



Part II

CASE NO. 2190

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of El Salvador presented by the Ministry of Education Workers' Trade Union (ATRAMEC)

Allegations: Non-recognition of the right of association of state employees leading to a refusal by the Ministry of Labour to approve the trade union statutes and grant legal personality.

- 480.** The complaint is presented in a communication from the Ministry of Education Workers' Trade Union (ATRAMEC) dated 12 March 2002. The Government sent its observations in a communication dated 29 April 2002.
- 481.** El Salvador has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 482.** In its communication dated 12 March 2002, the Ministry of Education Workers' Trade Union (ATRAMEC) states that it was also the complainant in Case No. 2085, on which occasion it alleged that the Ministry of Labour had refused to approve its trade union statutes and grant legal personality in spite of it having been established as a trade union since 24 March 2000. ATRAMEC recalls that the Committee on Freedom of Association, at its November 2000 meeting, had urged the Government "as a matter of urgency to ensure that national legislation is amended so that it recognizes the right of association of workers employed in the service of the State, with the sole possible exception of the armed forces and the police".

- 483.** ATRAMEC adds that on 6 July 2001 it once again requested the Minister of Labour and Social Protection to grant legal personality to the Ministry of Education Workers' Trade Union (ATRAMEC), and that this request, which is attached, has not been acknowledged. ATRAMEC emphasizes that the Government has ignored the recommendation of the ILO.
- 484.** ATRAMEC recalls that the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session held in Geneva on 18 June 1998, states:

The International Labour Conference: ... 2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining ...

B. The Government's reply

- 485.** In its communication of 29 April 2002, the Government stated that, as had been previously mentioned, the Constitution and the Labour Code recognized only the right of private workers and employers, and workers in autonomous official institutions to establish trade unions.
- 486.** With regard to the recommendation of the Committee on Freedom of Association that it amend labour legislation to recognize the right of association of workers employed in the service of the State, the Government states that in a communication dated 7 January 2002 it replied that the legal recognition of the right to association for private workers and employers, as well as workers in autonomous official institutions, laid down in both the Constitution and the Labour Code, and the recognition of the right of public employees to form associative groups conform to the sovereign decisions and requirements of the country as laid down in the reforms of the Constitution of the Republic, proclaimed by the Constituent Legislative Assembly in 1983, and the reforms to the Labour Code, which were agreed upon on a tripartite basis at the forum for social consultation, resulting from the peace agreements, and with technical assistance from the ILO. The Government also states that in this report it informed the Committee on Freedom of Association of the government plan, "Alliance for Labour", which envisages a strategic approach towards the adaptation of the legal framework to conform to the requirements of the national and international labour markets. It once again reiterates the validity of these concepts.

C. The Committee's conclusions

- 487.** *The Committee notes that in the present complaint, the education workers' trade union alleges that the Government: (1) has refused to comply with the recommendations of the Committee in Case No. 2085 to amend the legislation so that it recognizes the right of association of public service employees; (2) the complainant organization still does not have legal personality in spite of a new request on 6 July 2001.*
- 488.** *The Committee notes the Government's reply, but regrets that this reply contains no new elements in relation to the replies dated 24 July 2000 and 7 January 2002 in the framework of Case No. 2085. The Committee notes in particular that the workers of the Ministry of Education cannot legally form trade unions but only associations and the government plan, "Alliance for Labour", envisages a strategic approach towards the adaptation of the legal framework to conform to the requirements of the national and international labour markets.*

489. *In these circumstances, the Committee can only reiterate the conclusions it formulated on examining Case No. 2085 [see 323rd Report, para. 173, 327th Report, para. 57 and 328th Report, para. 47], which it repeats as follows:*

- *With regard to the refusal to grant legal personality to the Ministry of Education Workers' Trade Union (ATRAMEC) in May 2000, the Committee notes that, according to the Government, the Constitution of the Republic grants the right of association to workers in the private sector and to those employed in autonomous official institutions, but not to workers employed in the service of the State (public service and government employees), since the State provides essential services which must not be interrupted for any reason. The Committee is bound to emphasize that the denial of the right of public service employees to establish unions is an extremely serious violation of the most elementary principles of freedom of association. Consequently, the Committee urges the Government as a matter of urgency to ensure that the national legislation of El Salvador is amended in such a way that it recognizes the right of association of public service employees with the sole possible exception of the armed forces and the police.*
- *The Committee hopes that the adaptation of the legal framework to which the Government refers will take place in the near future and will include all the reforms requested by the Committee. The Committee requests the Government to keep it informed in this respect and points out that some of the points calling for reform, like for example, the need to guarantee the right of association for state employees, are in fact serious violations of that freedom.*
- *With regard to the reform of the Labour Code concerning in particular, the recognition of the trade union rights of state employees, the Committee regrets that the Government merely reiterates its previous comments on this issue. In this respect, "in view of the importance of the right of employees of the state and local authorities to constitute and register trade unions, the prohibition of the right of association for workers in the service of the State is incompatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish organizations of their own choosing without previous authorization" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 215], the Committee requests the Government to take the necessary measures to amend the legislation on the points mentioned above, so as to bring it into conformity with the principles of freedom of association. The Committee requests the Government to keep it informed in this respect.*

490. *The Committee expects that the trade union ATRAMEC will be recognized as soon as possible, as it was established since 24 March 2000.*

491. *The Committee draws the Government's attention to the availability of the technical assistance of the Office in this respect should it so desire.*

The Committee's recommendations

492. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a)** *The Committee strongly urges the Government as a matter of urgency to ensure that the national legislation of El Salvador is amended so that it recognizes the right of association of workers employed in the service of the State, with the sole possible exception of the armed forces and the police.*
- (b)** *The Committee expects that the trade union ATRAMEC will be recognized as soon as possible, as it was established since 24 March 2000.*

the trade unionists and demand the reinstatement of 124 workers dismissed as a consequence of a previous strike for trade union recognition. However, instead of negotiating, the employers organized violent attacks on the workers. On the morning of 16 May 2002, hundreds of hooded men, many of them armed, attacked the striking workers in the Los Alamos plantations. A dozen men were injured, some by bullets, and some women were harassed. It was reported that a Noboa company vehicle accompanied the assailants. According to the IUF, the Los Alamos plantations remain occupied by armed men, who are supplied and reinforced by Noboa company planes. The strike is ongoing, but the Government of Ecuador has still not taken effective measures to protect these workers against dismissals, intimidation and armed attacks and the Ministry of Labour has stated that it is not able to intervene to defend these fundamental rights guaranteed by ILO Conventions Nos. 87 and 98.

497. In its communication dated 17 June 2002, the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) referred, like the IUF, to the conflict involving the Noboa Banana Corporation. According to the CEOSL, the Los Alamos ranch, in Guayas Province, was in May subdivided into seven “mini-ranches” in order to prevent unionization by making them independent of the main Los Alamos ranch and, inconsistently with this policy, three third-party companies were set up, which exploit the workers mercilessly. When an attempt was made to uphold the workers’ rights by means of a strike, some 400 mercenaries were sent in to shoot at the workers point-blank, wounding a number of them, two seriously. The Government dragged its feet and behaved in a manner that indicated it favoured the employers. The CEOSL sent a summary of the conflict, produced by FENACLE, which stated the following:

- on 6 May 2002, the strike was announced at the Los Alamos ranch, with participation by some 1,200 workers (many of whom live at the ranch) who wished to improve their working conditions by means of a collective agreement;
- on 16 May at approximately 2 a.m., a group of approximately 400 hooded and armed men arrived, broke down the door with a truck and began to shoot at and attack the striking workers. Between 60 and 80 workers were taken to the radio office, where they were subjected to abuse and made to get into various vans; they were then locked in a truck and threatened that they would be taken far away and killed. Other workers called the police and in the meantime punctured the vehicle’s tyres to help their comrades escape. The attackers stole and looted workers’ property, which had been bought with great difficulty on the low wages they earned. During the attack, a number of workers were wounded by shots from the attackers’ rifles. One, Mr. Luis Vernaza, was shot at very close range and severely wounded in the right foot (which subsequently had to be amputated) and bled profusely for approximately two hours without being given first aid. The assailants threatened those of the workers who tried to help him. An ambulance arrived at 8 a.m. A small number of police arrived at approximately 6 a.m. in a patrol car. This made it more difficult for the criminals to leave, and moreover they wanted to take the stolen goods with them. They remained inside the ranch all day and were evacuated by helicopter to avoid identification. The assailants later admitted that they were under company orders and in company pay; two of them claimed to be personal bodyguards of Mr. Alvaro Noboa. The police accepted food from the attackers and refused to intervene to help the workers;
- in the afternoon of 16 May, the attackers threatened the workers that, if they did not leave voluntarily by 6.30 p.m., they would be forced out. At about 6.15, someone tried to leave the ranch by bus. This was used as an excuse for starting the second attack on the workers. The attackers moved up the entry road, shooting into the air, while a second group concealed itself and shot at the workers directly. They wounded

a number of workers and a police officer. One of the victims (Bernabé Menéndez) was seriously wounded in the stomach and head;

- a police special forces (GOE) unit arrived at about 7 p.m. and captured 16 of the attackers, who are being held at Milagro police station. The police took the entrance to the ranch, which meant that the workers were not allowed to go back to their former positions;
- a negotiating meeting began at 1 p.m. on 20 May in the Department of the Ministry of Labour. It was called by the Minister and attended by representatives of the Noboa Corporation and representatives of the Los Alamos workers affiliated to FENACLE, CEOSL and the Guayas Free Workers' Federation (FETLIG). The workers demanded the following: job security for three years; reinstatement of the workers dismissed; payment of wages lost before suspension; payment of wages for the time of the strike; payment of social benefits or extra redundancy pay for those who were given redundancy pay below the legal minimum; payment of all workers' social insurance contributions; and compensation for the wounded;
- on 27 May, the Los Alamos ranch admitted in writing that it was not complying with the labour legislation and promised to comply with it; unfortunately, the letter did not provide for worker reinstatement, job security and compensation. On 28 May, the workers, who were still on strike, presented the company with a formal written statement of their demands. Meanwhile, the company brought in strike-breakers (mostly under age) accompanied by hired assassins; and
- from the beginning of June, there were negotiations between the workers and the Ministry of Labour on the subject of the workers' demands, but the employers refused to accept any compromises.

B. The Government's replies

498. In its communication dated 11 June 2002, the Government states that in 2002 the Ministry of Labour, acting through the Department of Coastal Labour, granted legal personality to seven trade unions connected with the banana industry. The Government states that the Ministry of Labour took the following measures in response to the problem that arose at the Los Alamos ranch, where there is a collective labour dispute:

- it asked the police to intervene on an ongoing basis to protect the workers from harm and avoid confrontations;
- it used an independent mediation process to bring the parties together and seek a rapid solution to the conflicts;
- in parallel, and in accordance with the national Constitution and Labour Code, three Conciliation and Arbitration Tribunals were organized. These are the only forums that have the authority to examine collective labour disputes and include two worker representatives, two employer representatives and a labour inspector, who chairs the tribunal and leads and organizes the process;
- in the event that the mediation activities, which are ongoing, were to be unsuccessful, the conflicts would have to be further examined by the courts and a judgement rendered; and
- the conflict at the Los Alamos ranch actually consists of three collective labour disputes, since the workers there are employed by three different companies.

- 499.** The Government adds that it can be seen from the above that the Ministry of Labour has been proactive and diligent and that, given the nature of conflicts (which tend to be explosive), the Ministry of Labour would not otherwise be involved as it is in settling the current dispute. The Ministry has been careful and diligent and complied with constitutional and legal standards in attempting to resolve this and other conflicts in order to uphold workers' rights and ensure that peace is maintained.
- 500.** In its communication dated 22 August 2002, the Government states that unlawful acts of wounding are entirely at odds with the Ecuadorian legal system and society and such acts are noted and deplored. The criminal acts in this case, which appear to have occurred within a banana ranch, must be duly investigated by the competent authorities, namely the Office of the Public Prosecutor and the Ministry of Internal Affairs, in order that the perpetrators and their accomplices and abettors may be brought to justice.
- 501.** In accordance with the above, it should be carefully established that these criminal acts are not connected with the labour legislation, nor with individual or collective labour disputes, nor, indeed, with any failure to comply with international social and labour standards, but with circumstances of crime that can, unfortunately, occur in any country and any society.
- 502.** As regards restrictions on freedom of association and unionization, there are no such limitations or infringements. This right is granted freely on request in accordance with the legislation.
- 503.** The competent authorities have been approached and informed about the alleged criminal acts described above; further information will be transmitted to the ILO as soon as it becomes available.
- 504.** As regards the Los Alamos ranch and its collective labour disputes, which are being handled through the normal proceedings, the Government attaches documents on the steps taken by the authorities and the Conciliation and Arbitration Tribunal, from which it follows that there is a problem between two special committees that are disputing the right to represent workers and that there have been no rulings on the substance. It is emphasized once more that the alleged acts of violence are ordinary criminal acts that do not represent the labour or trade union situation. It will be necessary to examine the police and prosecution reports in order to determine the truth of these allegations of unlawful acts.
- 505.** In its communication of 8 October 2002, the Government sent information from the Attorney-General's office from which it emerges that an officer from that office started a preliminary investigation and that there are sufficient grounds to bring penal charges against several people for participation in criminal acts. As a result, 16 enterprise security guards and two policemen are held in custody. The officer from the Attorney-General's office should present a report to the judge.

C. The Committee's conclusions

- 506.** *The Committee notes that the complainants allege serious violations of the right to strike at the Los Alamos ranch. According to the complainants, the strike was responded to by hundreds of armed and hooded men invading the plantations, wounding twelve workers (two seriously) and harassing female workers. It is also alleged that the attackers detained, threatened and abused a group of 60 to 80 workers and looted workers' belongings; the attackers were subsequently evacuated by helicopter. Finally, it is alleged that, when negotiations began, the employers brought in strike-breakers accompanied by hired assassins. The complainants emphasize the employers' responsibility for these actions.*

507. *As regards the alleged acts of violence, the Committee notes the Government's statement, according to which: (1) the alleged criminal acts are to be investigated by the Office of the Public Prosecutor and the Ministry of the Interior in order that the perpetrators and their accomplices and abettors may be brought to justice; (2) the competent authorities (Attorney-General's office) have been approached regarding the alleged criminal acts and have provided information that, according to the preliminary investigation of the officer of the Attorney-General's office, sufficient grounds exist in order to bring penal charges against those who took part in the events and that, as a result, 16 enterprise security guards and two policemen are held in custody. The officer from the Attorney-General's office should present a report to the judge; and (3) the Ministry of Labour has asked the police to intervene on an ongoing basis at the Los Alamos ranch to protect the workers from harm and avoid confrontations.*
508. *The Committee emphasizes the gravity of the allegations of various acts of violence and intimidation in response to a strike and recalls that "freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed" and that "the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 46 and 47]. Since the case under consideration involves serious wounding of trade unionists and abuse and aggression against strikers and their property, the Committee urges the competent authorities to ensure immediately that an investigation and legal proceedings are commenced to find out what happened, define responsibilities, punish the guilty parties, award compensation and prevent such incidents happening again. The Committee requests the Government to inform it of developments in this respect and notes that "justice delayed is justice denied" [see **Digest**, op. cit., para. 56].*
509. *As regards the labour aspects of the conflict at the Los Alamos ranch, the Committee notes that the allegations are connected with the negotiation of a collective agreement and that the complainant recognizes that there have been negotiations, but states that the employers would not compromise and, while acknowledging that the labour legislation is not being complied with, still ignores the issues of reinstatement of the dismissed workers, job security and compensation of the injured. The Committee notes that the Government has provided information on the steps taken by the authorities as regards the normal procedures for labour disputes (independent mediation and the simultaneous intervention of three Conciliation and Arbitration Tribunals).*
510. *The Committee observes, however, that neither these measures nor the intervention of the Tribunal have resolved the conflict and that the Tribunal has not pronounced on the substance (this is due at least partly to a problem between two special committees that both claim competence to represent the workers). Hence, the Committee reiterates that it is important to resolve labour disputes without delay and that justice delayed is justice denied. The Committee requests the Government to encourage negotiation in good faith between the parties with a view to the conclusion of a collective agreement on general working conditions and hopes that the three Conciliation and Arbitration Tribunals will pronounce without delay on other, more specific issues relating to the strike at the Los Alamos ranch (dismissals, compensation of the injured, the introduction of strike-breakers, etc.). The Committee emphasizes that no worker should be dismissed or prejudiced for having peacefully exercised the right to strike and requests the Government to inform it in this respect.*

- (c) *The Committee requests the Government to take the necessary measures to amend the legislation on the points mentioned in its conclusions, so as to bring it into conformity with the principles of freedom of association. It requests the Government to keep it informed in this respect.*
- (d) *The Committee draws the Government's attention to the availability of the technical assistance of the Office in this respect should it so desire.*

CASE NO. 2201

INTERIM REPORT

Complaints against the Government of Ecuador

presented by

- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and**
- **the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL)**

Allegations: Violation of the right to strike at the Los Alamos ranch. Specifically, an invasion by hundreds of armed attackers who shot at the strikers, wounding 12 workers (two seriously) and harassed women, abuse of workers and death threats against them, looting of workers' property and the introduction on to the ranch of strike-breakers (mostly under age) supported by hired assassins.

- 493.** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) presented the complaint in communications dated respectively 27 May and 17 June 2002. The Government forwarded its observations in communications dated 11 June, 22 August and 8 October 2002.
- 494.** 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. The complainants' allegations

- 495.** In its communication dated 27 May 2002, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) referred to a strike that began in May 2002 in the plantations of the Los Alamos ranch (which grows bananas for the Noboa Banana Corporation). The strike involved the National Federation of Free Peasants' and Indigenous Peoples' Associations of Ecuador (FENACLE), which is endeavouring to organize the banana workers.
- 496.** The IUF alleges that, on 26 April 2002, recognition was granted to the trade union organizations that had applied for registration in order to represent the workers of the three companies administering the Los Alamos ranch and selling produce to the Noboa Banana Corporation. On 6 May, a strike was begun to protest at the dismissal and harassment of

The Committee's recommendations

511. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *As regards the allegations of serious wounding of trade unionists and abuse and aggression against strikers and their property at the Los Alamos ranch, the Committee emphasizes the gravity of the allegations. The Committee urges the competent authorities to ensure immediately that an investigation and legal proceedings are commenced to find out what happened, define responsibilities, punish the guilty parties, and award compensation and prevent such incidents happening again. The Committee requests the Government to inform it in this respect.*
- (b) *The Committee requests the Government to encourage negotiation in good faith between the parties with a view to the conclusion of a collective agreement on general working conditions, hopes that the three Conciliation and Arbitration Tribunals will pronounce without delay on other, more specific issues relating to the strike at the Los Alamos ranch (dismissals, compensation of the injured, the introduction of strike-breakers, etc.) and requests the Government to inform it in this respect.*

CASE NO. 2123

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Spain presented by the Independent Central Union and Union of Public Servants (CSI-CSIF)

Allegations: The complainant alleges that the Government unilaterally changed the conditions of employment of public servants, excluded the trade unions from the process of drawing up the Basic Statutes of the Public Service, and failed to comply with the terms of a collective agreement in the public sector by maintaining the pay freeze imposed on civil servants.

512. The complaint is set out in a communication from the Independent Central Union and Union of Public Servants (CSI-CSIF) dated 19 March 2001.

513. The Government replied in communications dated 26 September 2001, 27 February and 30 April 2002.

514. Spain 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), the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

515. In its communication of 19 March 2001, the Independent Central Union and Union of Public Servants (CSI-CSIF) alleges that the Government unilaterally amended Act No. 30/1984 concerning measures to reform the public service, by including in the bill respecting fiscal, administrative and social measures (“Act accompanying the General State Budgets Act for 2001”), an amendment to the provisions respecting mobility of public servants, approved by Parliament and reflected in section 36 of Act No. 14/2000. The amendment in question consisted in deleting section 20.1(d) of Act No. 30/1984 and adding a new paragraph under c), to allow relocation of public servants, in some cases to places more than 100 km from their normal places of residence or work, on the sole grounds of “operational requirements”, a concept which is ill-defined, difficult to establish and gives the employer absolute discretion. The complainant alleges that by introducing this amendment unilaterally, the Government disregarded Act No. 9/1987 respecting representative bodies, determination of conditions of employment and staff participation in the public administrations service (subsequently referred to as the LOR), as amended by Acts Nos. 7/1990 and 18/1994. Section 32 of the LOR sets out the matters that can be dealt with in collective talks, including the following:

...

- (j) all matters that may affect [...] the conditions of employment of public servants and require regulation by means of enactments with the status of law, and ...

The complainant adds that disregard of this provision resulted on 14 December 2000 in a nationwide strike which was unsuccessful, since the amendment in question was finally introduced without any effective negotiation with the Spanish public service unions, although such negotiation was obligatory under the terms of the LOR.

516. The complainant alleges, secondly, that the Government disregards the trade unions in the process of drawing up the future Basic Statutes of the Public Service, the fundamental legal instrument governing the statutory conditions of employment of public servants. This has come about because, although the Constitutional Court recalled that the Political Constitution sets out in general terms the statutory status of public servants, and that their remuneration is fixed by their own Statutes as enacted by law, the preliminary bill confirming that statutory status, which was agreed between the Government and the trade unions and signed on 10 February 1998 by the complainant, has still not been approved.

517. In its third and final allegation, the complainant raises the matter already considered by the Committee on Freedom of Association in 1997 in Case No. 1919, concerning the pay freeze imposed on civil servants in that year. The complainant states that, in accordance with the Committee's recommendations in that case, on 23 January 2001 the High Court (Division of Administrative Disputes) ruled against the pay freeze in Appeal Case No. 1033/1997 on the grounds that it was not in conformity with the law; it thus upheld the right of public servants covered by the Agreement between the administration and unions of 15 September 1994 to receive an increase in their remuneration (in accordance with the projected CPI increase in 1997), including any arrears owed as a result of the failure to apply the increase in question over a number of years. This body also ordered the administration to enter into negotiations without delay on the pay increase provided for in the Agreement with effect from 1996 (when the talks were to take place), and emphasized the following points:

- (a) the right of collective bargaining of public servants, as provided for in the LOR;
- (b) a genuine obligation to bargain on particular questions (section 34), and the binding nature of agreements on the parties concerned (section 35); and

- (c) the fact that the administrative authorities that are party to negotiations (in this case the Minister of Public Administrations, who signed the Agreement, and the Council of Ministers, which approved it) are bound by any agreement reached.

518. Following this ruling, on 26 January 2001, the complainant asked the Minister to convene an extraordinary meeting of the General Negotiating Committee. The agenda included, inter alia, the implementation of the ruling and talks on the contents of Title II of the Agreement of 15 September 1994 between the administration and the trade unions (concerning pay increases, clearly dependent on certain economic variables and subject to collective bargaining). However, the Government, which was disposed to appeal against the ruling, did not think it appropriate to convene the requested meeting, and the complainant therefore considers that the Government is failing to negotiate conditions of employment for public employees with the unions represented on the General Negotiating Committee, and that it is doing no more than inform the unions of decisions which have been adopted unilaterally.

B. The Government's reply

519. In its communication of 26 September 2001, the Government states that the amendment to section 20.1(c) of Act No. 30/1984 was negotiated in accordance with section 32 of the LOR. In fact, the agenda of the meeting of the General Negotiating Committee of 19 September 2000 included the following points:

1. staff- and pay-related measures to be included in the proposed 2001 Budgets Act and the accompanying Act respecting fiscal, administrative and social measures;
2. the Agreement on stability in public employment.

Despite this, during the meeting, the trade unions authorized to negotiate made no comment on these issues and, a few days after publication of the accompanying bill for 2001 by certain media (including the new wording of section 20.1(c) of Act No. 30/1984), the trade unions even alleged an attempt to introduce the new provision regarding mobility "by stealth" in the General Negotiating Committee. The Government adds that under these circumstances, the unions' spokespersons were invited to a meeting of the General Negotiating Committee at which the issue of compulsory mobility was discussed at length; however these organizations unanimously refused to discuss the matter and demanded nothing less than the withdrawal of the provision in question. Despite the fact that, during the talks of the General Negotiating Committee before the strike of 14 December 2000, referred to by the complainant, a meeting was held on the issue of compulsory mobility, and despite the willingness of the administration to negotiate, the trade unions expressly stated that the inclusion of the mobility provisions in the bill was one of the main reasons for so many public employees to go on strike. Therefore, according to the Government, since no agreement was reached during the talks and given the unions' refusal to consider any solution other than the withdrawal of the mobility provisions contained in the accompanying bill for 2001, the administration had no other option but to lay down conditions unilaterally and to maintain the original proposal unchanged (in accordance with section 37.2 of the LOR, which in the event of disagreement during talks or failure to reach express and formal agreement allows the administration to set the terms of employment of public servants), given that the previous provisions on mobility presented serious difficulties with regard to human resources management in the public services. There can thus be no doubt regarding the willingness of the administration to negotiate with the legitimate representatives of the public servants, not only with regard to the proposed amendment to section 20.1(c) of Act No. 30/1984, but also with regard to the implementation of that principle (which the trade unions have repeatedly refused to discuss). The Government maintains that the administration negotiated in good faith but,

without a satisfactory agreement with the unions, the Government, being ultimately responsible for the public administration, and in the wider public interest, decided to retain the change to section 20.1(c) in the proposed accompanying Act for 2001 (reflecting section 37.2 of the LOR).

