

Case No. 1304

REPRESENTATION MADE BY THE CONFEDERATION OF COSTA RICAN WORKERS (CTC), THE AUTHENTIC CONFEDERATION OF DEMOCRATIC WORKERS (CATD), THE UNITY CONFEDERATION OF WORKERS (CUT), THE COSTA RICAN CONFEDERATION OF DEMOCRATIC WORKERS (CCTD) AND THE NATIONAL CONFEDERATION OF WORKERS (CNT), UNDER ARTICLE 24 OF THE ILO CONSTITUTION, ALLEGING THE FAILURE BY COSTA RICA TO IMPLEMENT SEVERAL INTERNATIONAL LABOUR CONVENTIONS INCLUDING CONVENTIONS NOS. 11, 87, 98 AND 135

65. By a communication dated 16 April 1984, which was received in Geneva on 16 May, the above-mentioned trade union organisations presented a representation to the Office alleging failure by the Government of Costa Rica to implement various Conventions, including the Right of Association (Agriculture) Convention, 1921 (No. 11), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

66. The above-mentioned Conventions have been ratified by Costa Rica.

67. The representation was also directed against the International Monetary Fund, which the complainants state acts with the Government in the measures concerned.

68. At its 227th Session (June 1984) the Governing Body [see document GB.227/205], in accordance with the recommendation of its officers, declared the representation presented against Costa Rica receivable, particularly as concerns Conventions Nos. 11, 87, 98 and 135; declared irreceivable the representation against the International Monetary Fund; and referred the aspects of the representation relating to the implementation of Conventions Nos. 11, 87, 98 and 135 to the Committee on Freedom of Association.

69. By letters of 8 October, 22 November and 18 December 1984, the Government sent its observations on the allegations presented by the complainant organisations. The complainant organisations, for their part, supplied a series of documents in support of their allegations, which were received on 25 October 1984 and communicated to the Government on 5 November 1984.

A. The complainants' allegations

70. The complainants allege that, as a consequence of negotiations and undertakings between the Government and the

- The Legal Department must at the same time request the Ministry of Justice to take steps with the Public Ministry for the institution of legal proceedings against the instigators of the illegal strike movement and those responsible for it.
- You are requested to inform the President's Office of any abnormal movement or situation connected with the matters referred to in this Official Circular.

96. With regard to this official circular of August 1983 concerning the illegality of any strike in the public sector, the Committee considers that such matters are not within the competence of the administrative authority.

97. As regards the alleged application of penal sanctions for trade union activities, the Committee observes that the complainants have supplied specific information on only one case. This is a judgement of 27 March 1984 sentencing ten leaders of the Trade Union of the National Bank to six months' and one day's imprisonment (deferred for three years) and a fine of 1,200 colones each, in particular for abandonment of duty and incitement to collective abandonment of public duty.

98. From the reasons adduced for this judgement it may be inferred: (1) that the strike was declared as a consequence of the refusal of the budgetary authorities to approve the budgetary implications of a wage adjustment agreement to reflect the rise in the cost of living, concluded between the Union and the Bank; (2) that the strike lasted three days (from 26 to 28 September 1983) and was followed by 90 per cent of the workers; (3) that the legislation does not authorise strikes in state public service bodies such as the National Bank of Costa Rica and that this was the reason for the imposition of the penalties mentioned in the previous paragraph.

99. In this respect the Committee wishes to recall that the right to strike may be prohibited or largely restricted with respect to public servants acting in their capacity as agents of the public authorities (among whom those performing bank services can obviously not be counted) or with respect to workers in essential services in the strict sense of the term (those whose interruption would endanger the life, personal safety or health of the whole or part of the population). [See, for example, 233rd Report, Case No. 1225 (Brazil), para. 668.] The Committee has considered that the banking sector is not an essential service in the sense mentioned [See 233rd Report, Case No. 1225 (Brazil), para. 668] and that nobody should be deprived of his liberty or subjected to penal sanctions for the mere fact of organising or participating in a peaceful strike. [See 230th Report, Case No. 1184 (Chile), para. 282.] In addition, the Committee has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. [See,

for example 234th Report, Case No. 1173 (Canada/British Columbia), para. 87.] The Committee requests the Government to take measures to guarantee the exercise of the right to strike of the workers of the National Bank of Costa Rica.

100. In this connection, the Committee observed that the September 1983 strike at the National Bank of Costa Rica, although prohibited, took place as a result of the Government's failure to respect its commitment to approve the budgetary implications of a wage adjustment agreement concluded between the Bank and the Union. This, in turn, led to the sentencing of ten members of the executive committee of the Union for having organised the strike. The Committee considers that both the prohibition of the strike and the application of penal sanctions were incompatible with the principles of freedom of association.

101. In general, the Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the various Bills or Acts posing problems of conformity with Conventions Nos. 87 and 98.

The Committee's recommendations

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

- (a) In general the Committee recalls that all governments are obliged to respect fully the commitments undertaken by ratification of ILO Conventions and that a State cannot use the argument that other commitments or agreements can justify the non-application of ratified Conventions.
- (b) The Committee draws the attention of the Government to the fact that, even under a stabilisation policy, the right to regulate conditions of employment, including wages, by means of collective agreements, may be restricted with respect to wage negotiations only under certain conditions; in particular, such restrictions should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards.
- (c) The Committee observes that the legislation serving as the basis for restrictions on wage negotiation dates from August 1982 (Decree No. 13827-TSS). In this connection, it requests the Government to indicate the measures it envisages with a view to removing the restrictions imposed by the legislation thereby enabling a return to free collective bargaining on wages.

- (d) The Committee considers it imperative that the legislation contain specific provisions explicitly and clearly recognising the right of organisations of public employees and officials not acting in the capacity of agents of the state administration to negotiate collectively, a right which, in accordance with the principles, can only be denied to officials working in ministries and other comparable government bodies but not, for example, to persons working in public undertakings or autonomous public institutions.

- (e) As regards the Bill to consolidate the solidarity associations, which according to the complainants are a movement supported by the employers and parallel to the trade union movement, the Committee observes that the Bill governs a series of associations pursuing social objectives that are not specifically of a trade union nature. Nevertheless, bearing in mind the concern expressed by the complainants, the Committee considers that, in the event of the Bill becoming law, the provisions governing the solidarity associations should respect the activities of trade unions guaranteed by Convention No. 98.

- (f) With regard to the official circular of August 1983 concerning the illegality of any strike in the public sector, the Committee considers that such matters are not within the competence of the administrative authority.

- (g) As regards the strike of workers of the National Bank of Costa Rica the Committee would recall that the right to strike may be restricted or even prohibited in the civil service - civil servants being those who act on behalf of the public authorities - or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that the banking sector is not a service that is essential in the strict sense of the term. In addition, it has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. The Committee considers that both the prohibition of the strike and the application of penal sanctions to the ten members of the executive committee of the Union were incompatible with the principles of freedom of association.

- (h) The Committee requests the Government to take measures to guarantee the exercise of the right to strike of the workers of the National Bank of Costa Rica.

- (i) The Committee wishes to point out that the technical assistance of the International Labour Office might contribute effectively to the drafting of a proposed text for the reform of the Labour Code in which the rights enshrined in the freedom of association

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and collective bargaining Conventions are fully safeguarded. The Committee wishes to draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to the various Bills or Acts which raise problems of conformity with Conventions Nos. 87 and 98.

Geneva, 30 May 1985.

Roberto Ago,
Chairman.