or sentencing of a trade union official - as individuals have the right to be presumed innocent until found guilty - it has considered that it is incumbent upon the Government to show that the measures it has taken are in no

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¹ See 207th Report, Cases Nos. 997 and 999, paras. 275 to 315, approved by the Governing Body at its 215th Session (February-March 1981).

² See, for example, 27th Report, Case No. 143 (Spain), para. 183.

³ See, for example, 131st Report, Case No. 571 (Bolivia), para. 92, Cases Nos. 606 and 663 (Paraguay), paras. 103, 147th Report, Case No. 766 (Yemen), para. 361, Case No. 774 (Central African Republic), para. 372.

⁴ See, for example, 147th Report, Cases Nos. 698 and 749 (Senegal), para. 85.
way occasioned by the trade union activities of the individual concerned.¹

429. As for the other arrested GENEL-IS leaders, the Committee would once again wish to express its deep concern over their situation, and in general would recall that a genuinely free and independent trade union movement can only develop if basic human rights are respected.

430. Lastly, the Committee would wish to be kept informed of any developments in this case and also requests the Government to send information on the results of the judicial proceedings against the arrested trade union leaders.

Recommendations of the Committee

431. In these circumstances, the Committee recommends the Governing Body to adopt the present interim report and in particular the following conclusions:

The Committee, keeping in mind that Mr. Bastürk, who is the President of DISK and GENEL-IS, faces the possibility of a death sentence, and that other GENEL-IS leaders are in prison, expresses its deep concern about their situation.

In this regard it stresses the importance which should be attached to their right to fair trial by an independent and impartial judiciary and recalls that they should be presumed innocent until found guilty and that it is incumbent upon the Government to show that their being brought to trial is in no way occasioned by their trade union activities.

The Committee requests the Government to send it information on the results of the judicial proceedings against the arrested trade union leaders, and wishes to be kept informed of any developments in this case.

As in Cases Nos. 997 and 999 examined above, the Committee empowers its Chairman to contact the representatives of the Government of Turkey at the next session of the International Labour Conference so as to discuss the questions pending in this case and in particular with a view to the possibility of a direct contacts mission to Turkey.


¹ See, for example, 103rd Report, Case No. 536 (Gabon), para. 292.
INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 26 and 28 May 1981 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it, on the one hand, a number of complaints of infringements of trade union rights in Uruguay presented by various trade union organisations (Case No. 763) and, on the other hand, a complaint concerning the observance by Uruguay of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) made by a number of delegates to the 61st (1976) Session of the International Labour Conference under article 26 of the Constitution of the ILO.

3. At its 212th Session (March 1980) the Governing Body adopted interim conclusions reached by the Committee in its 200th Report.

4. Since then, a representative of the Director-General carried out a direct contacts mission to Uruguay and the Government has transmitted certain information. The Committee submits for the approval of the Governing Body a further report on the case and recommends the Governing Body to examine this report at its 216th Session.\(^2\)

**Case No. 763**

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, AND VARIOUS OTHER TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF URUGUAY


5. A number of trade union organisations, including the World Federation of Labour (WCL) and the World Federation of Trade Unions (WFTU), have presented allegations of violations of freedom

\(^1\) See footnote 1, p. 1.

\(^2\) See footnote 2, p. 1.
6. The Committee has examined the present case on several occasions. At its February 1980 Session, the Committee examined all aspects of this case, at which time it presented an interim report to the Governing Body.1

7. Since that time, the complainant organizations have sent the following communications: the International Confederation of Free Trade Unions (23 May, 25 September and 26 November 1980), the National Workers' Convention of Uruguay (CUT) (15 May, 14 July, 17 November and 3 December 1980), the World Confederation of Labour (19 September 1980), and the General Confederation of Workers of Uruguay (19 March 1981). In addition, on 25 May 1981, the Office received a communication from the ICFTU containing an annex of comments made by the Legal Service of the National Committee of Trade Union Rights of Uruguay.


9. The Committee on Freedom of Association, at its March 1980 Session, empowered the Chairman to examine with the representatives of the Government of Uruguay on the Governing Body appropriate means of arriving at a rapid and satisfactory solution of the questions raised in the examination of this case.

10. The Chairman of the Committee on Freedom of Association held discussions with representatives of the Uruguayan Government, and on 14 May 1980 the Government of Uruguay sent a communication to the Director-General of the ILO in which it requested the establishment of direct contacts "so as to be able to consider in a broader manner the different subjects of common interest that are being examined".

11. The Director-General, as he had done in 1975 and 1977, when direct contacts took place with the Government of Uruguay, designated Professor Philippe Cahier as his representative to carry out this new mission at the beginning of January 1981. He was accompanied by Mr. Manuel Araoz, Chief of the Freedom of Association Branch. The Committee on Freedom of Association was informed of this at its November 1980 Session.

12. The mission took place in Uruguay, as planned, from 3 to 11 January 1981.

13. While in Montevideo, the representative of the Director-General was received by the President of the Republic, Dr. Aparicio Aparicio...
Méndez, with whom he reviewed the different problems which were the subject of the mission. The representative of the Director-General had three meetings with the Minister of Labour and Social Security, Dr. Carlos A. Maeso, during which he was able to examine in detail all the questions which were the subject of the mission. The following persons were present at these meetings: Under-Secretary, Hr. H. Balvasio, the Chief of the Labour Office of the GHQ of the Armed Forces, Mr. Alouzo, two members of the staff of the Office, Messrs. d'Andrea and Olivera, and the counsellor of the Minister of Labour, Dr. Jorge Alvarez Olloniego. The representative of the Director-General was also received at the Ministry of Foreign Affairs by the Minister, Mr. Adolfo Folle Martinez, at the Ministry of the Interior by the Minister, General Nunez, the Under-Secretary, Mr. Jorge Amondarain, and the Director-General of the police, Colonel Castiglione. The representative of the Director-General visited the Supreme Military Tribunal, where he was received by the President, Colonel Federico Silva Ledesma, and was able to examine all the files he wished to consult concerning convicted trade unionists. Having requested permission from the competent authorities to interview five trade unionists, who were serving their sentences, in prison and having obtained this authorisation, the representative of the Director-General was able to interview personally, without any outside witnesses present, Messrs. Luis Alberto Iguini Ferreira, Carlos Maria Aristondo Pereira, Rosario Pietraroia Zapala, Hernando José Marrero Fuentes and Luis Enrique Viñas Cotrofe. The representative of the Director-General also visited trade unionists who had previously been detained but who were now at liberty.

14. As concerns employers, the representative of the Director-General met the President and other leaders of the Chamber of Industries, and also the President and leaders of the National Chamber of Commerce. He also went to the Chamber of Commercial Products of the country, where he had interviews with its President and the Managing Committee.

15. The representative of the Director-General also had long discussions with the leaders of trade unions of different tendencies, most of whom he had already met during his previous visits. It is thus that in Montevideo he saw separately, and more than once, the leaders of seven organisations which were affiliated with the National Workers' Convention (CNT), before that organisation was dissolved by the Government in 1973, and also leaders of two autonomous trade unions. He also met the President, the Secretary-General and other leaders of the General Confederation of Workers of Uruguay (CGTU), the President and the Secretary-General of the Trade Union Action of Uruguay (ASU), the leaders of an organisation which had been created recently (CATUD), as well as the representatives of the National Commission of Trade Union Rights (CNDS). He was also able to talk with a lawyer who is a specialist in trade union law. Lastly, he received written communications from six other trade unions.

16. In his report on the mission, the representative of the Director-General noted the courtesy accorded to him by the governmental authorities, and indicated that the facilities offered to him were better than during his previous visits. As soon as he arrived in the country, the Minister of Labour and Social Security told him that all the necessary facilities would be made available,
and stressed that the Government wished to provide frank and sincere assistance. A rapid and satisfactory response was given to all his requests for interviews and for information. In this regard, the action of Dr. Jorge Alvarez Olloniego, assigned by the Government to facilitate these contacts, was most effective.

17. Thanks to the co-operation he received from all the persons he was in touch with, particularly the employers' and workers' organisations, and the great interest they took in the mission, the representative of the Director-General was able to compile the information and viewpoints which served as the basis for this report.

18. Concerning this aspect of the case, the representative of the Director-General in his report on the mission indicates that the Committee on Freedom of Association has stated over a period of several years that it considers it urgent that trade unions should be enabled, both in law and in practice, to conduct their activities, without hindrance, this being the necessary condition for the establishment of a system of harmonious labour relations in Uruguay. Consequently, the Committee has considered that the adoption and the coming into force of new legislation on trade unions should constitute a decisive step to this end, and it has followed developments on this important question with great interest.

19. During the 1977 mission of the representative of the Director-General, government circles indicated that the trade union situation prevalent in the country was to be considered as temporary, and that the creation of joint committees should be considered as a first step towards the promulgation of trade union legislation. It was also indicated to him that the Government was in the process of studying the basic principles of the trade union legislation, without specifying the date when the legislation would finally be adopted.

20. In November 1978 the Government communicated to the Committee the preliminary draft of an Occupational Associations Bill.

21. In February 1979 the Committee examined the provisions of the preliminary draft; while noting that it contained certain positive features, such as the right to form occupational associations without previous authorisation, and to form federations and confederations, the Committee nevertheless made comments on several provisions of the preliminary draft which were not in conformity with the principles of freedom of association. These comments were made in order that the provisions in question might be re-examined, so that the future legislation would be in conformity with these principles and with the freedom of association Conventions ratified by Uruguay.

22. In May 1979, the Committee took note of a statement by the Government to the effect that the Committee's comments on the
preliminary draft Bill would be taken into account in the preparation of the definitive text, which would be submitted to the State Council; for this purpose both the workers' and the employers' organisations were being consulted.

23. In November 1979, the Committee considered it timely to repeat that after six years of serious restrictions on trade union activities there was a very urgent need to promulgate and implement legislation which recognised the right for workers, without any distinction whatsoever, to set up occupational organisations, and the right of these organisations to function and operate freely, in accordance with the Conventions on freedom of association.

24. In February 1980, the Committee examined the Occupational Associations Bill, which the executive power had submitted to the State Council on 17 December 1979. At that time, the Committee noted that this Bill varied very little from the preliminary draft, and it recalled the points of divergence with the ILO Conventions and the amendments which needed to be made; they may be summarised as follows:

(a) to provide for the possibility of forming occupational associations at both the enterprise and the industrial level;

(b) among the conditions of eligibility of trade union leaders, to eliminate the requirements of a declaration of "democratic faith" (section 5(c)), and that leaders must have belonged to the particular trade union for at least two years (section 5(d));

(c) to delete the obligatory voting in elections and plebiscites (sections 15(d) and 25);

(d) to limit the broad powers of the public authorities to require reports on trade union activities (section 22(a));

(e) to delete the maximum duration laid down for trade union assemblies (section 24);

(f) to delete section 26 (obligatory organisation of a plebiscite to examine draft collective agreements and in other cases provided for by regulations);

(g) to delete section 27 (suspension of membership of a member who has not taken part in a vote);

(h) to delete section 28 (lower-level trade unions are responsible, except in certain cases, for decisions taken by higher-level organisations to which they are affiliated).

25. With these considerations in mind, at its February 1980 Session the Committee expressed its firm hope that its comments would be taken into account in the final version of the law, and asked the Government to keep it informed of any developments in this regard.

26. During his first conversation with the Minister of Labour and Social Security, and in later meetings, the representative of the Director-General drew his attention to the
fact that it was not only urgent that the Bill be enacted as soon as possible, but also that it was necessary that the future law be in conformity with the obligations laid down in the international labour Conventions ratified by Uruguay. The Minister informed the representative of the Director-General that although the Bill was still before the State Council for adoption as soon as this legislative body resumed its session, that is to say after 15 March, it would immediately examine the Bill so that it would in any event be enacted in the first half of 1981 and very probably before 15 May. Regarding amendments to the Bill, without wishing to prejudge the attitude of the State Council, the Minister stated that his Government was fully conscious of its obligations under international treaties to which it had adhered. Consequently, in his opinion, the definitive text of the Act would be adjusted to the maximum to the ILO Conventions on freedom of association which his country had ratified. He added that he had already intervened to this end, and would continue to do so, before the State Council, and more specifically before the Labour and Social Security Commission, where the Bill was at present. Lastly, the Minister stated that once the Occupational Associations Act had been promulgated, the Government would proceed to the elaboration of a law to regulate strikes.

27. In the employers' circles, the representative of the Director-General was informed that, for the sake of the country's future, the adoption of the Occupational Associations Bill was considered necessary, but that it was very important that the Act should lay down safeguards to ensure that these associations functioned in conformity with democratic principles, and were not transformed into instruments of activity contrary to the national interest.

28. The mission report indicates that on the workers' side opinions are more varied; a distinction should be made, on the one hand, between the content of the Bill and, on the other, the desirability of its rapid adoption. On the first point, there is general agreement that the Committee on Freedom of Association has indicated the points on which changes should be made. However, the trade unions consider that there are important gaps in the Bill. In the first place, it does deal with the right to organise of civil servants. On this point the Government maintains the opinion expressed before the Committee that this right is covered by section 27 of the 1943 Civil Servants Statute. The workers also consider that the Bill should have dealt with the right to strike, which is recognised by article 57 of the Constitution. Finally, they consider it indispensable for the regularisation of trade union life to regulate the question of trade union immunity and the compulsory deduction of trade union membership dues from wages ("check-off"). As to the desirability of adopting legislation on occupational associations as soon as possible, a number of trade union leaders, among them those of the CGTU, consider that, with the amendments suggested by the Committee on Freedom of Association, this legislation can only contribute towards normalisation of trade union life. Other trade union leaders, generally connected with the CNT, are more sceptical regarding the necessity of adopting new trade union legislation, although, like all other workers, they wish to see the principles and provisions of the ILO Conventions on freedom of association govern the trade union activities of the country as soon as possible.
29. Without claiming to arrive at a final conclusion on this problem, the report of the representative of the Director-General states that, if one compares the situation in 1981 with that which prevailed in 1977, the moment has arrived (and on this point it seems that the Government, the employers and large sections of the workers agree) to adopt, as soon as possible, trade union legislation which will constitute a significant step forward if it does not contain divergencies from the principles and provisions of the ILO Conventions on the matter, and if in the near future steps are taken to regulate important trade union issues not covered by the Occupational Associations Bill.

30. The ICFTU's communication of 20 May 1981 refers to the earlier Bill which the Committee already examined at its earlier meetings. According to this communication the Bill did not cover the right to strike and protection of trade union leaders (fuero sindical).

31. By a communication dated 18 May 1981, the Government states that the Occupational Associations Act was passed by the State Council on 12 May 1981; the text is annexed.

32. The Committee notes the adoption of the Occupational Associations Act. Having examined it, the Committee observes that important improvements have been introduced in respect of the provisions of the Bill on which the Committee had made comments. Thus, the Committee notes with satisfaction that the following provisions of the Bill were deleted: the obligation to make a declaration of "democratic faith" in order to be eligible as a trade union leader; the obligatory voting in elections and plebiscites; the limitation of the maximum duration of trade union assemblies; the obligatory organisation of a plebiscite to examine draft collective agreements and in other cases provided for by regulations; and suspension of membership of those who have not taken part in a vote. The Committee also notes that the new Act limits the broad powers of the authorities to require of reports on trade union activities, and that the lower-level trade unions are not responsible for decisions taken by higher-level organisations to which they are affiliated. The Committee notes, however, that the Occupational Associations Act does not refer to the possibility of forming occupational associations at both the enterprise and the industrial level, and it requires a worker to have belonged to the particular trade union for two years in order to be considered eligible for trade union office, except in the case of a new occupational association in accordance with the new Act, or of one which adjusts to the new Act from the date it enters into force (section 5(c) of the Act); this does not fully conform to the principles of freedom of association.

33. As regards public servants, the Government had stated that they enjoy the right to organise under the Civil Servants Statute of 1943.

34. The Committee trusts that the Government will take the necessary measures so that the legislation will explicitly recognise the possibility of forming occupational associations at the enterprise and the industrial levels, and will repeal the requirement, in certain cases, of two years' membership of the trade union as a condition of eligibility to trade union office. The
Committee also trusts that the regulations to be issued under the Act will be in full conformity with the obligations arising under the freedom of association Conventions ratified by Uruguay and that other legislative measures will deal with the exercise of the right to strike and will ensure the protection of trade union leaders against any act of anti-union discrimination. The Committee considers that it should draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case, so that it may continue to examine it.

II. Arrests and detentions

35. As regards detention of trade union officials, at its February 1980 Session, the Committee noted with interest that certain trade union leaders had been released; expressed its concern over the fact that several persons had had to wait for a considerable time to be tried by the courts; it had called the Government's attention, in particular, to the principle that any person arrested should be subject to normal judicial procedure and should be brought before the appropriate judge without delay; and it had asked the Government to continue to supply information on the situation of the trade unionists mentioned by the complainants.

36. By a communication of 3 December 1980, the National Workers' Convention of Uruguay sent a list of detained trade unionists. The Government, for its part, in a communication of 12 February 1981, described the present situation of the persons mentioned by the complainant.

37. During the mission, the representative of the Director-General had occasion to examine with the competent authorities the questions related to detentions and arrests.

38. As regards persons detained for a few hours or a few days for questioning without being charged subsequently, the representative of the Director-General, during the contacts which took place in 1977, was able to note a reduction in this type of arrests, some of which seemed to have been the consequence of trade union activities. However, the number of such arrests had remained relatively high, and could be interpreted, in some cases, as a means of intimidating the trade union movement as a whole. Since then, and particularly in the 1979 through 1980 period, the situation seems to have improved. According to trade unionists of different tendencies with whom the representative of the Director-General spoke, arrests due to trade union activities were entirely exceptional and the situation was in no way comparable to that which prevailed in 1975 and 1977. However, as was pointed out to the representative of the Director-General, on the occasion of 1 May 1980, a few arrests did take place, either of workers who did not report for work, or of those who took part in a commemorative mass, which, in the Minister of Labour's opinion, had taken on a political overtone. These persons were released shortly thereafter. In addition, leaders of the Association of Bank Employees were arrested on 29 April 1980, for publishing a document, which had been sent to the authorities, in which the trade union criticised the law which
suppressed 1 May as a holiday. These persons were detained by the police for a period lasting from one day to one week, after which they were released. Consequently, it seems that, on this point, the Government's attitude has changed appreciably.

39. Turning to those who have been prosecuted and sentenced to imprisonment, in the first place a three-fold improvement can be observed: the delays between arrests and sentences have been considerably shortened, the number of persons detained also seems to have been reduced, as does the number of persons who have recently been prosecuted.

40. Regarding the first point, the representative of the Director-General had indicated in his 1977 report, that the military penal procedure was very slow. Indeed, an examination of the list of detainees annexed to his mission report showed that only a small number of them had been convicted, although most of the arrests occurred in 1974 and 1975.

41. According to the representative of the Director-General, the situation appears different today: almost all the detainees had been tried at first instance, and the majority on appeal. The procedure itself has been greatly accelerated.

42. As regards this procedure, the report of the mission also refers to the defence of the detainees, and to the results of appeals. As was mentioned in the report of 1977, the majority of the accused were defended by civilian lawyers. The situation has changed since then. A review of the files (and this was also confirmed by the President of the Supreme Military Tribunal), shows that in almost all cases the defence was conducted by a military officer. According to the government authorities, the reason for this is financial, since most of the accused could not afford the costs of a civilian defence. According to other sources, civilian defence counsel had been encountering difficulties in accomplishing their functions. Whatever the explanation may be, the representative of the Director-General observed in examining some files that the role of the defence was very limited, since for the most part the defence counsel had limited himself to expressing the view that the penalty requested was an exaggerated one. People interviewed by the representative of the Director-General also told him that their contacts with their military defence lawyers were practically non-existent.

43. Regarding the results of appeals, which under article 489 of the Military Penal Procedure Code are automatic, in examining 17 cases, the representative of the Director-General observed a slight tendency to increase the penalties pronounced at first instance. Thus penalties were increased in five cases; in seven cases the penalties imposed at first instance were confirmed, in two cases the penalties were reduced, and in three cases the judgement had not yet been given. In the opinion of the President of the Supreme Military Court, the explanation for the increase in penalties resides in the discovery of new grounds for conviction between the first instance and the appeal.

44. According to information which the representative of the Director-General obtained from the Supreme Military Court, there has been a reduction recently in the number of persons detained during their trial, or following their conviction, irrespective of whether they were in some way associated with the trade union movement.
45. The representative of the Director-General did not obtain a detailed breakdown of the grounds for releases, although some of them were of people who have completed their sentence. In examining the 17 cases mentioned above, he did however observe some cases of early release. In one case, the person in question had been freed after 18 months of imprisonment, and even though he was subsequently sentenced to four years' imprisonment he remained free on probation. In other cases the period of detention pending trial made it possible to release the persons concerned when they were sentenced to an equivalent period of imprisonment, even though the court of appeal had not yet examined the case.

46. Finally, under the legislation, a convicted person can apply for release on parole after serving half of his sentence. However, the representative of the Director-General did not learn of any cases where this had happened.

47. At times, people are kept in prison under urgent security measures even after having served their sentence. The representative of the Director-General learned of two such cases, in which the people concerned were later released.

48. The number of new detentions following trial has substantially diminished. This was confirmed to the representative of the Director-General on all sides. Some attribute it to the beginnings of liberalisation, whereas others find the explanation in the fact that most of the people more or less closely involved in the 1973 events have already been tried and convicted.

49. Regarding the grounds of conviction, the representative of the Director-General indicated in his 1977 report that: (1) according to the Government no one had been prosecuted for their trade union activities, but for subversive activities carried on under the cover of trade union activities; (2) the examination of a number of files had enabled him to conclude that the criminal prosecutions were in fact directed against political activities, which the Government considered dangerous to public order, and also that some of the accusations arose out of the CNT's activities following its dissolution in 1973, which were therefore considered by the Government to be illegal.

50. After having again examined a number of files, the representative of the Director-General considers that the conclusions reached in his 1977 report remain valid in 1980. Since he could not examine the files of all the persons mentioned in the complaint, he asked to see about 15 of them, which he was able to consult at the Supreme Military Tribunal.

51. The majority of the files examined relate to charges of assistance to subversive organisations, participation in subversive organisations, and attacks on the Constitution, all falling under section 60 of the Military Penal Code. All the persons whose files he examined were members of the Communist Party.

52. In two of the cases examined, the charges referred to terrorist activities: a bomb explosion and an armed attack. Six other cases concerned activities in favour of the Communist Party: secret meetings, collection of funds etc. Two of these persons have been freed, one of them after having served a five-year sentence,
and the other on probation. One case refers to accusations arising out of prohibited political activities, and also to activities relating to a trade union following its dissolution. Finally, five other persons were convicted for activities connected with CNT after its dissolution: secret meetings, collection of funds, distribution of bulletins, etc. Two of them are free, one on parole and the other on probation.

53. The representative of the Director-General was able to talk to five detainees in prison. Contrary to what happened last time, these interviews took place without any representative of the authorities present. Two of the detainees he visited indicated that they had been ill but had recovered now. They all confirmed that they received good medical assistance. He was generally informed by sources of different tendencies that convicted persons sentenced to terms of imprisonment were not ill-treated in the places in which they served their sentence. However, this does not exclude psychological pressure, occasional bullying, and rather frequent sanctions, such as deprivation of daily exercise for minor breaches of the rules.

54. After the representative of the Director-General had completed his mission, the Government sent a communication dated 12 February 1981, containing full information on the 139 persons, who, according to the complainants, were in detention. This information indicated that 77 of them had been convicted and were still in detention, 8 were presently on trial, 8 were still being sought, 7 were on probation, 15 have been released and 14 had been neither detained nor tried. Finally, the Government requested supplementary information on 10 of them.

55. The Committee observes, concerning the arrests for periods lasting from a few hours to a few days for questioning that, according to the report on the mission which took place in Uruguay from 3 to 11 January 1981, the situation seems to have improved since the last mission in 1977, and that, according to trade unionists of many different tendencies with whom the representative of the Director-General spoke, arrests of this type are very rare and the situation is in no way comparable to that which prevailed in 1975 and 1977.

56. As regards persons detained during their trial or sentenced to terms of imprisonment, the Committee notes that the representative of the Director-General found that there had been improvements in three respects: the delays between arrests and sentences have been considerably shortened; the number of persons detained has been reduced, as has the number of persons who have recently been prosecuted. The Committee notes, in particular, that almost all the detainees have been tried at first instance, and the majority on appeal, and finally, that the trial procedure has been greatly accelerated.

57. The Committee notes that in almost all the trials, the defence was entrusted to a military officer, that the examination of a number of files revealed that the role of the defence was very limited, and that the persons interviewed indicated that contacts with their military defence lawyers had been practically non-existent.
58. The Committee observes also that under section 489 of the Code on Military Procedure appeals are automatic, and that the representative of the Director-General observed a slight tendency to increase the penalties pronounced at first instance. According to the President of the Supreme Military Court, this is due to the discovery of new grounds for conviction.

59. The Committee notes that recently the number of persons detained during trial or following conviction irrespective of whether they were associated with the trade union movement, has been reduced.

60. The Committee notes that, at times, under urgent security measures, people are kept in prison even after having served their sentence.

61. The Committee notes that the representative of the Director-General obtained permission to examine the files on the detainees' trials, and that he was able to meet several detainees in prison in the absence of any representatives of the authorities. On the other hand, the Committee notes that the detainees said they received good medical assistance, and that sources of all tendencies stated that persons sentenced to terms of imprisonment were not ill-treated, which, however, did not exclude psychological pressure, occasional bullying and sanctions for minor breaches of the rules.

62. The Committee has examined the Government's communication of 12 February 1981, in which it sent further information on the list of 139 persons, who according to the complainants, were in detention. This information indicated that 77 of them had been convicted and were still in detention, 8 were being tried, 8 were still being sought, 7 were on probation, 15 had been released and 14 had neither been detained nor tried. The Government requested supplementary information on 10 of them.

63. From the information examined, the Committee notes that the number of persons detained for trade union reasons, has been reduced in recent years, and particularly the number of those recently prosecuted. The Committee also notes that of the 139 detained persons mentioned by the National Workers' Convention of Uruguay, 77 are still serving their sentences, and 36 have been released in some form or another. Concerning the penal procedure, the Committee has noted that appeals are automatic, in virtue of section 489 of the Military Penal Procedure, and at times may lead to increases in penalties, whereas in other cases, through the use of urgent security measures, detainees continue to be held in prison even after having served their sentences. Furthermore, the report of the mission refers to some cases in which the detainees' contacts with their lawyers were practically non-existent.

64. In these circumstances, in view of the time which has elapsed since the majority of the detainees and convicted persons were deprived of their freedom, and in view of the convictions which were based on trade union reasons, in particular - as indicated in the report of the representative of the Director-General - activities associated with the National Workers' Convention of Uruguay after its dissolution (secret meetings, collection of funds, distribution of bulletins, etc.) - the Committee considers that the release of the persons who are detained for these reasons is a
necessary condition to the harmonious development of labour relations and requests the Government to take measures in this direction and to inform it in this regard.

III. Other allegations

65. In its letter of May 1979, the WFTU stated that in certain cases the workers who requested the setting up of joint committees were being subjected to pressure and persecution. In this regard the complainant mentioned particularly the "Aurora" textile factory and the undertaking "Banco Comercial".

66. The WFTU further stated that some trade union premises had been closed and occupied by government bodies. The WFTU mentioned the case of the National Trade Union of Construction Workers and Allied Trades (SUNCA), whose premises had apparently become the barracks of the grenadier guards, of the National Union of Workers in the Metal and Allied Trades (UNTRMA) whose premises had apparently become the headquarters of the Police Section 12, of the National Workers' Convention (CNT), whose premises had apparently become a centre for the women police of Montevideo (and whose equipment, paid for by the workers, was being used by Department No. 6 of the police), the case of the Meat Workers' Federation, the use of whose premises had been requested by the Montevideo Police Commissioner of Section No. 24, the case of the Federation of Teachers, Secondary School Teachers' Section, whose premises had also, according to the complainant, become para-military installations.

67. The WFTU also refers to dismissals taking place on the basis of Institutional Act No. 7; 40 members of the staff of the Clínicas Hospital were thus dismissed in January 1979.

68. For its part, the National Workers' Convention alleged in a letter of September 1979, that on 26 July 1979, the prefecture of the police of Montevideo had notified the Association of Bank Employees of Uruguay (AEBU), that it was deprived of legal personality, in conformity with Decree No. 622/973 of 1 August 1973.

69. At its February 1980 Session, the Committee noted that the Government had just sent, on 18 January 1980, certain observations on these allegations, and therefore adjourned its examination of them.

70. In a communication of 19 March 1981, the Confederation of Workers of Uruguay (CGTU) alleged that Joaquín Peschera and Juan Gros had been dismissed by the undertaking Urreta S.A.; they had been entrusted by the Regional Co-ordinator of the CGTU, with initiating activities aimed at organising the workers of the undertaking.

71. In its communication of 18 January 1980, the Government had expressed its concern to accelerate the procedure for the establishment of joint committees, but stated that their formation and functioning had been left entirely to the will of the employers and workers. As concerns the alleged pressure and persecution of
the joint committees in the undertakings "Banco Comercial" and "Aurora", the Government states that the complainant neither mentioned concrete facts nor offered solid evidence. On the other hand, it emerges from the report of the mission of the representative of the Director-General that the joint committees, in which at one time great hopes were placed, had finally received neither from the workers nor from the employers the support which had been expected.

72. In its communications of 18 January 1980 and 12 February 1981, the Government refers to the allegations concerning the closing of the premises of trade unions, and their occupation by the state bodies. The Government's information discloses that the National Union of Workers in the Metal and Allied Trades (UNTRMA), the National Trade Union of Construction Workers and Allied Trades (SUNCA), and the Uruguayan Federation of Teachers, were declared illegal and dissolved respectively in 1973 and 1974, because of their association with the Communist Party and the CNT. For this reason, their premises were closed and their assets confiscated. These organisations, according to the Government, have neither a de jure nor a de facto legal status, and thus have no legal right to own assets. Concerning the Association of Electricity and Telecommunications Workers (AUTE), the Government states that their premises, presently closed and abandoned, are at the disposal of the authorities to be designated by the workers. Finally, when in Uruguay, the representative of the Director-General was informed that the premises of the Meat Federation were open.

73. As regards the January 1979 dismissals of 40 members of the staff of Clinicas Hospital, which took place on the basis of Institutional Act No. 7, in its communication of 18 January 1980, the Government qualifies these allegations as vague, since they give neither the names of the dismissed persons, nor precise information regarding the trade union activities of the persons concerned, nor indications that these were a determining factor in the alleged dismissals.

74. In his mission report, the representative of the Director-General indicates that since the adoption of Institutional Act No. 7 (27 June 1977), dismissals of public administration employees are allowed for reasons of suppression or reorganisation of services, or for reasons of public interest. In the latter case, according to the Act, the decision to dismiss is discretionary. On the other hand, the mission report of the representative of the Director-General, in dealing with this aspect of the case, does not exclude the possibility that certain dismissals may have been for trade union reasons. According to the Ministry of Labour, in a three-year period, only 36 persons were dismissed.

75. As regards the situation of the Association of Bank Employees of Uruguay (AEBU), the Government indicates in its communication of 18 January 1980, that Decree No. 622/73 establishes a series of requirements necessary for registration which automatically confers legal personality. AEBU did not fulfil any of these requirements and for that reason does not enjoy legal personality. On the other hand, the Government states that Decree No. 622/73 will be substantially amended by the future Occupational Associations Act. The representative of the Director-General indicates in his mission report that, according to the Ministry of
the Interior, the civil personality of the AEBU had been maintained, allowing it to possess and administer assets, so that this organisation was continuing to function normally within the framework of its sporting and cultural activities, notwithstanding the fact that it had been deprived of legal personality, in virtue of Decree No. 622/73.

76. In its communication of 12 May 1981, the Government states that the CGTU’s allegations concerning Messrs. Joaquin Peschera and Juan Gros are unfounded. According to the Government, Mr. Peschera was never dismissed and is continuing to work normally at the undertaking. As regards Mr. Gros, the Government adds, he was dismissed together with other workers, on the basis of the undertaking’s decision to reduce personnel for economic reasons, as a consequence of a reduction in sales. Furthermore, the Government states that the undertaking Ureta S.A. was not aware that Mr. Juan Gros was initiating activities aimed at organising the workers of the undertaking, and this was not mentioned by Mr. Juan Gros himself when he went to the State Secretariat to claim the sums owed to him as a result of the termination of his employment relationship.

77. As concerns the allegations regarding the joint committees, the Committee observes that the complainant does not refer to concrete facts nor does it provide evidence to support the alleged pressures and persecutions of the workers who requested the formation of joint committees. In the light of these circumstances, and given the limited interest in these committees by both the workers and the employers, the Committee considers that this aspect of the case does not call for further examination.

78. As regards the closing of trade union premises, and their occupation by state bodies, the Committee notes that, according to the mission report, the trade union premises of the Meat Federation are open. The Committee also notes that the confiscation of the assets of the UMTRA, SUNCA, and of the Uruguayan Federation of Teachers, occurred as a result of the declaration of their illegality and dissolution. The Committee observes that the Government has not stated whether state bodies have taken over these premises as is indicated by the WFTU. In this respect, the Committee draws the attention of the Government to the fact that the property of dissolved organisations must be distributed between the members of the organisation, or transferred to the organisations which succeed them.¹

79. Regarding the dismissals of 40 members of the staff of Clinicas Hospital, the Committee notes from the mission report that certain dismissals may have been for trade union reasons. Consequently, the Committee asks the Government to re-examine the situation of the dismissed persons in order to reinstate those who were dismissed for reasons related to trade union activities.

80. As regards the allegations relating to the AEBU, the Committee notes that this association was deprived of legal personality because it did not fulfil any of the requirements prescribed in Decree No. 622/73. The Committee observes that, in

¹ See for example, 110th Report, Case No. 519 (Greece), para. 177, and 202nd Report, Case No. 823 (Chile), para. 305.
fact, this association is continuing to function normally by carrying out its cultural and sporting activities. The Committee notes moreover the Government's statement that Decree No. 622/73 will be modified substantially once the Occupational Associations Act is approved. The Committee trusts that, now that the Occupational Associations Act has been passed, the AEBU, as well as the rest of the organisations concerned, will be allowed to reacquire legal personality.

81. Referring to the dismissals of Messrs. Joaquin Peschera and Juan Gros, workers of the Urreta S.A. undertaking, the Committee notes that the former was never dismissed, and the latter was dismissed together with other workers, as a result of the undertaking's decision to reduce its personnel due to a reduction in its sales. The Committee notes also that the undertaking was not aware that Mr. Gros was initiating activities aimed at organising the workers of the undertaking, and that he himself did not complain of this situation to the State Secretariat, where he went to in order to claim the sums owed to him as a result of the termination of his employment relationship. In these circumstances, the Committee considers that this aspect of the case does not call for further examination.

The Committee's recommendations

82. In these circumstances, the Committee recommends the Governing Body to adopt the present report, and in particular the following conclusions:

The Committee notes that a direct contacts mission took place in Uruguay in January 1981.

In relation to the trade union legislation, the Committee notes the adoption on 12 May 1981 of the Occupational Associations Act, and observes with satisfaction that following direct contacts important improvements have been introduced to the provisions of the Bill, on which the Committee had made comments. Thus, the Committee notes that the following provisions of the Bill were deleted: the obligation to make a declaration of "democratic faith" in order to be eligible as a trade union leader; the obligatory voting in elections and plebiscites; the limitation of the maximum duration of trade union assemblies; the obligatory organisation of a plebiscite to examine draft collective agreements and in other cases provided for by regulations; and suspension of membership of those who have not taken part in a vote. The Committee also notes that the new Act limits the broad powers of the authorities to require reports on trade union activities, and that the lower-level trade unions are not responsible for decisions taken by higher-level organisations to which they are affiliated. The Committee trusts that the Government will take measures to ensure that the legislation will recognise explicitly the possibility of forming occupational associations at the occupational and the industrial levels, and to repeal the requirement, in certain cases, of two years' membership of a trade union as a condition of eligibility to trade union office. The Committee trusts also that the regulations to be issued under the Act will be in full conformity with the
obligations arising under the freedom of association Conventions ratified by Uruguay and that other legislative measures will deal with the exercise of the right to strike and will ensure the protection of trade union leaders against any act of anti-union discrimination. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case, so that it may continue to examine it.

In relation to the detentions alleged by the complainants, the Committee notes with interest that some of the trade unionists mentioned by the complainant have already been released, and that during the last few years the number of detainees has been reduced, as has — to a marked extent — the number of new detentions followed by prosecution. Nevertheless, the Committee must also note that in almost all the cases the defence was entrusted to a member of the military. When the representative of the Director-General referred to appeals, he stated that a slight tendency to increase the sentences handed down at first instance could be noted.

In view of the time which has elapsed since the majority of the detainees and convicted persons were deprived of their freedom, the Committee considers that their release would be a necessary condition for the harmonious development of labour relations. It therefore requests the Government to take measures for the release of the trade unionists mentioned by the complainants still in prison and asks the Government to keep it informed of any measures taken in this regard.

As regards the other allegations:

The Committee draws the Government's attention to the fact that assets of dissolved organisations should be distributed between the members of the organisation or transferred to the organisations which succeed them.

The Committee asks the Government to re-examine the situation of the workers dismissed in January 1979 from the Clinicas Hospital, with a view to reinstating those whose dismissal was based on trade union activities.

The Committee trusts that, the Occupational Associations Act having been approved, the AEBU, as well as the rest of the organisations concerned, will be able to regain legal personality shortly.

210TH REPORT

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 26 and 28 May 1981 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The Argentinian member was not present during the discussion of the case.

2. The Committee had before it, on the one hand, various complaints of infringements of trade union rights in Argentina presented by a number of trade union organisations (Case No. 842), and, on the other hand, a complaint concerning the observance by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by a number of delegates to the 63rd (1977) Session of the International Labour Conference under article 26 of the Constitution of the ILO.

3. At its 213th Session (May 1980) the Governing Body adopted the interim conclusions submitted to it by the Committee in its 203rd Report.

4. Since then, a representative of the Director-General carried out a direct contacts mission to Argentina and the Government has transmitted certain information. The Committee submits for the approval of the Governing Body a further report on the case and recommends the Governing Body to examine this report at its 216th Session. 2

Case No. 842

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND SEVERAL OTHER TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF ARGENTINA


5. The Committee has examined this case on several occasions.

1 See footnote 1, p. 1.
2 See footnote 2, p. 1.
occasions and most recently at its May 1980 meeting when it presented an interim report to the Governing Body.¹

6. Since that examination of the matter, the complainant organisations have sent the following communications to the Office: International Confederation of Free Trade Unions (ICFTU), 17 June and 8 December 1980; World Confederation of Labour (WCL), 18 June, 27 August, 5 and 9 September 1980, and 9 March 1981.


8. In addition, by a communication dated 17 June 1980, the Ambassador and Permanent Representative of Argentina to the International Organisations in Geneva requested the establishment of direct contacts relating both to the application of the Conventions ratified by Argentina and to the circumstances which, until the present, have not permitted the ratification of several others.

9. The Director-General appointed Professor Antonio Malintoppi as his representative, who accompanied by Mr. Augustín Torres Abreu of the office of the Legal Adviser of the ILO, carried out this direct contacts mission from 7 to 13 December 1980.

10. As concerns the government authorities, the representative of the Director-General met in particular the Minister of Labour, Mr. Jamil Neston, on several occasions, the Under-Secretaries of State, Mr. Rojas and Mr. Vásquez Salazar and various people who work with this Ministry. He also met with the Minister for Social Security, Mr. Praga.

11. In addition, the representative of the Director-General visited the Argentina Industrial Union (UIA), when he held talks with the civil supervisor of this organisation, and the Federation of Textile Industries, where he held talks with a group of officials from this sector. He also spoke on several occasions with Mr. Murat Eurnekian, an official of the textile sector and deputy Employer member of the ILO Governing Body.

12. As regards the workers' organisations, the representative of the Director-General had meetings in the ILO premises with different groups of trade union leaders. Firstly, he met with a group of ten officials from two groups known as the National Labour Committee and the Committee of 20. Among the leaders of the first of these committees was Mr. Baldasini, Secretary-General of the Federation of Post and Telecommunications Workers and Employees (FOECYT), a deputy Worker member on the Governing Body. At this meeting representatives of the insurance sector, the milling industry, the pasta manufacturing industry, glassmakers and maritime electricians, public servants, the light and power industries, railway workers and the plastics industry, were present. Secondly, he received a group of 12 officials mostly from an association known as the Committee of 25, which had been joined by a leader from the Committee of 20 and 3 officials from an independent confederation. This group consisted of representatives

¹ See 203rd Report, paras. 5 to 22, approved by the Governing Body at its 213th Session (May-June 1980).
of the paper workers sector, the food industry, the state petrol industry, the state gas industry, private petrol concerns, employees in the tobacco, taxi and graphics industries and those involved in education. Thirdly, he met a group of four persons from the National Permanent Committee for Free Trade Unionism, which included representatives of the plumbers' guild. He also met with a representative of the Latin American Confederation of Workers (CLAT).

13. In addition, the representative of the Director-General visited the headquarters of five important trade unions which were still suffering military interference: the Association of Textile Workers (AOT), the Union of Metallurgical Workers (UOM), the Buenos Aires Regional Union of the Federation of Post and Telecommunications Workers and Employees (FOECYT), the Argentinian Federation of Rural and Dock Workers (PATRE) and the Union of Construction Workers of the Republic of Argentina (UOCRA). During these visits he had the opportunity to listen to the points of view both of the supervisors named by the Government and of the trade union officials who continue to carry out their functions in collaboration with the supervisors (interventores).

14. He also met with relatives of detained or disappeared trade unionists and, lastly, received a visit from the delegation of an association of lawyers specialising in labour law, who made known to him their opinion of the new Argentinian Act on occupational associations of workers.

15. The representative of the Director-General mentioned in his report the spirit of co-operation he encountered at all times with the Argentinian authorities who, he states, provided all the necessary facilities for the completion of his mission. He adds that the meetings that he had both with official persons and with workers' and employers' leaders, as well as with some lawyers and the press, left him convinced of the importance given in Argentina to the satisfactory development of this mission.

A. Act on occupational associations of workers

16. The complainants had alleged that the new trade union Act (No. 22105), promulgated on 15 November 1979, contained provisions incompatible with Conventions Nos. 87 and 98, ratified by Argentina.

17. At its February 1980 meeting, the Committee had noted that the new trade union legislation had been promulgated. However, it regretted that the text of the draft Act had not been transmitted to the Office before its adoption, which would have allowed communication to the Government of comments which could have been useful before the text was brought into force in its final form. The Committee commented on the following aspects of the new trade union legislation: provisions concerning the founding of trade unions; political activities of trade unions; approval of constitutions; intervention in internal administration; right to elect leaders; rights of associations having trade union status; right to establish confederations and to affiliate to international organisations; provisions concerning the dissolution of trade union organisations; and provisions concerning welfare schemes.
18. In May 1980, the Committee examined Regulatory Decree No. 640/80 and took note of certain of its provisions. In particular, it noted with interest that the Decree restricted the scope of supervisory staff and management which, under the Act, could not be members of the same trade unions as other workers.

19. The government authorities told the representative of the Director-General that only when the Act was fully in force would it be possible to examine its practical effects. They stated that the restrictions imposed by the Act did not try to hinder the trade union movement but to prevent the recurrence of a situation similar to that which prevailed in the years prior to 1976. In the opinion of the government authorities, once the normalisation process is completed, the application of the Act will clearly show its positive aspects.

20. The government authorities with whom the representative of the Director-General met made comments regarding certain provisions raised by the Committee when it was analysing the legislation. Accordingly, they explained that the trade union structure founded on a geographic basis did not attempt to prohibit the existence of national trade unions or the possibility of representation at the national level. Both these things could be obtained at the federation level. According to them, this provision simply aimed at avoiding the proliferation of second-degree entities as was the case before 1976. As for the prohibition on trade union participation in political activities, according to the authorities, this only applied to party politics. As regards the conditions of eligibility, they affirmed that this dealt with limiting the undue prolongation of terms of office and that the requirement relating to previous criminal records was only applied to crimes and contraventions which might endanger the proper exercise of trade union functions. Finally, according to the authorities, the intervention in the internal administration of trade unions aimed exclusively at controlling the legality of such unions' actions. The ability of the Minister of Labour to temporarily take over the associations, although not subject to a time limit, could be very brief. They stated that its duration will depend on the nature of the defect which caused the intervention and judicial measures always remained open through appeal for protection (amparo).

21. In its communication of 8 May 1981, the Government states in particular that Act No. 22105 and its Regulatory Decree form a prestigious realisation for the country and that the legal system in force aims at the concrete implementation of free trade unionism in a democratic State. According to the Government, the Act marks a movement towards the strengthening of first degree organisations and the independence of trade unions before the public powers. It considers that some time will be needed to evaluate the real efficiency of the Act and that over a longer period consensus will increase. Nevertheless, the Government reiterates the explanations already made to the representative of the Director-General during his mission: (a) the trade union structure founded on a geographic basis reflects the Government's federalist constitutional system and its socio-economic peculiarities; (b) the requirement of four years' length of service in an occupation so as to be able to carry out trade union functions has a limited scope and is sufficiently reasonable for trade union organisations to be able to be endowed with really qualified leaders; the experience
gathered on this matter will be interesting in its final evaluation; (c) the restriction on the duration of terms of office of trade union leaders is only following the trend of modern legal thinking; (d) regarding the conditions of eligibility relating to previous criminal records, Decree No. 640 refers to a prison sentence pronounced by judicial decision and not to preventive detention. Section 20 bis of the Penal Code restricts the scope of administrative decisions on incompatibility with the exercise of trade union functions since, to a large extent, the facts subject to penalties must have originated in intentional offences closely linked to the exercise of trade union activities; the administrative decisions can be finally reviewed by a judicial body; (e) regarding supervision of workers' organisations, the Act set up a system which ensures an effective balance between "supervision" and "guarantees" such that the risk of abuse is limited, just as section 34(4) of Decree No. 640/80 on powers of inquiry provides that such investigations can only be carried out when the Labour Ministry "remarks or has knowledge of an irregularity in the administration or management of assets".

22. The Government also recalls certain comments which it made in reply to observations by the Committee of Experts on the Application of Conventions and Recommendations, in particular certain provisions of Decree No. 640 which, in the Government's opinion, agree with the principles of Convention No. 87, especially: sections 3 and 9 which guarantee workers the right to associate or disassociate; sections 4 and 5 on the right to appeal and judicial review of resolutions imposing expulsion; section 7 on the stability of members of the managing boards giving the provisions and the bodies responsible for sanctions; section 10 (section 13(g) to (h) of the Act) which guarantees the internal democracy of organisations at all levels of freedom of association; section 11 which assures the purity of the electoral process; section 12 (section 16 of the Act) and section 13 (section 17 of the Act) on the calling of trade union elections at the level of the undertaking which can also be done by an association which is simply registered; section 21 (section 30(g) of the Act) on accounting books and registers; section 33 (section 61 of the Act) on the time limits on the placing under control; section 34(4) (section 65 of the Act) on the restriction of the power of inquiry into the economic and financial movements of occupational associations. The Government considers that these provisions introduce elements capable of making the practical application of the system more flexible.

23. As concerns the possibility of setting up third-degree organisations, the Government also points out that the absence of regulation does not limit the guarantees provided for in Convention No. 87. It adds that, as there is no specific provision, the Act is implicitly permissive. In the same way, no provision prohibits affiliation with international trade union organisations. It states more precisely that certain Argentinian trade unionists carry out management functions in international trade union organisations.

24. In addition, the Government adds that the trade unions publicly express their opinions on questions of economic and social policy and that it always pays attention to the criticisms which they make.

25. Furthermore, it appears from the report of the representative of the Director-General that the main feeling in the
workers' organisations was that the Act is completely contrary to the workers' interests and that it had been drawn up without consulting the trade unions or, where they had on their own initiative given their opinion, without taking that opinion into account. They stated that, in their opinion, the Government is deliberately trying to weaken the trade union movement by depriving it of its means of action. The trade unions consider that the Act is restrictive as regards the possibilities for action by organisations, particularly in the political, profit-making and social welfare fields. It is devoted to an excessive state intervention because it provides for the approval by the authorities of the geographical zones of action and the constitutions of trade unions and because it empowers the Ministry to call meetings, to suspend or remove legal personality, to dismiss the leaders or to place the organisations under control. In addition, in the opinion of the majority of trade union leaders, the Act considerably weakens federations by reducing the number of officials to two, and by refusing the right to conclude collective agreements to trade unions which have trade union status and are affiliated to a federation. Only one of the workers' organisations disassociated itself clearly from the other trade unions. In its opinion, the Act, certain aspects of which represented real progress as regards the previous system, unfortunately is devoted to a unitary trade union structure by taking up the concept of trade union status.

26. The leaders of the employers' organisations met by the representative of the Director-General indicated that they could not discuss the contents of the Act as that was a matter outside their competence.

27. Finally, it appears from the mission report and from the information sent by the Government that the Act on occupational associations is still the subject of diametrically opposed opinions on the part of the Government and the trade union sectors. The Government's view is that this Act is aimed at normalising trade union relations and at preventing trade unions from moving away from their normal aims, a deviation which apparently had for many years influenced the political situation in the country. As for the workers, on the other hand, the Act aims at prohibiting the organisations from performing fully their role.

28. The Committee must point out that the concern shown by the trade union leaders over certain provisions of the Act is largely connected to the comments that it had made in February 1980. In these circumstances, the Committee considers that the important provisions of the legislation which are not in conformity with Conventions Nos. 87 and 98, ratified by Argentina, ought to be amended in the near future with a view to the satisfactory application of the standards set out in those Conventions. In this regard, the Committee considers it useful to recall that the recommendations that it made with a view to amending the legislation mainly concerned the provisions relating to the creation of workers' organisations, the political activities of trade unions, the approval of their constitutions, the intervention in their internal administration, the right to elections, the right to set up confederations, the dissolution of organisations and the management of welfare schemes.

29. In this regard, the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations
Reports of the Committee on Freedom of Association

asked the new Government which took office on 29 March 1981 to supply full particulars on the application of Convention No. 87 to the Conference at its 67th Session (June 1981) and to report in detail for the period ending 30 June 1981. The Committee trusts that the Government, which has already been able to implement concretely certain improvements through the Decree regulating the application of the Act on occupational associations, will be able to announce on these occasions its intentions as to the adoption of other appropriate measures still necessary with a view to giving effect to its recommendations and to the Committee of Experts' observations.

B. Various restrictions on trade union activities

30. During the previous examination of the case, the Committee had expressed its concern over the placing under supervision of trade union organisations, in particular the General Confederation of Labour (CGT), and over certain restrictions placed on trade union activities, in particular the suspension of collective bargaining and the right to strike.

31. In this regard, the mission report states that a certain improvement in Argentinian labour relations should not be underestimated. In fact, the representative of the Director-General states "although the structures existing in 1978 - such as prohibition of strikes and trade union elections and collective bargaining, interference in certain occupational associations and extensions of terms of office of leaders of others - were almost the same; in fact, there have been some advances in the path to normalisation and I believe that within this framework there has been a certain increase in trade union activity". The representative of the Director-General adds that "according to what the Minister of Labour told me, despite the prohibitions still in force, trade union activity has developed normally. The Government itself was not satisfied with the rhythm of normalisation for it wished this to progress more rapidly. The slowness was due, according to the Minister, partly to the lack of collaboration between the sectors concerned".

32. The majority of the trade union leaders stated that normalisation could not be discussed while freedom of association had not been re-established to lift the existing prohibitions on holding meetings, collective bargaining and strikes, and to suspend the military interference in occupational associations. As for the right to hold meetings, according to the trade union leaders, previous permission was required which was almost always refused when it was a question of mass meetings, which meant that this right almost did not exist. In this connection the representative of the Director-General was told that a meeting held some days before by one of the groups he met (the Committee of 25 and some members of the Committee of 20), which aimed at re-establishing the General Confederation of Labour, had been broken up by the police and several of the persons present had been called before the Metropolitan Security Superintendent, where they remained a few hours being treated, in their own words, correctly. According to the government authorities, the method in question was not
detention, as could be seen from police proceedings relating to this affair, but was an invitation to the leaders so as to inform them of the provisions of Act No. 21323 (prohibiting the holding of trade union or political meetings without previous authorisation).

33. As regards the trade union organisations which had been placed under the authority of supervisors (interventores) appointed by the Government, the representative of the Director-General recalls in his report that the most important of these organisations, the CGT, had been dissolved by virtue of Act No. 22105 (section 75). The trade union officials have raised up energetically against this dissolution. On their side, the government authorities stated that the dissolution of the CGT had occurred under the national law and not through an administrative act. According to them, the fact that this organisation monopolised trade unionism and had affiliate bodies of all sorts had led to it becoming a political power.

34. The leaders of the supervised trade unions whom the representative of the Director-General met, who act as collaborators with the supervisors (interventores), agreed that, although there had been difficult moments, their activities were now developing more or less normally. The military intervention had left them a certain latitude and their relations with these public servants were good and correct, which did not prevent the fact that they unanimously wished the intervention to end, as is the wish of all the occupational associations, supervised or not. In two of the five supervised trade unions that the representative of the Director-General visited, he was told that membership of the union had increased since the commencement of the intervention, a fact which, according to the supervisors, proved a substantial improvement in the administration of the trade union affairs.

35. In its communication of 8 May 1981, the Government recalls, as the Committee of Experts on the Application of Conventions and Recommendations had already done, the opening of elections in occupational associations of workers and at the highest level of employers' representation. It adds that, at present, there are 1,159 first-degree organisations and 68 second-degree organisations. The constitutions of 12 trade unions have already been approved, 4 have called for elections and the 8 others will do so in the next 3 months, in conformity with section 70 of the Act. It states again that in the "supervised" trade unions the number of members has considerably increased and adds that the interventions, as everyone hopes, will cease once the legal steps of normalisation of trade union activities have been implemented.

36. The representative of the Director-General states that although the new Act re-establishes collective bargaining, this will not be able to operate normally until the occupational associations are restructured according to the new Act. In the meantime, collective bargaining properly speaking continues to be suspended. The trade union leaders consulted consider that such a situation has resulted in a continued erosion of wages and conditions of work. As for wages, it appears that although the situation has recently improved somewhat, it has still not managed to recuperate the loss of purchasing power which occurred between 1976 and 1978. Furthermore, in some cases, existing collective agreements had been cancelled which thus annulled workers' conquests passed under the
Reports of the Committee on Freedom of Association

37. The Committee notes the information collected by the representative of the Director-General on these various points during his mission. It observes that the effective restoration of collective bargaining is the general wish of the Argentinian trade union movement. Accordingly, the Committee considers that such a restoration - which is already written into the Act - would be an important factor in the improvement of industrial relations in the country.

38. However, the Committee must also point out that a genuinely efficient system of collective bargaining assumes the absence of restrictions on the legitimate activities of trade union organisations, particularly as concerns their internal management. Such a system assumes in particular that the trade union organisations may join together without impediments - that is, without the necessity of previous authorisation - and that they be represented during negotiations by leaders freely elected by their members, from which arises the importance of the rapid withdrawal of the supervisions still in force.

39. Finally, as concerns the dissolution of the CGT, the Committee can only state that the creation of a large trade union control body in the country corresponds to the hopes of the large majority of Argentinian workers. It is the Committee's opinion that legal recognition of the trade unions' possibility of forming confederations would be a significant step towards the return to a normal trade union situation.