- 520.** As regards the allegation that the Government disregards the unions in drawing up the future Basic Statutes of the Public Service, the Government explains that in June 1999, the relevant bill, the contents of which had been agreed with the unions, was sent to the Congress of Deputies but the dissolution of both houses of the Legislature in January 2000 meant that all pending bills lapsed. The Government adds that the unions are not the only parties concerned in the matter, since the General Administration of the State and the other public authorities had to be taken into consideration, as did the suggestions made by the Council of State (the highest advisory body of Government). The Government therefore expresses the hope that in the new session of the Legislature, the Basic Statutes will obtain the widest possible parliamentary support, as well as the consensus required in the public interest.
- 521.** Lastly, with regard to the freeze on public servants' pay imposed since 1997 and the Government's refusal to negotiate public servants' conditions of employment with the unions represented on the General Negotiating Committee, it is the Government's understanding that the complaint is based on the administration's refusal to negotiate the implementation of the High Court ruling of 23 January 2000 (Appeal Case No. 1033/1997). The Government states that the union's claim was answered with the letter from the Minister of Public Administrations of 30 January 2001, which maintains that it would be inappropriate to negotiate the implementation of a ruling which is not yet final, pending the decision of the Supreme Court to which the Government has appealed against the ruling on grounds of serious deficiencies. The Government maintains that negotiations did take place in 1996. In July of that year, the Wages and Employment Committee reached an agreement signed by all the parties, under the terms of which an agreement would be negotiated within the General Negotiating Committee on a pay rise to be included in the General State Budgets Act for 1997, and any provisions that might affect the public service and merited inclusion in the relevant legislation would be discussed. The Government also specifies that, according to point 9 of the agreement in question, the trade unions accepted the administration's interpretation of Chapter VI of the Agreement of 15 September 1994, according to which the pay increases for 1996 and 1997 were not automatic but were to be negotiated in the light of the various factors referred to in that chapter (the CPI for the periods in question, budget forecasts, the accuracy of forecasts and success in achieving stated objectives which might justify pay rises, the economic growth rate, the funding capacity of the general state budgets in the light of the public deficit, increases in productivity).
- 522.** The Government adds that the record of the meeting of the General Negotiating Committee of 19 September 1996 reflects reports from eight working groups involving the administration and the unions and active on those dates, which hardly suggests that no genuine negotiations took place in 1996. Furthermore, the fact that the General Negotiating Committee met again on 3 December 1996, with the participation of all the unions that had been invited, shows that the latter did not consider that the talks at the previous meeting had broken down. The Government emphasizes that in the new meeting, the administration unsuccessfully presented a number of proposals for an agreement regarding conditions of employment in the public service, an agreement that would have replaced the 1994 Agreement and incorporated the conclusions of the working groups.
- 523.** Under these circumstances, the Government considers that genuine negotiations undeniably took place. Consequently, considering the factors referred to in the Agreement itself, and given that the matter directly concerned the general public interest, the

Government reiterates the observation which it made in the context of Case No. 1919, to the effect that it was obliged to maintain a strictly restrictive interpretation of the guidelines agreed in 1994 as part of the public deficit reduction policy adopted with a view to achieving European Union economic convergence targets. Furthermore, the Government points out that, given its previous commitments, it was unable to relinquish its rights and obligations regarding overall economic planning under the country's Political Constitution. In this context, the Government cites Supreme Court Ruling No. 96/1999, according to which the application of a salaries and bargaining system for public employees that is different from the one used for other workers is based on the fact that the right of collective bargaining, which is typical of private companies, may be qualified in the public service, whose employees must give way to the higher public interest and the requirements of economic policy. It also states that, in accordance with the High Court ruling of 8 April 1981, the non-implementation of the terms of a collective agreement does not constitute a breach of constitutional provisions concerning free collective bargaining rights and respect for the binding nature of collective agreements (enshrined in article 37 of the Constitution), if non-implementation can be justified by reference to higher interests of State. Thus, the constitutional doctrine gives precedence to the general public interest over the right of collective bargaining, while endorsing the interpretation according to which the 1994 Agreement provided for negotiations on a pay increase for 1996 and 1997 in the light of the economic policy factors that needed to be considered in order to safeguard the general public interest.

- 524.** In a communication of 27 February 2002, the Government states that the High Court ruled on the alleged refusal to implement the Agreement of 1994 concluded between the administration and the trade unions. In a communication of 20 April 2002, the Government specifies that the Supreme Court annulled the ruling of the "Audiencia nacional" (Appeal Case No. 1033/1997) confirming the right of the public servants covered by this Agreement to the pay increase, in addition to amounts not perceived during the following years, due to the inapplicability of the expected increase. To invalidate this ruling, the Supreme Court has considered that:
- (a) the Agreement established a pay increase for 1995 without establishing an automatic increase for 1996 and 1997, providing just for guidelines for a future negotiation on eventual increase of wages;
 - (b) the Agreement did not provide for the obligation to negotiate a more important increase for 1996 and 1997;
 - (c) it is certain that the obligation to bargain exists, but the negotiation should not necessarily concern the increase of wages;
 - (d) the administration did not unilaterally exclude increase of wages from negotiations; it did not infringe the principle of obligation to negotiate in good faith. In fact, it was not possible to reach an agreement and it is for the Government to set the conditions of employment of public servants in cases where no agreement could be reached during collective bargaining;
 - (e) the approval of the budget is one of the tasks of the legislative power and is under exclusive competence of the Parliament. The Agreement of 1994 did not have a binding effect on legislative power.

C. The Committee's conclusions

525. *The Committee notes that in the present complaint, the Independent Central Union and Union of Public Servants (CSI-CSIF) alleges that the Government has unilaterally amended Act No. 30/1984 regarding reforms to the public service, so as to increase the mobility of all public service employees to allow them to be relocated on the sole grounds of "operational requirements". The Committee notes, however, that according to the Government, and contrary to the statements made by the complainant, mobility was open to negotiation under the terms of section 32 of the LOR (which provides for collective bargaining on all matters pertaining to the conditions of employment of public servants), but that the administration found that the authorized unions were unwilling to negotiate and demanded nothing less than the withdrawal of the provisions in question from the bill. Lastly, the Committee notes that, faced with the refusal by the unions to consider any solution other than the withdrawal by the administration of the provisions in question, the Government had no choice but to apply section 37.2 of the LOR which, in the event of disagreement during talks or failure to reach express and formal agreement, empowers the administration to set the conditions of employment of public servants. In view of the discrepancies between the parties' respective versions of events, the Committee draws the attention of the parties to the importance of bargaining in good faith in accordance with the Collective Bargaining Convention, 1981 (No. 154), and emphasizes the importance that both employers and trade unions bargain in good faith and make every effort to reach an agreement [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th (revised) edition, 1996, para. 815]. The Committee requests the Government and the organizations of public servants to take this principle into account in their future negotiations.*
526. *As regards the allegation that the Government disregards the unions when drawing up the Basic Statutes of the Public Service, the Committee notes that the process of updating the Statutes has been postponed, despite the fact that they are a fundamental instrument that sets out the status and legal position of public servants. Under these circumstances, the Committee emphasizes the need to invite the public sector trade unions to talks with adequate advance notice to allow them to bargain collectively, within reasonable deadlines, on their conditions of employment, taking into account the strict deadlines for submitting legislative bills to Parliament. The Committee also emphasizes the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests [see **Digest**, op. cit., para. 929].*
527. *Finally, with regard to the alleged persistent failure of the Government to comply with a collective agreement by maintaining the pay freeze imposed on public servants in 1997, the Committee recalls that this allegation was already examined in Case No. 1919 (see 308th Report, paras. 273-326, approved by the Governing Body at its 270th Session in November 1997). On this occasion, the Committee had regretted that no increase whatsoever in the remuneration of public servants for 1997 had been conceded, not even for those who had the lowest salaries. In this context, the Committee had recalled that the right to bargain collectively was one of the procedures mentioned in Convention No. 151, ratified by Spain, and that this procedure had been included in the Spanish legislation for determining labour relations in the public service. The Committee had expressed the firm hope that the Government, in accordance with its own national legislation, would have recourse to collective bargaining in order to determine the conditions of employment of public servants. The Committee furthermore had emphasized that mutual respect for the commitment undertaken in the collective agreements was an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground.*

528. *The Committee notes that according to these conclusions and recommendations, the Administrative Disputes Division of the High Court annulled the pay freeze and confirmed the right of public servants covered by the Agreement of 1994 to the pay increase, in addition to amounts not perceived during the following years, due to the non-implementation of the abovementioned increases.*
529. *The Committee also notes that the Government appealed against the ruling and that the Supreme Court invalidated the judgement of 26 February 2002. The court considered in particular that the Agreement of 1994 did not provide for an automatic increase for the following years, that negotiations should not necessarily concern the increase of wages and that the administration did not infringe the principle of obligation to negotiate in good faith.*
530. *In this respect, the Committee notes that according to the statements of the Government, trade union organizations accepted the interpretation according to which, under the terms of the Agreement of 15 September 1994, there was no commitment to an automatic pay increase, only to renegotiating pay level with the trade unions. The Committee also notes that the Government is again citing economic criteria and imperatives in justification of its strictly restrictive interpretation of the guideline agreed in 1994 regarding any future pay increase for public servants.*
531. *In similar cases, the Committee has endorsed the point of view expressed by the Committee of Experts on the Application of Conventions and Recommendations in its 1994 General Survey:*
- ... the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants; where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the parties to bargaining, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other [see **Digest**, op. cit., para. 899].*
532. *In the present case, the Committee notes that the Government declined to negotiate with the trade unions until the Supreme Court has given its ruling on the pay freeze. Furthermore, the Committee observes that this pay freeze has been imposed for a long period of time.*
533. *In these circumstances, the Committee requests the Government to take measures in order to give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. To this effect, the Committee requests, the Government to open negotiations with representative trade union organizations without delay in order to re-establish professional relations on solid and firm ground in an atmosphere of mutual trust. The Committee requests the Government to keep it informed of any measure taken in this respect.*

The Committee's recommendations

534. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee requests all parties in their future negotiations to bear in mind the importance of bargaining in good faith, in accordance with the Collective Bargaining Convention, 1981 (No. 154), and to make every effort to reach an agreement.*

- (b) *The Committee emphasizes that public sector trade unions must be invited to talks with adequate advance notice to allow them to bargain collectively, within reasonable deadlines, on their conditions of employment, taking into account the strict deadlines for submitting legislative bills to Parliament, while also emphasizing the value of consulting workers' organizations during the preparation of legislation that may affect their interests.*
- (c) *The Committee requests the Government to take measures in order to give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. To this effect, the Committee requests the Government to open negotiations with representative trade union organizations without delay in order to re-establish professional relations on solid and firm ground in an atmosphere of mutual trust. The Committee requests the Government to keep it informed of any measure taken in this respect.*

CASE NO. 2133

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of The
former Yugoslav Republic of Macedonia
presented by the
Union of Employers of Macedonia (UEM)**

Allegations: The complainants allege that employers' organizations cannot obtain registration and do not engage in collective bargaining.

535. The complaint is contained in a communication from the Union of Employers of Macedonia (UEM) dated 11 June 2001.
536. In the absence of a reply from the Government, the Committee had to postpone its examination of the case three times. At its June 2002 meeting [see 328th Report, para. 8], the Committee issued an urgent appeal to the Government drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of the case at its next meeting if the information and observations of the Government had not been received in due time [GB.283/8, para. 8].
537. The former Yugoslav Republic of Macedonia 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

538. In a communication dated 11 June 2001, the Union of Employers of Macedonia (UEM) alleges that legal obstacles impede the registration and legal recognition of employers' organizations, and their participation in collective bargaining.

545. *In the absence of any reply from the Government, the Committee observes that the current state of law and practice in the area of registration constitutes such an obstacle to the establishment of employers' organizations that it deprives employers and their organizations of the fundamental right to establish occupational organizations of their own choosing. The Committee recalls that the principles laid down in Convention No. 87, ratified by the former Yugoslav Republic of Macedonia, cover employers as well as workers and that according to the principle laid down in Article 2 of the Convention, workers and employers without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee recalls that "the principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization" and that "requirements must not be such as to be equivalent in practice to previous authorization, or as to constitute such an obstacle to the establishment of an organization that they amount in practice to outright prohibition" (**Digest of decisions and principles of the Freedom of Association Committee**, para. 244). The Committee observes moreover that the status of citizens' associations is unrelated to the objectives and activities of an employers' organization. The Committee requests the Government to initiate discussions urgently with the complainant with a view to finalizing the registration process of the complainant under a status that corresponds to its objectives as an employers' organization. The Committee requests to be kept informed of developments in this respect.*
546. *The Committee notes that in the absence of registration and legal personality, the complainant organization does not engage in collective bargaining. The Committee notes moreover that the only body with which the Government holds consultations is the Economic Chamber, which is based on compulsory membership of all enterprises and which cannot be considered as an employers' organization for the purpose of collective bargaining. In the absence of any reply from the Government, the Committee recalls the principle laid down in Article 4 of Convention No. 98, ratified by the former Yugoslav Republic of Macedonia, to the effect that measures appropriate to national conditions shall be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation and emphasizes "the importance which it attaches to the right of representative organizations to negotiate, whether these organizations are registered or not" [**Digest**, para. 784]. The Committee requests the Government to take all necessary measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations in conformity with Convention No. 98.*
547. *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.*

The Committee's recommendations

548. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee deplores the fact that the Government has not replied to the allegations despite the fact that it was invited to do so on several occasions, including by means of an urgent appeal, and urges it to reply promptly.*

539. The complainant states that since its creation in 1998 it has not been able to obtain its registration and recognition as an employers' organization by the competent authorities of the Republic. The complainant adds that legislation in the area of industrial relations does not provide any indication on the registration of employers' organizations and covers only the registration of trade unions. In the absence of registration, the complainant is unable to recruit new members, open a bank account, use its proper stamp and collect membership fees. Moreover, it is not invited by the Government to attend seminars organized in cooperation with the ILO. The complainant adds that it has recently initiated a process for its registration as a citizens' association.
540. The complainant states that without registration, it is not invited by the Government to participate in collective bargaining and that the Government invites only the Economic Chamber, which is based on compulsory membership of all enterprises and is not registered as an employers' organization.

B. The Committee's conclusions

541. *The Committee deplores the fact that, despite the time which has elapsed since the presentation of the complaint, and bearing in mind the extreme gravity of the allegations, the Government has not provided in due time the comments and information requested by the Committee, although it was invited to send its reply on several occasions, including by means of an urgent appeal at its June 2002 meeting. In these circumstances, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to present a report on the substance of this case, in the absence of the information it had hoped to receive in due time from the Government.*
542. *The Committee reminds the Government, first, that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations concerning violations of freedom of association is to ensure respect for the rights of employers' and workers' organizations in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating, for objective examination, detailed factual replies concerning the substance of the allegations brought against them [see First Report of the Committee, para. 31].*
543. *The Committee notes that the present complaint concerns allegations of obstacles to the registration of employers' organizations and the exercise of their right to collective bargaining.*
544. *The Committee notes that the Union of Employers of Macedonia (UEM) states that it has been unable since 1998 to register as an employers' organization. As a result, it is not vested with legal personality and cannot commence its activities. In addition, it is not invited by the Government to participate in seminars organized in cooperation with the ILO. The Committee notes that legislation in the area of industrial relations does not provide any indication as to the registration and legal recognition of employers' organizations and deals only with the registration of trade unions. The Committee notes moreover that the complainant organization has initiated a process for its registration as a citizens' association.*

- (b) *The Committee requests the Government to initiate discussions urgently with the complainant with a view to finalizing the registration process of the complainant under a status that corresponds to its objectives as an employers' organization. The Committee requests to be kept informed of developments in this respect.*
- (c) *The Committee requests the Government to bring its legislation and practice concerning registration of employers' organizations in conformity with Convention No. 87.*
- (d) *The Committee requests the Government to take all necessary measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations in conformity with Convention No. 98.*
- (e) *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.*

CASE NO. 2176

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Japan
presented by
the Japan Postal Industry Workers' Union (YUSANRO)**

Allegations: The complainant alleges that the legal provisions against unfair labour practices and anti-union discrimination and their implementation are inadequate.

- 549.** This complaint is contained in communications dated 22 February and 26 March 2002, from the Japan Postal Industry Workers' Union (YUSANRO).
- 550.** The Government submitted its reply in a communication dated 13 September 2002.
- 551.** Japan 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

- 552.** In its communication of 22 February 2002, the complainant organization states that it represents workers employed by post offices and related undertakings in Japan. It consists of 101 branches distributed in nine regional offices, and is affiliated to the National Confederation of Trade Unions (ZENROREN).

- 553.** YUSANRO submits that the Central Labour Relations Commission (CLRC), established under the Trade Unions Law, is mandated to implement measures to protect workers' and trade unions' right to organize. It is supposed to examine complaints of unfair labour practices by employers and to issue relief orders to protect workers against such practices. However, the CLRC now tends to waste time and spends unnecessary long periods of time, only to vary the orders issued by the Prefectoral Labour Relations Commissions (PLRCs) and issue decisions that are unfavourable to workers. In 1999, the CLRC spent on average four years and one month to hear cases and took as long as five years and one month after the filing of a complaint before issuing a decision. All this time was spent merely to confirm initial decisions issued by PLRCs dismissing workers' complaints, or to reverse initial PLRCs' decisions in workers' favour. The CLRC examination process is a very heavy burden for workers living in local areas far from the capital. Taking into account that long procedures have often resulted, at best in the confirmation of unfavourable decisions, at worst in even more unfavourable decisions, the complainant argues that the CLRC does not fulfil its role and functions, which are to protect workers against unfair labour practices.
- 554.** For instance, on 9 June 1998, YUSANRO filed a complaint of unfair labour practices to the CLRC (Case No. 2-1998) arguing that some actions of the employer, including an unreasonable location for the union office and the forced transfer of the union branch officers, aimed at weakening the union. The CLRC assigned the case to local coordinators for pre-hearing examination, which is supposed to be completed within 30 days of the filing of the complaint, under article 56.3 3) of the CLRC Rules. However, the examination in that case was completed only one year and two months after the filing of the complaint, despite YUSANRO's repeated requests for speedy hearing. Furthermore, it took the coordinators seven additional hearings to complete the examination, on 13 September 2000. This delayed the whole process and the hearing on the merits, which was finally scheduled to start on 27 March 2002, i.e. three years and nine months after the filing of the complaint. In the meantime, YUSANRO has submitted two requests to the CLRC (30 June 2000, asking for swift completion of the examination; and 8 March 2001, asking that a date be fixed rapidly for a hearing on the merits). It also requested the CLRC to explain the reasons for the long delays between the completion of the pre-hearing examination by local coordinators and the hearing by the CLRC, but has received no satisfactory explanation.
- 555.** These inadequate practices and undue delays cannot be allowed, given the CLRC's mandate and objectives. When workers who are victim of anti-union discrimination, in violation on Convention No. 98, have to wait more than three years to be heard, it cannot be said that they enjoy adequate protection against such acts. This also leads to the denial of the right of unions to organize.

B. The Government's reply

- 556.** In its communication of 13 September 2002, the Government states that the CLRC review procedure is part of the unfair labour practices processing system, which is uniform nationwide. In 2000, out of the review proceedings submitted to the CLRC against PLRC orders, 29 have been filed by workers and 35 by employers. On average, there were 1.6 hearings per case heard in 2001, which is not too heavy a burden on workers and employers. The CLRC may vary an initial order of the PLRC for, or against, workers; the complainant is therefore wrong when arguing that the CLRC only makes decisions unfavourable to workers.

557. As regards Case No. 2-1998, the Government states generally that while the CLRC in principle carries investigations and hearings as rapidly as possible, the process can be compared to a trial, and many factors may intervene, such as the complexity of the case, adjustment of schedules, replies of the parties, etc. The pre-hearing examination is a preparatory procedure, which contributes to clarifying the facts and arguments, and promotes discussion between the parties to seek an amicable settlement. Statements, replies and evidence thereon may be submitted, all of which takes time, particularly where complex issues arise, which was precisely the case here: redeployment of 11 union members, non-lease of space for the union at four post offices.
558. Concerning YUSANRO's argument that one year and two months elapsed between the filing of the complaint and the date of the first examination, the Government points out that the delay under article 56.3 3) of the CLRC Rules may be extended with the consent of the parties, which happens frequently in practice. Here, the complainant participated voluntarily in the procedure even after the 30 day's delay. In cases involving national enterprises, as in the present case, the CLRC Chairman may appoint "Local Members for Adjustment" (local coordinators) who have a good understanding of the local situation and represent the public interest. In this case, documents were exchanged on no less than nine occasions, from 3 July 1998 to 19 May 1999, including further issues that were added by the complainant on 14 May 1999. It took all this time before the issues could be identified and the investigation date set, after confirmation by the local coordinators.
559. The seven additional pre-hearings criticized by the complainant are due to the complexity of the case, the enormous number of documents, and to delays in submissions of arguments and replies by both the complainant and the employer. The case was handled properly, since the investigation on seven occasions was necessary in preparation for the hearing on the merits. The local coordinators finally clarified the issues in September 2000 and prepared their report, which was notified to the parties on 19 April 2001.
560. As regards YUSANRO's argument that an additional year elapsed between the completion of the investigation and the CLRC hearing, the Government states that the CLRC considers that amicable settlements are important in cases of unfair labour practices. Since a settlement was possible in this case, such as the leasing of office space after the completion of the local coordinators' examination, the CLRC tried hard to reach a settlement with the employer, without success however. On 26 October 2001, the parties were notified that the hearing was set on 28 November; it was however impossible to adjust the schedules of the parties and the first hearing took place on 27 March 2002.
561. In summary, the Government contends that CLRC proceedings depend on the particulars of each case, and it cannot be said that the Japanese system of protection against unfair labour practices does not work properly.

C. The Committee's conclusions

562. *The Committee notes that this case concerns allegations that the system of protection against unfair labour practices in Japan is inadequate due to undue delays. YUSANRO supports its allegations by giving the example of a complaint that it had filed in this respect in 1998 with the body responsible for examining such complaints, the Central Labour Relations Commission (CLRC), and which is still unresolved.*
563. *The Committee cannot but note that the handling of that complaint did take a very long time, since it was filed on 9 June 1998 and the first hearing on the merits was held on 27 March 2002 (a period of three years and nine months). In addition, the Committee takes note of the complainant's allegation that the CLRC procedure represents a heavy burden for workers living in local areas far from the capital. Furthermore, the Committee has not*

been informed as to whether other hearings were held, whether the decision has been issued and what was the ultimate result.

564. *The Committee notes on the other hand the explanations given by the Government that the delays in this particular case were due to the complexity of the case and the numerous hearings that were necessary as a result, the fact that all attempts were made to settle the case amicably, and that it was difficult to adjust the schedules of all parties, who were both responsible for some of the adjournments. The Committee further takes note of the data given by the Government on CLRC's activities.*

565. *However, the Committee recalls that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 741]. The Committee emphasizes in this respect that the longer it takes for such a procedure to be completed, the more difficult it becomes for the competent body to issue a fair and proper relief, since the situation complained of has often been changed irreversibly, people may have been transferred, etc, to a point where it becomes impossible to order an adequate redress or to come back to the status quo ante. The Committee also takes into account that the employer here is the postal service, with its national public component, subject to at least some government control, including for its deeds in the processing of unfair labour practices complaints. The Committee considers that the procedure is far too slow and inadequate. It therefore requests the Government to ensure, in future, that complaints of unfair labour practices and anti-union discrimination are processed speedily and effectively, and to keep it informed on the outcome of Case No. 2-1998, once it is finalized by the CLRC.*

The Committee's recommendation

566. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

Noting that the procedure is far too slow and inadequate the Committee requests the Government to ensure, in future, that complaints of unfair labour practices and anti-union discrimination are processed speedily and effectively, and to keep it informed on the outcome of Case No. 2-1998, once it is finalized by the Central Labour Relations Commission.

CASES NOS. 2177 AND 2183

INTERIM REPORT

**Complaints against the Government of Japan
presented by**

Case No. 2177:

- **the Japanese Trade Union Confederation (JTUC-RENGO)**
- **the RENG0 Public Sector Liaison Council (RENGO-PSLC)**
- **the International Confederation of Free Trade Unions (ICFTU)**
- **Public Services International (PSI)**
- **the International Transport Workers' Federation (ITF)**
- **the International Federation of Building and Wood Workers (IFBWW)**
- **Education International (EI) and**
- **the International Federation of Employees in Public Services (INFEDOP)**

Case No. 2183:

- **the National Confederation of Trade Unions (ZENROREN) and**
- **the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN)**

Allegations: The complainants allege that the upcoming reform of the public service legislation, developed without proper consultation of workers' organizations, further aggravates the existing public service legislation and maintains the restrictions on the basic trade union rights of public employees, without adequate compensation.

- 567.** The complaint in Case No. 2177 is contained in communications dated 26 February and 25 March 2002 from the Japanese Trade Union Confederation (JTUC-RENGO) and the RENG0 Public Sector Liaison Council (RENGO-PSLC). It was supported by: the International Confederation of Free Trade Unions (ICFTU) on 27 February 2002; Public Services International (PSI) on 1 March 2002; the International Transport Workers' Federation (ITF) on 7 March 2002; the International Federation of Building and Wood Workers (IFBWW) on 12 March 2002; Education International (EI) on 18 March 2002; and the International Federation of Employees in Public Services (INFEDOP) on 27 March 2002.
- 568.** The complaint in Case No. 2183 is contained in a communication dated 15 March 2002 from the National Confederation of Trade Unions (ZENROREN) and the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN).
- 569.** The Government submitted its reply concerning both complaints in a communication dated 16 September 2002.
- 570.** Japan 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). It has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

Case No. 2177

571. In their communication of 26 February 2002, the complainants JTUC-RENGO and RENGO-PSLC allege that past ILO reports have clearly established that the existing public service system in Japan infringes Conventions Nos. 87 and 98 and is not consistent with international labour standards. However, the Japanese Government has consistently ignored the ILO recommendations. Quite the contrary, the current reform process of the public service, contained in the General Principles for Civil Service System Reform adopted by Cabinet on 25 December 2001 (hereafter the “General Principles for Reform”) will further aggravate the situation, since the authority of the Government in personnel management matters will be greatly expanded, while the restrictions on basic trade union rights of public employees are to be maintained.

