



## Governing Body

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### FOURTH ITEM ON THE AGENDA

## Reports of the Committee on Freedom of Association

### 360th Report of the Committee on Freedom of Association

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## Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 26 and 27 May and 3 and 7 June 2011, under the chairmanship of Professor Paul van der Heijden.
2. The members of Argentinian, Colombian, Mexican and Peruvian nationality were not present during the examination of the cases relating to Argentina (Cases Nos 2726, 2743, 2784 and 2809), Colombia (Cases Nos 2790, 2791 and 2801), Mexico (Cases Nos 2766, 2774 and 2802) and Peru (Cases Nos 2533, 2664, 2757, 2810 and 2813), respectively.

\* \* \*

3. Currently, there are 151 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 40 cases on the merits, reaching definitive conclusions in 24 cases and interim conclusions in 16 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

## Serious and urgent cases which the Committee draws to the special attention of the Governing Body

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2508 (Islamic Republic of Iran), 2664 (Peru), 2712 (Democratic Republic of the Congo), 2726 (Argentina), 2727 (Bolivarian Republic of Venezuela) and 2745 (Philippines) because of the extreme seriousness and urgency of the matters dealt with therein.

## Urgent appeals

5. As regards Cases Nos 2318 (Cambodia), 2516 (Ethiopia), 2620 (Republic of Korea), 2648 (Paraguay), 2710 (Colombia), 2713 and 2715 (Democratic Republic of the Congo), 2723 (Fiji), 2733 (Albania), 2739 (Brazil), 2780 (Ireland), 2789 (Turkey), 2794 (Kiribati), 2795 (Brazil), 2797 (Democratic Republic of the Congo), 2808 (Cameroon), 2815 (Philippines), and 2819 (Dominican Republic), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question 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 may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

## New cases

6. The Committee adjourned until its next meeting the examination of the following cases: Cases Nos 2844 (Japan), 2845 and 2846 (Colombia), 2847 (Argentina), 2848 (Canada), 2849 (Colombia), 2850 (Malaysia), 2851 (El Salvador), 2852 and 2853 (Colombia), 2854 (Peru), 2855 (Pakistan), 2856 (Peru), 2857 (Canada), 2858 (Brazil), 2859 (Guatemala),

2860 (Sri Lanka), 2861 (Argentina), 2862 (Zimbabwe), 2863 (Chile) and 2864 (Pakistan), since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

### **Observations requested from governments**

7. The Committee is still awaiting observations or information from the governments concerned in the following cases: 2203 (Guatemala), 2254 (Bolivarian Republic of Venezuela), 2445 (Guatemala), 2528 (Philippines), 2602 (Republic of Korea), 2609 (Guatemala), 2655 (Cambodia), 2694 (Mexico), 2702 (Argentina), 2753 (Djibouti), 2786 (Dominican Republic), 2807 (Islamic Republic of Iran), 2822 and 2823 (Colombia), 2825 (Peru), 2827 (Bolivarian Republic of Venezuela), 2828 (Mexico), 2829 (Republic of Korea), 2830 and 2835 (Colombia), 2837 (Argentina), 2839 (Uruguay) and 2840 (Guatemala).

### **Partial information received from governments**

8. In Cases Nos 2265 (Switzerland), 2660 (Argentina), 2673 (Guatemala), 2684 (Ecuador), 2704 (Canada), 2706 (Panama), 2740 (Iraq), 2749 (France), 2752 (Montenegro), 2768 (Guatemala), 2778 (Costa Rica), 2792 (Brazil), 2811 (Guatemala), 2821 (Canada), 2824 (Colombia), 2831 and 2833 (Peru) and 2842 (Cameroon), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