40. In its communication of 8 May 1981, the Government states that since it took office on 29 March 1981, the normalisation of the labour sector has been one of its main objectives in the light of both its international commitments and the general interest shown by all the sectors of the country. In this regard, it recalls that the country has entered upon a new stage of the process of national reorganisation. The dangers which have occurred will require the drawing up of new lines of action. The new administration will have amongst its responsibilities the task of finally normalising the activity of occupational organisations to make their participation a reality. Every economic sector has already been called for this dialogue. In conclusion, the Government confirms that it is willing to continue its path so as to discharge loyally and in good faith its international obligations, so that the dialogue can once and for all be concretely established in the various consultation systems which are provided for by international standards to perfect the drawing up and application of international Conventions and of the legislation which is enacted in conformity with these international instruments.

41. The Committee has noted all the information collected by the representative of the Director-General from all the sectors concerned. It has also taken note of the Government's last communication and trusts that, taking account particularly of the assurances given by the Government, appropriate measures will be taken so as to end all the restrictions still existing which, for the most part, have now been in force for almost five years. In addition, the Committee asks the Government to supply information on the development of the situation.
C. Arrest or disappearance of trade unionists and former trade unionists

42. In its most recent examinations of the case, the Committee had noted with interest the release of several of the persons mentioned by the complainants. It had also noted that the Government was carrying out investigations and that it would be useful for its investigations to have additional information. The Committee recalled that it had already invited the complainant organisations to supply information in this regard and that it had at that time received no reply on this point. The Committee considered it desirable that the Government continue to supply information on the other persons mentioned by the complainants.

43. Since then, in communications dated 29 October 1980 and 8 May 1981, the Government has sent information on the situation of several arrested trade unionists. Some of them have been released: Alberto José Piccinini, Carlos Arturo Escobar, Horacio Isaac Santillán, Eduardo Luis Fernandez, Mario Orlando Aragón, Beatriz Mónica Busto, Alberto Luis Díaz, Oscar Ernesto Chávez, Osvaldo María Pavlolo, Luis Angel Segovia, Hugo Gabriel Gonzáles, Carlos José Gazey, Pedro Kiselisky, Luis María Vásquez, José Chacón, Ángel Díaz, Gustavo Leopold, Francisco Luis Ibarra and Francisco César Tineo; certain others enjoy supervised freedom: Eduardo Pérez, Héctor Gustavo López and Juan Antonio Medina; finally, Manuel Eduardo Favias has been at the disposition of the executive since December 1974.

44. In addition, the Government insists that the lists of persons sent to it should contain full particulars and information on the circumstances, and all the elements necessary to throw light on the situation of the persons concerned. In particular, it states that it would like to have information on the numbering of the identity papers of those concerned and maintains its objections in principle to both the origin and the contents of the lists of persons allegedly arrested or disappeared, lodged with the Office by international trade union organisations.

45. In its communication of 8 May 1981, the Government also considers it wise to make a distinction between the notion of a trade union representative or delegate and a trade unionist. The former are defined by their status in conformity with the specific legislation which determines the manner of their election and their powers. On the other hand, the term "trade unionist" can also include the simple militant without any representativity. The only condition to being a trade unionist is thus not to be excluded from the general standard.

46. The Argentinian authorities, however, never refused to have in-depth discussions during the visit of the representative of the Director-General, on the condition and whereabouts of the trade unionists who were in detention. The Minister of Labour pointed out in particular that, in his view, the lists had been drawn up overseas by persons who did not know the reality of the country as is proved by the fact that they included cases where all internal appeals had not been exhausted. He stated that there were at the present time in Argentina 1,000 detained persons, 600 of whom had been prosecuted and 400 of whom had not as yet been so treated.
addition, the names of detained persons and those released are published in the country's press. Trade union leaders told of some cases of detention or disappearance which had been going on for some time, although according to the mission report these disappearances or imprisonments appear to have taken place in the first months of the 1976 events especially. In particular, the representative of the Director-General had no evidence of any new arrests of this type since his first visit to the country in 1978 and particularly throughout 1980. In this regard, the Government also stated in its communication of 8 May 1981 that no arrests have taken place since 1978 for trade union reasons.

47. The Argentinian trade union leaders were unanimous in telling the representative of the Director-General of the situation of the two former trade union leaders still imprisoned, namely the former Secretary-General of the Federation of the Telephone Workers and Employees of the Republic of Argentina (FOPTRA), Mr. Julio Isabelino Guillán, who had been detained without trial since March 1976, and the Secretary-General of the San Justo delegation "SMATA", Mr. Jorge R.R. Marelli, arrested in March 1976, found not guilty of charges brought against him, but who is still deprived of his freedom, as the Public Prosecutor has appealed against the first ruling.

48. Since the mission, the WCL has sent two lists of new names of arrested trade unionists which have been transmitted to the Government. This first concerns trade unionists from various branches of activity who are said to have been arrested in 1975 and 1976, and the second concerns members of workers' organisations in the printing industry whose arrests and disappearances have increased again between 1976 and 1978.

49. In the light of the information collected by the representative of the Director-General, the Committee must observe that according to the authorities' statements themselves, a large proportion of arrested persons have not been brought to trial. In addition, certain of them are still in detention after a long time. In these circumstances, the Committee, relying on the importance of regular judicial procedures that it has reaffirmed time and again in this case, considers that the release at an early date of the trade unionists held without trial for some time would be a pre-condition to the improvement of the social climate in the country. It would also be desirable for the Government to envisage, in the same spirit, taking measures in favour of the sentenced trade unionists who often have heavy penalties. Finally, the Committee requests the Government to continue to send it information on the situation of the persons mentioned by the complainants in respect of whom it has not yet replied and, more generally, on any measure which might be taken with a view to the release of the arrested trade unionists.

50. In conclusion, the Committee must point out that no new element has arisen in the matter of the disappearance of trade unionists or former trade unionists. It keenly regrets that the circumstances of these disappearances have not until the present been able to be explained even though witnesses exist to numerous cases of disappearances. The Committee would like to be kept informed of any developments which might take place in this matter.

* * *
Recommendations of the Committee

51. In these circumstances, the Committee recommends the Governing Body to adopt the present interim report, in particular the following conclusions:

The Committee notes the information collected by the representative of the Director-General during his mission in December 1980 and the information sent subsequently by the Government. In particular, it notes that according to the representative of the Director-General a certain improvement in fact in labour relations should not be underestimated.

As regards the trade union legislation, the Committee considers that the important provisions of the new Act which are not in conformity with Conventions Nos. 87 and 98, ratified by Argentina, should be amended in the near future with a view to the satisfactory application of the standards set out in these Conventions. The Committee trusts that the Government, which has already been in a position to bring about concretely certain improvements through the Regulatory Decree concerning the Act on occupational associations, will be able, at the next session of the International Labour Conference and that of the Committee of Experts on the Application of Conventions and Recommendations, to announce its intentions as to the adoption of other appropriate measures still necessary so as to give effect to its recommendations and to the Committee of Experts' observations which related to the provisions on different aspects of trade union rights such as the creation of workers' organisations and trade union activities.

Regarding the various restrictions on trade union activities, the Committee points out that the restoration of collective bargaining would constitute an important factor in the improvement of industrial relations in the country. For the restoration to be really effective, the trade union organisations should be able to join together without impediments and they should be represented by leaders freely elected by their members. In addition, legal recognition of the right to form confederations would be a significant step towards the return to a normal trade union situation.

Consequently, the Committee hopes that the new Government will be able to take measures so as to bring to an end all the restrictions still in force. It also asks the Government to send it information on the development of the situation.

Regarding the detention of trade unionists, the Committee notes with interest that a certain number of the trade unionists mentioned by the complainants have been released. However, it must point out that a large proportion of the unionists have still not been brought to trial. While drawing the Government's attention to the fact that the release of detained trade union leaders is a precondition to the improvement of the social climate, the Committee requests the Government to supply information on the situation of the persons in respect of whom it has not yet replied and, more generally, on any measure which might be taken with a view to the release of the trade unionists still in prison.
Finally, the Committee must point out with keen regret that the circumstances of the disappearances of trade unionists have not until now been able to be explained. It requests the Government to keep it informed of any developments which might take place in this matter.

Reports of the Committee on Freedom of Association
(211th, 212th and 213th)

211TH REPORT

<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>1-27</td>
</tr>
<tr>
<td><strong>Irreceivable complaints</strong></td>
<td>28</td>
</tr>
<tr>
<td><strong>Cases not calling for further examination</strong></td>
<td>29-72</td>
</tr>
<tr>
<td>Case No. 974 (Peru): Complaint presented by the National Federation of Mineworkers and Metal Workers against the Government of Peru</td>
<td>29-34</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>35</td>
</tr>
<tr>
<td>Case No. 1010 (Spain): Complaint presented by the Police Officers' Trade Union against the Government of Spain</td>
<td>36-46</td>
</tr>
<tr>
<td>A. The complainant's allegations</td>
<td>38-40</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>41-43</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>44-46</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>47</td>
</tr>
<tr>
<td>Case No. 1030 (France/Guiana and Martinique): Complaint presented by the World Federation of Teachers' Unions (FISE) against the Government of France/Guiana and Martinique</td>
<td>48-52</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>53</td>
</tr>
<tr>
<td>Case No. 1036 (Colombia): Complaint presented by the Social Security and Communications Employers' Union against the Government of Colombia</td>
<td>54-58</td>
</tr>
<tr>
<td>Case No. 1056 (Honduras): Complaint presented by the Latin American Federation of Farm Workers against the Government of Honduras</td>
<td>60-65</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>A. Allegations of the complainant</td>
<td>62</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>63</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>64-65</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>66</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case No. 1059 (Dominican Republic): Complaint presented by the Workers' Trade Union Autonomous Federation against the Government of the Dominican Republic</th>
<th>67-72</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Allegations of the complainant</td>
<td>69</td>
<td>14</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>70-71</td>
<td>14</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>72</td>
<td>14</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>73</td>
<td>15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cases in which the Committee has reached definitive conclusions</th>
<th>74-175</th>
<th>15-43</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Case No. 996 (Greece): Complaint presented by the Pan Hellenic Federation of Accountants against the Government of Greece</th>
<th>74-99</th>
<th>15-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Allegations of the complainant</td>
<td>76-83</td>
<td>15-17</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>84-90</td>
<td>17-18</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>91-99</td>
<td>18-20</td>
</tr>
<tr>
<td>Recommendation of the Committee</td>
<td>100</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cases Nos. 1035 and 1050 (India): Complaints presented by the Centre of Indian Trade Unions and the DVC Staff Association against the Government of India</th>
<th>101-118</th>
<th>20-26</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. The complainants' allegations</td>
<td>103-105</td>
<td>21</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>106-108</td>
<td>22</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>109-118</td>
<td>23-26</td>
</tr>
</tbody>
</table>
Case No. 1038 (United Kingdom): Complaints presented by the Trades Union Congress, the International Confederation of Free Trade Unions and the Public Services International against the Government of the United Kingdom

A. The complainant's allegations

B. The Government's reply

C. The Committee's conclusions

Recommendations of the Committee

Case No. 1052 (Panama): Complaint presented by the National Council of Private Enterprise of the Republic of Panama against the Government of Panama

A. The complainant's allegations

B. The Government's reply

C. The Committee's conclusions

Recommendation of the Committee

Case No. 1053 (Dominican Republic): Complaint presented by the Sole Confederation of Workers against the Government of the Dominican Republic

A. The complainant's allegations

B. The Government's reply

C. The Committee's conclusions

Recommendations of the Committee

Case No. 1057 (Greece): Complaint submitted by the Panhellenic Union of Merchant Marine Engineers against the Government of Greece

A. Allegations of the complainant organisation

B. The Government's reply

C. Conclusions of the Committee

Recommendations of the Committee

Cases in which the Committee requests to be kept informed of the evolution

Case No. 965 (Malaysia): Complaint presented by the Malaysian Trades Union Congress against the Government of Malaysia
A. The complainant's allegations .......... 179-182 44-45
B. The Government's reply ................. 183-194 45-47
C. The conclusions of the Committee ....... 195-208 48-53
Recommendations of the Committee .......... 209 54

Case No. 1004 (Haiti): Complaint presented by the Union of Haitian Workers against the Government of Haiti 210-221 54-56
A. Previous examination of the case ....... 212-216 55
B. Reply of the Government ................. 217-218 55-56
C. Conclusions of the Committee .......... 219-221 56
Recommendations of the Committee .......... 222 57

Case No. 1020 (Mali): Complaint presented by the Central Board of the Trade Union Committees of the National Educational and Cultural Workers' Union against the Government of Mali 223-251 57-62
A. Allegations of the complainant .......... 225-231 57-58
B. The Government's reply ................. 232-240 59-60
C. The Committee's conclusions .......... 241-251 60-62
Recommendations of the Committee .......... 252 62

Case No. 1025 (Haiti): Complaint presented by the World Confederation of Labour against the Government of Haiti 253-274 63-66
A. Previous examination of the case ....... 255-258 63
B. The Government's reply ................. 259-264 64
C. The Committee's conclusions .......... 265-274 65-66
Recommendations of the Committee .......... 275 67

Case No. 1028 (Chile): Complaint presented by the National Trade Union Confederation of Workers in the Construction, Timber, Building Materials and Allied Industries against the Government of Chile 276-290 67-71
A. The complainant's allegations .......... 278-283 68
B. The Government's reply ................. 284-286 69
C. The Committee's conclusions .......... 287-290 70-71
Recommendations of the Committee .......... 291 71
<table>
<thead>
<tr>
<th>Case No.</th>
<th>Description</th>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1033 (Jamaica):</td>
<td>Complaint presented by the National Workers Union against the Government of Jamaica</td>
<td>292-303</td>
<td>71-75</td>
</tr>
<tr>
<td></td>
<td>A. The complainant's allegations</td>
<td>294-297</td>
<td>72-73</td>
</tr>
<tr>
<td></td>
<td>B. The Government's reply</td>
<td>298-299</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td>C. The conclusions of the Committee</td>
<td>300-303</td>
<td>73-75</td>
</tr>
<tr>
<td></td>
<td>Recommendations of the Committee</td>
<td>304</td>
<td>75</td>
</tr>
<tr>
<td>1046 (Chile):</td>
<td>Complaints presented by the Coordinadora Nacional Sindical and the International Confederation of Free Trade Unions against the Government of Chile</td>
<td>305-325</td>
<td>76-80</td>
</tr>
<tr>
<td></td>
<td>A. Allegations of the complainants</td>
<td>307-313</td>
<td>76-77</td>
</tr>
<tr>
<td></td>
<td>B. The Government's reply</td>
<td>314-319</td>
<td>77-78</td>
</tr>
<tr>
<td></td>
<td>C. The Committee's conclusions</td>
<td>320-325</td>
<td>78-80</td>
</tr>
<tr>
<td></td>
<td>Recommendations of the Committee</td>
<td>326</td>
<td>80</td>
</tr>
<tr>
<td>1051 (Chile):</td>
<td>Complaint presented by the Confederation of Private Employers of Chile against the Government of Chile</td>
<td>327-340</td>
<td>81-83</td>
</tr>
<tr>
<td></td>
<td>A. The complainant's allegations</td>
<td>329-332</td>
<td>81-82</td>
</tr>
<tr>
<td></td>
<td>B. The Government's reply</td>
<td>333-336</td>
<td>82</td>
</tr>
<tr>
<td></td>
<td>C. The Committee's conclusions</td>
<td>337-340</td>
<td>82-83</td>
</tr>
<tr>
<td></td>
<td>Recommendations of the Committee</td>
<td>341</td>
<td>83</td>
</tr>
<tr>
<td>1074 (United States of America):</td>
<td>Complaints presented by the World Federation of Trade Unions and the International Confederation of Free Trade Unions against the Government of the United States of America</td>
<td>342-371</td>
<td>83-94</td>
</tr>
<tr>
<td></td>
<td>A. The complainant's allegations</td>
<td>344-348</td>
<td>84-85</td>
</tr>
<tr>
<td></td>
<td>B. The Government's reply</td>
<td>349-362</td>
<td>85-89</td>
</tr>
<tr>
<td></td>
<td>C. The Committee's conclusions</td>
<td>363-371</td>
<td>89-94</td>
</tr>
<tr>
<td></td>
<td>Recommendations of the Committee</td>
<td>372</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>Cases in which the Committee has reached interim conclusions</td>
<td>373-619</td>
<td>95-159</td>
</tr>
<tr>
<td>823 (Chile):</td>
<td>Complaints presented by the International Confederation of Free Trade Unions, the World Confederation of Labour, the World Federation of Trade Unions and several other trade union organisations against the Government of Chile</td>
<td>373-401</td>
<td>95-101</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Previous examination of the case</td>
<td>376-377</td>
</tr>
<tr>
<td>B. New allegations</td>
<td>378-383</td>
</tr>
<tr>
<td>C. The Government's reply</td>
<td>384-393</td>
</tr>
<tr>
<td>D. Conclusions of the Committee</td>
<td>394-401</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>402</td>
</tr>
</tbody>
</table>

Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016 (El Salvador): Complaints presented by various trade union organisations against the Government of El Salvador | 403-435 | 101-110 |

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Urgent appeals and Conference contacts by the Chairman of the Committee with the representatives of the Government of El Salvador</td>
<td>406-410</td>
<td>102-103</td>
</tr>
<tr>
<td>B. Summary of the allegations</td>
<td>411-421</td>
<td>103-106</td>
</tr>
<tr>
<td>C. The Government's observations</td>
<td>422-429</td>
<td>106-108</td>
</tr>
<tr>
<td>D. Conclusions of the Committee</td>
<td>430-435</td>
<td>108-110</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>436</td>
<td>110</td>
</tr>
</tbody>
</table>

Case No. 958 (Brazil): Complaints presented by the National Labour Front, the World Confederation of Labour, the International Confederation of Free Trade Unions, the International Metalworkers' Federation and the World Federation of Trade Unions against the Government of Brazil | 437-444 | 112-113 |

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Previous examination of the case</td>
<td>439-441</td>
<td>112-113</td>
</tr>
<tr>
<td>B. Subsequent development of the case</td>
<td>442-443</td>
<td>113</td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>444</td>
<td>113</td>
</tr>
</tbody>
</table>

Recommendations of the Committee | 445 | 113 |

Case No. 995 (India): Complaint presented by the Centre of Indian Trade Unions against the Government of India | 446-456 | 114-116 |

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. The complainant's allegations</td>
<td>448-452</td>
<td>114-115</td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>453</td>
<td>116</td>
</tr>
<tr>
<td>C. The conclusions of the Committee</td>
<td>454-456</td>
<td>116</td>
</tr>
</tbody>
</table>

Recommendations of the Committee | 457 | 116 |

Cases Nos. 997, 999 and 1029 (Turkey): Complaints submitted by several trade union organisations against the Government of Turkey | 458-497 | 119-127 |

vi
<table>
<thead>
<tr>
<th>Case No.</th>
<th>Description</th>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1014</td>
<td>Dominican Republic: Complaint by the National Trade Union of Telephonic Workers against the Government of the Dominican Republic</td>
<td>499-513</td>
<td>130-132</td>
</tr>
<tr>
<td>A. Allegations of the complainant</td>
<td>502-504</td>
<td>130-131</td>
<td></td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>505-508</td>
<td>131</td>
<td></td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>509-513</td>
<td>131-132</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>514</td>
<td>132</td>
<td></td>
</tr>
<tr>
<td>1022</td>
<td>Malaysia: Complaint by the International Metalworkers' Federation against the Government of Malaysia</td>
<td>515-525</td>
<td>133-135</td>
</tr>
<tr>
<td>A. Allegations of the complainant</td>
<td>517-518</td>
<td>133</td>
<td></td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>519-521</td>
<td>134</td>
<td></td>
</tr>
<tr>
<td>C. The Committee's conclusions</td>
<td>522-525</td>
<td>135</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>526</td>
<td>135</td>
<td></td>
</tr>
<tr>
<td>1024</td>
<td>India: Complaint by the Centre of Indian Trade Unions against the Government of India</td>
<td>527-540</td>
<td>136-138</td>
</tr>
<tr>
<td>A. The complainant's allegations</td>
<td>529</td>
<td>136</td>
<td></td>
</tr>
<tr>
<td>B. The Government's reply</td>
<td>530-533</td>
<td>136-137</td>
<td></td>
</tr>
<tr>
<td>C. The conclusions of the Committee</td>
<td>534-540</td>
<td>137-138</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>541</td>
<td>139</td>
<td></td>
</tr>
<tr>
<td>1031</td>
<td>Nicaragua: Complaint by the World Confederation of Labour against the Government of Nicaragua</td>
<td>542-550</td>
<td>139-141</td>
</tr>
<tr>
<td>A. Allegations of the complainant</td>
<td>544-545</td>
<td>140</td>
<td></td>
</tr>
<tr>
<td>B. Reply of the Government</td>
<td>546-547</td>
<td>140</td>
<td></td>
</tr>
<tr>
<td>C. Conclusions of the Committee</td>
<td>548-550</td>
<td>140-141</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>551</td>
<td>141</td>
<td></td>
</tr>
</tbody>
</table>
A. The complaints' allegations 554-558 142-143
B. The Government's reply 559-565 143-145
C. Conclusions of the Committee 566-570 145-146
Recommendations of the Committee 571 147

Case No. 1043 (Bahrain): Complaints presented by the World Federation of Trade Unions and the Bahrain Workers Union against the Government of Bahrain 572-589 147-153
A. The complainants' allegations 574-579 148-149
B. The Government's reply 580-582 150
C. The Committee's conclusions 583-589 150-153
Recommendations of the Committee 590 153

Case No. 1044 (Dominican Republic): Complaint presented by the Permanent Congress of Trade Union Unity of Latin American Workers against the Government of the Dominican Republic 591-603 153-155
A. The complainant's allegations 593-596 154
B. The Government's reply 597-599 154-155
C. The Committee's conclusions 600-603 155
Recommendations of the Committee 604 156

Case No. 1063 (Costa Rica): Complaint presented by the Sole Confederation of Costa Rican Workers against the Government of Costa Rica 605-619 156-159
A. Allegations of the complainant 607-612 157
B. The Government's reply 613-614 158
C. The Committee's conclusions 615-619 158-159
Recommendations of the Committee 620 159
Case No. 842 (Argentina): Complaints presented by the World Federation of Trade Unions, the World Confederation of Labour, the International Confederation of Free Trade Unions and other trade union organisations against the Government of Argentina

Complaint concerning the observance by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), presented by a number of delegates to the 63rd (1977) Session of the International Labour Conference under article 26 of the Constitution of the ILO

A. Various restrictions on trade union activities
B. Arrests of trade unionists and former trade unionists

Recommendations of the Committee

Cases Nos. 954, 957, 975, 978 and 1026 (Guatemala): Complaints presented by several trade union organisations against the Government of Guatemala

A. Introduction
B. Urgent appeal by the Director-General
C. Urgent appeals by the Committee
D. Contacts during the Conference
E. Previous examination of Case No. 957
F. Summary of allegations made in connection with Cases Nos. 954, 975, 978 and 1026

1. Deaths, murders and disappearances
2. Cases of physical assault
<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Arrests</td>
<td>40-45</td>
</tr>
<tr>
<td>4. Further allegations</td>
<td>46-51</td>
</tr>
<tr>
<td>G. Conclusions of the Committee</td>
<td>52-63</td>
</tr>
<tr>
<td>Recommendations of the Committee</td>
<td>64-65</td>
</tr>
</tbody>
</table>
Earlier reports of the Committee on Freedom of Association have been published as follows:

<table>
<thead>
<tr>
<th>Report</th>
<th>Publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3</td>
<td>Sixth Report (1952), App. V</td>
</tr>
<tr>
<td>4-6</td>
<td>Seventh Report (1953), App. V</td>
</tr>
<tr>
<td>7-12</td>
<td>Eighth Report (1954), App. II</td>
</tr>
</tbody>
</table>

**Official Bulletin**

<table>
<thead>
<tr>
<th>Vol.</th>
<th>Year</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>13-14</td>
<td>XXXVII</td>
<td>1954</td>
</tr>
<tr>
<td>15-16</td>
<td>XXXVIII</td>
<td>1955</td>
</tr>
<tr>
<td>17-18</td>
<td>XXXIX</td>
<td>1956</td>
</tr>
<tr>
<td>19-24²</td>
<td>XXXIX</td>
<td>1956</td>
</tr>
<tr>
<td>25-26</td>
<td>XL</td>
<td>1957</td>
</tr>
<tr>
<td>27-28²</td>
<td>XI</td>
<td>1958</td>
</tr>
<tr>
<td>29-45</td>
<td>XLIII</td>
<td>1960</td>
</tr>
<tr>
<td>46-57</td>
<td>XLIV</td>
<td>1961</td>
</tr>
<tr>
<td>58</td>
<td>XLV</td>
<td>1962</td>
</tr>
<tr>
<td>59-60</td>
<td>XLVI</td>
<td>1962</td>
</tr>
<tr>
<td>61-65</td>
<td>XLVI</td>
<td>1962</td>
</tr>
<tr>
<td>66</td>
<td>XLVI</td>
<td>1963</td>
</tr>
<tr>
<td>67-68</td>
<td>XLVI</td>
<td>1963</td>
</tr>
<tr>
<td>69-71</td>
<td>XLVI</td>
<td>1963</td>
</tr>
<tr>
<td>72</td>
<td>XLVII</td>
<td>1964</td>
</tr>
<tr>
<td>73-77</td>
<td>XLVII</td>
<td>1964</td>
</tr>
<tr>
<td>78</td>
<td>XLVIII</td>
<td>1965</td>
</tr>
<tr>
<td>79-81</td>
<td>XLVIII</td>
<td>1965</td>
</tr>
<tr>
<td>82-84</td>
<td>XLVIII</td>
<td>1965</td>
</tr>
<tr>
<td>85</td>
<td>XLIX</td>
<td>1966</td>
</tr>
<tr>
<td>86-88</td>
<td>XLIX</td>
<td>1966</td>
</tr>
<tr>
<td>89-92</td>
<td>XLIX</td>
<td>1966</td>
</tr>
<tr>
<td>93</td>
<td>L</td>
<td>1967</td>
</tr>
<tr>
<td>94-95</td>
<td>L</td>
<td>1967</td>
</tr>
<tr>
<td>96-100</td>
<td>L</td>
<td>1967</td>
</tr>
<tr>
<td>101</td>
<td>LI</td>
<td>1968</td>
</tr>
<tr>
<td>102-103</td>
<td>LI</td>
<td>1968</td>
</tr>
<tr>
<td>104-106</td>
<td>LI</td>
<td>1968</td>
</tr>
<tr>
<td>107-108</td>
<td>LI</td>
<td>1969</td>
</tr>
<tr>
<td>109-110</td>
<td>LI</td>
<td>1969</td>
</tr>
<tr>
<td>111-112</td>
<td>LI</td>
<td>1969</td>
</tr>
<tr>
<td>113-116</td>
<td>LII</td>
<td>1970</td>
</tr>
<tr>
<td>117-119</td>
<td>LII</td>
<td>1970</td>
</tr>
<tr>
<td>120-122</td>
<td>LIV</td>
<td>1971</td>
</tr>
<tr>
<td>123-125</td>
<td>LIV</td>
<td>1971</td>
</tr>
<tr>
<td>126-133</td>
<td>LV</td>
<td>1972</td>
</tr>
<tr>
<td>134-138</td>
<td>LVI</td>
<td>1973</td>
</tr>
<tr>
<td>139-145</td>
<td>LVII</td>
<td>1974</td>
</tr>
</tbody>
</table>

¹ The letter S, followed as appropriate by a roman numeral, indicates a supplement.

<table>
<thead>
<tr>
<th>Vol.</th>
<th>Year</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>LVIII</td>
<td>1975</td>
<td>Series B, Nos. 1-2</td>
</tr>
<tr>
<td>LVIII</td>
<td>1975</td>
<td>&quot;   &quot; No. 3</td>
</tr>
<tr>
<td>LIX</td>
<td>1976</td>
<td>&quot;   &quot; No. 1</td>
</tr>
<tr>
<td>LIX</td>
<td>1976</td>
<td>&quot;   &quot; No. 2</td>
</tr>
<tr>
<td>LIX</td>
<td>1976</td>
<td>&quot;   &quot; No. 3</td>
</tr>
<tr>
<td>LX</td>
<td>1977</td>
<td>&quot;   &quot; No. 1</td>
</tr>
<tr>
<td>LX</td>
<td>1977</td>
<td>&quot;   &quot; No. 2</td>
</tr>
<tr>
<td>LX</td>
<td>1977</td>
<td>&quot;   &quot; No. 3</td>
</tr>
<tr>
<td>LXI</td>
<td>1978</td>
<td>&quot;   &quot; No. 1</td>
</tr>
<tr>
<td>LXI</td>
<td>1978</td>
<td>&quot;   &quot; No. 2</td>
</tr>
<tr>
<td>LXII</td>
<td>1978</td>
<td>&quot;   &quot; No. 3</td>
</tr>
<tr>
<td>LXII</td>
<td>1979</td>
<td>&quot;   &quot; No. 1</td>
</tr>
<tr>
<td>LXII</td>
<td>1979</td>
<td>&quot;   &quot; No. 2</td>
</tr>
<tr>
<td>LXII</td>
<td>1979</td>
<td>&quot;   &quot; No. 3</td>
</tr>
<tr>
<td>LXIII</td>
<td>1980</td>
<td>&quot;   &quot; No. 1</td>
</tr>
<tr>
<td>LXIII</td>
<td>1980</td>
<td>&quot;   &quot; No. 2</td>
</tr>
<tr>
<td>LXIII</td>
<td>1980</td>
<td>&quot;   &quot; No. 3</td>
</tr>
<tr>
<td>LXIV</td>
<td>1981</td>
<td>&quot;   &quot; No. 1</td>
</tr>
<tr>
<td>LXIV</td>
<td>1981</td>
<td>&quot;   &quot; No. 2</td>
</tr>
</tbody>
</table>
211TH REPORT

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 9 and 10 November 1981 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of Argentine, Spanish, French and Indian nationality were not present during the examination of the cases relating to Argentina (Case No. 842), Spain (Case No. 1010), France (Case No. 1030) and India (Cases Nos. 995, 1024, 1035 and 1050).

2. The Committee recommends the Governing Body to examine the present report at its 218th Session.

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1 Earlier reports have been published as indicated in the table following the table of contents.

2 The 211th, 212th and 213th Reports were examined and approved by the Governing Body at its 218th Session (November 1981).
3. The Committee had before it 108 cases in which the complaints had been submitted to the governments concerned for observations. The Committee reached final conclusions in 22 cases and interim conclusions in 28 cases; the remaining cases were adjourned for various reasons.

4. The Committee adjourned until its next session the cases relating to Spain (Cases Nos. 1039, 1061 and 1078), Portugal (Cases Nos. 1045 and 1087), Nicaragua (Case No. 1047), Pakistan (Case No. 1075), Peru (Cases Nos. 1049 and 1081), Canada (Cases Nos. 1055, 1070 and 1071), Greece (Cases Nos. 1082 and 1086), Colombia (Cases Nos. 1065, 1072, 1073, 1079, 1083 and 1085), Romania (Case No. 1066), Bolivia (Case No. 1076), Morocco (Case No. 1077), Mauritania (Case No. 1088) and Upper Volta (Case No. 1089) concerning which it is still awaiting information or observations from the governments concerned. As regards the cases concerning Canada (Cases Nos. 1055, 1070 and 1071) and Pakistan (Case No. 1075) the Governments, in communications dated 27 October and 5 November 1981, respectively, stated that they would be sending their observations at the earliest possible date. All these cases concern complaints brought since the last session of the Committee.

5. Not having received the observations or information requested from the governments in the cases relating to Colombia (Cases Nos. 919 and 994), Sudan (Case No. 940), Sri Lanka (Cases Nos. 988 and 1003), Morocco (Case No. 1017), Ecuador (Case No. 1032) and Brazil (Case No. 1034), which the Committee already had before it at its last session, it adjourned these cases and requests all the governments concerned to send their observations as soon as possible.

6. As for the cases relating to Kenya (Case No. 984), Paraguay (Case No. 1027), Brazil (Case No. 1041), Portugal (Case No. 1042), Pakistan (Case No. 1048), Greece (Cases Nos. 1058 and 1068), Argentina (Cases Nos. 1060 and 1067), Uruguay (Case No. 1064), India (Case No. 1069) and Zambia (Case No. 1080), the Committee has received the Governments' observations and intends to examine these cases in substance at its next session. The observations concerning the cases of Brazil, Paraguay, Portugal, Pakistan, Argentina, India and Zambia were received during the session of the Committee.

7. The Committee also adjourned its examination of Case No. 900 (Spain) concerning which it has received a communication from the Government stating that a final decision of the employers' organisation has not yet arrived.

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1 These include the cases relating to Argentina (Case No. 842) and Guatemala (Cases Nos. 954, 957, 975, 978 and 1026) which will be examined in its 212th and 213th Reports, respectively.
8. As regards Case No. 1062 concerning Greece, the Committee adjourned its examination as it is waiting to receive comments from the complainants on the Government's observations.

9. As regards Case No. 1007 (Nicaragua), a communication was received from the Government in October 1981 containing certain observations on the information requested by the Committee at its May 1981 Session. In view of the contradictory nature of the Government's observations and the complainant's allegations which are still pending, the Committee adjourned its examination of this case and is waiting to receive comments from the complainant to whom it has sent a copy of the above-mentioned communication. Moreover, the Committee expresses its concern over the situation of the imprisoned employers who were allegedly arrested and sentenced to prison terms and, as the Government makes no comment in this respect, it has nevertheless requested it to send the text of the judicial decisions taken on appeal by these employers.

10. Concerning the case of Sudan (No. 1037), in a communication of 18 October 1981 the Government stated that the necessary investigations would be facilitated if it had the names of the persons listed by the complainant. The Committee adjourned its examination of this case as it is awaiting receipt of this information from the complainant.

URGENT APPEALS

11. Regarding the cases relating to Grenada (Case No. 963), Bolivia (Case No. 983), Colombia (Case No. 1009), and Greece (Cases Nos. 1019 and 1021), the Committee observes that, in spite of the time which has elapsed, the observations of the governments concerned have not been received. The Committee requests these governments to send their observations urgently.

12. As regards the cases of Morocco (Cases Nos. 992 and 1018), concerning which an urgent appeal has already been made to the Government, the Committee observes once again that despite the time which has elapsed, the observations of the Government have not been received. The Committee wishes to point out in this regard that, in conformity with the procedural rules set out in paragraph 17 of its 127th Report approved by the Governing Body, it will present a report at its next session on the substance of the cases even if the Government's observations have not been received at that date.

DIRECT CONTACTS AND SIMILAR MISSIONS

13. As regards Cases Nos. 997, 999 and 1029 relating to Turkey, the Committee had empowered its Chairman to contact the Government representatives present at the June 1981 Session of the International Labour Conference so as to discuss, in particular, the possibility of an on-the-spot mission to this country. The Chairman of the Committee met with the Government representatives on 12 and
16 June 1981, and, by a letter dated 30 September 1981, the Government gave a negative reply to this request. The Committee, when examining the substance of these cases during its present Session (see paras. 458 to 498), expresses the hope that the Government will re-examine its decision.

14. As regards Case No. 1054 relating to Morocco, given the nature of the allegations - which refer to the deaths of workers during demonstrations and many arrests of trade unionists - the Director-General has requested the Government to communicate to him its intentions regarding the possibility of an on-the-spot mission by a representative of the Director-General. In a communication dated 12 October 1981, the Government states that it will make its observations on these cases. The Committee requests the Government to send its observations as a matter of greatest urgency, as well as its reply to the request for an on-the-spot mission.

15. As regards Case No. 1084 relating to Nicaragua, given the seriousness of the allegations, the Director-General sent a telegram to the Government stating his wish to send to Nicaragua, at an early date, a high-level official acting as his representative to discuss this affair (imprisonment and sentencing of leaders of the Senior Council of Private Undertakings) with the government officials. In these circumstances, the Committee expresses its firm hope that the Government of Nicaragua will give an affirmative reply to the request of the Director-General so that the case can be examined in full knowledge of the facts.

Effect given to the recommendations of the Committee and of the Governing Body

16. As regards the case concerning Japan (Case No. 792), in a letter of 26 October 1981 the Government again states that the appeal brought by Messrs. Makieda and Hasuda, leaders of the Japanese Teachers' Union, before the Tokyo High Court has not yet been heard. It also points out that there have been hearings of the cases concerning the Teachers' Unions of the Saitama and Iwate Departments. The Committee recalls in relation to this case that Messrs. Makieda and Hasuda were sentenced in 1974 and that their appeal against the decision at first instance was brought in March 1980. The Committee considers in this respect that it must point out the importance which it attaches to the right of trade unionists, like any other individual, to be judged fairly and in the shortest possible time. It hopes that the examination of these cases will conclude rapidly and requests the Government to keep it informed of the outcome of these appeals.

17. As regards Case No. 884 concerning Peru, in a communication dated 5 May 1981, the Government states that the Amnesty Law for labour in the private sector provides for the re-instatement of the workers dismissed after the 1977 strike. A tripartite national committee governed by Supreme Decree No. 05-81 TR of 13 March 1981 has been empowered to implement this decision and the Government adds that this shows that the necessary provisions to obtain the re-instatement of the dismissed workers have been adopted. The Committee notes with satisfaction the information supplied by the Government on this question.
18. Regarding Case No. 913 concerning Sri Lanka, the Government announces in a communication dated 29 September 1981 that the application filed in the Labour Tribunal by the late Mr. Chandrasena against the Ceylon Petroleum Corporation regarding his dismissal has been dismissed by the President of the Labour Tribunal. The Committee takes note of this information.

19. As concerns Case No. 922 regarding India, the Committee had asked the Government to keep it informed of the result of the conciliation proceedings in the matter of the dismissal of five trade unionists and the forced retirement of a trade union official. In a communication dated 7 November 1981, the Government states that the case of Mr. Jay Bahadur was taken up in further conciliation at the level of deputy labour commissioner and the dispute was referred to adjudication on 2 November 1981. As regards Messrs. Sharma, Balaras and Abdul Hamid, the Government states that the National Union of Race Employees of India informed the conciliation officer that the workers are no longer interested in the disputes as they have drawn their dues in full and have arrived at a final settlement. Because of this, the Union has requested the Government to treat the matter as closed. The Committee notes this information and requests the Government to keep it informed of the decision which will be handed down in Mr. Bahadur's case.

20. As for Case No. 929 relating to Honduras, the Committee had requested the Government to keep it informed of the results of the inquiry into the violent death of the worker José Pedro Zavala, in particular on the possible guilt of the forces of order in the matter. In a communication dated 10 July 1981, the Government states that a final judgement was handed down on 1 October 1980 applying Amnesty Decree No. 11 of September 1980 exonerating the parties presumed guilty of the events which took place on 6 March 1979 at the Bemis Mandal undertaking. It adds that this decision is res judicata and that it is impossible to re-open an inquiry of the matter. The Committee takes note of the Government's statement on the matter.

21. As regards Case No. 931 concerning Canada, on 13 July 1981 the Government sent details as to the outcome of appeals by the trade unionists who had participated in the 1978 strike. It appears from this information that six of them were given suspended sentences and six months' probation in 1980 and 1981. Only Mr. Parrot served three months in prison and was sentenced to 18 months' probation on 30 January 1980. Mr. Morel's case is scheduled for trial in September 1981. The Committee notes this information and requests the Government to keep it informed of the result of the trial of Mr. Morel.

22. As for Case No. 960 relating to Peru, the Committee had suggested to the Government that in order to restore an industrial climate more propitious to the development of good labour relations it should take steps to facilitate the re-instatement of the workers dismissed after a six-hour strike at the SCALA undertaking. In its communication of 5 May 1981, the Government again states that the administrative appeal brought by the dismissed workers had been rejected by Directional Resolution No. 1555580 of 15 May 1980 because serious misconduct justified their dismissal. The Committee can only note with regret that the Government has not followed its recommendations in this matter. In this respect, it draws the
Reports of the Committee on Freedom of Association

Government's attention once again to the fact that dismissals because of strike action involve serious risks of abuse and threats to freedom of association and that the adoption of an inflexible attitude in the application of excessively severe sanctions to workers is certain to impair the development of harmonious labour relations. In light of these considerations, the Committee hopes that the Government will be able to re-examine its position and try to facilitate the re-instatement of the workers dismissed for having participated in a strike.

23. As regards Case No. 968 relating to Greece, in a letter dated 9 October 1981 the Government states that the judgment in the appeal brought by the Labour Centre of Piraeus and the Union of Metalworkers decided on 15 January 1981 had not yet been published, but that in the meantime the complainant union - the Union of Metalworkers, Employees and Technicians of Piraeus and the Islands - continues to exist and function legally. The Committee takes note of this information. However, it hopes that the final decision of the court will confirm the registration of this trade union and requests the Government to keep it informed of any judicial decisions handed down.

24. As regards Case No. 989 also referring to Greece, the Committee notes that the matter of the death of the student Sotiria Vassila Kopoulou should have been decided on 10 June 1981 by the Court of Summary Jurisdiction of Athens, but that the proceedings have been adjourned until 12 October 1981. The Committee requests the Government to keep it informed of the outcome of these proceedings.

25. Lastly, as regards Case No. 1006 also relating to Greece, the Government states that court decisions in favour of the workers dismissed following the strike called in the Public Electricity Company have permitted the re-instatement of these workers in their employment. It states that it communicated the Committee's recommendations in this matter to the management of the Public Electricity Company and adds that it will send the full information supplied to it by the management in question as soon as possible. The Committee notes the information transmitted by the Government in this affair.

26. As concerns Case No. 1011 relating to Senegal, involving a labour dispute in the teaching sector in May 1980, the President of the Republic of Senegal states in a communication dated 19 October 1981 that special measures had been taken at his initiative since January 1981 and applied in favour of the teachers. It appears from this information that the States General of Education and Training as well as the National Committee for Educational Reform grouping all the professional teaching sectors have been officially set up. At the same time, exceptional measures of clemency have been applied to teachers who were the subject of administrative sanctions and, since 12 February 1981, all acts of removal, dismissal and reprimand have been repealed, the inculpated staff purely and simply being re-instated in their posts. Finally, the status of officials in the teaching service of Senegal is the subject of sympathetic study by the authorities and the claims relating in particular to the compensatory housing allowance were satisfied on 1 July 1981. The Committee notes with satisfaction the information supplied by the President of the Republic.
27. In addition, the Committee notes that the Governments of Paraguay (Case No. 854), Colombia (Case No. 871), Poland (Case No. 909), Turkey (Cases Nos. 930/962 and 985), Peru (Case No. 967), and the Dominican Republic (Case No. 971) have not yet responded to the Committee's requests to be kept informed of developments in these cases. Therefore the Committee requests these Governments to be good enough to communicate this information as soon as possible.

IRRECEIVABLE COMPLAINTS

28. In letters dated 11 and 12 October 1981 the Federation of Associations and Unions of the International Civil Service and the Trade Unions International of Public and Allied Employees presented complaints regarding the situation of the United Nations Staff Association in Geneva. By virtue of the procedure in force, the Committee can only examine complaints presented against States. In these circumstances, the Committee recommends the Governing Body to decide that the complaints in question are irreceivable.

CASES NOT CALLING FOR FURTHER EXAMINATION

Case No. 974

COMPLAINT PRESENTED BY THE NATIONAL FEDERATION OF MINWORKERS AND METAL WORKERS AGAINST THE GOVERNMENT OF PERU


30. As the statements made by the parties were contradictory, on 30 April 1981 the Director-General, in accordance with the procedure of the Committee on Freedom of Association, asked the complainant organisation to transmit any observations which it might consider advisable on the Government's observations by 30 June 1981 at the latest. The Committee has not received any communication since then.

31. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1948 (No. 98).

32. In its communication, the complainant organisation refers to the kidnapping in Lima of the trade union leader and miner, Aldo Morán, by Argentinian and Peruvian forces. It claims that his life and person are in danger.

33. In its reply, the Government states that according to the inquiry carried out by the Senior Directorate of the Civil Guard...
and the Investigating Police, the trade union leader Aldo Moran has never been detained. In conclusion, it accordingly rejects the complaint as being completely baseless.

34. The Committee notes that the complainant did not supply any details as to the circumstances of or reasons for the alleged arrest of Mr. Aldo Moran. It also points out that the complainant did not exercise its right to send additional information in support of its complaint and that it did not make any observations on the Government's reply which was transmitted to it by the Director-General. In addition, the Committee notes that according to the competent Peruvian authorities the person concerned has not been detained.

The recommendations of the Committee

35. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1010

COMPLAINT PRESENTED BY THE POLICE OFFICERS' TRADE UNION AGAINST THE GOVERNMENT OF SPAIN


37. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

38. The complainant alleges that after the Union's National Committee had submitted its demands to the Ministry of the Interior and publicly released its resolutions and decisions at a press conference, the Ministry of the Interior closed the Union's premises and local offices throughout Spain and took disciplinary action against high-ranking representatives of the Union, proceedings against 30 being pending at present. The complainant states that two appeals made by the Union, one relating to the closure of its offices and the other to the action taken against various union representatives, were upheld by the courts and transmits the text of the verdict concerning the closure of the offices and the decision of the examining magistrate proposing the stay of disciplinary proceedings against Mr. Pablo Sanchez Garcia, National President of the Police Officers' Trade Union.
39. The complainant adds that the Director-General of Police called a meeting of the Union's National Committee on his own authority, contrary to the Union's rules and regulations, with the aim of boycotting the negotiations and steps under way, removing high-ranking trade unionists and setting up parallel bodies obedient to the authorities.

40. Finally, the complainant alleges that permission for the Union to hold a peaceful public demonstration was refused, that authorisation for a general meeting of the Union was withheld, and that when the meeting finally took place steps were taken to prevent a number of the Union's representatives from attending.

B. The Government's reply

41. The Government states that the exercise of trade union rights within the police force has in no way been hindered or delayed. Authorisations for release from duty to enable union representatives to attend union meetings, the Government continues, are strictly subject to the rule that such releases shall not prejudice the effectiveness of the police force to ensure public safety and prevent crime; in accordance with this rule, authorisations were granted only in cases where the absence of the officers from duty did not prejudice the effectiveness of the police force.

42. As regards the allegation that proceedings were instituted against police officers representing the Union, the Government states that disciplinary measures were taken in a number of cases under the Government Police Regulations; and these cases are being examined at present in order to determine whether any administrative infractions were committed.

43. As regards the closure of the Union's offices by the General Directorate of Police, the Government states that the Directorate readily granted permission for the provisional use of official premises for the Union's normal activities and closed premises only where evidence existed that they would be used to promote strike action among police officers, such action being prohibited to these public servants. Once the reasons for closing the premises ceased to exist, permission was granted, on 14 November 1980, to the officers of the Management Committee of the Police Officers' Trade Union to use the premises again.

C. The Committee's conclusions

44. The Committee has noted the allegations of the complainant organisation and the Government's observations. However, it observes that this complaint was submitted by the Police Officers' Trade Union whose members, as is clear from its title and its rules and regulations, are officials of the police force. The Committee recalls in this respect that Article 9(1) of Convention No. 87 provides that "the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations".
45. The Committee notes in this connection that neither the complainant nor the Government has made any precise reference to regulations governing the points at issue. For this reason, and since the legislative process required for the determination of the principles to be applied to the police as regards trade union matters has not yet been completed, the Committee believes that there is reason to hope that this process will result in the adoption of provisions which will define the exact extent of the trade union rights of this category of workers. The Committee therefore believes that it is inadvisable for it to decide on the allegations contained in this complaint.

46. The Committee also observes that some of these allegations have already been considered by the Spanish judicial authorities and rulings given, and that Spanish legislation provides legal channels for the examination of the questions raised by the complainant.

The recommendations of the Committee

47. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1030

COMPLAINT PRESENTED BY THE WORLD FEDERATION OF TEACHERS' UNIONS (FISE) AGAINST THE GOVERNMENT OF FRANCE/GUIANA AND MARTINIQUE

48. In a communication dated 11 February 1981, the World Federation of Teachers' Unions (FISE) presented a complaint alleging the infringement of trade union rights in Guiana and Martinique. For its part, the Government furnished its comments in a letter dated 6 August 1981.

49. France has ratified the Right of Association (Non-metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) as well as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and has declared that these Conventions apply without modification to Guiana and Martinique.

50. FISE states that delegates of trade union organisations were refused permission by the authorities to participate in a regional seminar held by two trade union organisations of the complainant Federation. It alleges that the rector of the Antilles and Guiana educational district refused to grant unpaid leave of absence to delegates of the National Union of Technical and Vocational Teachers of Martinique (SNETP) and the Union of Educational Workers of Guiana (STEG), autonomous members of the SNETP-CGT of France, itself a member of the FISE, for them to participate in the seminar on rural literacy and training which was held in San José, Costa Rica, between 18 and 23 January 1981.
51. In its reply, the Government states that the Ministry of National Education conducted an inquiry into the matter and that it was decided to annul the decision in dispute without waiting for the result of the appeal which had been lodged by trade union militants of SNTEP of Martinique and STEG of Guiana with the Administrative Tribunal of Fort de France. The Government adds that it has also asked the rector to take the necessary steps in accordance with this decision to revoke the measures allegedly taken against the parties concerned.

52. The Government notes that the decision in question has been annulled and that measures taken against the trade unionists have been revoked.

The Committee's recommendations

53. In these circumstances, the Committee recommends the Governing Body to conclude that the present case does not call for further examination.

Case No. 1036

COMPLAINT PRESENTED BY THE SOCIAL SECURITY AND COMMUNICATIONS EMPLOYEES' UNION AGAINST THE GOVERNMENT OF COLOMBIA


55. Colombia has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

56. The complainant alleges that the Government continues to adopt a repressive attitude towards trade union organisations and refers in this connection to instances of massive dismissals, arrests, torture, entry into and search of trade union headquarters, threats made against trade union officials, disappearances of workers and disregard of collective agreements (in this latter connection, the complainant mentions the names of certain undertakings and trade union organisations, such as the Trade Union of Workers).
57. In its communication of 11 June 1981, the Government, while denying the general allegations, states that a new collective agreement has been signed between the Trade Union of Workers and the Colombian Petroleum Company. The Government also states that the case concerning the Eternit Company has been sent to the Court of Arbitration since the parties were unable to reach an agreement at the negotiation stage.

58. The Committee takes note of the allegations made by the complainant organisation, as well as the observations sent by the Government. However, the Committee also notes that the allegations have been made in such general terms that it is practically impossible not only to identify any specific complaints, but also to decide whether they have been presented by an organisation directly involved in the matter. Given the lack of precise information on the motives and circumstances of the allegations in question, and since the complainant organisation has not availed itself of the procedural right currently in force to present additional information, although invited to do so, the Committee therefore concludes that the present case does not call for further examination.

Recommendations of the Committee

59. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1056

COMPLAINT PRESENTED BY THE LATIN AMERICAN FEDERATION OF FARM WORKERS AGAINST THE GOVERNMENT OF HONDURAS

60. The complaint is contained in a communication dated 24 June 1981 from the Latin American Federation of Farm Workers. The Government sent its observations in a letter dated 27 August 1981.

61. Honduras has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. The complainant's allegations

62. The Latin American Federation of Farm Workers (FCL) alleges that massive arrests of peasant leaders have been carried out in the Department of Copán.

B. The Government's reply

63. The Government states that after several peasants had been indicted on charges involving various offences committed against individual persons and the State, and after investigations had established reasonable evidence of their guilt, the respective courts sentenced the persons in question to imprisonment. The Government points out that the offences for which they were prosecuted were in no way related to their participation in trade union activities and it encloses the reports of the First and Second Superior Courts of Santa Rosa de Copán in which the names of the accused and their offences are recorded (usurpation, assault, damage to property, intimidation or arson).

C. The Committee's conclusions

64. The Committee notes that according to the Government the imprisonment of the peasants whose names it provides was ordered by the judicial authorities after it was concluded that there was reasonable evidence that the accused had committed offences in common law, and that the charges were in no way related to the trade union activities of the peasants, as can be seen from the relevant reports of the judicial authorities.

65. The Committee notes that the complainant has not made use of the procedural right to present additional information and that it gave no information in its brief communication of 24 June 1981 as regards the names of the peasant leaders who had been arrested and the motives and circumstances of their arrest.

Recommendations of the Committee

66. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.
Case No. 1059

COMPLAINT PRESENTED BY THE WORKERS' TRADE
UNION AUTONOMOUS FEDERATION AGAINST THE
GOVERNMENT OF THE DOMINICAN REPUBLIC


68. The Dominican Republic has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

69. The Workers' Trade Union Autonomous Federation alleges that workers of the Los Minas textile undertaking are confronted with a serious situation infringing freedom of association: 600 workers have not received their wages for the last six weeks and several workers have been imprisoned and beaten.

B. The Government's reply

70. The Government points out that the Secretariat of State for Labour is determined to find a solution to the problem of the payment of wages overdue and that discussions are continuing with the management of the undertaking with a view to resolving this problem as soon as possible.

71. The Government also states that persons were taken into protective custody as a result of clashes which occurred in the public thoroughfare between workers and persons from outside the undertaking on the one hand and officers of the National Police on the other. Furthermore, the Government adds that no worker is currently being held in prison as a result of these clashes and that according to investigations which have been carried out, no one has been beaten.

C. The Committee's conclusions

72. The Committee notes that the present complaint does not refer to precise cases involving the infringement of trade union rights, but simply to allegations of a generic nature concerning the infringement of freedom of association. The Committee also notes that the complainant has not made use of the procedural right to present additional information.
Recommendations of the Committee

73. In these circumstances, the Committee recommends the Governing Body to conclude that the present case does not call for further examination.

CATEGORIES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

Case No. 996

COMPLAINT PRESENTED BY THE PAN HELLENIC FEDERATION OF ACCOUNTANTS AGAINST THE GOVERNMENT OF GREECE


75. Greece has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

76. In its first communication, POL alleged that the Ministry of Labour had interfered in the trade union activities of accountants. The Ministry of Labour allegedly made use of the provisions of Act No. 3299/55 respecting collective bargaining, which the complainant considers detrimental to the interests of the workers, to offer employers around 100 million drachmai at the expense of the accountants and assistant accountants. POL maintains that in this way the Government made use of the services of the so-called Accountants' Occupational Organisation, a trade union association which lacked any real existence, to conclude "pseudo collective agreements" with the employers' organisations without the participation of POL.

77. The complainant includes with its original complaint two of the communications which it had sent out to all accountants in Greece. It would appear from these communications, firstly, that as a result of the absence of any promulgation in the Official Gazette by the Minister of Labour of an arbitration award (No. 55/80) which the Federation had been awarded by the Arbitration Appeals Court of Athens, the POL officials were obliged to file the said arbitration award at the Athens justice of the peace court on 25 June 1980 in order to obtain its enforcement (procedural document No. 45).
78. The complainant explained that this arbitration award should have come into force on the same date as its adoption, i.e. 29 February 1980, and that the employers should have granted wage increases to accountants and assistant accountants from that date. However, the complainant alleges that the Government, acting in the interests of the employers, allowed the latter to withhold the wage increases for a prolonged period of time. Indeed, POL maintains that the Ministry of Labour had recourse to the law to ensure that the arbitration award did not become obligatory until the date of its promulgation, which was then delayed for more than four-and-a-half months after the adoption of the award, i.e. until 15 July 1980 following an express request to the court for its implementation lodged by POL on 25 June 1980.

79. Secondly, the complainant alleges that the Ministry of Labour lost no time in making it obligatory for all parties to subscribe to the provisions of a "pseudo collective agreement" which had been signed by the Accountants' Occupational Organisation, a rival body which the complainant labels an "anti-trade union movement" sponsored by the Federation of Private Greek Employees (OIYE), which according to POL was irrelevant to the accountants.

80. In its additional communication of 25 October 1980, POL reviews the history of the trade union movement of accountants in Greece. It explains that POL was dissolved during the period of dictatorship, when its rival was recognised to be the most representative organisation. However, a decision of the Athens court of arbitration of the first instance has since granted recognition as the most representative organisation to POL (judgement No. 28/1976).