572. Japan’s labour legislation has not basically changed since the end of the Second World War, when the National Public Service Law (NPSL) was enacted, which strictly restricted basic trade union rights of public employees. Other laws enacted later to cover other public employees also severely restricted their basic trade union rights to varying degrees, as follows:

	Category	Right to organize	Right to bargain collectively	Right to strike
National public service employee	Administrative/ clerical workers	Legalized excluding the personnel in the police and Maritime Safety Agency	Not legalized	Not legalized
	Non-clerical workers, including the personnel in the IAs*	Legalized	Legalized	Not legalized
Local public service employee	Administrative/ clerical workers	Legalized excluding the personnel in the police and fire defence	Not legalized, only Gentleman’s agreement without any bargaining power	Not legalized
	Non-clerical workers	Legalized	Legalized	Not legalized

* IAs: the independent administrative institutions.

573. The ILO supervisory bodies have repeatedly criticized that legislation and practice and made recommendations. For instance, the 1965 Fact-Finding and Conciliation Commission on Freedom of Association made critical comments on issues like: the indiscriminate and total ban of the right to strike (“Dreyer” Report, Summary of findings and recommendations, paragraphs 19 and 24); definition of managerial personnel (ibid., paragraph 54); restrictions on bargaining rights of administrative and clerical employees (ibid., paragraph 60); full-time officers with public employee status (ibid., paragraph 63).

574. As the Government kept ignoring these recommendations, several public sector trade unions filed complaints in 1972 and 1973 with the Freedom of Association Committee concerning the denial of the right to organize of personnel in the Fire Department, Penal Institutions and Maritime Safety Agency. While pointing out that the right to organize and the right to strike are different matters, the Committee stated that firemen should have the right to organize [139th Report, Case No. 737, para. 180]. The Committee also

recommended that the legislation be changed to enable local public employees to establish organizations of their own choosing [op. cit., paras. 170-171] and commented on the restrictions on bargaining rights of administrative and clerical employees [op. cit., para. 334]. In 1983, public sector trade unions filed further complaints with the Committee against the Government's failure to implement the recommendation made by the National Personnel Authority concerning a pay increase for public employees; the Committee regretted this action and expressed the firm hope that these employees would enjoy some measure of compensation from the restriction placed on their collective bargaining rights and their right to strike [222nd Report, Case No. 1165, para. 168], a recommendation which it later reiterated [236th Report, Case No. 1263, para. 274].

- 575.** In its 1983 and 1994 General Surveys, the Committee of Experts on the Application of Conventions and Recommendations has developed a series of principles, with which the Japanese public service legislation does not conform, in particular as regards: the scope of managerial exclusions; the restrictions on political activities; the indiscriminate and total prohibition of the right to strike; the penal and administrative sanctions against strikers.
- 576.** A number of conclusions of the Conference Committee on the Application of Standards included similar comments, acknowledged that these restrictions on the trade union rights of public employees in Japan were inconsistent with the ILO standards and recommended that the situation be remedied. As recently as June 2001, the Conference Committee has commented on the right of freedom of association of various public employees, including fire-fighting staff, and expressed the hope that a bona fide dialogue would take place with the relevant trade unions as regards the latter's right to associate (ILC, 2001, 89th Session, *Provisional Record* No. 19, Part Two, p. 2/46). All the above shows that Japan's public service legislation has been subject to strong and repeated criticisms from various ILO supervisory bodies, but that the Government has failed to take any measures to rectify the situation.
- 577.** The complainants submit that the General Principles for Reform infringe ILO Conventions even further. These principles are based on a previous Cabinet decision (1 December 2000) on the "General Principles for Administrative Reform". As regards the most important issue, i.e. the labour relations regime in the public sector, the Government neglected the strong demands of the complainants that international labour standards be complied with. On the contrary, the Government proceeded unilaterally and, on 25 December 2001, the Cabinet adopted the General Principles for Reform, which violate freedom of association principles as regards both procedure and contents.
- 578.** Concerning procedure, the Government had committed itself at the 2001 International Labour Conference to "sincerely negotiate and consult with the organizations concerned" following which the Conference Committee on the Application of Standards asked the Government "to promote social dialogue with the relevant trade union organizations in the public service". However, the Government went ahead unilaterally without negotiating or consulting with the trade unions, which clearly violates the recommendations of the Conference Committee and Convention No. 87.
- 579.** As regards substance, the Government again ignored ILO recommendations and trade unions' demands and decided that "the current restrictions placed on the fundamental labour rights of public workers shall be maintained, while ensuring adequate compensatory measures". However, the General Principles for Reform provide that the personnel management power of the National Personnel Authority (NPA) is to be drastically reduced, while those of the Cabinet and each Minister are to be greatly strengthened. The Government is thus attempting to further reduce the NPA recommendation system, which is already inadequate, as pointed out by the Freedom of Association Committee in its 236th Report.

580. The complainants attach to their complaint the text of the General Principles and a chronological description of the process, which can be summarized as follows:

- May 1997: establishment of the Public Service System Research Council (where trade unions were represented), mandated to advise the Prime Minister on the reform of the public service;
- March 1999: the Council makes its basic recommendations and continues its work;
- unsatisfied with the Council’s recommendations, the Government establishes its own study group, whose work led Cabinet, in December 2000, to adopt the General Principles for Administrative Reform, including a policy to “drastically reform the national public service system”;
- December 2000: establishment of the Administrative Reform Promotion Bureau, headed by the Prime Minister, with its secretariat within Cabinet;
- March 2001: the Government decides to go ahead with its reform framework;
- 26 June 2001: the Government announces its “Basic Outline for Civil Service System Reform”;
- 25 December 2001: Cabinet decision embodying the “General Principles for Public Service System Reform”.

The complainants submit that they intervened many times at each stage during that process, asking that their views be reflected in the final outcome, without any success however, which shows the lack of meaningful consultations and negotiations.

581. In their additional communication of 25 March 2002, the complainants give several examples of freedom of association violations in the public service, under the National Public Service Law (NPSL), the Local Public Service Law (LPSL) and the National Enterprises and Specified Independent Administrative Institutions Labour Relations Law (NELRL).

582. As regards the right to organize:

- the staff of penal institutions, of the Maritime Safety Agency and firefighters, are still denied the right to organize, 36 years after Japan’s ratification of Convention No. 87, in spite of repeated criticisms by the ILO supervisory bodies. At present, 186 organizations regrouping 11,500 firefighters are united under the National Firefighters Association (NFA) created in August 1977; in spite of all its efforts, the NFA has been prevented from establishing an independent organization due to legislative obstacles and interference from the authorities. The system of Fire-Defence Personnel Committees has been established six years ago; where such committees exist, they have contributed to improving the working environment, but they are still insufficient due to the lack of cooperation of authorities and there are still many problems to solve; and there are a considerable number of workplaces where such committees have not been set up and problems are even worse;
- the registration system is a major obstacle to form organizations, tantamount to the denial of the right to organize without prior authorization; for instance, some 18,000 administrative and clerical staff who have been transferred to “independent administrative institutions” (IAIs) became covered by the NELRL and had to resign from the organizations they belonged to; as regards local public employees’ unions,

the requirement that an independent union should be established for each local government, or public corporation, has the effect of fragmenting unions;

- the scope of managerial personnel is too wide and often decided unilaterally, which decreases the potential membership of organizations; the complainants give the example of the locality of Oouda-cho (Nara Prefecture) where such an unduly enlarged interpretation virtually crippled the union management, which was almost driven to dissolution;
- the existing legislation prevents the free election of full-time officers, since it is left at the employer's discretion;
- political activities are totally banned, and punished with criminal penalties;
- public employees do not enjoy the same legal protection as private sector workers against unfair labour practices, as they are excluded from the Labour Relations Commission system.

583. With respect to the right to bargain collectively:

- unions representing administrative and clerical employees (at the local level) may negotiate basic working conditions, embodied in a written agreement; however, such agreements do not bind the parties as they are not recognized by law, nor work in practice under the statutory system of wage control;
- the scope of negotiation matters is unduly restrictive, as an extensive interpretation is given to the “matters concerning administration and operation”, which in practice often excludes subjects closely related to working conditions.

584. Concerning the right to strike:

- the Government has enlarged the scope of essential services and considers that all public employees in the national and local public services, and in public enterprises as “public servants engaged in the administration of the State”, thus totally and indiscriminately prohibiting their right to strike;
- workers who do not respect the prohibition to strike face heavy criminal and administrative sanction.

585. As regards compensations for the restrictions on fundamental labour rights of public employees:

- the National Personnel Authority (NPA) system has failed to fulfil the compensatory function it was supposed to accomplish; since 1997, a situation has developed where agreements reached by labour and management are not implemented, partially or totally, due to the decisions of local assemblies to override these agreements. For instance: in 1997, the recommendation was not implemented during a full year for employees in designated posts; in 1999, a pay raise recommended for administrative personnel in higher grades was not implemented; in 2000, the recommended revision of pay scale was not implemented and the gap between the private and public sectors was partly filled by increasing family allowances;
- in municipalities, labour and management negotiate under the LPSL and agreements are submitted to local assemblies for decision; since 1997, several agreements have been partly revised or totally rejected, in 1997 (Urasoi City, Okinawa Prefecture),

1998 (Yamato-cho, Miyagi Prefecture; Okahara-mura, Kumamoto Prefecture) and 1999 (Araka ward, Tokyo Prefecture; Takada machi, Fukuoka Prefecture);

- while some working conditions may be negotiated in national enterprises, wages are subject to the decision of government and financial authorities. Since the law came into force, there has not been a single case where wage negotiations were settled voluntarily and it has always been necessary to resort to the Central Labour Relations Commission; but, although awards bind the parties, they must be approved by the Cabinet and sometimes by the Diet, as in a recent case concerning the postal service and forestry workers.

586. To summarize, the complainants have strongly protested against the General Principles for Reform and have requested that the Cabinet's decision be withdrawn, without any success. The Government is proceeding with its intentions to revise the national and local public service laws, based on the General Principles for Reform, which constitute serious violations of freedom of association, in particular Conventions Nos. 87 and 98. The amendment bills are to be drafted in December 2002 and presented to Parliament in 2003, where they will be passed by the ruling coalition. If the amendments are adopted as proposed, this infringement of ILO principles would lead to a serious situation not only for public servants in Japan, but also in other Asia and East Asia countries, and for the ILO in terms of maintaining respect for international labour standards worldwide.

Case No. 2183

587. In its communication of 15 February 2002, the National Confederation of Trade Unions (ZENROREN) explains that it is one of the Japanese trade union national centres, with 22 industrial federations, 47 local organizations and a total membership of 1,470,000 members. Its affiliates JICHI-ROREN, ZENKYO and KOKKO-ROREN together represent 530,000 public service workers, at various levels.

588. ZENROREN's allegations concern essentially the same issues as in Case No. 2177, revolving around the Cabinet decision on the General Principles for Reform. The complainant states that it is only a few days before that decision was made that the trade unions concerned were informed that the current restrictions on fundamental labour rights of public employees would be maintained, including the total prohibition of the right to strike and restrictions on collective bargaining. This shows that the Government has not made all necessary efforts to "negotiate and consult with the organizations in good faith" contrary to its public commitment in this respect at the 2001 International Labour Conference, and to the recommendations adopted in this respect that same year by the Conference Committee which "expressed the hope that the Government would hold a bona fide dialogue with the concerned trade unions" and "urged the Government to undertake efforts to encourage a social dialogue with the concerned trade union organizations of the public sector".

589. In addition, the contents of the intended reform as outlined in the Cabinet document mainly concern general administrative categories of public employees; reforms concerning other categories of state employees, as well as municipal employees and teachers have not been examined at all. In spite of this, the Government has declared that the current restrictions will be maintained across the board for all public employees. Moreover, the Government has made clear that it will introduce a bill for local service reform along with amendments to the NPSL in 2003.

590. When adopting the "Basic design" in June 2001, the Government had stated that it would consider the existing labour rights restrictions during the re-examination process. KOKKO-ROREN and other public employees' unions accepted this proposal and

requested that negotiations and consultations be held separately on conditions of work, including the wage determination system, with the complete restoration of labour rights as their basic demand. Many sessions of negotiations and consultations were held but no progress could be achieved as the Government maintained that “the question of basic labour rights is to be solved politically”. This shows that the Government has decided the status quo on existing restrictions regardless of the different existing systems.

591. The Reform Plan makes no mention of the following points which are still at issue, in spite of repeated criticisms from ILO supervisory bodies:

- restriction on the right to freedom of association of fire-fighting personnel;
- exclusion from the subjects of negotiation of certain items on the grounds that they are “administrative or management matters” or “out of jurisdiction”, resulting in the restriction on the right to collective bargaining imposed at the discretion of the public authorities;
- the frequent violations of basic labour rights by the Government and local municipalities: the Government and municipal authorities often disregard the salary recommendations issued by the NPA and the Local Personnel Committees on the grounds of “financial reasons”, or decide unilaterally to decrease the levels of pay for public employees;
- the refusal to include workers’ representatives in the composition of the NPA and the Local Personnel Committees;
- continued restrictions by the Government on the rights of state employees by extending the definition of “public employees who are involved in the state administration”.

592. After Japan had ratified Convention No. 87 in 1965, the Government declared that it would continue to examine the so-called “three remaining tasks” of the “Civil Service System Reform Council” (right to organize of firefighters; methods of arbitration in case of breakdown of negotiations; penal sanctions). A Liaison Council on Civil Servants Problems was set up in 1973 to examine these issues, but was dissolved in 1997 without making any positive conclusions. The Japanese Government has repeatedly stated that the reform of civil service, this time, is a drastic one.

593. The General Principles provide expressly that “the Cabinet and chief ministers will manage the personnel and organizational affairs with mobility and flexibility”. For this, “the institutional role of each chief minister will be clearly defined as ‘competent personnel manager’ who designs and manages the personnel and the organization on his/her own judgement and in his/her own responsibility”. In addition, the Cabinet will “actively exercise its function of designing and elaborating plans regarding the personnel administration”. In this connection, the General Principles propose to revise the functions of the NPA, which is an attempt to reduce its present function into a mere “ex post fact control”. When it has to explain the rationality of the restrictions on fundamental labour rights, the Government has always invoked the existence of the National Personnel Authority as a compensatory measure. However, the substance of the current civil service system reform as it is presented in the General Principles means diminution of functions and jurisdiction of the NPA on the one hand, and the extension of the jurisdiction of the Government and ministries regarding personnel management on the other. There is also a risk that the compensatory function of the NPA, whose insufficiency has been criticized for many years by public employees’ unions, will be further reduced.

- 594.** The reform as it is presented in the General Principles could also lead to the extension of the sphere of competence of the Government and ministries in deciding the working conditions of the personnel, including the introduction of an individualized pay system based on the abilities and results achieved by each individual worker. ZENROREN and other public service unions therefore have demanded the Government to examine the restoration of the basic labour rights. In addition, they have asked for an examination of a new civil service system, taking into account the governmental statement at the Diet sessions that the restrictions on the basic labour rights and the compensatory function of the NPA go together and cannot be separated. However, as indicated above, the Government has unilaterally declared the status quo on workers' right restrictions and has not responded to the demands on workers' organizations. While trying to reduce the compensatory function of the NPA, the Government refuses to take up the question of restricted fundamental labour rights. Given the contents of the General Principles for Reform, the public employees' unions fear that the civil service system reform will lead to further violation of basic labour rights.
- 595.** The Government has stated that the reform of different systems concerning conditions of work of public employees will be implemented by the Administrative Reform Promotion Bureau of the Cabinet according to the basic plan presented in the General Principles for Reform. However, half of the members of this Bureau have been transferred from the NPA: this is the result of the Government's demand for "cooperation of the NPA" formulated in the "Basic Outline". It is also stressed that "further cooperation of the NPA" is called for in implementing the civil service system reform; this suggests that the compensatory function of the NPA will be made impotent and will exist actually in name only. The civil service system reform, if implemented under the principle of determining working conditions by law which the Government maintains, could mean nothing but changes in working conditions such as change in criteria for pay determination. To promote this kind of reform while maintaining the restrictions on the basic rights that should be guaranteed to workers to protect their interests and reduce the role of the NPA that should compensate such restrictions, constitute a violation of the ILO Conventions Nos. 87 and 98 and reflects the disrespect of the basic labour rights by the Government.
- 596.** In its communication complementing ZENROREN's allegations, the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN) essentially takes up similar arguments, as applied to the situation of local employees, and confirms the lack of meaningful negotiations and consultations.
- 597.** According to JICHIROREN, the General Principles for Reform clearly express the Government's intention to restructure the system governing local government employees along with the system governing national government employees; its basic position is to maintain the restrictions on fundamental labour rights including the total ban of strike and the restriction of the right of concluding collective agreements (which would be accorded only to those who work for local public enterprises and similar activities). JICHIROREN has serious apprehensions and reservations at the industry-wide organization of municipal workers. The General Principles greatly reduce fundamental labour rights, by reducing the authority of the NPA (which the Government says is a third-party organization functioning as a compensatory body), and enlarging its authority for the restrictions of the employer of public service workers in the decision-making system of wages and working conditions.
- 598.** For instance, the Government has alleged that the total ban on strike and restrictions on the right of collective bargaining of local public employees does not violate Convention No. 87, because the "Local Personnel Committees" have a compensatory function. But, in fact, in the past and at present, there are no such Local Personnel Committees set up in the overwhelming majority of municipalities such as cities, towns and villages except

prefectures and ordinance-designated cities. This proves that the assertion of the Government is groundless.

- 599.** The General Principles for Reform are based on the idea of restructuring national government employees. The document provides as regards local public employees that “based on the spirit of the local autonomy, ... necessary changes are to be brought in accordance with the reform of the national government employees’ system”, but no consideration has been made for special problems of local government employees; neither consultations nor negotiations with the trade unions concerned on the modifications of public employees’ system were carried out; neither hearings, nor consultations with the heads of the local governments and other related persons were held at all. Notwithstanding, the document maintains that the restrictions on the fundamental labour rights of the local public employees should be maintained.

B. The Government’s reply

General

- 600.** In its communication of 16 September 2002, the Government gives general explanations on fundamental labour rights of public employees, which do indeed suffer some restrictions, due to the distinctive status and the public nature of the functions performed, in order to guarantee all the people’s common interests. The public service legislation in Japan is based on this idea. Salaries, working hours and other working conditions for national public employees in the non-operational sector are under the deliberation right of the budget and legislative power of the Diet, because of the distinctive status of public employees who are ultimately employed by the people and whose salaries are paid by tax revenues. However, public employees have, as workers, specific rights that must be guaranteed, and benefit from compensatory measures, including the NPA recommendation system, etc. Concretely, compensatory measures for the restrictions on fundamental labour rights are: a guarantee of status; working conditions determined by law; the recommendation system; a procedure for requesting administrative measures on working conditions and filing objection to disadvantageous treatment, etc. Thus compensatory measures for the restriction of fundamental labour rights are systematically guaranteed. For the same reasons, salaries and other working conditions for local public employees in the non-operational sector are under the deliberation right of the budget and authority to enact ordinances of the local assemblies. The Personnel Commissions fulfil the same functions as the NPA and the governor, the local assemblies and other administrative organs have the obligation to carry out appropriate measures, as required, so that working conditions are in line with general circumstances in society. According to the Government, the Supreme Court ruled as regards national public employees (25 April 1973, Agriculture and Forestry case) that compensatory measures counterbalancing the restrictions on their fundamental labour rights are systematically guaranteed. For employees of national enterprises, etc., the right of association and the right of collective bargaining (including the right to conclude agreements) are granted; however, the right to strike is not.

- 601.** Within that general background, the Government has initiated in recent years various reforms, including the Central Government Reform, with a view to setting up an administrative system to meet demands of the new era. At the same time, there was a call in the general public for reform of public corporations, the civil service system and other administrative organizations and systems. In response, the Cabinet adopted the General Principles for Administrative Reform, where particular importance was attached to reform of public corporations, public interest corporations and the civil service. The Administrative Reform Promotion Bureau was set up in the Cabinet secretariat to play an active part in this process, which included a review of the public service personnel system.

The Promotion Bureau eventually produced a “Basic Outline for Reform” and the “Plan for Civil Service Reform” was adopted by the Cabinet on 25 December 2001. The Promotion Bureau continues its work on details of the Plan; the amendments to the NPSL will be submitted to the Diet by the end of 2003 and the new system could be introduced in fiscal year 2005. RENGO’s assertion that the Cabinet secretariat has no authority to plan, design or review the public service system is incorrect, since that power derives from article 12.2 2) of the Cabinet Act.

- 602.** As regards the alleged lack of consultations on the Framework for Civil Service Reform, the Government points out that this document, by nature, was not meant to be discussed with employees’ organizations and was only a general preliminary plan for coordination between Cabinet and the Government. On the other hand, the Basic Outline adopted later in the process by the Promotion Bureau did present the outline of the new civil service system and the issues that needed to be examined; it was adopted after 27 sessions of negotiations, totalling 14 hours. Therefore, this was not the result of a one-sided decision.
- 603.** The General Principles for Reform indicate the direction of the legislation. Before adoption, there were 77 sessions of negotiation and consultation totalling 66 hours. The restrictions on fundamental labour rights are an extremely important matter; the authorities needed time to examine this issue; this is why the policy in this respect was only presented to employees’ organizations on 18 December 2001. It should be noted that, prior to developing and deciding that policy, the Government explained its views and held discussions with employees’ organizations, where it indicated that the restrictions on fundamental labour rights would have to be maintained. The Government thus considers that the discussions, consultations and negotiations were conducted in good faith and that RENGO’s allegations in this respect are not founded.
- 604.** Regarding the alleged substantive problems with the contents of the reform, the Government points out that: “Fully taking into account concerns about maintaining a stable and continuous public service, the impact on the life of Japanese people and other relevant considerations, the current restrictions placed on the fundamental labour rights of public workers shall be maintained, while ensuring adequate compensatory measures.” The document also provides that “the NPA will continue to be properly involved in matters relating to the setting of work conditions, e.g. salary”. This reflects the Government’s intention to maintain an adequate system to compensate for the restrictions. It is fully aware of the importance of this issue and has thoroughly considered it during the process. However, it did not result in a change to the present restrictions. For the Government, the NPA compensatory measures have been functioning appropriately, taking ILO principles into account; for instance, working conditions of public employees have been maintained at the same level as in the private sector.
- 605.** The Plan aims to identify clearly the responsibilities and authority of each minister so that they could adequately fulfil their duties, but the NPA compensatory measures will be maintained; the planned reform will never lower these. While the Government recognizes the ILO’s views on fundamental labour rights, it considers that these issues should be addressed taking into consideration the specifics of each country, such as its historical and social background. In view of current public opinion towards public employees in Japanese society and other individual circumstances the Government needs to be careful in addressing the issues.
- 606.** As part of the process of administrative reform, public undertakings are being transferred to the private sector via the establishment of Independent Administrative Institutions (IAIs), in order to separate policy planning from policy execution. Since April 2001, the operation of some national undertakings (e.g. national museums, art museums, research institutions) has been transferred to 57 IAIs, where the right to conclude agreements is

similar to the situation prevailing in national enterprises. As of 1 January 2002, 16,564 persons worked for IAIs, and more will be gradually transferred (statistics centres, national hospitals and sanatoriums, etc); as the transfer of policy execution to IAIs increases, so will the number of public employees having the right to conclude agreements.

- 607.** Regarding RENGO's allegation on the transfer of NPA staff, the Government states that about half of the staff of the Administrative Reform Promotion Bureau comes from the NPA. They are assigned to perform tasks as staff of the Promotion Bureau, so this does not affect the independence of the NPA.
- 608.** The General Principles provide that the Local Public Service System will be reviewed in accordance with the reform of the National Public Service System, respecting the principle of local autonomy, while fully taking into account actual circumstances faced by local governments. Given that fundamental labour rights are the same for all public employees, whether they work at national or local level, the Government has decided that the current restrictions would also be maintained for local employees.
- 609.** Further details of the Plan are currently being examined and the amendments are discussed within the Government. Amendments to the national and local public service laws will be submitted to the Diet by the end of 2003.

Specific allegations

- 610.** Turning to the specific allegations submitted in the context of both complaints, the Government denies them all, or considers that they do not raise any problem in terms of ILO Conventions or of principles of freedom of association.
- 611.** As regards the *scope of exclusion of managerial personnel*, the Government states that the NPSL prohibits managers and similar categories of employees to join the same organizations as rank-and-file employees, due to potentially conflicting interests. The decision is made by a neutral third-party body (the National Personnel Authority, the Personnel Commission or the Equity Committee) on the basis of the job duties, which the Committee of Experts has recognized as acceptable. Under an administrative circular of 21 June 1966, deputy directors are considered as managerial employees. The particular case at the Prefecture of Oouda-cho, raised by RENGO, is currently before the courts. The Government therefore considers that there is no problem in this respect.
- 612.** With respect to *full-time union officers*, the Government explains that employees' organizations can freely appoint employees or non-employees as their officers; public employees are allowed to engage exclusively in the affairs of their organization with the approval of the responsible authority. In practice, leaves of absence are granted to serve as full-time union officers, unless it hinders the operation of service. The duration of service as full-time officer has been fixed at seven years by the National Personnel Authority, which the Committee of Experts has recognized as acceptable (observation 1994, Convention No. 98). The Government therefore considers that there is no problem in this respect.
- 613.** On the denial of the *right to organize to firefighters*, the Government provides an extensive statement, from the 1965 discussions and exchanges on this issue, to the 1995 decision to establish Fire-Defence Personnel Committees, and the present situation. The system of Fire Defence Personnel Committees guarantees the participation of employees in the determination of working conditions. It has been established in all fire defence headquarters by 1 April 1997 and operates properly. For instance:

- in 2001, meetings were held in 664 fire stations (71.4 per cent) and 4,912 opinions have been examined; in most of the other locations the need was not felt to hold a meeting;
- since the system was implemented, almost 5,000 working conditions items have been examined each year;
- about 40 per cent of the items examined have been found appropriate for implementation (41.8 per cent in 2001);
- in Kuwana City, the committee, made up of 14 members, met three times in 2000; 27 opinions were presented, 12 of which were found “appropriate for implementation”;
- in Shiraoi Town, the committee, made up of six members, met twice in 2000; 12 opinions were presented, all of which were found “appropriate for implementation”;
- the Government continued to distribute information brochures on the system to all firefighters (160,000 copies) and provides advice at training courses, in order to promote the smooth application of the system at each fire station.