### **Observations received from governments**

9. As regards Cases Nos 2177 and 2183 (Japan), 2708 (Guatemala), 2729 (Portugal), 2741 (United States), 2750 (France), 2751 (Panama), 2758 (Russian Federation), 2761 (Colombia), 2781 (El Salvador), 2785 (Spain), 2788 (Argentina), 2793 and 2796 (Colombia), 2798 (Argentina), 2804 (Colombia), 2805 (Germany), 2806 (United Kingdom), 2812 (Cameroon), 2814 (Chile), 2816 (Peru), 2817 (Argentina), 2820 (Greece), 2826 and 2832 (Peru), 2834 (Paraguay), 2836 (El Salvador), 2838 (Greece), 2841 (France) and 2843 (Ukraine), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

### **Receivability of a complaint**

10. Following examination of the content of the complaint presented by the Mexican Electricians Union (SME) in a communication dated 26 November 2009, the Government's observations, and a new information provided by the SME at the Committee's request, the Committee considered that the complaint in question was not receivable.

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## **Working methods, visibility and impact**

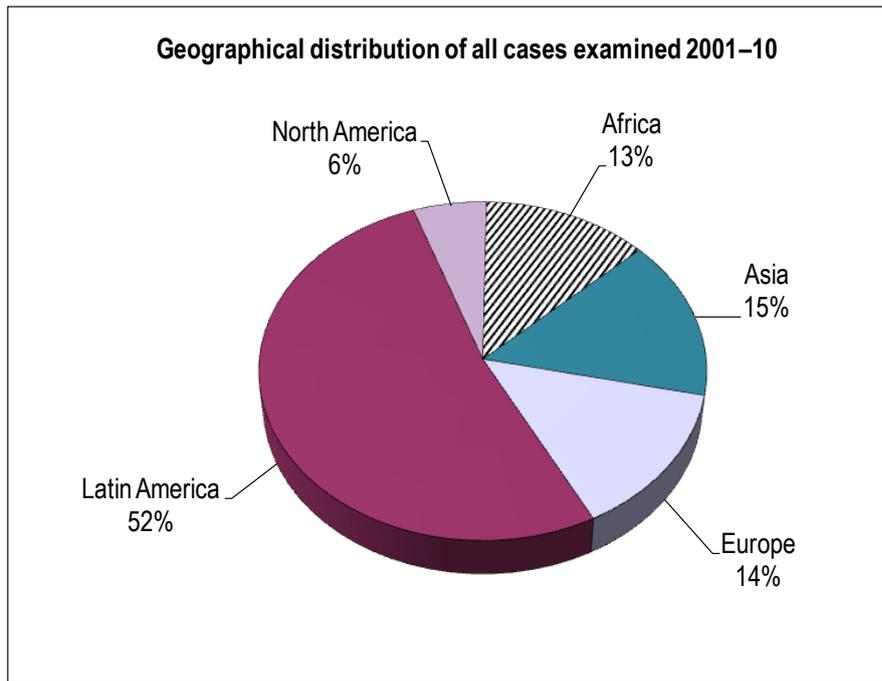
11. During the last term of office of the Governing Body Committee on Freedom of Association (2008–11), the Committee members engaged in discussions on the Committee's working methods, procedures, its visibility and impact, including through a series of special sittings presided by the Committee's independent chair.