81. POL also states that by means of the procedure set forth in Act No. 3239/55 respecting collective bargaining, the Government is able to fix wages by threatening to settle disputes by blocking them in the Court of arbitration. In the view of the complainant, a court would issue uniform, stereo-typed decisions which would result in wage increases which were in line with the wishes of the Government. Furthermore, the complainant explained that when a dispute involving accountants is submitted to arbitration, OIYE signs a collective agreement with the employers without POL being present or invited to participate. POL adds that this was the case in 1978 and 1980. For their part, the courts do not grant any arbitration awards to the accountants which are any more advantageous than these "pseudo collective agreements" signed by OIYE. Furthermore, these agreements take effect for OIYE members a few weeks before the dispute between the employers and POL is sent to arbitration. In the view of POL, this allows the accountants to be pressurised into joining the rival organisation.

82. Thus POL alleges that the last collective agreement covering members of the rival organisation came into force on 1 February 1980, whilst the arbitration award (No. 55/80) which applied to all accountants was dated 29 February 1980. Moreover, the Ministry delayed the promulgation of the date from which the award came into force. When this finally took place, almost five months later, on 12 June 1980, it exempted employers from the retroactive payment of the wage increase granted from 19 February 1980 under the said arbitration award and justified the withholding of hundreds of millions of drachmai by the employers by referring to legal obstacles.
83. POL also alleges that an attempt was made to impose an additional contribution on all wage earners in the country, payable in addition to the contribution which already finances ODEPES, a public body which collects trade union dues and subsequently distributes funds to the trade union organisations. POL maintains that this contribution should be collected on behalf of the General Confederation of Greek Workers (CGTG) through the state services (IKA). If this attempt were to be successful, it would have serious consequences for the trade union movement and an even more negative system than that of the Trade Union Special Fund Management Organisation (ODEPES) would be gradually set up: those organisations which do not belong to the CGTG and which, in any case, demand the abolition of this system of financing will, in the view of the complainants, be excluded from benefiting from such contributions.

B. The Government's reply

84. In its reply dated 26 March 1981, the Government states that under Ret No. 3239/1955, employers and workers are free to negotiate collective agreements to establish the conditions of work and wages applicable to workers in their branch.

85. The Government adds that since the adoption of Act No. 73 of 1974, the Ministry of Labour no longer has the right to annul or amend collective agreements, either in whole or in part. However, before the promulgation of such agreements in the Official Gazette, it may proceed to an examination of the lawfulness of such agreements and, in the event that they infringe the law, refrain from promulgating them. The Government explains that in this case either of these parties may file the collective agreement at the competent justice of the peace court. Once this is done, the agreement comes into force but in the event of litigation by one or other of the parties, the lawfulness of the agreement is decided by the court.

86. The Government states that, in the present case, several trade union organisations compete with one another to promote the occupational and economic interests of accountants employed in private undertakings. The Federation of Private Greek Employees (OITE), the Federation of Accountants and Assistant Accountants as well as the Association of Accountants signed a collective agreement with the employers' organisations on 24 April 1980 covering the conditions of work and wages of their members. This agreement was filed with the Ministry of Labour for promulgation. The Ministry returned the document to the parties concerned, pointing out that the Pan-Hellenic Federation of Accountants (POL), which in the past had been considered the most representative organisation, was not included.

87. In the light of the refusal by the Ministry of Labour to promulgate the collective agreement in question, the signatory organisations filed the agreement before the Athens justice of the peace court, in accordance with the provisions of section 8 of Legislative Decree No. 186 of 1969. The Government explains that once the collective agreement is thus filed at the court, it becomes
binding on the employers and workers who have signed it. The Government adds that both the most representative organisations as well as those which are simply representative may conclude collective agreements.

88. The Government points out that, in the meantime, a dispute broke out between POL and the trade union organisations which had signed the collective agreement. The dispute was taken to the Athens court of arbitration of the first instance and subsequently settled on appeal at the request of POL by Decision No. 55/80 respecting the conditions of work and wages of accountants and assistant accountants affiliated to POL.

89. The Government states that both texts were declared obligatory by Decisions Nos. 16090 and 16091 of 1980. It explains that the Ministry of Labour does not have the right to give retroactive effect to the provisions of an arbitration award or a collective agreement: these texts therefore came into force on the date of their promulgation in the Official Gazette.

90. Finally, as regards the question of trade union dues, the Government recalls that it has already provided the ILO with comprehensive and exact information on this subject. It reiterates that it is still awaiting concrete suggestions from the workers' organisations with a view to making rules for the collection of dues by means of a check-off system established by collective agreement so as to abolish the financing of trade union organisations by the intermediary of ODEPES.

C. The Committee's conclusions

91. The Committee notes in the present case that the respective statements of the complainant and the Government are contradictory. The complainant alleges that the Government deliberately delayed the date on which an arbitration award came into force and that it encouraged the conclusion of a "pseudo collective agreement" between employers' and workers' organisations which were insufficiently representative, in order to promote the interests of the employers at the expense of those of the complainants. On the other hand, the Government believes that it has made a contribution towards guaranteeing the trade union rights of the complainant by its refusal to publish automatically a collective agreement signed by trade union organisations which were not the most representative organisations of their branch and the fact that it pointed out to these organisations that the complainant, which was the most representative organisations, was not one of the signatories of the said collective agreement.

92. The Committee notes that the complainant was obliged to file the arbitration award and the collective agreement at the Athens justice of the peace court to ensure their publication and subsequent implementation. In this respect, the Government itself explains that the filing of such texts at the Court makes them binding for both signatories and that the texts come into force on the date of their promulgation. The Committee observes that both texts were promulgated by Ministerial Decisions Nos. 16090 and 16091 published in the Official Gazette.
Furthermore, the Committee has examined the provisions of Act No. 3239 of 18 May 1955 whereby no decision of the Ministry of Labour publishing the collective agreement or confirming and publishing an arbitration award in the Government Gazette may be issued before the sixteenth day or after the thirty-fifth day from the filing of the agreement at the Ministry of Labour or the notification of the award (section 20(1)). Where the prescribed procedure is not completed within the period specified, either of the parties shall be entitled to file the agreement or award at the justice of the peace court in Athens within ten days of the end of the time allowed. The parties so doing must give notice thereof by bailiff to those affected and to the Ministry of Labour; the agreement or award shall take effect from the day following the notification of the last recipient (section 20(3)). The Act also stipulates that the collective agreement shall take effect from the date of publication in the Official Gazette, unless a different date is specified therein. Moreover, Legislative Decree No. 73 of 1974, which amends Act No. 3239 of 1955, gives the Government the right, as it itself has pointed out, to verify the lawfulness of collective agreements and arbitration awards and to refer back for further study by the parties or the Administrative Court of Arbitration any agreement or decision which it is about to publish (section 2).

As regards the arbitration award, the Committee notes that although the Government did not refer the award back to the Administrative Court of Arbitration, it did not publish the award within the 35 days following its adoption, as required by the law. In fact, the complainant alleges that the award dates from 29 February; it should therefore have been published at the beginning of April.

However, the Committee also observes that the complainant itself could have filed the award which it had received at the justice of the peace court of Athens within the ten days of the end of the time allowed, i.e. about 15 April 1980, and given notice both to the employers and the Ministry so as to ensure that the award took effect. In accordance with the law, the award would then have taken effect the day following notification of the last recipient, i.e. very probably before the end of April or at the very beginning of May.

In this connection, the complainant itself admits that it did not file its request until 25 June, hence the delay with which the arbitration award came into effect. Furthermore, the complainant does not indicate whether it gave notice thereof by bailiff to its employers and the Ministry. If it had made haste to give such notification, once again the arbitration award would, according to the law, have come into effect from the day following the notification of the last recipient.

As regards the allegation that the Government knowingly delayed the date on which an arbitration award came into effect, the Committee therefore notes that although the Government did not publish the award within the 35 days required by the law, the complainant itself did not file its request with the Court within the period of 10 days allowed by the law. The Committee believes in this connection that the provisions of the law are reasonable and that such requirements do not constitute an infringement of trade union rights in general and that there has been no breach of the trade union rights of the complainant in the present case.
98. As regards the allegation that the Government deliberately encouraged the conclusion of a "pseudo collective agreement" with trade union organisations which were insufficiently representative, the Committee notes that before publishing the collective agreement in the Official Gazette, the Government pointed out to the parties that the complainant, which was the most representative trade union organisation, was not a signatory. The Government had therefore taken the necessary precautions before it promulgated the agreement at the request of the signatories. As regards the second point, the Committee once again therefore believes that the publication of the collective agreement did not constitute an infringement of the trade union rights of the complainant.

99. With regard to the allegation concerning the financing of trade union organisations, the Committee once again asks the Government to adopt legislation so as to abolish the financing of these organisations by the intermediary of the ODEPES and so as to fix a framework to permit trade unions, which so wish, to collect dues from their members by means of a check-off system established by collective agreement.

Recommendation of the Committee

100. In these circumstances, the Committee recommends the Governing Body to decide that the allegations concerning collective bargaining do not call for further examination.

As regards the financing of trade union organisations, the Committee asks the Governing Body to request the Government once again to adopt legislation so as to abolish the financing of trade union organisations by the intermediary of the Trade Union Special Fund Management Organisation and so as to fix a framework to permit trade unions, which so wish, to collect dues from their members by means of a check-off system.

Cases Nos. 1035 and 1050

COMPLAINTS PRESENTED BY THE CENTRE OF INDIAN TRADE UNIONS AND THE DVC STAFF ASSOCIATION AGAINST THE GOVERNMENT OF INDIA

101. The complaint of the Centre of Indian Trade Unions (CITU) is contained in a communication dated 23 March 1981. That of the DVC (Damodar Valley Corporation) Staff Association is contained in a communication dated 8 June 1981 and it sent additional information on 6 July 1981. The Government sent its reply in letters dated 21 August and 10 September 1981.

102. India has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. The complainants' allegations

103. In its letter, the CITU alleges that employees of the Damodar Valley Corporation (DVC) - a multi-purpose government-run corporation set up in 1949 - have, since the advent of its new chairman in August 1980, been denied their economic demands and trade union rights. The CITU explains that its affiliate - the DVC Shramik Union - organised a hunger strike on 23-24 July followed by submission of a memorandum of demands to the management: mass squatting (dharna) on 27-28 August followed by the submission of a similar memorandum and, there being no management reaction, a duly notified strike on 23-24 September. It claims that against this background of growing struggle, the management, on 21 August, issued a circular banning any discussion with the "unrecognised" unions, depriving the workers of their right to collective bargaining, whereas under a standing order of November 1969 discussion had been allowed irrespective of recognition. According to the complainant, the management then cancelled in contravention of the DVC standing orders the casual leave already granted on personal grounds to some workers who had participated in the hunger strike and dharna. On 3 October 1980, when one of the two recognised unions was "derecognised", orders were given for maintaining "a watch on the known or suspected agitators" and "a continuous dossier on the activities and acts of indiscipline that may be committed by suspects or likely offenders" which the CITU considers intimidated the workers and deprived them of their basic democratic and trade union rights.

104. The CITU then lists specific cases of anti-union victimisation allegedly carried out by the DVC: on 4 September 1980, D. K. Roychowdhury, Treasurer of the DVC Shramik Union, was transferred in violation of all the norms laid down by the DVC; on 1 October 1980, seven workers, including Mr. M.M. Dutta and Mr. Himanshu Roychowdhury, Vice-President and member of the Central Committee of the DVC Shramik Union respectively, were suspended on false and fabricated grounds; on 17 October, three more unionised employees were suspended on a baseless allegation that they neglected their duties; one recognised union received favoured treatment over the others as the management allowed leave with pay for its hunger strike and dharna because its members did not participate in the strike of 23-24 September.

105. The DVC Staff Association alleges that the employees of the Damodar Valley Corporation have, since August 1980, been denied their trade union and democratic rights by the following actions by the employer: refusal of discussion, including collective bargaining, with unrecognised registered trade unions despite past practice; salary cuts and caution letters to be applied to workers taking part in industrial action, copies of such letters being kept on the workers' service records; de-recognition of the complainant organisation without giving reasons or allowing it the opportunity of a hearing and consequent refusal of representation on various committees; the banning of bill posting and rallies in the DVC industrial colony; transfer of employees who took part in trade union activities; the scrapping of collective agreements in favour of unilaterally imposed decisions; and intimidation against the collection of union dues by issuing a show cause notice as to why disciplinary action should not be taken against unionists for such unauthorised action.
106. The Government generally states that while it fully recognises the right of workers to strike, the DVC Staff Association, by its own admission, has been frequently resorting to agitation and coercive methods such as the hunger strike and dharna in July and August 1980 and it points out that the September strike was illegal under the Industrial Disputes Act, 1947 because conciliation proceedings were pending before the Labour Commissioner of West Bengal. More specifically, it claims that it is not correct to say that management had earlier discussed various problems with all registered unions irrespective of whether or not they were recognised - even under the 1969 circular unrecognised registered unions could only discuss individual cases having no general application - and registered unions, even if unrecognised, can always utilise the Industrial Disputes Act for settlement of disputes within the meaning of that Act. In addition, the Government points out that agreement has already been reached with the recognised union concerning the demands which gave rise to the industrial action. It claims that the management has been ensuring that the legitimate grievances of workers are settled expeditiously and there is no restriction on their trade union rights.

107. As regards the allegations of anti-union reprisals, the Government states that the casual leave which had been granted was cancelled, and consequent wage cuts for absence ordered, because it had come to the management's notice that the workers had applied for it on private and personal grounds but had in fact taken leave to participate in the hunger strike. It states that the "derecognition" notice of 3 October was issued for the safety of the plant and included orders for surveillance because attempts were made to sabotage the plant after one of the unions had been derecognised. In fact, it alleges that an employee caught taking part in such sabotage was a member of the derecognised union and was arrested under the National Security Act. The Government explains that D.K. Roychowdhury, engineer, was transferred in the interests of the DVC's work and not as a measure of victimisation - the management thought that being a technical hand, his services could be better utilised in construction projects rather than at headquarters. It claims that the suspension of seven workers was not due to their trade union activity, but for their assault and incitement of other employees to assault the Chairman of the DVC on 1 October 1980, as a result of which he had to be hospitalised. It continues that the three other suspensions were due to gross negligence of duty which could have caused serious damage to the plant; these workers were, however, released from suspension and reinstated after admitting their mistake. As regards suspensions in general, the Government points out that the union could have had recourse to the existing legal remedies for settlement, rather than lodging a complaint with the ILO. Lastly, it states that the management's action in allowing leave with pay to certain workers was not to favour them, but was a token of appreciation of their devotion to duty during the September strike.

108. In its communication of 10 September 1981, the Government refers to the banning of bill posting stating that the unions were indulging in sticking posters on the walls of the power plants and other buildings indiscriminately in spite of notice boards
provided for that purpose and that they had been warned not to do so; it also mentions that the Government of India in 1970 issued directives to take immediate steps to efface all objectionable writings and posters on the walls of buildings, so the Corporation's action does not affect trade union rights. The Government goes on to state that the allegations of transfer of employees and scrapping of collective agreements are vague and too general to comment on; it does however deny that any person has been transferred by way of victimisation for his trade union activities. Lastly, it claims that the notice regarding the ban of collection of subscriptions within factory/office premises during working hours cannot be objected to as such collection violates Regulation 9 of the DVC Service Conduct/Regulations.

C. The Committee's conclusions

109. This case concerns allegations that after engaging in industrial action in July, August and September 1980, certain unions and employees of the government-run Damodar Valley Corporation were victimised by the management by the banning of any discussion with the "unrecognised" unions which allegedly deprived the workers of their right to collective bargaining; cancellation of the casual leave already granted to some participants in the industrial action; "derecognition" of one of the unions involved and the ordering of a watch and continuous dossiers on known or suspected agitators; transfer of the Treasurer of one of the unions involved; suspension of ten workers including the Vice-President and a Central Committee member of the same union; favoured treatment to members of another union which did not participate in the September 1980 strike; and additional allegations concerning the banning of bill posting, rallies and of collection of union dues at the workplace.

110. As regards the allegation that the management's banning of any discussion with the "unrecognised" unions deprived workers of their right to collective bargaining, the Committee notes the Government's statement that discussion with "unrecognised" unions had only taken place in respect of individual cases having no general application and that these unions have the same right as other registered unions to settle disputes through the Industrial Disputes Act. Furthermore, the Committee notes that, according to the Government, the demands which gave rise to the industrial action have been settled by agreement with the recognised union. The Committee has considered in the past that a refusal by an employer to bargain with a particular union need not constitute an infringement of freedom of association; it has adopted this attitude on the basis of the principle that collective bargaining must, if it is to be effective, assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining. It is therefore of the opinion that this aspect of the case does not call for further examination.

111. As concerns the cancellation of the casual leave already granted to some participants in the industrial action, the Committee

1 See, for example, 102nd Report, Case No. 512 (Cyprus), para. 19; 202nd Report, Case No. 915 (Spain), para. 53.
notes that the CITU itself admits — in accordance with the Government's justification — that the leave had been claimed on personal grounds and was subsequently used for participation in a hunger strike and dharna directed against the DVC. In these circumstances, the Committee considers that the subsequent retroactive cancellation of the leave granted and the consequential wage-cuts for unauthorised absence do not appear, in this particular case, to constitute acts of anti-union discrimination. It accordingly considers that this aspect of the case does not call for further examination.

112. Regarding the "derecognition" notice ordering the maintenance of a watch on known or suspected agitators and a continuous dossier on the suspects' acts of indiscipline, the Committee notes the Government's explanation that this was done for the safety of the plant, particularly in view of a recently-foiled sabotage attempt by an employee, a member of the "derecognised" union. While acknowledging the employer's right to protect his plant, the Committee finds it difficult to accept that the action of one unnamed employee should justify the continuous surveillance of all members of his union, indeed, of all the employees of the undertaking who are "known or suspected agitators". In this connection, it would recall the ILO Resolution concerning trade union rights and their relation to civil liberties which makes special mention of the right to freedom and security of person as one of the civil liberties essential for the normal exercise of trade union rights and the right to inviolability of trade union premises as well as of correspondence and telephonic conversations.

113. As for the transfer of D.K. Roychowdhury, the Treasurer of one of the unions involved in the industrial action, the Committee notes that the CITU alleges that this was due to his trade union activities, whereas the Government explains that this was done in the interests of the DVC's work since he was a technical hand who could be better utilised in construction projects than at headquarters. In view of this reply and the absence of evidence to support the allegation, the Committee would simply recall that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, this protection being particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee considers that this aspect of the case does not call for further examination.

114. As regards the suspension of 10 workers, including Mr. M.M. Dutta and Mr. Himanshu Roychowdhury, the Vice-President and a Central Committee member of one of the unions involved in the industrial action, the Committee notes that the CITU alleges this was done on false and baseless grounds, whereas the Government

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1 Adopted at the 54th Session of the International Labour Conference, 1970.

2 See, for example, 197th Report, Case No. 920 (United Kingdom/Antigua), para. 132; Case No. 913 (Sri Lanka), para. 317.
claims that it was due, in the case of the seven workers suspended on 1 October, to their violent assault on the Chairman of the Corporation, and in the case of the three suspended on 17 October, to their gross neglect of duty. The Committee further notes that, according to the Government, these latter three were released from suspension and reinstated after admitting their mistake, so it is only the situation of the seven workers suspended on 1 October that is outstanding. In cases involving allegations of anti-union discrimination, the Committee has referred to the difficulty that a worker may have in furnishing proof of such an act of which he claims to have been the victim and it has drawn attention to the Workers' Representatives Recommendation, 1971 (No. 143) which recommends, as one of the measures that should be taken to ensure the effective protection of workers' representatives, provision for laying on the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was justified. In the present case, the Government has not supported its explanation of the suspensions with concrete evidence; its claim that the union could have had recourse to the existing legal remedies for settlement, rather than lodging a complaint with the ILO, does not justify the DVC's actions. The Committee, when examining other cases in the past, has stated that in view of the nature of its responsibilities it cannot consider itself bound by any rule that national procedures of redress must be exhausted. It would therefore draw the Government's attention to the above-mentioned principle that workers, especially trade union officials, should enjoy adequate protection against acts of anti-union discrimination in their employment and would request the Government to consider the possibility of revoking the suspension of the seven unionists and trade union leaders involved.

115. As concerns the alleged favoured treatment given by the management to the members of one union which did not participate in the strike in September 1980, the Committee notes the Government's reply that the allowance of leave with pay to certain workers was a token of appreciation of their devotion to duty. In this connection, the Committee would recall that by placing one organisation at an advantage or at a disadvantage in relation to the others, a government may either directly or indirectly influence the choice of workers regarding the organisation to which they intend to belong, since they will undeniably want to belong to the union best able to serve them, even if their natural preference would have led them to join another organisation for occupational, religious, political or other reasons.

116. As regards the allegations presented by the DVC Staff Association concerning transfer of employees who took part in trade union activities and of scrapping of collective agreements in favour of unilaterally imposed decisions by management, the Committee notes

1 130th Report, Case No. 673 (Madagascar), para. 65.
2 See, for example, 78th Report, Case No. 294 (Spain), para. 136; 190th Report, Cases Nos. 871 and 907 (Colombia), para. 262.
3 See, for example, 58th Report, Case No. 231 (Argentina), paras. 551 and 552; 202nd Report, Case No. 949 (Malta), para. 277.
the Government's statement that these are vague and general allegations and that in the absence of any specific instances being cited, no comments can be given beyond a general denial of any transfers of personnel because of trade union activities. In view of the lack of detailed information as to these two allegations, either in the original complaint or in the additional information, the Committee cannot but come to the conclusion that this aspect of the case does not call for further examination.

117. Regarding the allegation of the banning of bill posting and rallies, the Committee notes that according to the Government, this was justified because the unions had, despite warnings to the contrary and the provision of notice boards, been indiscriminately sticking posters on the walls of Corporation buildings. It does not specifically refer to the alleged ban on rallies. In this connection, the Committee would, while noting the lack of specific details given by the DVC Staff Association, generally point out that the ILO Resolution concerning Trade Union Rights and their Relation to Civil Liberties lists freedom of assembly and freedom to impart information and ideas through any media as among the civil liberties which are essential for the normal exercise of trade union rights.

118. As concerns the banning of the collection of union dues within the undertaking's premises and during working hours, the Committee notes the Government's statement that such collection violates the Corporation's Service Regulations. In this connection, it would draw the Government's attention to ILO Recommendation No. 143 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, which provides that in the absence of other arrangements for the collection of trade union dues, workers' representatives authorised to do so by the trade union should be permitted to collect such dues regularly on the premises of the undertaking. It would accordingly request the Government to consider taking steps to bring Regulation 9 of the Corporation's Service Regulations into line with this provision of Recommendation No. 143.

The recommendations of the Committee

119. In these circumstances, the Committee recommends the Governing Body to approve this report, and in particular the following conclusions:

The Committee considers that the allegation that certain unions had been denied their collective bargaining rights, the allegation concerning unjustified cancellation of casual leave and those relating to the transfer of union officials do not call for further examination in the special circumstances of the case.

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1 Adopted by the International Labour Conference at its 54th Session, 1970.
Regarding the ordering of a watch and continuous dossiers to be maintained on known or suspected agitators in connection with the derecognition of a union, the Committee would draw the Government's attention to the Resolution concerning trade union rights and their relation to civil liberties which upholds the right to freedom and security of person and to inviolability of union premises, correspondence and telephonic conversations.

As concerns the suspension of trade union leaders and members involved in the industrial action of September 1980, the Committee would draw the Government's attention to the principle that workers, especially trade union officials, should enjoy adequate protection against acts of anti-union discrimination in their employment. It would accordingly request the Government to consider the possibility of revoking the suspension of the seven unionists and trade union leaders involved.

Regarding the alleged favoured treatment given by the management to the members of the union which did not participate in the industrial action in question, the Committee would recall the danger to the principle of free choice of unions when governments place one organisation at an advantage or at a disadvantage in relation to others.

Regarding the banning of bill posting and rallies, the Committee notes the lack of specific details given by the complainant, but would generally point out to the Government that the ILO Resolution concerning Trade Union Rights and their Relation to Civil Liberties upholds freedom of assembly and freedom to impart information as essential for the normal exercise of trade union rights.

The Committee would draw the Government's attention to ILO Recommendation No. 143 as regards the facilities to be afforded to trade union representatives for the collection of union dues, and would ask the Government to consider taking steps to bring Regulation 9 of the Corporation's Service Regulations, which prohibits such collection, into line with the relevant provisions of Recommendation No. 143.

Case No. 1038

COMPLAINTS PRESENTED BY THE TRADES UNION CONGRESS,
THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS
AND THE PUBLIC SERVICES INTERNATIONAL AGAINST THE
GOVERNMENT OF THE UNITED KINGDOM

121. The United Kingdom has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

122. The TUC alleges that the Government has violated Conventions Nos. 87 and 98 and Articles 7 and 8 of Convention No. 151 through its unilateral suspension of the Civil Service Pay Agreement (which provided agreed arrangements for jointly determining pay in the civil service), through its refusal to negotiate with civil service trade unions for pay increases which were due on 1 April 1981 and through its refusal to have the issue of civil service pay and conditions referred to the duly constituted machinery for arbitration - the Civil Service Arbitration Tribunal.

123. According to the TUC, on 27 October 1980, the Lord President of the Council (the minister responsible for the civil service) informed the Council of Civil Service Unions (CCSU) that the Government had decided to suspend the 1974 Pay Agreement so far as the settlement for 1981 was concerned; the Agreement was devised and operated to keep the pay of civil servants in line with that of employees in the private sector and in the rest of the public sector. It states that the Government, by letter dated 29 October, also denied to the CCSU access to the reports of the Pay Research Unit which provided the data on pay movements on which settlements were based. The TUC continues that on 5 February 1981, the CCSU made a claim for a pay increase and the Government made an offer substantially below it; at a meeting on 9 February the Lord President refused recourse to arbitration proposed by the CCSU. It states that on 23 February, the Lord President announced that the Government intended to review arrangements for determining the pay of non-industrial civil servants with the object of establishing an agreed system, but when the CCSU sought elucidation of this statement, none was forthcoming.

124. In the additional information supplied by the TUC is a copy of the writ of injunction served on the Director of the Pay Research Unit on 31 October 1980 ordering him to deliver up the Unit's reports, and a copy of the Chancery Division judgment of the application handed down on 2 December 1980 in which the Court held that, as the Pay Research Unit is a government body and its director and staff are civil servants, the Government had the right to stop it continuing to prepare the reports, the Crown having the right to withdraw the services of its servants whether that withdrawal involved a breach of the Pay Agreement or not.

125. The TUC also attaches a document describing the history of arbitration within the context of the Civil Service Arbitration Agreement, signed in 1925, and pointing out that the Government's refusal of arbitration "on grounds of policy" stems from a 1926 statement that "... the Government of the day, to whatever political party it may belong, is responsible to Parliament for the administration of the public service. It cannot relieve itself of
this responsibility, or share it with any other persons or organisation". It also describes subsequent uses of this limitation: in the 1936 equal pay for women dispute; the 1950 interned Admiralty Staff pay dispute; the 1961 pay pause policy; and the 1978 Society of Civil and Public Servants' pay claim and London weighting dispute. This document refers then to the "Staff Relations in the Civil Service" handbook, first drafted in 1947, which includes in the section entitled "Arbitration policy" the following paragraph:

94. On the other hand, there have been refusals to allow certain claims to go to arbitration. Some refusals have been based on interpretation of the Arbitration Agreement, and have already been described (paragraphs 79-82 above). (It should of course be emphasised that the decision whether a claim is arbitrable within the terms of the Agreement has no necessary connection whatsoever with the merits of the claim; indeed, departments have accepted as arbitrable a great many claims which they have regarded as possessing no merits at all.) But the government must also reserve to itself the right to refuse arbitration "on grounds of policy"; because the government is responsible to Parliament for the administration of the public service and cannot relieve itself of that responsibility or share it with any other persons or organisation.

According to the complainant, the first draft of the handbook was transmitted to the staff side with a covering letter stating that it was not "in any way intended to be an agreed Whitley document, and we do not ask you to accept any kind of responsibility for views expressed in it or for the manner of their presentation". It thus claims that the staff have never accepted the explanation of the "grounds of policy" argument included in the handbook and relied on by the Government.

B. The Government's reply

126. In its reply, the Government states that the TUC's complaint is in very general terms and that it can see nothing in the complaint, nor in the dispute itself, which could support the allegation that the provisions of Conventions Nos. 87 and 98 have been infringed, or indeed any matter which is in any way relevant to them.

127. Turning to Article 7 of Convention No. 151, the Government states that it fully accepts its obligation to encourage and promote the full development and utilisation of machinery for the negotiation of terms and conditions of employment between the Government as employer and the civil service unions; such machinery has existed since 1919, enabling union representation in negotiations with the Government or discussion on all issues and it has always been recognised that parties to agreements or arrangements under this machinery were free to seek to alter them by agreement, or to withdraw from them. According to the Government, it was necessary, in view of public criticism of the existing arrangements and also because of the increasingly difficult economic

29
position of the country, to suspend the existing Pay Agreements for the 1981 pay settlement on grounds of national policy and finally formally to confirm its withdrawal from these Agreements in accordance with their terms. It claims that, in taking this action, it nevertheless remained anxious to reach a negotiated and agreed pay settlement for 1981 and accepted the need to establish new and agreed pay arrangements as soon as practicable.

128. Referring to Article 8 of Convention No. 151, the Government states that notwithstanding the suspension of the Pay Agreements, negotiations continued in the attempt to reach agreement on a pay settlement for 1981. It points out that agreement was finally reached on 31 July 1981. In its view, as throughout the dispute the Government sought an agreed settlement through negotiation, there was no obligation to pursue one of the alternative courses mentioned in Article 8 by seeking a settlement through independent and impartial machinery, such as mediation, conciliation and arbitration. In support of this, it refers to the guidance given as to the meaning of the term "as may be appropriate to national conditions" during the discussion of this Convention at the International Labour Conference in 1978. With specific reference to the allegation that the Government refused to allow the dispute to go to arbitration, it points out that successive governments have always publicly reserved the right to refuse arbitration on grounds of national policy, and that in continuing to subscribe to the Civil Service Arbitration Agreement all parties have been fully aware that its operation is subject to this reservation. The Government claims that this reservation is appropriate to national conditions and is in no way incompatible with its obligations under Convention No. 151.

129. Lastly, the Government explains that in the agreement which ended the dispute, it was accepted that in the event of disagreement in negotiations for the 1982 pay settlement, the Government will accept recourse to the Civil Service Arbitration Tribunal, subject to the understanding that it reserves the right to ask the House of Commons to approve setting aside the Tribunal's award on grounds of overriding national policy. For the longer term, the Government announced on 29 June 1981 the appointment of an independent Inquiry under the chairmanship of a retired Lord Justice of Appeal to conduct a review of civil service pay arrangements and to make recommendations on the principles and the system by which remuneration of the non-industrial civil service should be determined. It explains that the Inquiry has been appointed with the objective of establishing as soon as practicable an ordered and agreed system which takes account of all relevant factors and which could command the widest possible acceptance. It states that the civil service unions have welcomed the setting up of this Inquiry and have been invited to contribute their views to it. According to a copy of the announcement supplied by the Government, the Inquiry is to report by the summer of 1982.

130. In an explanatory note attached to the Government's communication, it gives its version of the facts of the dispute, pointing out in particular that, as a result of the suspension of the Pay Agreements, the Pay Research Unit did not deliver the evidence it had collected for the 1981 settlement to either of the negotiating parties and that in negotiating the three closely related issues (i.e. the level of pay increase for 1981, the way in
which the 1982 settlement would be reached and the longer-term arrangements for determining pay) eight meetings were held between Civil Service Department Ministers and the Council of Civil Service Unions from February to June 1980, in addition to a number of meetings between union representatives and department officials and exchanges of correspondence. It also points out that the Civil Service Arbitration Agreement provides for the reference of disputes on pay and associated matters to the independently chaired Civil Service Arbitration Tribunal by the Secretary of State for Employment at the request of either party (though for grades with pay above that of Principal the agreement of both parties is required and has rarely been given by the management) and that the Government's reservation of the right to refuse this is made clear in the "Staff Relations in the Civil Service" handbook, and has been exercised on a number of occasions on grounds of national policy.

C. The Committee's conclusions

131. The Committee notes that this case involves allegations of violations of Conventions Nos. 87 and 98 and Articles 7 and 8 of Convention No. 151 arising out of the Government's termination of Pay Agreements, which operated to keep the pay of civil servants in line with that of other sectors, and its alleged refusal to negotiate or to allow arbitration of the civil service pay for 1981 as provided for under the Civil Service Arbitration Agreement, 1925, as amended. The complainants also allege that the Government denied access to information prepared by the Pay Research Unit in accordance with the Pay Agreements as a basis for determining civil service pay increases, and that the Government, after announcing its intention to review arrangements for determining such pay, had not answered the unions' request for elucidation of this statement.

132. The background of the dispute, as it appears to the Committee from the documentation supplied by both sides, is as follows: under the Civil Service Pay Agreement which came into effect from 1 January 1975 and was amended in 1977, the Pay Research Unit would establish and report to the parties concerned the facts of outside remuneration for comparable work annually, so that negotiations could take place for pay increases by 1 April each year. Under the Agreement, it was open to either side to propose, at any time, a review of any of its provisions or to give six months' notice of an intention to withdraw from it or any part of it; where a review was proposed, the existing provisions were to continue in force until the date agreed for the implementation of provisions revising them (paragraph 2). On 27 October 1980, the Minister responsible for the civil service suspended the Pay Agreement and on 29 October the Pay Research Unit informed the unions that it would not be delivering the reports to the negotiating parties. At a meeting of government officials and the Council of Civil Service Unions on 5 February 1981, the unions claimed a pay increase of 15 to 19 per cent and the Government offered 6 per cent. On 23 February, the Government offered 7 per cent and a further offer of a flat rate of 30 pounds a head or 7 1/2 per cent was finally agreed upon on 31 July. Arbitration was refused by the Government on economic grounds as from 9 February 1981.
133. The Government argues that Conventions Nos. 87 and 98 are not relevant to the dispute and have not been infringed. The Committee considers that in the present case Article 3 of Convention No. 87 could be of some relevance since it provides for the right to trade unions to organise their activities and formulate their programmes, a right that has always been considered by the Committee to embrace the right of trade unions to engage in collective bargaining on behalf of their members. In the present case this requirement of the Convention would appear to have been satisfied, since high-level negotiations did in fact take place between the parties until a settlement of the dispute was reached. Moreover, since a large proportion of the employees involved in the dispute are employed in the administration of the State and are thus excluded under Article 6 from the terms of Convention No. 98, this Convention cannot be invoked in discussion of the whole dispute. In view of the fact that a more recent Convention exists covering the workers concerned and directly relevant to the central points at issue, the Committee will base its examination of the case on Convention No. 151.

134. Regarding the alleged breach of Article 7 of Convention No. 151, the Committee notes that the complainants allege that the Government unilaterally terminated the previously existing negotiating procedure and refused to negotiate with the civil service trade unions for the pay increases due on 1 April 1981, whereas the Government states that, because of public criticism of the existing negotiation arrangements and the difficult economic position of the country, it was necessary to withdraw from them. It claims that it did so in accordance with the terms of the Agreement but that discussions, exchanges of correspondence and high-level negotiation continued from the date it announced its suspension of the arrangements until a settlement was reached on 31 July 1981.

135. The Committee recognises that Article 7 allows a certain flexibility in the choice of procedures to be taken in the determination of terms and conditions of employment and that both parties in the present case did in fact continue negotiations for a 1981 settlement until an agreement was reached. Nevertheless, it observes that such negotiations took place without the aid of the independent data which, under the terms of reference of the Pay Research Unit (set out in point 7 of the 1974 Pay Agreement) should be reported to the negotiating parties as long as the Agreement is in force and which had previously been relied on in negotiating pay settlements. The Committee notes that the courts refused to order the Pay Research Unit to deliver this information even when the withdrawal of its services involved a breach of the 1974 Agreement and is bound to note that the unions may accordingly have been

1 Article 7 reads as follows:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

32
placed in a weaker position than they would have normally been during the negotiation of the terms and conditions of employment of civil servants. The Committee notes moreover that the Government unilaterally suspended the 1974 Pay Agreement so far as the settlement for 1981 was concerned and subsequently withdrew from it, without giving the full six months' notice as stipulated in the Pay Agreement.

136. As regards the alleged breach of Article 8 of Convention No. 151, the Committee notes that the Government, relying on the preparatory work during the adoption of the Convention, interprets the Article as giving a choice between negotiation or other procedures (such as arbitration) in settling disputes. The Committee notes that the Government also argues that it had always had a right to refuse arbitration which other Governments in the United Kingdom had used in the past and of which the unions were fully aware. The Committee recalls that, during discussion at the Conference of the term "as may be appropriate to national conditions", the representative of the Secretary-General stated, in paragraph 63 of the Report of the Committee on the Public Service:

The term applied to what followed in the text and had to be interpreted in the light of the other parts of the Article which specified two different approaches to the settlement of disputes - namely, negotiation between the parties or recourse to an independent and impartial machinery, it being understood that one may follow the other. It would appear that at least one of these approaches should exist and that governments in individual countries would be free to choose in accordance with their national conditions.

and it was noted in the same paragraph that:

The Workers' members agreed that the statement of the representative of the Secretary-General corresponded to their understanding of the position.

Thus, while the Government's choice to negotiate the dispute does not appear to the Committee to conflict with Article 8 of the Convention, it does appear clear from the evidence in the present case that the form of settling the 1981 pay dispute imposed by the Government did not have the confidence of the trade unions, a situation which might have been avoided had the Government accepted recourse to arbitration as it has accepted to do in the event of a disagreement in the 1982 pay negotiations.

137. As concerns the alleged government denial of access to the Pay Research Unit's reports, the Committee notes from the

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1 Article 8 reads as follows:

The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.
Government's reply and from a copy of the Unit Director's letter dated 29 October 1980 (supplied by the TUC) notifying the Council of Civil Service Unions of the non-delivery of the reports, that none of the negotiating parties would receive the information. While the Committee notes that an application to force the delivery of the reports was rejected by the courts, it regrets that such information was denied to the negotiating parties even though, under the 1974 Pay Agreement, the Pay Research Unit had a duty to report such information while the Agreement was in force, that is until the Government's notice of withdrawal took effect in April 1981.

138. Regarding the complainants' allegation that the Government had not answered the unions' request for clarification of its announcement to review arrangements for determining civil service pay increases in the future, the Committee notes that the allegation was made in the TUC's letter of 12 May 1981 and that the following month the Government had publicly announced the setting up of an independent Inquiry including details as to its chairmanship, terms of reference and reporting period. Consequently, the Committee considers that this aspect of the case does not call for further examination.

139. Turning then to the situation for the 1982 civil service pay increases, the Committee notes that this aspect of the dispute was raised in the February 1981 discussions, was specifically discussed in correspondence dated 6 May 1981 and finally settled in the 31 July agreement which ended the dispute. The situation, according to the Government, is that in the event of disagreement in the 1982 negotiations, it will accept recourse to the Civil Service Arbitration Tribunal, subject to the understanding that the Government reserves the right to ask the House of Commons to approve setting aside the Tribunal's award on grounds of overriding national policy. In examining this arrangement under Article 8 of Convention No. 151, the Committee does not challenge the Government's right to put before Parliament issues of national policy, but it points out that the independent and impartial machinery chosen by the Government to settle disputes must be established "in such a manner as to ensure the confidence of the parties involved". Moreover, the Committee has always stressed the importance of the principle that where procedures such as conciliation and arbitration are used, the awards made should be binding on both parties. It accordingly hopes that the Government will exercise its right to refer any arbitration award to the House of Commons only if convinced that this is required on grounds of overriding national policy.

140. Lastly, as concerns the long-term situation for determining civil service pay increases, the Committee notes the establishment of an independent Inquiry under the chairmanship of a retired Lord Justice of Appeal to report on the principles and the system to be applied by the summer of 1982. In particular, it notes the Government's statement that the civil service unions have welcomed the Inquiry and have been invited to contribute their views to it. The Committee hopes that this Inquiry will report in the shortest possible time and will recommend arrangements, satisfactory to all parties in view of what has been stated above in regard to Articles 7 and 8 of Convention No. 151, so as to avoid any future tensions in this particular sector.
The recommendations of the Committee

141. In these circumstances, the Committee recommends the Governing Body to approve this report, in particular the following conclusions:

The Committee considers that the allegation relating to the lack of elucidation of the Government's announcement to review arrangements for determining civil service pay increases does not call for further examination.

As regards the alleged breach of Article 7 of Convention No. 151, the Committee notes that continuous negotiations took place resulting in a settlement of the 1981 pay increases, but also notes that the independent data which should have been reported to the negotiating parties under the terms of the 1974 Pay Agreement, as long as this Agreement was in force, and which had been relied on previously in negotiating pay settlements was not made available, and that the unions may accordingly have been placed in a weaker position than they would have been in normally during the negotiations. The Committee also notes that the Government unilaterally suspended the 1974 Pay Agreement and subsequently withdrew from it without giving the full six months' notice as stipulated in the Pay Agreement.

As regards the alleged breach of Article 8 of Convention No. 151, the Committee, noting the interpretation of this Article accepted by the Conference Committee in 1978, considers that the Government's choice to negotiate the dispute does not appear to conflict with this Article, but also considers that it appears clear from the evidence in the present case that the form of settling the dispute imposed by the Government did not have the confidence of the trade unions, a situation which might have been avoided had the Government accepted recourse to arbitration as it has agreed to do in the event of disagreement in the 1982 pay negotiations.

Regarding the arrangements for the 1982 pay increases, the Committee notes that the Government has agreed to arbitration on the understanding that it can ask the Parliament to set aside the Arbitration Tribunal's award. While not challenging this right, the Committee would draw the Government's attention to the principle that arbitration awards should be binding on both parties to the dispute and that such procedures should have the confidence of the parties involved (Article 8 of Convention No. 151). It hopes that the Government will exercise its right to refer any arbitration award to the House of Commons only if convinced that this is required on grounds of overriding national policy.

Lastly, as concerns the long-term situation for determining civil service pay increases, the Committee notes the setting up of an independent Inquiry into the principles and system to be utilised and hopes that it will report in the shortest possible time and will recommend arrangements, satisfactory to all parties, so as to avoid any future tensions in this sector.

143. Panama has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

144. CONEP alleges that sections 2 and 4 of Act No. 13, dated 15 June 1981, institute general wage increases and modify all the wages agreed upon in the collective agreements in force, thus infringing the freedom of association Conventions ratified by Panama.

Sections 1, 2 and 4 of this Act have the following purport:

"Section 1. Workers employed by private enterprises shall be granted an increase in wages of 30 balboas (B/.30.00) per month over the levels existing on 31 December 1980 ...."

"Section 2. In the case of construction industry workers hired for specific jobs, the increase shall be 15 cents (B/ .0.15) above the minimum hourly wage agreed to in the collective agreement."

"Section 4. Except for those agreed to by collective agreement, wages which have been increased since 31 December 1980 by amounts equal or superior to those referred to in section 1 shall not require any adjustment, but increases of lesser amounts shall be increased from the entry into force of this Act by amounts equivalent to the difference.

The principle set forth in the preceding paragraph shall apply to employers who may be obliged to grant increases effective prior to 1 January 1982, in such a way that if the increase is less they shall only pay that ordained by this Act, but if the latter is higher they shall pay the difference on the date on which such increase shall be in force.

In addition to what has been laid down in the preceding paragraphs, the employer shall grant his workers 25 per cent of the general wage increases instituted in the relevant, collective agreement."
145. The complainant adds that the promulgated wage measures neither encourage nor promote collective bargaining and that the increases imposed by the State reflect an attitude and intention on its part which are unacceptable to the employers and the employers' organisations which have signed collective agreements, the State thus assuming the role of a dictator of voluntarily negotiated conditions of employment and establishing the basis so that in the future such conditions can be altered or modified to the detriment of the employers or the workers.

146. Lastly, according to the complainant, the wage increases instituted by Act No. 13 alter the wage scales freely agreed on between the Panamanian Chamber of Construction and the Single National Trade Union of Construction Workers, as well as modifying all the clauses stipulating wage increases in all the other collective agreements in force; all this contributes to the discouragement of the voluntary negotiation of collective agreements.

B. The Government's reply

147. After referring to the aim and essence of the labour law and, more specifically to its function of protecting the worker in view of the position of inferiority in which he is placed vis-à-vis the employer, the Government declares that it acted in the face of extraordinary conditions, given the marked inflationary spiral, and that the policy of encouraging and promoting the conclusion of collective agreements is not incompatible with an extraordinary wage increase measure whose aim is to restore the lost purchasing power of the workers.

148. The Government also declares that the average wage of the workers - 216 balboas - makes it impossible for a great many of them to cover their basic family needs, especially if it is borne in mind that the rate of inflation in 1980 was 13.8 per cent while the average general increase in collective agreements was 6 cents per balboa, which represents less than 6 per cent of the average income of the workers. The Government points out in addition that Article 59 of the Constitution obliges the State to formulate economic policies designed to guarantee to every worker the conditions necessary for a decent existence.

149. The Government adds that prior to the promulgation of Act No. 13 of 15 June 1981, the Ministry of Labour and Social Welfare appointed an Interministerial Commission composed of economic advisers of different ministries to make a study of the national economic situation and the possibility and extent of general wage increases. This Commission, the Government continues, concluded that a restoration of purchasing power would require an increase of approximately 38 balboas a month.

150. The Government points out that after the Commission's report had been presented to the employers and the workers, the former were agreeable to increases in the order of 25-30 balboas a month which would include those increases agreed upon in collective agreements for the year 1981, while the workers considered that the
increase should be 50 balboas a month on top of what had been agreed on in collective agreements for the year 1981. The Government states that the increases instituted in Act No. 13 of 1981 are closer to the employers' proposal and below the amount worked out by the Interministerial Commission.

151. The Government declares that, having regard to the circumstances mentioned, the preliminary draft of the Act fixed an increase of 30 balboas a month for all workers and granted 25 per cent of that agreed upon in collective agreements. The Government adds that before the adoption of Act No. 13 of 1981 the Panamanian National Legislative Council, through the intermediary of the Labour Commission, gave the workers a hearing at one meeting and the employers at three.

C. The Committee's conclusions

152. In the present complaint, the complainant raised the question of the conformity of sections 2 and 4 of Act No. 13 of 15 June 1981, which institutes general wage increases in the private sector, with the ILO's freedom of association Conventions.

153. The Committee notes that, according to the Government, the measures provided for in Act No. 13 of 1981 were due to exceptional circumstances and aimed at restoring the purchasing power of the workers in view of the fact that the rate of inflation in 1980 was 13.8 per cent whereas the average general increase in collective agreements amounted to less than 6 per cent of the average income of the workers. The Committee also notes that the average wage of the workers, 216 balboas, is insufficient to cover the basic family needs of a great many of them and that Article 59 of the Constitution obliges the State to formulate economic policies designed to guarantee to every worker the conditions necessary for a decent existence.

154. The Committee observes that since the employers in the course of the consultations preceding the adoption of Act No. 13 of 1981 had shown themselves to be in agreement with wage increases in the order of 25-30 balboas a month, in which would be included the increases agreed upon in collective agreement for 1981, the dispute surrounding the said Act relates to the increase of 15 cents in the balboa above the minimum hourly wage agreed on in the collective agreements applying to construction workers hired for specific jobs (section 2) and the employers' obligation to grant their workers 25 per cent of any general wage increases established in the relevant collective agreement (section 4, third paragraph).

155. In general terms, the Committee wishes to underline the importance it attaches to the principle of the autonomy of the parties to the collective bargaining process, a principle generally recognised in the preparatory discussions that led to the adoption by the Conference in 1981 of the Collective Bargaining Convention (No. 154). It follows from this principle that the public authorities should not as a rule intervene in order to modify the contents of collective agreements freely concluded. Such intervention would be justified only for cogent reasons of social justice and the general interest.
156. In this connection the Committee notes that, after furnishing figures in support of its statements, the Government pointed out that it had acted in the face of extraordinary circumstances in order to restore the workers' purchasing power, adding that the average wage of the workers made it impossible for a great many of them to cover their basic family needs. The Committee also observes that the Government described the wage measures contained in Act No. 13 of 1981 as extraordinary measures and that it does not appear that the wage increases prescribed by the said Act are disproportionate in relation to the rate of inflation. The Committee observes, finally, that before the adoption of Act No. 13 of 1981 consultations were held with employers and workers who adopted divergent positions as to the amount of the wage increases to be granted.

157. Taking into account the exceptional circumstances of the present case invoked by the Government as well as the Government's statement that discussions took place prior to the promulgation of Act No. 13 of 15 June 1981 with all parties concerned, the Committee does not find itself in a position to state that the enactment in question violated the principles of collective bargaining. The Committee does however consider in general that the harmonious development of industrial relations would be promoted if the public authorities, in tackling problems relating to the loss of the workers' purchasing power, were to adopt solutions which did not entail modifications of what had been agreed upon between workers' and employers' organisations without the consent of both parties.

The recommendations of the Committee

158. In these circumstances, the Committee recommends the Governing Body to approve the present report and, in particular, to decide that it is not in a position to state that the enactment in question violated the principles of collective bargaining. However, it would draw to the Government's attention that the harmonious development of industrial relations would be promoted if the public authorities, in tackling problems relating to the loss of the workers' purchasing power, were to adopt solutions which did not entail modifications of what had been agreed upon between workers' and employers' organisations without the consent of both parties.

Case No. 1053

COMPLAINT PRESENTED BY THE SOLE CONFEDERATION OF WORKERS AGAINST THE GOVERNMENT OF THE DOMINICAN REPUBLIC

159. The complaint is contained in a communication dated 12 June 1981 from the Sole Confederation of Workers. The Government sent its observations in a communication dated 5 August 1981.

160. The Dominican Republic has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948
A. The complainant's allegations

161. The Sole Confederation of Workers alleges that Nelson Rafael Minaya was dismissed from his job as a result of his recent election as executive member of this trade union confederation and for having requested a wage increase of 70 per cent, in accordance with the terms of the preliminary draft of the collective agreement which will shortly be discussed between the Cartonera Dominicana Corporation and the trade union of this undertaking, of which Mr. Minaya is Secretary-General. The complainant adds that the undertaking has thus violated the provisions of sections 43 and 307 of the Labour Code and Conventions Nos. 87 and 98.

B. The Government's reply

162. The Government states that the dismissal of Nelson Rafael Minaya constitutes an infringement of the collective agreement concluded between the undertaking and the trade union, but should not be confused with an infringement of freedom of association. The Government adds that in the event of an infringement of the clauses of a collective agreement, it is for the courts to assess the scope and consequences of such infringements and to determine whether any guilt can be assigned.

C. The Committee's conclusions

163. As the Committee has already pointed out in other cases,¹ national legislation which enables employers, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, to dismiss a worker does not give sufficient protection against anti-trade union discrimination, since it enables an employer, on condition that he pays the compensation prescribed by law, to dismiss any member of his staff, for trade union or other activities, the public authorities being powerless to prevent him from doing so. Protection is particularly desirable in the case of trade union officials because in order to be able to perform their trade union duties in full independence, they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. This guarantee is also necessary to secure respect for the principle that workers' organisations have the right to elect their representatives in full freedom.

¹ See, for example, 119th Report, Case No. 611 (Costa Rica), paras. 104 and 105; 153rd Report, Cases Nos. 763, 786 and 801 (Uruguay), para. 240; and 190th Report, Cases Nos. 672, 768, 802, 819, 822 and 847 (Dominican Republic), para. 51.
164. In the present case, the Committee notes that the Government has at no time referred to any serious misconduct on the part of the trade union leader, Mr. Hinaya, nor has it raised any objections to the allegation that Mr. Hinaya was dismissed on the grounds of his trade union activities; on the contrary, the Government has in its references to Mr. Hinaya described his dismissal as an infringement of the collective agreement in force. The Committee also notes that section 84 of the Labour Code of the Dominican Republic authorises dismissal without just cause on condition that the employer pays the compensation prescribed by the law and that section 679 imposes only small fines in the event of an infringement of the provisions which establish protection against acts of trade union discrimination. The Committee therefore draws the attention of the Government to the principles set forth in the preceding paragraph and requests it to consider the adoption of legislation to give effective protection to trade union leaders and workers against dismissals made on the basis of their trade union activities, and more specifically, to take steps with a view to reinstating the trade union leader, Nelson Rafael Hinaya, in his workplace. In addition, it would draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.

The Committee's recommendations

165. In these circumstances, the Committee recommends the Governing Body to approve the present report and, in particular, the following conclusions:

The Committee draws the attention of the Government to the fact that legislation which authorises the dismissal without just cause of trade union leaders and workers on condition that they are paid the compensation prescribed by law, does not give sufficient protection against acts of anti-union discrimination. It accordingly draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

The Committee requests the Government to consider the adoption of legislation to give effective protection to trade union leaders and workers against dismissals made on the basis of their trade union activities and more specifically, to take steps with a view to the reinstatement of the trade union leader, Nelson Rafael Minaya, in his workplace.

Case No. 1057

COMPLAINT SUBMITTED BY THE PANHELLENIC UNION OF MERCHANT MARINE ENGINEERS AGAINST THE GOVERNMENT OF GREECE

166. The complaint of the Panhellenic Union of Merchant Marine Engineers (PEMEN) is contained in a communication dated 8

167. Greece has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant organisation

168. The complainant organisation, PEMEN, refers to Act No. 549 of 1977 which rescinds section 31, subsection 2, of Act No. 330 of 1976 respecting occupational associations and federations, thereby abolishing the restrictions imposed on the participation of occupational associations in meetings organised by their federations. The PEMEN alleges that, four years after its adoption, the 1977 Act has still not been applied to occupational associations of seafarers.

169. The PEMEN explains that the right to vote of occupational associations of seafarers and journalists in their federations is still governed by the former Act, as is specified once again by Act No. 1085 of 1980 (section 16(1)). Consequently the law applicable is Legislative Decree No. 4361 of 1964 (section 5(1)), which provides that the total number of votes allotted to a maritime union in its federation does not depend on the number of members (and the PEMEN points out that it has a membership of 15,000), but is limited to one-tenth of the total number of votes.

170. Consequently, the PEMEN goes on to say, there is no genuine representation of the occupational associations of seafarers within their federation, namely the Federation of Maritime Unions (PNO). Highly representative occupational associations, like the complainant union, have only one-tenth of the total number of votes in the federation's assemblies while small unions also have one-tenth of the votes, thus allowing for the creation of artificial majorities which do not represent the real wishes of the seafarers.

B. The Government's reply

171. The Government confirms that the legislation referred to by the PEMEN is in force and that seafarers are governed by its specific provisions, but it states that the said provisions are in harmony with international labour Conventions since they are of a general nature and were not adopted to the detriment of the PEMEN.

172. Nevertheless, the Government adds that the Ministry of the Mercantile Marine, when it comes to revise the legislation in force in respect of seafarers will, taking account of the views expressed by the federation to which the PEMEN is affiliated, examine the possibility of amending the provision which limits the representativity of trade unions within the general assemblies and congresses of the said federation.
C. Conclusions of the Committee

173. In this case the Committee notes that although in 1977 the Committee of Experts had noted with satisfaction the abolition by Act No. 549 of 1977 of the limitations previously imposed on the right to vote of occupational associations within their federations, which limitations were incompatible with the standards of Convention No. 87, it also requested the Government to inform it of the holding of elections within the seafarers' unions. Moreover, in 1981, the Committee of Experts reminded the Government of its request that the legal provisions in respect of occupational associations of seafarers be extended.

174. In the present case, as regards the Government’s argument that the legislation specifically applicable to the merchant navy is in harmony with the Conventions because it is of a general nature and was not adopted to the detriment of the PEMEN, the Committee recalls that in accordance with Article 3 of Convention No. 87 the Government is required to refrain from any interference which would restrict the right of workers' and employers' organisations to elect their representatives in full freedom, to organise their activities and to formulate their programmes. The Committee considers that the only limitations that might possibly be acceptable should consequently aim solely at ensuring respect for democratic rules within the trade union movement and in particular at the level of the federation. The limitation to one-tenth of the total number of votes imposed by the law on occupational associations when they vote in the general assemblies and congresses of federations goes beyond a simple guarantee of democratic procedure and, in the view of the Committee, and as was already pointed out by the Committee of Experts, constitutes a measure incompatible with the standards and principles of Convention No. 87.