In summary, the Government considers that the Fire-Defence Personnel Committees are functioning smoothly in line with the spirit of the system, and that RENGO’s allegations in this respect are without merit.

- 614.** Regarding the denial of the *right to organize to the Japan Coast Guard and employees of penal institutions*, the Government states that coastguards actually perform police functions at sea and that they can be assimilated to police personnel under Convention No. 87, which the Committee of Experts has accepted [1973 observation, Convention No. 87]. Relying on Cases Nos. 60 and 179 [12th and 54th Reports of the Committee on Freedom of Association], the Government considers that, given the special nature of their functions, the same reasoning should be applied to employees of penal institutions.
- 615.** Concerning *the registration system of employees’ organizations*, the Government states that the system in place is used to verify that employees’ organizations are authentic, independent and democratic, and not to discriminate against them in their negotiating capacity. Local employees are allowed to organize beyond the local level and organizations may join federations and confederations. The registration system does not have the effect of subdividing trade unions. The Government therefore considers that there is no problem in this respect.
- 616.** As regards *political activities*, the Government states that the activities of employees’ organizations should mainly aim at maintaining or improving working conditions. Public employees at national and local level are prohibited from conducting certain political activities, under articles 102 of the NPSL and 36 of the LPSL respectively, to avoid undue politicization and maintain the neutrality of the public service. The Supreme Court of Japan has confirmed the constitutionality of these prohibitions. The Government therefore considers that there is no problem in this respect.
- 617.** As regards *limits on negotiation rights of public employees in the non-operational sector*, the Government declares that national and local public employees in the non-operational sector are allowed to negotiate but that they do not have the right to conclude collective agreements. Matters “of operation or management” are not negotiable (article 108.5.3 of the NPSL; article 55.3 of the LPSL) but “working conditions which may be affected by the handling of matters of operation or management” are subject to negotiation.

618. As regards *the alleged Government's intervention in negotiations of public employees in the operational sector*, the Government states that under article 8 of the National Enterprises and Specified Independent Administrative Institutions Labour Relations Law (NELRL), matters "of operation or management" are not negotiable but if a specific matter of operation or management affects working conditions, it may be subject to negotiation.
619. As regards *public servants engaged in the administration of the State*, the Government considers that this should depend on whether the employees concerned benefit from statutory terms and conditions of service. According to the Government, this derives from the discussions at the ILC when Convention No. 98 was adopted, and from previous decisions of the Freedom of Association Committee [12th Report, para. 43; 54th Report, para. 179; 139th Report, para. 174]. The Government adds that public employees in the operational sector have the right to bargain collectively, including the right to conclude collective agreements. Therefore, no problem exists in this respect in the application of Convention No. 98.
620. As regards *the indiscriminate and total prohibition of the right to strike*, the Government states that some restrictions are justified due to the distinctive status and public nature of the duties performed, an approach confirmed by the Supreme Court of Japan. However, public employees benefit from compensatory measures, including the NPA Recommendation System. While recognizing the ILO views in this respect, the Government considers that it should take into account the specifics of each country, such as its history and the tradition of labour relations in the public service. In addition, the duties of public employees covered by the NELRL involve services and operations that have a public component, since the failure to perform them could have seriously adverse effects on national life and social and economic stability. Public employees working in national enterprises and specified independent administrative institutions, like public employees in the non-operational sector, do not have the right to strike, but they have the right to negotiate and to conclude collective agreements. The compensatory measures for the prohibition of strikes have been considered acceptable by the ILO [Dreyer Report, paras. 2144, 2145].
621. As regards *penal and administrative sanctions for violations of the strike prohibition*, the Government states that since national and local public employees are legally prohibited from striking, disciplinary sanctions may properly be taken against those who participate in strikes in violation of this prohibition. Each authority concerned decides whether a sanction is warranted, and which one is appropriate, in view of particular circumstances. As regards public employees in the non-operational sector and employees of national enterprises and specified independent administrative institutions, penal sanctions, including imprisonment, are imposed only to those who conspire, instigate or incite other employees to strike, and not to those who simply participate. The Government's practice in this respect conforms with principles of the Freedom of Association Committee [187th Report, paras. 135, 138].
622. As regards *the recommendations of salary cuts, and the partial or non-implementation of recommendations of the NPA and the Personnel Commissions*, the Government states the following:
- the function of the NPA recommendations is to secure an appropriate salary level for public employees by adjusting it to general conditions of society, as a compensatory measure for restrictions of their fundamental rights. In April of each year, the NPA compares salaries paid in the private and public sectors and makes adjustment recommendations on that basis, both to secure the understanding of the general public and to maintain stable labour-management relations. The NPSL provides that revisions of 5 per cent or more (upward or downward) must be submitted to the Diet

and Cabinet. The Government firmly maintains its policy of respecting the NPA recommendations. The partial or non-implementation of recommendations from 1982 to 1985 were exceptional measures due to social, economic and fiscal conditions, and public opinion; since 1986 the recommendations have been fully implemented. The fact that the 1999 and 2000 recommendations did not allow filling completely the gap between the public and private sectors is not an indication that the NPA system has lost its compensatory function for public employees. Rather, it is due to specific circumstances: in 1999, the salaries of high-ranking officials were not raised as had been the case in 40 per cent of private companies; in 2000, the salary gap between the public and private sectors was unusually small that it was technically difficult to make adjustments and it was decided instead to increase family allowances, to advantage employees with dependants most affected by successive cuts in bonus payments;

- concerning local public employees, article 14 of the LPSL provides that local public bodies shall take measures to adapt working conditions, including salaries, to the general conditions of society, by considering such factors as the cost of living, salaries of State and other local public and private employees (as in the case of national public employees, local public employees may face pay cuts, to adapt salaries to those of private sector workers). A system of Personnel Commissions has been set up for that purpose. Where Personnel Commissions exist, local public bodies have made every effort to implement their recommendations; where there is no Personnel Commission, local public bodies have also made every effort to revise salary scales on the basis of NPA recommendations. In some cases, however, it was not possible to give effect to the pay raises, due to the local financial situation. Even in such cases, pay raises are postponed for a certain period rather than suppressing them altogether; this kind of measure has been taken only in a small number of cases. The Supreme Court of Japan has ruled that this does not mean that Personnel Commissions do not only fulfil their compensatory function. The Government therefore considers that the system for determining salaries has been functioning satisfactorily for many years;
- as regards the specific examples given by RENGO concerning the alleged failure of the compensatory system, the Government states that these were cases where the local public bodies considered that pay increments were not immediately possible in view of economic, fiscal and financial circumstances; their implementation was postponed for a certain period. As of April 1999, there were 3,299 local public bodies; the examples given by RENGO represent only a small fraction of those; most local public bodies have in fact implemented the recommendations of the NPA or the Personnel Commissions.

623. As regards *the non-application of legal provisions on unfair labour practices to public employees in the non-operational sector*, the Government states that public employees in the non-operational sector have the right to organize and to participate in their activities to improve working conditions (article 108-2 of the NPSL; article 52 of the LPSL); these laws also protect them against unequal treatment or discrimination for these reasons (article 108-7 of the NPSL; article 56 of the LPSL). No unfair labour practices, such as refusal to negotiate, take place in practice.

624. As regards *the neutrality and impartiality of NPA commissioners and members of the Personnel Commissions and Equity Committees*, the Government states the following:

- the NPA is a neutral and impartial administrative commission, composed of three commissioners, but not a tripartite body; commissioners enjoy a guarantee of status comparable to that of judge (they may not be dismissed except in limited cases specified by the NPSL, under an open impeachment procedure initiated by the Diet);

commissioners must be at least 35 years old, have the highest moral character and integrity, respect democracy, have a sound judgement and an extensive knowledge of personnel administration; during the five previous years, they must not have occupied an influential political position, or have been candidate for elective public office; and no two commissioners can be members of the same political party, or graduates from the same university;

- because they must have an expert and neutral point of view, members of Personnel Commissions and Equity Committees also have to fulfil strict legal requirements: they must have a high moral character, a solid understanding of local autonomy, democracy and personnel administration; two of the three members must not belong to the same political party; and they are subject to limitations of political activity; Personnel Commissions and Equity Committees are not tripartite bodies but are appointed by elected governors, upon consent of assemblies representative of residents. Therefore, they do not represent the interests of employees or of local public bodies, but are rather selected in view of their neutrality and impartiality to both workers and employers.

625. As regards *compensatory measures for restrictions on fundamental labour rights in local public bodies other than Prefectures and designated cities*, the Government reiterates in essence the information and arguments mentioned above regarding the non-implementation of recommendations of the NPA and Personnel Commissions, adding that local public bodies that do not have Personnel Commissions must set up Equity Committees, which have similar functions. The Supreme Court has ruled that these bodies have the necessary structures to secure the interests of public employees' working conditions, from a neutral point of view (case of Iwate Prefecture Teachers' Union, May 1976).

626. As regards *the system of arbitration and rulings for national enterprises and specified independent administrative institutions*, the Government states that collective bargaining takes place on working conditions and collective agreements may be concluded. In national enterprises, where wages and benefits are connected to state budget expenditures, some limitations are imposed on the effect of collective agreements: the approval of the Diet is therefore required. By contrast, no limitations are imposed on agreements or arbitration rulings for specified independent administrative institutions because their budget is not subject to the Government's prior screening.

627. Finally, as regards *the inter-ministerial conference on public employees' problems*, which ZENROREN says has been abolished in 1997, the Government states that it has in fact not been abolished and is still in operation; it met last on 30 July 2002.

C. The Committee's conclusions

General

628. *The Committee notes that the allegations in this case concern the current and upcoming reform of the public service in Japan, as well as the procedure and methods used to plan and develop it. To support their allegations the complainants RENGO and ZENROREN give concrete examples of past situations which, in their view, demonstrate that the existing system is not functioning properly and that, as the Government intends to maintain some major features of this system, the same problems will not only continue but will be aggravated due to new difficulties arising from that reform. The Committee further notes that it has already examined some of these issues, the legislative aspects of which have been referred to the Committee of Experts on the Application of Conventions and*

Recommendations. Other aspects have been dealt with in earlier ILO reports and documents (including the Fact-finding and Conciliation Commission, the so-called “Dreyer Report”) or have been the subject of deliberations and recommendations in other ILO forums, including the Committee on Application of Standards of the International Labour Conference. Taking into account the bulk of documents and arguments submitted by both sides, the Committee finds it necessary at the outset to refocus the issues at hand and their respective importance in terms of freedom of association principles, in order to have a meaningful discussion.

- 629.** *Firstly, the Committee emphasizes that, even though the complaints give examples of past or alleged violations of freedom of association, the first and foremost issue in the present complaints is the reform plan as embodied in the General Principles (See Annex 1, which reproduces the table of contents of the reform, and the Preamble and “Basic concept” which expose its underlying philosophy and rationale). Rather than going back at length on all individual issues, many of which it has already examined in the context of previous complaints, the Committee will therefore focus its attention to the major aspects of this reform and recall principles that apply, as well as relevant ILO Recommendations made earlier in this respect. The Committee sincerely hopes that this approach will provide a renewed opportunity for social dialogue.*
- 630.** *Secondly, as the Government has mentioned several times that account should be taken of national circumstances, such as the history of labour relations in the public service, the social and economic context, etc., the Committee points out that while it always considers such factors when examining a complaint, freedom of association principles apply uniformly and consistently among countries. When a State decides to become a member of the ILO, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 10] and all Governments are obliged to respect fully the commitments undertaken by ratification of ILO Conventions [**Digest**, *ibid.*, para. 11].*
- 631.** *Thirdly, the Committee notes that the Government has relied repeatedly on decisions of the Supreme Court of Japan to justify its position that some legal provisions are justified (e.g. prohibitions to organize, to strike) or that national or local institutions are appropriate (e.g. NPA, personnel commissions, equity committees). The Committee recalls that where national laws, including those interpreted by the high courts, violate the principles of freedom of association, it has always considered within its mandate to examine the laws in question and provide guidelines to bring them into compliance with the principles of freedom of association, as set out in the ILO Constitution and the applicable Conventions [**Digest**, *ibid.*, para. 8].*

The contents of the reform

- 632.** *Concerning substantive issues, while it is too early to ascertain the actual contents of the amending provisions of the NPSL and the LPSL, and even less how the new system will be applied in practice, the Committee may express its views on the current provisions and situation, inasmuch as the Government intends to carry them into the future legislation. The Committee notes that the reform plan is an ambitious one, as shown by the table of contents, but that the Government has explicitly stated its firm intention to maintain some of the major features of the existing system, including the prohibition to organize for some categories of workers, the absence of collective bargaining rights for the majority of public employees, the existing institutions and methods of compensation for workers whose fundamental labour rights are restricted and a total prohibition of the right to strike.*

Right to organize

633. As regards the right to organize, the Committee recalls that all public service employees should, like private sector workers, be able to establish organizations of their own choosing to further and defend the interests of their members [*Digest*, op. cit., para. 206] with the sole possible exception of armed forces and police, as indicated in Article 9 of Convention No. 87, an exclusion which should be defined in a restrictive manner. Fire service personnel and prison staff should therefore enjoy the right to organize [see to the same effect, **Freedom of association and collective bargaining**, General Survey, 1994, ILC, 81st Session, 1994, para. 56]. While noting the Government's observations on Fire-defence personnel committees, the Committee recalls that this issue has been outstanding since 1965, has been the subject of several unambiguous recommendations of this Committee and the Committee of Experts, and of numerous discussions in other ILO forums, including the debate in the Conference Committee on Application of Standards at the 2001 International Labour Conference. Despite the Government's view that the fire-defence personnel committees are functioning smoothly, the evidence submitted here shows that they are not in place everywhere and, where they exist, there are still problems. The bottom line is that fire-fighters in Japan are not allowed to organize freely, and that representative organizations keep requesting the granting of that right. Recalling, once again, that the right to organize and the right to strike are two distinct matters, the Committee urges the Government to amend its legislation in this respect so that fire-defence personnel and prison staff may establish organizations of their own choosing.

Registration of workers' organizations without prior authorization

634. RENGO cites the example of 18,000 administrative and clerical staff who were transferred to IAIs and thus became covered by the NELRL and had to resign from the unions to which they belonged; it also mentions the situation of local public employees' unions, where one independent union must be established for each local government, which has the effect of fragmenting union. RENGO argues that the registration system is therefore a major obstacle to form organizations, tantamount to a denial of the right to organize without prior authorization. The Government replies that the system in place is used to verify that employees' organizations are authentic, independent and democratic, and that local organizations may join federations and confederations.

635. As regards organizations of local employees, the Committee recalls that it has already examined this issue in 1974, in the context of a series of complaints against Japan [Cases Nos. 737-744, 139th Report, paras. 95-220] and concluded that the "effect of the registration system is to perpetuate the horizontal and vertical subdivision of local public employees' organizations into small units, as already pointed out by the Fact-Finding and Conciliation Commission". Considering that an excessive fragmentation of trade unions is likely to weaken them and their action in defence of workers' interests, the Committee can only reiterate this view and recommends that the appropriate amendments be adopted, as part of the legislative reform, to allow public employees at local level to establish organizations of their own choosing without being subject to measures tantamount to prior authorization.

636. As regards the 18,000 employees transferred to IAIs, the evidence submitted does not indicate whether, upon transfer, they were prevented from joining organizations of their own choosing without prior authorization. The Committee therefore requests the Government and RENGO to provide further information in this respect.

Scope of exclusion of management personnel

637. *As regards the exclusion of management personnel from bargaining units, RENGO alleges that the scope of managerial exclusions is too wide and often decided unilaterally; it gives one example (Oouda-cho, Nara Prefecture) where this had the result of virtually destroying the union. The Government replies that such decisions are made by neutral third-party bodies on the basis of job duties and that the case concerning the situation at Oouda-cho is before the courts.*
638. *The Committee recalls that it is not necessarily incompatible with the requirement of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same unions as other workers, on condition that two requirements are met: first, that such workers have the right to form their own associations to defend their interests; and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers, by depriving them of a substantial proportion of their present or potential membership [Digest, op. cit., para. 231]. In addition, legal provisions which permit employers to undermine workers' organizations through artificial promotions of workers constitute a violation of freedom of association principles [Digest, op. cit., para. 233]. On the basis of evidence submitted regarding the Oouda-cho case, the Committee is not in a position to appreciate whether this case is an isolated one or reflects a generalized problem. The Committee notes however that this situation started on 4 July 1997 when the local authorities promoted the President, Vice-President and General Secretary of the union to positions of assistant chiefs, and that the Equity Commission suspended the union's registration in May 1998, and cancelled it on 1 February 1999. The union brought a lawsuit which is still pending before the courts. The Committee therefore brings the Government's attention to the above principles regarding managerial exclusions and emphasizes that these decisions should be made by bodies which are not only neutral but considered as such by all concerned. Noting with concern that in Oouda-cho, the trade union's registration was cancelled and that more than five years have elapsed since the beginning of that dispute, the Committee strongly hopes that this proceeding will be completed soon and requests the Government to keep it informed of the decision once it is issued.*

Full-time union officers

639. *The complainant RENGO alleges in this respect that the decision to grant workers the status of full-time union officer while keeping their public employee status is left at the discretion of the employer. The Government replies that in practice, leaves of absence are granted to workers to serve as full-time union officers, unless it hinders the operation of service, and that the NPA has fixed at seven years (non-renewable) the duration of service as full-time union officer. The Committee recalls that freedom of association implies the right of workers to elect their representatives in full freedom [Digest, op. cit., para. 350] and that it should be left to the unions themselves to set the periods of term of office [Digest, op. cit., para. 359]. The Committee therefore recommends that the appropriate amendments be adopted, as part of the legislative reform, to allow public employees' unions to set themselves the term of office of full-time union officers, so that the right of workers to elect their representatives in full freedom be recognized in law and in practice.*

Right to strike

640. *Concerning the right to strike, the Government reiterates its stand that the general prohibition is justified due to the distinctive nature and duties of public employees. It intends to maintain this blanket strike interdiction for public employees in the future legislative framework.*

641. *The Committee recalls, amongst its numerous principles on the right to strike, that this right is a fundamental right of workers and their organizations, and that public servants should enjoy it, with the following possible exceptions: members of the armed forces and the police, public servants exercising authority in the name of the State, workers employed in essential services in the strict sense of the term, or in situations of acute national crisis. Workers who may be deprived of this right or have it restricted, and therefore lose an essential means of defending their interests, should be afforded appropriate guarantees to compensate for these prohibitions or restrictions, e.g. adequate, impartial and speedy conciliation and arbitration procedures in which the parties can take part at every stage and in which the awards, once made, are fully and promptly implemented. In addition, workers and union officials should not be penalized (and in this particular instance, face the heavy criminal and administrative sanctions currently applicable) for carrying out legitimate strikes. See the principles elaborated in this respect [Digest, op. cit., paras. 473-605]. The Committee therefore requests the Government to amend its legislation, as part of the reform process, to bring it into conformity with these principles.*

Collective bargaining

642. *The allegations in this respect concern: the categories of workers not entitled to bargain collectively; the excessive restrictions on the scope of bargaining; the inadequate compensatory measures for the bargaining restrictions; and the unsatisfactory implementation of recommendations made by the competent bodies.*
643. *The Committee notes that some allegations in these respects are common to both complaints, that other allegations are submitted by either one of them, but not the other(s), and that the Government's observations sometimes cover the former, sometimes the latter, and sometimes both. Rather than going in minute detail into each and every allegation, the Committee, here too, will recall its main principles, inasmuch as they are germane to the allegations.*
644. *As regards the categories of workers that are deprived, partially or totally, of the right of collective bargaining, the Committee recalls that this is a fundamental right of workers, that it should be recognized throughout the private and public sectors, with the sole possible exception of the armed forces and the police and public servants engaged in the administration of the State. A distinction must be drawn between, on the one hand, public servants who by their functions are directly engaged in the administration of the State (that is, civil servants employed in government ministries and other comparable bodies) as well as officials acting as supporting elements in these activities and, on the other hand, persons employed by the government, by public undertakings or by autonomous public institutions: only the former category can be excluded from the scope of Convention No. 98 [Digest, ibid., para. 794]. The Committee of Experts has also emphasized that the mere fact that public servants are white-collar employees is not in itself conclusive of their qualification as employees engaged in the administration of the State; if this were not the case, Convention No. 98 would be deprived of much of its scope [General Survey, ibid., para. 200]. To sum up, all public service workers, with the sole possible exclusion of the armed forces and the police and public servants directly engaged in the administration of the State, should enjoy collective bargaining rights. The Committee therefore requests the Government to amend its legislation, as part of the reform process, to bring it into conformity with these principles.*
645. *As regards ZENROREN's allegation (Case N° 2177) that the planned reform mainly concerns general administrative categories of public employees and that the case of other public employees (e.g. municipal employees and teachers) has not been examined, the Committee points out that the above principles are applicable to them as well. As regards more particularly teachers, the Committee refers to its recent decision concerning the*

Okayama high-school teachers [Case No. 2114, 328th Report, paras. 371-416] where it pointed out that teachers should have the right to bargain collectively, and to its follow-up comments in the introduction of the present report.

- 646.** *Concerning the scope of bargaining, the Committee notes that both RENGO and ZENROREN submit that the matters excluded from negotiation are much too wide. They add that the reform provides that more working conditions will be determined by law, which means further deterioration in future. The Government replies that matters of “operation or management” in both the operational and non-operational sectors (without explaining what these categories include) are not negotiable but that working conditions that may be affected by matters of operation or management may be negotiated. The Committee recalls that while certain matters clearly appertain primarily or essentially to the management and operation of government business and can therefore be reasonably regarded as outside of the scope of negotiation, some other matters are primarily or essentially questions relating to conditions of employment and should not be regarded as falling outside the scope of collective bargaining [Digest, ibid., para. 812]. The Committee requests the Government to engage in dialogue on this issue with trade unions in the context of the reform.*
- 647.** *As regards the issue of compensatory measures for public sector workers whose basic labour rights are restricted, both RENGO and ZENROREN complain about the inadequacy of the present system (the incomplete or late implementation of recommendations made by the competent bodies at national or local level), the reduced role assigned in future to the NPA and the corresponding extension of government and cabinet powers under the reform plan; they also point out that there are no local personnel commissions set up in the overwhelming majority of cities, towns and villages. The Government states, as explained in the Preamble of the General Principles, that a drastic reform of the public service is necessary to meet new challenges and to adapt it to the changing circumstances and demands of society; as regards those instances where the recommendations of the NPA or local bodies were not implemented, the Government submits that these were not the majority of cases, that when such situations arose they were due to severe fiscal and financial circumstances and, in any event, that the recommendations were not disregarded completely but that their implementation was only postponed.*
- 648.** *The Committee should first point out that it is part of the Government’s executive responsibility to decide whether it wishes to initiate and implement a reform of the civil service, what body it wants to entrust with that task, whether it wishes to shift more responsibilities on cabinet and ministers for management and personnel matters, and whether it wants to transfer some duties and functions hitherto executed by the public service to private or semi-public entities. However, it is clearly within the Committee’s mandate to examine whether, in proceeding with such a reform, the Government acts in conformity with freedom of association principles that have been recalled above as regards workers who should be entitled to bargain collectively. As regards compensatory measures for other workers, the Committee notes from the General Principles that the Government intends to maintain the same type of system and to reduce the role of the NPA. The Committee recalls that it has repeatedly expressed its views on this exact issue as concerns Japan [see, for instance, 139th Report, para. 122; 142nd Report, para. 125; 222nd Report, para. 164; 236th Report, para. 270; to quote only a few instances dating back 20 years or more] and expressed its doubts that the method of determination of terms and conditions of employment ensured the confidence of the parties concerned. The Committee pointed out several times, and recalls once again here, that whenever such a basic right as the right to bargain collectively in the civil service is forbidden or subject to restrictions, adequate guarantees, such as speedy and impartial arbitration procedures in which the parties can take part at every stage and in which the awards, once made, are*

fully and promptly implemented, should be put in place to safeguard fully the interests of the workers thus deprived of an essential means of defending their occupational interests. As the Committee had pointed out as early as 1974, steps could be taken to ensure that the various interests are fairly reflected in the numerical composition of the commissions, and to consider also the advisability of providing that each of the parties concerned shall have an equal voice in the appointment of members of the commissions [139th Report, para. 162]. According to the evidence submitted, it does not appear that the situation has changed significantly in recent years, and the Committee has some difficulty understanding how the General Principles address these fundamental issues. The Committee therefore requests the Government to amend its legislation, as part of the reform process, to bring it into conformity with the above principles.