### ***Increasing workload and effective use of the special procedures***

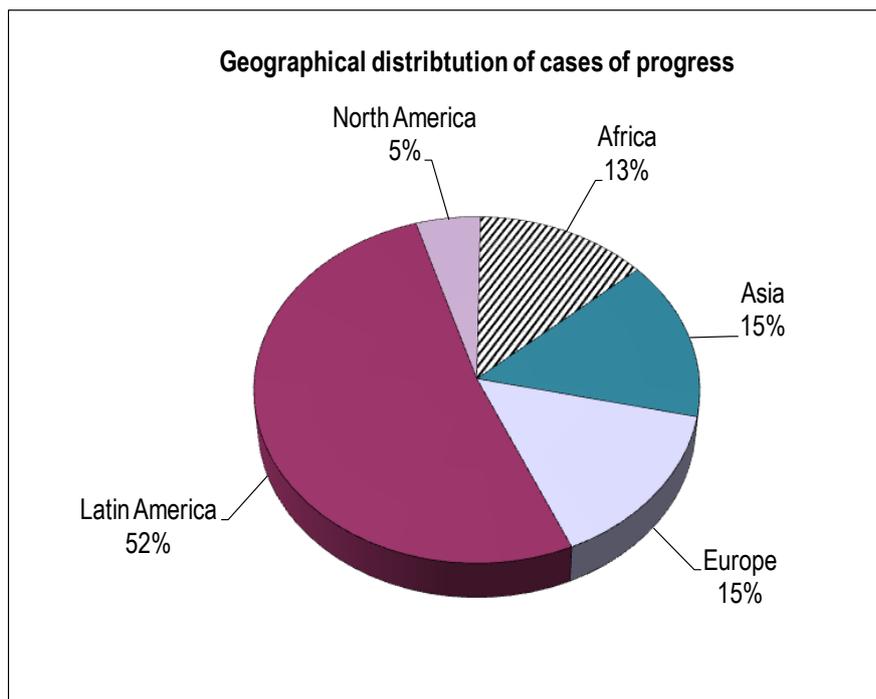
12. The number of cases pending before the Committee has nearly doubled to that of the late 1980s and early 1990s. The prestige that has come to be associated with the work of the Committee in its nearly 60 years of existence is one explanation of the increasing recourse that is made to its complaints mechanism. This has however placed considerable stress on the Committee as well as the Office secretariat. The Committee places particular importance on the timely handling of complaints. The Committee has also agreed to keep the timing and frequency of its meetings under review. It considers that further measures are needed to ensure that sufficient resources are available to render its work the most effective, including through the provision of appropriate assistance to complainant organizations in bringing forward all relevant information to assist in the understanding of the complaint and the necessary relationship to freedom of association and to Governments so as to ensure that their replies are on time and complete. The provision of such resources will assist another of the Committee's objectives, that is, the timely preparation and distribution of tentative working papers by the Office secretariat. Where Governments are having difficulties in ensuring full replies, they are encouraged to explain the challenges faced in this regard. The procedures adopted in 2002 to ensure that, where applicable, information is being secured from the parties affected via the employers' or workers' organization concerned should be further reinforced with the necessary follow-up. Nonetheless, it should not be forgotten that it is the Governments who are ultimately responsible for ensuring the effective recognition of the principles of freedom of association and they should therefore not resort to simply transmitting the views of third parties. It should also be noted that the Committee has, during its last term of office, adopted a more consistent approach to the naming of companies on a limited basis where necessary to the implementation of its conclusions and recommendations. Taking these considerations into account, the Committee has requested the Office to consider the preparation of simple guides for the tripartite partners aimed at ensuring that all relevant information is brought before the Committee in a timely fashion and enabling the Office to assist the parties in identifying the matters not raising freedom of association issues so that the Committee's resources not be used for questions outside its mandate.

### ***Geographical distribution and visibility***

13. Statistics over the years have confirmed that a significantly higher number of complaints emanate from one geographical region.



**14.** The Committee wishes to emphasize that the number of complaints in and of itself is not an indicator of the degree of freedom of association in a given country. Indeed, the Committee is well aware that there are a number of countries and geographical areas with an especially low number of complaints that is more probably the result of the lack of visibility of its work and the apprehension or capacity of the organizations concerned to submit complaints. In addition, in preparing statistics on its impact over the last ten years, the Committee has observed with interest that the progress achieved in specific cases has been almost exactly proportional to the percentage of complaints per region. This clearly attests to the value attributed to the work of the Committee not only as a forum for raising issues of concern but also as a legitimate and credible body that can assist in finding practicable solutions aimed at ensuring full and effective implementation of freedom of association principles.