175. Consequently the Committee, taking note of the assurances given by the Government to the effect that the Ministry of the Mercantile Marine, when it comes to revise the legislation in force, will examine the possibility of amending the legislation taking account of the views expressed by the PNO, hopes that the revised legislation will take account of the principles set forth above.

Recommendations of the Committee

176. In these circumstances, the Committee recommends the Governing Body to approve the present report and in particular to note that the legislation in force in respect of the right to vote of occupational associations of seafarers within their federation entails limitations which go beyond simple guarantees of procedure designed to ensure democracy within the trade union organisations.

The Committee expresses the hope that when the law is revised account will be taken of the principles concerning the free election of trade union leaders, as set forth in Convention No. 87, and it draws this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.
CASES IN WHICH THE COMMITTEE REQUESTS TO BE
KEPT INFORMED OF THE EVOLUTION

Case No. 965

COMPLAINT PRESENTED BY THE MALAYSIAN TRADES UNION
CONGRESS AGAINST THE GOVERNMENT OF MALAYSIA


178. Malaysia has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

179. The complainant alleges that amendments to the Trade Unions Ordinance, 1959, and to the Industrial Relations Act, 1967, passed in May 1980 contain prohibitive and oppressive anti-union provisions which erode the basic rights of workers, restrict union activities and result in government and employer interference in the internal administration of trade unions.

180. The MTUC refers in particular to the following sections of the new trade union legislation: section 27(2)(f) and (3)(aa) which provides that public officers and any person employed by a statutory authority holding any post in the managerial or professional group or engaged in a confidential or security capacity shall not join or be a member of any trade union; section 2(1) which defines a strike widely to include the word "reduction" in execution of employment and section 40(6) which provides that the Registrar, if satisfied that a strike or lockout would contravene the Trade Unions Ordinance or any other law, may direct the trade union or employer not to commence the proposed strike or lockout and, in this connection, new section 43 of the Industrial Relations Act which prohibits strikes in essential services which, according to the complainant, now include private sector industries such as banking; section 18 which allows the Minister of Labour to suspend any trade union, subject only to the agreement of the Minister responsible for internal security, for a period not exceeding six months if in his opinion the union is being used for purposes prejudicial to or incompatible with the interests of Malaysian security or public order (during suspension the certificate of registration of the union shall cease to have effect, it shall be prohibited from carrying out its normal activities and its funds shall be frozen), there is no appeal and non-compliance shall be punished by a fine not exceeding $3,000 or three years' imprisonment or both; section 52 which prohibits the use of trade union funds for promoting political objects which are broadly defined; section 28(2) which allows the Registrar at his discretion to disqualify a
member of a trade union or federation executive from holding office; section 64 which empowers the Registrar to enter trade union premises and, where he has reasonable grounds for believing that an offence under the Trade Unions Ordinance has been committed and after obtaining a search warrant from a magistrate, search and seize any document or article for use in prosecution proceedings; and section 76A(1)(b) which provides that no trade union shall affiliate with any consultative or similar body whether established within or outside Malaysia except with the prior permission of the Registrar.

181. With regard to changes to the Industrial Relations Act, the MTUC complains of section 2A which makes the office of Director General of Industrial Relations a political appointment rather than a career civil service one; section 8A of the Act which provides that an employer may convey directly to his workmen in such manner as he may deem appropriate any information pertaining to any collective bargaining or trade dispute concerning them (according to the complainant, this would create misunderstanding between union members and officials); section 40(1) and (2) which restricts workers not directly involved in the trade dispute and elected union officers from participating directly in picketing (according to the complainant, this would remove leadership during pickets); section 52 of the Act which denies to workmen in the employ of a statutory authority the provisions of the Act relating to protection of rights of workmen and employers and their trade unions (Part II), recognition and scope of representation (Part III), collective bargaining (Part IV), conciliation (Part V) and representation on dismissal (Part VI).

182. In addition, the complainant states that the draft amendments were only sent to it by the Government on 29 January 1980 for discussion in the tripartite National Joint Labour Advisory Council on 4 February. The complainant's protest to defer the meeting to a later date to enable it to study fully the proposed amendments was ignored. At the meeting, the Government granted the MTUC a month in which to study the proposals and to submit observations thereon; this the MTUC did within two weeks, but its counterproposals were not tabled or discussed during the adoption of the amendments. According to the complainant, it and its affiliates made every endeavour to persuade the Government to defer adoption of the amendments to enable further discussion between all the parties concerned and to this end a memorandum was submitted to the Prime Minister on 27 March 1980. Nevertheless, the bills were passed without taking into account the unions' objections.

B. The Government's reply

183. In its letter of 28 September 1981, the Government states that workers in Malaysia enjoy the right to organise and engage in collective bargaining consistent with the provisions of Convention No. 98, ratified by Malaysia, and that the requirements of the Trade Unions Ordinance for trade unions to be structured along lines of particular or similar industries, trades or occupations do not contravene this Convention. It claims that these requirements have helped the orderly growth of trade unions and development of collective bargaining as is substantiated by
statistics, e.g. in 1969 there were 337 trade unions covering 314,758 members which concluded 58 agreements that year; in 1975 there were 350 trade unions covering 455,796 members which concluded 137 agreements that year; in 1980 there were 392 trade unions covering 517,677 members which concluded 280 collective agreements that year. According to the Government, the 1980 amendments to section 27 of the Ordinance merely added those engaged in a confidential or security capacity and those who hold posts in the managerial or professional groups to the police, armed forces and prisons service which are excluded from taking part in trade union activities; it states that through administrative action in June 1981, the scope of the managerial or professional category has been considerably relaxed. According to the Government, this amendment reflects the recognition that there can be a conflict of interests if certain high-level policy-making personnel in the public sector are allowed to take part in trade union activities.

184. As regards the amended definition of "strike", the Government states that this does not introduce any substantial change, but provides greater clarity to the definition.

185. As regards the new provision allowing suspension of trade unions, the Government stresses that it does not obliterate the existence of a union, but only places a temporary (not exceeding six months) "freeze" on its activities and that the order of suspension may, at any time, be varied or revoked by the Minister. The Government considers this provision essential for the maintenance of law and order in the light of past experience.

186. Regarding amended section 52, the Government states that trade union funds can only be expended on objects specified in the Ordinance and that the amendment merely clarifies what political objects are; it stresses that it does not in any way restrict a member of a trade union from taking part in politics in his individual capacity.

187. As for the new powers to remove elected trade union officials from office, the Government claims that the amendment does not confer on the Registrar the power to remove from office any person who qualifies and is duly elected to the executive, but is aimed at persons who are elected despite being disqualified from holding such positions under the Ordinance.

188. As regards amended section 64, the Government points out that the powers of entry and search of trade union premises are subject to the existence of reasonable grounds for believing that an offence has been committed and the obtaining of a search warrant, duly issued by a magistrate.

189. Concerning the prohibition on formation of or affiliation with consultative or similar bodies, the Government states that the provisions concerning affiliation to international bodies have always been in the Ordinance and the amendment merely sets out in detail the procedural matters concerning such affiliation and provides the Registrar with powers to withdraw his permission in respect of such affiliation should the union concerned fail to comply with the Ordinance. It points out that the Registrar's decision can be appealed to the Minister of Labour and Manpower.
190. As regards the amendments to the Industrial Relations Act, 1967, the Government states that the position of Director-General of Industrial Relations is a designated position within the public service and denies that it is a political appointment.

191. Concerning the right of employers to provide certain information to the workmen, it claims that in recent years workers have complained of the lack of information from trade union officials, which omission or failure has led to undue protraction of collective bargaining resulting in disputes which would not otherwise have occurred. According to the Government, where employers attempted to keep their employees informed of the situation, they were accused by the union officials of engaging in unfair labour practices so the amendment now legitimises this action. It stresses that the provision is not intended to undermine trade union functions and that no employer would want to disseminate wrong information.

192. The Government then states that the amendment concerning restriction of participation in picketing does not introduce any substantial change apart from rendering the provision more explicit and introducing an element of flexibility by allowing an officer or employee of the relevant union, who may not be a workman involved in the trade dispute with which the picketing is involved, to be present to maintain order and respect of the law. According to the Government, the redesignation of "public utility services" as "essential services" in section 43 was due to difficulty of interpretation and past confusion and there is no prohibition of strikes in the essential services if the relevant legal conditions are complied with. It points out that "banking services" are included in this category as they are another service on which the nation's economic life is dependent.

193. Lastly, the Government states that Parts II, III, IV, V and VI of the Act do not apply to government employees as their terms and conditions of employment are determined by the Government; employees of statutory bodies and local authorities have also been excluded from these parts of the Act to harmonise the conditions of the public sector as a whole and to raise the position of these employees to the level of public service employees, not in any way as a discriminatory move as is alleged by the complainant.

194. The Government adds that notwithstanding the complainant's posture as regards the 1980 amendments to the labour legislation, individual unions have generally accepted the rationale behind them. It supplies a copy of the Second Reading Speech of the two amendment Acts made by the Minister of Labour and Manpower, in which he states that the amendments were discussed in the National Joint Labour Advisory Council at committee level in 11 separate meetings with workers and employers, in two full sessions of the Council itself and in a meeting with the Prime Minister. The Minister stresses that there was no undue haste in amending the labour legislation and that many suggestions are reflected in the amendments.
C. The conclusions of the Committee

195. The Committee notes that this case concerns amendments to the two principal pieces of labour legislation, alleged by the complainant to be serious violations of the workers' fundamental rights adopted without proper consultation, but upheld by the Government as having been widely discussed and not endangering trade union rights.

196. As regards firstly the allegations relating to the Trade Unions (Amendment) Act which amends the 1959 Ordinance, concerning section 18 (Minister's discretion to suspend a trade union, subject to the agreement of the Minister responsible for internal security, for no longer than six months for security and public order reasons), the Committee notes the Government's reply that this was essential for the maintenance of law and order in the light of past experience. It however would recall that it has emphasised in the past the importance of the generally accepted principle that employers' and workers' organisations should not be subject to suspension or dissolution by administrative authority, and that where suspension measures are issued by administrative authority, there may be danger that they will appear to be arbitrary even though they are issued only temporarily or for a limited time.

197. Concerning section 27 (public officers in the managerial or professional group denied the right to associate), the Committee notes the Government's statement that this avoids a conflict of interests situation and that recent administrative action has considerably relaxed the scope of the managerial and professional staff who are prohibited to join trade unions. Nevertheless, it would stress the fundamental importance of the right to organise and that it should be guaranteed without distinction of any kind, not only to workers in the private sector of the economy but also to civil servants and employees of public services in general. The definition of personnel which may be excluded from labour unions should be restrictive and cover only those persons who genuinely represent the interests of the State as employer. The scope of managerial staff and the like should not be defined so widely as to weaken the organisations by depriving them of a substantial portion of their present or potential membership.

198. As regards section 28(2) (Registrar's right to disqualify any member of a trade union executive or federation for the reasons set out in section 28(1), i.e. he has not been engaged for at least three years in the occupation with which the union is connected; criminal conviction for breach of trust, extortion or intimidation or any offence which the Registrar considers renders him unfit for office; or, inter alia, bankruptcy), the Committee,

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1 See, for example, 201st Report, Case No. 842 (Argentina), para. 61.

2 See, for example, 155th Report, Case No. 815 (Ethiopia), para. 23.

3 See, for example, 199th Report, Case No. 861 (Bangladesh), para. 203.
whilst recognising that certain of these reasons could constitute valid grounds for disqualification, would recall that the Committee of Experts on the Application of Conventions and Recommendations has expressed the view\(^1\) that when provisions in national legislation provide that all trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities, the rights of workers\(^2\) organisations to elect their representatives in full freedom may be impaired; a greater degree of flexibility could be introduced into the provisions by exempting from the occupational requirement a reasonable proportion of the officers of the organisation. In the present case, it appears to the Committee that the Registrar is given an unduly wide discretion to disqualify executive members. It would recall, as it has in the past\(^2\) in this connection, that the removal from office by an administrative authority of trade union leaders is a serious infringement of the free exercise of trade union rights, and that it is desirable for the authority to refrain from any interference in the performance by trade union leaders of union functions to which they have been freely elected by the members of the trade unions. Furthermore, in the Committee's opinion, it is of paramount importance that measures for the suspension or disqualification of trade union officials should not become enforceable except on the basis of a firm sentence on the part of the competent judicial authority, or, in any case, after the period allowed for the submission of an appeal has elapsed without such an appeal having been made.\(^3\)

199. As concerns section 40 (Registrar's right to direct a trade union not to commence a proposed strike if it would contravene the Ordinance or any other written law), the Committee must point out that this section, aimed at controlling the legality of strikes and lockouts, could have the effect of severely limiting the right to strike, particularly so when read in conjunction with new section 43 of the Industrial Relations Act which prohibits strikes in essential services which are listed in the Schedule to the Act as including banking, docking, postal services, fuel production, storage and distribution, radio-communication services, transport and water services. The Committee notes the Government's statement that there is no prohibition of strikes in essential services if the relevant legal provisions are complied with and that banking services are included in this category as the nation's economic life depends on them. However, the Committee has always considered that the right to strike is one of the essential means through which workers and their organisations may promote and defend their occupational interests.\(^4\) It has admitted that the right to strike could be restricted or even prohibited in the civil service or in essential services in the strict sense of the term, i.e. services whose interruption would endanger the existence or well being of the

\(^1\) See General Survey, 1973, para. 89.

\(^2\) See 21st Report, Case No. 19 (Hungary), para. 33.

\(^3\) See, for example, 114th Report, Case No. 510 (Paraguay), para. 62.

\(^4\) See, for example, 197th Report, Case No. 927 (Brazil), para. 353.
whole or part of the population. On this criterion, the Committee has been of the opinion that the hospital sector is an essential service; it has also stated that, for instance, banking, petroleum production, general dock work, aircraft repairs and transport services did not appear to be strictly essential in character. In addition, where strikes are prohibited or subject to restrictions, it is important to ensure adequate guarantees to safeguard to the full the interests of the workers so deprived of this means of defending their interests by providing adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage.  

200. With reference to section 52 (trade union funds not to be applied for political objects, which are defined as including (a) payment of candidacy expenses in parliamentary elections, (b) holding meetings or distributing literature in support of candidates, (c) maintenance of a parliamentary member, (d) registration of electors or selection of a candidate for membership of Parliament, (e) holding of political meetings and distribution of political documents of any kind, and (f) any object which the Minister may specify in the Gazette), the Committee notes the Government's explanation that this amendment does not restrict a member of a trade union from taking part in politics in his individual capacity. It would point out generally that freedom of association implies not only the right for workers and employers to form freely associations of their own choosing, but also the right for the industrial associations themselves to pursue lawful activities in defence of their occupational interests. More specifically, if trade unions are prohibited in general terms from engaging in any political activities, this may raise difficulties by reason of the fact that the interpretation given to the relevant provisions in practice may change at any moment and considerably restrict the possibility of action of the organisations: it would therefore seem that States should be able, without prohibiting in general terms political activities of occupational organisations, to entrust to the judicial authorities the task of redressing abuses which might, in certain cases, be committed by organisations, which had lost sight of the fact that their fundamental objective should be the economic and social advancement of their members. In the present case it appears to the Committee that certain of the restrictions imposed, such as those relating to the maintenance of a member of Parliament or payment of candidacy expenses, may be considered as reasonable. However, the prohibition of the use of trade union funds for the holding of political meetings or distribution of political documents of any kind, and the Minister's  

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1 See, for example, 207th Report, Case No. 991 (Costa Rica), para. 261; 208th Report, Cases Nos. 988 and 1003 (Sri Lanka), para. 336.  

2 See, for example, 95th Report, Case No. 461 (Spain), para. 246.  

3 See, for example, Sixth Report, Case No. 12 (Argentina), para. 205.  

4 See, for example, 191st Report, Case No. 763 (Uruguay), para. 27.  

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discretion to specify any object as being political, appear to the Committee to be too far reaching as well as susceptible of application in a manner that would be contrary to the principles of freedom of association.

201. As regards section 6A (Registrar's right to enter trade union premises, and, after obtaining a search warrant from a magistrate, search and seize union property), the Committee would recall that, while recognising that trade unions like other associations or persons cannot claim immunity from a search of their premises, it has emphasised that such a search should only be made following the issue of a warrant by the ordinary judicial authority after that authority has been satisfied that reasonable grounds exist for supposing that evidence exists on the said premises material to a prosecution for an offence under the ordinary law and provided that the search is restricted to the purposes in respect of which the warrant was issued. In the present case, the provision does require the issue of a search warrant by the ordinary judicial authority "if he is satisfied upon written information by the Registrar that there is good reason to believe that an offence under this Ordinance or any regulations has been committed, and that the office, premises or place to be specified in the search warrant is kept or used for the purposes of the trade union". It would therefore appear that, in this particular instance, the legislation is in conformity with the recognised principles of freedom of association.

202. With reference to section 76A (prohibition, unless the Registrar so permits, on registered trade unions against the formation of or affiliation with consultative or similar bodies, whether established within or outside Malaysia), the Committee notes the Government's statement that the amendment merely sets out in detail the procedural matters concerning such affiliation and allows the Registrar to withdraw his permission already granted. It would recall the importance of the principle that no obstacle should be placed in the way of the affiliation of workers' organisations, in full freedom, with any international organisation of workers of their own choosing. In this respect, it has stated in the past that legislation which requires the obtaining of government permission for the international affiliation of a trade union is incompatible with the principle of free and voluntary affiliation of trade unions with international organisations. Moreover, the Committee considers that this provision restricts the right of workers and their organisations to organise their activities and to formulate their programmes, given that the setting up of such bodies is normally one of a union's legitimate activities in defence of the workers' occupational interests.

203. Considering secondly the amendments to the Industrial Relations Act, the Committee notes that, according to the Committee's general 204th Report, Case No. 856 (Guatemala), para. 117.

2 See, for example, Sixth Report, Case No. 3 (Dominican Republic), para. 1026.

3 See, for example, 65th Report, Case No. 266 (Portugal), para. 42.
Reports of the Committee on Freedom of Association

plainant, section 2A (appointment of Director General for Industrial Relations) introduces a political appointment, but that the Government specifically denies this. As the complainant does not explain how this violates freedom of association, the Committee considers that this aspect of the case does not fall within its competence and does not call for further examination.

204. As regards section 8A (employer may provide information on collective bargaining and trade dispute to his workmen), the Committee notes the complainant's fears that this could result in the dissemination of a distorted version of the facts, especially as the workers' unions are not given the reciprocal right (direct communication with the board of directors and shareholders) and that the Government denies that this would occur. In this respect, the Committee considers that the provision in question confers on the employer an entitlement that is wholly reasonable and that it therefore is not incompatible with the principles of freedom of association. Nevertheless, the Committee is of the opinion that the employer should not use this right to undermine the position of the trade unions or the workers' representatives or to interfere in the union's right to represent the workers in the collective bargaining process.

205. As concerns section 40(1) (restriction of picketing on employers and workmen not directly involved in the trade dispute), the Committee notes the Government's statement that uninvolved unionists may attend pickets to maintain order and respect of the law. In this connection, it would point out as it has in the past that pickets acting in accordance with the law should not be subject to interference by the public authorities, but that it has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continue to work. In this case, the Committee considers that the restriction on participation in pickets applying as it does to an employer as well as to workers not directly involved in the dispute does not violate the principles of freedom of association. As concerns section 40(2) (supervisory role in pickets of trade union officers), the Committee notes the complainant's view that this would remove the leadership from the rank-and-file picketers. It appears to the Committee that this provision which authorises the presence of trade union officers at pickets organised by members of their union solely for the purpose of maintaining order and discipline is unduly restrictive and runs counter to the principle according to which trade unions should be able to formulate their programmes and organise their activities without interference from the public authorities.

206. As regards section 52 (exclusion of government and statutory authority employees from the rights guaranteed under the Act), the Committee notes the Government's explanation that this results in a harmonisation of treatment of employees of the public sector as a whole and is not in any way discriminatory. However, it would recall that Convention No. 98, and in particular Article 4

1 See, for example, 204th Report, Case No. 941 (Guyana), para. 283.
2 See, for example, 197th Report, Case No. 915 (Spain), para. 473.
thereof concerning the encouragement and promotion of collective bargaining, applies both to the private sector and to nationalised undertakings and public bodies, it being possible to exclude from such application only public servants engaged in the administration of the State. The Committee of Experts on the Application of Conventions and Recommendations has pointed out that, while the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of persons employed by the State or in the public sector, who do not act as agents of the public authority (even though they may be granted a status identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. The distinction to be drawn, according to the Committee, would appear to be basically between civil servants employed in various capacities in government ministries or comparable bodies on the one hand, and other persons employed by the government, by public undertakings or by independent public corporations. In the present case, it would appear that the provision in question is too broad in its scope and is therefore not in conformity with the Convention.

207. In view of the various principles and considerations set out in the paragraphs above concerning sections 18, 27, 28, 40(6), 52(2) (e) and (f) and 76A of the Trade Unions Ordinance and sections 40(2), 43 and 52 of the Industrial Relations Act, which run counter to the principles of freedom of association, the Committee would ask the Government to give serious consideration to amending these sections to bring the trade union legislation into conformity with these principles. It also considers that the attention of the Committee of Experts on the Application of Conventions and Recommendations should be drawn to those aspects of the new legislation which are incompatible with Convention No. 98, ratified by Malaysia.

208. Finally, regarding the complainant's allegation that its opposition to the changes in the legislation was ignored both by the tripartite National Joint Labour Advisory Council and by the Prime Minister, the Committee notes that, according to the Government, consultations did take place on a number of occasions and that many suggestions are reflected in the amendments. In view of the conflicting statements in this regard the Committee would limit itself to recalling the terms of the Consultation (Industrial and National Levels) Recommendation, 1960, No. 113, according to which measures appropriate to national conditions should be taken to promote effective consultation and co-operation between public authorities and employers' and workers' organisations. Such consultation and co-operation should aim at joint consideration of matters of mutual concern with a view to arriving to the fullest possible extent at agreed solutions. It should also aim at ensuring

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1 See, for example, 197th Report, Case No. 917 (Costa Rica), para. 224.
2 See, for example, 143rd Report, Case No. 764 (Colombia), para. 87.
that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner in respect of such matters as the preparation and implementation of laws and regulations affecting their interests.¹

**The Committee's recommendations**

209. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

As regards the allegations concerning section 64 of the Trade Unions Ordinance and sections 2A and 8A of the Industrial Relations Act, the Committee considers that these aspects of the case do not call for further examination.

The Committee would draw the attention of the Government to the principles and considerations set out in the preceding paragraphs concerning sections 18, 27, 28, 40(6), 52(2)(e) and (f), and 76A of the Trade Unions Ordinance, and sections 40(2), 43 and 52 of the Industrial Relations Act which run counter to the principles of freedom of association. It would ask the Government to give serious consideration to amending these sections to bring the trade union legislation into conformity with these principles.

The Committee would also draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to these aspects of the new legislation which are incompatible with Convention No. 98, ratified by Malaysia.

The Committee requests the Government to inform it of any measures taken or envisaged to amend the above-mentioned provisions of the trade union legislation in accordance with the principles of freedom of association set out in the preceding paragraphs.

**Case No. 1004**

**COMPLAINT PRESENTED BY THE UNION OF HAITIAN WORKERS AGAINST THE GOVERNMENT OF HAITI**

210. The Committee already examined this case at its February 1981 Session, when it presented an interim report to the Governing Body.² Since then, the Government sent certain information in a letter of 31 March 1981.

211. Haiti has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and

¹ See 105th Report, Case No. 503 (Argentina), paras. 210 and 211.

Previous examination of the case

212. The complaint of the Union of Haitian Workers concerned the disappearance of an active trade unionist, Bemy Alexis, a member of the "Association of Haitian Chauffeur-Guides" trade union, who, according to the complainant, was secretly kidnapped while he was at the central headquarters of the Association in Port-au-Prince, where his car remained parked.

213. Over and above this particular case, the complainant denounced the total absence of freedom of association. According to the complainant, workers' organisations which operated within the country could not maintain contact with the international trade union federations or confederations which would be able to provide them with support, since affiliation of any kind was prohibited.

214. The Government reported the facts concerning the disappearance of Bemy Alexis to the steering committee of the Association of Haitian Chauffeur-Guides, of which the missing trade unionist was a member. The Association stated that it had been informed of the disappearance of the missing trade unionist by members of his family, but that it knew nothing of the circumstances of his disappearance. It also maintained that the affair was not a trade union matter.

215. The Government had also informed the Ministry of the Interior and National Defence of the complaint and stated that it would transmit any report which it received on the case. Furthermore, the Government did not provide any information on the allegation that the trade union organisations operating within the country could not remain in contact with international trade union federations or confederations.

216. In these circumstances, at its February 1981 Session, the Committee requested the Government to keep it informed of any development in the situation concerning the disappearance of Bemy Alexis and to furnish its observations on the allegation concerning the difficulties encountered by the trade unions as regards their affiliation and contacts with international trade union organisations.

Reply of the Government

217. In its communication of 31 March 1981, the Government states, in connection with the allegation concerning the difficulties encountered by the trade unions as regards their affiliation and contacts with international trade union organisations, that the Haitian Labour Code contains no restrictions in this regard. It adds that section 276 of this Code provides that "No person who ... is not a Haitian citizen; ... has not been engaged in the trade or
occupation concerned or employed in the workplace concerned for at least six months, or is not in possession of a qualifying diploma or certificate in the branch or trade concerned; shall be a member of the board of management of a union”. The Government goes on to say that, in accordance with section 279, the labour court may suspend the activities of any union if it appears that the union employs open violence against persons for the purpose of compelling them to join the union or of interfering with their lawful work; commits, or incites others to commit, any acts punishable by law against persons or property, engages in political activities, or concerns itself with matters unconnected with its object.

218. The Government concludes by stating that the internal affairs of a Haitian trade union lie exclusively within the competence of the Haitian citizens who are members of its board of management. The Government adds that any external interference which would incite the trade union to commit the acts punishable by law referred to in the above-mentioned section of the Code should be avoided. According to the Government, the principle of non-interference in the internal affairs of a country lies at the root of any relations which may have been “freely” entered into between the Haitian trade unions and the international organisations of their choice. Furthermore, the Government supplies no new information on the death of Émy Alexis.

Conclusions of the Committee

219. As regards the allegations that national organisations may not maintain contacts with international organisations, the Committee takes note of the Government’s statement that the Labour Code does not forbid Haitian trade unions from becoming affiliates of these organisations.

220. On this important point the Committee nevertheless wishes to recall that international trade union solidarity is one of the fundamental objectives of any trade union movement and that it inspired the standard set forth in Article 5 of Convention No. 87, namely that any organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers. The Committee accordingly wishes to stress, as it has done in earlier cases, the importance that it attaches to the fact that no obstacle - either in law or in fact - should be placed in the way of the affiliation of workers' organisations with any international organisation of workers of their own choosing. It also wishes to recall that the principle according to which national organisations shall have the right and the effective possibility of affiliating with international organisations implies that they have the right to maintain contact with these organisations and, in particular, to take part in their activities and to benefit from the services and the advantages deriving from membership.

221. The Committee can only deplore the fact that it has not received additional information regarding the disappearance of the

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1 See in particular 6th Report, Case No. 3 (Dominican Republic), para. 1026.
active trade unionist, Rémy Alexis, and must again request the Government to keep it informed of any further development in this case.

**Recommendations of the Committee**

222. In these circumstances the Committee recommends the Governing Body:

- to draw the attention of the Government to the importance which it attaches to the fact that no obstacle should be placed in the way of the affiliation of workers' organisations in Haiti with any international organisation of workers of their own choosing;

- to again request the Government to keep it informed of any further development regarding the disappearance of the active trade unionist, Rémy Alexis.

**Case No. 1020**

**COMPLAINT PRESENTED BY THE CENTRAL BOARD OF THE TRADE UNION COMMITTEES OF THE NATIONAL EDUCATIONAL AND CULTURAL WORKERS' UNION AGAINST THE GOVERNMENT OF MALI**

223. In a communication dated 19 December 1980, the Central Board of the Trade Union Committees of the National Educational and Cultural Workers' Union presented a complaint of infringement of trade union rights in Mali. The Government, for its part, forwarded its observations in a letter dated 30 April 1981 and the judicial decisions relating to this matter in a communication received by the ILO on 26 October 1981.

224. Mali has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Allegations of the complainant**

225. The complaint relates to the arrest, imprisonment, deportation and other summary punishment imposed on trade unionists belonging to the teaching profession.

226. In its letter of 30 April 1980, the complainant states that the events began on 15 March 1979, when the National Council of the National Educational and Cultural Workers' Union (SNEC), which is affiliated to the Mali National Union of Workers (ONTM), decided to organise a march to protest against a newspaper article criticising teachers' demands for an upgrading of their profession.
The text of a statement by the Secretary-General of the SNEC, calling workers to demonstrate in connection with the newspaper article, is attached to the complaint. However, the complainant continues, ten minutes before the march, when all of the militants had assembled, the SNEC called it off.

227. The militants immediately demanded the resignation of the national leadership of the trade union movement on the ground of evident collusion between it and the Government. An extraordinary congress, which had been planned by the national leadership for the month of May under the pressure of the militants, was not held in the end because the Government, according to the complainant, considered it to be a threat to law and order.

228. The complainant further alleges that, following subsequent dissolution of the trade union organisations, the trade union committees freely reorganised within a Central Board enjoying a large hearing. Up to 29 July 1980, the Central Board obliged the Government and the trade unions which, according to the allegations, were government controlled, to deal with it. The Government and those unions, however, decided to put an end to the Central Board's activities, as is clear, the complainant states, from the action taken against their members.

229. The complainant explains that the teachers, without ever stopping to give their courses regularly, refrained from taking part in the supervision and correction of the year-end examinations for which they had demanded compensation in vain. Their salaries were then suspended for three months, from July to September. Twelve union-member teachers were arrested and on 12 September 1980 sentenced by the Bamako criminal court to three and four months' imprisonment and transferred, by order of the Minister of the Interior, to unknown places. An appeal was lodged by their counsel. By a decision of the Minister of the Interior on 4 December 1980, the convicted trade unionists were also excluded from the teaching profession and assigned to administrative posts in the Sahel at the rank of sub-prefectural secretarial clerks. According to the complainant, 20 other union-member teachers face the same penalties.

230. Documentary evidence in support of its complaint is attached by the complainant, including ministerial circulars announcing the withholding of the teachers' salaries and their transfer to posts in the Sahel and an attestation from their counsel addressed to the Minister of Justice to the effect that his clients had been transferred to unknown places by order of the Ministry of the Interior.

231. The memorandum attached to the complaint explains that the arrested trade unionists were charged with "opposing the lawful authorities" for wishing, according to them, to put an end to government-controlled trade unionism. The memorandum also refers to reprisals against the imprisoned trade unionists; interrogation of their wives; physical assault and moral attacks against teachers who came to visit them at police headquarters; holding of the accused in custody for an excessive period of time; failure to provide notification of arrest and search warrants; and refusal to permit communications during the period of remand in custody pending trial.
232. In its communication of 30 April 1981, the Government explains that during 1979-80 the normal functioning of educational institutions was disrupted by strikes, leading to the boycotting of examinations.

233. Just before the examinations, the SNEC, an organisation affiliated to the UNTM, had considered the rates to be applied for compensating supervision, correction and secretarial work. Following negotiations between the competent national authorities and the executive committees of the above-mentioned trade unions, the Government, an agreement was reached between the parties on the payment of compensation at a higher rate.

234. The Government further states that, whereas the agreement was endorsed by the great majority of the teachers, it was rejected by a small group who were dissatisfied with its terms. First known as the "Examination Correction Board", this group, without having acquired any legal status establishing its existence as a trade union organisation, then took the name of "Board of the Trade Union Committees of Bamako and Kati" and finally "Central Board of the SNEC Trade Union Committees".

235. The Government adds that the situation created by this group of teachers led the public authorities to take measures to safeguard and protect the sovereignty of the State, and the police apprehended in the act of sedition in the public thoroughfare numerous demonstrators committing acts of vandalism (setting fire to property, looting, throwing stones against buildings, assaulting individuals). The Government asserts that the inquiry proved that the acts were committed according to instructions given by a group of teachers including those presenting the complaint. However, the persons concerned were charged only with the offence of opposing the lawful authorities and sentenced to three or four months' imprisonment according to the case.

236. The Board presenting the complaint is, the Government states, an unofficial, clandestine organisation which has not deposited any by-laws or been recognised by the Malian authorities, as required under section 283 of the Labour Code. Therefore, it has no legal existence and no authority to refer a complaint to the ILO in the name of workers whom it does not represent. The Government submits that the complaint is not receivable.

237. In reply to the various grievances invoked by the complainants, the Government states, regarding the status and upgrading of the teaching profession, that Malian teachers are public servants subject to the General Public Service Statute, that they enjoy the right to organise and, if they consider that their rights are infringed, are entitled to appeal through administrative and judicial channels. Measures were recently adopted to improve the situation of teaching staff, including, in November 1979, an increase in the teachers' allowance from 25 to 50 per cent according to the duty station. Regarding the non-payment of unworked days, the Government explains that, in accordance with law, officials who are irregularly absent from work are not entitled to pay. The members of the complainant organisation could not claim their
salaries since they had boycotted the examinations and deserted their posts; this accounted for the non-payment of salaries beginning in July.

238. In connection with the criminal proceedings, the Government sends the judgement of the court of first instance of Bamako dated 2 September 1980 and the appeal decision handed down by the circuit court at Gao on 28 November 1980. It denies that there was any infringement of freedom of association: since the examination strike was not called according to the normal procedure, its instigators had infringed section 79 of the Criminal Code providing that anyone who, through acts, speech, gestures or machinations, opposes the exercise of lawful authority and anyone who, through voluntary abstention, disturbs law and order or obstructs the normal operation of administrative services shall be liable to a fine or up to three months' imprisonment. If there is more than one perpetrator, the sentence may be doubled. Moreover, under the law governing the organisation of the Judiciary, courts are authorised to move to any locality within their jurisdiction. It is therefore to no avail to the counsel of the members of the complainant organisation, the Government states, to have protested against their transfer to the north where the court subsequently moved for their trial. As for the granting of permission to communicate with visitors, the Government stresses that the time limits imposed on those who had received such permission were due to the large number of visitors.

239. Regarding the transfers to the Sahel, the Government states that these were administrative measures intended in particular to safeguard law and order. It claims that the transferred teachers enjoy the same opportunities as other public servants for promotion to various posts of responsibility. The complainants have the possibility of applying to the administrative section of the Supreme Court responsible for public service disputes. No application, it adds, has been made to that section.

240. The Government states that the teachers convicted were released after having served their sentence. None is under arrest for any reason whatever at present.

C. The Committee's conclusions

241. Firstly, the Committee notes that the Government does not consider the complaint to be receivable since it does not come from any recognised organisation of workers, pointing out that the group known as the "Central Board of Trade Union Committees" has not deposited its by-laws in accordance with law.

242. In this connection the Committee on Freedoms of Association, at its first meeting in January 1952, adopted the principle that it possesses full freedom to decide whether an organisation may be deemed to be an employers' or workers' organisation within the meaning of the ILO Constitution, and it does
not consider itself bound by any national definition of the term. In the case in question, the Committee considers that, as it has already pointed out on a previous occasion, the fact that a trade union has not deposited its by-laws as may be required by national laws is not sufficient reason to make its complaint irreceivable since the principles of freedom of association demand precisely that the workers shall be enabled, without previous authorisation, to establish organisations of their own choosing.

243. As to the substance of the complaint, the Committee observes that the present case relates to a collective labour dispute in the sector of public education caused, according to the complainant, by the Government's refusal to grant compensation to teachers for supervising and correcting examinations.

244. The Committee notes the Government's statement that the resulting situation led it to take measures to safeguard and protect the sovereignty of the State. Consequently, according to the Government, the police apprehended in the act of sedition in the public thoroughfare numerous demonstrators committing acts of vandalism according to instructions from the teachers who submitted the complaint.

245. Regarding the alleged refusal to grant compensation for correcting the examinations, the Government states that an agreement had been reached between the UNTM and SNEC executive committees and the authorities involved concerning the payment of compensation at a higher rate.

246. However, the Committee also notes that the teachers belonging to the Central Board of SNEC Trade Union Committees, an organisation which had been set up previously, were opposed to the agreement. The strike movement which ensued resulted in the imprisonment for three or four months of 12 trade unionists who, after having served their sentences, were excluded from the teaching profession and transferred to the Sahel.

247. In the Committee's opinion, the agitation of the leaders of the Central Board of SNEC Trade Union Committees who were convicted of incitement to violence during the labour dispute goes beyond what may be defined as normal trade union activities.

248. Nevertheless, the Committee considers that after the Government had found that the agreement concluded with the SNEC concerning compensation for correcting examinations was opposed by part of the teaching profession, constructive negotiations should have been initiated with all of the parties concerned, including the representatives of the Central Board of SNEC Trade Union Committees, in accordance with the principles of freedom of association. In this way it might have been possible to avoid the tensions produced in the present case.

249. Concerning the prison sentences imposed on the strikers, the Committee notes from an examination of the judicial decisions

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1 See the Committee's First Report, General Comments, para. 28.
2 See the Committee's Sixth Report, Case No. 55 (Greece), paras. 902 and 903.
supplied by the Government that they were sentenced to 3 and 4 months' imprisonment only for having refused to supervise the examinations of the 1979-80 scholastic year. The Committee also notes the Government's statement that, after having served their sentence, the persons concerned were all released. It nevertheless believes that it is important to recall once again that an inflexible attitude in applying excessively severe penalties for strike occurrences may jeopardise the development of labour relations and points out that penalties should in every instance be proportionate to the offence committed.

250. As regards the transfer of teachers who took part in the strike, the Committee, while taking note of the Government's statements, wishes to stress that a fundamental principle of freedom of association is that trade unionists should enjoy adequate protection against any acts of anti-union discrimination affecting their freedom in respect of employment, suspensions, transfers, downgrading and other prejudicial action. The Committee has also stated that a policy of transferring trade unionists may be harmful to the proper functioning of trade union activities.

251. Consequently, the Committee stresses the importance it attaches to a review of the situation of the 12 teachers transferred to posts outside their original faculty, with a view to calming the tensions in the country and within the trade union movement.

The Committee's recommendations

252. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

Concerning the prison sentences imposed on the strikers, the Committee, while noting that they have been released, considers that an inflexible attitude in applying excessively severe penalties for strike occurrences is likely to jeopardise the development of labour relations and points out that penalties should in every instance be proportionate to the offence committed.

Regarding the transfer of teachers who took part in the strike, the Committee recalls that it is essential that trade unionists should enjoy adequate protection against any acts of anti-union discrimination affecting their freedom in respect of employment, suspensions, transfers, downgrading and other prejudicial action, and stresses the importance it attaches to a review of the situation of the 12 teachers transferred to posts outside their original faculty, with a view to calming the tensions in the country and within the trade union movement. Accordingly, it requests the Government to keep it informed of any developments in this connection.
Case No. 1025

COMPLAINT PRESENTED BY THE WORLD CONFEDERATION
OF LABOUR AGAINST THE GOVERNMENT OF HAITI

253. The Committee already examined this case at its May 1981 Session when it submitted an interim report to the Governing Body. Since then, the Government has supplied its observations in a letter dated 30 September 1981.

254. Haiti has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

255. The initial complaint of the World Confederation of Labour (WCL) related primarily to the refusal to grant legal recognition to the Autonomous Confederation of Haitian Workers (CATH) established in accordance with legal requirements, the occupation by the police of the headquarters of that Confederation, the confiscation of bank assets, the arrest on 22 December 1980 of its Secretary-General, Mr. Yves Richard, his deportation to Curacao and the arrest of other trade union leaders. In addition, the complaint alleged that 48 workers had been dismissed without grounds from the National Brewery, 6 from the Textile Look factory and 3 from the Dress Martin factory.

256. More recently, the WCL also alleged that the trade unionist Jean-Baptiste Simon was shot dead by the police force when leaving a trade union meeting and that 45 CATH trade unionists, whose names it supplied, had been imprisoned.

257. At its May 1981 Session, the Committee, having noted the partial observations supplied by the Government on certain aspects of the case, requested it, in the absence of information on other points, for its comments on the allegations relating to the death of Mr. Jean-Baptiste Simon, the imprisonment of 45 trade unionists mentioned by the complainant organisation, the breaking into trade union premises and the freezing of bank accounts.

258. The Committee also noted in connection with the failure to recognise the CATH that this Confederation had not complied with the normal legal formalities provided for by the labour legislation but gathered that apparently it had in any case continued its activities without being registered.

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1 See 208th Report, paras. 404 to 420, approved by the Governing Body at its 216th Session (May-June 1981).
B. The Government's reply

259. In a communication dated 30 September 1981, the Government states that the provisions of the Labour Code governing the operation of trade union organisations are consistent with Convention No. 87 and that if the CATH has continued its activities without being registered, it has done so illegally and without having acquired trade union status at any time. No registered trade union has claimed to belong this Confederation, which appears to be only a project or wishful thinking on the part of its leaders, and in no case can its activities be equated to trade union activities.

260. In reply to the various allegations made by the complainant organisation, the Government states, concerning the occupation of the CATH headquarters that, even if it were proved that premises had been occupied by the police, the premises in question could not have been the headquarters of a trade union. The Government further states that it does not see in what capacity this body could have been authorised to collect union dues or to open a bank account in the name of a trade union.

261. Regarding the imprisonment of 45 CATH members whose names were communicated to it, the Government states that the inquiry it carried out showed that none of the workers in question were under arrest and that all were going about their usual occupations.

262. Concerning the death on 22 December 1980 of the trade unionist Jean-Baptiste Siméon, the Government acknowledges that his death occurred during a police raid carried out, according to it, to suppress a plot against the internal security of the State. His death, the Government claims, was justified by his resistance to the police force and Mr. Siméon, an active militant of the opposition and a notorious anarchist, was not a trade unionist since his name does not appear in any trade union files.

263. Concerning the allegation that Mr. Yves Richard was Secretary-General of the CATH at the time of his arrest, the Government challenges the validity of Mr. Richard's claim to that office since, under section 276(5) of the Labour Code, members of a trade union executive committee are required to have been members of the trade for at least six months, a requirement that he did not fulfil. The Government adds that the activities held against the few persons who had formed the Confederation in question, without legal status, were subversive activities and that those persons threatened the internal security of the State. Consequently, the action taken against Mr. Yves Richard, allegedly Secretary-General of the CATH, could not have been taken because of his trade union activities or in violation of the legal provisions governing the operation of trade union organisations.

264. Concerning the dismissal of 48 workers from the National Brewery, 6 from the Textile Look factory and 3 from the Dress Martin factory, the Government acknowledges that, according to the minutes drawn up by the Conciliation and Arbitration Department of the General Directorate of Labour, the workers dismissed from the National Brewery were dismissed on grounds of participation in an illegal strike, in accordance with the provisions of the Labour
211th Report

Code. An employment contract may be terminated on grounds of participation in an illegal strike without entailing any liability for the employer and without prejudice to the penalties that may be taken by the public authorities against the strikers. The dismissals in the other two enterprises, of 3 and 6 workers respectively, were due to fluctuations in production and administrative reasons warranting application of the provisions of the Code. Most of the dismissed workers in this case freely accepted the severance pay owing to them. The Government concludes that those who chose instead to bring a lawsuit for unfair termination of their contracts subsequently waived the action initiated and accepted the legal benefits owing to them.

C. The Committee's conclusions

265. In this case, the World Confederation of Labour (WCL) has based its complaint on the information it received from the Haitian national organisation affiliated to the Latin American Central of Workers (CLAT), which in turn is affiliated to the WCL: the Autonomous Confederation of Haitian Workers (CATH), an organisation representing one of the tendencies of the country's trade union movement.

266. The Committee recalls that this Confederation was refused registration of its by-laws by the administrative authorities on 2 June 1980. It nevertheless observes that the CATH has continued to carry out de facto activities and that, according to the complainant, repressive action was subsequently taken against leaders and members of this organisation, including the death of a trade unionist, the arrest of numerous members and the deportation of its Secretary-General.

267. The Government considers that the CATH has no legal existence since it has not been registered and that in no case can its activities be equated to trade union activities.

268. In this respect, the Committee wishes to recall that, during its first meeting in January 1952, it established the principle that it has full discretion to decide whether or not an organisation is to be regarded as an industrial association within the meaning of the ILO Constitution and that it does not consider itself bound by any national definition of this term. In the case in question, the Committee considers that the fact that a workers' organisation has not registered its by-laws, as may be required by national law, is not sufficient reason to make its complaint irreceivable since the principles of freedom of association demand precisely that workers shall be enabled, without previous authorisation, to establish organisations of their own choosing.

269. As to the substance, the Committee observes that repressive action was taken following an attempt to establish a trade union organisation and a meeting held by that organisation.

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1 See the Committee's First Report, General Comments, para. 28.
270. In the Committee's opinion, the severity of the repressive action taken has created within that organisation an atmosphere of intimidation that can only be detrimental to the development of its activities and even perhaps to further steps required for obtaining legal status. Consequently, the Committee considers that the principle that workers should be able to establish organisations of their own choosing without previous authorisation has been violated.

271. In these circumstances, the Committee deplores the violent death of Mr. Jean-Baptiste Siméon who, according to the statements of the Secretary-General of the CATH, was a trade unionist leaving a union meeting at the time when he was killed, and the arrest, followed by deportation, of the Secretary-General of that organisation.

272. The Committee notes that the 45 members of the CATH who were arrested are free. It nevertheless considers that the Government's statements do not contain a formal denial of the allegations of the complainant organisation that the persons in question had been arrested. On this point, the Committee recalls the importance it attaches to the principle that the arrest by the authorities of trade unionists against whom no subsequent charge is brought may involve restrictions to freedom of association and that the authorities should take appropriate measures to prevent the dangers involved for trade union activities by measures of arrest.

273. Regarding the dismissal of 48 strikers from the National Brewery, the Committee notes that, according to the Government, those workers were dismissed for having taken part in an illegal strike. On this point, the Committee, after examining the national legislation in force governing labour disputes, observes that sections 195, 199 and 212 of the Labour Code contain provisions whereby legal exercise of the right to strike may be considerably restricted. Under this legislation, labour disputes may be settled by compulsory arbitration by the Higher Arbitration Board. The Committee has always regarded the right to strike as one of the essential means for protecting the economic interests of workers. The Committee has nevertheless acknowledged that this right may be restricted, and even prohibited, in certain essential services when a strike in those sectors might have highly prejudicial effects for the national community. However, it has held that this principle might well become meaningless if it were so interpreted as to permit prohibition of a strike in an undertaking not providing an essential service in the strict sense of the term, i.e. a service whose interruption would endanger the existence or well-being of the whole or part of the population. In the case in question, it does not seem to the Committee that the National Brewery is an essential service according to this criterion.

274. Accordingly, the Committee considers that it would be appropriate for the Government to take steps to facilitate the reinstatement of the dismissed workers.
The Committee's recommendations

275. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

The Committee deplores the repressive action taken following an attempt to establish a trade union organisation, the Autonomous Confederation of Haitian Workers, and in particular the violent death of Mr. Jean-Baptiste Simon who, according to the Secretary-General of that Confederation, was a trade unionist, the arrest and subsequent deportation of Mr. Yves Richard, Secretary-General of the CATH, an organisation affiliated to the complainant organisation, as well as the alleged arrest of numerous trade unionists. On this last point, however, the Committee notes that, according to the Government, these persons are free.

In this case, the Committee considers that the principle of freedom of association that workers should be able to establish organisations of their own choosing without previous authorisation has been violated by the measures adopted and wishes to draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.

Concerning the dismissal of 48 workers from the National Brewery accused of having taken part in an illegal strike, the Committee considers that the National Brewery can hardly be considered to be an essential service in the strict sense of the term.

Consequently, in view of the importance which it attaches to the exercise of the right to strike as one of the essential means which workers should have for protecting their occupational interests, the Committee considers that it would be appropriate for the Government to take steps to facilitate the reinstatement of the workers dismissed and requests it to keep it informed of any steps it takes to that end.

Case No. 1028

COMPLAINT PRESENTED BY THE NATIONAL TRADE UNION CONFEDERATION OF WORKERS IN THE CONSTRUCTION, TIMBER, BUILDING MATERIALS AND ALLIED INDUSTRIES AGAINST THE GOVERNMENT OF CHILE

276. In a communication dated 10 February 1981, the National Trade Union Confederation of Workers in the Construction, Timber, Building Materials and Allied Industries presented a complaint alleging the infringement of trade union rights by the Government of Chile. The Government sent its observations in a communication dated 27 August 1981.

277. Chile has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. The complainant's allegations

278. The complainant organisation refers to the dismissal by the Labour Directorate of the Ministry of Labour and Social Welfare of four of its national leaders, namely Messrs. Hector Cuevas Salvador, Chairman; Sergio Troncoso Cisternas; Hector Solis Saavedra, the officer responsible for industrial relations; and Edelmiro Aravena Lastra, the officer responsible for social welfare.

279. In an appendix to its communication, the complainant organisation includes various documents in support of its complaint, in particular its charter, Resolution No. 41 of the Labour Directorate promulgated on 2 February 1981 respecting the declaration of the legal incapacity of the four leaders of the confederation as well as the appeal lodged by the complainant organisation with the labour courts.

280. It appears from these various documents that the complainant organisation, which comprises 23 trade unions from different parts of the country, was established on 7 November 1980 in the presence of a witness on oath. During this meeting, a board of management composed of 21 members was elected in accordance with the regulations. The charter and the statutes of the organisation, as well as the list of its leaders, were registered in accordance with the law with the Santiago provincial Labour Inspectorate on 14 November 1980.

281. On examining these documents, the Labour Directorate discovered that the constituent organisations of the confederation included two first-degree trade unions from the Greater Santiago area which had been dissolved in 1978 as a result of their affiliation to another organisation which itself had been dissolved by Legislative Decree No. 2346 of October 1978, the former Industrial Federation of Building, Wood and Construction Workers. As a result of this situation, these two trade unions did not, in the view of the Labour Directorate, enjoy legal personality and their representatives could not therefore sit on the confederation and in particular on its executive bodies. The Labour Directorate therefore issued a resolution which dismissed the four leaders who represented these two trade unions and had been elected to the steering committee of the federation and ordered them to cease exercising their functions immediately.

282. The complainant organisation considers that the resolution of the Labour Directorate was an arbitrary decision totally devoid of any legal basis. It points out in particular that the leaders concerned were not given the opportunity to express their views and were thus unable to state their case. As regards the situation of the two trade unions affected by the declaration of legal incapacity, the complainant organisation points out that one of the trade unions had enjoyed legal personality since 1940 and the other since 1955. After the adoption of new trade union legislation in Chile in 1979, the two organisations in question amended their statutes accordingly and held new elections. The two unions subsequently received documents on several occasions in 1979 and 1980 from the Labour Directorate which accredit their legal status.

283. As regards the motive for the alleged dissolution of these two trade unions, namely their affiliation to an organisation
which itself had been dissolved, the former Industrial Federation of
Building, Wood and Construction Workers, the complainant recognises
that section 3 of the legislative decree concerning the dissolution
also applied to the organisations which were affiliated to the
Federation. It points out, however, that shortly after this
Federation had been dissolved, the Labour Directorate declared that
the affiliated organisations were to retain their legal personality
until the Ministry of the Interior had drawn up a detailed list of
the organisations concerned. For its part, the Ministry of the
Interior had also stated that only federations had been dissolved
and that the Ministry would specify subsequently what effects these
dissolutions would have on the member organisations. The
complainant organisation therefore believes that the Labour
Directorate was not legally competent to issue a decision on the
legal existence of the two trade unions in question. As a
consequence, it has made an application to the labour courts
requesting the annulment of the declaration of legal incapacity
issued by the Labour Directorate.

B. The Government's reply

284. The Government states firstly that the new Chilean trade
union legislation of 1979 (Legislative Decree No. 2756) grants trade
unions the right to establish federations and confederations and to
affiliate to such organisations provided that the latter have been
established in accordance with the law or have made the necessary
amendments for this purpose. It points out that the exercise of
freedom of association is guaranteed under the law to all trade
unions, but that on the contrary non-trade union bodies such as de
facto organisations which do not enjoy legal personality are not
entitled to exercise trade union rights.

285. As regards the boards of management of federations and
confederations, the law requires that their members are leaders of
an affiliated organisation (section 66 of Legislative Decree No.
2756). The Government points out that the persons who were
dismissed in February 1981 represented de facto organisations which
did not enjoy the status of trade union organisations as required by
the law since the organisations in question had been dissolved by
Legislative Decree in October 1978. Since these organisations did
not legally exist, they were not entitled to participate in the
establishment of a trade union organisation of a federative nature.
Consequently, its representatives did not possess the legal status
of trade union leaders since they did not fulfil the requirements
established by section 66 of the above-mentioned Legislative Decree.
The Labour Directorate was therefore obliged to adopt a resolution
declaring that the persons concerned were not legally authorised to
exercise a trade union function.

286. In conclusion, the Government points out that section 23
of Legislative Decree No. 2756 grants the right to appeal against
resolutions of the administrative authorities declaring the legal
incapacity or incompatibility to exercise trade union functions and
that this right is exercised in the civil courts. The case in
question is currently before the Santiago civil court. The
Government states that once the court has delivered its judgement,
it will be transmitted to the Committee.
C. The Committee's conclusions

287. The present case concerns the declaration by the Labour Directorate of the legal incapacity of four persons who had been elected in November 1980 as leaders of the National Trade Union Confederation of Workers in the Construction, Timber, Building Materials and Allied Industries. This declaration of legal incapacity was based upon the fact that the persons concerned did not fulfill all the requirements established by the law for persons to be elected as trade union leaders since they represented first-degree trade unions which, in the view of the Government, had been dissolved at an earlier date and which therefore did not enjoy any legal existence. The persons in question could not therefore be considered as the leaders of an affiliated organisation and consequently could not be elected to the executive bodies of the Confederation. In the view of the complainant, the declaration of legal incapacity was an arbitrary measure since the authorities themselves had recognised the legal existence of the trade unions concerned in various documents.

288. As regards the motive for the decision to declare legal incapacity - i.e., the dissolution of the former Industrial Federation of Building, Wood and Construction Workers which according to the Government resulted in the dissolution of its affiliated organisations and, therefore, of the two trade unions of which the leaders in question were members - the Committee notes that this case of dissolution had already been the subject of a complaint which it had examined on several occasions.1 The Committee had noted that the procedure followed in this case was not compatible with the principles of freedom of association since the dissolution had been made by administrative authority. Furthermore, the Government had stated at the time in connection with this case2 that the organisations affiliated to the dissolved groups were not concerned by the dissolution measures. The reasons now invoked for the annulment of the election of trade union leaders of the building confederation thus seem to contradict the previous statements of the Government concerning the legal existence of the first-degree trade unions in question.

289. In addition to the ambiguous nature of the motives thus put forward, the Committee must point out that the declaration of legal incapacity in question was made by an administrative authority, namely the Labour Directorate, and that it came into force immediately after its adoption. In this respect, the Committee considers it necessary to recall, as it has done on many occasions,3 the importance of the principle that the public authorities should refrain from any interference which would

1 See Case No. 823, 187th Report, paras. 402 to 405; 190th Report, paras. 206 to 211; 194th Report, paras. 160 to 165; 197th Report, paras. 423 to 425; 202nd Report, paras. 303 to 305.
2 See in particular 194th Report, para. 162.
3 See, for example, 158th Report, Case No. 818 (Canada), para. 216.
restrict the right of workers’ organisations to elect their representatives in full freedom. The Committee believes that in order to prevent such interference, measures for the dismissal, suspension or disqualification of trade union officials should not become enforceable except on the basis of a sentence on the part of the competent judicial authority or, in any case, after the period allowed for the submission of an appeal has elapsed.¹

290. Finally, the Committee notes that the case has now been placed before the civil courts and that the Government will transmit the results of the proceedings when the court has made its decision.