Unfair labour practices

649. *The Committee notes the contradictory statements of the complainants (who state that the public service employees do not enjoy the same protection as private sector workers as regards unfair labour practices) and the Government. It requests them to provide further information on the law and practice in this respect.*

The consultation process

650. *The Committee notes that the positions of the complainants and the Government are completely at odds on this issue. RENGO states for instance that it has repeatedly made known its opposition to the maintenance of the restrictions on fundamental labour rights and expressed its dissatisfaction with the compensatory measures, but that its views were never taken into account, as shown by the current text of the General Principles which maintains the status quo; ZENROREN and JICHIROREN hold similar views. The Government states for its part that the initial document was never intended to be discussed with workers' organizations, and that the following ones have indeed been discussed with them: 27 sessions for a total of 14 hours in the case of the Framework for Civil Service reform; 77 sessions for a total of 66 hours as regards the General Principles. The Government adds that the document on General Principles was only presented to workers' organizations seven days before its adoption by the Cabinet because the authorities needed time to examine this important issue.*

651. *The Committee recalls that it has generally emphasized the importance that should be attached to full and frank consultations taking place on any questions or proposed legislation affecting trade union rights [Digest, op. cit., para. 927]. More particularly, it has often drawn the attention of governments to the importance of full and detailed consultations before the introduction of draft legislation affecting collective bargaining and conditions of employment [Digest, op. cit., paras. 930-931]. In addition, where a government seeks to alter bargaining structures in which it acts actually or indirectly as employer, it is particularly important to follow an adequate consultation process, whereby all objectives perceived as being in the overall national interest can be discussed by all parties concerned; such consultations imply that they be undertaken in good faith and that both partners have all the information necessary to make an informed decision [Digest, op. cit., para. 941]. As acknowledged by the Government and explicitly mentioned in the Preamble of the General Principles, the planned reform of public service is a drastic one; it would therefore seem all the more important that meaningful consultations be held in good faith when proceeding to such a major reform, the first in some 50 years, which is going to affect large numbers of public employees. Based on the evidence and arguments adduced, the Committee is bound to conclude that whilst a number of meetings were held, the views of representative organizations of public employees, at national and local levels, might have been listened to but were not acted upon. For all practical purposes, the*

Government maintains that the present system is in conformity with Conventions and principles on freedom of association, that the restrictions on fundamental rights are appropriate in view of the special status and duties of public employees, that the existing compensatory measures function properly, in short that the status quo should prevail. As regards the Government's argument that the document on General Principles was only presented to workers' organizations seven days before its adoption by the Cabinet because the authorities needed time to examine this important issue, the Committee points out that this matter is equally, if not more, important for workers' organizations, which would have needed more time to study the Government's position and table constructive counter-proposals. While recognizing that there comes a time when decisions have to be made, the Committee considers that it would be beneficial for all concerned, and for the development of stable and harmonious professional relations in the public sector, that full, frank and meaningful consultations be held on the rationale and substance of the public service reform, with a view to obtaining a larger consensus on the subject. In these circumstances, and taking into account that the legislative amendments are to be presented to the Diet by the end of 2003, the Committee strongly recommends that the Government launch rapidly such wide consultations with all parties concerned, with a view to amending the legislation and bringing it into conformity with freedom of association principles. It also recalls to the Government that the technical assistance of the Office is available should it so desire.

The Committee's recommendations

652. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Government should reconsider its stated intention to maintain the current restrictions on the fundamental labour rights of public employees.***
- (b) The Committee strongly recommends that full, frank and meaningful consultations be held soon with all parties concerned on the rationale and substance of the public service reform to obtain a wider consensus on the subject, and with a view to amending the legislation and bringing it into conformity with freedom of association principles. These consultations should notably address the following issues, concerning which the legislation and/or practice in Japan are in violation of the provisions of Conventions Nos. 87 and 98:***
 - (i) granting fire-defence personnel and prison staff the right to establish organizations of their own choosing;***
 - (ii) amending the registration system at local level, so that public employees may establish organizations of their own choosing without being subject to measures tantamount to prior authorization;***
 - (iii) allowing public employees' unions to set themselves the term of office of full-time union officers;***

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- (iv) *granting public employees not directly engaged in the administration of the State the right to bargain collectively and the right to strike in conformity with freedom of association principles;*
 - (v) *as regards workers whose collective bargaining rights and/or right to strike may be legitimately restricted or prohibited under freedom of association principles, establishing appropriate procedures and institutions, at national and local level, to compensate adequately these employees deprived of an essential means of defending their interests;*
 - (vi) *amending the legislation so that public employees who exercise legitimately their right to strike are not subject to heavy civil or criminal penalties.*
- (c) *The Committee requests the Government and RENGO to inform it as to whether the 18,000 employees transferred to independent administrative institutions were able to establish or join organizations of their own choosing without prior authorization.*
 - (d) *The Committee requests the Government to provide it with the court decision concerning the case at Oouda-cho (Nara Prefecture).*
 - (e) *The Committee also requests the Government to engage into meaningful dialogue with the trade unions concerning the scope of bargaining matters in the public service.*
 - (f) *The Committee requests the Government and the complainants to provide further information on the prevailing law and practice as regards the procedure of redress for unfair labour practices.*
 - (g) *The Committee requests the Government to keep it informed of developments on all the above issues and to provide copies of the proposed legislative texts.*
 - (h) *The Committee recalls to the Government that the technical assistance of the Office is available should it so desire.*
 - (i) *The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

Annex

[Extracts; unofficial translation]

General Principles for Public Service Reform

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General Principles for Public Service System Reform

(decided by the Cabinet on 25 December 2001)

Tentatively translated into English by
International Policy Division,
JTUC-RENGO

Japan is currently under severe conditions, as its continuous economic growth came to an end, and it is now forced to find diverse national values within constrictions of available resources.

We are faced with many difficult challenges related to problems such as an accumulation of large fiscal deficits and social security problems. We cannot spare even a moment before embarking on exploring the right direction to our future. Under such circumstances, the total quality of government's policies as they are planned and executed is under strict scrutiny.

In recent years, the central government has placed a new priority on administrative reforms and promoted them actively by implementing a new set up in the Ministries of the central government as well as enhancing the Cabinet functions.

However, public workers who support the organization and operation of public administration are stringently criticized for having become less reliable on policy planning capability, sticking to precedent-based practices, and lacking in cost consciousness and service-oriented attitude.

In order to realize public administration which truly caters to the needs of the people, it is essential to radically reform the attitude and behaviour of public employees and it is important to review the public service system which largely influences the attitude and behaviour of public employees.

In reviewing the public service system, it is necessary to aim to greatly improve the government's performance, while striving to ensure the expertise, neutrality, efficiency, continuity and stability required for public services. It is also essential to secure the personnel who can immediately respond to administrative needs, to create an environment where public workers can demonstrate their full abilities while competing with each other, and to allow organizational structures to be flexibly and quickly restructured to become optimum for current needs. Further, it is important for public employees, who are the foundation of public administration, to be able to perform their jobs with a high sense of mission and fulfilment, by trying to improve their capabilities and choosing from diverse career paths, while securing the trust of the people.

Thus, it is now required to design the system from the standpoint of "What is the public administration expected by the people and truly essential to the people?"

On the basis of such a perspective, the proposed public service system reform holds as its basic concept the realization of public administration geared to the needs of the people and aims to reform the very basis of administration by drastically reforming the public service system from the standpoint of the people.

At the same time, comprehensively taking into consideration how to assure stable and continuous public services and how reforms are to affect the life of Japanese people, the current restrictions placed on the fundamental labour rights of public workers shall be maintained, while ensuring adequate compensatory measures.

I. Realization of adequate personnel and organizational management in the entire government

1. Basic concept

In order to meet the needs of the times, to formulate comprehensive and strategic policies from the national perspective and to provide administrative services responsively and efficiently, it is essential that the Cabinet and the Ministries responsible for administrative management should adequately manage personnel and organizational matters.

The government is now faced with problems: inflexible policies are unable to meet administrative requirements which have become complex and sophisticated and the administrative system now suffers from institutional fatigue causing inefficient work performance. These problems are partly due to the fact that the government's ministries have failed to manage personnel and organizational matters actively and responsibly because they are short of clear sense of personnel management.

In an environment where administrative requirements have become complex and sophisticated, calling for mobility in administrative operations, the government has introduced new mechanisms for information disclosure and policy assessment, etc. to shift the direction of public administration towards performing administrative operations transparent and clearly accountable to the people, so that correct policy judgment can be maintained without deferring problems.

However, the current personnel and organizational management framework which requires prior and detailed checks for individual cases partly restricts the mobility with which each competent Minister performs administrative tasks utilizing human resources, etc. Furthermore, the Cabinet must formulate adequate policies in order for each competent Minister to be able to manage personnel matters in a way meeting the practical needs of administrative tasks. In actuality, however, it is difficult to say that the Cabinet has fully performed this responsibility, as it is largely dependent on the independent organ.

Therefore, it is required that the framework of personnel and organizational management for the entire government be reorganized so that, under a system open to the people, the Cabinet responsible to the Diet, which represents the people, and the competent Ministers, who comprise the Cabinet, can actively and responsibly perform tasks involving personnel management of public employees, who support public administration, while securing the neutrality and equity of personnel administration. It is also necessary that the prior and detailed institutional restrictions placed by the central personnel administrative bodies must be reviewed and that the Cabinet and competent Ministers will manage personnel and organizational affairs with mobility and flexibility.

On the other hand, under the present circumstances where the fundamental labour rights are restricted for public employees, it is necessary to provide for a framework to assure proper treatment of public employees.

With an awareness described above and from the standpoint of drastically reforming the public service system, a new framework shall be constructed to realize adequate personnel and organizational management for the entire government.

2. Direction for new personnel and organizational management for the entire government

(1) *Law stipulating clearer rules concerning personnel and organizational management*

With a grand principle of having public workers placed under democratic control, the framework of the new public service system must be legally stipulated. Therefore, how public workers should be, the purpose of personnel system, the framework and other important standards shall be clearly stipulated by law.

(2) *Realigning the functions of the Cabinet and the independent organ*

1. Clarifying the active responsibility and authority of each competent Minister who will be designated as the person competent for Personnel Management

Each competent Minister shall realize mobile and efficient operations of administrative tasks through adequate and flexible personnel and organizational management, fully and fairly utilizing the human resources in the administrative organizations within his or her jurisdiction.

In order to realize this, each competent Minister shall be clearly designated as the Person Competent for Personnel Management, who, with his or her own judgment and responsibility, shall design and operate personnel and organizational affairs within his or her jurisdiction.

The Person Competent for Personnel Management shall actively and responsibly be in charge of personnel management in general as provided by law, and shall perform flexible organizational management through managing the matters concerning the organization and staff size to be made elastic by the proposed reform as well as through active position management.

Each Ministry shall strengthen the bureaux in charge of personnel and organizational matters in order to implement adequate and flexible personnel and organizational management.

2. Strengthening the Cabinet's function of policy planning and comprehensive coordination of personnel administration

From the standpoint of being jointly accountable to the Diet which represents the people, the Cabinet shall, under democratic control, deal responsibly with designing and planning policies regarding the public service system.

The Cabinet shall actively perform its function to formulate policies regarding personnel administration by drafting bills and enacting ordinances as delegated by law and shall lay rules necessary for the Person Competent for Personnel Management to manage personnel and organizational matters appropriately and flexibly. Secondly, the Cabinet shall be able to request the National Personnel Authority to act concretely to review the matters as delegated to the National Personnel Authority regulations by law, with a view to securing appropriate administrative management. Due consideration shall be paid to the relationship between the Cabinet and the National Personnel Authority in designing the new system.

Thirdly, the Cabinet shall have a strengthened function to coordinate in a comprehensive manner the personnel management conducted by the Person Competent for Personnel Management, so as to maintain integral personnel administration.

3. Protecting the interests of personnel and ensuring the neutrality and equity of personnel administration by the independent organ

The National Personnel Authority, from the standpoint of protecting personnel's interests and ensuring the neutrality and equity of personnel administration, shall state its opinions as required to the Diet and the Cabinet, and stipulate the National Personnel Authority Rules as delegated by law. Further, the National Personnel Authority shall continue to be involved in setting working conditions such as salary.

4. Relief system

In order to deal properly with cases where public employees suffer from disadvantages regarding personnel management, proper grievance measures to be taken by the Person Competent for Personnel Management shall be studied and the relief measures by the National Personnel Authority shall be improved and reinforced, so that public service employees suffering from disadvantages shall be entitled to fair and adequate relief measures to be taken by the National Personnel Authority.

3. **Realigning the Cabinet's functions and those of the independent organ in the concrete system**

According to (2) above, the functions of the Cabinet and those of the independent organ in the concrete system shall be realigned.

(1) Recruitment of employees

In order to secure employees who meet the practical needs of administration, the Person Competent for Personnel Management shall play a central role in recruitment. The Cabinet shall plan and formulate policies regarding the recruitment system and ensure smooth recruitment of human resources required by each Ministry.

(2) Allocation of staff, human resource development and codes of conduct

In order for the Person Competent for Personnel Management to perform swift and efficient management of administration in matters within his or her jurisdiction, he or she shall appoint personnel to appropriate positions, foster human resources by training and other means, adequately manage employees' observance of service regulations including their observance at the time of retirement. The Cabinet shall plan and formulate policies regarding the personnel management system required for personnel allocation, human resource development and service regulation management conducted by the Person Competent for Personnel Management and perform necessary coordination in order to assure standardized personnel management.

From the point of view of protecting employees' interests and securing the neutrality and equity of personnel administration, the National Personnel Authority shall carry out, according to a predetermined clear standard, ex post checks such as issuing recommendations for improving personnel administration practices to the Person Competent for Personnel Management.

(3) Matters relating to working conditions

Under the principle of democratic fiscal system and statutory working conditions, the National Personnel Authority shall be involved in matters relating to working conditions. The National Personnel Authority shall design the salary standard, make recommendations to the Diet and the Cabinet and express opinions to the Diet and the Cabinet on the number of employees for each competence grade which will determine the staff size. In addition, the National Personnel Authority shall be able to make each Ministry act flexibly through standardization of working conditions and ex post checks.

CASE NO. 2198

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Kazakhstan
presented by
the Federation of Trade Unions of Kazakhstan**

Allegations: The complainant alleges that the employer has withdrawn the long tradition of check-off facilities; denies the president of the trade union access to the trade union members' workplaces and trade union premises; has formed "yellow" trade unions; obstructs trade union meetings; and violates the right to bargain collectively in the Tengizchevroil company (TCO).

- 653.** In a communication dated 16 April 2002, the Federation of Trade Unions of Kazakhstan filed a complaint of violations of freedom of association against the Government of Kazakhstan.
- 654.** The Government forwarded its observations in a communication dated 18 July 2002.
- 655.** Kazakhstan 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). It has also ratified the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

- 656.** In its communication dated 16 April 2002, the Federation of Trade Unions of Kazakhstan alleges that the administration of the Tengizchevroil company (TCO) has violated the right of the Trade Union of TCO Workers to organize its administration and activities by, inter alia, suspending transfers of trade union dues, denying the trade union president access to the trade union members' workplaces, obstruction of trade union meetings and forming of "yellow" trade unions. The complainant also alleges violations of the right to bargain collectively in the TCO.
- 657.** In particular, the complainant states that in July 1998, the TCO administration decided to terminate the deduction and transfer of trade union dues from the wages of members of the Trade Union of TCO Workers. The TCO administration based its decision to terminate this five-year practice on section 22 of the Law on Trade Unions, according to which "trade union committees have the right to collect trade union dues at the place of employment and education without detriment to the activity of the enterprise". The administration justified its decision by arguing that the bookkeeping programme was overloaded. However, according to the complainant, such a justification is doubtful, as the bookkeeping programme used at the enterprise is one of the most sophisticated programmes available on the market. The administration of the TCO failed to respond to the request made by the trade union to demonstrate the basis on which the transfer of dues could be characterized as detrimental to enterprise activity, as well as to provide information about the conditions

on which another public organization created at the TCO – Kazakh Language Society – continued to have member dues transferred to it as usual. The complainant adds that as the TCO works are scattered throughout a vast territory where trade union employees are not permitted, it is simply impossible to collect trade union dues directly from the workers. The withdrawing of check-off facilities is causing serious economic damage to the trade union.

- 658.** The complainant further alleges that the TCO management denies the president of the union access to the trade union members' workplaces and to trade union premises. In July 1998, the management of the TCO rejected the trade union president's request for an entry pass, which would permit entering the trade union office located in the enterprise township. As a result of the case being brought before the district court in September 1998, the president was later able to obtain the entry pass.
- 659.** Currently, the TCO management – in violation of section 10 of the Law on Trade Unions which provides for the right of workers' representatives to visit enterprises and places of work of trade union members – prohibits trade union officers who are not TCO employees, from having access to premises of the enterprise township outside working hours (the access to the township premises is allowed only from 6:00 a.m. to 6:00 p.m.). However, during this time, trade union members are at their places of work and not present at the enterprise township. As a result, the trade union president is unable to visit and to communicate with trade union members at their places of work.
- 660.** The complainant also alleges that in 1998, the administration became the initiator of the establishment of the Independent Trade Union of Tengiz Oil and Gas Complex. Some workers were called for talks with the management at the Human Resources Management (HRM) department and forced to sign declarations about entering into the new union. The registration of the new trade union, the preparation of the seal and the publication about a new TCO trade union in the local mass media were all done by the representative of the TCO public relations department. According to the information provided by the administration, this trade union counts 130 members. However, the complainant submits that, besides the president appointed by the administration, there are no real members belonging to this organization.
- 661.** After the introduction of the new Labour Code adopted on 10 December 1999, which stipulates in section 1 that besides trade unions, persons and organizations duly authorized by the workers may act as workers' representatives, another "yellow" trade union was created. At a meeting held on 7 July 2002 at the initiative of the administration of the TCO, the Association of Tengizchevroil Workers was constituted. In the letter to the president of the Trade Union of TCO Workers, the leader of the Association openly declared that "the administration of the TCO was also interested in the creation of this organization and played the most direct role in the organization of meetings in all subdivisions of the TCO and in the organizational decision-making".
- 662.** Furthermore, the complainant submits that the TCO administration repeatedly refused to provide the Trade Union of TCO Workers with the premises for holding conferences and obstructed all efforts to organize trade union meetings. For example, the general manager of HRM refused to provide premises for the conference due to take place on 17 July 1998 on the grounds of the administration's inability to take part in the conference on that day. On many occasions, the managers did not allow workers to leave for meetings despite a longstanding agreement providing for such privileges.
- 663.** Nevertheless, according to the complainant, meetings of workers organized by the administration, including meetings of the association of TCO workers were being held. However, notwithstanding the fact that according to the collective agreement of 1996, the

Trade Union of TCO Workers is the sole representative of the TCO workers. The administration repeatedly prevented trade union activists from attending these meetings.

- 664.** Moreover, the administration prepared a special handbook “Manual of the TCO Manager” which stipulates that the application to carry out meetings with the TCO workers must be made no less than ten days in advance and must state the purpose of the meeting and provide the names of the trade union representatives who intend to attend and take part in it. It further states that “meetings between trade union representatives and members of the labour collective, as well as meetings of the trade union committee are normally carried out outside working hours at the office of the trade union committee. Trade union representatives not employed by the TCO must receive permission to be present on the TCO premises outside working hours. The HRM labour relations coordinator is present at all the meetings of the trade union representatives and workers at TCO. The representatives of the administration of TCO may also attend the meetings”.
- 665.** After the creation of “yellow” trade unions, the TCO administration prefers to deal directly with representatives of trade union organizations instead of allowing trade unions to hold meetings. All requests for permission to hold meetings made by the trade unions have remained unanswered. For example, to date, there has been no response to the 26 September 2001 request by the Trade Union of TCO Workers to hold a meeting.
- 666.** The trade union attempted to solve the issue of facilitating trade union activity by means of negotiations with the administration over a new collective agreement in October 2000. The TCO administration agreed to carry on bargaining with the Trade Union of TCO Workers on the condition that a common body including two representatives from each of the three workers’ organizations would be created. As the clause concerning the guarantees of trade union activity proposed by the Trade Union of TCO Workers did not find support from the two other organizations, the administration had refused to include it in the collective agreement and suggested to regulate this issue by a separate agreement. However, when such an agreement drafted by the trade union was submitted to the TCO administration, the administration refused to sign it, preferring to deal with each matter through individual application but even then without their written registration, which means, according to the complainant, that any agreed facility can be terminated at any time.
- 667.** As regards the transfer of trade union dues, the administration declared that this issue could not be settled through an additional agreement, since this would be in contradiction with the Kazakh legislation. On the other hand, the Kazakh legislation makes provision for the resolution of this issue precisely through collective agreement.

B. The Government’s reply

- 668.** In its communication of 18 July 2002, the Government confirms that the TCO management had suspended deduction and bank transfers of trade union membership dues. It states, however, that the TCO administration proposed that a system of collection involving workshop treasurers be instituted instead. The Government further indicates that according to the general agreement for 2002 concluded between the Government, national trade union associations and employer’s organizations, the parties shall “not obstruct bank transfers of membership dues when such a facility is requested by the union members and where appropriate provisions are made in the relevant collective agreement”. The issue of trade union dues is therefore dealt with by a collective agreement. Moreover, under the current legislation, the Government cannot require employers to transfer trade union dues, since the employers and the TCO workers’ representatives did not reach consensus during the collective bargaining negotiations.

- 669.** The Government further confirms that the union president was denied access to workers at their workplaces and indicates that following judicial inquiry, the president was authorized to visit the work premises. According to the Government, the state inspectors have not received any complaints regarding access to workplaces during their inspections of the TCO.
- 670.** The Government denies the allegations concerning the establishment of “yellow” trade unions, and states that all five workers’ organizations operate on an equal footing and that the employer does not interfere in their internal affairs.
- 671.** As concerns the obstruction of trade union meetings, the Government denies this allegation and states, apparently referring to the conference which was due to take place on 17 July 1998, that the employer had suggested changing the time of meeting due to the shift changes.
- 672.** The Government indicates that the TCO administration systematically meets with all the representatives of the workers’ organizations. When the allegation concerning the refusal by the administration to continue talks on working conditions was examined, the administration and the president of the Trade Union of TCO Workers were unable to agree on the matter of the additional allowances for trade union employees with regard to living expenses, transport payments for the union committee accountant and 1.5 paid hours per day demanded for the trade union leaders as well as for their members.
- 673.** The Government adds that the state inspectors, together with the plant management and the chairperson of the Neftegazprom regional council, examined the complaint. In order to reconcile the divergences that have arisen, regularize the records of the union members, and find out the views of the union members on the series of issues raised in the complaint, it has been recommended that the trade union committee should hold a union conference by 1 November 2002.

C. The Committee’s conclusions

- 674.** *The Committee notes that the allegations in this case concern the violation by the administration of Tengizchevroil (TCO) of the right of the Trade Union of TCO Workers to organize its administration and activities by suspending transfers of trade union dues, denying to the trade union president access to the trade union members’ workplaces, obstruction of trade union meetings, the forming of “yellow” trade unions and the violation of the right to bargain collectively in the TCO.*
- 675.** *First, as concerns the suspension of deduction and transfer of trade union dues, the Committee notes that the complainant alleges that from July 1998 onwards, the TCO administration stopped deducting the trade union dues from the wages of the members of the Trade Union of TCO Workers. The Committee notes that the versions provided by the two parties on this matter are mutually contradictory: while the complainant alleges that check-off withdrawal was carried out as an anti-union measure and that it is practically impossible for the trade union’s president to collect trade union dues in cash, the Government states that the management of the TCO did not act illegally by deciding to stop deducting trade union dues and that the management proposed that a system of collection involving workshop treasurers be instituted instead. The Government states that in the enterprise in question, the TCO administration decided not to deduct trade union dues and that under the current legislation, it cannot require the employer to do so, since the employer’s and workers’ representatives did not reach consensus during their talks.*
- 676.** *The Committee also notes that under section 22 of the Law on Trade Unions, trade union committees have the right to collect trade union dues at the place of employment and*

education without detriment to the activity of the enterprise and that in the general agreement for 2002 concluded between the Government, national trade union associations and employers' organizations, the parties undertook not to obstruct bank transfers of membership dues when requested by the union members concerned and where appropriate provisions are made in collective agreements.

- 677.** *The Committee further notes that the Trade Union of TCO Workers attempted to resolve this issue through negotiation over a new collective agreement. However, the TCO administration refused to include in the collective agreement any clause concerning the deduction and transfer of trade union dues and declared that this issue could not be settled in an additional agreement either.*
- 678.** *The Committee emphasizes that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 435]. In this regard, the Committee considers that, in the present case, stopping the deduction and transfer of trade union dues could cause serious difficulties for the trade union.*
- 679.** *Moreover, the clear refusal by the TCO administration to justify the suspension of the check-off facilities and to include a clause concerning the deduction and transfer of trade union dues in the collective agreement and its unwillingness to negotiate a settlement of this issue by an additional agreement leads the Committee to query whether the principle of bargaining in good faith was indeed respected. The Committee recalls the importance which it attaches to the obligation to negotiate in good faith and make every effort to reach an agreement. Moreover, genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties [see **Digest**, *op. cit.*, paras. 814 and 815]. The Committee therefore requests the Government to adopt the necessary measures to ensure that the company engages in good faith bargaining with the trade union in accordance with the legislation on the deduction of trade union dues and to keep it informed in this regard.*
- 680.** *Secondly, the Committee notes the complainant's allegation that trade union officers who are not TCO employees, are not permitted access to workplaces of trade union members and are allowed to enter the premises of the enterprise township only between 6:00 a.m. and 6:00 p.m., the time when trade union members are usually at work. The Government, confirming that in the past the trade union president was denied access to workplaces of its members, states that the problem was resolved following a judicial inquiry. It adds that the state inspectors have not received any complaints regarding access to workplaces during their inspections of the TCO. However, according to the complainant, following the abovementioned court decision, the president of the trade union was able to obtain an entry pass to the trade union office, but the problem of access to trade union members' workplaces is still not resolved. The Committee also notes that the "Manual of TCO Manager", to which the complainant refers, stipulates that access to the premises in the TCO enterprise township outside working hours, as well as to the TCO works outside the enterprise township could be obtained upon request to the TCO administration and to the coordinator of the Human Resources Management department (HRM).*
- 681.** *The Committee notes that, for the right to organize to be meaningful, the relevant workers' organizations should be able to further and defend the interests of its members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers' representatives, including access to the workplace of trade union members. Since, according to the complainant only access to the trade union office and not to*

workplaces of trade union members was obtained, the Committee requests the Government to ensure that reasonable access to workplaces of trade union members is ensured.