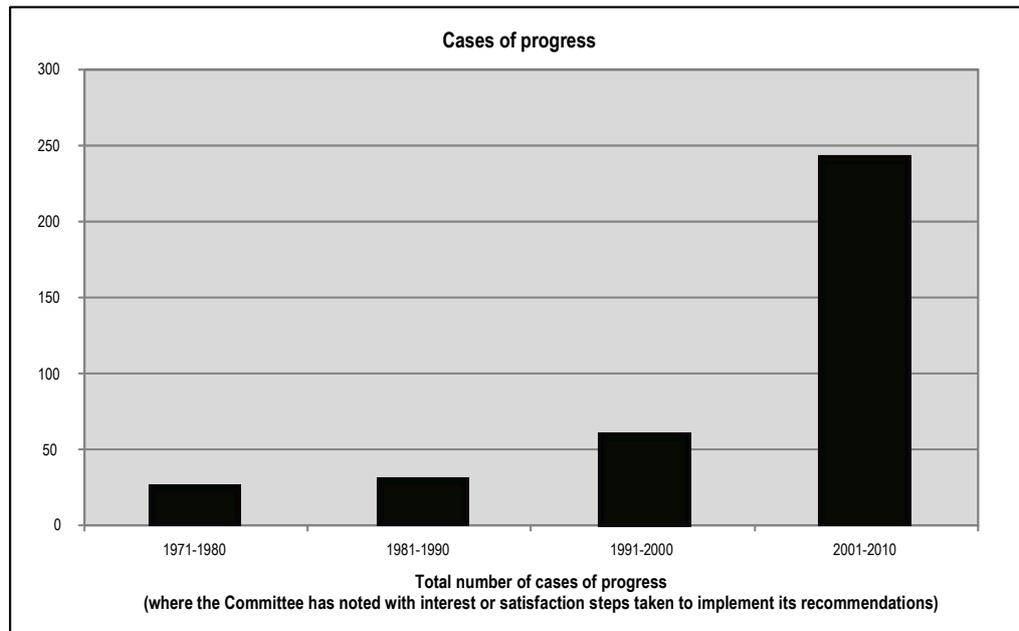
15. While as a general rule the Committee considers that, where national circumstances permit, complainants and prospective complainants should be encouraged to first use national mechanisms and processes to deal with their allegations of freedom of association violations, it nevertheless wishes to emphasize that recourse to the Committee for freedom of association complaints is open to all regions and has thus invited the Office to ensure a wider and more systematic dissemination of the information on its work and its procedures.

### **Technical assistance and advisory missions**

16. The Committee has observed over the years with concern a certain number of cases in which, despite the urgent appeals made, it has been obliged to examine complaints without any government reply. The Committee considers that such a situation only does a disservice to all concerned and is particularly problematic where companies may have been referred to in the complaint and are not otherwise able to provide relevant information or explanation except through the government reply. The Committee urges all governments to reply in a timely fashion and has asked the Chairperson to make systematic use of the International Labour Conference to convey these concerns to the governments involved. Governments are further encouraged to address the Office with any specific requests for technical assistance aimed at ensuring full and timely replies. Equally, the Committee has increasingly highlighted areas of progress that have been made by governments in a number of cases, and recommends that this practice continue.
17. The Committee recognizes the effectiveness of preliminary on-the-spot missions and direct contacts missions as referred to in paragraphs 67 and 68 of its Procedures for the examination of complaints alleging violations of freedom of association. It observes that, over the last ten years, a number of complaints have been resolved at the national level with the assistance of such missions and ultimately given rise to the closing, or even the withdrawal, of complaints. The Committee further considers that, in certain circumstances, countries may give consideration to the establishment of special national bodies having the confidence of all parties, aimed at providing rapid solutions to freedom of association complaints. While complainants must retain the right to submit complaints in accordance with the admissibility criteria set out in the Committee's procedures, such national bodies, if developed in full consultation with the tripartite partners, can provide an alternative for the satisfactory and prompt resolution of complaints at the national level.