The Committee’s recommendations

291. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

Noting that the disqualification of the four trade union leaders referred to in the complaint was made by administrative authority, the Committee recalls that measures for the dismissal, suspension or disqualification of trade union leaders should not become enforceable except on the basis of a sentence by the competent judicial authority or, in any case, after the period allowed for the submission of an appeal has elapsed. The Committee therefore considers that the measure taken by the Labour Directorate did not comply with the principles of freedom of association.

The Committee notes that the case has now been placed before the civil courts and that the Government will transmit the results of the proceedings when the court has delivered its decision.

Case No. 1033

COMPLAINT PRESENTED BY THE NATIONAL WORKERS UNION AGAINST THE GOVERNMENT OF JAMAICA

292. The complaint of the National Workers Union (NWU) is contained in communications dated 12 February and 3 July 1981. The Government sent its reply in letters dated 15 April and 4 August 1981.

293. Jamaica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

¹ See, for example, 114th Report, Case No. 510 (Paraguay), para. 62. See also 185th Report, Case No. 823 (Chile), para. 104.
A. The complainant's allegations

294. The complainant alleges that after the present Government came to power on 30 October 1980, it disbanded the Board of Directors of the Government-owned Jamaica Broadcasting Station and, when constituting an Interim Board, refused to re-appoint the two worker representatives Messrs. Brian Weeks and Pat Riley despite the fact that there were no legal barriers to having workers on the Board and despite the Government's statement that it was committed to worker participation and despite the appointment of workers to the boards of other Government-owned bodies. According to the complainant, in spite of numerous attempts on its part, the Corporation refused to appoint the worker representatives, or any other two workers, to the Board and the matter was referred to the Ministry of Labour for conciliation. After two meetings had been held, the Director of Industrial Relations informed the NWO that it was the view of the Ministry that this particular issue did not qualify as an industrial dispute and consequently would not be further pursued by the Ministry.

295. The complainant states that the Corporation then disbanded the Current Affairs Department of the Broadcasting Station making Messrs. Meeks and Bogue redundant. After unsuccessful discussion with the Corporation, the matter was referred to the Ministry for conciliation which also failed; the NWO asked for the matter to be referred to the Industrial Disputes Tribunal in accordance with section 6 of the Labour Relations and Industrial Disputes Act, 1975, and with the grievance procedure clause of the collective agreement in force between the NWO and the Corporation, but the Corporation refused to join in the referral. The grievance paragraph 37(e) reads "failing settlement of such mediation the dispute shall be referred to arbitration and the decision thereon shall be binding on both parties". The complainant further claims that the Minister refused to intervene in a positive manner as he is entitled under section 10 of the Act (discretion to refer an industrial dispute, other than those in an essential service, to the Tribunal for settlement) in a definite attempt to abrogate from the rights of the union. The NWU also claims that this action contravened Part VI, paragraph 21, of the Labour Relations Code of 1976 which sets out the steps to be included and followed in a collective agreement, steps which were included in the agreement in force between the union and the Corporation.

296. Lastly, the NWO alleges that 13 more unionised members of another department of the Corporation were dismissed on the pretext that their posts were being made redundant whereas the identical posts (as ascertained from the job descriptions) were then advertised to the public under different names. The dismissed persons included Mr. Carl Campbell, Chief Delegate for the NWO, whose dismissal according to the complainant, not only drives fear into the hearts of other prospective delegates and the workers in general, but also contravenes the disciplinary procedures set out in Part VI(e) of the Labour Relations Code i.e. "no disciplinary action should normally be taken against a delegate until the circumstances of the case have been discussed with a full-time official of the union concerned". According to the complainant, discussion of this action with the Corporation was unsuccessful; the matter was taken to the Ministry for conciliation but this again proved futile as the
Corporation refused to allow the dispute to go to arbitration. The complainant submits that this victimisation is contrary to section 24(3) of the Constitution which states that no individual should be discriminated against in any manner whether by reason of his race, place of origin, political opinions, colour or any such criteria. It successfully sought an injunction before the High Court to prevent the Corporation from filling the 13 posts and states that a final ruling should be forthcoming shortly on the final aspect of the injunction hearing.

297. The complainant sees this action on the part of the Government as part of a broader attack upon the rights of trade unions as they serve as encouragement to management as a whole to ignore collective agreements and slowly erode the hard-earned rights of workers. It submits that if the Corporation is allowed to openly ignore the existing collective agreement, this will encourage other management to break unilaterally and arbitrarily these agreements.

B. The Government's reply

298. The Government states that the NHU did make complaints to the Ministry of Labour on two separate but similar issues. With regard to the first, the Government explains that the Minister of Labour, acting on the advice of the Law Officers of the Crown, ruled that there was no dispute referrable to the Industrial Disputes Tribunal; the law governing dismissals by reason of redundancy sets out the procedure to be followed. With regard to the second issue involving dismissal of some Broadcasting Station workers, the NWU's request for a meeting at the Ministry was duly accommodated, according to the Government, but the meeting ended inconclusively. It states that the next development was not another meeting to conciliate and settle, but the NWU took its case to the Supreme Court where it is still awaiting a ruling.

299. In its second communication, the Government explains that although the Ministry of Labour does not determine the policies of the other ministries, it can say that one of the basic policies of the Government is the encouragement of worker representation on boards of management, a policy which is having very effective and positive results.

C. The conclusions of the Committee

300. This case involves three issues: the non-appointment of two worker representatives to the Board of the Government-owned Broadcasting Station, the dismissal on grounds of redundancy of two unionised station employees and the retrenchment of 13 unionised station employees, including the chief delegate to the NWU. The two latter actions were allegedly excluded from hearing by the Industrial Disputes Tribunal because of the Government's stance.

301. The Committee notes that the complainant does not allege that the non-appointment of workers' representatives to the Board
Reports of the Committee on Freedom of Association

was due to anti-union discrimination, nor does it stipulate which laws the Government was breaking by not appointing workers to the Board; it in fact admits that workers have been appointed to the boards of other Government-owned bodies. The Committee, while generally recalling the importance of consultation and co-operation between public authorities and employers' and workers' organisations regarding matters of mutual concern, as stressed in the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), considers that there are no grounds for examining the first issue and decides that this aspect of the case does not call for further examination.

302. Regarding the dismissal on grounds of redundancy of two unionised Broadcasting Station employees, the Committee notes that the complainant does not allege that this action was due to anti-union discrimination, nor does it clearly state how the handling of this action violated the procedure governing such situations. The Labour Relations Code - paragraph 21 of which is cited by the complainant - only sets out guidelines helpful for the purpose of promoting good labour relations, and the collective agreement in force - paragraph 37(e) of which is cited by the complainant - does not specify that both parties to a dispute shall refer it to arbitration in the case of failure to settle it by mediation but states that "the dispute shall be referred to arbitration ...". Section 10 of the Labour Relations and Industrial Disputes Act, 1975, also cited by the complainant, merely sets out a ministerial discretion to intervene. Lastly, presumably because the collective agreement is not explicit in this respect, the complainant cites section 6 of the Act which reads as follows:

6. Collective agreements. (1) Every collective agreement which is made in writing after the commencement of this Act shall, if it does not contain express procedure for the settlement, without stoppage of work, of industrial disputes between the parties, be deemed to contain the procedure specified in subsection (2) (in this section referred to as the implied procedure).

(2) The implied procedure shall be -

(a) the parties shall first endeavour to settle any dispute or difference between them by negotiation; and

(b) where the parties have tried, but failed, to settle a dispute or difference in the manner referred to in paragraph (a) any or all of them may request the Minister in writing to assist in settling it by means of conciliation; and

(c) all the parties may request the Minister in writing to refer to the Tribunal for settlement any dispute or difference which they tried, but failed, to settle by following the procedure specified in paragraphs (a) and (b).

This section appears to be silent as to what happens when the Minister refuses to refer the request for settlement to the Tribunal under subsection (c), but the Committee notes the Government's statement that he acted "on the advice of the Law Officers of the
Crown" in refusing to do so in this dispute. The Committee also notes that neither the two persons involved nor the complainant organisation challenged the Minister's omission before other forums. In this respect, it would point out, as it has done in the past, that where a worker feels that he is the subject of anti-union practices, he should be able to appeal to a court or to some other authority independent of the parties concerned. Nevertheless, in view of the lack of detailed information before the Committee, it is of the opinion that this aspect of the case does not call for further examination.

303. As concerns the retrenchment of 13 unionised workers at the Station, including the chief delegate to the NWU, the Committee notes that the complainant sees this action on the part of the Government as part of a broader attack on trade unions and that the Government answers this allegation by referring to the fact that the matter is pending before the Supreme Court. Although the Committee has recognised that it would be extremely difficult for a worker who was dismissed by an employer invoking, for example "neglect of duty", to prove that the real motive for his dismissal was to be found in his trade union activities, it considers that the fact that the 13 allegedly redundant posts were re-advertised to the public is hardly indicative of good faith on the part of the employer. The Committee would accordingly point out to the Government that one of the basic principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, transfer, demotion and other prejudicial measures - and that this protection is particularly desirable in the case of trade union officials because, in order to perform their trade union duties in full independence, they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organisations should have the right to elect their representatives in full freedom. It would like to be informed of the outcome of the Supreme Court action in the hope that the 13 unionised workers will be reinstated in their posts or, if this is not possible, at least compensated for the discrimination shown them.

The recommendations of the Committee

304. In these circumstances, the Committee recommends the Governing Body to adopt the following conclusions:

The Committee decides that the allegations relating to the non-appointment of workers' representatives to the Board of the

1 See, for example, 204th Report, Case No. 959 (Honduras), para. 186.

2 See, for example, 142nd Report, Case No. 745 (Japan), para. 133, and 197th Report, Case No. 920 (United Kingdom/Antigua), para. 132.
Government-owned Broadcasting Station and the dismissal on grounds of redundancy of the unionised Station employees do not call for further examination.

The Committee would bring to the Government's attention the principle that workers, especially trade union officials, should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment and asks it to inform the Committee of the outcome of the Supreme Court action brought by the retrenched Broadcasting Station workers.

Case No. 1046

COMPLAINTS PRESENTED BY THE COORDINADORA NACIONAL SINDICAL AND THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AGAINST THE GOVERNMENT OF CHILE

305. In a communication dated 11 May 1981, the Coordinadora Nacional Sindical (CNS) presented a complaint of infringement of trade union rights in Chile. The International Confederation of Free Trade Unions, in a letter dated 17 June 1981, enclosing the text of the CNS's complaint, stated that the allegations made had its full support. The Government, for its part, supplied its observations in a communication dated 24 September 1981.

306. Chile has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainants

307. The CNS alleges, first of all, that the Government prohibited nine trade union organisations having legal personality from holding a meeting of workers on May Day when these organisations had complied with all of the obligations provided for in the labour legislation, having requested the authorisation of the competent police inspector. However, on 23 April the police authorities had notified the administrator of the premises where the meeting was to be held that any meeting or demonstration was prohibited and consequently that he should refrain from allowing the premises to be used. In addition, the Minister of the Interior had publicly stated that any meeting held on the occasion of May Day, besides that called by the Government itself, would be repressed.

308. This warning, according to the CNS, was carried out, and the workers who had gathered at the doors to the hall where the meeting was to be held were violently dispersed by the police and agents of the National Central Information Agency. The CNS leaders then requested the workers to withdraw peacefully.

309. However, according to the complainant organisation, 141 persons were arrested on May Day in the city of Santiago. In other
areas of the country as well (Valparaíso, Concepción, Iquique), meetings called by trade unions were prohibited and 84 persons arrested. At the time of sending the complaint, 15 persons whose names are listed in the communication were still held by the National Central Information Agency.

310. On 6 May 1981, the CNS continues, the Minister of the Interior placed under house arrest, in various isolated places in the far south of the country, 12 workers and students who had been held since 1 May. These persons were to remain in those places for three months.

311. Furthermore, the Chairman of the National Federation of Textile Workers, Fernando Bobadilla, was arrested on 1 May by agents of the National Central Information Agency when he was returning from the headquarters of the National Association of Public Employees. According to the complainant organisation, he was subjected to psychological torture to make him divulge information about the Coordinadora Nacional Sindical. Mr. Bobadilla subsequently lodged an "appeal for protection" with the Santiago Court of Appeal describing in detail the interrogation to which he had been subjected.

312. The complaint then refers to physical assaults by uniformed police against miners in the El Teniente area at Rancagua, mentioning in particular incidents that occurred on 6, 7, 8 and 9 May during peaceful demonstrations. During one of these, 27 persons were arrested, including 12 miners and 15 women and young persons. As a result of ill-treatment, two workers' arms were broken. Furthermore, on 11 May, when the miners' wives were protesting against the arrests by beating on empty pots, the police broke violently into the buildings, throwing tear-gas bombs, and proceeded to arrest several mothers of families, who were subsequently released.

313. Lastly, the CNS mentions the situation of 1,000 Mapuche Indian peasants whose co-operative at Lumaco has been taken over by the Government. The peasants are in jeopardy of losing their land owing to the mismanagement of government officials. Their leaders have been thrown into jail after denouncing the abuses committed against the indigenous population. The CNS adds that a co-operative trade union has been organised by these peasants.

B. The Government's reply

314. Concerning the May Day celebrations, the Government denies that there was any general prohibition of meetings. It states that all organisations were able to meet freely in their premises to examine their problems, and that this occurred throughout the country. The meeting to which the complaint refers was a public meeting in a theatre, outside the trade union headquarters, and without prior authorisation by the police. The Government recalls that, since the country is in a state of emergency, such an authorisation must be obtained prior to holding a public meeting.
315. The Government adds that large-scale arrests were not made and that if some persons were arrested, the arrests were made to prevent disturbance of the peace and in no case on account of trade union celebrations held in the organisations' premises. Of the persons listed by the complainants, the Government was able to find information about seven who are being held in a public prison. These persons are charged with breaking the law on state security and Decree No. 77 "to dissolve political parties and prohibit activities for promoting doctrines involving a concept of man and society contrary to the dignity of human beings and the values of freedom and Christianity which are part of the national tradition". These persons were members of a propaganda cell of those political parties. The case against them is now in first instance and the public prosecutor's report is awaited. The accused will be entitled to appeal when the sentence is handed down. It appears therefore to be clear, according to the Government, that the reason for their arrest was not the celebration of May Day or any facts connected with freedom of association. Nor are they being held, as the complainants falsely assert, in secret places.

316. Concerning the measures of house arrest, the Government points out that the President of the Republic has the right to take such measures under the Constitution approved by referendum on 11 September 1980. This presidential right, which is of a transitional nature, is exercised when acts of violence are committed that affect law and order or when the peace is likely to be disturbed. It has been exercised in a limited number of cases against habitual agitators. Moreover, the persons concerned may appeal to the authorities for a review of the case. The Government reaffirms that this exceptional measure has never been used to repress the exercise of trade union rights.

317. Regarding the arrest of Mr. Fernando Bobadilla, the Government points out that under article 21 of the Constitution any person arrested in violation of existing legislation or illegally threatened in his right to personal freedom and individual safety may appeal to the courts to adopt measures to re-establish the exercise of his rights and ensure his protection. This is what has happened in the case in question, Mr. Bobadilla having lodged an appeal for protection with the Santiago Court of Appeal. On this point, the Government concludes that Mr. Bobadilla has been released.

318. The action taken by the police in the case of the strike at El Teniente was intended to maintain peace and order which political activists not connected with the mine aimed at disrupting. No worker or trade union leader at the mine was arrested for participating in the legal strike.

319. The allegations relating to the Indian peasants of the Lumaco co-operative, according to the Government, have to do with the financial administration of an agricultural enterprise governed by the general law on co-operatives. The Government adds that the Committee on Freedom of Association is not competent to take a position on the economic management of an enterprise and that no violation of labour legislation was committed. In the Government's opinion, this is a matter that has no relation to freedom of association.
C. The Committee's conclusions

320. The CNS's complaint relates essentially to events which occurred during the celebration of May Day in 1981. Other allegations relate to incidents that occurred during a strike at the copper mines in the El Teniente area and in an agricultural cooperative of indigenous peasants.

321. The Committee observes that it has had before it for five consecutive years allegations concerning impediments to the celebration of May Day in Chile. In this connection it must stress, as it has done on several occasions in conjunction with Case No. 823 relating to Chile, that the holding of public meetings and the voicing of demands of a social and economic nature are traditional forms of trade union action on the occasion of May Day. Trade unions should have the right to organise freely whatever meetings they wish to celebrate May Day, provided public order is respected. In the case in question, an authorisation to hold the meeting had been requested and the trade unions organising the meeting had planned to hold it in closed premises. It does not therefore appear that any particular disturbance of the peace was to be feared.

322. In addition, the incidents which took place on May Day led to measures of detention and house arrest. It emerges from the Government's reply, in particular, that seven persons who, according to the complainants, had been arrested on May Day, are still being held pending trial before the courts. Other persons were placed under house arrest in isolated places, a decision taken outside any judicial procedure. In this connection, the Committee wishes to recall the importance which it attaches to the right of all accused persons to enjoy the benefits of normal judicial procedures. In these circumstances, the Committee must stress, as it has already done in cases relating to Chile, that the persons arrested during a demonstration organised by a trade union - which appears to be the case of the demonstration to which the allegations refer - should be released or, if they are accused of crimes, be judged within a normal period of time by impartial and independent courts. The Committee would like to be kept informed of the results of the court proceedings brought against the seven persons in question.

323. Concerning the arrest of Mr. Fernando Bobadilla, a well-known trade union leader in Chile, the Committee must recall that the arrest of a trade unionist against whom no charge is brought involves restrictions to freedom of association. Governments should adopt measures for issuing appropriate instructions to prevent the danger involved for trade union activities by such arrests. It is also clear that such measures create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities.

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2 See, for example, 202nd Report, para. 333.
324. Concerning the allegations relating to police intervention during the strike at El Teniente, the Committee, while noting the Government's statement that the persons arrested were agitators not connected with the mine, observes that, according to detailed information supplied in the complaints, the police intervened frequently during the dispute and proceeded to arrest miners and the wives of strikers. In this connection, the Committee wishes to stress that in cases of strike movements the authorities should resort to the use of force only in serious situations where law and order is seriously threatened.

325. Lastly, the Committee notes, concerning the allegations relating to the indigenous peasants of the Lumaco co-operative, that in the Government's view this matter has nothing to do with freedom of association. The Committee observes however that the leaders of the peasants who, according to the complainants, were arrested - which the Government has not denied - intervened to defend the peasants' economic interests with the Ministry of Economy and Finance and that they have organised a trade union. Before being arrested, they had therefore acted as workers' representatives. The Committee expresses the hope that a rapid solution will be found in this matter and that no definite action will be taken against the peasant leaders for reasons connected with the performance of their functions as representatives.

The Committee's recommendations

326. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

The Committee recalls that trade unions should have the right to organise freely whatever meetings they wish to celebrate May Day, provided that public order is respected.

Noting that persons arrested on May Day are still being held in prison and that others have been placed under house arrest in isolated places, the Committee wishes to recall the importance which it attaches to the right of all accused persons to enjoy the benefits of normal judicial procedures. It also stresses that the persons arrested during a demonstration organised by a trade union should be released or, if they are accused of crimes, be tried within the normal period of time by impartial and independent courts. The Committee requests the Government to keep it informed of the results of the court proceedings brought against the seven persons mentioned in its communication.

Concerning the arrest of Mr. Bobadilla, the Committee points out that the arrest of trade unionists against whom no charge is brought involves restrictions to freedom of association. Such measures also could create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities.

In respect of the police intervention during the strike at El Teniente, the Committee considers that in cases of strike movements the authorities should resort to the use of force only in serious situations where law and order is seriously threatened.
Lastly, the Committee expresses the hope that a rapid solution will be found in the case of the Lumaco co-operative and that no definite action will be taken against the peasant leaders for reasons connected with performance of their functions as representatives.

Case No. 1051

COMPLAINT PRESENTED BY THE CONFEDERATION OF PRIVATE EMPLOYEES OF CHILE AGAINST THE GOVERNMENT OF CHILE

327. In a communication dated 2 June 1981, the Confederation of Private Employees of Chile (CEPCH) presented a complaint alleging the infringement of trade union rights in Chile. For its part, the Government furnished its observations in a communication dated 13 August 1981.

328. Chile has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

329. The complaint concerns the dismissal of Mr. Walter Antognini Ibacache, one of the national leaders of CEPCH, and the declaration of his legal incapacity made by the Labour Directorate of the Ministry of Labour and Social Welfare.

330. The complainant organisation explains that Mr. Antognini had been working at the National Vocational Training Institute (INACAP) since 16 September 1967. This Institute is a private undertaking which is dependent upon a public body, the Production Development Corporation, the executive committee of which includes representatives of the Ministry of Labour. Since May 1975, Mr. Antognini has been one of the national leaders of CEPCH, a fact which had been duly made known to the Labour Directorate and his employer.

331. On 1 April 1981, i.e., on the eve of the company union elections, INACAP informed Mr. Antognini of his dismissal on grounds attributable to the operating requirements of the undertaking. CEPCH adds that INACAP had not given the statutory 30 days' advance notice and had decided to compensate this lack of advance notice by the payment of a sum of money, although such payments are not allowed under the law. As indicated in a report from the labour inspectorate attached to the complaint, Mr. Antognini obtained a majority of votes in the trade union elections of 2 April; in the presence of a labour inspector, he had a meeting with the chief of personnel of the undertaking who refused to reinstate him. Mr. Antognini then filed a complaint of unjustified dismissal with the competent courts.
332. On 22 May 1981, the Labour Directorate declared that Mr. Antognini was not legally qualified to exercise the functions of leader of the company trade union since he no longer fulfilled the requirements for such a post established by the law. Mr. Antognini then lodged an appeal requesting that the decision to disqualify him be considered illegal.

B. The Government's reply

333. The Government states firstly that INACAP is a private undertaking and that its administration, management and financing are autonomous and independent from the Ministry of Labour and the governmental authorities.

334. It points out that in accordance with Act No. 16,455 of 1961 and Legislative Decree No. 2200 of 1978, undertakings may terminate a contract of employment with their workers for one of the reasons mentioned in these texts. One of these reasons concerns grounds attributable to the operating requirements of the undertaking and is used to make adjustments in the size of the workforce in the light of production needs. Workers who are dismissed may appeal to the labour courts which, in the event of unjustified dismissals, may order the reinstatement of the workers concerned or, in the event of a refusal by the employer, order the latter to pay compensation equal to at least 30 days' earnings for each year and a half worked.

335. In the present case, the undertaking made use of the dismissal procedure set forth above and the worker concerned has made an application which is currently before the civil courts for a declaration of unjustified dismissal.

336. In conclusion, the Government states that no discriminatory or oppressive measures were taken against the worker in question. It adds that the decision of the court will be transmitted to the Committee as soon as it is delivered.

C. The Committee's conclusions

337. The Committee notes that the present case concerns the dismissal of one of the leaders of the Confederation of Private Employees of Chile (CEPCH) by his employer, the National Vocational Training Institute (INACAP). This dismissal led to a declaration by the Labour Directorate concerning the legal incapacity of the worker to exercise his trade union functions.

338. As regards the dismissal, the Committee is unable, on the basis of information currently at its disposal, to determine whether the worker was dismissed for economic reasons as stated by the employer and the Government, or whether the dismissal was the result of anti-trade union discrimination, as alleged by the complainant. The Committee considers that the text of the decision concerning the application made for a declaration of unjustified
dismissal could provide it with additional information. It notes in this respect that the Government has indicated that the decision will be transmitted to the Committee as soon as it is delivered. However, the Committee can at this stage note that the worker concerned had been employed by the company for a period of thirteen years, had for the last six years been a trade union leader, and was dismissed on the eve of his election as leader of the company union, a dismissal which was illegal according to the provisions of section 22 of Legislative Decree No. 2200 which requires the employer to obtain prior permission from a court before dismissing a trade union leader.

339. As regards the declaration of legal incapacity, the Committee notes that this decision was made in accordance with section 21 of Legislative Decree No. 2756 of 1979 respecting the organisation of trade unions, which stipulates that a person must, in order to be elected to the executive committee of a company trade union, be employed by the undertaking concerned.

340. In the particular circumstances of the case, the Committee cannot but reach the conclusion that the action thus taken by the company had the effect of impeding the right of a workers' organisation to elect its representatives in full freedom and was accordingly contrary to the principles of freedom of association.

The Committee's recommendations

341. In these circumstances, the Committee recommends the Governing Body to approve the present report and in particular the following conclusions:

The Committee considers that the dismissal of Mr. Antognini had the effect of impeding the right of a workers' organisation to elect its representatives in full freedom and requests the Government to inform it of the results of the judicial proceedings underway.

Case No. 1074

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS AND THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AGAINST THE GOVERNMENT OF THE UNITED STATES OF AMERICA

342. The complaint of the World Federation of Trade Unions (WFTU) is contained in a letter dated 12 August 1981; it supplied additional information in a communication of 21 September 1981. The complaint of the International Confederation of Free Trade Unions (ICFTU) is contained in a letter dated 2 September 1981 and was supported by the American Federation of Labor and Congress of Industrial Organisations (AFL-CIO) in a communication of the same date. The AFL-CIO, in its communication, expressly disassociates itself from the WFTU complaint. The Government replied in communications dated 20 October and 5 November 1981.
343. The United States of America have not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), or the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

344. In its letter of 12 August 1981, the WFTU alleges that during a strike by air traffic controllers in August, the Government dismissed more than 12,000 workers, imposed on trade unions $100,000 an hour fines and jailed the strike leaders. It further states that 72 members of the union are under "court persecution" and that military controllers were used to substitute for those on strike. In its letter of 21 September 1981, the WFTO adds that the Federal Aviation Authority (FAA) decertified the Professional Air Traffic Controllers' Organisation (PATCO) on the grounds of its strike, thus terminating its legal existence. It states that the courts had brought criminal charges against 24 union leaders and had issued over 40 injunctions, and that the Government had put strikers in chains and leg shackles. Lastly, it alleges that the Government now makes every federal employee sign a no-strike clause, contrary to the guarantees set out in the ILO Conventions on trade union rights. The WFTU asks for the re-employment of the dismissed workers, withdrawal of the repressive measures and harassment of PATCO and re-certification of PATCO.

345. In its letter of 2 September 1981, the ICFTO alleges infringements of Conventions Nos. 87, 98 and 151 by the Government during the PATCO dispute. It gives a background of the facts as follows: on 22 June 1981, a tentative contract was signed between PATCO and FAA subject to ratification by the union's membership; the membership rejected it by a 95 per cent to 5 per cent vote and the union attempted to negotiate further its original proposals; upon the Government's refusal to resume meaningful negotiations, more than 12,000 employees walked off their jobs on 3 August; the same day the Government announced that it would terminate the employment of those workers failing to return to their jobs by 5 August; on 5 August the Government began dismissing those who had not done so; on 9 August it reaffirmed its position of no negotiation with PATCO and has since repeatedly refused requests for mediation and conciliation.

346. The ICFTU states that by refusing to negotiate with and recognise the union after the walk-off and before the matter was adjudicated properly, the Government decertified PATCO which could be considered as being tantamount to dissolution by administrative action. It also states that the administration of the FAA (the only body authorised by law to bargain on certain safety issues which were included in the union's demands) refused to attend any bargaining session before or after 22 June and that the Government refused to bargain at all after 3 August. This, it claims, is a violation of the right to collective bargaining, which is aggravated by the Government's statement of intention to bargain directly with those employees who did return to work.
347. According to the ICFTU, FAA supervisors are advising union members whose contracts have been terminated to appeal the terminations without union representation; government personnel are stating that internal, informal administrative decisions will control who is rehired, are telling union members to testify against the union to avoid being terminated, and are threatening physical violence against union members if they report intimidating communications to their union. Furthermore, the ICFTU alleges that the Government is prosecuting cases against the union in approximately 70 courts throughout the country, rather than in one consolidated action, in an attempt to overpower its legal capacities. Among other acts of alleged anti-union discrimination, the ICFTU lists: the 75 criminal indictments against individual union members for their alleged participation in the walk-off; the Government's request (which was denied) for imprisonment of the union's executive board for failure to order members back to work; the Government's request for excessive fines; the Government's action resulting in the imprisonment of five union members, one in shackles; other government agencies victimising union members, e.g. the Department of Housing and Urban Development will no longer allow them to utilise the Government's mortgage protection programme; the Government has attempted to prohibit non-violent picketing by the union.

348. Lastly, the ICFTU alleges that the absence of a right to strike for the union was not offset by adequate guarantees to safeguard the workers' interests, this limitation being discriminatory in view of the fact that airline pilots and other organised groups in the air traffic sector do have that right.

B. The Government's reply

349. In its communication of 20 October 1981, the Government explains that the seven month-long negotiations with PATCO involved approximately 12 representatives of the FAA (the Director of Labour Relations representing the Administrator of the FAA), about 12 from PATCO, and the Acting Director and an Associate of the Federal Mediation and Conciliation Service (FMCS). Its view of the events is as follows: in January 1981 PATCO presented a set of 99 proposals and the FAA presented 15 counter-proposals; almost half of PATCO's proposals fell outside the FAA's negotiating jurisdiction (limited under 5 U.S.C. 7103(a) (12, 14) and 5 U.S.C. 7106 to personnel policies and working conditions) but the FAA did not foreclose the possibility of seeking new legislation to cover the demands which it could not negotiate; despite lengthy discussion agreement was reached on only four proposals; PATCO walked away from the bargaining table on 28 April and returned from its annual convention with an ultimatum that, if by 22 June the FAA had not produced an acceptable settlement, it would go on strike; on 22 June the President of PATCO announced that he had won a "fair contract" but the Executive Board and membership rejected it; on 31 July PATCO gave the Government a 67-hour strike ultimatum to settle the dispute, but itself resubmitted its original proposals which amounted to a sum 17 times the amount agreed upon in the June settlement; the Secretary of Transportation repeatedly requested PATCO to extend its strike deadline but even the FMCS representative...
to the negotiations could not get PATCO to offer rearrangements or suggestions concerning the June settlement; the strike commenced on 3 August.

350. According to the Government, once the strike began, it obtained, in the District Court for the District of Columbia, a temporary restraining order against PATCO, its President and 10 other union officials so as to minimise the potential danger to public safety in the airways and bring the strike to an end as quickly as possible. The order was granted because US law (18 U.S.C. 1918) prohibits strikes by federal employees and because these employees had signed a no-strike oath. PATCO failed to comply with the injunction and, on 10 August, the Court imposed the fines for contempt of court set out in its order, i.e. $1,000 per day for the President of the union and a sliding scale of $250,000 to $1,000,000 per day for the union itself, but it refused further civil remedies sought by the Government, namely confinement of the President. The Government points out that in the United States a court may assess fines independent of the funds available to the defendant. Because PATCO refused to comply with this order, the Government concluded that effective relief could only be achieved by seeking restraining orders against the 12,000 striking controllers in local federal courts across the country, and 100 further temporary restraining orders were obtained. The Government explains that in two civil contempt cases the judges went beyond the Government's request and imposed jail sentences on five union members. In one of them, in accordance with the customary practice of that particular court, the defendant union official was taken to jail in restraints. According to the Government, in both of these cases the defendants appeared in court, were represented by counsel and were given a choice of complying with the court's order or going to jail; the defendants chose to go to jail but were freed within a few days at the request of the Government. It states that as of 7 October 1981, only 63 air traffic controllers have been indicted for criminal violation of the no-strike law and 70 further cases are proceeding.

351. The Government continues that, in a private action, on 3 August the Air Transport Association (ATA) went to court to seek a contempt citation against PATCO for violating a 1970 private injunction against further strikes. Although PATCO is attempting to have this injunction vacated, to date it has been unsuccessful, and the District Court for the Eastern District of New York fined PATCO $100,000 per hour (twice what the ATA sought) for the duration of the strike plus an additional fine of $25,000 per day; when judgements totalling $4.5 million in fines had been entered, the judge terminated them.

352. The Government states that a third type of action was taken on 3 August: since strikes against the Government are considered as unfair labour practices (5 U.S.C. 7116(b)(7)), the FAA filed such a charge with the Federal Labor Relations Authority (FLRA) - the independent quasi-judicial agency of the Federal Government which regulates labour-management relations in the federal public sector - calling on it to revoke PATCO's exclusive recognition status. On 10 and 11 August hearings were held before the FLRA Chief Administrative Law Judge, all parties being present and represented by counsel. After that judge's recommendation for revocation was handed down, oral argument was heard by the full FLRA
but as of 9 October 1981 the case had not been decided. The Government points out that the FLRA's decision can be appealed to the Court of Appeals. On 3 August the FLRA, at the FAA's request, had also obtained a temporary restraining order against PATCO.

353. According to the Government, on 9 August, PATCO filed an unfair labour practice charge with the FLRA alleging that the FAA had refused to bargain in good faith; however, the case was dismissed on 25 August and PATCO's appeal was rejected on 21 September.

354. The Government states that, as federal law specifically prohibits striking employees from accepting or holding positions with the Government (5 U.S.C. 7311), PATCO and all individual controllers were repeatedly warned that controllers participating in an illegal strike could be dismissed. When the strike commenced the President of the United States, on his own initiative, allowed the strikers a period of 48 hours' grace to return to work and the Department of Transportation interpreted this deadline as liberally as possible. On 6 August the FAA started sending out notices of proposed removals to the strikers and, after the 7-day period of response had elapsed, issued dismissal letters informing the employee of his right to appeal within 20 days to the Merit Systems Protection Board (MSPB) from which there is an appeal to either the US Court of Claims or Court of Appeal. Controllers who demonstrate a valid reason for their absence from work during the strike may be returned to their jobs by the FAA or the MSPB. Accordingly, the Government considers that the dismissal of the strikers was not wrongful.

355. In reply specifically to the WFTU's allegation concerning the right to strike, the Government considers that it provides adequate guarantees to safeguard the interests of federal workers who do not enjoy this right: two representatives of the FMCS (the independent agency set up to assist parties to labour disputes in industries affecting commerce to settle such disputes through conciliation and mediation) were present during all the negotiations at the request and with the approval of both parties; PATCO was at all times during the negotiations able to lodge a "negotiability appeal" with the FLRA (5 U.S.C. 7117) asking it to overrule the Government's refusal to negotiate specific union demands which the Government considers non-negotiable at law, but PATCO did not exercise this appeal; PATCO also at any time could have had recourse to binding arbitration settlement through the Federal Service Impasses Panel (5 U.S.C. 7119) - an entity established within the FLRA to provide assistance in resolving negotiation impasses on items that are already determined to be negotiable where the parties have exhausted all other means of settling the dispute i.e. voluntary arrangements, the FMCS or any other third-party mediation.

356. As regards the WFTU's allegation that 72 union members are under "court persecution", the Government stresses that the 70 odd members of PATCO still being prosecuted for violating the temporary restraining orders enjoy all the guarantees of due process and that this can in no way be seen as "persecution".

357. Regarding the WFTU's allegation concerning the use of military controllers, the Government states that the number of military staff, after the initial call of 150, rose to 370 by 7
August and that there are currently 800 serving as back-ups in
civilian airports. It considers that the use of military
controllers during the emergency is entirely consistent with the
principle of freedom of association whereby, in the case of an
unlawful strike in an essential service, the Government may deploy
such personnel in the interests of public welfare and safety.

358. In reply to the ICFTU's allegation of dissolution of the
union by administrative action, the Government refers to the
principle that dissolution or decertification of a union should only
be effected through judicial action and only if there is provision
for deferring the effective date of the decertification order until
after opportunities to appeal to judicial bodies have been
exhausted. It states that PATCO raised this issue of de facto
decertification in its unfair labour practice charge filed with the
FLRA, which first by the FLRA Regional Director and then by the
General Counsel was dismissed. According to the Government, until
formal and final decertification is ordered, PATCO is able to
exercise its rights as the representative of employed air
controllers and still enjoys exclusive bargaining status. Moreover,
it points out that the request for decertification of PATCO is being
handled under the normal procedure: a hearing before the FLRA whose
decision can be appealed to the Court of Appeals for review. As
regards the alleged failure to bargain raised by the ICFTU, the
Government points out that the Administrator of the FAA was
represented by the Director of Labor Relations of the FAA at all
negotiating sessions, this representative being fully empowered to
conclude an agreement with PATCO. In fact he was a signatory to the
22 June agreement. As regards the refusal to bargain after the
commencement of the unlawful strike, the Government claims that this
was not an anti-union action because PATCO was provided with
adequate safeguards to offset the absence of the right to strike.

359. As for the ICFTU's allegation that FAA supervisors are
contacting and threatening PATCO members and are thus interfering in
the union's affairs, the Government states that this is
unsubstantiated. It claims that any individual has the right to
bring such allegations before the FLRA, but that no one has done so
to date. It further points out that the union members were
dismissed under procedures strictly outlined in law and may be
reinstated by the Merit Systems Protection Board, not by internal
and informal administrative decisions, which are prohibited.
Regarding the allegation that the Government is attempting to
overpower the legal capabilities of the union, it points out that it
only commenced the civil actions against individual strikers because
PATCO had ignored the 3 August temporary restraining order. It
states that PATCO has asked the Court to consolidate the cases but
no decision has yet been handed down. The Government has opposed
PATCO's request because at the present time the cases primarily
involve regulation of picketing at individual facilities by former
FAA employees, which is a matter of a local nature. As regards the
cases concerning criminal indictment, the Government points out the
United States law prohibits consolidation of criminal cases. In
this connection, the Government denies the allegation that it has
attempted to prohibit all picketing, and states that in the event of
an illegal strike, non-violent picketing may, by law, be regulated
by the local district courts.

360. As regards the ICFTU's allegation of anti-union
discrimination by other government agencies, the Government explains
that the Department of Housing and Urban Development, on 20 August, announced that former controllers would be considered for mortgage protection, if and when they requested it, on the same criteria as any other individuals seeking such relief. However it also noted that striking controllers might not meet all the criteria since "participation in an illegal strike may not be considered [as circumstances] beyond the individual's control" which have forced him to default on his mortgage payments.

361. Lastly, the Government denies the ICPTU claim that air traffic controllers should be exempted from the legal restrictions on the right of federal employees to strike because other organised groups in that sector do have this right. It points out that pilots and other such groups are not government employees, and that any change regarding the right of air traffic controllers to strike would have to be made by Congress, not by the Executive.

362. In its letter of 5 November 1981, the Government sends further information regarding the status of legal proceedings related to PATCO. According to the Government, on 22 October 1981, the three-member FLEA issued its decision to uphold the recommendation of the Chief Administrative Law Judge and PATCO filed an appeal against this recommendation. At the same time it filed an emergency motion for a stay of the FLEA's revocation of its exclusive recognition status, which was granted by the Court until 27 October. The Court has indicated that a three judge panel would hear the case as expeditiously as possible. The Government further states that PATCO's request for consolidation of the court actions pending against it was refused on 20 October 1981.

C. The Committee's conclusions

363. This case concerns allegations that during the air traffic controllers' strike initiated in August 1981, the Government violated the ILO Conventions on freedom of association in the following manner: it did not provide sufficient guarantees to offset the legislative prohibition of the right of federal employees to strike; it committed various anti-union acts (criminal and civil court actions; imposition of excessive fines; imprisonment of five striking unionists, one in chains; dismissal of over 12,000 strikers; intimidation of and discrimination against unionists); it used military controllers to substitute for those on strike; it refused to bargain with the air traffic controllers' union which could be considered to be tantamount to dissolution by administrative authority, and it de-certified the union.

364. The Committee considers that the nature of the present case is mainly distinguished by the fact that US legislation prohibits strikes by federal employees, air traffic controllers being included in this category, as they are employed by the FAA, an agency of the United States Department of Transportation. The relevant sections of the Federal Service Labor-Management Relations Statute and the Crimes and Criminal Procedures Statute read as follows:

7311. An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he -
(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

1918. Whoever violates the provision of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he-

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia;

shall be fined not more than $1,000 or imprisoned not more than one year and a day, or both.

365. The Committee would point out as it has in the past that although industrial action, such as the right to strike by workers and their organisations, is generally recognised as a legitimate means of defending their occupational interests, this right could be restricted or even prohibited in the civil service or in essential services in the strict sense of the term, i.e. services whose interruption would endanger the existence or well-being of the whole or part of the population.\(^1\) The Committee has, for instance, considered that, on this criterion, the hospital sector is an essential service.\(^2\) In another case, for example, the Committee considered that it was not established in a satisfactory way that the Mint, the government printing service and the state alcohol, salt and tobacco monopolies constitute genuinely essential services. The Committee in this case considered that, although it might be said that a stoppage of work by the workers concerned in these undertakings could cause public inconvenience, it did not appear possible to consider that it could bring about serious public inconvenience.

\(^1\) See, for example, 207th Report, Case No. 991 (Costa Rica), para. 261; 208th Report, Cases Nos. 988 and 1003 (Sri Lanka), para. 336.

\(^2\) See, for example, 199th Report, Case No. 910 (Greece), para. 117; 202nd Report, Case No. 949 (Malta), para. 276.
Applying this criterion to the particular circumstances of the present case, the Committee considers that the withdrawal of services by air traffic controllers could endanger the existence or well-being of a very large number of aircraft passengers and flying staff. It is accordingly of the opinion that the exclusion of this particular category of public employees from the right to strike does not constitute a violation of the principles of freedom of association.

Nevertheless, the Committee has always considered that where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate them for this limitation on their freedom of action, for example, by adequate impartial and speedy conciliation and arbitration procedures. The Committee would also refer in this respect to the Labour Relations (Public Service) Convention, 1978 (No. 151), Article 8 of which provides that the settlement of disputes in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved. The Committee notes that in the present case, according to the Government, adequate guarantees existed for the air traffic controllers through the continuous presence of the Acting Director and an associate of the Federal Mediation and Conciliation Service throughout the negotiations, through the right to lodge a "negotiability appeal" with the Federal Labor Relations Authority and through the right to request binding arbitration before the Federal Service Impasses Panel of the FLRA. The Government points out that the union did not make use of either of these procedures, but that it did file an unfair labour practice charge with the FLRA, alleging that the Government had refused to bargain in good faith, which was dismissed at first instance and on appeal.

The Committee has examined the relevant provisions of the Federal Service Labor-Management Relations Statute (Chapter 71 of Title 5 of the US Code). It notes that these provisions provide, in particular, that the FMCS shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses and that it is for the FMCS itself to determine under what circumstances and in what manner such assistance shall be provided; that, where the services of the FMCS fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter; and that, as an alternative, the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, if such a procedure is approved by the Panel (5 U. S. C. 7119). The Committee has also noted the provision

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1 See, for example, 187th Report, Case No. 893 (Canada), para. 535.

2 The relevant subsection reads as follows:

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall (Footnote continued on next page)
under which, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may within a period of 15 days appeal this allegation to the FLRA (5 U.S.C. 7117).¹

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(Footnote continued from previous page)

provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse -

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel."

¹ The relevant subsection reads as follows:

"(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

"(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by -

"(a) filing a petition with the Authority; and

"(b) furnishing a copy of the petition to the head of the agency.

"(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(b) of this subsection, the agency shall -

"(a) file with the Authority a statement -

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(b) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(b) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) A hearing may be held, in the discretion of the Authority, -

(Footnote continued on next page)
368. The Committee considers that, in the present case, the requirement that services and assistance be provided to the bargaining partners by the FMCS with a view to overcoming negotiation impasses were satisfied through the continuous presence throughout the bargaining process of two FMCS representatives. The fact that the negotiations between the FAA and PATCO nonetheless ultimately broke down alters nothing in this regard. Furthermore, from the evidence available to the Committee it appears that PATCO did not choose to avail itself of any of the above-mentioned procedures, i.e. a "negotiability appeal" to the FLFA, referral of the case to the Federal Service Impasses Panel or recourse to binding arbitration. Whilst recognising the fact that recourse to binding arbitration could have been had only with the agreement of the FAA and with the approval of the Panel, the Committee is bound to note that nothing would have prevented PATCO from proposing recourse to arbitration. In all these circumstances, the Committee does not find itself in a position to uphold the allegation that adequate procedures do not exist to safeguard the interests of workers not enjoying the right to strike.

369. As regards the allegations concerning action taken against the union and individual unionists during the strike, the Committee notes the Government's explanation that the judicial authorities imposed fines (one case quoted is a private action having nothing to do with the Government) and briefly imprisoned five unionists for contempt of court orders duly obtained by the Government. It notes the Government's statement that the dismissals were carried out in accordance with the legislation in force and can be appealed to judicial authorities. It notes finally that the Government considers that the allegations of intimidation and interference are unsubstantiated and that the purported example of anti-union discrimination in the government mortgage protection scheme is factually untrue. In view of the wide variety and the extreme severity of the action taken against the striking air traffic controllers the Committee would recall that it has stated in the past that the application of excessively severe sanctions to public servants on account of their participation in a strike is not conducive to the development of harmonious industrial relations. It would ask the Government to give consideration to and inform it of any action taken or envisaged towards the reinstatement of dismissed controllers, towards a waiving or reduction of the fines imposed and expresses the hope that no controller will be deprived of assistance under the government mortgage protection scheme on the grounds solely of his participation in the air traffic controllers' strike.

370. As for the use of military controllers, the Committee notes the Government's statement that this strictly temporary

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"(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date."
measure was necessary to minimise the potential danger to public safety in the airways and to bring the strike to an end as quickly as possible. In the present case, the Committee has already stated its opinion that the withdrawal of services by air traffic controllers could endanger the existence or well-being of very large numbers of aircraft passengers and flying staff. It further considers that the use of military controllers as an emergency measure to maintain the safety of the air travelling public was in the present case the only option open to the Government beyond that of closing down all air traffic. The Committee can therefore not uphold the allegation that the action taken by the Government in this regard constituted a violation of the principles of freedom of association. It notes the Government's statement that the measures in question are of a strictly temporary nature, expresses the hope that the situation will in a near future return to normal, and requests the Government to inform the Committee of any developments in this direction.

371. Regarding the allegation of dissolution by administrative authority and decertification of PATCO, the Committee notes that the proceedings for decertification of PATCO are still pending before the competent judicial authorities. It would ask the Government to inform it of the outcome of the case. The Committee would nevertheless recall the importance that it attaches to the principle that employers, including governmental authorities in their capacity of employers of wage earners, should recognise for collective bargaining purposes the organisations representative of the wage earners employed by them. It therefore expresses the hope that the Government will in this regard see its way to re-opening a dialogue with PATCO.

The recommendations of the Committee

372. In these circumstances, the Committee recommends the Governing Body to approve the following conclusions:

The Committee considers that the withdrawal of services by air traffic controllers could endanger the life and safety of large numbers of air passengers and flying staff. It is accordingly of the opinion that the exclusion of this particular category of employees from the right to strike does not constitute a violation of the principles of freedom of association.

The Committee considers that the use of military air traffic controllers as an emergency measure to maintain the safety of the air travelling public was in the present case the only option open to the Government beyond that of closing down all air traffic. It can therefore not uphold the allegation that this action by the Government constituted a violation of the principles of freedom of association. It notes the Government's statement that the measures in question are of a strictly temporary nature, expresses the hope

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1 See, for example, 190th Report, Case No. 882 (United Kingdom/St. Vincent), para. 289; 207th Report, Case No. 886 (Canada), para. 97.
that the situation will in the near future return to normal, and requests the Government to inform it of any developments in this direction.

The Committee recalls the importance which it attaches to the principle that, where the right to strike is restricted or prohibited in the civil service or in essential services in the strict sense of the term, adequate protection, such as impartial and speedy conciliation and arbitration, should be given to the workers concerned to compensate them for this limitation on their freedom of action. Having examined the relevant provisions of the Federal Service Labor-Management Relations Statute (Chapter 71 of Title 5 of the US Code), the Committee is unable to uphold the allegation that adequate procedures do not exist to safeguard the interests of workers not enjoying the right to strike.

The Committee notes the severe nature of the various actions taken against the air traffic controllers. It is of the view that the application of excessively severe sanctions against public servants on account of their participation in a strike cannot be conducive to the development of harmonious industrial relations. It requests the Government to give consideration to and inform it of any action taken or envisaged towards the reinstatement of dismissed controllers, towards a waiving or reduction of the fines imposed, and expresses the hope that no controller will be deprived of assistance under the government mortgage protection scheme on the grounds solely of his participation in the air traffic controllers' strike.

As regards the decertification case against PATCO, the Committee notes that the proceedings are still pending before the competent judicial authorities and would ask the Government to inform it of the outcome of the action. It would recall in this connection the importance that it attaches to the principle that governmental authorities in their capacity of employers of wage earners should recognise for collective bargaining purposes the organisations representative of their employees, and expresses the hope that the Government will in this regard see its way to reopening a dialogue with PATCO.

CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Case No. 823

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, THE WORLD FEDERATION OF TRADE UNIONS AND SEVERAL OTHER TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF CHILE

373. The Committee has examined this case on several
Reports of the Committee on Freedom of Association

occasions and in particular at its February 1981 Session, when it submitted an interim report to the Governing Body. 1

374. Since the last examination of the case, the complainant organisations have sent the ILO the following communications: the World Federation of Trade Unions (WFTU) (communications dated 11 March, 25 May, 8 and 13 July 1981); the Trades Union International of Workers in the Metal Industry (10 June 1981); the International Confederation of Free Trade Unions (ICFTU) (3, 9, 16 and 17 July 1981, 12 August 1981); National Trade Union Co-ordinating Body (CNS) (3, 8 and 9 July 1981); the Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL) (9 July 1981); the World Confederation of Labour (WCL) (13 July 1981); the International Federation of Teachers' Unions (IFTU) (14 July 1981); the Trade Unions International of Public and Allied Employees (20 July 1981).

375. For its part, the Government forwarded observations in a letter dated 24 September 1981.

A. Previous examination of the case

376. At its session in February 1981, the Committee had adopted interim conclusions on one of the aspects of the case, namely the arrest of two trade union leaders: Manuel Bustos and Alamiro Guzmán, chairman and secretary-general respectively of the CNS. The Committee had requested the Government to inform it of the results of the legal proceedings taken against these two persons.

377. Furthermore, the Committee had asked to be kept informed of any subsequent developments concerning two other aspects of the case: the inquiries undertaken into the disappearance of trade unionists or former trade unionists and trade union legislation.

B. New allegations

378. In its communication of 11 March 1981, the WFTU alleges the arrest on 7 March of Luis Vergara, President of the Glass Federation and Carlos Gonzales, leader of the Coal Federation.

379. The WFTU includes with its communication of 25 May 1981 a report of the external committee of the Single Central Organisation of Chilean workers. In addition to allegations already examined by the Committee, the report refers to the situation of 35 workers who were allegedly dismissed from the Panal Textile Undertaking because of their trade union activities during a lawful strike lasting 57 days which had been organised in this undertaking.

380. The other communications from the complainants concern the arrest of ten leaders of the National Trade Union Co-ordinating

1 See 207th Report, paras. 150 to 197, approved by the Governing Body at its 215th Session (March 1981).
211th Report

Body (CNS). This organisation explains, in particular in a communication dated 9 July 1981, that in accordance with requests made by trade union leaders in November 1980 at the organisation's national advisory meeting, the CNS has drawn up a list of demands, now referred to as the "register of national demands", which was approved by 500 trade union organisations and 2,000 leaders who represented, according to the complainant organisation, 800,000 workers. The national executive of the CNS was instructed to present the register of demands to the governmental authorities. The main demands concerned legislation on work contracts, the recognition of greater freedom of association, the extension of collective bargaining, wage adjustments, social security reform and housing.

381. The CNS requested an interview with the Minister of Labour on 8 June in order to deliver the register of demands, but the request was refused. The register was therefore sent to him by post. The Minister of the Interior then instituted legal proceedings against 11 national trade union leaders, all members of the CNS executive. These trade unionists were accused of arrogating the right of representing workers without being legally qualified to assume such functions and of political proselytism and militancy. Under the provisions of Legislative Decree No. 2347, the first of these charges is punishable by prison sentences running from 541 days to 5 years and under the National Security Act, the second charge is punishable by imprisonment and exile. The Minister of the Interior also made use of the power conferred on him by the new Constitution to request the constitutional court to apply the provisions of article 8 of the Constitution concerning acts of totalitarianism and terrorism. The constitutional court must decide as a matter of conscience whether the accused are guilty or innocent and what penalties should be imposed. Furthermore, according to the CNS, the authorities summoned each of the trade unions which had signed the register of demands and threatened to dissolve them if they did not withdraw their signatures.

382. On Tuesday, 7 July, all the trade union leaders against whom proceedings had been instigated were summoned to appear before the examining magistrate. They were immediately arrested and transferred to the Santiago public prison. Only Juan Manuel Sepúlveda, the CNS officer in charge of international relations escaped this fate since he was on a trade union mission in Europe. The CNS points out that its chairman Manuel Bustos and secretary-general Alasiro Guzmán had already been prosecuted by the Ministry of the Interior for the same offence and had been given a suspended sentence of 541 days of imprisonment by the Court of First Instance; as a consequence, they will now have to serve the sentence without any possibility of a new suspension being granted. The ICFTU subsequently informed the ILO of the release of eight of the CNS leaders so that only Manuel Bustos and Alasiro Guzmán are still being detained.

383. In a telegram dated 12 August 1981, the ICFTU reported the expulsion to Argentina of Chilean lawyers who had agreed to defend the accused trade union leaders before the courts.
C. The Government's reply

384. The Government points out that technical amendments were made to legislation respecting trade union organisations with a view to bringing the texts into line with the country's political Constitution, approved in a referendum held in September 1980. It adds that the advisability or otherwise of introducing new amendments to national legislation is a matter exclusively within its sovereign rights, in accordance with its policy and the national interest. The Government states that employers' and workers' organisations were consulted on a permanent basis during the preparation of the respective bills.

385. As regards the judicial proceedings concerning the trade unionists who have disappeared, the Government states once again that these cases are being investigated and fall within the competence of the ordinary judicial authorities. The Government will transmit any new information of interest to the Committee.

386. As regards the initial legal proceedings taken against Manuel Bustos and Alamiro Guzman in January 1981, the Government points out that the examining magistrate issued his findings at the beginning of April and that in June the accused were given a suspended sentence of 541 days imprisonment. The accused appealed to the Court of Appeal which upheld the original sentence. The defence counsel then lodged a new appeal, known as a "complaints appeal", with the Supreme Court. The latter, in a judgement delivered in August 1981, also upheld the original verdict.

387. The allegations made in connection with the arrest of two trade unionists, Luis Vergara and Carlos Gonzales, are, according to the Government, unfounded. It explains that there is no trace of their having been arrested and that these persons are not known in the sectors of activity mentioned by the complainants since the organisations of which they are said to be leaders enjoy no legal or de facto existence.

388. As regards the proceedings taken against the leaders of the CNS, the Government states, on the basis of the relevant texts in force, that Chilean law guarantees all citizens full freedom of association, and that they may freely establish, join or withdraw from trade union organisations. Furthermore, under section 1 of Legislative Decree No. 2347 of 1978, associations or groups of persons which represent workers without having the legal capacity to do so are declared contrary to the public order and the national security. According to the Government, this provision protects the activity of legitimately elected leaders, since otherwise it would be impossible for workers to distinguish between legally established organisations and de facto organisations which are established and dissolved without statutes and in accordance with interests not shared by the workers.