- 682.** *Thirdly, concerning the allegation of the creation by the TCO management of “yellow” trade unions, the Committee notes that the Government denies these allegations stating that all five trade unions operate on an equal footing. The Government does not comment on the complainant’s allegation that some workers were called for talks with the management at the HRM and forced to sign declarations about entering into the new union, neither on the declaration of the leader of the allegedly “yellow” trade union, the Association of Tengizchevroil Workers, according to whom the administration of the TCO played the most direct role in the organization of meetings and decision-making. The Committee further notes that during negotiations over a new collective agreement, the clause concerning the guarantees of trade union activity proposed by the Trade Union of TCO Workers did not find support from the two allegedly “yellow” trade unions and consequently, the administration had refused to include it in the collective agreement.*
- 683.** *The Committee considers that situations where the management of the enterprise, by establishing alternative workers’ organizations, interferes in the activities of a freely constituted trade union create an environment in which it becomes more difficult to bargain collectively. In this respect, the Committee recalls that Article 2 of Convention No. 98 establishes the total independence of workers’ organizations from employers in exercising their activities [see **Digest**, op. cit., para. 759]. Recalling the importance of the independence of the parties in collective bargaining, negotiations should not be conducted on behalf of employees by bargaining representatives appointed by or under the domination of employers or their organizations [see **Digest**, op. cit., para. 771]. The Committee therefore requests the Government to initiate inquiries into the allegations made in this respect and to keep it informed of the outcome.*
- 684.** *Finally, concerning the allegations of obstruction of trade union meetings, the Committee notes that, referring to the workers’ conference which was due to take place on 17 July 1998, the Government states that the TCO management had suggested changing the date of the meeting due to shift changes. However, the Committee notes from the letter of the general manager of HRM, attached to the complaint, that the refusal to provide premises for the conference was indicated as being due to the unavailability of members of the TCO administration to be present at the conference on that day. Moreover, the Committee notes that the “Manual of the TCO Manager” prepared by the TCO administration, which regulates in detail the organization of meetings with TCO workers, provides that the HRM labour relations coordinator shall be present at all meetings of trade union representatives and workers at TCO and that the representatives of the administration of TCO may also attend these meetings. The Committee also notes the complainant’s statement that the TCO administration repeatedly prevented trade union activists from attending collective meetings of TCO workers and that all requests for permission to hold meetings have remained unanswered, as is the case, for example, with the written request of 26 September 2001.*
- 685.** *The Committee expresses its concern in relation to the administration’s actions to obstruct trade union meetings – refusal to provide premises, refusal of trade union’s requests to be present at the meetings of the labour collective or to hold trade union meetings, and the instructions contained in the Manual. In this context, the Committee considers that the right of workers’ organizations to hold meetings to discuss occupational questions, without prior authorization and interference by the employer, is an essential element of freedom of association and the employer should refrain from any interference which would restrict this right or impede its exercise [see **Digest**, op. cit., para. 130]. It recalls that respect for the principle of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more*

*important that employers exercise restraint in the same regard [see **Digest**, op. cit., para. 761]. The Committee urges the Government to take all the necessary measures without delay to ensure that the TCO administration withdraws the above-noted instructions in the Manual and that the Trade Union of TCO Workers be guaranteed the right to carry out its legitimate trade union activities, in particular the right to hold meetings without interference from the management. The Committee requests the Government to keep it informed of any measures taken to that end.*

686. *The Committee notes the Government's statement according to which after the examination of the complaint by the state inspectors together with the plant management and the chairperson of the Neftegazprom regional council, it has been recommended that the trade union committee holds a union conference by 1 November 2002 in order to reconcile the divergences that have arisen, regularize the records of the union members, and find out the views of the union members on the series of issues raised in the complaint. The Committee requests the Government and the complainant to keep it informed in this respect.*

The Committee's recommendations

687. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) Recalling the importance which it attaches to the obligation for all parties to negotiate in good faith, the Committee requests the Government to adopt the necessary measures to ensure that the Tengizchevroil company bargains in good faith with the Trade Union of TCO Workers in accordance with the legislation on the deduction of trade union dues and to keep it informed in this regard.*
- (b) The Committee requests the Government to ensure that reasonable access to workplaces of trade union members at Tengizchevroil is ensured.*
- (c) Regarding the allegations of the forming of "yellow" trade unions at Tengizchevroil, the Committee requests the Government to initiate the relevant inquiries into these allegations and to keep it informed of the outcome.*
- (d) The Committee urges the Government to take all the necessary measures without delay to ensure that the TCO administration withdraws the instructions contained in the Manual, which provide that the HRM labour relations coordinator shall be present at all meetings of trade union representatives and workers at TCO and that representatives of the administration of TCO may also attend these meetings, and that the Trade Union of TCO Workers be guaranteed the right to carry out its legitimate trade union activities, in particular the right to hold meetings without interference from the management. The Committee requests the Government to keep it informed of any measures taken to that end.*
- (e) The Committee requests the Government and the complainant organization to keep it informed of the outcome of the proposed trade union conference.*

CASE NO. 2175

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Morocco
presented by
the Democratic Labour Confederation of Morocco (CDT)**

Allegations: The refusal by the Professional Association of Moroccan Banks to have dialogue and negotiate with the complainant organization and the refusal to accept the adherence of this organization to a collective labour agreement.

- 688.** The complaint in the present case is contained in a communication dated 15 January 2002 from the Democratic Labour Confederation (CDT).
- 689.** The Government sent its observations in a communication dated 6 May 2002.
- 690.** Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

- 691.** In its communication dated 15 January 2002, the CDT explains that the Professional Association of Moroccan Banks (GPBM) is an organization that comprises all the commercial banks operating in Morocco and that the Moroccan banking sector employs 28,000 staff and management. The collective labour agreement that governs working relations in this sector was signed in 1960 with the banks' unions (USIB), which was affiliated at that time to the Moroccan Labour Union (UMT). Since then, this collective agreement has had only certain articles known as agreement protocols amended. In February 1993, the majority of the national committee of the banks' unions of the UMT, including its Secretary-General and most of the local executive officers, left the UMT and joined the CDT in order to form the Banks' National Trade Union (SNB). Furthermore, almost half the staff delegates would have submitted to the presidency of the Professional Association of Moroccan Banks statements confirming their membership of the SNB/CDT.
- 692.** The complainant organization states that the GPBM, instead of noting the new trade union situation and opening dialogue with the SNB/CDT, chose to support the UMT and refused to negotiate with the SNB/CDT. Moreover, the complainant organization states that, at the most recent elections of staff representatives held in 1997, the SNB/CDT would have polled 51 per cent of the staff delegates, confirming thereby its effective representativeness. Despite these results and despite numerous requests in writing to the various people in charge at the GPBM and the Government requesting that dialogue be opened and negotiations take place with the SNB/CDT, the GPBM refused to have dialogue and negotiate with this trade union and also refused to accept its adherence to the collective labour agreement governing working relations in this sector since 1960, in violation of articles 5 and 77 of that agreement.

B. The Government's reply

693. In a communication dated 6 May 2002, the Government enclosed a copy of a letter dated 8 April 2002 from the SNB/CDT, addressed to the president of the GPBM, in which the latter was notified by the trade union of its adherence to the collective agreement of bank personnel signed between the USIB/UMT and the GPBM. In this communication, the SNB/CDT recalled that it had already notified the GPBM of its adherence in March 1993 and in October 1996, and it hoped that a meeting would take place between the parties soon.

C. The Committee's conclusions

694. *The Committee notes that this case relates to allegations of refusal on the part of the Professional Association of Moroccan Banks (GPBM) to have dialogue and negotiate with the Banks' National Trade Union (SNB), affiliated to the CDT, and the refusal to accept the adherence of the trade union to the collective labour agreement governing working relations in the banking sector and signed in 1960 between the GPBM and the USIB, affiliated to the UMT.*

695. *The Committee notes that, according to the complainant organization, the trade union situation in the banking sector underwent a notable change in 1993 when the majority of the national committee of the USIB/UMT left to create the SNB, affiliated to the CDT. This new situation would have been reflected in the result of the elections for staff delegates in 1997, when the SNB/CDT obtained 51 per cent of the positions, thereby confirming its effective representativeness. The Committee notes that, despite this, the GPBM has to this day refused to open dialogue with the SNB/CDT and has chosen to support the USIB/UMT. The Committee notes, furthermore, that, in its very partial reply, the Government includes a letter from the SNB/CDT in which the latter notifies the GPBM of its adherence to the collective agreement of 1960. However, this letter states, on the one hand, that the SNB/CDT had already made a similar notification in 1993 and in 1996, and expresses, on the other hand, once again the hope that a meeting will take place with the GPBM very soon. The Committee notes that this letter seems in no way to confirm that the GPBM has accepted the adherence of the SNB/CDT to the collective agreement of 1960, neither does it indicate that it has decided to negotiate with the trade union.*

696. *The Committee wishes to recall, in a general way, that if there is a change in the relative strength of unions competing for a preferential right or the part to represent workers exclusively for collective bargaining purposes, then it is desirable that it should be possible to review the factual basis on which that right or power is granted. In the absence of such a possibility, a majority of the workers concerned might be represented by a union which, for an unduly long period, could be prevented – either in fact or in law – from organizing its administration and activities with a view to fully furthering and defending the interests of its members. Furthermore, the authorities have the power to hold polls for determining the majority union which is to represent the workers for the purposes of collective bargaining. Such polls should always be held where there are doubts as to which union the workers wish to represent them [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 836-837]. The Committee trusts that the Government will fully take these principles into account in the future. Moreover, the Committee requests the Government to inform it whether, following the communication of the SNB/CDT of 8 April 2002, the GPBM has accepted the adherence of this trade union to the collective labour agreement governing working relations in the banking sector and the negotiations between the parties involved have begun. Should this not be the case, the Committee requests the Government to take all necessary steps to ensure that acceptance of the trade union's adherence and the opening of negotiations*

between the parties involved take place without delay. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendation

697. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

The Committee requests the Government to indicate whether, following the communication of the SNB/CDT of 8 April 2002, the GPBM has accepted the adherence of this trade union to the collective labour agreement governing working relations in the banking sector and if the negotiations between the parties involved have begun. Should this not be the case, the Committee requests the Government to take all necessary steps to ensure that acceptance of the trade union's adherence and the opening of negotiations between the parties involved take place without delay. The Committee requests the Government to keep it informed in this respect.

CASE NO. 2163

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Nicaragua presented by the Latin American Federation of Education and Culture Workers (FLATEC)

Allegations: Trade union dues of the Education and Culture Workers' Federation of Nicaragua not deducted as a result of their statement that they were willing to begin strike action.

698. The complaint is contained in a communication from the Latin American Federation of Education and Culture Workers (FLATEC) dated 8 November 2001; subsequently the association submitted further information on 5 March 2002. The Government replied in a communication dated 13 November 2001. On two occasions, the Office requested, without success, clarifications from the complainant organization on statements made by the Government.

699. Nicaragua 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

700. In its communication of 8 November 2001, the Latin American Federation of Education and Culture Workers (FLATEC) states that in Nicaragua, in accordance with national legislation, the State deducts the trade union dues of education workers belonging to the trade union association in question, and pays the trade union dues by cheque directly to the Education and Culture Workers' Federation of Nicaragua (FENITEC), affiliated to

FLATEC. The complainant organization states that this customary practice for the whole of the labour collective and the other trade union associations of the country underwent a serious change after the President of the Republic, in a public speech, said that, finding himself in disagreement with the executive committees of the trade union associations for education, the check-off facility for trade union dues would be withdrawn for the trade unions of the country, and among them FENITEC, as they had indicated their willingness to begin strike action in March 2001. This interference by the State in the trade union freedoms of local workers of the organization was carried out and, to date, as a result of this reprisal against the trade unions, FENITEC is undergoing serious economic problems in continuing to develop its trade union programme and activities in defence of the interests of its members.

- 701.** In its communication dated 5 March 2002, FLATEC stated that, following the submission of the complaint to the Committee on Freedom of Association, the Government convoked FENITEC to find a solution to the problem, thus providing a possibility of resolving the conflict in the framework of a renewal of collective bargaining in the education sector.

B. The Government's reply

- 702.** In its communication dated 13 December 2001, the Government states that the provisions of the Labour Code are compulsory for all natural or legal persons established in the country. With regard to the deduction of the trade union dues of workers, this must take place expressly, that is to say the workers must accept, by signing a document, that trade union dues are deducted from their wages. The document must be submitted by members of the executive committee of the trade union organization so that the deduction of trade union dues from the wages of the staff is carried out. The Government states that if the executive committees of trade union organizations follow the relevant procedures and the employer refuses to carry out the deductions, the trade unions can submit a complaint to the departmental delegations of the Ministry of Labour, which will take the necessary steps to ensure that the labour legislation is complied with.
- 703.** The Government states that the complaint lacks the following clarifications: the number of workers allegedly affected; any indication that the trade union organization complied with the relevant procedures in accordance with the law; and information on the departmental delegations of the Ministry of Labour where the respective complaints were presented.

C. The Committee's conclusions

- 704.** *The Committee notes that, in this case, the complainant organization alleges that the trade union dues of the trade union federation FENITEC were not deducted as a result of the statement of their willingness to begin strike action in March 2001. The Committee also notes that the complainant organization stated in March 2002 that the Government had convoked FENITEC to find a solution to the problem in order to resolve the conflict. The Government, meanwhile, while recognizing that the deduction of trade union dues from wages is provided for and regulated in the legislation, with the possibility of recourse to the administrative authorities if the legislation is not complied with, emphasizes that the complaint lacks clarification (number of workers affected, compliance with the legal procedures and presentation of complaints to the administrative authorities). The Committee notes that the Office has requested on two occasions, without success, that the complainant organization clarify these details.*
- 705.** *The Committee recalls that "the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided" [see **Digest of decisions***

On 24 May 2000 the National Trade Union of Carpenters, Bricklayers and Allied Trade Unions (SNSCAASC) presented a list of demands to the Ministry of Labour to activate the revision procedure for the collective agreement that had been signed in April 1999 with the Nicaraguan Construction Industry Association (CNC).

- 710.** The complainant organization states that the periods laid down in article 379 of the Labour Code were not respected (15 days extended by another period of eight days) in the negotiating process. According to the CST-JBE, the negotiating period was extended to more than one year and the CNC was not present at 12 of the 34 meetings that were held.
- 711.** The complainant organization also states that on more than six occasions it requested the Directorate of Conciliation and Counsel for Mediation to appoint a Strike Council to resolve the conflict but the administrative authority has not ruled with regard to this. Finally, the complainant organization states that the Directorate of Individual and Collective Conciliation of the Ministry of Labour determined unilaterally to extend the collective agreement for a period equal to the previous one, violating the negotiation process.

B. The Government's reply

- 712.** In a communication dated 15 July 2002, the Government stated that the Departmental Inspectorate of Labour, Construction, Transport and Telecommunications Sector of Managua received a list of demands submitted by the SNSCAASC and transferred proceedings to the Directorate of Individual and Collective Conciliation in a decree dated 27 April 2000.
- 713.** The Government also states that both parties set the criteria for agreement on the spirit of the negotiation and established written records to the fact that they would revise totally the list of rates beginning with the carpenters and establishing a temporary wage while the negotiations took place. With regard to this, the Government states that it could be said that there is no conflict as none of the grounds established in article 243 of the Labour Code are present.
- 714.** The Government states that owing to the fact that the wages of workers in the construction industry, in accordance with the legal provisions of article 83b of the Labour Code, are stipulated by unit of work, piece or item, the clause in question is considered fundamental as what the negotiation procedure hoped to correct was the wage discrepancies in this sector. However, the Government indicates that the collective agreement of the construction industry was still valid, therefore the procedure was not the correct one inasmuch as the wage demands were a revision and not a submission of a list of demands.
- 715.** The Government states that while article 240 accepts the possibility of revision, the legislation does not state clearly whether the procedure to follow is that stipulated in articles 379 to 381 inclusive of the Labour Code on conciliation. In any case, the Government indicates that the Directorate of Conciliation reminded the parties that while differences could arise during the proceedings, these should occur in an atmosphere of agreement and harmony, and it repeated to the parties that the revision taking place was exclusively on the wage clause and was not a negotiation of a list of demands with regard to the collective agreement, the latter having been extended automatically in accordance with article 241 of the Labour Code (this article states that: "The term of the collective agreement being expired, without there being any request for revision, the agreement shall be extended for a period equal to that of its previous validity"), to expire on 30 April 2003. The Government states that the process is continuing and at a recent meeting held at the Ministry of Labour in July 2002, the parties, in mutual agreement, decided to continue the negotiations for a wage revision for a further three months from the signing of the

agreement, both undertaking in a climate of harmony to reach consensus on the proposals and that these agreements would be communicated to the ILO at the end of the period.

- 716.** In its communication of 10 October 2002, the Government declares that agreements signed on 29 August and 18 September 2002 between, on the one hand, the Nicaraguan Construction Chamber (CNC), the National Trade Union of Carpenters, Bricklayers and Allied Trade Unions (SNSCAASC-CST), the Nicaraguan Federation of Construction and Wood Workers (FITCMN), and, on the other hand, civil servants from the Ministry of Labour, put an end to the labour conflict in the construction sector.

C. The Committee's conclusions

- 717.** *The Committee notes that in this case the complainant organization states that: (1) in May 2000, the National Trade Union of Carpenters, Bricklayers and Allied Trade Unions (SNSCAASC) submitted a list of demands to the administrative authority to begin revision proceedings of the collective agreement concluded in April 1999 with the Nicaraguan Construction Industry Association (CNC); (2) this proceeding took place over more than one year, violating the time period laid down in the Labour Code for negotiations; (3) the CNC was not present at a number of meetings relating to the negotiation hearings; (4) on various occasions the administrative authority was requested to convoke a Strike Council but there has been no ruling in this respect; and (5) finally, the Directorate of Individual and Collective Conciliation of the Ministry of Labour decided unilaterally to extend the collective agreement for a period equivalent to that for which it had previously been valid.*
- 718.** *The Committee notes the Government's statement that: (i) this case does not represent a collective conflict (change in the collective agreement as a whole) but tries to clarify wage discrepancies in the sector; (ii) there is a collective agreement in force, which means that the procedure that should have been followed is that of revision of the agreement and not submission of a list of demands; (iii) the collective agreement was extended according to article 241 of the Labour Code which states that: "The term of the collective agreement being expired, without there being any request for revision, the agreement shall be extended for a period equal to that of its previous validity"; (iv) the parties, in mutual agreement, decided in July 2002 to continue the negotiations for a wage revision for a further three months from the signing of the agreement, both parties undertaking to reach a consensus on the proposals in a climate of harmony; and (v) in August and September 2002, the parties and the Ministry of Labour signed agreements which put an end to the labour dispute.*
- 719.** *First, the Committee regrets that, although the procedure begun was not the correct one, the negotiation of a list of demands has lasted more than one year. In this sense, the Committee requests the Government to take steps to ensure that, in the future, collective bargaining procedures are carried out within reasonable time limits.*
- 720.** *Second, the Committee notes with interest that the parties and civil servants from the Ministry of Labour have signed agreements in August and September 2002 which put an end to the labour dispute.*

The Committee's recommendation

- 721.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

Regretting that the negotiation of a list of demands has lasted more than one year, the Committee requests the Government to take steps to ensure that, in

and principles of the Freedom of Association Committee, 4th edition, 1996, para. 435]. The Committee is of the opinion that non-deduction of trade union dues should not in any circumstances, be a measure caused by the carrying out of legitimate trade union activities. In this case, taking into account that national legislation allows for the deduction of trade union dues from wages, the Committee requests the Government to carry out an investigation and, if it finds that FENITEC has complied with the legal requirements, to ensure the immediate restoration of the deduction of the trade union dues of its members from their wages. The Committee requests the Government to keep it informed in this regard.

The Committee's recommendations

706. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

(a) The Committee requests the Government to carry out an investigation into the allegations and, if it finds that FENITEC has complied with the legal requirements, to ensure the immediate restoration of the deduction of the trade union dues of its members from their wages.

(b) The Committee requests the Government to keep it informed in this regard.

CASE NO. 2205

DEFINITIVE REPORT

Complaint against the Government of Nicaragua presented by the José Benito Escobar Workers' Trade Union Confederation (CST-JBE)

Allegations: The complainant organization alleges excessive delays and difficulties in the bargaining procedure for a list of demands and the unilateral extension of the validity of a collective agreement.

707. The complaint is contained in a communication dated 30 May 2002 from the José Benito Escobar Workers' Trade Union Confederation (CST-JBE). Subsequently, the CST-JBE sent further information in a communication dated 29 June 2002. The Government sent its observations in communications dated 15 July and 10 October 2002.

708. Nicaragua 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

709. In communications dated 30 May and 29 June 2002, the José Benito Escobar Workers' Trade Union Confederation (CST-JBE) states that, in accordance with the provisions of article 240 of the Labour Code: "The collective agreement shall be revised before its validity expires at the request of one of the parties, if there are substantial changes to the social and economic conditions of the company or the country that make this advisable".

the future, collective bargaining procedures are carried out within reasonable time limits.

CASE No. 2195

REPORT IN WHICH THE COMMITTEE REQUESTS TO BE KEPT
INFORMED OF DEVELOPMENTS

**Complaint against the Government of the Philippines
presented by
the Association of Airline Pilots of the Philippines (ALPAP)**

Allegations: The complainant alleges that after staging a strike against the management of Philippine Airlines Inc. for unfair labour practices, a return-to-work order was issued and the strike was declared illegal, with the result of the striking workers losing their jobs and the union being left practically busted.

722. In a communication dated 15 April 2002, the Association of Airline Pilots of the Philippines (ALPAP) submitted a complaint of violations of freedom of association against the Government of the Philippines.

723. The Government sent its observations in a communication dated 5 June 2002.

724. The Philippines 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

725. In a communication dated 15 April 2002, ALPAP firstly explains that it is a legitimate labour organization, comprised of all commercial airline pilots of Philippine Airlines, and, prior to its current dilemma, was its recognized collective bargaining agent. ALPAP is also a member of the International Federation of Airline Pilots. ALPAP then explains that according to the legislation in force in the Philippines, before a strike can be legally conducted, a union must first: (a) file a notice of strike with the Department of Labor and Employment; (b) wait for a period of no less than 30 days in case the strike is due to a deadlock in collective bargaining; seven days in case acts of unfair labour practice are committed. However, a union may strike immediately upon filing of the notice if the acts of unfair labour practice include the termination from employment of union officers. But in every case of a labour dispute, the Secretary of Labor and Employment may determine that the strike can affect public interest and assume jurisdiction over the dispute in which case, if the striking workers have already gone on strike, a return-to-work order is issued forthwith.

726. ALPAP explains further that several acts from the employer, Philippines Airlines Inc. (PAL), led it to stage a strike on 5 June 1998. These acts included: the forced retirement of a 45-year-old pilot; the plan of management to retrench airline employees, including pilots; the filing of a baseless charge against a pilot who was a former union official; and sudden and unexplained delays in the payment of salaries and remittance of union dues. Fearing

for their jobs as well as for the existence of the union, ALPAP decided on 5 June 1998 to conduct a general assembly wherein the majority petitioned their officers to take immediate action. After the assembly, ALPAP filed a notice of strike on the grounds of unfair labour practice and union busting. In full conformity with the exception allowed under article 263 of the Labor Code that allows a strike to be staged without a strike vote and the necessity of undergoing a cooling-off period because the survival of the union was at stake, ALPAP staged a strike at around 5.30 p.m. on 5 June 1998. Immediately, the Department of Labor and Employment (DOLE) assumed jurisdiction, called the parties to a conference and issued a return-to-work order dated 7 June 1998. The order gave ALPAP a 24-hour deadline within which to comply therewith. But according to ALPAP, as early as 6 June 1998, PAL circulated an official announcement considering all ALPAP officers to have lost their employment status. After issuing the said announcement, PAL allegedly took the position that any returning pilot would be considered a new applicant to the position, the end result of which would be the pilot forfeiting his retirement benefits.

- 727.** Furthermore, ALPAP claims that while the return-to-work order was issued on 7 June 1998, a copy of the order was not served upon ALPAP until 25 June 1998. In compliance therewith, the striking pilots reported for work at 11 a.m. on 26 June 1998. However, they were no longer accepted by PAL and on 2 July 1998, PAL made it clear that it would not accept the striking workers back on account of their failure to comply with the 24-hour deadline.
- 728.** On 1 June 1999, the Secretary of Labor and Employment, following a motion filed by both parties, came out with a ruling in which he declared the strike conducted by ALPAP on 5 June 1998 and thereafter to be illegal for being procedurally infirm and in open defiance of the return-to-work order of 7 June 1998. Consequently, the strikers were deemed to have lost their employment status. ALPAP then filed a motion for reconsideration, which was denied on 23 July 1999. ALPAP then filed a Petition for Certiorari before the Court of Appeals, which was also denied.

B. The Government's reply

- 729.** In a communication dated 5 June 2002, the Government states that in its view, the complaint centres on the declaration that the strikes staged by ALPAP on 5 June 1998 and thereafter were illegal. The said strikes were ruled "illegal for being procedurally infirm and in open defiance of the return-to-work order of 7 June 1998". The Government indicates that the basis for declaring the strikes illegal were discussed in detail in the 1 June 1999 resolution of the Secretary of Labor and Employment as well as the 22 August 2001 Decision of the Court of Appeals. In a resolution issued on 10 April 2002, the Supreme Court dismissed ALPAP's petition assailing the decision of the Court of Appeals.
- 730.** The Government contends that the national legislation provides for reasonable procedures on the exercise of the right to strike, in particular the requirement of a strike vote (article 263 of the Labor Code). Rule XXII, section 3, of the Rules Implementing the Labor Code states that "... in case of unfair labour practice involving the dismissal from employment of any union officer ... which may constitute union-busting, where the existence of the union is threatened, the fifteen-day cooling-off period shall not apply *and the union may take action immediately after the strike vote is conducted* and the results thereof submitted to the appropriate regional branch of the Board".
- 731.** In this regard, the Government points out that the Supreme Court has ruled that the requirement of a strike vote is mandatory because many disastrous strikes had been staged in the past based merely on the insistence of minority groups within the union. Thus, the Government claims that the exception put forward by ALPAP does not exist since the law is clear on the fact that a strike vote must be held before a strike can take place, even in

instances where the cooling-off period does not apply. The Government insists on the fact that ALPAP clearly did not conduct a strike vote and that no duly elected officer was dismissed to warrant an immediate strike.

- 732.** Concerning the return-to-work order, the Government recalls that the relevant provision of the Labor Code is article 263(g) which states that:

When, in his opinion, there exists a labour dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. *If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.*

The Government explains that the return-to-work order of 7 June 1998 recognized the effect of a strike in the airline industry, given the significant PAL market share in passenger and cargo transport.

- 733.** In conclusion, the Government points out that procedural requirements are necessary for the orderly exercise of the right to strike and do not constitute tools of repression to stifle workers.