### **Visibility and impact**

18. The Committee has called upon the Office to undertake a communications strategy to enhance the knowledge and understanding of the Committee's work as a whole and to assist in the follow-up given to its conclusions and recommendations in specific cases. The Committee considers that the updating of its *Digest of decisions and principles of the Freedom of Association Committee* to complete the current jurisprudence at regular intervals is key in ensuring a full appreciation of the latest developments in its thinking on the state of freedom of association in the twenty-first century. Although cases referred to in the *Digest* ultimately bear on their individual facts, the principles of freedom of association expressed in those cases have universal application. In addition, the regular publication of the principal freedom of association matters resolved following the examination of complaints is expected to increase the familiarity with the Committee's work and its relevance. A preliminary assessment of the Committee's influence on the ground, facilitated over the last decade with results-based management and implementation reports that have focused record keeping on the effect of ILO mechanisms, demonstrates a skyrocketing impact for the Committee's conclusions and recommendations.



19. The Committee considers that one of the reasons for this noteworthy impact resides in its formulation of consensual conclusions and recommendations aimed at assisting governments in finding practicable solutions to ensure a harmonious and sustainable environment for freedom of association and the effective recognition of collective bargaining. Whilst the process of finding consensus involves compromise, it has the effect of constituting a collective position that comprises the Committee's membership. Further, the value of its work is dependent on the care given by each one of its members, regardless of the group they are representing, to act in their personal capacity –and in full respect of the Committee's rules of confidentiality – in the interests of ensuring rigorous respect for the fundamental principles on which the International Labour Organization is based. This outgoing Committee welcomes the members newly appointed under the upcoming Governing Body mandate and invites them to continue these discussions in this same spirit to which it has faithfully adhered.

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

### Case No. 2302 (Argentina)

20. The Committee last examined this case at its November 2010 meeting and on that occasion requested the Government to keep it informed of the outcome of the proceedings and the *amparo* application concerning the leaders of the Trade Union of "Puntanos" Judicial Employees (SIJUPU), and to send its observations regarding the alleged lack of participation of the SIJUPU in the organization of the Judicial Training Institute [see 358th Report, paras 15–18].
21. In a communication of March 2011, the Government sent the reply of the High Court of Justice of San Luis Province, which stated that its labour policy has been borne out by the fact that, following the election of a new executive committee of the SIJUPU, there have been certain positive developments following a reciprocal proposal for dialogue, referred to by both parties – the union and the High Court of Justice – as the "Dialogue Committee". The objective of the Committee, whose members are two ministers and trade union representatives, is to seek peaceful alternatives "through dialogue, coordination of efforts, strengthening of projects and a search for solutions for all judicial employees". In

that spirit, as reflected in the certified copy of the presentation made to the High Court of Justice by the SIJUPU, it has been possible to implement the following measures: “reactivation of the judicial career path”; “changing the term ‘length of service’ to ‘judicial status’, to be acquired automatically upon promotion”; “attendance bonus”; “university degree bonus”; “higher education bonus”; “allowance for differently abled staff”; “limit on hours of service to the public during judicial vacation fixed at two hours less (from 9 a.m. to 1 p.m.)”, and “transfer of judicial employees to other departments at their request”.

22. In addition, it should be pointed out that the “Dialogue Committee” was instrumental in enabling the peaceful, reasonable and gradual implementation of the demands put forward by the SIJUPU. The High Court of Justice adds that, in view of the above, and of the SIJUPU’s endorsement of the manner in which the proposals made over the years have been handled and gradually resolved (a communication from the SIJUPU referring to the progress achieved as a result of the “Dialogue Committee” is enclosed with the reply), Case No. 2302 should be closed.
23. *The Committee notes this information with satisfaction.*