389. The Government continues that, despite the clarity of these provisions, a group of former militants from dissolved political parties set itself up as the leader of an organisation, called the National Trade Union Co-ordinating Body, established completely outside the law. This group, claiming to represent all Chilean workers, addressed a document called "Register of national
demands" to the President of the Republic which practically requested the repeal of trade union legislation. The offence committed was not the fact of having presented a request to the head of State, but rather that the group had assumed the status of workers' representative without being trade union leaders. The Government states that the legally established organisations have moreover denied their alleged affiliation to the CNS.

390. The Government explains that the sole purpose of the proceedings which were instituted against the leaders of this organisation was therefore to protect the trade union activity and freedom of legally established organisations. It also points out that the legitimately elected trade union leaders of legally existing organisations have the right to present petitions. The President of the Republic frequently meets with such leaders without such contacts leading to court proceedings against the trade unionists.

391. The judicial authorities were therefore requested to examine whether the action of the CNS leaders constituted an offence or not. An examining magistrate was appointed and found grounds for a charge against the CNS leaders of illegally assuming the representation of workers. The defence requested the magistrate and subsequently the Appeals Court and the Supreme Court to annul the indictment and to release the persons concerned on bail. These two requests were refused. Subsequently, during the trial, bail was granted to the accused with the exception of Messrs. Guzmán and Bustos since under the Penal Code, persons who have been previously given suspended sentences of imprisonment are not entitled to bail. The Government points out, however, that the persons concerned may request their temporary release as many times as they wish.

392. As regards the allegations concerning the expulsion of four lawyers from the country, the Government points out that these persons - whose names it gives - were not the defence counsel of the CNS leaders, but were militant members of suspended political parties. Three of them had exercised ministerial functions in previous governments. One is in Venezuela, one in Spain and two in Mexico.

393. In conclusion, the Government states that it has provided this information as a demonstration of its desire to cooperate with the ILO, but that it does not accept that it should be judged on the basis of complaints which are designed to complicate and prolong indefinitely the Chilean case before the ILO.

D. Conclusions of the Committee

394. The Committee notes that technical adjustments have been made to the trade union legislation. However, these amendments are not such as to warrant any modification of the comments made in its previous report. It therefore requests the Government to continue to keep it informed of any subsequent developments in this matter.

395. The Committee also notes that inquiries are continuing into the disappearance of trade unionists. It would like to be kept informed of the results of the judicial inquiries now under way.
396. As regards the matters involving the leaders the National Trade Union Co-ordinating Body, the Committee notes that the leaders in question have been prosecuted for having acted as representatives of the workers without having the legal capacity to do so, since they are the leaders of a de facto organisation which does not enjoy legal personality. The Committee must, however, point out that the origin of the present case is certainly one which concerns freedom of association because the proceedings were instituted after a register of demands of a clearly social and occupational nature had been presented by the leaders concerned. Furthermore, this register had been drawn up in accordance with a decision taken at a meeting which was attended by a large number of federations or confederations which represent workers from different sectors of activity and of which the leaders of the CNS are, for the most part, also leaders.

397. If it is true that the CNS does not possess legal personality - in that it appears that this organisation never requested it - the Committee must however recall that, when it examined the new trade union legislation, it had pointed out that a certain number of provisions relating to federations and confederations were incompatible with the principles of freedom of association, in particular as regards the setting up of these organisations. The Committee is of the opinion that these restrictions imposed on the creation and activities of confederations might be able to explain, at least to a certain extent, why the CNS has apparently not requested legal personality. In addition, the Committee notes that a number of organisations which take part in the activities of the CNS do have legal personality. The Committee also recalls that the CNS represents - as the ILO mission which was sent to Chile in December 1980 was able to note - a body which co-ordinates different workers' organisations belonging to various sectors of activity.

398. As regards the allegations that the Government refused to meet with the CNS leaders, the Committee must stress the importance, for the maintenance of a country's social harmony, of regular consultations with employers' and workers' representatives; as regards the trade union sphere such contacts should embrace the whole spectrum of trade union activity, irrespective of the philosophical or political beliefs of its leaders.

399. The Committee notes that only the two trade unionists holding the principal executive function at the CNS, namely Manuel Bustos, chairman and Alamiro Guzmán, secretary-general, are still being detained at the present time. It points out that the proceedings taken against these two persons are of a particularly serious nature since the accused had already been found guilty of having represented workers without having the legal capacity to do so in an earlier trial and that their sentence could not this time be suspended. The Committee understands that the judicial proceedings in this matter are following their course. It therefore requests the Government to provide information on the results of these legal proceedings.

400. As regards the other allegations which have been made by the complainants since the last examination of the case (arrest of two persons in March 1981 and expulsion of four lawyers), the Committee takes note of the denial by the Government of the complainants' statements concerning the anti-trade union nature of the alleged facts.
211th Report

401. Finally, the Committee observes that the Government has not provided information on the allegations made by the WFTU concerning the dismissal of workers in the Panal Textile Undertaking.

The recommendations of the Committee

402. In these circumstances, the Committee recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

The Committee takes note of the information supplied by the Government on the technical amendments made to the trade union legislation. It requests the Government to continue to keep it informed of any subsequent developments in this matter.

The Committee also notes that the judicial inquiries into the disappearance of trade unionists are continuing and requests the Government to keep it informed of the results of these investigations.

As regards the proceedings instituted against the leaders of the National Trade Union Co-ordinating Body, the Committee notes that the reason put forward by the Government to justify such action is, in particular, that the organisation concerned has no legal existence. In this connection, the Committee recalls that the trade union legislation contains a certain number of provisions relating to federations and confederations which are incompatible with the principles of freedom of association, in particular the provision concerning the setting up of these organisations. The Committee is of the opinion that these restrictions imposed on the creation and activities of confederations might be able to explain, at least to a certain extent, why the CNS has apparently not requested legal personality.

The Committee notes that the proceedings taken against Manuel Bustos and Alamiro Guzmán are of a particularly serious nature in as far as their sentence on this occasion cannot be suspended. It requests the Government to transmit information on the results of these legal proceedings.

Finally, the Committee requests the Government to send its observations on the allegations concerning the dismissal of workers from the Panal Textile Undertaking.

Cases Nos. 844, 873, 904, 953, 973, 987, 1000 and 1016

COMPLAINTS PRESENTED BY VARIOUS TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF EL SALVADOR

403. Since 1976, numerous complaints concerning alleged violations of freedom of association in El Salvador have been...
presented to the Committee by the following organisations: the United Trade Union Federation of El Salvador (FUSS), the Federation of Unions of Workers in the Food, Clothing, Textile and Allied Industries of El Salvador (FESTIAVTSCES), the Committee for Trade Union Unity of Workers of Central America and Panama (CUSCA), the Trade Unions' International of Textile, Clothing and Fur Workers, the Trade Unions' International of Food, Tobacco, Hotel and Allied Industries' Workers, the Latin American Central of Workers (CLAT), the World Confederation of Labour (WCL), the World Federation of Agricultural Workers, the International Confederation of Free Trade Unions (ICFTU), and the Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL).

404. The complaints submitted to the Committee include allegations referring to the assassination, arrest, torture or disappearance of trade union officials and workers, attacks on trade union premises by the armed forces, threats and the destruction of trade union files. The contents of the complaints were successively transmitted to the Government as they were received.

405. The Committee has examined Cases Nos. 844, 873, 904 and 953 at previous meetings and has presented interim reports to the Governing Body. ¹

A. Urgent appeals and Conference contacts by the Chairman of the Committee with the representatives of the Government of El Salvador

406. At its session in May 1980, the Committee decided to adjourn its examination of Cases Nos. 844, 873 and 904 since it had not yet received the detailed information which had been requested from the Government. At its session of November 1980, the Committee once again adjourned its examination of these cases for the same reason and included them in its report under the heading "Urgent appeals". At its February 1981 session, the Committee also included Cases Nos. 953, 1000 and 1016 under the same heading "Urgent appeals".

¹ The Committee examined Case No. 844 in November 1976, in February, May and November 1978, and again in February 1980 (see 160th, 177th, 181st, 187th and 199th Reports, approved by the Governing Body at its 201st, 205th, 206th, 208th and 212th Sessions).

Case No. 873 was examined in November 1977, May 1978 and February 1980 (see 172nd, 181st and 199th Reports, approved by the Governing Body at its 204th, 206th and 212th Sessions).

The Committee also examined Case No. 904 at its meetings of May and November 1978 and February 1980 (see 181st, 187th and 199th Reports, approved by the Governing Body at its 206th, 208th and 212th Sessions).

Finally, the Committee examined Case No. 953 in November 1980 (see 204th Report, approved by the Governing Body at its 214th Session).
appeals* since the Government had failed to provide any detailed information. While noting with concern the troubled situation in El Salvador, the Committee pointed out to the Government that in accordance with the procedural rules currently in force, it could present a report on the substance of the cases pending even if the Government's observations had not been received.

407. Given the extremely serious nature of most of the complaints, and since the Government had not provided sufficiently detailed information on the cases pending, the Committee decided at its May 1981 session to apply the procedure contained in paragraphs 23 and 24 of its 164th Report. In accordance with this procedure, the Government was immediately informed that the Chairman of the Committee would make contact, on behalf of the Committee, with representatives of the Government of El Salvador at the 67th Session of the International Labour Conference in order to draw attention to the various cases in question and discuss the reasons for the delay in the transmission of replies to the allegations contained in these various cases.

408. In accordance with the decision adopted by the Committee at its session in May 1981, the Chairman met with the Minister of Labour and Social Security of El Salvador, Mr. Julio Alfredo Samayoa, on 10 June. The Chairman of the Committee explained the purpose of the meeting. The Minister of Labour stated that his Government's delay in replying to the Committee on the cases pending had been due to the unsettled situation through which his country had been passing for some time and that it was in no way the result of any lack of co-operation by his Government with the ILO and in particular with its supervisory bodies. He then transmitted a communication containing the observations of his Government on these cases, including annexes on Cases Nos. 873 and 904. The Minister added that he was prepared to provide any other information which the Committee on Freedom of Association considered necessary.

409. Furthermore, the Government had already furnished certain comments on some of the allegations in communications dated 15, 19, 22 and 27 May 1981.


B. Summary of the allegations

(a) Allegations concerning attacks against the lives, persons and freedom of movement

411. As regards Case No. 844, the complainants alleged in their original communication that on 28 October 1977, workers of the El León factory who were preparing to organise a collection in support of a strike at the undertaking were attacked by the police and two of them lost their lives. Other allegations related to the arrest and torture on 16 December 1977 of 12 workers of the undertaking Quality Food de Centroamérica who were released the next
day, and the arrest of 20 workers and disappearance of two trade union officials during an attack on the headquarters of two trade unions. According to the complainants, all these situations fitted into the general pattern since the passage of an anti-terrorist Act designed to legalise the repression of the workers. Furthermore, it was alleged that three trade union officials of the textile industry - José Guillermo Rivas González, Miguel Ángel Solis and Orlando Platero - were assassinated on 2 and 12 September 1978 as a result of their trade union activities and that other officials were arrested.

412. The complainants had also alleged that a peasant militant, Francisco Gírón Ramos, had been imprisoned on charges of slandering the authorities of Rosario de Núñez, whereas according to the complainants the real cause of his detention was his militant trade union activities (Case No. 873).

413. As regards Case No. 904, the complainants alleged that the Government had launched a campaign of bloody persecution against agricultural workers and their organisations, resulting in the death, injury and arrest of many workers, including the assassination on 20 March 1978 of Tránsito Vásquez, a local leader of an agricultural organisation by members of the Nationalist Democratic Organisation (ORDEN), which the complainants allege is a para-military government organisation. In their communications of 4 April, 13 August and 25 September 1979, the complainants alleged that the workers of the unions of the undertakings Productos Nacionales S.A., La Pesca S.A., La Constancia S.A., Embotelladora Tropical and STECEL were harshly repressed by the Government because they had demanded collective labour contracts; as a result, seven leaders and militants of these unions had been killed and a number injured. A list of 24 primary school teachers allegedly murdered with "the complicity of the education authorities of the country" was also provided; in addition to mentioning the full names of the teachers, the list indicated their trade union activities or their relationship with the trade union organisations, their place of work and the date, place and circumstances of their deaths.

414. Other allegations concerned the death of Tomás Rosales, a leader of the workers' union Granja Santa Inés, during clashes which took place with the armed forces on 24 June 1980 and in which four other trade unionists were injured (Case No. 953). The complainants had pointed out that the armed forces had intervened at the request of the management of the undertaking El Granjero S.A. and had attacked rural workers who had gone on strike in support of a number of wage claims.

415. As regards Case No. 973, the complainants allege that José Santos Tiznado and Pedro González - leaders of the Salvadorian Peasants' Central - were dragged from their homes in the Jesús suburb of the San Ramón municipality, in the Department of Cuscatlán, at 12 midnight on 10 May 1980 by uniformed members of the National Guard and subsequently assassinated. The complainants also allege that Manuel Antonio Carrillo and José Antonio Carrillo, former leaders of the Salvadorian Peasants' Central and members of the El Rosario Agricultural and Consumers' Co-operative Ltd. were also assassinated by members of repressive forces, and based their allegations on the calibre of the bullets found near the dead bodies. The complainants explain that Manuel Antonio Carrillo had
already received anonymous threats as well as threats from OPDEM, and although the authorities had been duly informed, no protection was afforded the worker, who was assassinated at his own home on 3 June 1980. The perpetrators of the act immediately proceeded to the house of José Antonio Carrillo, whom they dragged out and brutally and callously assassinated. The complainants also allege that on 17 December 1980, the National Guard suddenly drove into the town of Cojutepeque and cowardly assassinated eight peasant leaders of the Salvadorian Peasants' Central who were participating through their base organisations in plans for agrarian reform. These leaders were: Torcuato González, Ruperto Méndez, Antonio Ayalá, Jesús López, Pablo Gabriel, Antonio Franco, Emstaugio Ayala and Angela López. The complainants also include a list of workers and peasants who were assassinated, many during the exercise of their trade union activities, and who were members of the Salvadorian Workers' Central (CTS) and the Salvadorian Peasants' Central (CCS). Furthermore, the complainants allege that on 17 December 1980, five peasant leaders of the CCS were attacked and seriously wounded by guerrillas of the extreme left on the Guajayjo estate in the Department of San Vicente.

The complainants also point out that Rafael Hernández Olivo, Secretary-General of the Irrigation and Drainage Section of the National Association of Workers of the Ministry of Agriculture and Cattle Farming (ANTHAG), who had been transported to the Metapán Hospital after being injured in an accident, was subsequently arrested by the Hacienda police, and that his present whereabouts are unknown. The complainants state that on 30 May 1980, José Félix Minero and two other members of the National Association of Workers of the Ministry of Agriculture and Cattle Farming were arrested by uniformed members of the Hacienda police in Santa Cruz Porrillo. José Félix Minero was shot in full view of his companions.

The Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL) alleges that, on 31 July 1980, the national police arrested Enrique Tejada, Antonio Campos Mendoza, Salomón Sánchez Márquez, Vicente Aguirre, Melitón Sánchez, Antonio Fuentes and Maximiliano Castro, members of the Executive Committee of the National Union of Workers in the Transport and Allied Industries, during a discussion of a list of claims in the premises of the undertaking Buses Ruta Urbanos 5-28. The complainants point out that the present whereabouts of these persons are unknown (Case No. 987).

CPUSTAL also alleges that Concepción Burgos (of the CUTS), Héctor Bernabé Recinos (of PENASTRAS), Arnulfo Granada, Alfredo Represa and Jorge Hernández were also arrested and that their present whereabouts are known (Case No. 1000).

As regards Case No. 1016, the International Confederation of Free Trade Unions (ICFTU) alleges that Podolfo Viera, Secretary-General of the Salvadorian Communal Union, and Mark Pearlman and Michael Hammer - officials of the AFL-CIO - were assassinated on 3 January 1981 while they were drinking coffee in the restaurant of the Hotel Sheraton in San Salvador. According to this complainant, these persons, who were preparing a study on the agrarian reform programme, were assassinated by three individuals, two of whom were armed and who were able to act without let or hindrance whereas normally the Hotel Sheraton is kept under police protection. It is therefore significant that no such protection
was provided on the day on which the assassination occurred. The complainant goes on to say that, given the circumstances in which the events occurred, there would appear to be serious grounds for supposing that there was complicity between the perpetrators of the crime and the Government.

(b) Other allegations

420. The complainants also alleged that Jorge Alberto Casillo Muñoz, Héctor Cercamo Gómez, Juan Pablo Portillo, Jorge Alberto Esquivel and Carlos Antonio Tejada, trade union leaders of the Federation of Unions of Workers in the Construction, Transport and Allied Industries (FESINCONSTRANS) were threatened by members of the National Guard of El Salvador on 23 February 1980 while they were upholding wage claims made by the workers. The complainants added that, on 27 February 1980, the armed forces broke into the premises of FESINCONSTRANS at San Miguel, threatened the trade unionists, Zoila Mercado and Antonio Arias Gonzales, and destroyed the trade union files (Case No. 953).

421. In a communication dated 21 April 1981, the WCL alleged that trade union leaders and activists of the Salvadorean Peasants' Central and the Salvadorean Workers' Central had recently been threatened by para-military groups of the extreme right and by members of the National Guard and Hacienda police, as well as by guerrillas of the extreme left, particularly in the departments of Cuscatlán, San Vicente and Rosario de Mora (Case No. 973).

C. The Government's observations

422. The Government states that the Act which was applied to the case of the "El León" factory (Case No. 844) - in which an attack by the police led to the death of two persons - has since been repealed. The Government adds that the investigations which were supposedly ordered by the Government in power at that time did not, for reasons which are unknown, produce any results. The Government states that it considers itself free of any responsibility since the matter concerns acts allegedly committed by the previous Government, with which it has no link of continuity. However, the Government points out that a new inquiry is now being undertaken to clarify the matter, the results of which will be communicated to the Committee.

423. As regards the imprisonment of the trade union leader Francisco Girón Ramos (Case No. 873), the Government states that he was indicted on a charge of destroying genuine documents and that there was never any allegation that there had been an infringement of freedom of association. The Government adds that Francisco Girón has been free since 1977, when the judge ruled that he should be released on bail, although it was not known why a final judgement had not been pronounced at that time. A recommendation has thus been made for a decision be issued as soon as possible and the Committee will be informed accordingly.

424. As regards the allegations concerning workers who were killed, wounded and arrested (Case No. 904), the Government stated
that the acts of violence to which reference had been made probably took place before 15 October 1979 and that one of the reasons why the previous régime had been deposed was precisely because of the repeated protests against violations of human rights and freedom of association which the Revolutionary Junta was endeavouring to end by all available means. More recently, the Government has declared that a major programme of agrarian reform is currently under way, the socio-economic consequences of which will ensure that the events involved in the present case cannot recur. As regards the death of Tránsito Vásquez, the Government explained that, under a court decision issued on 16 March 1979, a stay of proceedings was granted concerning the charge relating to wilful homicide and the release was ordered of Máximo García López, José Felipe García Vásquez and Sarbelo García Ramírez. The Government adds that the accused had admitted they were members of the Federation of Catholic Peasants of El Salvador (FECAS) and the Union of Field Labourers (UTC) and not the Nationalist Democratic Organisation (ORDEN), as had been stated by the complainants.

425. As regards the observations made in connection with Case No. 953, the Government states that, on 24 June 1980, after a work stoppage had been declared in the "El Granjero S.A." undertaking, forces of the Army intervened in order to eject the picketers who had threatened to damage plant equipment. The Government adds that terrorist elements had infiltrated into these groups.

426. As regards Case No. 973, the Government states that it has requested the collaboration of the Ministry of Labour and the Public Prosecutor's Office of the Republic so that appropriate investigations may be made into the events of 17 December 1980, the results of which will be transmitted in due course. As regards the list supplied by the complainants of workers and peasants who had died, the Government states that their deaths were not the result of repressive action due to their trade union activities and obligations, but rather of the violence which continues to be generated by the extreme left and the extreme right and which, by drawing the armed forces into a purely defensive response, are plunging the country into a bloodbath which has been criticised and deplored by the true citizens of El Salvador.

427. With regard to Case No. 1000, in which one of the complainants alleged that five trade unionists had been arrested, the Government states that the events in question were brought about by an illegal strike which had been declared by the River Lempa Hydroelectric Company Workers' Trade Union on 21 and 22 August 1980. The Government adds that the instigators of the strike violated the provisions of the Constitution by not following the procedure set forth in the Labour Code when they cut off without any advance notice the electricity service throughout the country, which seriously damaged the national economy (with losses exceeding 50 million colones) and caused the irreparable loss of human lives in hospitals and other medical centres. According to the Government, when the situation reached the point of posing a threat to the national security, since the service involved was one which was indispensable to the community, and as a result of the public outcry, the armed forces intervened in the plant without bloodshed and proceeded to arrest the principal leaders of the strike who - with the exception of those who were not considered to be responsible and who were subsequently released - are now being held
in prison, where they are being treated correctly. The Government states that the prisoners are subject to the jurisdiction of military courts, which are now investigating their case in collaboration with their defence counsel.

428. With regard to the assassination of Rodolfo Viera, Mark Pearlman and Michael Hammer (Case No. 1016), the Government stated that it had ordered the arrest of the wealthy right-wing businessmen Ricardo Sol Meza and Hans Christ; the latter is currently in Miami and proceedings are at present under way to seek his extradition. The Government adds that the Public Prosecutor has been especially instructed to appoint, on behalf of the State, representatives to take part in the trial being heard by the Fifth Criminal Court and these representatives have already participated in the investigations. The Government points out that Mr. Viera was, in addition to being a member of the Salvadoran Communal Union, a high official of the Government and was looked upon as one of the major proponents of agrarian reform, all of which constituted the motives for his assassination at the wretched hands of the extreme right and extreme left.

429. Finally, as regards the allegations concerning the assassination of workers, trade union leaders and school teachers between 30 October 1978 and 25 September 1979 (Case No. 904) under the presidency of General Carlos Humberto Romero, the Government states that it does not know why the corresponding investigations did not produce any results, if indeed such investigations took place. The Government adds, however, that in order to demonstrate clearly and sincerely that the present rulers of El Salvador are free of any links or compromises with the past, an investigation will be conducted into these deplorable events, the results of which will be transmitted to the Committee as soon as possible.

D. Conclusions of the Committee

430. Before considering the substance of the various matters raised by the complainants, the Committee would like to express its deep concern at the serious nature of the allegations, most of which refer to the death, assassination, arrest or disappearance of trade unionists and trade union leaders, which have continued to occur even after 15 October 1979, the date on which the former Government was deposed. While noting the troubled situation which is facing the authorities in El Salvador, the Committee must draw the attention of the Government to the fact that a free and independent trade union movement can develop only in a climate of respect for fundamental human rights, and to the Resolution concerning Trade Union Rights and their relation to Civil Liberties adopted by the International Labour Conference in 1970, which states in particular that the concept of trade union rights is totally meaningless in the absence of civil liberties and that the rights conferred on workers' and employers' organisations must be based on respect for civil liberties.

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1 See, for example, 147th Report, Case No. 766 (Yemen), para. 362; 149th Report, Case No. 709 (Mauritius), para. 101 and 208th Report, Case No. 957 (Guatemala), para. 287.
431. The Committee also deplores the fact that in spite of the time which has elapsed, the Government in its observations has still not replied to all the allegations or has done so only incompletely in some of the cases.

432. The Committee notes that the Government considers itself free of any responsibility for the events which allegedly occurred before 15 October 1979. In this connection, the Committee considers, as it already pointed out at its session in February 1980, that there exists a link of continuity between successive governments in the same State and that although a government cannot be held responsible for events which took place under a preceding one, it has a clear responsibility for any consequences which those events might have produced since its accession to power. This principle is particularly applicable as regards the clarification of events which have led to the loss of human lives or the detention of trade unionists who are still being held in prison.

433. As regards the allegations concerning the attacks on the lives or persons of trade unionists or trade union leaders, the Committee cannot but deplore the loss of numerous lives and the injuries mentioned in the complaints. The Committee notes the Government's statement that investigations are now under way concerning the events referred to in Cases Nos. 844, 973 and 1016 and, more generally, into the assassinations which allegedly took place between 30 October 1978 and 25 December 1979 (Case No. 904) concerning which the Government states that an investigation is being ordered, the results of which will be transmitted to the Committee. However, since the Government has not provided information on the death of the trade union leader Tomás Rosales (Case No. 953) or the injuries to which reference is made in Cases Nos. 904 and 953 and some of the assassinations referred to in Case No. 973, the Committee requests the Government to undertake as soon as possible - if it has not already done so - an independent judicial inquiry into these allegations with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties, and to keep the Committee informed of the results as and when available, of these investigations and those currently under way. The Committee is also of the view that special measures should be taken with a view to guaranteeing the personal security of those persons who are more directly involved in the trade union movement.

434. As regards trade union leaders and workers who have been arrested or who have disappeared, the Committee notes that Francisco Giron Ramos has now been set free and that in principle a decision will be issued on his possible guilt on the charge of destroying authentic documents, which will be communicated to the Committee. The Committee also notes that the arrests referred to in Case No. 1000 were the result of an illegal strike in the Río Lempa Hydroelectric Company which led to the irreparable loss of human

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1 See, for example, 131st Report, Case No. 571 (Bolivia), para. 91.

2 See, for example, 207th Report, Cases Nos. 997 and 999 (Turkey), para. 304 and 208th Report, Case No. 1007 (Nicaragua), para. 387.
lives in hospitals and other medical centres. However, the Committee notes that the Government has not specified the reasons or circumstances which led to the arrest of the trade union leader Rafael Hernández Olivo, whose present whereabouts are unknown, the arrest of the two members of the National Association of Workers of the Ministry of Agriculture who accompanied José Félix Minero on 30 May 1980 when the latter was assassinated (Case No. 973) and that of trade union leaders Enrique Tejada, Antonio Campos Mendoza, Salomón Sánchez Márquez, Vicente Aguirre, Melitón Sánchez, Antonio Fuentes and Maxiilliano Castro who, according to the complainants, were arrested as they were discussing a list of demands in the premises of the Buses Puta Urbanos 5-28 undertaking and whose present whereabouts are unknown (Case No. 987). In this respect, since no information is available on the present situation of the persons mentioned above, and in particular as to whether proceedings have been instigated against them, the Committee cannot but recall that it should be the policy of every government to ensure the right of all detained persons to receive a fair trial at the earliest possible moment, and point out that the arrest of trade unionists against whom no grounds for conviction are subsequently found may involve the restriction of trade union rights and a serious interference with trade union activities. The Committee requests the Government to indicate the motives and circumstances which led to the arrests of the above-mentioned persons and to furnish information on their present situation. More generally, the Committee considers that a contribution would be made towards normalising the trade union situation and labour relations - a necessary objective within the context of the full respect of human rights - and the restoration of social harmony if the Government examined the situation of the arrested persons to whom the complainants refer, with a view to freeing those who may have been arrested for trade union reasons.

Furthermore, the Committee observes that the Government has not replied to the allegations concerning the threats made against trade unionists and trade union leaders (Cases Nos. 953 and 973), the attack by the armed forces on the premises of FESINCONSTRA y and the destruction of the files of this trade union organisation. The Committee requests the Government to furnish its observations on these matters.

Recommendations of the Committee

In these circumstances, the Committee recommends the Governing Body to adopt the present interim report and, in particular, the following conclusions:

The Committee expresses its deep concern at the serious nature of the allegations and observes that acts of a similar nature have continued to occur even after 15 October 1979, when the previous Government was deposed.
The Committee draws the attention of the Government to the fact that an independent and free trade union movement can develop only in a climate of respect for basic human rights, and to the Resolution concerning Trade Union Rights and their relation to Civil Liberties, which was adopted by the International Labour Conference in 1970.

The Committee deplores the fact that in spite of the time which has elapsed, the Government in its observations has not yet replied to all the allegations or has done so only incompletely in some of the cases.

The Committee is of the view that there exists a link of continuity between successive governments in the same State and that although a government cannot be held responsible for events which took place under a preceding one, it has a clear responsibility for any consequences which those events might have produced since its accession to power.

The Committee deplores the loss of many human lives and the injuries to which reference is made in the complaints and notes that investigations have been opened into some of the allegations. It requests the Government to undertake as soon as possible a judicial inquiry into those cases where investigations have not been opened and to inform the Committee of the results as these become available.

The Committee also considers that special measures should be taken with a view to guaranteeing the personal security of those persons who are more directly involved in the trade union movement.

The Committee requests the Government to indicate the motives and circumstances which led to the arrests of trade union leaders Rafael Hernández Olivo, Enrique Tejada, Antonio Campos Mendoza, Salomón Sánchez Márquez, Vicente Aguirre, Melitón Sánchez, Antonio Puentes and Maximiliano Castro, and to provide information on their present situation. The Committee recalls that it should be the policy of every government to ensure observance of the right of all detained persons to receive a fair trial at the earliest possible moment and points out that the arrest of trade unionists against whom no grounds for conviction are subsequently found may involve the restriction of trade union rights and a serious interference with trade union activities.

More generally, the Committee is of the view that a contribution would be made towards normalising the trade union situation and labour relations - a necessary objective within the context of the full respect of human rights - and the restoration of social harmony if the Government examined the situation of the arrested persons to whom the complainants refer, with a view to freeing those who may have been arrested for trade union reasons.

Finally, the Committee requests the Government to communicate its observations on those allegations to which it has not yet replied, namely: threats made against trade unionists and trade union leaders, attack on the FESINCONSTANS premises and destruction of the files of this trade union organisation.
Reports of the Committee on Freedom of Association

Case No. 958


437. The Committee examined this case at its February and May 1981 Sessions and presented an interim report to the Governing Body on both occasions.1 Subsequently, the Committee has received a communication from the International Confederation of Free Trade Unions (ICFTU) dated 31 August 1981. The Government has supplied certain observations in a communication dated 5 October 1981.

438. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

439. The allegations referred to the strike by the workers of the metallurgy sector of Sao Paulo from 1 April to 12 May 1980, the primary purpose of which was to obtain wage increases and continuity of employment for a year, and which was declared illegal by the judicial authorities on 14 April 1980, and to the events which occurred during and after the strike: intervention by the authorities in trade unions, removal from office of trade union leaders and their replacement by civil servants, arrests of trade union leaders and the prosecution and sentencing under the National Security Act of the trade union leaders Djalma de Souza Bom, Luiz Inácio da Silva, Emilson Simões de Moura, Rubens Teodoro de Acruda, José Maria de Almeida, Ossar Santos de Mendoca, Juraci Batista Magalhaes, Manoel Anisio Gomes, Gilson Luiz Correia de Menezes, Nelson Campanholo and Wagner Lima Alves.

440. Concerning the trade union leaders mentioned above, the Committee at its May 1981 Session, after observing that the principal reason for the convictions appeared to have been the incitement to take part in the strike declared illegal on 14 April 1980 and considering that such incitement should not be considered as constituting an offence, drew the Government's attention to the fact that the harmonious development of labour relations could be impaired as a result of the application of excessively severe sanctions to workers who participate in strikes and expressed the hope that the final judgement handed down in the case concerning the convicted trade union leaders would take full account of the

1 See 207th Report, paras. 198 to 220, approved by the Governing Body at its 215th Session (March 1981), and 208th Report, paras. 290 to 309, approved by the Governing Body at its 216th Session (May 1981).
generally recognised principles of freedom of association. The Committee requested the Government to inform it of the outcome of the proceedings.

441. As regards the other pending questions, the Committee requested the Government to indicate whether the convicted trade union leaders could again take up their functions normally and regretted that the Government had still not sent the observations requested on certain allegations, requesting it accordingly to send information on the arbitrary dissolution of trade unions, physical assaults on workers in front of trade union premises on 18 April 1980, which were alleged to have resulted in injuries to dozens of persons, the prohibition on the holding of meetings announced by the police on 21 April 1980, the arrest for several hours of the delegation of agricultural workers who were supporting the metalworkers' strike, and many dismissals - 1,507 according to the complainants - which were said to have taken place two days after the strike.

B. Subsequent development of the case

442. In its communication of 31 August 1981, the ICFTU states that the appeal lodged by the metalworkers' trade union leaders tried by the military court would be examined on 2 September 1981.

443. In its communication of 5 October 1981, the Government states that on 9 September 1981 the Higher Military Court accepted the plea for annulment submitted by the lawyers of the trade union leaders who had been convicted and declared the trial null and void. As a result, the proceedings must be referred back for a fresh trial to the court which originally examined the case.

C. The Committee's conclusions

444. The Committee takes note of the information supplied by the ICFTU and the Government. Considering that the case against the convicted trade union leaders is to be reviewed and that the Government has not yet supplied certain observations and information requested of it, the Committee maintains the principal conclusions it reached in its previous report¹ concerning the trade union leaders tried and the information requested.

The Committee's recommendations

445. In these circumstances, the Committee recommends the Governing Body to approve this interim report, in particular the following conclusions:

¹ See 208th Report, paras. 303-308.
The Committee draws the Government's attention to the fact that the harmonious development of labour relations could be impaired as a result of the application of excessively severe sanctions to workers who participate in strikes.

The Committee expresses the hope that the final judgement handed down in the case concerning Luiz Inácio de Silva and the other convicted trade union leaders will take full account of the generally recognised principles of freedom of association and requests the Government to transmit the text of the judgement and to keep it informed of any subsequent developments in this respect.

The Committee requests the Government to indicate whether the trade union leaders tried are able to take up their functions normally at present and to send information on the allegations to which it has not yet replied (arbitrary dissolution of trade unions, physical assaults on workers in front of trade union premises on 18 April 1980 resulting in injuries to dozens of persons, the prohibition on the holding of meetings announced by the police on 21 April 1980, the arrest for several hours of the delegation of agricultural workers who were supporting the metalworkers' strike, and many dismissals - 1,507 according to the complainants - which took place two days after the strike).

Case No. 995

COMPLAINT PRESENTED BY THE CENTRE OF INDIAN TRADE UNIONS AGAINST THE GOVERNMENT OF INDIA

446. The complaint of the Centre of Indian Trade Unions (CITU) is contained in a communication dated 18 August 1980. The Government sent its reply in a communication dated 4 June 1981.

447. India has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

448. The complainant alleges that since the latter half of 1979 employees of the General Reserve Engineer Force (GREF) - also known as the Border Roads Organisation, created under the Ministry of Shipping and Transport to construct roads over mountain terrain in north and north-eastern India - have been refused the right to form an association, have been arrested, tortured, detained without trial and dismissed for their trade union activity and had their "illegal" trade union premises broken into, their documents confiscated and their funds seized.

449. The complainant explains the background to the poor industrial relations as follows: the Border Roads Organisation
functions as a separate, self-contained body under the Ministry and its employees are governed by the same rules that apply to civilians in the Defence Service, namely the Central Civil Service (Classification, Control and Appeal) Rules, 1965; they are recruited through the Union Public Service Commission, sit the All India Service Examinations and are not trained to use any weapon. According to the complainant, in 1969 these employees were placed under certain provisions of the Army Act, 1950 and the Army Rules, 1954 for the purpose of discipline only, in conjunction with the Central Civil Service Rules; since then, 95 per cent of employees' cases have been tried under the Army Act which does not allow for a fair trial. The complainant claims that the GREF employees have been unfairly victimised as none of the other civilian employees in the Defence Service are subject to two sets of rules. It further states that the key appointments in the GREF are held by army personnel who enjoy better conditions of service than the civilian employees and are not subject to the Central Civil Service Rules; the resulting blockage of civilian promotions together with the unequal treatment has led to serious discord.

450. The complainant points out that the combined effect of article 33 of the Indian Constitution (freedom of association may be restricted in the armed forces) and section 4 of the Army Act (application of the Act to any force raised or maintained in India under the authority of the Government) restricts the right of the GREF employees - which it stresses are merely a civilian construction force recognised as such by the Government during Parliament on 18 June 1980 (the complainant attaches a copy of the Parliamentary question in which the Government's admission appears) - to form trade unions. Nevertheless, the complainant states that the 2,000 odd GREF employees at Tezpur, Assam State, on 15 August 1978, formed an association called the All India Border Roads Employees' Association which put its demands for equal treatment before a departmental committee which visited the area in September 1979. This action apparently annoyed the military authorities who, on 14 December 1979, allegedly broke into the Association's premises and took away its vital documents and two bank drafts worth 3,500 rupees.

451. On the same day, six office bearers of the Association were arrested and, according to the complainant, severely beaten. The following day, continues the complainant, all GREF Tezpur employees held a peaceful protest for the release of their arrested colleagues; the army infantry was called in and 335 employees were arrested and held in prisoner of war cells for weeks and months without sanitation, food, water or lighting arrangements and their families were terrorised by the military. The complainant lists the Association's officers who are awaiting trial or who were detained, courtmartialled by military tribunals and jailed under regimes of vigorous imprisonment; they are attached as an annex. The complainant also alleges that more than 850 employees who took part in the peaceful collective movement have been fined.

452. Lastly, the complainant states that other office bearers of the All India Border Roads Employees' Association have been forced to go underground as warrants for their arrest have been issued: R. Viswan (General Secretary), Net Ran, Meghaj Sharma, S.V. Tyagi, Pritham Singh, K.K. Tyagi, Gandhamb Singh and N.C. Nandi.
The Government's reply

453. In its letter of 4 June 1981, the Government states that the GREF is entrusted with the work and responsibility connected with defence and is practically a wing of the army being covered by the Army Act. The restriction on its employees forming an association is within the national law and in keeping with Article 9 of Convention No. 87 and Article 5 of Convention No. 98, according to the Government, so there has been no infringement of the Conventions.

The conclusions of the Committee

454. This case concerns allegations that the civilian employees of the General Reserve Engineer Force (GREF) have been refused the right to organise, have been arrested, tortured, detained without trial and dismissed for their trade union activities and that their trade union premises were broken into, documents confiscated and funds seized. The Government replies that the GREF is practically a wing of the army as its work is connected with defence, and thus its employees are lawfully restricted from forming an association.

455. Having been informed that supplementary indications would be supplied by the Government on the issue of the right to organise of the employees of the General Reserve Engineer Force (GREF) the Committee decided to hold in abeyance until its next session its examination of this aspect of the case.

456. The Committee notes that the Government does not reply to the specific and detailed allegations relating to arrest, torture, detention without trial and dismissal for trade union activity of the GREF employees since December 1979, nor to the breaking-into of their trade union premises and violation of trade union property on 14 December 1979. It would accordingly ask the Government to supply its observations on them, giving in particular information on the present situation of the 45 trade unionists listed by the complainant in the annex.

The Committee's recommendations

457. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, in particular the following conclusions:

In view of the fact that the Government did not reply to certain allegations, the Committee would ask it to supply its observations on the alleged arrest, torture, detention without trial and dismissal for trade union activity of the GREF's employees since December 1979, in particular the 45 officers of the All India Border Roads Employees' Association listed in the annex, and on the alleged breaking-into of their trade union premises and violation of trade union property on 14 December 1979.
**ANNEX**

<table>
<thead>
<tr>
<th>Name</th>
<th>Situation</th>
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<tbody>
<tr>
<td><strong>ASSAM STATE</strong></td>
<td></td>
</tr>
<tr>
<td>1. Shri P. Chandra Mouli (President)</td>
<td>Arrested on 14.12.79 and severely beaten; kept in army custody for 7 months without trial; jailed for 30 months and discharged from service.</td>
</tr>
<tr>
<td>2. Shri P. Kuttan</td>
<td>Arrested on 15.12.79; kept in military custody for 6 months; jailed for 12 months and discharged from service.</td>
</tr>
<tr>
<td>3. Shri Asar Singh</td>
<td></td>
</tr>
<tr>
<td>4. Shri Kishan Chand</td>
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<tr>
<td>5. Shri T. Krishanan (Co-ordinating member)</td>
<td>Arrested on 14.12.79 and severely beaten; kept more than 1 month in army custody; imprisoned for 12 months and discharged from service.</td>
</tr>
<tr>
<td>6. Jagatar Singh (Executive member)</td>
<td>Arrested on 14.12.79 and severely beaten; kept more than 2 months in army custody without trial; jailed for 9 months and discharged from service.</td>
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<tr>
<td>7. S.K. Mondal</td>
<td>Arrested on 15.12.79; kept in military custody for 1 month without trial; jailed for 6 months during January 1980 and discharged from service.</td>
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<td>8. L.C. Hooda</td>
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<td>9. M.T. Mathew</td>
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<td>10. Darshan Singh</td>
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<td>11. Shri Madhavan Pillai</td>
<td>Arrested on 15.12.79; detained in army custody for 1 month without trial; jailed for 7 months during February 1980 and discharged from service.</td>
</tr>
<tr>
<td>12. Shri Hariharan (Executive member)</td>
<td>Arrested on 14.12.79 and severely beaten; kept 1 month in military custody without trial; jailed for 6 months during January 1980 and discharged from service.</td>
</tr>
<tr>
<td>13. Shri S.P. Sachdeva (Vice-President)</td>
<td>Arrested on 14.12.79 and severely beaten; kept for 1 month in military custody without trial; jailed for 6 months during January 1980 and discharged from service.</td>
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<td>14. P. Surarajan</td>
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<td>15. K.C. Scaria</td>
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<td>16. S.K. Vedacharya</td>
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<td>17. P.V.G.K. Air</td>
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<td>18. D.M. Khan</td>
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<td>19. Annas Rodrigouos</td>
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<td>20. D. Bhowal</td>
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<td>21. Virender Kumar</td>
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<td>22. Bhagwan Dass</td>
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<tr>
<td>23. Niyazuddin</td>
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</table>
Peports of the Committee on Freedom of Association

24. Mohinder lal
25. S. Mahato
26. A.K. Dass
27. L.K. Tyagi
(Executive member)
28. Shri M.O. Mathew
29. Shri P. Chelladura
30. Shri Mupid

Tried under Central Civil Service Rules and discharged from service during July 1980.

31. Shri Ranjit Singh
32. Shri V.K. Sharan
33. Shri P.K. Srivastava
34. Shri I.N. Sharma
35. Shri V.K. Chibber

DELIHI

Arrested on 28.12.79; detained without trial in military custody and awaiting trial.

36. Shri Ramiah

Sikkim

Arrested during December 1979; detained without trial for a month in military custody; jailed for 4 months during February 1980 and discharged from service.

37. Shri Kaladharan

Arrested on 28.2.80; detained in military custody without trial and awaiting trial.

38. Shri N. Sukumaran

Bhutan

Arrested during January 1980; detained in military custody for 14 days; released without charge, without trial, but pay cut for 14 days.

39. Shri Joga Singh

Punjab

Arrested on 24.12.79; detained in military custody for 14 days and released after recovering 14 days' pay fine.

40. Shri Mohan Singh

Rajasthan

No information supplied by complainant.

41. Shri Anandan

Arrested and detained for over 1 month in military custody without trial; jailed for 6 months during January 1980 and discharged from service.
42. Shri N.S. Natarajan) Facing trial under Central Civil
43. Shri Dhanuskodi) Service Rules.
44. Shri G.P. Panday)
45. Shri B.A. Khan)

Cases Nos. 997, 999 and 1029

COMPLAINTS SUBMITTED BY SEVERAL TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF TURKEY

458. The Committee has already examined Cases Nos. 997 and 999 on two occasions, the last being at its May 1981 session when it submitted an interim report to the Governing Body.¹ The Committee also submitted an interim report in respect of Case No. 1029 to the Governing Body at its May 1981 session.²

459. Since the Committee last examined these cases the ILO has received communications from the following complainant organisations: the Trade Unions International of Workers in Commerce (23 July 1981); the Trade Unions International of Textile, Clothing, Leather and Fur Workers (31 July 1981); the World Confederation of Labour (WCL) (22 May, 30 June, 26 July, 28 August and 7 and 23 October 1981); the World Federation of Trade Unions (WFTU) (15 May, 22 July and 1 September 1981). In addition, the Trade Unions International of Workers in the Metal Industry (UIS metals) associated itself with the complaint of 22 July 1981 from the WFTU.

460. During the same period the International Confederation of Free Trade Unions (ICFTU) made similar allegations in communications dated 17 July and 31 August 1981, and the International Metalworkers' Federation associated itself with the complaint made by the ICFTU on 12 August 1981.

461. Turkey has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

¹ See 208th Report, paras. 342 to 370, approved by the Governing Body at its 216th Session (May-June 1981).
² See 208th Report, paras. 421 to 431.
A. **Request for direct contacts**

(a) **Background**

462. The complaints referred in particular to the imprisonment and violent deaths of trade unionists, to restrictions imposed on the trade union activities of the Confederation of Unions of Progressive Workers (DISK), of the Confederation of Unions of Nationalist Workers (MISK) and of numerous trade union organisations affiliated to them, and to the general abolition of the right to strike and the right of collective bargaining.

463. At its session in May 1981 the Committee, in addition to its conclusions on the substance of these cases, noted that the World Confederation of Labour had requested that a representative or a mission should be sent to Turkey to investigate the situation as regards the treatment of prisoners, the manner in which trials were conducted and the rights and freedoms of the trade union movements, its leaders and members.

464. The Committee therefore empowered its Chairman to contact the Government representatives of Turkey at the June 1981 Session of the International Labour Conference with a view to discussing the questions pending in these cases and in particular the possibility of a direct contacts mission to Turkey.

465. In accordance with this decision, the Chairman of the Committee met Mr. Kamran Inan, the Ambassador and Permanent Representative of Turkey in Geneva, and Mr. Turhan Esener, the Minister of Labour, during the 67th Session of the Conference on 12 and 16 June 1981 respectively. He explained that the Committee wished to know the Government's intentions regarding the possibility of a representative of the Director-General undertaking a direct contacts mission to discuss certain questions. The Minister of Labour informed the Chairman of the Committee that he was not in a position, without fully consulting the authorities of his country, to give a definitive reply on the matter. However, he emphasised that he trusted that the ILO would be able to provide valuable help and that his Government hoped to collaborate as closely as possible with the Organisation.

(b) **The Government's reply**

466. In a communication dated 30 September 1981, the Government recalls that relations and possibilities for contacts between it and the ILO have always been open. It specifies that several ILO officials have been able to go to Turkey when they wished to have discussions with the authorities concerned on subjects within the sphere of their competence. The ILO has a representative in Ankara who enjoys all sorts of facilities including the possibility of contacts with the authorities. Lastly, the Permanent Mission in Geneva has always made a point of maintaining dialogue and co-operation with the ILO. The Government goes on to say that all these normal channels for contacts and communications remain open and consequently the need and even the desirability of setting up special procedures - as though there were no possibilities for normal contacts - is not justified. The
Government adds that if the aim is to find out more about the present situation in Turkey as regards trade union matters, there is nothing to prevent this aim from being achieved through the normal and usual channels already in existence. The Government states that the ILO can count on the co-operation of its authorities in any action it might undertake without any special arrangements being made. According to the Government, the present situation of Turkey is transparently clear and ILO officials, in the course of their normal contacts with the Turkish authorities, can raise whatever questions they wish. They will always be answered without having any need for a special status. But, the Government specifies, if the aim sought by recourse to special procedures is to carry out on-the-spot investigations to meet the wishes of the complainant organisations, it goes without saying that, for obvious reasons that have nothing to do with the trade union situation, the Government cannot even think of agreeing to this. The Government concludes by stating that at this stage it would be far more desirable and fruitful for mutual efforts to be devoted to making better use of the existing means of dialogue rather than seeking new types of contacts.

(c) The Committee's conclusions

467. The Committee can only take note of the position thus taken by the Government. It would emphasise, however, that the wish it expressed regarding the possibility of an on-the-spot mission in no way constitutes an attempt to establish new types of contacts. On the contrary, such visits on-the-spot constitute a practice used more and more frequently by governments and the Committee to help in reaching solutions to the problems at issue. In these circumstances, the Committee hopes that the Government will re-examine its decision in this regard and will accept the principle of an on-the-spot visit of a representative of the Director-General so as to examine together the questions pending in the present cases.

B. Death and detention of trade unionists

(a) Previous examination

468. With regard to the substance of these cases the Committee, at its May 1981 session, noted that there were still 195 trade unionists under arrest. Furthermore since, according to the complainants, 126 death sentences had been called for by the military prosecutors, it expressed its deep concern about the trial of the trade union leaders and the heavy sentences, including the death penalty, incurred by the trade unionists. It noted with regret that the Government had not supplied detailed information about the situation of the trade unionists whose names had been mentioned by the complainants. Consequently it requested the Government to send as precise information as possible on the persons whose names appeared in the Annex to the 207th Report in respect of Cases Nos. 997 and 999 and in paragraph 351 of the 208th Report, as well as on any new fact relevant to Case No. 1029.
(b) New allegations

469. Since then, the complainant organisations have communicated further allegations and additional information in support of their complaints. These relate to the death of a trade union leader and to further arrests and sentencing to prison of trade unionists, and include details concerning the official announcement that 52 death sentences have been called for by the military prosecutor in respect of the leaders of the DISK, and the announcement of a hunger strike said to have been started by Mrs. Oksan Yardımcı, Legal Adviser of the DISK, who has been held without trial since January 1981 in the military prison of Métis.

470. Most of the complainant organisations allege that Keram Budak, the President of the Leather and Fur Workers' Union (İLERİCİ DERİ IS), was murdered by the police on 26 July 1981 when he was sitting in a shop in Istanbul (Zeytinburnu).

471. Furthermore, the WCL and the WFTU express their concern at the arrest of Mr. Ercument Tahiroglu, a DISK lawyer, alleged to have been held by the authorities for three days as from 27 April 1981.

472. The WCL also alleges that the following persons have been arrested: Mr. Nusret Aydin, President of the Union of Hotel and Restaurant Workers (OLEY IS), Mr. Ekrem Etis and Mr. Bedri Doganay, President and General Secretary respectively of the Union of Office Workers (SOSYL IS).

473. Furthermore, the ICFTU, which carried out an on-the-spot mission from 6 to 10 April 1981, explains in its report that ill-treatment is common and was, in particular, inflicted on Mr. Bastürk, the President of the DISK. The Confederation also points out that prison visits by the prisoners' families and lawyers take place in very unfavourable conditions.

474. Several complainant organisations also state that the No. 3 military court of Istanbul sentenced 14 members of the HADEN IS workers' choir to 5 years, 6 months and 20 days imprisonment and to house arrest in the Bursa district for one year, 10 months and 6 days. According to the complainants, the trade unionists thus sentenced under section 142 of the Penal Code were accused of Communist propaganda on the pretext that they had sung the Internationale at the 23rd National Congress of their union in December 1979 in Istanbul.

475. In addition, according to the WFTU, the No. 2 military court of Izmir sentenced 185 workers who were members of the TEKSTİL trade union to terms of 2 to 24 years' imprisonment. They were accused of having organised an illegal strike with occupation of premises at the beginning of 1980. According to the WFTU, the purpose of their strike was to protest against dismissals.

476. Furthermore, still according to the WFTU, on 3 July 1981 a civil court at Bakirköy (Istanbul) sentenced to 6 months' imprisonment and a fine of 500 Turkish pounds all the members of the executive committee of the DISK between 1977 and 1980, namely Mr. Bastürk, Mr. İskiklate, Mr. Nebioglu, Mr. Güven Zırtıloglu, Mr. Kocamanolu and Mr. Aktulgali. These trade unionists are said to
have been charged with organising a demonstration in March 1978 in protest against the murder of seven university students by right-wing terrorists and to have been sentenced for incitement of workers to an illegal strike.

477. The WFTU also alleges that another trial is taking place before a Bakırköy civil court at which DISK leaders are being charged for organising a "national mourning" campaign in September 1976 against a Bill providing for the setting up of state security courts. Still according to the WFTU, the persons charged had previously been acquitted but the decision to acquit them was appealed against and the case was to be heard on 25 September 1981.

478. The WFTU also states that a third trial is taking place before the same court where members of the executive committee of the DISK are charged with infringing Act No. 275 in respect of collective bargaining, strikes and lock outs, for having organised on 30 June 1980 a national strike in protest against the ban on the holding of 1 May celebrations in Istanbul. Lastly, the WFTU alleges that a trial began on 28 May 1981 for the same causes before the No. 2 military court of Istanbul, involving 153 DISK leaders and militants, charged under Act No. 1402 in respect of the state of emergency and Act No. 275, with incitement to and participation in an illegal political strike. In this respect the lawyers for the defendants are said to have emphasised that three trials were taking place on the same matter, based on the same activities, against the same persons but with different charges.

479. Lastly, and above all, the WCL, the ICFTU and the WFTU express their deep concern at the declaration made by the military prosecutor of Istanbul, Colonel Suleysan Takkeci, which was broadcast and televised on 25 June, in which the prosecutor called for the death penalty in respect of 52 DISK federal, regional and national trade union leaders. The names of these 52 trade unionists whose lives are thus in danger are appended to the present report.

480. In this public declaration the prosecutor states that none of the activities by workers which have led to trials represent the legal exercise of the right to strike. He adds that these are not isolated events but that they were planned with a view to setting up a Marxist-Leninist order. The trial of the 52 leaders in question is designed to reveal that the DISK, which has declared economic, ideological and political war on the State, is behind these incidents. Furthermore, according to the prosecutor, there are some 2,000 suspects but it is clear that this number will only increase in the future. He also states that this first part of the trial concerns the DISK and that others will follow for other unions. In conclusion, the prosecutor is said to have requested that the 52 trade unionists should be tried in accordance with sections 141 and 146 of the Turkish Penal Code.

(c) The Government's reply

481. For its part, the Government in its reply of 2 October 1981 states that, on 23 September 1981, the total number of trade unionists under arrest was still 195. Most of these persons are being prosecuted for infringements of sections 141, 142 and 146 of the Penal Code and some are charged with belonging to illegal secret
organisations, with carrying and using explosives, with attempts to murder or to misappropriate funds. More exactly, of the 92 persons mentioned by the WCL, 39 are under arrest and the other 53 are neither held nor being prosecuted. Lastly, with regard to the seven persons mentioned in paragraph 351 of the 208th Report, only one, Mustafa Karadayi, is in prison. Arrest warrants have been issued in respect of the six others.

482. The Government also states that in Turkey there are no extraordinary courts. Each person brought to justice is tried by impartial and independent courts. The trade unionists who are under arrest enjoy all the facilities recognised by law to prepare their defence and to be represented and defended by the lawyers of their choice. Consequently there are no grounds for concern regarding the trade unionists' trial. On the subject of the 126 death sentences which, according to the WCL in its initial complaint, have been called for by the prosecutors, the Government adds that the fact that a sentence is called for cannot be considered a valid criterion for determining the sentence that will be called for for other persons in other cases and that it would be wrong to confuse, whether intentionally or unintentionally, the penalties called for by the prosecutors and the sentences passed by the courts. The Government informs the Committee that, however many death sentences may have been demanded, the courts have so far passed only 14 such sentences, none of which concerned trade unionists.

483. In a communication dated 23 October 1981, the Government refers to the death of Keram Budak explaining that the authorities had been searching for him since September 1980 and that on 25 July 1981, a police unit, acting on an anonymous telephone tip, went to the place where he was said to be and wanted to carry out an identity check. The person in question suddenly tried to escape and the Government states that the police called on him to halt, then fired a warning shot in the air and then, after the usual warning, shot him to prevent him from getting away. He died while being transported to hospital and after checking his identity, he proved indeed to be Keram Budak.

484. The Committee can only deeply regret the climate of insecurity and violence which surrounds the trade union movement and which has led to the death of the trade unionist Keram Budak, who died, in the Government's own words, from wounds inflicted by the police when he took flight to escape from them. On this point, the Committee recalls the extreme importance that it attaches to the right to security of the person and it notes with concern that it now has to regret the loss of two human lives in this affair. The Committee has already urged the Government to take the strictest measures so that such incidents will not reoccur and it can only reiterate its request.

485. In addition, the Committee notes with deep concern that the death penalty has been called for in respect of a large number of trade unionists and that most of the other trade unionists being tried are also liable to the death penalty. The Committee considers this situation all the more alarming since the specific acts in respect of which charges have been laid are mostly connected with
the exercise of trade union type activities such as, for example, the organisation of demonstrations on 1 May or protest strikes against dismissals. Moreover, the Committee observes that the activities in some cases date from a long time ago. In these circumstances, the Committee firmly trusts that the sentences called for against the trade unionists will not be pronounced and it recalls that the trade unionists must not be sentenced for actions which normally constitute trade union activities.