C. The Committee's conclusions

- 734.** *The Committee notes that in this case, the complainant organization, ALPAP, alleges that after staging a strike against the management of Philippine Airlines Inc. (PAL) for unfair labour practices, the Department of Labor and Employment (DOLE) assumed jurisdiction over the dispute and issued a return-to-work order. ALPAP also claims that as the strike was declared illegal, the consequence was that all striking workers lost their jobs and the union was left practically busted.*

- 735.** *The Committee notes that according to the Government, the main issue of the complaint lies with the fact that the strike staged by ALPAP on 5 June 1998 was declared illegal for being procedurally infirm and in open defiance of the return-to-work order of 7 June 1998. According to the Government, the fact that ALPAP did not follow the legal requirement of a strike vote before it staged the strike on 5 June 1998 rendered the strike illegal, which was confirmed by different rulings of the national courts, including the Supreme Court in April 2002.*

- 736.** *In this regard, the Committee recalls that it has, in the past, considered that the obligations to give prior notice to the employer before calling a strike and to take strike decisions by secret ballot are acceptable. However, in the Committee's view, the problem in the case lies primarily with the content of section 263(g) of the Labor Code. The Committee notes that this provision permits the Secretary of Labor and Employment to submit a dispute to compulsory arbitration, thus bringing an end to a strike, in situations going beyond essential services or an acute national crisis. The provision endows the Secretary with such authority where he is of the opinion that there exists "a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest". The provision goes on to empower the President to determine "the industries that, in his opinion, are indispensable to the national interest", and allows him to intervene at any time and assume jurisdiction "over any such labor dispute in order to settle or terminate the same". In this respect, the Committee recalls that responsibility for declaring a strike illegal should not lie with the Government but with an independent body*

which has the confidence of the parties involved [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 522]. Furthermore, the Committee observes that for several years now, the Committee of Experts on the Application of Conventions and Recommendations has been requesting the Government to take measures to amend section 263(g) of the Labour Code in order to bring it into conformity with the requirements of the Convention.

- 737.** *In this particular case, the Committee notes that less than 48 hours after the strike was staged by ALPAP, the Secretary of Labor and Employment assumed jurisdiction over the conflict and issued a return-to-work order, taking into account the effect of a strike in the airline industry, given the significant PAL market share in passenger and cargo transport. In this regard, the Committee recalls that it has never, in the past, considered transport in general and airline pilots in particular to constitute essential services in the strict sense of the term. The Committee recalls that to determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to life, personal safety or health of the whole or part of the population [see **Digest**, op. cit., paras. 540 and 545]. Furthermore, whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or personal safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category of staff in the event of a strike whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association [see **Digest**, op. cit., para. 572]. Therefore, the Committee urges the Government to amend section 263(g) of the Labor Code, in order to put it into full conformity with the principles of freedom of association. The Committee asks the Government to keep it informed in this regard.*
- 738.** *With respect to the sanctions which were imposed upon ALPAP's striking workers, namely the loss of their jobs, the Committee recalls that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike. However, in the present case, it appears that the strike staged by ALPAP was entirely peaceful. The Committee thus recalls that the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitute a violation of freedom of association. Moreover, the Committee has always considered that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. As noted above, some of the limitations on strike action contained in the legislation are not in conformity with the principles arising from Convention No. 87. While acknowledging the fact that ALPAP could be required to hold a strike vote before staging a strike, the Committee nevertheless considers that the Secretary of Labor and Employment should not have assumed jurisdiction over the conflict and put an immediate end to the strike. Furthermore, the Committee is of the view that sanctions, such as massive dismissals, in respect of strike action, should remain proportionate to the offence or fault committed. In these conditions, the Committee requests the Government to initiate discussions in order to consider the possible reinstatement in their previous employment of all ALPAP's workers who were dismissed following the strike staged in June 1998. It asks the Government to keep it informed in this regard.*

The Committee's recommendations

- 739.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Recalling that the responsibility for declaring a strike illegal should not lie with the Government but with an independent body which has the*

confidence of the parties involved, the Committee urges the Government to amend section 263(g) of the Labor Code in order to put it into full conformity with the principles of freedom of association. It asks the Government to keep it informed in this regard.

- (b) *While acknowledging the fact that ALPAP could be required to hold a strike vote before staging a strike, the Committee nevertheless considers that the Secretary of Labor and Employment should not have assumed jurisdiction over the conflict and put an immediate end to the strike. Furthermore, considering that sanctions, such as mass dismissals, in respect of strike action, should remain proportionate to the offence or fault committed, the Committee requests the Government to initiate discussions in order to consider the possible reinstatement in their previous employment of all ALPAP's workers who were dismissed following the strike staged in June 1998. The Committee asks the Government to keep it informed in this regard.*

CASE NO. 2181

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Thailand
presented by
the Bangchak Petroleum Public Co. Ltd. Employees' Union (BCPEU)**

Allegations: The complainant alleges that the Government cancelled its registration and dissolved it as a result of a change of status, from public to private company.

- 740.** The complaint is set out in communications dated 18 February and 10 May 2002 from the Bangchak Petroleum Public Co. Ltd. Employees' Union (BCPEU).
- 741.** The Government submitted its reply in communications dated 17 May and 7 October 2002.
- 742.** Thailand has 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), nor the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 743.** In its communication of 18 February 2002, the BCPEU alleges that it had been formally registered on 25 January 2001 (Registration Certificate No. SorRorRor 54) as a legal trade union of Bangchak Petroleum Public Co. Ltd., under the State Enterprises Labour Relations Act, 2000 (SELRA 2000), with Mr. Sobhon Thamrongpholtheeraphap as President. Its registration was revoked by the Department of Labour Protection and Welfare (DLPW) of the Ministry of Labour Protection and Social Welfare (MOLSW) on 26 December 2001. The complainant describes the sequence of events as follows.

- 744.** On 11 September 2001, the management of the Petroleum Authority of Thailand – Exploration (PTT-EP) asked the DLPW whether it would still be considered a state enterprise under article 6(2) of SELRA 2000, when its parent company, the Petroleum Authority of Thailand (PTT), would be changed into a private company on 1 October 2001. On 4 October 2001, the DLPW replied that PTT-EP was no longer a state enterprise, covered as such by the SELRA 2000, and would be covered by the law governing private sector enterprises, i.e. the Labour Relations Act of 1975.
- 745.** On 12 October 2001, the Acting Managing Director of the Bangchak Petroleum Public Co. Ltd. wrote to the Ministry, asking: (1) whether the company was still considered a state enterprise covered by the SELRA 2000; (2) if not, which labour law applied, and from what date; and (3) whether the BCPEU was still considered as a union under the SELRA 2000 and, if not, its effective date of dissolution.
- 746.** On 28 October 2001, the President of the BCPEU wrote to the Ministry, arguing that the union should be considered as a state enterprise union, given the intent of the SELRA 2000. The President of the company, Mr. Narong Boonyasaguan, also stated publicly on 22 April 2002, in the context of a request for a 3 billion bahts bail-out/debt restructuring addressed to the Government, that "... as the company was state-owned, he was certain the Government would never let it collapse".
- 747.** On 3 November 2001, representatives of the company and of the BCPEU, along with officials of the Ministry, met to discuss a labour dispute arising from the collective bargaining demands made by BCPEU under the SELRA 2000 on 1 October 2001, at which time a copy of the demands had been sent to the authorities. The management of the company refused to bargain collectively with the union, stating they wanted first to know whether the union had the right to submit such demands and whether the company was still considered a state enterprise. The meeting concluded with government officials present stating they would seek a legal opinion from the Council of State.
- 748.** On 28 November 2001, the Ministry of Finance informed the Ministry of Labour that it still viewed the company as a state enterprise under the Budget Procedures Act of 1959. However, on 24 December 2001, the Council of State informed the Ministry of Labour that the company was not covered by the SELRA 2000 and that the registration of the BCPEU should therefore be revoked. On 26 December 2001, the registration of the BCPEU was revoked as of 1 October 2001. That decision was notified the same day to the President of the BCPEU, stating further that the union would have to be newly organized, under the Labour Relations Act of 1975.
- 749.** The BCPEU submits that its right to exist should not be tied to the status of the employer as a public or private concern since its representational activities and duties have not changed in any way. It argues that the intent of the Ministry is to use the legal classification of employers to destroy this union and perhaps, in the future, other state enterprises in Thailand. The revocation of BCPEU's registration had a direct impact on collective bargaining efforts under way with the employer, as shown by the management's refusal to bargain at the meeting on 3 November 2001. Furthermore, it is now unclear whether the previously negotiated terms and conditions of employment are still in force, and the workers are greatly concerned that the employer will take unilateral action to reduce wages and benefits without negotiating with the union.
- 750.** In its communication of 10 May 2002, the BCPEU adds that, on 7 January 2002, it complained about this situation to the Parliamentary Committee on Labour and Social Welfare, thereby initiating an investigative process. On 30 January 2002, the Chairman of that Committee met with representatives of the BCPEU and of various government agencies concerned with the issue. The two main conclusions of the Committee, issued on

10 April 2002, were that the change in shareholders at the company did not impact on its status as a state enterprise and therefore, that there should be no change in BCPEU status as a state enterprise union.

B. The Government's reply

- 751.** In its communication of 17 May 2002, the Government confirms that the BCPEU was registered on 25 January 2001 under the SELRA 2000, as a legal union of employees of the Bangchak Petroleum Public Co. Ltd. The shareholders of the company were then: the Ministry of Finance (47.87 per cent); the Petroleum Authority of Thailand (PTT, 24.29 per cent); the Krung Thai Bank Public Co. Ltd. (7.86 per cent); and "others" (20 per cent). As the Ministry of Finance and the PTT held together more than 50 per cent of the stock, the company had the status of state enterprise under article 6(2) of the SELRA 2000.
- 752.** On 25 September 2001, the Cabinet adopted a resolution creating the Thai Petroleum Public Company Ltd. The Cabinet also approved the conversion of PTT's capital into shares of the newly created Thai Petroleum Public Company Ltd., which was registered on 1 October 2001 as a limited public company, the sole shareholder of which was now the Ministry of Finance. Under article 24 of the State Enterprise Capital Act of 1999, all rights, assets and liabilities of PTT, including its 24.29 per cent share capital of the Bangchak Petroleum Public Co. Ltd., were transferred to the Thai Petroleum Public Company Ltd., effective 1 October 2001. As a result, from that date, the shareholders of the Bangchak Petroleum Public Co. Ltd. were as follows: Ministry of Finance, 47.87 per cent; Thai Petroleum Public Company Ltd., 24.29 per cent; Krung Thai Bank Public Co. Ltd., 7.86 per cent; "others", 20 per cent.
- 753.** According to the Government, the State Council has considered that the Petroleum Authority of Thailand (PTT) was completely privatized and became the Thai Petroleum Public Company Ltd. on 1 October 2001. As a result, the PTT was not a state enterprise under article 6(1) of the SELRA 2000, and the Bangchak Petroleum Public Co. Ltd. automatically became a private company which did not have the status of state enterprise any longer. The Government adds that the conversion of the company from a state enterprise to a "private public company" automatically ended BCPEU's status of state enterprise trade union on 1 October 2001. This was officially announced by the Registrar on 26 October 2001.
- 754.** The former President and the executive committee of BCPEU were then invited by the Department of Labour Protection and Welfare (DLPW) to meet the competent officer to obtain information on the right to organize and register under the Labour Relations Act of 1975.
- 755.** On 18 March 2002, a group of 12 workers led by a person other than the former President of BCPEU (a Mr. Sthaphorn Mesa-Ard) filed a registration application with the DLPW, which the Registrar approved and announced on 5 April 2002 (Registration Certificate No. KorThor 785).
- 756.** In its communication of 7 October 2002, the Government indicates that the former executive of BCPEU are entitled to organize a trade union under the Labour Relations Act of 1975. The Government considers that the revocation of BCPEU's registration and its dissolution are legitimate, and that BCPEU's rights to organize and to bargain collectively are fully sustained, under the Labour Relations Act of 1975 and the 1997 Thai Constitution.

C. The Committee's conclusions

757. *The Committee notes that this complaint concerns a situation arising out of a purported change of status of a state-owned oil company, from state to private enterprise, as a result of which the complainant organization (BCPEU) was automatically dissolved and prevented from bargaining collectively.*

758. *The Committee notes at the outset that the intended change of status is not all that clear, since two government agencies or bodies (the Ministry of Finance on 28 January 2001, and the Parliamentary Committee on Labour and Social Welfare on 10 April 2002) stated that the change in shareholders did not impact on the status of Bangchak Petroleum Public Co. Ltd. as a state enterprise, and that there should be no change in BCPEU status as a state enterprise union. Secondly, the President of Bangchak Petroleum himself stated publicly on 22 April 2002 (more than seven months after the purported change) that “the company is state-owned”, when requesting a government bail-out to restructure the company's debt.*

759. *Whatever the current legal status of the company (which is not for the Committee to decide) and whether or not the conversion was a bona fide one, the crucial issues from the Committee's point of view are that the BCPEU was dissolved, its registration was cancelled, it is prevented from bargaining collectively, the application of the previously negotiated agreement is unclear, and the representational gap may ultimately affect the working conditions of the workers.*

760. *The Committee recalls that:*

- *Measures of dissolution by administrative authorities constitute serious infringements of the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 664].*
- *The dissolution of trade union organizations is a measure which should occur only in extremely serious cases, and only following a judicial decision so that the rights of defence are fully guaranteed [see **Digest**, op. cit., para. 666].*
- *The cancellation of an organization by the Registrar of trade unions is tantamount to the dissolution by administrative authority [see **Digest**, op. cit., para. 669].*
- *Deregistration measures, even when justified, should not exclude the possibility of a union application for registration to be entertained once a normal situation has been re-established [see **Digest**, op. cit., para. 671].*
- *Legislation which accords the Minister complete discretionary power to order the cancellation of the registration of a trade union, without any right of appeal to the courts, is contrary to the principles of freedom of association (see **Digest**, op. cit., para. 672).*

761. *The Committee notes that all these principles were violated in the particular circumstances, notably as regards the administrative dissolution of BCPEU and the automatic revocation of its registration and legal personality. It therefore requests the Government to take appropriate measures so that the legal personality and registration of BCPEU be restored immediately, if necessary by transferring these rights under the new legislation covering the Bangchak company, and to keep it informed in this respect.*

762. *As regards the current trade union situation in the company, the Committee notes that a new union, led by another president, has been registered by the authorities. It is unclear*

however whether that registration in practice prevents BCPEU from applying for registration, and what are the practical consequences, in terms of preferential bargaining rights, for instance, etc. The Committee therefore requests the Government and the complainant to provide further updated information on the trade union situation in Bangchak Petroleum Public Co. Ltd., including the number of trade unions present in the company, their representativity, whether the previous collective agreement is being applied and the situation of collective bargaining rights. It also requests the Government to clarify the status, public or private, of the company in question.

763. *In view of the serious consequences that the existing legislation may bring about for the existence of workers' organizations in such cases of conversion from state to private enterprise, the Committee requests the Government to take appropriate measures so that this situation will not arise again in future and trade union successors' rights are safeguarded.*

The Committee's recommendations

764. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee requests the Government to take appropriate measures so that the legal personality and registration of BCPEU be restored immediately, if necessary by transferring these rights under the legislation covering the Bangchak company, and to keep it informed in this respect.*
- (b) The Committee requests the Government and the complainant to provide updated information on the trade union and collective bargaining situation in the Bangchak Petroleum Public Co. Ltd. It requests the Government to clarify the status, public or private, of the Bangchak Petroleum Public Co. Ltd.*
- (c) The Committee requests the Government to take appropriate measures so that this situation will not arise again in future.*

CASE NO. 2079

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Ukraine
presented by
the Volyn Regional Trade Union Organization of the
All-Ukraine Trade Union “Capital/Regions”**

Allegations: The complainant organization alleges the adoption of legislation contrary to freedom of association, the denial of legal recognition to a trade union, and the harassment and intimidation of trade union activists from various enterprises in the Volyn region.

- 765.** The Committee has already examined the substance of this case on three occasions, at its November 2000, June 2001 and March 2002 meetings when it submitted interim reports to the Governing Body [see 323rd Report, paras. 525-543, 325th Report, paras. 547-560 and 327th Report, paras. 868-883, respectively].
- 766.** The Government provided further information in communications dated 25 March, 30 May and 7 June 2002. The complainant forwarded additional information in communications dated 22 May and 10 July 2002.
- 767.** Ukraine 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

- 768.** At its meeting in March 2002, in the light of the Committee’s interim conclusions, the Governing Body approved the following recommendations:
- (a) With regard to the allegations of a legislative nature related to certain provisions of the Act on “Trade Unions, their Rights and Safeguard of their Activities”, the Committee takes due note that a bill amending the said provisions was examined at a session of the Supreme Council. It once again asks the Government to continue to keep it informed of the measures effectively taken to bring the said Act into full conformity with the provisions of Conventions Nos. 87 and 98.
 - (b) The Committee asks the Government to keep it informed of whether the Volynskaya Province division of the All-Ukraine Trade Union “Capital/Regions” has been registered with the local authorities.
 - (c) With regard to the case of Mr. Linik, the Committee requests the Government to set up an independent inquiry into his dismissal and if there was evidence that he had been dismissed for reasons linked to his legitimate trade union activities, to take all necessary measures to reinstate him in an appropriate position, without loss of wage and benefits. The Committee asks the Government to keep it informed of the situation of Mr. Jura, trade union leader at the Volynoblenergo enterprise.

- (d) In the light of the continued allegations of acts of anti-union discrimination at the Lutsk Bearing Plant, the Committee urges the Government to investigate these allegations and, if they are proven to be true, to take all necessary measures to put an end to these acts. The Committee also asks the Government to keep it informed in this regard. The Committee also asks the Government to provide its observations on the recent allegations put forward by the complainant organization in its communications of 1 and 21 November 2001, and 9 January 2002.

B. The complainant's new allegations

769. In a communication dated 10 July 2002, the complainant organization once again expresses its deep concern over the draft proposals on the amendments of sections 16 and 39 of the Act on "Trade Unions, their Rights and Safeguard of the Activities". The complainant organization is concerned that the content of section 16 of the Act, which provides for the registration of trade unions, will amount to previous authorization for the establishment of trade unions. Furthermore, section 39 of the Act, which deals with the termination of an employment contract, would, according to the complainant, give the employer too broad powers in order to decide if a trade union, which is in disagreement with the termination of employment, has clearly motivated its position. The complainant organization further indicates that negotiations on the draft proposals on the amendments to the Act on "Trade Unions, their Rights and Safeguard of their Activities" will be carried out until 2 September 2002.

C. Further replies of the Government

770. In its communications dated 25 March, 30 May and 7 June 2002, the Government firstly acknowledges that there had been in the past violations of trade union rights by the management of certain enterprises. However, once these violations were confirmed, the relevant authorities took measures to remedy the said violations and settle the labour disputes. For example, a number of violations were acknowledged on the part of the management of the Volynoblenergo enterprise in its relations with the complainant organization. Therefore, on 12 March 2002, the Ministry of Labour and Social Policy sent a letter to the Chairman of the board of this enterprise requesting him to take appropriate measures to eliminate the existing shortcomings on the part of the administration in its relations with the abovementioned union. Following this request, the management of the Volynoblenergo enterprise has provided the trade union committee of the All-Ukraine Trade Union, "Capital/Regions" with premises, means of communication and other facilities needed for its work, and the said union is able to carry out its mandate without problems. As a general rule, the examination of all complaints is carried out on the spot, in conjunction with the local authorities as well as the regional offices of the National Service of Mediation and the State Labour Inspection. In this regard, the Government points out that in numerous cases, the facts stated in the complaints are not confirmed in the course of inspections and there appears to be a lack of good will on the part of certain trade union leaders to settle labour disputes.

771. As for the situation of the Volynskaya Province division of the All-Ukraine Trade Union "Capital/Regions", the Government indicates that according to the Volynskaya Regional Directorate of Justice, the regional organization of the All-Ukraine Trade Union "Capital/Regions" has not to date submitted its registration documents. The Government further indicates that during the current year, the Chief Directorate of Labour and Social Protection of the Volynskaya region has received no complaints concerning violations of rights from workers at the Lutsk Bearing Plant or at the Volynoblenergo enterprise.

772. Finally, as regard the case of the dismissal of the forge worker Mr. Linik, the Government insists that it has already transmitted all the relevant information and that in accordance

with the legislation in force in Ukraine, the matter of Mr. Linik's reinstatement can only be decided following due judicial process.

D. The Committee's conclusions

- 773.** *The Committee recalls that this case related to two sets of allegations, namely, allegations of a legislative nature concerning certain provisions of the Act on "Trade Unions, their Rights and Safeguard of their Activities", and allegations of a factual nature related to the denial of legal recognition of trade unions, harassment and intimidation of trade union activists as well as unlawful dismissals.*
- 774.** *With regard to the allegations of a legislative nature related to certain provisions of the Act on "Trade Unions, their Rights and Safeguard of their Activities", the Committee had previously noted that according to the Government, a bill amending several sections of the Act had been examined at a session of the Supreme Council and adopted as a basis for further discussion. The drafting process would also take into account the conclusions of the ILO mission which visited the country in April 2001. The Committee understands from the complainant's statement that the discussions on the draft amendments to the Act were to be concluded in the course of the autumn of 2002. The Committee also takes note of the renewed concern of the complainant organization over certain provisions of the Act, and in particular section 16, which concerns registration requirements for trade unions. In this regard, the Committee wishes to recall that it has already examined and commented on the disputed provisions of this Act, in particular, in a previous examination of this case [see 323rd Report, paras. 538-539] as well as in the context of Case No. 2038 [318th Report, paras. 517-533]. Therefore, while taking due note that the discussions on the draft amendments to the Act are still ongoing, the Committee asks once again the Government to continue to keep it informed of the measures effectively taken to bring the said Act into full conformity with the provisions of Conventions Nos. 87 and 98.*
- 775.** *With regard to the continued allegations of acts of anti-union discrimination at the Lutsk Bearing Plant and Volynoblenergo enterprise which had been put forward by the complainant organization throughout the years 2000-01, the Committee notes that the Government itself acknowledged that there had been in the past violations of trade union rights by the management of these companies. However, the Committee notes that according to the Government, measures were taken in order to put an end to these violations and that no complaints from workers at the Lutsk Bearing Plant or at the Volynoblenergo enterprise have been filed with the Chief Directorate of Labour and Social Protection of the Volynskaya region so far this year.*
- 776.** *As regards the question of trade union registration, the Committee notes the Government's indication that according to the Volynskaya Regional Directorate of Justice, the regional organization of the All-Ukraine Trade Union "Capital/Regions" has not to date submitted its registration documents. Yet, in a previous examination of the case, the Committee had noted the registration of the All-Ukraine Trade Union "Capital/Regions" and the acquisition of legal personality of its affiliates. Furthermore, in its most recent reply, the Government indicates that the management of the Volynoblenergo enterprise has provided the trade union committee of the All-Ukraine Trade Union "Capital/Regions" with premises and that the said union is able to carry out its mandate. In this regard, recalling that the founders of a trade union should comply with the formalities prescribed by legislation but that these formalities should not be of such a nature as to impair the free establishment of organizations, the Committee requests the Government to clarify the situation of the Volynskaya Province division of the All-Ukraine Trade Union "Capital/Regions" as far as its registration with local authorities is concerned. It asks the Government to keep it informed in this respect.*

777. *With regard to the case of Mr. Linik, the Committee notes that the Government merely states that his reinstatement can only be decided following due judicial process. In this respect, the Committee recalls that in its previous examination of the case, in view of the contradicting statements from the complainant and the Government, it had asked the Government to set up an independent inquiry into the dismissal of Mr. Linik. The Committee reiterates this request and, if there is evidence that Mr. Linik had been dismissed for reasons linked to his legitimate trade union activities, trusts that the Government will take all necessary measures to reinstate him in an appropriate position without loss of wage and benefits. The Committee asks the Government to keep it informed in this regard. The Committee further asks the Government once again to keep it informed of the situation of Mr. Jura, who was a trade union leader at the Volynoblenergo enterprise and had been allegedly threatened with dismissal for his trade union activities in 2000.*

The Committee's recommendations

778. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) With regard to the allegations of a legislative nature related to certain provisions of the Act on "Trade Unions, their Rights and Safeguard of their Activities", the Committee takes note that the draft amendments to the said provisions are still under discussion. It once again asks the Government to continue to keep it informed of the measures effectively taken to bring the said Act into full conformity with the provisions of Conventions Nos. 87 and 98.*
- (b) Recalling that the founders of a trade union should comply with the formalities prescribed by legislation but that these formalities should not be of such a nature as to impair the free establishment of organizations, the Committee requests the Government to clarify the situation of the Volynskaya Province division of the All-Ukraine Trade Union "Capital/Regions" as far as its registration with local authorities is concerned. It asks the Government to keep it informed in this respect.*
- (c) With regard to the case of Mr. Linik, the Committee once again requests the Government to set up an independent inquiry into his dismissal and if there is evidence that he had been dismissed for reasons linked to his legitimate trade union activities, to take all necessary measures to reinstate him in an appropriate position, without loss of wage and benefits. The Committee asks the Government to keep it informed in this regard. It also once again asks the Government to keep it informed of the situation of Mr. Jura who was a trade union leader at the Volynoblenergo enterprise and had been allegedly threatened with dismissal for his trade union activities in 2000.*

CASE NO. 2174

INTERIM REPORT

**Complaint against the Government of Uruguay
presented by
the Staff Association of the CASMU (AFCASMU)**

***Allegations: The complainant alleges that:
(1) the Assistance Centre of the Medical Trade Union of Uruguay has suspended 46 workers without pay and ordered that proceedings be instituted against them following their participation in a strike; and (2) proceedings were instituted against five workers for having participated in a protest organized by the trade union outside the workplace.***

779. The complaint is contained in a communication from the Staff Association of the CASMU (AFCASMU) dated 21 January 2002. The AFCASMU sent further allegations in a communication dated 11 June 2002. The Government sent its observations in a communication dated 22 May 2002.

780. Uruguay 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

781. In its communication of 21 January 2002, the Staff Association of the CASMU (Assistance Centre of the Medical Trade Union of Uruguay) – AFCASMU – alleges that it was the target of a clear measure of trade union repression following direct action decided on by the sovereign general assembly of the association on 10 January 2002.