486. As regards the allegations of ill-treatment inflicted on imprisoned trade unionists and in particular on Mr. Bastürk, the Committee emphasises with the greatest firmness the importance that should be attached to the principle laid down in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

487. As regards the allegations concerning the unfavourable conditions in which visits by lawyers to their clients take place, including the arrest for three days of the DISK lawyer, the Committee recalls that arrested trade unionists, like any other persons, should benefit from normal judicial procedure and be entitled to well administered justice, namely to be informed of the charges against them, to have the necessary time to prepare their defence, to communicate with counsel of their choice without hindrance and to be judged without delay.

488. The Committee requests the Government to keep it informed of the results of the trials under way, particularly in respect of the situation of the 52 trade unionists who are liable to capital punishment and the other trade unionists being tried before civil and military courts, and to supply detailed information on the ill-treatment alleged to have been inflicted on imprisoned trade unionists.

C. Other allegations

(a) Previous examination

489. In the preceding stages of its examination of the case, the Committee noted that the DISK and the MİSK and their affiliate organisations were still under the control of the authorities and it had expressed the firm hope that the suspended confederations and organisations would be restored to their former status. It pointed out firmly to the Government that it should give priority to lifting the suspension measures since the courts had not delivered any verdict on the alleged offences.

490. Furthermore, the suspension of the right to strike and the restrictions which remained as regards collective bargaining led the Committee to express its serious concern and the hope that the new legislation on freedom of association promised by the Government would enable trade union activities to return to normal.
(b) New allegations

491. Since the last examination of the cases in question, the WCL has stated that the Government has appointed three administrators to manage the assets of the DISK which have been ceded to banking and government institutions. For its part, the WFTO specifies that the building under construction that was to be the headquarters of the DISK-GENERAL IS (Public Services Union) has been taken over by the municipal authorities and that the DISK education and leisure centre has been rented by the administrators to the Tourism Bank for five years.

492. The ICFU states that on 13 June 1981 the Commander in charge of the state of emergency suspended the YOL IS union of Izmir, bringing to three the number of regional unions affiliated to the TUFK IS Confederation that have been suspended, namely those of Izmir, Ankara and Diyarbakir.

493. The complainant organisations recall that strikes have been banned since 12 September 1980 and that the High Commission for Arbitration set up by the Government makes only compulsory awards. Moreover, a new and permanent Act is said to ban strikes in the tourist industry during the high season.

494. The WFTU, in a communication dated 15 May 1981, alleges that the Government has deprived Mehmet Karaca, Kemal Deysal, Bahtiyar Erkul, President and Secretaries respectively of MADEN IS, of their nationalities together with Metin Denizmen, the President of the DISK/BANK-SEN on the grounds that they were tried and sentenced in their absence for Communist propaganda in the course of trade union activities when they sang the Internationale at a trade union congress in December 1979 and that they have taken refuge abroad.

(c) The Government's reply

495. In its reply of 2 October 1981, the Government once again states that the suspension of the activities of certain trade union organisations and the restrictions on the exercise of certain trade union rights are provisional measures made necessary by the exceptional circumstances and the particular character of the transition period the country is going through. It adds that the evolution of the trade union situation depends on that of the country in general. In so far as circumstances will permit, the restrictions in question will of course be removed. Measures towards a general and realistic return to normality in the country are gradually being applied, the Government states, an example of which is the forthcoming convening of the Constituent Assembly to draft the new Constitution and the decrease to 45 days of the period of policy custody.

(d) The Committee's conclusions

496. The Committee, while noting the observations thus made, deeply regrets the fact that no improvement has occurred regarding the lifting of measures of suspension of trade union activities which have now been in force for more than a year. On the contrary,
the Committee notes that further measures have been adopted which restrict trade union activities even more. Thus unions belonging to the only Confederation whose activities continued (TURK IS) have been suspended. In the circumstances, the Committee recalls how important it considers it to be that all measures such as those taken by the Government during the past year and which undermine the free exercise of freedom of association should be limited in their duration and scope to the immediate period of emergency. It once again expresses the firm hope that the country will return to a normal trade union situation. It requests the Government to keep it informed of any progress made in this field.

497. The Committee also requests the Government to communicate its observations on the allegations concerning the use of the DISK trade union assets and the allegation that trade unionists have been deprived of their nationality.

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Recommendations of the Committee

498. In these circumstances the Committee recommends the Governing Body to approve the present interim report and in particular the following conclusions:

The Committee recalls that on-the-spot visits constitute a practice used more and more frequently by governments and the Committee to help in reaching solutions to the problems at issue. The Committee reiterates the hope that the Government will accept the principle of an on-the-spot visit of a representative of the Director-General so as to examine together the questions pending in the present cases.

As concerns the substance of these cases, the Committee regrets the climate of insecurity and violence which surrounds the trade union movement and which has already led to the loss of two human lives in this case. It again urges the Government to take the strictest measures so that such incidents will not reoccur.

With regard to arrests, the Committee is deeply concerned to note that the death penalty has been called for in respect of a large number of trade unionists and that most of the other trade unionists undergoing trial are also liable to the death penalty.

The Committee trusts that the sentences called for will not be pronounced and recalls that trade unionists must not be sentenced for actions which normally constitute trade union activities.

The Committee requests the Government to keep it informed of the outcome of the trials under way, particularly in respect of the 52 trade unionists liable to capital punishment and the other trade unionists mentioned by the complainants. It also requests the Government to send its observations on the allegations of ill-treatment inflicted on imprisoned trade unionists.
With regard to the suspension of trade union activities which has been in force for over a year, the Committee deeply regrets the fact that there is no sign of any improvement in this field.

The Committee reminds the Government how important it considers is to be that measures taken by the Government which undermine the free exercise of freedom of association should be limited in their duration and scope to the immediate period of emergency and requests the Government to keep it informed of any progress made towards a return to a normal trade union situation.

Lastly, the Committee requests the Government to supply its observations on the allegations concerning the use made of the trade union assets of the DISK and the allegation that trade unionists have been deprived of Turkish nationality.

APPENDIX

List of DISK leaders in danger of incurring the death penalty

The 52 DISK leaders are all members or former members of the executive bodies of the Confederation and its member unions.

Members of the Executive Committee

1. Abdullah Basturk
   President
   President of GENEL-IS
   Member of the Executive Bureau of the PSI (ICFTU)
   Former M.P. of the People's Republican Party

2. Fehmi Isiklar
   General Secretary
   Member of the MADEN-IS (metallurgy)

3. Riza Guven
   Secretary
   Former President of TEKSTIL (textiles)

4. Mukhil Zirtiloglu
   Secretary
   Former President of OLEYIS (hotel trade)

5. Suleyman Celebi(a)
   Secretary of TEKSTIL

6. Kemal Nebioglu(b)
   Secretary 1977-80
   Former President of GIDA-IS (food)

7. Tuncer Kocamanoglu
   Secretary 1977-80
   Former President of D. TOPEAK-IS (agriculture)

8. Mustafa Aktulgali
   Secretary 1977-80
   President of KERAMIK-IS (ceramics)

Members of the Administrative Committee

9. I. Hakki Onal
   Secretary of GENEL-IS

10. Belguzar Can
    Secretary of GENEL-IS
11. Ekrem Akkus Secretary of GENEL-IS
12. D. Ali Yalniz President of LASTIK-IS (rubber)
13. Celal Kucuk General Secretary of LASTIK-IS
14. Kenan Akman Secretary of LASTIK-IS
     Former M.P. of the People's Republican Party
15. Nusret Aydin President of OLEYIS
     Former head of the Workers' Committee of the People's Republican Party
16. Tahir Guner Secretary of OLEYIS
17. Ridvan Budak President of TEKSTIL
18. Mustafa Karadayi President of PETKIM-IS (petrochemicals)
     Auditor of the ICPS (WFTU)
19. Demirhan Tuncay President of the GIDA-IS
20. Selahattin Sayin President of the TEKDES-IS (gas, electricity, water)
21. Ozcan Keskec President of the SOSYAL-IS (employees)
22. Aksin Koc President of the FINDIK-IS (employees)
23. Yalcin Talaka President of the TIS (agriculture)
24. Ismet Canterkan Secretary of the DEV MADESEN (miners)

Members of the Administrative Committee 1977-80
25. Halil Hayta President of the TUMHAS-IS (health)
26. Mehmet Mahlaci Secretary of the GIDA-IS
27. Kemal Yilmaz Leader of the LASTIK-IS
28. Niyazi Kuas Leader of the LASTIK-IS
29. Ali Sahin Leader of the LASTIK-IS

Members of the Supervisory Committee
30. Fikri Tanta LASTIK-IS
31. Mehmet Bekirogullari LASTIK-IS
32. Kemal Akar OLEYIS
33. Ali Kocaman OLEYIS
34. Ismail Ozbicen GENEL-IS

Members of the Disciplinary Committee
35. Talat Oz LASTIK-IS
36. Turker Adakli LASTIK-IS
37. Osman Ozkan LASTIK-IS
38. Ismail Caliskan GENEL-IS
39. Cemal Arslan GENEL-IS
40. Ergun Erdem MADESEN
41. Ali Taser
42. Saban Aygin

Secretaries representing local or regional trade unions
43. Ali Kaya MADESEN
44. Recep Koc MADESEN
45. Tayyar Elmas MADESEN
46. Celal Alcinkaya MADESEN
47. Hasan Kahraman MADESEN

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129
Case No. 1014

COMPLAINT PRESENTED BY THE NATIONAL TRADE UNION OF TELEPHONIC WORKERS AGAINST THE GOVERNMENT OF THE DOMINICAN REPUBLIC

499. The complaint is contained in a communication from the National Trade Union of Telephonic Workers (SNTT) dated 21 November 1980. The Government replied in a communication dated 7 February 1981.

500. At its May 1981 Session, the Committee decided to transmit the main points of the Government's reply to the complainant for its comments. The SNTT supplied its comments in a communication dated 30 July 1981, which was forwarded to the Government. The Government sent its observations in a communication dated 23 October 1981.

501. The Dominican Republic has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

502. The SNTT alleges that on 29 October 1980, on the eve of negotiating a new collective agreement between the Dominican Telephone Company (CODETEL) and the SNTT, the company published a statement in the press to the effect that action would be taken against a small group of persons illegally using telephone equipment for long-distance calls. The complainant adds that the denunciation contained an indirect allusion to the workers dismissed on 29 October and that the purpose behind the company's action was to refuse to discuss the new collective agreement and to create circumstances propitious for breaking up the union.

503. The complainant also adds that on 13 November 1980, when union members had gathered to hear their leaders' reports on the negotiations for reinstating the dismissed workers, the police appeared and without warning assaulted the workers, beating 17. The police also arrested 14 workers, including various trade union officers. One of them, Jesús Fernández, the union's press and propaganda officer, was, in violation of the provisions on trade union immunity, dismissed on 21 November 1980 for having "discredited" the company.
211th Report

504. Lastly, the complainant states that the company has no intention of continuing to pay union leaves and wishes to compel the union to sign new terms much inferior to those contained in previous collective agreements.

B. The Government's reply

505. The Government states that, according to the company, Mr. Jesús Fernández was dismissed for statements he had made to the press claiming that CODETEL was electronically recording users' calls and for having used insulting language against various of the company's managers in violation of the Labour Code. This allegation has been denied by the union and the case is before the courts to determine whether or not the dismissal was justified.

506. Regarding the dismissal of other workers for reasons of service, the Government states that, according to the Department of Traffic, the persons dismissed were involved in illegal traffic of long-distance calls, an allegation which has also been denied by the union.

507. Concerning the alleged assaults by the National Police, the Government states that it has no precise information on such events and that the intervention of the police was preventive action intended to maintain public order. The Government had succeeded in advancing the negotiations for concluding a new collective agreement prior to the date provided for in the existing agreement and for reinstating a number of the dismissed workers, as the company had been requested to do by the union, and the police, without disregarding the principles established by the Constitution, proceeded to disperse the pickets only in order to prevent unfortunate clashes. The Government adds that no person is being held in custody in connection with this case.

508. In its last communication, the Government states that CODETEL and the SNTT have already approved most of the provisions of the new collective agreement, including a clause providing for unpaid full-time leave for two to three years for trade union leaders to allow them to attend to union business.

C. The Committee's conclusions

509. The Committee notes that on 29 October 1980 the company CODETEL published a statement in the press to the effect that action would be taken against a group of workers for illegally using telephone equipment for long-distance calls and that on the same day it dismissed various workers. The Committee considers, however, that the complainant, by mentioning such facts without giving further particulars, has failed to bring out any relation between those facts and the aims allegedly pursued by the company (to refuse to discuss the collective agreement and create circumstances propitious for breaking up the union), especially as the dismissed workers, according to the Department of Traffic, were involved in
illegal traffic of long-distance calls. In these circumstances, the Committee considers that this aspect of the case does not call for further examination.

510. In connection with the dismissal of the trade union leader Jesús Fernández, the Committee notes that a case is pending before the courts to determine whether the dismissal was justified or not. In view of the contradiction between the complainant's allegations and the Government's reply on this matter, the Committee requests the Government to send it the text of the judgement handed down in this respect so that it can examine this allegation in full knowledge of the facts.

511. With respect to the allegation concerning police intervention during the trade union meeting held on 13 November 1980 for purposes of information, which allegedly resulted in the beating of 17 persons and the arrest of 14, including various union leaders, the Committee notes that the Government, while not expressly denying that persons were beaten or arrested, has stated that no one is being held in custody in connection with this case, that it has no precise information on the assaults, that the police intervention was preventive action, and that the police dispersed the pickets in order to avoid unfortunate clashes.

512. In view of the fact that the complainant's and the Government's versions of the circumstances surrounding the police intervention differ and that the information available is insufficient to determine with certitude whether that intervention was warranted by a real danger to public order and not merely a hypothetical one, the Committee can only recall that freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential element of trade union rights and that the public authorities should refrain from any interference which would restrict this right or impede its exercise,¹ unless public order is disturbed thereby or its maintenance seriously and imminentely endangered.

513. Lastly, the Committee notes that CODETEL and the SNTT have already approved most of the provisions of the new collective agreement, including a clause providing for unpaid full-time union leave for the union's leaders.

The Committee's recommendations

514. In these circumstances, the Committee recommends the Governing Body to approve this interim report, in particular the following conclusions:

¹ See, for example, 139th Report, Case No. 698 (Senegal), para. 459.
The Committee recalls that freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential element of trade union rights and that the public authorities should refrain from any interference which may restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered.

The Committee requests the Government to send it the text of the judgement handed down concerning the dismissal of the trade union leader Jesús Fernández so that it may examine this aspect of the case in full knowledge of the facts.

Case No. 1022

COMPLAINT PRESENTED BY THE INTERNATIONAL METALWORKERS’ FEDERATION AGAINST THE GOVERNMENT OF MALAYSIA

515. The complaint of the International Metalworkers’ Federation (IMF) is contained in a communication dated 26 January 1981; additional information was supplied in a letter dated 29 April 1981. The Government replied in a communication dated 15 September 1981.

516. Malaysia has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

517. The complainant alleges that its affiliate - the Electrical Industry Workers’ Union (EIWO) - is still faced with the Government’s restrictive interpretation of law and anti-union practices similar to those examined by the Committee in Cases Nos. 879 and 911. It claims that the Government has disregarded the recommendations of the Committee and the Governing Body.

518. The complainant explains that after assisting in settling a strike at the RUF (Malaysia) Sdn. Bhd. factory (RUF), a radio and electric parts factory, the EIWO started to organise the RUF workers and succeeded in unionising 600 out of the total of 800 employees. On 7 October 1980 the EIWO claimed recognition for collective bargaining and other purposes from the employer and from

See, respectively, 177th Report, paras. 88-113 (approved by the Governing Body at its 205th Session, February-March 1978), and 190th Report, paras. 410-429 (approved by the Governing Body at its 209th Session, February-March 1979) and 202nd Report, paras. 122-142 (approved by the Governing Body at its 213th Session, May-June 1980).
the Registrar of Trade Unions under section 9 of the Industrial Relations Act, 1967. While the company kept its decision in abeyance pending the ministerial decision, on 18 December the EIWO was informed by the Director-General of Industrial Relations that the Registrar had decided that it could not represent the employees of RUF. On 31 December, continues the complainant, the EIWO appealed again to the Director-General of Industrial Relations claiming that RUF manufactured similar products produced by several other companies (Pernas Plessey Electronics Sdn. Bhd., Matsushita Electric Company (M) Bhd., Toshiba (M) Bhd., Sanyo Industries (M) Bhd., Roxy Electric Industries (M) Bhd., Maltronics Sdn. Bhd., Setron (M) Sdn. Bhd. and McAlister Industries) whose employees were permitted by the Registrar to join the EIWO and stressing that under the EIWO's membership Rule (3), it could unionise employees engaged in the "manufacture and repair of radios and communication equipment" such as was being carried out by 65 per cent of RUF's employees. However, according to the complainant, on 8 January 1981, the Director-General confirmed the Registrar's decision and the EIWO then appealed to the Minister of Labour and Manpower to exercise his discretion under section 71A of the Trade Unions Ordinance, 1959 as amended. When this appeal was rejected on 24 February 1981, the EIWO decided to apply to the High Court for an Order of Certiorari; the complainant encloses a copy of the Affidavit, dated 6 April 1981, which asks for annulment of the Minister's decision.

B. The Government's reply

519. While recalling that this matter is sub judice before the High Court of Kuala Lumpur, the Government states that it would like to clarify why the EIWO is not allowed to recruit the RUF employees as its members: section 26(1A) of the Trade Unions Ordinance reads "No person shall join, or be a member of, or be accepted or retained as a member by any trade union if he is employed or engaged in any trade, occupation or industry which is not similar to the trade, occupation or industry in respect of which the trade union is registered". The Government states that RUF is not considered as an industry "similar" to those industries where the workers have been enrolled by the EIWO under the Ordinance, and that the membership scope of the EIWO's own constitution does not encompass such workers as those employed by RUF.

520. Regarding the allegation that the Registrar's decision is inconsistent with the previous rulings allowing the EIWO to unionise workers of similar industries, namely Roxy Electrical Industries, Matsushita Electric, Setron, Sanyo Industries, Toshiba, Atlas Electronics and ITT, the Government states that this is not so; the Registrar has ruled that RUF is not similar to these industries.

521. Lastly, the Government points out that it has not ratified Convention No. 87 and that workers in Malaysia enjoy the right to organise and engage in collective bargaining consistent with the provisions of Convention No. 98 which the Government has ratified.
C. The Committee's conclusions

522. The Committee notes that this complaint is similar to previous complaints brought by the complainant organisation alleging restrictive interpretation by the authorities concerned of trade union registration legislation as regards the unionisation of workers in the electronic industry by the Electrical Industry Workers' Union. The relevant section 26 (1A) of the Trade Unions Ordinance is set out above.

523. The Committee recalls that in its examination of Cases Nos. 879 and 911, it stated that it would be desirable for the Government to take steps to ensure that the provisions on the establishment of first-degree unions were interpreted in a less restrictive manner by the administrative authorities, especially in view of the fact that the right of workers to establish and join organisations of their own choosing is one of the basic tenets of freedom of association. It notes that in the present case these authorities once again do not appear to have taken into account the previous comments of the Committee and expresses the firm hope that account will be taken of them in the future.

524. At the same time, it notes that the complainant organisation's affiliate has appealed to the High Court to quash the decision of the Minister and the Registrar of Trade Unions and would request the Government to keep it informed of the outcome of this appeal.

525. Finally, the Committee notes the Government's statement that the workers in Malaysia enjoy the right to organise and to engage in collective bargaining. It requests the Government to indicate the manner in which these rights are currently enjoyed by the employees of BOF.

The recommendations of the Committee

526. In these circumstances, the Committee recommends the Governing Body to approve the present interim report and in particular the following conclusions:

The Committee must repeat the conclusions it arrived at in its examination of two earlier complaints concerning the same issue, that it is desirable for the Government to take steps to ensure that the provisions on the establishment of first degree unions are interpreted in a less restrictive manner by the administrative authorities. The Committee expresses the firm hope that account will be taken of its comments in this respect in the future.

The Committee notes that an appeal on the issue of unionisation of certain workers by the complainant's affiliate is before the High Court and requests the Government to keep it informed of the outcome of this case and to indicate the manner in which the employees of RUF (Malaysia) Sdn. Bhd. enjoy the right to collective bargaining.

op. cit., paras. 109 and 135.
COMPLAINT PRESENTED BY THE CENTRE OF INDIAN TRADE UNIONS AGAINST THE GOVERNMENT OF INDIA

The complaint of the Centre of Indian Trade Unions (CITU) is contained in a communication dated 3 February 1981. The Government sent its observations in a communication dated 7 May 1981.

India has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

The complainant alleges that the Government arrested a large number of locomotive crew of the Indian Railways at a peaceful movement demanding an eight-hour day and an end to victimisation. It claims that there is reckless use of blacklists and mass dismissals to suppress its struggle and that freedom of association and collective bargaining are denied.

B. The Government's reply

The Government explains that in the Indian railway sector there are two types of unions: recognised unions enjoying a permanent negotiating machinery which takes into account their demands within the existing rules and financial and administrative constraints; and unrecognised unions whose problems are discussed at informal meetings and whose demands are considered on their merits. The Loco Funning Staff Association (L RSA), in respect of whose members the complaint has been made, is unrecognised but, on two occasions (after the August 1973 strike and the March 1979 threatened strike), it has enjoyed the services of ad hoc grievances committees.

The Government states that, despite the setting up of this machinery on the last occasion, the LRSA continued to resort to agitation, particularly during crucial periods and in sensitive areas. In January/February 1981, the LRSA held some work stoppages against alleged wrongful harassment of railway workers by local anti-social elements. When the management took action against the members, the LRSA gave the administration a 72-hour ultimatum for withdrawal of the victimisation and mass sick leave was consequently taken on 28/29 January. According to the Government, the notice for this action was not in accordance with section 22(1) of the Industrial Disputes Act, 1947; nor was it peaceful, as other workers were intimidated, their families harassed and sabotage and violence took place.
532. The Government considers that, in view of this, action had to be taken and arrests were made under section 121 of the Indian Railways Act, 1890 (which provides that if a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with imprisonment up to six months or with a fine of up to 500 rupees, or both) and other such legal provisions in force. A number of railway employees were also dismissed from service and compulsorily retired after following the procedure laid down in the rules.

533. Finally, the Government states that the LBSA ceased its agitation as from 25 February 1981 and that the employees against whom action has been taken have, under the rules, the right to appeal upon which suitable action is always taken by the competent authority on the merits of each case. It concludes that action was taken, legally, against the employees not for their trade union activities and that no government can afford to allow a small section of the employees to hold the entire country to ransom in a strategic sector such as the railways.

C. The conclusions of the Committee

534. This case concerns arrests and dismissals in January/February 1981 of a large number of locomotive crew-members of the Loco Running Staff Association - employed by the Government-run Indian Railways.

535. The complainant alleges that the arrests and dismissals occurred after a peaceful movement over conditions of work and as a denial of freedom of association and collective bargaining. The Government claims that not only was the industrial action taken on 28/29 January illegal in that insufficient notice was given under the Industrial Disputes Act, but it was also violent. According to the Government, the arrests were made legally under the Indian Railways Act and other such legal provisions in force and a number of railway employees were dismissed and compulsorily retired in accordance with the rules; in addition, all employees concerned enjoy the right of appeal.

536. The Committee notes the conflicting nature of the complainant's and the Government's statements and would observe that it would have liked to have had more information from the complainant so as to be in a better position to examine the facts. In addition, the Committee notes from the Government's explanations that the Association in question had at least on two occasions in the past been able to discuss its demands with the government employer through grievances committees, thus avoiding recourse to industrial action. It considers that the parties on this occasion ought to have made an effort to reconstitute this consultation machinery with a view to avoiding the dispute.

537. Furthermore, the Committee wishes to emphasise, firstly, the importance which it attaches to the recognition of the right to strike of workers and their organisations as a legitimate means of defending their occupational interests. In a number of cases, however, the Committee has agreed that the right to strike can be
restricted or even prohibited, in the civil service or in essential services, to the extent that a strike could cause serious hardship to the national community, and provided that the restrictions are compensated by corresponding guarantees. The Committee has nevertheless pointed out on several occasions, particularly with reference to the transport sector, that the principle concerning the prohibition of strikes in essential services may well become meaningless if a strike in an undertaking which does not supply an essential service in the strict sense of the word, i.e. a service whose interruption would endanger the existence or well-being of the whole or part of the population, is declared illegal.

538. The Committee is aware that a total and prolonged stoppage of railway services throughout the country might lead to a situation such as to endanger the well-being of the population. It would accordingly seem justified to provide for a minimum service in the event of a strike whose extent and duration might be such as to provoke circumstances of acute national emergency. In order to be acceptable, a minimum service of this kind should on the one hand be restricted to operations strictly necessary to avoid endangering the existence or well-being of the whole or part of the population, and, on the other hand, workers’ organisations should be able to participate in defining such a service in the same way as employers and the public authorities.

539. In the present case, the Committee notes that the industrial action was relatively short - two days - and accordingly it would point out, as it did in other cases and in particular in a case concerning a strike of railway workers in India, that arrests and dismissals of strikers on a large scale involve serious dangers of abuse and place freedom of association in grave jeopardy; it considers that the competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association implied by such arrests and dismissals.

540. Although the Government states that a right of appeal against the measures taken exists, and that suitable action is always taken by the competent authority on the merits of each case, the Committee notes that no appeals appear to have been lodged and no reinstatements appear to have occurred. In consideration of the principle set out above, the Committee requests the Government to supply information on the present situation of the arrested and dismissed members of the Loco Running Staff Association, giving details in particular as to whether any persons remain under arrest, how many persons were tried and sentenced to fines or imprisonment and whether any appeals have been lodged or reinstatements occurred.

1 See, for example, 118th Report, Cases Nos. 589 and 594 (India), paras. 90 and 92; 197th Report, Case No. 823 (Chile), para. 411.

2 See, for example, 204th Report, Case No. 952 (Spain), para. 159.

3 See 149th Report, Case No. 793 (India), para. 138; 151st Report, Case No. 804 (Pakistan), para. 171; 190th Report, Cases Nos. 884 and 906 (Peru), para. 104; 187th Report, Case No. 889 (Colombia), para. 507; 202nd Report, Case No. 871 (Colombia), para. 105.
The Committee's recommendations

541. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, in particular the following conclusions:

The Committee considers that, in view of the fact that the Loco Running Staff Association, whose members were arrested and dismissed, had previously been able to discuss its demands with the Government through grievances committees, on this occasion the parties ought to have made an effort to reconstitute this machinery so as to avoid the dispute.

The Committee stresses that restrictions on the right to strike should be limited to essential services in the strict sense of the term, i.e. services whose interruption would endanger the existence or well-being of the whole or part of the population. If a minimum service must be provided for in the event of a total and prolonged strike, such service should be limited to operations strictly necessary and workers' organisations should be able to participate in its definition in the same way as employers and the public authorities.

The Committee draws the Government's attention to the principle that arrests and dismissals on a large scale, after situations such as a strike by railway workers, involve serious dangers of abuse and place freedom of association in jeopardy.

The Committee requests the Government to supply information on the present situation of the arrested and dismissed members of the Loco Running Staff Association, giving details in particular as to whether any persons remain under arrest, and as to any trials, appeals or reinstatements as outlined in the preceding paragraph.

Case No. 1031

COMPLAINT PRESENTED BY THE WORLD CONFEDERATION OF LABOUR AGAINST THE GOVERNMENT OF NICARAGUA

542. The complaint of the World Confederation of Labour (WCL) is contained in a communication dated 2 March 1981. WCL sent additional information on 8 April 1981. The Government sent its reply in a communication dated 27 April 1981.

543. Nicaragua has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. Allegations of the complainant

544. The WCL alleges that simply as a result of a request for a wage increase which was presented by more than 800 workers through their trade union organisation, the most elementary rights of the workers at the Javier Guerra Mill were violated and suppressed.

545. The complainant adds that the Javier Guerra Mill was attacked by the police and that Santos Martinez Ortiz, Róger Pérez and Manuel Guadamuz, trade union leaders of the Mill, were imprisoned along with Enrique Velarde Ortiz, Martha Alvarez and Víctor Flores, national officials of the Nicaraguan Confederation of Labour (CTN). Lastly, the WCL alleges that Carlos Huembes, Secretary General of the CTN, was attacked as a result of his trade union functions.

B. Reply of the Government

546. In its communication of 27 April 1981, the Government states that after certain workers at the Javier Guerra Mill had committed acts of sabotage aimed at disrupting production at the Mill, various suspects were arrested for questioning, including Messrs. Santos Martinez, Manuel Guadamuz and Róger Pérez. After 19 days of detention, the latter were released on bail by the Managua Court of Appeal.

547. The Government also states that Messrs. Santos Martinez and Róger Pérez were dismissed from the Javier Guerra Mill because they were suspected of having committed acts of sabotage and because their insufficient work skills had proved detrimental to the Mill's production.

C. Conclusions of the Committee

548. The Committee notes that discrepancies exist between the accounts of the complainant and the Government concerning the arrest of the trade union officials Santos Martinez, Róger Pérez and Manuel Guadamuz. According to the complainant, the arrests appeared to be connected with the wage claims presented by the trade union organisation of the Javier Guerra Mill. For the Government, on the other hand, the three trade union officials were suspected of having carried out acts of sabotage against the Mill's production and the arrests were made in order to allow inquiries to be carried out. Be that as it may, the Committee notes that the three trade union officials were freed after 19 days' detention, following a decision by the Appeals Court to grant bail. In this respect, even if the discrepancies between the statements of the Government and the complainant cannot allow any conclusions to be drawn as to the motives behind the arrests, the Committee must, however, draw the attention of the Government to the fact that the detention of trade unionists without specific criminal charges against them involves restrictions of trade union rights.
549. The Committee notes that according to the Government, the trade union officials Santos Martinez and Róger Pérez were dismissed from the Javier Guerra Mill because they were suspected of having committed acts of sabotage and because their insufficient work skills were proving detrimental to the production of the Mill. In this connection, the Committee observes that after a period of detention of 19 days for the purposes of investigating their involvement in acts of sabotage, Santos Martinez and Róger Pérez were released by the Appeals Court. The Committee also notes that according to the complainant, the arrests were connected with wage claims presented by the workers. In these circumstances, the Committee believes that it would be in the interests of developing harmonious labour relations if the Government examined to what extent the dismissals were due to the trade union activities of the workers concerned, so that in the event that the dismissals were made for such reasons, measures might be adopted with a view to the reinstatement of these officials in their work places.

550. Furthermore, the Committee notes that the Government has not replied to the allegations concerning the acts of aggression against Carlos Huembes, Secretary General of the Nicaraguan Confederation of Labour, as a result of his trade union activities, and the arrest of Enrique Velarde Ortiz, Martha Alvarez and Victor Flores, trade union leaders of the Nicaraguan Confederation of Labour. The Committee requests the Government to supply its observations on these allegations.

Recommendations of the Committee

551. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, and in particular, the following conclusions:

The Committee notes that the trade union officials Santos Martinez, Róger Pérez and Manual Guadamuz have been released.

The Committee draws the attention of the Government to the fact that the detention of trade unionists without specific criminal charges against them involves restrictions on trade union rights.

The Committee believes that it would be in the interests of developing harmonious labour relations if the Government examined to what extent the dismissals of Santos Martinez and Róger Pérez were the result of their trade union activities, so that in the event that the dismissals were made for such reasons, measures might be adopted with a view to reinstating these persons in their work places.

The Committee requests the Government to supply its observations on the allegations to which it has not yet replied, as indicated in the previous paragraph.
COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND THE GENERAL UNION OF CENTRAL AFRICAN WORKERS AGAINST THE GOVERNMENT OF THE CENTRAL AFRICAN REPUBLIC


553. The Central African Republic has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

554. The complaint of the ICFTU relates to the dissolution, by means of a Presidential Decree dated 16 May 1981, of the UGTC, a trade union organisation which according to the ICFTU has 15,000 members and which, consequently, is by far the most representative organisation at the national level.

555. Apart from its own dissolution by administrative measures, the allegations of the UGTC, in its first communications, deal with the occupation of its premises by the armed forces, the freezing of its assets, the recognition - 48 hours before its dissolution - of a new central trade union organisation which it describes as pro-governmental (the National Confederation of Central African Workers (CNTC)), the censoring of its broadcasts, the removal of banderoles and banners which it had set up for 1 May, and threats of arrest and deportation made against trade union officers.

556. The UGTC, in its first communications, states that on 15 May 1981, after due notice had been given, a general strike was declared throughout the private sector following vain attempts at collective bargaining with the Government and the employers. According to the complainants the Government had rejected the workers' grievances which had been listed on the occasion of 1 May. This list included all the workers' claims, namely: a request for the application of the check-off system in public services, a five-day working week instead of six, still on the basis of a 40-hour week, payment of the increased wages which the Government had promised in March 1981, payment of state contributions to the Central African Social Security Office on behalf of a number of former employees who had not received family benefits since 1975,
the closing of the French military postal bureau within the Post Office, the ratification of ILO Conventions Nos. 135 and 140 and full respect of the Constitution adopted by the Central African people on 1 February 1981. The UGTC explains, furthermore, that it informed the Government of its reasons for rejecting the programme of economic recovery proposed by the International Monetary Fund as well as the Government's decision to request the Central African Social Security Office to pay the Central African Government's contribution to the ILO.

557. On 16 May 1981, the UGTC goes on to say, the day after the strike was declared, the President of the Republic dissolved the organisation by Decree on the grounds of its supposed uncompromising attitude in the negotiations with the employers and Government, its alleged secret dealings abroad and its illegality. The General Secretary of the UGTC, in his communication of 22 May, recognises however that article 1 of the rules of his organisation had become invalid since the adoption of the Central African Constitution restoring trade union pluralism. He considers, however, that the article in question should simply have been amended on the recommendation of the Minister of the Interior rather than leading to the dissolution of his organisation.

558. More recently, in a communication dated 14 July 1981, the UGTC further alleges that a number of trade unionists have been dismissed or suspended and the organisation includes with its communication a Ministerial Order of 23 May 1981 suspending four senior officials, Mr. Possiti, Mr. Gallo, Mr. Mamadou Sabo and Mr. Sakouma, for abandoning their posts, and a memorandum from the Director of Education dismissing a headmaster, Mr. Solamosso. The UGTC also encloses a note from the Ministry ordering the Director-General of the Central African National Savings Bank to block the account of the organisation.

B. The Government's reply

559. In its reply of 29 July 1981, prior to the change of regime, the Government communicates the observations of the Minister of the Public Service, Labour and Social Welfare on the matter.

560. Going over the background, the Government explains that in 1961 the Congress of the Movement for the Social Development of Black Africa (MESAN) decided, for political and constitutional reasons, to merge the workers' unions, namely the General Confederation of Workers, the African Confederation of Free Trade Unions, the African Confederation of Workers and the African Confederation of Believing Workers, into the General Union of Central African Workers. The Government states that this merger infringes the principles of the Freedom of Association and Protection of the Right to Organise Convention (No. 87), ratified by the Central African Republic in 1960, and the Labour Code of 1961, section 6 of which provides that any worker or employer may freely join a union

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1 This article stipulates that "there shall be only one national central trade union organisation on the Central African territory".
561. The Government continues by explaining that the general strike declared by the UGTC on 15 May 1981 in the private sector had nothing to do with the conditions of work of employees which, it maintains, was a pretext used by the UGTC to declare the strike, which actually concerned a legal dispute between two citizens.

562. The Government explains that in October 1980 the employees' delegates of a Bangui company, COLALU, lodged a complaint with the Director of Labour and Social Legislation concerning the behaviour of the personnel manager of the company, Mr. Bagaragonda, who was reproached with being biased in his examination of applications made by the staff to buy sheet-metal and household goods, and with being severe towards the company's employees. Since the staff threatened to go on strike if the personnel manager did not change his attitude, the Director of Labour immediately called a meeting between the persons concerned with a view to conciliation. According to the minutes of the conciliation meeting, the functions of the personnel manager were restricted to administration and management and he was no longer to deal with loan applications. Nevertheless, in January 1981, the employees' delegates, supported by the UGTC, complained to the Director of Labour that the personnel manager was still examining the applications for loans and requested his dismissal, threatening once again to strike. The director of the company, the Government explains, refused to accede to the workers' request and the workers went on strike for a week despite conciliation attempts by the administrative authorities.

563. Subsequently, in May 1981, the Government states, a worker in the company, Mr. Gohol, accused the personnel manager of stealing a jack belonging to the company but the director of the company informed the police that he himself had given the jack to the personnel manager. The latter was therefore released and sued the worker for slanderous denunciation and for threatening to kill him, whereupon the Public Prosecutor ordered the worker's arrest. On the recommendation of the UGTC, the staff of the company then went on strike once again, on 7 May 1981. The Public Prosecutor authorised the worker to be released on bail on 12 May 1981. The Government maintains that the UGTC, on 13 May 1981, took advantage of this legal dispute to serve notice on the Minister of Labour of a general strike in the private sector on 15 May, asking for a meeting of the arbitration board without giving due notice, and demanding the release of the worker alleged to have been victimised by the personnel manager and the departure of the said personnel manager from COLALU.

564. The Minister of Labour summoned the General Secretary of the UGTC on 14 May but he failed to attend. The Government states that, in a press communique issued the same day, it had expressed its disapproval of the strike which, it maintained, had no occupational justification and it invited workers in the private
sector to go freely to their work. On 15 May, still according to the Government, the strike had little support among the workers because of its political nature. The Government adds that the UGTC leaders, invoking their rules, resorted to violence and threatened to kill workers who went to work and employers who opened their workshops. The Government concludes by pointing out that constitutional legality was flouted in the name of trade union monopoly and that the UGTC was dissolved so that Central African workers might be able freely to join organisations of their own choosing. It also states that the UGTC membership of 15,000, mentioned by the ICPTU, is fictitious since membership implies a voluntary act, a membership card and the payment of contributions and, according to the Government, the UGTC confused the issue by maintaining that every wage earner or peasant was a member of the single trade union organisation in the name of trade union monopoly.

565. Together with its reply, the Government has furnished the notice of 13 May 1981 from the UGTC to the Minister of labour in which it requests the release of the worker, the unconditional departure of the personnel manager and the holding of a meeting of the arbitration board to give a ruling on the matter. It also furnishes the complaint addressed by the employers' federation on 15 May to the Public Prosecutor in respect of the threats made by members of the UGTC to workers who went to work and threats to the employers who let workers into their premises.

C. Conclusions of the Committee

566. The Committee notes with concern that the complaint contains serious allegations of the dissolution of the UGTC by administrative measures, of the occupation of its premises by the armed forces, of the censoring of its views, the freezing of its assets and the subsequent dismissal of a number of workers. The Committee notes the explanations furnished by the Government on the reasons which led to such measures.

Allegation concerning the dissolution of the UGTC by administrative authority

567. Concerning the dissolution of the UGTC by administrative measures, the Committee can only emphasise the very great importance it attaches to respect for Article 4 of Convention No. 87, ratified by the Central African Republic, and which states that workers' organisations shall not be liable to be dissolved or suspended by administrative authority. The Committee places particular emphasis on this point especially since, in the present case, even though the Government disputes the figure of 15,000 as the membership of the UGTC, the measure in question affects a trade union confederation which is widely representative, thereby entailing serious consequences for the defence of the occupational interests of a large number of workers in the country.

568. The Committee notes that the Presidential Decree in respect of the dissolution expressly refers to the new Central African Constitution, to the Freedom of Association and Protection
Reports of the Committee on Freedom of Association

of the Right to Organise Convention (No. 87), and to the Central African Labour Code of 1961 proclaiming trade union pluralism. However, according to the Government, article 1 of the rules of the UGTC unfairly gives the dissolved organisation a trade union monopoly. In this respect, the Committee considers that the Government, if it wished to change the rules on this point, should either have invited the trade union leaders concerned to repeal or amend the rules themselves (even the UGTC having admitted that they had become invalid) or possibly asked a civil court to take the appropriate action. In no case, however, should it have dissolved the organisation by administrative measures. Consequently, the Committee, recalling that only serious and duly proved facts may lead to the dissolution of trade union organisations by judicial measures, invites the Government, as a matter of priority, to rescind the administrative measure by which it dissolved the UGTC and requests the Government to keep it informed of all steps taken in this connection.

Allegation concerning the occupation of premises, the freezing of assets and censorship imposed on the UGTC

569. The Government makes no observations on these points. The Committee, not having sufficient information on these aspects of the case, is not in a position to express an opinion in full knowledge of the facts. Nevertheless, in general terms, the Committee would like at this stage to remind the Government that the occupation of trade union premises may well constitute serious interference by the authorities in trade union affairs. It also wishes to draw the Government's attention to the content of the Resolution concerning Trade Union Rights and their relation to Civil Liberties, adopted by the International Labour Conference in 1970, which laid particular emphasis on freedom of opinion and expression, on the right to receive and impart information and ideas through any media, and on the right to protection of the property of trade union organisations as civil liberties essential for the normal exercise of trade union rights.

Allegation concerning the dismissal of certain workers

570. The Government makes no observation on this aspect of the case. Once again, therefore, the Committee cannot express an opinion in full knowledge of the facts. Nevertheless, the Committee has always considered that the dismissal of trade unionists following a labour dispute entails risks of abuse and of seriously jeopardising freedom of association. Consequently, in case it were found that the trade unionists mentioned by the complainants had been dismissed or suspended from their functions on account of trade union activities, the Committee considers that it might be desirable, in order to restore a climate propitious to the harmonious development of industrial relations, for steps to be taken with a view to re-examining their situation.
Recommendations of the Committee

571. With regard to the case as a whole, the Committee recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

The Committee notes with concern that the General Union of Central African Workers (UGTC) was dissolved by administrative authority. It can only emphasise the very great importance that it attaches to respect for Article 4 of the Freedom of Association and Protection of the Right to Organise Convention (No. 87), ratified by the Central African Republic, according to which workers' organisations shall not be liable to be dissolved or suspended by administrative authority. In addition, the dissolution of trade union organisations by judicial measures should only occur where there are serious and duly proved facts.

Consequently the Committee expresses the firm hope that the Government will, as a matter of priority, rescind the administrative measures by which it dissolved the UGTC. It requests the Government to keep it informed of developments in the situation.

With regard to the allegations concerning the occupation of trade union premises, the freezing of assets and the censorship imposed on the UGTC, the Committee points out to the Government that the International Labour Conference, in a Resolution of 1970 concerning Trade Union Rights and their relation to Civil Liberties, placed special emphasis on the obligations of governments to respect freedom of opinion and expression, on the right of trade union organisations to receive and impart information and ideas through any media, and on the right to protection of the property of trade union organisations, as being essential for the normal exercise of trade union rights. It requests the Government to communicate its observations on this aspect of the case.

With regard to the allegations of dismissal or suspension of workers mentioned by the complainants, the Committee considers that in case it were found that the dismissals had been based on trade union activities, it would be desirable, to restore a climate propitious to the harmonious development of industrial relations, for steps to be taken to re-examine the situation of the penalised workers. It requests the Government to communicate its observations on this aspect of the case and to keep it informed of any measures that might be found necessary in this respect.

Case No. 1043

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS AND THE BAHRAIN WORKERS UNION AGAINST THE GOVERNMENT OF BAHRAIN

572. The complaint of the World Federation of Trade Unions (WFTU) is contained in letters dated 1 June and 16 July 1981; that of the Bahrain Workers Union is contained in letters dated 2 June, 9 May (received by the ILO on 26 June 1981) and 12 July 1981. The Government sent its reply in a letter dated 12 July 1981.
573. Bahrain has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

574. In its letter of 1 June 1981, the WFTU alleges that trade unionists Fada El-Djabal, Mohamed Reda El-Mararadij and Abdeljalil El-Arradi have each been sentenced to seven years' imprisonment for carrying out trade union activities. According to the WFTU, they were sentenced in closed court of the maritime military base of El-Mahret without the judicial guarantees to allow them to defend themselves and the defence witnesses and counsel (including the ex-Minister of Labour, who is the practising chairman of the Lawyers' Association of Bahrain) were reprimanded by the court.

575. In its further letter, the WFTU alleges that two more trade unionists - Ahmed Abdel Gaffar Mohamed and Mohamed Abdel Gaffar Mohamed - have been sentenced to three years' imprisonment for carrying out trade union activities, in closed court without any judicial guarantees. It states that other trade unionists are still in detention waiting to be sentenced including Youness Abdel Rida Kassir, Youssef Ali Zaied, Abdel Rasoul Ali Galoum, Ahmed El Saied Mohamed El-Moussaoui, Khaled Abdel Azir El Kassir, Abdel Mohamed Galoum, Moussa Jaafar Alaoui, Mohamed Houssein Rached, Ali Mouhsen Abdallah, Jalal Mohamed Halouaji, Sani Ali Waki Maukeich, Abdel Sunad Housein Patli, Mohamed Iskander Mohamed, Ahmed Ali Houssein Zeinal, Mohamed Ali Galoum Wadi, Wassir Hassen El Hadad and Mirza Mohamed Ali El Fardan. In addition the WFTU alleges that other trade union leaders who were previously detained - Adellah Monzejouch, Hassan Sarhan and Abdel Karim Salman - are living in difficult conditions in prison and that the Bahrain Government is continuing to take legal action against all trade union activists and workers engaged in any trade union activity.

576. In its letter of 2 June 1981, the BUD explains that in February 1980, the Ministry of Labour and Social Affairs agreed to continue discussions with the BHO through a common committee regarding freedom of association. The following month, a delegation of the International Confederation of Arab Trade Unions was invited by the Ministry to visit the country; it held discussions with the Ministry which led to undertakings by the latter to pass a law establishing the right to form trade unions, to create the appropriate conditions to enable all workers to participate in legal association activities, to allow free trade union elections, and to set free all detained unionists. However, the BUD claims that the Government did not fulfil its obligations, but imprisoned the official speaker of the Constitutional Committee of the BHU and many workers and unionists, inflicting torture on some of them, so that one, Jameel Ali, died. According to the BUD, the Government has sentenced Radhi Al-Jabal and Jaled Al-Arabi to seven years' imprisonment, along with the President of the Bahraini Constitutional Committee of the BWH, Abdullah Mutaiwei, who has been in prison since 1976. Public reaction to these measures allegedly forced the Minister to resign.
577. The BWU further alleges that the Government has not observed Article 142 of the 1976 labour law (Decree Law No. 23) for the private sector which reads:

Employers and workers of each establishment to be determined by a statutory order made by the Minister for Labour and Social Affairs shall form a joint committee for co-operation in resolving disputes, securing improved social conditions for the workers, organizing social services, determining wages, increasing productivity and in any other matter of mutual interest to the two parties thereto.

It also claims that Bahrain labour legislation makes no reference to the freedom to form trade unions.

578. In its letter of 9 May 1981 (received by the ILO on 26 June 1981), the BWU repeats the specific allegations of the WFTU set out in paragraph 574 above, giving the date of the sentencing of the three trade unionists as 27 April 1981 and adding that the Government's abuses of trade unionists have been going on since the end of 1979 and have forced many families and elements in Bahrain to leave the country.

579. To its letter of 12 July 1981 the BWU attaches several reports and documents relating to the trade union situation in Bahrain. Firstly, there is a BWU report on the Bahrain Labour Law for the Private Sector of 16 June 1976 alleging that: it does not give workers the right to form trade unions of their own choosing; that the workers were not consulted during the drafting of the Code; that it does not recognize the right to strike; that part-time and agricultural workers are excluded from its terms; that it does not fully treat arbitrary dismissal but only mentions indemnities and in fact allows dismissal without indemnity or notice for reasons including non-recognition of employers' directives concerning workers' safety; that it enforces the use of an intermediary to settle labour disputes; that it allows the Minister to decide on the methods of designating workers' representatives on joint committees and that it includes various unsatisfactory provisions concerning maternity leave, hours of work, etc. Secondly, the BWU attaches the report on the situation of Bahrain workers and workers' organisations prepared by the delegation from the International Confederation of Arab Trade Unions. According to this report, which is also signed by the then Minister, an interim Workers' Committee had been set up to work towards the creation of a trade union organisation to represent Bahrain workers and the then Minister was trying to introduce labour legislation to govern trade union action; the Chairman of the Council of Ministers is also quoted as being in favour of taking measures to set up healthy workers' organisations, unaffected by political tendencies. Thirdly, the BWU attaches a copy of a letter dated December 1980 from the Chairman of the interim Workers' Committee to the Minister complaining that its work was hampered by lack of funds, lack of premises and meagre membership (the four employers which had joined the Committee only employing 5 per cent of the Bahrain workforce) and threatening resignation of the Committee unless these problems were overcome. Lastly, the BWU attaches a copy of newspaper reports dated 6 August 1980 of alleged government torture of workers.
B. The Government's reply

580. In its letter of 12 July 1981, the Government states that the allegation that certain persons have been sentenced to imprisonment for undertaking trade union activities is not substantiated by the facts; they were, in effect, charged and convicted in a court of law established under the Constitution of the State of Bahrain with contraventions of sections 159, 164 and 185 of the 1976 Criminal Law (Decree Law No. 15) which relate to membership of a proscribed illegal society, incitement to sedition against the constitutional authority of the State and physical intimidation of citizens. The Government adds that throughout the hearing the accused were afforded the protection of the court and were represented by legal counsel who are members of the Law Society of Bahrain.

581. Regarding the allegation concerning workers' representation, the Government refers to the 1976 Labour Law for the Private Sector, as amended by Amiri Decree No. 8 of 1981 and subsidiary legislation enacted thereunder in terms of Orders Nos. 9 and 10 of 1981 made by the Minister for Labour and Social Affairs. It states that these enactments promote the further strengthening and progressive development of joint bargaining and tripartite machinery through a freely-elected joint committee at the level of the undertaking and through representation of workers' and employers' organisations on the General Committee for Bahrain Workers and the Bahrain Chamber of Commerce and Industry, respectively.

582. Lastly, the Government states that the BWO's claim to be a recognised association representative of workers' interests in Bahrain is unjustifiable as it is located outside the country (in Syria).

C. The Committee's conclusions

583. This case concerns allegations of unfair sentencing of five trade unionists; detention without trial of 17 trade unionists and ill-treatment of other detained unionists which led to the death of Jameel Ali; non-conformity of the 1976 Labour Code with ILO Convention No. 87; failure of the newly established joint committees to guarantee worker representation; and difficulties encountered by the interim Workers' Committee set up to work towards the creation of a trade union organisation to represent Bahrain workers.

584. The Committee notes in the first place that the Government questions whether one of the complainants - the Bahrain Workers Union - is competent to present a complaint as it is located outside the country. In previous cases examining receivability of complaints emanating from trade union organisations outside the country in question,1 the Committee has pointed out that under the procedure governing the submission of complaints relating to

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1 See, for example, 116th Report, Case No. 551 (Cuba), para. 89.
violations of freedom of association, such complaints must come either from organisations of workers or employers or from governments, but that it was sometimes suggested that persons purporting to act on behalf of such an organisation were not entitled to do so because the organisation had been dissolved or because the individuals lodging the complaint had ceased to be resident in the country concerned. The Committee considered that it would be altogether inconsistent with the purpose for which the procedure for the examination of allegations concerning the infringement of trade union rights had been established for it to admit that the dissolution or purported dissolution of an organisation by governmental action extinguished the right of the organisation to invoke the procedure. In such cases there might be difficult questions concerning the exact authority and knowledge of the facts of the persons claiming to act on behalf of the organisation concerned and the reliability of the testimony of persons no longer resident in the country concerned. The Committee stated that it would be prepared to consider such questions on their merits, as necessary, but that it would not regard any complaint as being irreceivable simply because the government in question had, or claimed to have, dissolved the organisations on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge outside the country concerned. In taking this view it had been influenced by the conclusions unanimously approved by the Governing Body in 1937, in the Labour Party of the Island of Mauritius Case, when considering a representation under article 24 of the Constitution of the Organisation (then article 23), according to which it would exercise its discretion in deciding whether or not a body was to be regarded as an industrial association for the purposes of the Constitution of the Organisation and would not consider itself bound by any national definition of the term "industrial association". Accordingly, the Committee considers that the complaint of the Bahrain Workers Union is receivable.

585. Regarding the allegation that five trade unionists have been sentenced to long periods of detention for their trade union activities without the normal guarantees of a fair trial, the Committee notes that the Government states that they were convicted in an ordinary court of law on criminal charges and enjoyed legal representation. As the Committee is faced with directly contradictory statements, neither party submitting evidence to substantiate its version of the facts, it would limit itself to recalling generally the importance of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the governments consider to have no relation to their trade union functions.

586. The Committee notes that the Government has not sent its observations on the WFTU's allegation that 17 named trade unionists are still detained without trial and that three trade union leaders are imprisoned in difficult conditions, nor on the BWU's allegation that torture of trade unionists has led to the death of one of them. It accordingly asks the Government to send these observations as soon as possible.

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1 See, for example, 187th Report, Case No. 892 (Fiji), para. 289; 208th Report, Case No. 940 (Sudan), para. 271.
587. The Committee also notes that the Government does not comment on the specific allegations made by the BWU relating to the 1976 Labour Law for the Private Sector, as amended, and would ask it to send its observations as soon as possible.

588. As regards the issue of workers' representation through joint committees, the Committee notes that, according to the Government, the recent legislative amendments regarding the creation of worker-employer committees in each establishment and the creation of a General Committee for Bahrain Workers promote the further strengthening and progressive development of joint bargaining. After examining the Orders made under articles 142 and 143 authorising the establishment of these committees, the Committee notes that in certain circumstances there is a risk that workers' representatives to the joint committees may not be elected freely, since article 3 of Order No. 9 states that "in the event of a tie in the number of votes received by nominees for election, the election committee shall have casting votes to determine the elected nominee", and since the election committee itself is appointed by the employer to organise the election. Moreover, article 4(4) of Order No. 9 prohibits a worker or employers' representative from standing for election if he has been convicted of "any crime" within the previous five years. In this connection, the Committee would recall that article 2(b) of Recommendation No. 143 concerning protection and facilities to be afforded to workers' representatives in the undertaking defines elected representatives as those "who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or collective agreements ...". It would also recall that on many occasions in the past it has stated that conviction on account of offences the nature of which is not such as to be prejudicial to the proper exercise of trade union functions should not constitute grounds for disqualification from trade union office and that any legislation providing for disqualification for any type of criminal offence might be regarded as inconsistent with the principles of freedom of association. In addition, the Committee notes that article 2 of Order No. 10 provides that the rules for the conduct of affairs of the General Committee for Bahrain Workers shall be approved by the Minister for Labour and Social Affairs, which would appear to conflict with the principle of freedom of association according to which workers' organisations shall have the right to draw up their constitutions and rules without any interference from the public authorities. Article 8 of Order No. 10 relating to subsequent amendment of the rules is subject to the same limitation. Lastly, article 10 of this Order prohibits the General Committee from investing its funds or accepting donations without the prior approval of the Minister and from being involved in political activities. The Committee considers that these limitations are contrary to the principle that workers' organisations shall have the right to organise their administration and activities and to formulate their programmes without any interference from the public authorities. It would accordingly request the Government to re-examine Orders Nos. 9 and 10 of 1981 in the light of the principles set out above with a view to bringing them into conformity with the principles of freedom of association.

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1 See, for example, 133rd Report, Case No. 668 (Jordan), para. 298; 197th Report, Case No. 823 (Chile), para. 384.
589. Finally, the Committee notes that the Government has not sent its observations on the alleged difficulties encountered by the interim Workers' Committee, set up to work towards the creation of a trade union organisation to represent Bahrain workers. It accordingly requests the Government to send these observations as soon as possible.

The recommendations of the Committee

590. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, and in particular the following conclusions:

The Committee notes that it is faced with directly contradictory statements as regards the alleged unfair trial of five trade unionists and would therefore limit itself to recalling generally the importance of prompt and fair trial by an independent and impartial judiciary in all cases, including cases where trade unionists are charged with criminal offences which the government considers to have no relation to their trade union functions.

As regards the alleged failure of the newly established joint committees to guarantee workers' representation, the Committee notes that several articles of Orders Nos. 9 and 10 of 1981 conflict with the generally accepted principles of freedom of association concerning free election of trade union leaders and free functioning of workers' organisations. It accordingly would request the Government to re-examine its legislation in this regard with a view to bringing it into conformity with the principles of freedom of association.

As the Government has not yet sent its observations on the alleged detention without trial of 17 named trade unionists and ill-treatment and torture of other detained unionists leading to the death of Jameel Ali, nor on the alleged non-conformity of the 1976 Labour Law for the Private Sector with ILO Convention No. 87, nor on the alleged difficulties encountered by the interim Workers' Committee, the Committee would ask it to do so as soon as possible.

Case No. 1054

COMPLAINT PRESENTED BY THE PERMANENT CONGRESS OF TRADE UNION UNITY OF LATIN AMERICAN WORKERS AGAINST THE GOVERNMENT OF THE DOMINICAN REPUBLIC

591. The complaint is contained in a communication dated 22 May 1981 from the Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL). The Government sent its observations in communications dated 3 and 6 August 1981.

592. The Dominican Republic has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. The complainant’s allegations

593. CPOSTAL alleges that in the last months of 1980 and the first quarter of 1981 industrial action, work stoppages and strikes by workers demanding wage increases and protesting against the high cost of living occurred in the State and free trade area undertakings, the multinational undertaking Falconbridge, the Metaldom undertaking, Ingenios Porvenir, Santa Fe, Quisqueña and Esperanza, AGROMAN, CODAL and in the Tabagueros de TAMBOBIL undertaking.

594. The complainant adds that the strike by the municipal workers, the doctors’ strike and the strike by workers of the National District City Council were harshly suppressed and that the last-mentioned strike resulted in four deaths, with dozens of injured persons and hundreds of arrests.

595. The complainant adds that hundreds of workers have been dismissed for having exercised their legitimate right to strike.

596. Finally, CPOSTAL alleges that although a request had been made more than six weeks in advance, Concepción de Oliveira was refused an entry visa into the country to represent CPOSTAL at the Congress of the Sole Confederation of Workers (CUT), affiliated to CPOSTAL, which was held on 25 and 26 April 1980 and that a list is maintained at the Santo Domingo airport including 16 trade union leaders of several American countries who are to be refused entry into the Dominican Republic, including Rodolfo Prieto, a member of the Executive Secretariat of CPOSTAL, who has never been in this country.

B. The Government’s reply

597. The Government states that the industrial action to which CPOSTAL refers was undertaken in disregard of the requisite procedure established by the legislation and that the authorities took no repressive action against the workers involved in these incidents. The Government adds that in many cases the resolute and unequivocal intervention of the labour authorities was beneficial to the workers and resulted in the signature of collective agreements in some of the undertakings mentioned by CPOSTAL, in particular in the state sugar production sector, and thereby prevented the undertakings from proceeding to dismiss hundreds of workers on the basis of their illegal acts.

598. With regard to the strike in the National District Municipal Council, the Government states that the workers were involved in violent street clashes and that they obtained the allocation of a state subsidy, which was the principal motive of the strike. As regards the deaths which allegedly took place, the Government denies that four persons lost their lives and states that what in fact happened was that Sergeant Hilario Márquez Miliano of the National Police, who was a member of the patrol sent to maintain public order and protect private property, disobeyed the instructions of his superiors and fired on the workers, causing
injuries which resulted in the death of Marcelino Vega Peguero, a journalist, and Manuel de Jesús Ciprián Valdez, a paper boy. The Government adds that Hilario Márquez Miliano - the policeman - was found guilty of murder and sentenced to 20 years of hard labour by the judicial authorities on 28 May 1981.

599. Finally, the Government states that an application for a visa was received from an alien who is prohibited from entering the country and that insufficient information is at its disposal to determine if Roberto Prieto fulfils the necessary conditions under legislation currently in force to be able to enter the country.

C. The Committee's conclusions

600. The Committee notes the statement by the Government that the strike by the workers of the National District Municipal Council led to the death of the journalist and a newspaper boy and that the person responsible for these deaths - a policeman - was found guilty of murder by the judicial authorities and sentenced to 20 years' hard labour.

601. The Committee also notes that according to the Government, the authorities have not taken any repressive action against the workers and that in most of the conflicts to which the complainant refers, benefits have accrued to the workers as a result of the intervention of the labour authorities which led to the signature of collective agreements in several undertakings and prevented the undertakings from proceeding to dismiss hundreds of workers on the basis of their illegal acts.

602. As regards the list of 16 foreign trade union leaders who are allegedly prohibited from entering the country and the refusal to grant an entry visa to a trade union leader of C.P.U.S.T.A.L who was to represent this organisation at a trade union congress in the Dominican Republic, the Committee, although recognising that the refusal to grant a visa or, in general, to deny entry to aliens wishing to enter its territory is the sovereign right of a State, must recall the principle that the right of trade unions to affiliate with international workers' organisations necessarily involves the right of national trade union organisations freely to maintain normal contact with the international organisations of workers to which they are affiliated, the corollary of which is that the formalities to which trade union leaders and trade unionists are subject in seeking entry into the territory of a State should be based on objective criteria and in any case be free of any anti-trade union discrimination.

603. Finally, the Committee notes that the Government has not yet replied to all the questions raised by the allegation concerning the suppression of the strike by workers in the National District Municipal Council - during which, it was alleged, dozens were injured and hundreds taken prisoner -, nor to the allegation

1 See, for example, 12th Report, Case No. 74 (Burma), para. 180, and 204th Report, Case No. 966 (Portugal), para. 82.
concerning the dismissal of hundreds of workers for having exercised the right to strike. The Committee requests the Government to transmit its observations on the matter.

The Committee's recommendations

604. In these circumstances, the Committee recommends the Governing Body to approve this interim report and, in particular, the following conclusions:

The Committee notes that the policeman responsible for the death of two persons during the strike by workers of the National District Municipal Council has been sentenced to 20 years' imprisonment.

Although the Committee recognises that the refusal to grant a visa or in general to deny entry to aliens wishing to enter its territory are matters concerning the sovereign right of a State, it must recall the principle whereby the right of trade unions to affiliate with international workers' organisations necessarily involves the right of national trade union organisations freely to maintain normal contacts with the international organisations of workers to which they are affiliated.

The Committee requests the Government to send detailed observations on the allegations concerning the dismissal of hundreds of workers for having exercised the right to strike and the suppression of the strike by workers in the National District Municipal Council, during which, according to the complainant, dozens were injured and hundreds of persons were arrested.

Case No. 1063

COMPLAINT PRESENTED BY THE SOLE CONFEDERATION OF COSTA RICAN WORKERS AGAINST THE GOVERNMENT OF COSTA RICA

605. The complaint by the Sole Confederation of Costa Rican Workers (CTC) is contained in a communication dated 23 June 1981. The Government, for its part, supplied its observations in a letter dated 5 August 1981.

606. Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
A. Allegations of the complainant

607. In its communication of 23 June 1981, the CTC, an organisation which it states is affiliated to the Latin American Central of Workers (CLAT), alleges that the Tempisque Sugar Works (Central Azucarera de Tempisque S.A.), where a union was formed for the protection of workers' rights, the Tempisque Sugar Workers' Trade Union (UTRACAT), affiliated in turn to the CTC, has repeatedly persecuted a number of the workers through penalties and dismissals.

608. For example, the complainant explains, in October 1980 the UTRACAT trade union leader, Claudio Gamboa Valverde, was dismissed without grounds because he was a member of the union's executive committee. Although the Minister of Labour was asked to intervene in his favour, the complainant states that no action has yet been taken.

609. It also states that in May 1981 the enterprise in question, taking advantage of the fact that harvesting was over, dismissed about 75 workers with permanent jobs because they belonged to the UTRACAT.

610. The complainant further alleges that in May 1981 the enterprise dismissed the trade union leader, Santos Gómez Hernández, and, in June 1981, Fernández Giménez, the union's secretary for training.

611. Attached to the complainant's communication is a letter addressed by it on 22 June 1981 to the Minister of Labour, requesting the latter's intervention for obtaining the reinstatement of the trade union leaders dismissed. The complainant explains that Mr. Santos Gómez Hernández, before belonging to the UTRACAT's executive committee, had been chairman of the permanent works committee, at which time he had encountered no difficulties. When he became a union member, the illegal persecutions by the enterprise commenced, and on several occasions it refused to draw up and enforce an internal works rule. Mr. Gómez was then dismissed on a false accusation of drunkenness.

612. The complainant states that the dismissal of the secretary for training, Mr. Fernández Giménez, was inconsistent in that he was dismissed on grounds of "reorganisation" whereas his own supervisors had, at the end of the harvest, stated that "in view of his output, he could keep his job and would not be dismissed during the reorganisation that was to take place". One month later, nevertheless, he was dismissed on grounds of reorganisation. The complainant states that the true reasons for his dismissal were the following. A group of peasants had asked Mr. Fernández Giménez for the union's help because their boss, Mr. Hernández, was obliging each team of 12 workers to spray 80 bags of fertilizer which, in the climatic conditions in which the work is performed, constitutes unfair and inhumane conditions of work. Mr. Hernández, having learned the name of the person making claims on their behalf, namely Mr. Alfonso Hernández Giménez, had him dismissed.
B. The Government’s reply

613. In his reply of 5 August 1981, the Minister of Labour states that, on receipt of the complaint, his ministerial department requested the enterprise to state the reasons why it had terminated the contracts of Claudio Gamboa Valverde, Santos Gómez Hernández and Alfonso Fernández Giménez. According to the Government, it could not be concluded from the reports supplied that the dismissals were due to anti-union discrimination; however, the Minister continues, he ordered an inquiry himself and sent a labour inspector to verify the facts and instructed him to draw up an exhaustive report as quickly as possible, which was known to the complainants.

614. As regards the allegation that in May 1981 the enterprise, taking advantage of the fact that the harvest was over, terminated the contracts of 75 workers for union membership, the Minister of Labour states that an inquiry has been carried on his instructions. The inquiry shows that at the time when the enterprise needed the maximum number of workers for harvesting, the total workforce amounted to 1,172 workers, 296 of whom belonged to the UTRACAT. At the end of the harvest, the total dropped to 1,052, 291 of whom belonged to the union. Now that the temporary work is over, the total number of employees is 785, 222 of whom belong to the UTRACAT. This shows that the enterprise terminated the temporary contracts of a larger number of non-union workers than of workers actually belonging to the union. According to the Government, therefore, there has been no anti-union discrimination.

C. The Committee’s conclusions

615. The Committee notes that the present case relates primarily to alleged dismissals of trade union militants and leaders. More precisely, according to the complainant, the dismissals took place in October 1980 in the case of Mr. Gamboa Valverde and in May and June 1981, respectively, in the cases of Mr. Gómez Hernández and Mr. Fernández Giménez, leaders of the UTRACAT, a trade union affiliated to the complainant organisation. The complainant also alleges that approximately 75 permanent workers were dismissed at the end of the harvest in May 1981 because of their membership of that union.

616. When considering allegations of this nature, the Committee usually draws the attention of governments to one of the fundamental principles of freedom of association, namely that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, including dismissal. This protection is particularly desirable in the case of trade union officials because in order to perform their trade union duties in full independence they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions.1

1 See in particular 144th Report, Case No. 762 (Peru), para. 144, and 147th Report, Case No. 717 (Costa Rica), para. 260.
617. As regards the allegation relating to the dismissal of three trade union leaders mentioned by the complainant, the Committee notes that the Government has ordered an inquiry. In these circumstances, the Committee requests the Government to keep it informed of the results of the inquiry and expresses the hope that, if it is found that the trade union leaders dismissed have not committed any serious offence, the Government will endeavour to obtain their reinstatement.

618. Concerning the alleged dismissal of approximately 75 permanent workers, the Committee notes that the opinion of the complainant and that of the Government on the matter conflict. In the opinion of the complainant, the workers, though permanent, were dismissed because of their membership of the UTRACAT, whereas in the opinion of the Government, following the inquiry it made, the enterprise terminated the temporary contracts of more non-union workers than union workers.

619. The Committee observes that the Government, though it has carried out an inquiry, has not stated whether permanent workers belonging to the UTFACAT were dismissed or, if they were, for what reason. Accordingly, the Committee requests the Government for precise information on this aspect of the case.

The Committee's recommendations

620. In these circumstances, the Committee recommends the Governing Body to approve this interim report, in particular the following conclusions:

As regards the alleged dismissal of three trade union leaders mentioned by the complainant, the Committee notes that an inquiry has been ordered by the Minister of Labour. The Committee requests the Government to keep it informed of the results of the inquiry and expresses the hope that, if it is found that the trade union leaders did not commit any serious offence and were dismissed only on account of trade union membership or activities, the Government will endeavour to obtain their reinstatement in their jobs in accordance with the principle of freedom of association.

Concerning the alleged dismissal of approximately 75 permanent workers because they belonged to the UTRACAT, the Committee requests the Government to specify whether workers enjoying permanent employment and belonging to the UTFACAT were dismissed by the enterprise to which the complaint refers and, if so, for what reason.

(Signed) Roberto AGO,  
Chairman.
I. INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 9 and 10 November 1981 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it, on the one hand, various complaints of infringements of trade union rights in Argentina presented by a number of trade union organisations (Case No. 842), and, on the other hand, a complaint concerning the observance by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by a number of delegates to the 63rd (1977) Session of the International Labour Conference under article 26 of the Constitution of the ILO.

3. At its 216th Session (May 1981) the Governing Body adopted the interim conclusions submitted to it by the Committee in its 210th Report.

4. Since then, the Government has transmitted certain information and the Committee submits for the approval of the Governing Body a further report on the case and recommends the Governing Body to examine this report at its 218th Session.*

Case No. 842

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND OTHER TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF ARGENTINA


5. The Committee has examined this case on several

1 See footnote 1, page 1.
2 See footnote 2, page 1.
occasions and in particular at its May 1981 meeting when it submitted an interim report to the Governing Body.¹

6. Since that examination of the matter, the Government has sent information in communications dated 28 August and 2 November 1981.

7. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

8. The questions still pending concern certain restrictions on trade union activities and the arrest of trade unionists and former trade unionists.

A. Various restrictions on trade union activities

9. During previous examinations of the case, the Committee had expressed its concern over the placing under supervision of trade union organisations, in particular the General Confederation of Labour (CGT), and over certain restrictions placed on trade union activities, in particular the suspension of collective bargaining and the right to strike. More precisely, at its meeting in May 1981, the Committee pointed out that the restoration of collective bargaining would constitute an important factor in the improvement of industrial relations in the country and added that for the restoration to be really effective, the trade union organisations should be able to join together without impediment and that they should be represented by leaders freely elected by their members. In addition, legal recognition of the right to form confederations would, in the opinion of the Committee, be a significant step towards the return to a normal trade union situation. The Committee therefore expressed the hope that the Government would take measures with a view to lifting all the restrictions still in force and it also asked the Government to send it information on the development of the situation.

10. In its communication of 28 August 1981, the Government states that in accordance with the wish expressed by the Committee, it had outlined developments in the trade union situation in the country and the Government's objectives in the matter to the Committee on the Application of Conventions and Recommendations of the International Labour Conference. On that occasion, the Government recalled that it has been in power for only a few months but that it is determined to carry out a thorough analysis of existing problems. The Government would like to see the spontaneous development of a truly representative and legitimate trade union movement, untainted by paternalism or interference by the State, in accordance with the spirit of Convention No. 87.

11. As regards collective bargaining, the Government has stated that it is examining its restoration as part of its policy

¹ See 210th Report, paras. 5 to 51, approved by the Governing Body at its 216th Session (May 1981).
The restoration of collective bargaining and the time limits required for its implementation depend upon two basic factors: the restructuring according to the new Act on occupational organisations on the one hand, and the reorganisation of the national economy and slowing down of inflation on the other.

As concerns the first point, the Government states that elections have been held which have led to changes at the highest level in the employers' organisations and that steps are being taken towards making workers' associations suitably representative. There are 1,149 first degree occupational organisations and 68 second degree organisations in the country; 876 areas of competence requested by the organisations have been approved, as have 66 trade union constitutions. Ten organisations have held elections and the others have called for elections. In the view of the Government, all this shows that the trade union organisations will be represented by leaders freely elected by their members once collective bargaining has been restored.

As regards inflation, the Government states that it must devote its attention to urgent priorities in order to strengthen the financial situation, reactivate production and deal with structural and economic problems. In a message addressed to the nation in August 1981, the Minister of Economy stressed that one of the immediate and priority objectives of the Government is to restore the level of employment and raise the level of the minimum wage. Once the current economic problems have been overcome, workers will participate to an appropriate extent in the increase of wealth so that their purchasing power can be improved. The Government hopes that in real terms wages for the period 1982-84 will increase faster than the economic growth rate.

The Government adds that both employers' organisations and workers' organisations are now playing an active role in information meetings and consultations with a view to finding economic solutions and implementing medium-term policies. The Government also states that it is continuing to adopt measures which in due course will allow the present economic obstacles to free negotiation to be overcome. It also reports that initiatives are under way to find methods of enabling trade union leaders to participate in organisations which are still under supervision and of recognising their role in the revision of working conditions.

As regards the right to establish confederations, the Government once again points out that the legislation does not prohibit the establishment of organisations of this type within the framework of the ordinary law of the Civil Code. The only limitation is that such associations may not exercise the rights reserved to corporate entities to which the Act on workers' organisations refers. The Government points out that limitations of this nature apply in certain European countries, in particular as regards collective bargaining.

After referring to the conclusions of the Conference Committee on the Application of Conventions and Recommendations, the Government points out that the purpose of its reply to the Committee was to draw attention to the progress - albeit limited - which has been made in the very short period of time since the last session of the Conference. The Government adds that the complexity of the situation excludes the possibility of finding solutions within a short period of time.
17. In its communication of 2 November 1981, the Government states that it has decided to undertake a revision of the working conditions set out in the collective agreements. To this end it has adopted Decree No. 1717 of 25 October 1981 which applies both to state and mixed economy bodies and undertakings and to private enterprise. By virtue of this Decree, public or semi-public bodies and undertakings shall undertake an in-depth study of working conditions as set out in the collective agreements. Once the necessary information has been assembled, the bodies and undertakings concerned will draft a new text of the agreements which will be submitted for approval to the Executive. These drafts will also be submitted to the occupational organisations which took part in the settlement of collective agreements so that they may give their opinion. In the private sector, the parties to a collective agreement or affected by an arbitration award will be able to ask the Ministry of Labour to carry out a revision.

18. The Government considers that this Decree should be introduced in the global context of the progressive liberalisation of trade union activities announced by the Government. It is of the opinion that this constitutes a positive step in the procedure which, in due course, will lead to a wide-scale restoration of the system of collective agreements.

19. The Committee notes the comments supplied by the Government, and in particular the information concerning the elections which have been held in certain trade union organisations and that concerning the possible changes to collective agreements with the approval of the public authorities. It must however note that trade union activity has not yet returned to normal. The return to a normal trade union situation will not be achieved as long as the serious limitations applied to trade union organisations continue to remain in force: the suspension of the right to collective bargaining and the right to strike, the placing of certain trade unions under supervision, the impossibility of establishing confederations subject to trade union law. In connection with this last point, the Committee is of the view that confederations established under ordinary law would not benefit from the basic rights which would allow them to operate genuinely and effectively in defence of the workers' interests: the right to declare strikes, the right to collective bargaining and the protection of their leaders.

20. Bearing in mind all these points, the Committee believes it useful once again to stress that these restrictions as a whole may be justified only in exceptional circumstances and for a short period of time. In these circumstances, the Committee must draw attention to the great importance which it attaches to the prompt lifting of restrictions placed on trade union activities and most of which have been in force for five years. The Committee expresses its firm hope that it will be able, at its next examination of the case, to note that significant progress has been made in this respect. To this end, it requests the Government to continue to transmit information on developments in the situation.
B. Arrests of trade unionists and former trade unionists

21. In its most recent examination of the case, the Committee had noted with interest the release of several of the persons mentioned by the complainants. However, the Committee noted that a large proportion of arrested trade unionists who were still in prison had not yet been brought to trial. In drawing the attention of the Government to the fact that the release of arrested trade unionists was a pre-condition to the improvement of the social climate, the Committee had asked the Government to send information on the situation of the persons in respect of whom it had not yet replied and, more generally, on the measures which might be taken with a view to the release of the trade unionists still in prison.

22. In its communication of 28 August 1981, the Government recalls that the persons mentioned in the lists which were sent to the ILO by the complainants have not been arrested because of their trade union status or activities as such, but for individual acts committed against the public order and for which identical penalties would be applied to all citizens.

23. The Government refers in particular to the situation of three persons: Héctor Gustavo López, who is no longer at the disposition of the national executive (Decree No. 701 of 17 July 1981), Susana Isabel Funes and Fubén Pariszewsky, who were released on probation on 25 June and 24 July 1981 respectively.

24. In its communication of 2 November 1981, the Government announces the release of the following trade union leaders: Alonso Ricardo Candido, who had been sentenced to five years' imprisonment; Esquerra Juan Francisco, who had been at the disposal of the Executive; Jarma Eduardo, who had benefited from the opportunity to leave the country; López Alfredo, who had been sentenced to four and a half years' imprisonment; Fuentes Geronimo, who had been sentenced to three years' imprisonment; Medina Walter Valentin, who is no longer at the disposal of the Executive and is sought by the Council of War for illicit association and violation of Act No. 20840.

25. The Committee takes note of this information, which does, however, concern only a very small number of the trade unionists referred to in the lists supplied by the complainants. In these circumstances, and recalling that a substantial number of the trade unionists still in prison have not been brought to trial, the Committee must point out that although the fact of exercising a trade union activity or holding a trade union mandate in no way implies any immunity from the provisions of penal law, the absence of any guarantee of regular judicial procedure leads to abuse and
may result in trade union leaders being victims of unfounded decisions. It also creates a climate of insecurity and fear which cannot but influence the exercise of trade union rights. The Committee must therefore request the Government to provide information on the situation of the persons under arrest whose names have been transmitted to it.

* * *

The Committee's recommendations

26. In these circumstances, the Committee, recalling the observations and considerations made in its previous reports, recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

The Committee notes the information transmitted by the Government on the elections which have been held in certain trade union organisations and that concerning the possible changes to collective agreements with the approval of the public authorities. It observes, however, that the serious limitations imposed on trade union organisations are still in force. The Committee points out that these restrictions as a whole can be justified only in exceptional circumstances and for a short period of time. The Committee must draw attention to the great importance which it attaches to the prompt lifting of the restrictions placed on trade union activities, most of which have been in force for five years. It expresses its firm hope that it will be able, at its next examination of the case, to note that significant progress has been made in this respect. To this end, it requests the Government to continue to furnish information on developments in the situation.

With regard to the arrest of trade unionists and former trade unionists, the Committee takes note of the information supplied by the Government, in particular concerning the release of some of them. It recalls, however, that a large number of trade unionists still in prison have not yet been brought to trial. The Committee believes that this situation creates a climate of insecurity and fear which influences the exercise of trade union rights. It requests the Government to provide information on the situation of the persons under arrest whose names have been communicated to it.

I. INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 9 and 10 November 1981 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it a number of complaints of infringements of trade union rights in Guatemala presented by the International Confederation of Free Trade Unions, the World Confederation of Labour, the Permanent Congress of Trade Union Unity of Latin American Workers, the International Union of Food and Allied Industries Workers and the International Federation of Commercial, Clerical, Professional and Technical Employees (Cases Nos. 954, 957, 975, 978 and 1026).

3. In the absence of the Government's observations, the Committee had been adjourning its examination of these cases. At its February 1981 Session, the Committee addressed an appeal to the Government to send its observations urgently. At its May 1981 Session, as it had still not received the observations requested, the Committee decided to apply to these cases the procedure provided for in its 164th Report, whereby the Chairman of the Committee will contact the Government representatives who participate at the International Labour Conference. In accordance with this procedure, these contacts took place in June 1981.

4. As the observations expected from the Government have not been received, the Committee recommends the Governing Body to examine this report at its 218th Session.

Cases Nos. 954, 957, 975, 978 and 1026

COMPLAINTS PRESENTED BY SEVERAL TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF GUATEMALA

A. Introduction

5. During 1980 and 1981 complaints regarding violations of freedom of association in Guatemala (Cases Nos. 954, 957, 975, 978 and 1026) have been submitted by the following organisations: The International Confederation of Free Trade Unions (ICFTU), The World Confederation of Labour (WCL), The Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL), The International Union

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1 See footnote 1, page 1.
2 See footnote 2, page 1.
of Food and Allied Industries Workers (IUA) and the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET).

6. These complaints involve allegations of murder, detention and torture of trade union leaders and trade unionists, their disappearance, threats made against them, and attacks on trade union premises and property by the armed forces. The complaints were transmitted to the Government of Guatemala as they were received.

7. Owing to the lack of observations from the Government, the Committee adjourned consideration of Case No. 954 at its meeting in May 1980, of Cases Nos. 975 and 978 at its meeting in November 1980, and of Case No. 1026 at its meeting in February 1981.

8. The Committee noted at its May 1981 meeting that the observations regarding Case No. 957, which the Committee requested from the Government at its meeting in May 1980, had not yet been received. It therefore decided to make use of the procedure in force and presented an interim report on the substance of the case.

B. Urgent appeal by the Director-General

9. In a communication dated 24 August 1980 the Director-General sent an urgent appeal to the President of the Republic of Guatemala. In this communication he voiced the growing concern on the part of the International Labour Organisation over the trade union situation in Guatemala, observing that the Committee on Freedom of Association and the Governing Body were currently examining several complaints of alleged violations of the freedom of association submitted by a number of international workers' organisations. The Director-General continued that in this connection the Chairman of the Committee on Freedom of Association had met the Minister of Labour and Social Welfare and the Permanent Representative Ambassador of Guatemala during the 66th International Labour Conference in Geneva in June 1980, and had informed them that the Government needed to reply in detail to the Committee's requests for information.

10. The Director-General also stated in his appeal that during this same period (June 1980) he had received telegrams from several international trade union bodies which referred to alleged

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1 See 202nd Report, para. 4, approved by the Governing Body at its 213th Session.

2 See 204th Report, para. 4, approved by the Governing Body at its 214th Session.

3 See 207th Report, para. 4, approved by the Governing Body at its 215th Session.

4 See 208th Report, paras. 274 and 289, approved by the Governing Body at its 216th Session.
violations of the freedom of association in Guatemala. In view of the seriousness and urgency of the events referred to in the telegram, he requested the Minister for External Relations to supply him with the Government's observations as soon as possible.

11. The Director-General's appeal concluded by kindly requesting the President of the Republic of Guatemala to take all possible measures to safeguard the life, freedom and security of trade union leaders, and he hoped that the President's action in this connection would have the desired effect in as short a time as possible. He also asked the President to communicate any information on the measures that might be taken as regards this serious situation.

12. No reply has been received to the communication sent to the President of the Republic of Guatemala by the Director-General.

C. Urgent appeals by the Committee

13. At its meeting in November 1980, the Committee observed that in spite of the time which had elapsed, the observations of the Government on Case No. 957 had not been received and requested it to send them urgently.

14. At its meeting in February 1981, the Committee noted with regret that it had still not received the Government's observations regarding Cases Nos. 954, 957, 975, 978 and 1026. In view of the extremely serious nature of the allegations the Committee again requested the Government to reply urgently.

D. Contacts during the Conference

15. At its May 1981 meeting the Committee noted that, despite repeated requests, the Government had sent no reply. The Committee therefore decided to apply to Cases Nos. 954, 957, 975, 978 and 1026 the procedure contained in the Committee's 16th Report according to which the Chairman of the Committee would make contact with the Government's representatives in order to have an exchange of views on the cases in question.

16. In accordance with the Committee's decision, the Chairman met with the Minister of Labour and Social Welfare and the Permanent Representative Ambassador of Guatemala in Geneva on 10 June 1981. The Chairman referred to the persistent failure of the Government of Guatemala to reply to all the communications concerning the cases before the Committee which had been sent to it during the previous year, in particular the letter sent personally by the Director-General of the ILO to the President of the Republic of Guatemala on 25 August 1980.

17. The Chairman of the Committee added that the failure to reply was particularly serious in view of the fact that four of the five cases involved the death or arrest of trade union leaders.
18. The Minister expressed his surprise that the President of the Republic had not replied to the Director-General's letter, and stated that he would do all he could to obtain a reply.

19. The Minister also stated that he would do everything possible to reply in writing before returning to Guatemala. To make this task easier a copy of the Director-General's letter was delivered to him on 11 June, together with copies of all the relevant communications which had been sent concerning Cases Nos. 954, 957, 975, 978 and 1026.

20. Apart from a brief communication dated 16 June 1980 concerning one aspect of Case No. 957, which was examined by the Committee at its meeting in May 1981 when it presented an interim report on this case, the Government has not sent any observations on the cases in question.

21. In view of the seriousness of the allegations, and in view of the time which has elapsed since the complaints were communicated to the Government, the Committee proposes, in accordance with the procedural rule set out in paragraph 17 of its 127th Report, to present a report on the substance of each case in question.

22. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

F. Previous examination of Case No. 957

23. As stated above, the Committee examined Case No. 957 at its meeting in May 1981 and presented an interim report.

24. CPSTAL had alleged that Rodolfo Ramirez, General Secretary of the Autonomous Trade Union Federation of Guatemala (FASGUA) and his wife were murdered on 15 April 1980, together with Maximo Velásquez Melgar, Secretary of the Trade Union of the Hemp Sack Factory, who was treacherously murdered as he was leaving work on 28 March 1980. CPSTAL added that on 5 May 1980 the bodies of Ricardo García and Arnulfo Gómez, leaders of the Coca-Cola Workers' Union who had been kidnapped on 1 May, were found. The complainant also referred to the kidnapping, death and subsequent discovery of the corpses of peasants and workers, some of whom it mentioned by name, and to the murder of 22 workers on 1 May, among whom were Judhit González, Edgar González García and Manuel de Jesús Flores.

25. CPSTAL also alleged that Guillermo Hernández - Secretary of the Union of Central American Sanitation Workers (INCESA) -, Hugo Rolando Tello González and Guillermo Hernández Gómez - trade union leaders whose whereabouts are unknown - and Efraín Najera and Margarito Tzul - both workers - were all under arrest.

26. The complainant added that on 15 April 1980 the army brutally repressed the meeting of Coca-Cola workers who were...
discussing a problem of wages. Twenty-seven workers subsequently disappeared, although the Government denied that they were under arrest. Furthermore, according to CPUSTAL on 29 April 1980 a group of 80 armed persons attacked, sacked and destroyed the premises of the CNT in Guatemala City, abducting 18 workers and beating up the watchman of the premises, Miguel Angel Olayo.

27. CPUSTAL also alleged that a large number of written threats were received by 30 major trade union leaders, warning them to leave the country within 30 days, and stating that they would be killed if they did not do so.

28. Finally, the complainant stated that on 29 March 1980 the headquarters of the FASGUA trade union organisation in Escuintla was attacked with machine-gun fire.

29. In a communication dated 16 June 1980 the Government stated that on the day when the General Secretary of FASGUA was murdered by persons unknown, the Government issued precise instructions to the Detective Section of the National Police to investigate the case. The Government added that no information had been discovered concerning the deaths of the General Secretary and his wife, as the assassins had left no traces, but the police were continuing with their inquiries.

30. The Committee keenly regretted that, despite repeated requests, the Government had not replied in detail to the allegations of the complainant, and that it therefore had been obliged to examine the case without having received detailed observations from the Government.

31. The Committee deeply deplored the deaths and murders of trade union leaders and workers, and expressed its concern at the seriousness of the allegations.

32. The Committee drew the attention of the Government to the fact that a free and independent trade union movement could develop only under a régime which guarantees fundamental human rights and requested the Government, in view of the deaths which had occurred and the seriousness of the allegations, to adopt a policy for the taking of special measures to fully guarantee the rights to personal safety, protection against unjustified arrest and detention, the right of assembly and demonstration, and the protection of trade union premises and property.

33. The Committee requested the Government to send its observations on the allegations made, in particular as to the death of the trade unionists mentioned in the complaint and as to the present situation of arrested workers and trade union leaders.
F. Summary of allegations made in connection with Cases Nos. 954, 975, 978 and 1026

1. Deaths, murders and disappearances

34. The complainants refer to the following deaths:

- Pedro Quevedo, Financial Secretary of the Guatemalan Bottling Company Workers' Union (EGSA), murdered on 12 December 1978;

- Manuel Francisco López Balán, General Secretary of the EGSA Workers' Union, murdered on 5 April 1979;

- Miguel Archilla, trade union leader, killed by the police on 13 October 1979 shortly after a demonstration by agricultural workers protesting against the dismissal of workers from the ISOTAL estate, which was violently dispersed;

- José León Castañeda, General Secretary of the Communication Workers' Union (SIMCOS), who was abducted on 16 November 1979 and died under torture the following day;

- Ricardo de Jesús Monzón Moriega, a trade union leader of the El Salto SA sugar factory, murdered on 29 February 1980 while returning from work;

- Julio Villavicencio Morales, disputes secretary of a Puerto Barrios trade union, who died from bullet wounds received on 10 March 1980 after leaving a trade union meeting;

- Arnulfo Feliciano López Velásquez, financial secretary of the Capri textile factory workers' union. His body was discovered on 1 April 1980; he had been shot. He had been kidnapped the same day as he was leaving the factory at midday;

- Horacio Samayoa Mayen, General Secretary of the Regional Autonomous Federation of the South, who, with his son Ernesto, died from bullet wounds received as they entered a bar in Mazatenango on 21 April 1980;

- Claudio Roberto Mamirez, an FNT official, found dead with bullet wounds on 24 April 1980. His body also showed signs of torture. He had been kidnapped by detectives belonging to the national police;

- René Reyes, member of the EGSA trade union, murdered on 1 May 1980. The complainants state that on 2 May the bodies of 12 unidentified persons were found at the morgue in Guatemala City. They had been killed by machine-gun fire from persons unknown when the 1 May demonstration was dispersed;

- Gabriel Clavería Aldana, a worker at the Hemp Sack factory, who apparently took part in the demonstration on 1 May 1980. He was shot several times as he left his house the following morning;

- Ricardo de Jesús Aylan, an official of the EGSA trade union, murdered on 7 May 1980;
- Fernando Leonel Rivas, who had just been elected financial secretary of the Hemp Sack factory workers' union, was murdered in Escuintla on 7 May 1980 as he was leaving home in the morning;

- Hilario Almira, a trade union leader at the Madre Tierra sugar factory, found dead on 16 May 1980, one day after his abduction in Santa Lucia Cotzumalguapa;

- Efrain Zamora Aroche, President of the EGSA Employees' Union, murdered on 16 May 1980;

- José Alfonso Pérez Hernández, trade union leader at the El Salto SA sugar factory, murdered in Escuintla on 19 May 1980. He had supported the wage claims of some dismissed workers;

- Marlon Mendizábal, General Secretary of the EGSA workers' union, murdered on 27 May 1980 by a volley of machine-gun fire as he was leaving work;

- Rogelio Mazariegos Ramírez, General Secretary of the workers' union of the Zone of Malacatan. His body, which showed signs of torture, was found on 1 July 1980 three days after he was abducted;

- Justiniano Vargas Casasola, a worker at EGSA, found dead from bullet and knife wounds on 11 July 1980;

- Edgar René Aldama, member of the Executive Committee of the EGSA Workers' Union, was abducted from the factory on 20 June 1980. His body was found later the same day not far from the factory, riddled with six bullet wounds;

- Oscar Amílcar Tatuaca, member of the CNT Executive Committee and of the INCESA-STANDARD union, found dead on 21 June 1980;

- Víctor Navarro Hernández and Jesús Santos Rosales, members of the INCESA-STANDARD union, murdered on 21 June 1980;

- Emilio Belte Villatoro, an official of the Communication workers' union (SIMCOS), murdered. His body was found on 24 June 1980;

- Carlos Enrique Melchor, trade union leader at the Grand Central American Tyre Factory, who died from bullet wounds on 26 June 1980 in Guatemala City;

- Ricardo Antonio Tenas, General Secretary of the Hemp Sack factory union, murdered in Escuintla on 28 June 1980;

- Ramón Aragón Estrada, a trade unionist at the El Salto SA works, shot twice in the head while in hospital in the Guatemalan Social Security Institute on 16 July 1980;

- Rafael Zepeda Bernal, Secretary of the municipal workers' union of Guatemala City, shot down in the street on 17 July 1980. Later the same day armed men entered the union premises where workers were hiding his body, killing two trade unionists (Marcelina Zepeda Valenzuela and Héctor Mayorga Portillo) and wounding four others;
Encarnación García, member of the Bakers' Union, shot dead on 5 August 1980 by two men on motor-bicycles;

Hugo René Rodríguez, member and former official of the Transport and Allied Workers' Union, shot dead on 10 September 1980 in Guatemala City;

Fredy Alberto Aragón Zuñiga, trade union leader and auxiliary nurse at the Guatemalan Social Security Institute, shot dead on 3 October 1980 in Guatemala City.

35. The FIET alleges in a communication dated 30 June 1980 that José Emilio Escobar Barrios and María Adela González, Secretary and member of the Committee of the Guatemalan Social Security Institute Workers' Union respectively, were tortured and killed. Their bodies were found on 26 June 1980.

36. In a communication dated 6 October 1980, the WCL alleges that two trade union leaders of the teaching profession in Guatemala were murdered; one of them was killed in front of his own pupils in broad daylight by members of the extremist right wing in the school where he taught. The WCL adds that Luis Fernando Moratoya Álvarez, General Secretary of the TIPIC steelworkers' union and of the Central Workers' Federation of Guatemala, which is a member of the WCL, was killed by members of the extremist right-wing Secret Anticomunist Army, who fired at him from a car with a machine gun.

37. In communications dated 3 February and 15 October 1981 CPUSTAL refers to the alleged murder of José L. Jacome Pinto, an official of the University staff union and of FASGUA, and the kidnapping and disappearance of Damián Gómez, General Secretary of FASGUA, on 2 July 1981. According to CPUSTAL, Mr. Gómez had been tortured.

38. The complainants refer also to intensified military repression in April 1980 in the rural provinces of Quiche and Escuintla, using helicopters to bomb the region in order to keep the peasants indoors. Soldiers then came to their homes with a list of supposed members of a guerrilla movement who were arrested or disappeared. In a communication dated 6 October 1980 UITA states that more than 40 people disappear daily in Guatemala. Many of them are trade union leaders or persons involved in the labour movement. The complainants refer in particular to the disappearance on 22 June 1980 of Manuel Jesús García, a member of the EGSA workers' union.

2. Cases of physical assault

39. The complainants allege the following cases of physical assault:

- on 20 February 1980 Pablo Bautista was seriously wounded by machine-gun fire from armed civilians. As an official of the CNT he had been particularly active in the region where he had just declared a strike of 50 cotton plantation and 70 sugar plantation workers in which the CNT was participating;

- on 16 May 1980 Félix Hernández Campos, a member of the EGSA Employees' Union, was wounded in the attack in which Efrain Zamora Aroche, President of the Union, was killed;
Reports of the Committee on Freedom of Association

- on 29 June 1980 several policemen in a car fired with machine guns at the EGSA factory, wounding workers Alfredo Córden and Alberto Domínguez, both members of the EGSA Employees' Union;

- on 1 July 1980, when workers at the EGSA factory were on strike and occupying the factory, 80 armed members of the "Model Platoon", the Judicial Police and of Command No. 6 of the National Police stormed into the factory, assaulted the workers and forced them to return to their places of work;

- on 17 July 1980, as has already been indicated, armed men burst into the premises of the Guatemala City municipal workers' union and wounded four workers who were hiding the body of the General Secretary of the union, who had just been shot dead.

- Finally, the 18 persons arrested on 29 April 1980 in the offices of the CNT, when preparing placards for 1 May (this was referred to in Case No. 957), were released on 2 May showing obvious signs of having been beaten and tortured.

3. Arrests

40. The complainants allege that shortly after the murder of the EGSA trade union leader Pedro Quevedo on 12 December 1978, 23 workers were placed in gaol on false charges. They add that on 20 April 1979 Yolanda Urioz Martínez de Aguilar and Rosa María Wantlan García, lawyers working for the trade union movement and advisers to the CNT, were arrested at Guatemala City airport together with a secretary working for the CNT. On 17 December 1979 Alfredo Briones, Willy Mijangos and Carlos Gómez, militant members of the CNT, were also arrested.

41. The complainants also allege that on 6 March 1980 Mario Rolando Canclinos, Fernando Castillo, Noel Escobar, Ageo Morales and Henry Cristóbal, all members of the Agua Capa Hydroelectric Works Union at Santa Rosa, were arrested at a meeting where they were discussing their collective demands. Regarding the arrest of Guillermo Hernández Gómez, Secretary of the sanitation workers' union (INCESA), which was referred to in the allegations concerning Case No. 957, the complainants report that this in fact took place on 24 March 1980 when the police intervened in a demonstration of workers at the CAMSA furniture factory.

42. The complainants further allege that on 21 June 1980, after the murders of Edgar René Aldama and Oscar Amilcar Tatuaca, the CNT Executive Committee met delegates of the trade unions concerned at the headquarters of the CNT to discuss what action should be taken and to discuss a possible demonstration to protest against the murders. During the discussion a group of 60 heavily armed men, claiming to be members of the state security forces, blocked traffic in the street of Guatemala City next to the CNT headquarters, broke down the door with a jeep, broke up the meeting and arrested 27 trade unionists, who were led in small groups to unknown destinations. The national police claim that they have no knowledge of the whereabouts of these arrested people, whose names are as follows: Ismael Vázquez Ortiz, Orlando Pérez and Florentino Gómez López (members of the EGSA workers' union), Mario Martínez and
Luis Rodolfo Bonilla (members of the Foremost dairy workers' union), Bernardo Marroquin Salazar, Antonio Rodriguez Ramos and Rafael Antonio Aguilar Pérez (members of the Kerns Food Products union), Florencia Xocop Chávez, Gonzalo Vásquez, Manuel Sánchez and Oscar Salazar (members of the CNT organising committee), Sonia Furio (member of the BIC union), Irma Pérez Osorio and Hilda Carlota Pérez Menéndez (General Secretary and member respectively of the INDUPLASTIC union), Sara Cabrera Flores (General Secretary of the AGRICASA union). The other names are: Orlando García Rodríguez, Irma Barrio, Cristina Yolanda Carrera, Irving René Hernández Paiz, Selvin Arnoldo García López, Sonia Alecio, Crescencio Coronel Ordoñez, Jorge Luis Serrano, Jorge Zamora, Manuel René Polanco Salguero and Mario Campos Valladares.

43. The complainants add that on 1 July 1980, 80 armed men entered the EGSA factory where the workers were on strike and occupying the factory, and abducted two workers, both members of the EGSA workers' union. One of them, Marcelino Santos Chacón, was later released after being assaulted and interrogated by the police.

44. On 24 August 1980, the complainants claim, 17 trade union leaders were arrested by the national police at the Emaux estate (Escuintla) when they were holding a meeting. They were later transferred to the national police headquarters in Guatemala City. The arrested include: Gustavo Adolfo Bejarano, Guillermo Alberto Moreno Valencia, Juan Guerra, Rafael Giron Mérida, Guillermo Turcios, Edgar de la Cruz, Augusto Yach Ciriaco, Iliana de la Cruz, Roldán Alberto Salazar Uriza, Alfonso Molina Mérida, and the director of the Emaux estate, José Luis Peña.

45. Finally, in a communication dated 8 May 1981, the WCL submitted a list of other trade union leaders and workers who have been arrested. The trade union officials on this list include: Marco Antonio Yuntuche López, arrested 15 November 1978; Pedro Ignacio Tobar Guzmán - 3 February 1979; Antonio Benvenuto Serrano - 25 May 1979 (the latter two are being held in Guatemala City); José Morales López - 10 September 1979; Víctor Rivas Paiz and Adán Tolásquez Duarte - 5 August 1979. The trade unionists on the same list include: Marco Antonio Blanco - arrested 7 October 1978; Juan Lopreto Balux and Plácido Reyes - 9 December 1978; Jorge Enrique García Castellanos - 10 January 1979 (in detention in Guatemala City); Manuel Enrique Mejía - 5 August 1979; Juan de Dios Aguilar, Saturnino Cifuentes Salazar and Luis González Bahuár - 10 September 1979; Jorge Callejas Cruz - 22 December 1979 (being held in Guatemala City); Agustín Chitay Chapton, Álvaro Oswaldo Estrada, Tomás Roberto Poll and Pedro Ramos Micantu - 21 June 1980 (also being held in Guatemala City); Víctor Herrera, Adalberto Juárez, Rosario Leal, Nery Robledo Espinoza and José Ruiz, arrested on 24 August 1980 (currently being held in Palin, Escuintla).

4. Further allegations

46. The complainants allege that Israel Neftali Márquez, General Secretary of the EGSA workers' union, was forced to leave the country in March 1979 after numerous attempts were made to kill him. Miguel Cifuentes, General Secretary of the Tacasa tobacco workers' union was forced to leave for the same reason in April 1979.
47. The complainants further allege that by the end of September 1979 the largest central trade union body in the country, the CNT, had lost 21 of its 56 affiliated trade unions as a result of the methods used by the Government and the employers to destroy the trade unions: the adjournment of legal recognition of the unions for months or even years; occupation by the armed forces of factories, the employers being able to hire soldiers; the creation of "amarillos" trade unions dominated by factory owners; the artificial closure of factories later opened again under different names, with new staff and without a trade union, and finally, the use of intimidation.

48. On 31 January 1980, at midnight, according to the complainants, the police were summoned by the management to the EGSA factory, where they threatened to arrest the entire night shift consisting of 80 to 90 workers owing to the smashing of an old piece of equipment, which the management were hasty to term "worker sabotage".

49. The complainants further allege that in the month of April 1980 the management of EGSA dismissed 31 workers, including three trade union leaders, after the workers' union had appealed to the courts for a ruling ordering the continuation of negotiations for the renewal of a collective agreement which they had already obtained. Despite a ruling by the labour court for the reinstatement of all the dismissed workers, only the three trade union officials have been reinstated. Four of the 28 workers dismissed have agreed, under death threats, to accept their dismissal.

50. With reference to the events of 29 April 1980, when 20 armed men entered the CNT premises and arrested 18 trade unionists, the complainants state that the premises were destroyed and that their typewriters, copying machines and other office equipment were confiscated, and that the telephone line was cut.

51. Finally, in a communication dated 11 March 1980, the ICFTU alleges that a Draft Labour Code submitted to the Congress of the Republic of Guatemala by the Ministry of Labour and Social Welfare and due, in principle, to come into force on 1 May 1980, contained several provisions which are not in conformity with Convention No. 87 (Case No. 954).

6. Conclusions of the Committee

52. The Committee observes that, although the complaints which have been received contain extremely serious allegations, the Government has not yet sent its observations. The Committee regrets the Government's failure to reply and that it has chosen to ignore the numerous requests for such observations and urgent appeals from the Committee, the urgent appeal from the Director-General and the appeal made by the Chairman of the Committee when he met the Government representatives during the last International Labour Conference.

53. In accordance with the procedure in force, the Committee considers it necessary to examine in detail the various complaints,
even in the absence of the Government's observations, and believes it appropriate to recall again that the purpose of the Committee's procedure for the examination of complaints is to promote respect for the freedom of association both "de jure" and "de facto". The Committee believes that whereas the procedure protects governments against unreasonable accusations, governments should in turn recognise the importance of replying in detail to the allegations in order to make it possible to examine them objectively.¹ The Committee considers therefore that the co-operation of governments in obtaining full understanding of the incidents referred to the Committee by the complainants is essential to ensure full respect for freedom of association and for the normal development of the trade union movement.

54. After a lengthy examination of the allegations, the Committee can only express its deep concern at their seriousness: murders and violent physical attacks on a large number of trade union leaders, trade unionists and workers, arrests and disappearances of persons linked to the trade union movement, threats, violations of the right to strike, violent interference in trade union meetings, the occupation of trade union premises, attacks on trade union property and dismissals of individuals owing to membership of or involvement in trade union activities.

55. Although well aware of the difficulties of the situation in Guatemala, the Committee must draw to the attention of the Government, as it did at its meeting in May 1981,² that a free and independent trade union movement can only develop under a régime which respects and guarantees fundamental human rights. The Committee therefore requests the Government to adopt a policy for the taking of special measures to fully guarantee the right to personal security, adequate protection against unjustified arrest and detention, the right of assembly and demonstration for trade union purposes, and the protection of trade union premises and property.

56. With regard to the allegations concerning the murders of and attacks against trade union leaders, trade unionists and workers, the Committee deeply deplores the loss of human life and the injuries sustained by individuals mentioned in the complaints. The Committee draws to the attention of the Government the importance of a prompt and independent legal investigation of the alleged cases of death, assault and ill-treatment, with a view to elucidating the facts in full, to identifying the persons responsible and to taking proceedings against them.³ The Committee requests the Government to keep it informed of the outcome of its investigations.

57. In view of the fact that some of the murders and attacks were committed by armed civilians and of the fact that the

¹ See First Report, para. 31, and 208th Report, Case No. 957 (Guatemala), para. 284.

² See 208th Report, Case No. 957 (Guatemala), para. 287.

³ See, for example, 207th Report, Cases Nos. 997 and 999 (Turkey), para. 304; and 208th Report, Case No. 1007 (Nicaragua), para. 387.
allegations include references to the disappearance of trade unionists, the exile of trade union leaders and numerous death threats, the Committee particularly emphasises the need to adopt effective measures to guarantee the personal security of those who have the closest links with the trade union movement. Such measures would include, firstly, investigations to establish the whereabouts and condition of persons who have disappeared. The Committee also requests the Government to keep it informed of developments in this respect.

58. As regards the trade union leaders, trade unionists and workers alleged by the complainants to have been arrested, without giving more detailed information on the circumstances, the Committee can only state, as it is not aware of the reasons for the arrests and the present situation of those concerned, that governments should ensure that any person arrested is treated in accordance with the normal procedures and that his case is dealt with promptly, and would add that the arrest of trade unionists against whom no grounds for conviction are subsequently found is liable to involve restrictions of trade union rights and may constitute serious interference in trade union activities.

59. The Committee notes, however, that in other cases the complainants indicated in detail the circumstances of the arrests, showing plainly that membership of a trade union or involvement in its activities had played a decisive role. With regard to these arrests, in addition to stressing the principles expressed in the preceding paragraph, the Committee asks the Government to take measures to secure the release of all those arrested owing to their membership of a trade union or to activities on its behalf which are generally considered legitimate.

60. The Committee also requests that the Government state the reasons for and circumstances of each arrest mentioned by the complainants, and also to report on the present situation of the persons arrested.

61. As regards the Draft Labour Code which was due to come into force on 1 May 1980, the provisions of which were alleged by one of the complainants not to be in conformity with the international Conventions on freedom of association, the Committee considers that, as the Code has not yet entered into force and according to information at the Committee's disposal that it will not be approved, this aspect of the case does not call for further examination. Nevertheless, noting that the Committee of Experts on the Application of Conventions and Recommendations has for many years now referred to significant differences between Guatemalan legislation and Convention No. 87, the Committee would request the Committee of Experts to continue to pay particular attention to the need for changes in Guatemalan legislation relating to freedom of association.

1 See, for example, 144th Report, Case No. 784 (Greece), para. 155.
2 See, for example, 207th Report, Case No. 963 (Grenada), para. 229.
62. As regards the activities aimed at destroying the trade unions, which resulted in the CNT losing 21 of its 56 affiliated organisations, the Committee draws the attention of the Government to the fact that, in accordance with Article 2 of Convention No. 98, workers' and employers' organisations should enjoy adequate protection against any interference in one another's activities.

63. Finally, the Committee notes that, according to the complainants, no effect has yet been given to the legal decision ordering the reinstatement of the 28 EGSA workers who were dismissed in April 1980 after the trade union made an appeal to the labour court for a ruling ordering the continuation of discussions concerning the renewal of the collective agreement which they had obtained. The Committee draws the attention of the Government to the fact that Article 1 of Convention No. 98 provides for protection against any act calculated to cause the dismissal of a worker by reason of his union membership or his participation in its activities. The Committee therefore requests the Government to take measures to ensure that the court decision on the reinstatement is given effect accordingly and to report to the Committee on the matter.

Recommendations of the Committee

64. In these circumstances, the Committee recommends to the Governing Body to approve the present interim report, and in particular the following conclusions:

The Committee keenly regrets that the Government has not sent its observations, despite requests and urgent appeals by the Committee, the urgent appeal of the Director-General and the appeal made by the Chairman of the Committee during the last International Labour Conference.

The Committee again reminds the Government that the purpose of the procedure for the examination of complaints submitted to the Committee is to promote respect for trade union rights both "de jure" and "de facto", and that whereas the procedure protects governments against unreasonable accusations, the governments in turn must recognise the importance of sending detailed replies to the allegations in order to make possible an objective appraisal of their contents. The Committee considers in this regard that the cooperation of governments in efforts to obtain a detailed understanding of the matters referred to the Committee by the complainants is essential to promote full respect for trade union rights and the normal development of the trade union movement.

The Committee is extremely concerned at the seriousness of the allegations: murders, violent physical attacks on a large number of trade union leaders, trade unionists and workers, arrests and disappearances of persons linked to the trade union movement, threats, violations of the right to strike, violent interference in trade union meetings, the occupation of trade union premises, attacks on trade union property and dismissals of individuals owing to their membership of or involvement in trade union activities.
The Committee again draws the attention of the Government to the fact that a free and independent trade union movement can only develop under a regime which respects and guarantees fundamental human rights. The Committee therefore asks the Government to adopt a policy for the taking of special measures to fully guarantee the right to personal security, adequate protection against unjustified arrest and detention, the right of assembly and demonstration for trade union purposes, and the protection of trade union premises and property.

The Committee deeply deplores the numerous losses of human life and the injuries and ill-treatment suffered by those mentioned in the complaints. The Committee draws to the attention of the Government the importance of a prompt and independent investigation of the alleged cases of death, assault and ill-treatment, with a view to elucidating the facts in full, to identifying the persons responsible and instituting proceedings against them. The Committee requests the Government to keep it informed of the outcome of its investigations.

The Committee asks the Government to inquire into the whereabouts and condition of the persons who have disappeared and to keep it informed of developments.

The Committee recalls that governments should ensure that any person arrested is treated in accordance with the normal procedures and that his case is dealt with promptly, and would add that the arrest of trade unionists against whom no subsequent grounds for conviction are found is liable to involve restrictions of trade union rights and may constitute serious interference in trade union activities.

The Committee asks the Government to take measures to secure the release of all those arrested owing to their membership of a trade union or involvement in trade union activities generally considered legitimate, and requests it to state the reasons for and circumstances of each arrest mentioned by the complainants, and also to report on the present condition of the persons arrested.

The Committee would request the Committee of Experts on the Application of Conventions and Recommendations to continue to pay particular attention to the need for changes in Guatemalan legislation relating to freedom of association.

The Committee draws to the attention of the Government that, in accordance with Article 2 of Convention No. 98, workers' and employers' organisations should enjoy adequate protection against any interference in one another's activities.
The Committee draws to the attention of the Government that Article 1 of Convention No. 98 makes provision for protection against any act calculated to cause the dismissal of a worker by reason of his union membership or his participation in trade union activities. The Committee therefore requests the Government to take measures to ensure that the court decision ordering the reinstatement of the 28 EGSA workers dismissed in April 1980 is enforced, and to report to the Committee on the matter.

65. Finally, the Committee recommends that the Governing Body decide to give to this report the widest possible distribution.