782. The AFCASMU explains that for over three years the CASMU, a mutual institution, has been paying its workers' salaries late, sometimes with delays extending up to three months (the salaries are paid in instalments), and more recently it has stopped providing holiday pay. This situation deteriorated further during the last few months of 2001. As a result, during an assembly meeting on 10 January 2002 the workers decided on a series of trade union measures to address the matter, and also on corrective measures to improve the operation of the health-care system. These measures included the following: "that either on 14 January all wages are paid or on 15 January the operating-room staff and the equipment centre staff of Sanatorium 2 will not attend work; that the entire executive committee of AFCASMU, advised and supported by the first-level committee of this sanatorium and colleagues from other places who wish to provide their support, will be at the door; that the following month, if all non-medical wages have not yet been paid, there will be a 24-hour strike in all the surgical blocks and equipment centres". This measure was decided by a majority and communicated in due time and form on 11 January to the institutional authorities. It should be pointed out that whenever measures are taken in any of the areas of assistance, a trade union presence is maintained to man the emergency rooms and this is what happened on the occasion in question. Given that the salaries were not paid on 14 January (with November and December being owed), the measure was carried out in

the surgical block and equipment centre of Sanatorium 2 with members of the trade union remaining on duty from midnight to midnight on 15 January according to a roster established by the union. For the record, all the staff were located in the dining room of Sanatorium 2 in case it was necessary to replace those on duty. The duty roster mentioned was coordinated with the official in charge of the surgical block. Also present was the director of the sanatorium, who did not report any irregularities in respect of emergencies.

- 783.** The AFCASMU alleges that the technical/administrative management of the CASMU decided the same day to send a memo to 46 of the 78 workers who participated in the action to inform them of their preventive suspension from duties without pay and of the decision to institute proceedings against them. It should be noted that this decision was endorsed by the board of directors of the CASMU, a political body of institutional management, following a meeting held with the trade union during which it explained the circumstances in which the measure decided by the assembly was implemented. The CASMU decision was communicated to the AFCASMU in a fax on 16 January.
- 784.** The AFCASMU adds that on 17 January the trade union met in a mass general assembly and decided, inter alia, to submit an appeal for the protection of its constitutional rights to the judiciary requesting that the suspension of the 46 workers and the withholding of wages as a result of their participation in trade union activities be declared null and void. It also decided to file a complaint with the Ministry of Labour and the ILO (Committee on Freedom of Association).
- 785.** In a communication dated 11 June 2002, the complainant organization alleges that as a result of a protest conducted outside the workplace in response to economic measures adopted by the Government, the authorities of this body decided to institute proceedings against five workers who participated in the protest (Ms. Sadi, Mr. Daniel Fernández, Mr. Julio César Ximenes, Mr. Héctor Pereira and Mr. Cyro Simoes).

B. The Government's reply

- 786.** In its communication of 22 May 2002, the Government states that it has consulted both the General Labour Inspectorate and the National Labour Directorate concerning the complaint in question and has found no reference whatsoever to the dispute.
- 787.** The Government adds that the Staff Association of the CASMU (AFCASMU), in accordance with trade union action approved by the general assembly of the AFCASMU, decided on Thursday, 10 January 2002 that if after 14 January the CASMU had not paid the wages owed to the staff, it would conduct a partial sector-specific strike in the department of the surgical block and the equipment centre of Sanatorium 2. As the wages owed had not been paid by 15 January, a strike was conducted from midnight to midnight with a trade union presence in place according to a duty roster.
- 788.** On 16 January, in accordance with a resolution handed down by its board of directors, the CASMU decided on the examination proceedings (which were to finish by 23 January) concerning the workers involved in the trade union action and the suspension from duties with full retention of pay during the period of the examination proceedings. The workers considered that this decision infringed on the following fundamental rights: freedom of association and the right to strike, which in this case consisted of an atypical form of sector-level strike.
- 789.** On 17 January the trade union decided to lodge an appeal for the protection of its constitutional rights to the judiciary requesting that the suspension of the 46 workers and the withholding of wages owing to their involvement in trade union action be declared null and void.

790. The examination proceedings were completed on 21 January, the preventive suspension was lifted and a call was made for a return to usual duties. Consequently, the workers returned to work.
791. A trade union hearing was held, for which provision is made in appeals for the protection of constitutional rights. The judicial authority, following the witnesses' statements and considering the fact that the CASMU had reinstated its workers, declared that "there is no sign of a potential infringement of a right, nor of irreparable damage and, in addition, an ordinary procedure is in place whereby possible disciplinary sanctions that the defendant might have imposed on the plaintiffs can be reviewed", and dismissed the appeal for protection.
792. Consequently, in principle the Ministry of Labour would not have any objections to make to the result of the appeal for the protection of constitutional rights and would like to be informed of any information the workers might provide concerning the result of the proceedings.

C. The Committee's conclusions

793. *The Committee observes that in this case the complainant organization alleges that on 16 January 2002 the Assistance Centre of the Medical Trade Union of Uruguay preventively suspended from duties, without pay, and ordered that proceedings be instituted against, 46 workers as a means of trade union repression following direct trade union action (more specifically, the failure of the operating-room and equipment centre staff to attend work on 15 January 2002, although emergency rooms were kept in service by means of trade union duty rosters and all the staff were present in the dining room in case it was necessary to replace those on duty). The complainant organization explains that 78 workers participated in this action and that the action was taken because for over three years the CASMU has been behind by up to three months in its payment of wages to its workers and that more recently it had also failed to pay for holidays.*
794. *The Committee notes the Government's statement that this constituted a partial sector-level strike and that it confirmed the failure to pay the wages owed as well as the suspension from duties without pay during the examination proceedings ordered by the institution. The Committee notes that once the examination proceedings had been completed the preventive suspension was lifted and that on 21 January 2002 the workers were invited to return to their duties, and all the workers who had been suspended from their duties were reinstated. The Government sends a copy of the judgement on the appeal for the protection of constitutional rights dated 28 January 2002 where this appeal is dismissed "without any special convictions", in particular given the nature of the appeal (which takes place "when there is an infringement or imminent threat of an infringement to a right or freedom which causes or will bring about irreparable damage if the formalities corresponding to the usual instruments are adhered to") and taking into account that the officials in question were reinstated and that "an ordinary procedure is in place whereby possible disciplinary sanctions that the defendant might have imposed on the plaintiffs can be reviewed".*
795. *The Committee has considered that the right to strike may be restricted or prohibited in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 526] and has deemed the hospital sector to be an essential service [see **Digest**, op. cit., para. 544]. The Committee has considered possible the establishment of minimum services in the case of strike action in essential services in the strict sense of the term [see **Digest**, op. cit., para. 556]. The Committee observes that in Uruguay strikes*

are not prohibited in the hospital sector and that in this case minimum services were maintained.

796. *In the circumstances of this case, the Committee requests the Government to indicate why the CASMU preventively suspended 46 workers from their duties without pay and instituted proceedings against them. Also, given that they were reinstated five days after the day of the partial strike, the Committee requests the Government to indicate whether these workers were paid the wages withheld during the five days that the examination proceedings lasted, and also whether these workers still run the risk of being punished or whether the disciplinary proceedings have been filed. The Committee requests the Government to keep it informed in this respect.*

797. *Lastly, the Committee notes with concern the allegation relating to the proceedings instituted against five workers of the CASMU for having participated in a protest organized by the trade union outside the workplace in response to economic measures adopted by the Government, and requests the Government to communicate its observations in this respect without delay and in particular to inform it about the result of the proceedings in question.*

The Committee's recommendations

798. *In the light of its foregoing interim conclusions, the Committee invites the Government Body to approve the following recommendations:*

(a) Taking into account the circumstances of this case, the Committee requests the Government to indicate why the CASMU preventively suspended 46 workers from their duties without pay and instituted proceedings against them. Also, given that they were reinstated five days after the day of the partial strike, the Committee requests the Government to indicate whether these workers were paid the wages withheld during the five days that the examination proceedings lasted, and also whether these workers still run the risk of being punished or whether the disciplinary proceedings have been filed. The Committee requests the Government to keep it informed in this respect.

(b) The Committee notes with concern the allegation relating to the proceedings instituted against five workers of the CASMU for having participated in a protest organized by the trade union outside the workplace in response to economic measures adopted by the Government, and requests the Government to communicate its observations in this respect without delay and in particular to inform it about the result of the proceedings in question.

CASE NO. 2154

INTERIM REPORT

**Complaint against the Government of Venezuela
presented by**

- **the Venezuelan Workers' Confederation (CTV),**
- **the Road Workers' Union of the State of Trujillo and**
- **the Construction and Timber Industry Workers' Federation
of Venezuela (FEDRACONSTRUCCION)**

Allegations: Unfair dismissals and denial of justice.

799. The complaint is contained in a joint communication dated 14 September 2001, from the Venezuelan Workers' Confederation (CTV), the Construction and Timber Industry Workers' Federation of Venezuela (FEDRACONSTRUCCION), affiliated to the CTV, and the Road Workers' Union of the State of Trujillo.

800. In the absence of a reply from the Government, the Committee was obliged on two occasions to postpone its examination of the case. At its May-June 2002 meeting [see 328th Report, para. 8], the Committee issued an urgent appeal to the Government drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of the case at its next meeting if the information and observations of the Government had not been received in due time.

801. Venezuela 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

802. In a communication dated 14 September 2001, the Venezuelan Workers' Confederation (CTV), the Construction and Timber Industry Workers' Federation of Venezuela (FEDRACONSTRUCCION) and the Road Workers' Union of the State of Trujillo allege that, by means of a decree, the Regional Government of the State of Trujillo dismissed 3,500 workers, doctors, sportsmen and sportswomen and teachers, as well as a number of pregnant women, all employed in its service. The documents sent by the complainants show that the dismissals, took place on grounds of reorganization of the Executive, by means of Decree No. 60 of the Government of the State of Trujillo, which included the abolition of the Trujillo Sports Institute, the Trujillo Tourism Institute, the Centre for the Development of Crafts, Micro-enterprise and Small Industry of the State of Trujillo, the Agricultural Development Corporation, the Special Fund for Child Development, the Trujillo Institute of Culture, the Trujillo Development Corporation, the Trujillo Housing Institute and the Trujillo Highways Institute, whose legal personality was thus eliminated. The complainants state that the property of those organizations remained in the hands of the State of Trujillo, and were assigned to the new organizations which resulted from the administrative reorganization, remaining in the hands of the various departments of the Executive.

803. The complainants point out that this mass dismissal was unfair, being in breach of article 93 of the Political Constitution (which upholds stability at work and outlaws unjustified dismissals), the legal prohibition on dismissing pregnant women, the collective labour agreement and the Organic Labour Act (articles 449, 451 and 453), which provides for the irremovability of the dismissed employees, based on discussion of the draft collective agreement provided for in the same act (trade union immunity). In fact, the Executive of the State of Trujillo arbitrarily dismissed these workers, without complying with the procedures set out in article 453, in open disregard of article 449. Articles 449-459 state as follows:

- Workers shall enjoy trade union immunity during collective bargaining, in consequence of which they shall not be dismissed without good grounds that have been previously established by the labour inspector.
- Any dismissal of a worker enjoying trade union immunity shall be considered null and void if the procedures laid down in article 453 of this Act have not been respected. Under the latter, where an employer seeks to dismiss for good reason (in this case a reorganization which, according to the complainants, is no more than a pretext) a worker enjoying trade union immunity, he shall request the corresponding authorization from the labour inspector of the jurisdiction in which the trade union is domiciled. Failing this, any worker dismissed in this way, without the established formalities having been respected, may submit a request to the labour inspector for reinstatement in his previous position.
- The inspector shall verify as appropriate if irremovability applies and, if so, he shall order reinstatement in the previous position and the payment of lost earnings. The decision ordering reinstatement shall be final, except in the case of legal proceedings.

804. The complainants state that, following these legal procedures, the labour inspectorate of the corresponding jurisdiction ordered in March 2001 the reinstatement of the persons dismissed in this situation from one of the mentioned sectors (construction and medicine), as well as the payment of wages owed since the date of dismissal (the text of this order was annexed to the complaint). Nevertheless, as stated by the complainants in one of the annexes to the complaint, in spite of the final ruling of the court of first instance relating to the civil, trade, agriculture, transport, labour and stability of employment departments of the State of Trujillo, which condemns the state entity on the basis of the stability of employment proceedings initiated by various employees who were dismissed, the entity in question did not comply with the judicial decision. It also disregarded the implementing orders issued against it by the competent authorities with regard to its blatant contempt and disobedience with regard to the judicial resolutions.

805. Finally, the complainants claim that there has been an extreme denial of justice, especially as the competent administrative proceedings tribunal did not admit the appeal for constitutional protection presented by the requesting parties, despite the order of the Supreme Court to admit all cases involving requests for protection and the support shown by the Committee for Human and Constitutional Rights of the National Assembly, as well as the Human Rights Committee of the State of Trujillo (as stated in the annex to the complaint).

B. The Government's reply

806. By a communication dated 5 September 2002, the Government recalls that the complainants requested the Committee to combine the allegations in this case with those of Case No. 2067, and it therefore considers that it would have been proper for the Committee to have restricted itself to requesting additional observations in this respect, instead of having recourse to what it considers to be an overstepping of its mandate, and a violation of the right of defence inherent in the principle of procedural symmetry. In addition, the

Government points out that it is unable to comprehend the content of the allegations, what specific facts are being denounced, or which international standards are supposed to have been violated. From this perspective, it considers it important to present observations on the complainant's communication, and therefore to require any kind of reply to such an imprecise communication would violate the right to due process.

C. The Committee's conclusions

- 807.** *The Committee notes the Government's request to join the allegations in this case with those of Case No. 2067, on the grounds that the right to due process would otherwise be denied. Nevertheless, although the Committee recognizes that certain aspects of both cases may appear to overlap, the allegations in this case are different from those of Case No. 2067. Indeed, it recalls that the latter case is concerned with anti-union legislation, suspension of collective bargaining following a decision by the authorities, convening of a national referendum on trade union issues, and hostility on the part of the authorities towards a trade union confederation (CTV), while the present case, in which the only complainant in common with the previous case is the CTV, is concerned with unfair dismissals and the denial of justice, which may also aim to obstruct the effective exercise of the freedom of association. In addition, although the national Government certainly is responsible, by definition, for ensuring that international standards are complied with throughout the territory of the country, it should nevertheless be emphasized that the scope of the present case is regional (State of Trujillo), while the context of the previous one was federal.*
- 808.** *The Committee also considers that the request for the examination of allegations in Case No. 2067 did not prevent the Government in any way from sending its observations within the prescribed time limits. The Committee also recalls that when this complaint was presented, in June 2001, the Committee had already examined Case No. 2067 on two occasions, and that it reached definitive conclusions in November 2001.*
- 809.** *The Committee deplores the fact that, despite the time that has elapsed since the submission of the complaint, and given the serious nature of the allegations that have been made, the Government has not replied to any of the allegations made by the complainants, although it has been invited on several occasions to present its own comments and observations on the case, including by means of an urgent appeal. Under these circumstances and in accordance with the applicable rules of procedure [see the Committee's 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to present a report on the substance of the case, even without the information which it had hoped to receive from the Government.*
- 810.** *The Committee reminds the Government, first, that the purpose of the whole procedure set up in the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. If the procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating, so as to allow objective examination, detailed replies to the allegations brought against them. [See First Report of the Committee, para. 31.]*
- 811.** *The Committee deplores with grave concern the fact that, despite this case concerning Venezuela being the subject of a special paragraph in the introduction of the last report of the Committee under the heading "urgent appeals" [see 328th Report, para. 8], the Government of Venezuela still does not appear to be prepared to cooperate with the Committee with respect to the complaints made against it.*

- 812.** *As regards the supposedly general and vague nature of the allegations, the Committee observes that the complainants are presenting specific allegations. Indeed, they state in concrete terms that the regional Government of the State of Trujillo, for reasons of reorganization, dismissed 3,500 workers unfairly, in violation of the Constitution of the Bolivarian Republic of Venezuela and the Organic Labour Act, which provides for irremovability as a result of discussion of the draft collective agreement, as well as in disregard for the collective labour agreement in force.*
- 813.** *Under these conditions, the Committee firstly recalls that governments should consult with trade union organizations to discuss the consequences of restructuring programmes on the employment and working conditions of employees [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 937], without proceeding by decree. In addition, observing that the state entity which is the subject of the complaint carried out this mass dismissal while a draft collective agreement was under discussion, the Committee recalls that the dismissal of workers on grounds of trade union activities violates the principles of freedom of association and where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment [see **Digest**, op. cit., paras. 702 and 698].*
- 814.** *The Committee notes that in March 2001 the competent labour inspectorate ordered the reinstatement of some of the dismissed workers and the payment of wages owed. In addition, it appears that the competent court which dealt with the claim made by some of the dismissed employees ruled against the state entity. Nevertheless, it observes that not only did the entity in question fail to comply with these resolutions but it also disregarded the corresponding judicial implementing orders issued against it, whereby it was to reinstate the dismissed workers and pay them the wages owed since the day of their dismissal.*
- 815.** *Under these conditions, observing in short that the competent authorities ruled in favour of some of the dismissed workers, but that the ruling, by the labour inspectorate and the courts, was not implemented, the Committee is bound to recall that justice delayed is justice denied. It also points out the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers [see **Digest**, op. cit., paras. 105 and 746]. The Committee therefore firmly urges the Government to ensure that the ruling concerning some of the persons dismissed by the regional Government of the State of Trujillo is implemented and that, together with the complainant organizations, it keeps it informed of the situation of the employees in whose favour orders were issued for reinstatement in their posts and the payment of wages owed.*
- 816.** *With respect to the remaining dismissed employees, the Committee reminds the Government that in a case involving a large number of dismissals, it would be particularly necessary for the Government to carry out an inquiry urgently in order to establish the true reasons for the measures taken [see **Digest**, op. cit., para. 735]. The Committee therefore requests the Government that if this inquiry, which must be independent, reveals that the remaining dismissals were on anti-union grounds, it should ensure that these workers are reinstated and the outstanding wages paid. It therefore requests the Government, together with the complainant organizations, to keep it informed in this respect.*

The Committee's recommendations

817. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee recalls that the dismissal of workers on grounds of trade union activities violates the principles of freedom of association and where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment.*
- (b) The Committee is bound to recall that justice delayed is justice denied and emphasizes the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers.*
- (c) The Committee urges the Government to ensure that the ruling concerning some of the persons dismissed by the regional Government of the State of Trujillo is implemented and that, together with the complainant organizations, it keeps it informed of the situation of the employees in whose favour orders were issued for reinstatement in their posts and the payment of wages owed.*
- (d) The Committee reminds the Government that in a case involving a large number of dismissals, it would be particularly necessary for the Government to carry out an urgent inquiry in order to establish the true reasons for the measures taken. It also requests the Government that, if this inquiry, which must be independent, reveals that the remaining dismissals, or some of them, were on anti-trade union grounds, it should ensure that these workers are reinstated and the outstanding wages paid. Finally, it requests the Government, together with the complainant organizations, to keep it informed in this respect.*

CASE NO. 2184

DEFINITIVE REPORT

**Complaint against the Government of Zimbabwe
presented by
the International Confederation of Free Trade Unions (ICFTU)**

Allegations: On 14 March 2002, policemen entered by force into the headquarters of the Zimbabwe Congress of Trade Unions (ZCTU) in Harare in order to monitor a meeting of its Executive Council. When reminded that they were not invited and should therefore leave the ZCTU premises, they threatened that, unless they were allowed in, they would use force to disband the meeting. As the union leadership stuck to its position, the police prevented the ZCTU from proceeding with the meeting. Allegations refer also to the intention of the authorities to deregister the ZCTU.

818. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 15 March 2002. The Government sent its observations in a communication dated 26 June 2002.

819. Zimbabwe has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

820. The complainant alleges acts of unauthorized police entry in trade union premises in order to prevent a meeting of the executive council of a trade union from taking place.

821. In its communication dated 15 March 2002 the International Confederation of Free Trade Unions (ICFTU) states that on 14 March 2002 at approximately 2 p.m., policemen in plain clothes entered by force into the headquarters of the Zimbabwe Congress of Trade Unions (ZCTU) in Harare in order to monitor a meeting of its executive council. When reminded that they were not invited and should therefore leave the ZCTU premises, they threatened that unless they were allowed in, they would use force to disband the meeting. The complainant alleges that as the union leadership stuck to its position, the police prevented the ZCTU from proceeding with the meeting.

822. The complainant alleges moreover that the situation of trade unionists in Zimbabwe is extremely precarious at present. According to the complainant several trade unionists have been victimized both during the electoral campaign and the period leading to it, while during the electoral campaign the President allegedly expressed the intention to deregister the ZCTU. The complainant further notes that unionized workers have been massively involved in civic and political activities calling for a change in the political leadership in Zimbabwe as workers are bearing the brunt of the mismanagement of the national economy and are prompted to militate for change by the erosion of their purchasing power, high unemployment, the breakdown in social and medical facilities and the looming problem of famine.

B. The Government's reply

823. In its communication dated 26 June 2002, the Government states that far from forcing its way in the ZCTU meeting, the police simply approached the ZCTU leadership in order to ascertain the nature of the gathering and, that at that point, the ZCTU executive council abandoned the meeting citing police interference. The Government informs the Committee that it acted in accordance with the Public Order and Security Act (POSA) which requires prior notification of public meetings and authorizes their monitoring by the police (Chapters 11:17 and 28:03). With regard to the legal basis of its action, the Government informs the Committee that after the aborted meeting, the ZCTU filed a petition to the High Court which ruled that ZCTU meetings are not covered by POSA.

824. The Government is of the view that the aborted ZCTU meeting was not a genuine trade union meeting but rather aimed at planning mass action against the Government, as shown by the fact that the organization called for a stay away two days later. The Government emphasizes that the stay away did not concern issues of employment but political goals. According to the Government, the ZCTU is an appendage of MDC, an opposition political party, which lost the latest presidential elections and connived with ZCTU to embark on mass actions to topple the elected Government. The Government points out that, as it has communicated to the ZCTU leadership, it does not interfere in genuine trade union meetings but if it has good cause to believe that the meetings are of a political nature and in contravention of POSA, it will not hesitate to deal with the situation, particularly when the action is aimed at removing the Government by violence.

C. The Committee's conclusions

825. *The Committee notes that the complainant alleges that on 14 March 2002 at approximately 2 p.m., representatives of the Zimbabwean Republic Police in plain clothes entered the ZCTU headquarters in Harare, threatened that they would use force to disband the meeting unless they were allowed in the premises, and finally prevented the ZCTU from proceeding with a scheduled meeting.*

826. *The Committee notes that the Government states that the police simply approached the ZCTU leadership in order to ascertain the nature of the gathering, in accordance with the Public Order and Security Act (POSA) which prohibits public meetings without prior notice to the police, and that the decision to abandon the meeting was taken by the ZCTU itself. The Committee also notes that according to the Government, the aborted ZCTU meeting was not a genuine trade union meeting but rather a meeting of a political nature. The Committee notes that according to the Government, the ZCTU called the aborted meeting in order to plan a stay away, which took place two days later, in an effort to embark on mass action to topple the Government. The Committee observes that the Government has not sent information supporting its views on this.*

827. *The Committee observes, however, that the High Court ruling of 11 April 2002 (sent by the Government) found that the meeting of the ZCTU was exempted from POSA by virtue of paragraph (j) of the Schedule to section 24(5) of this Act. Moreover, the Court found that the ZCTU meeting did not qualify as a public gathering as defined in section 2 of this Act. The High Court found therefore that the police did not have a right to monitor the meeting and issued an order prohibiting the police from sitting at or attending the meeting of the General Council of the ZCTU which would be held on Friday, 12 April 2002, and any similar meeting to be held in the future.*
828. *The Committee recalls that “the entry by police or military forces into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities” [Digest of decisions and principles of the Freedom of Association Committee, 1996, para. 176] and that “the right of the inviolability of trade union premises also necessarily implies that the public authorities may not insist on entering such premises without prior authorization or without having obtained a legal warrant to do so” [Digest, op. cit., para. 175]. The Committee recalls that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions [Digest, op. cit., para. 761].*
829. *The Committee requests the Government to ensure that the principles of non-interference by the authorities in the meetings and internal affairs of trade unions are respected and to implement the order of the High Court of Zimbabwe to the effect that police intervention in the meetings of trade unions may be avoided in the future.*
830. *The Committee notes with grave concern the allegations of the complainant concerning the intention of the authorities to deregister the ZCTU and the attitude against trade unionists before and during the electoral campaign. It observes that the Government has not made observations in this respect. The Committee strongly urges the Government to refrain from any action in this respect.*

The Committee’s recommendations

831. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee reminds the Government that the entry by police into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities and that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions.*
 - (b) *The Committee requests the Government to ensure that the principles of non-interference by the authorities in the meetings and internal affairs of trade unions are respected and to implement the order of the High Court of Zimbabwe to the effect that police intervention in the meetings of trade unions may be avoided in the future.*

- (c) *The Committee notes with grave concern the allegations of the complainant concerning the attitude against trade unionists before and during the electoral campaign and the intention of the authorities to deregister the ZCTU and strongly urges the Government to refrain from any action in this respect.*

Geneva, 17 November 2002.

(Signed) Paul van der Heijden,
Chairperson.

Points for decision:

Paragraph 174;	Paragraph 417;	Paragraph 697;
Paragraph 184;	Paragraph 447;	Paragraph 706;
Paragraph 193;	Paragraph 479;	Paragraph 721;
Paragraph 216;	Paragraph 492;	Paragraph 739;
Paragraph 281;	Paragraph 511;	Paragraph 764;
Paragraph 298;	Paragraph 534;	Paragraph 778;
Paragraph 315;	Paragraph 548;	Paragraph 798;
Paragraph 356;	Paragraph 566;	Paragraph 817;
Paragraph 384;	Paragraph 652;	Paragraph 831.
Paragraph 399;	Paragraph 687;	