### **Case No. 2603 (Argentina)**

24. The Committee last examined this case at its November 2010 meeting, and on that occasion requested the Government to take the necessary steps without delay to initiate an inquiry into the alleged transfer from their workplace of three leaders of the Association of Workers of the Provincial and Municipal Public Administration of Salta (ATAP) who were permanent staff members of the General Tax Directorate of the province of Salta: namely, Sergio Martín Zamboni, finance secretary; Fátima Elisabeth Gramajo, third substitute member; and Walter Rodolfo Alderete, second regular member of the electoral board; and, should it be found that the three were transferred on anti-union grounds, to take steps to ensure their reinstatement in their former posts. The Committee requested the Government to keep it informed in that regard. The Committee further noted that the ATAP alleged that there had been obstacles and delays in the handling of a penal complaint against the authorities of the province’s Ministry of Labour and Social Welfare concerning the check-off code for the deduction of trade union dues, and requested the Government to send its observations on the matter [see 358th Report, paras 22–24].
25. In a communication of March 2011, the Government states that the General Tax Directorate of the province informed it that Sergio Martín Zamboni is employed in the financial administration service of the treasury unit; Fátima Elisabeth Gramajo was appointed in 2008 by Decree No. 1076/08 as coordinator of the Undersecretariat for Native Peoples under the Ministry of Human Development; this appointment was revoked by Decree No. 677/10 and she returned to the General Tax Directorate; and Walter Rodolfo Alderete is employed in the financial administration service pursuant to Decree No. 660/08 and is currently working in the tax audit subprogramme under Rotation Memorandum No. 83/2009. The Government points out that this information does not indicate that the persons concerned were transferred on anti-union grounds, but shows that since they entered the service they have been employed in the same public administration – the General Tax Directorate – which is still the case. The Government adds that, notwithstanding this information, further information will be requested from the provincial administration concerning the complaint presented.
26. *The Committee takes note of this information and looks forward to receiving the additional information which the Government indicates that it intends to obtain concerning the alleged anti-union transfers of three ATAP leaders. The Committee also requests the Government to send without delay its observations concerning the ATAP’s allegations relating to obstacles and delays in the handling of a penal complaint against the*

*authorities of the province's Ministry of Labour and Social Welfare concerning the check-off code for the deduction of trade union dues.*

### **Case No. 2614 (Argentina)**

27. The Committee examined this case at its November 2010 meeting and on that occasion requested the Government to send its observations with regard to the communication from the Trade Union of Judicial Workers of Corrientes (SITRAJ) alleging that the authorities of the High Court of Justice of the Province of Corrientes had suspended one of the check-off codes (deductions for a refundable assistance fund) that was applicable to members and that deductions of union dues were made two months late, and also requested the Government to send its observations concerning information recently communicated by the Argentine Judicial Federation (FJA) (the FJA had objected to the transfer of the general secretary of the Association of Judicial Workers of La Rioja, Mr Horacio Rodolfo Juárez, from his post) [see 358th Report, paras 25–27].
28. In a communication dated 7 February 2011, the Government states with regard to the allegations presented by the SITRAJ that the High Court of Justice of the Province of Corrientes informed it that the deductions of union dues and membership contributions to the mutual fund were still being made, and that the only deductions that had been discontinued were those for mutual fund loans, which slightly affects the principles of freedom of association.
29. *The Committee takes note of this information and requests the Government to send its observations without delay concerning the information communicated by the FJA relating to the transfer of the general secretary of the Association of Judicial Workers of La Rioja, Mr Horacio Rodolfo Juárez, from his post.*

### **Case No. 2622 (Cape Verde)**

30. The case was last examined by the Committee at its March 2010 meeting [see 356th Report, paras 43–45] and concerns a number of provisions of the Labour Code that have been contested by the complainant organization (the Cape Verde Confederation of Free Trade Unions (CCSL)). In its previous examination of the case, the Committee had taken note of the measures adopted to give effect to its recommendations, in particular by the Council for Social Consultation regarding proposed amendments or modifications to sections 15, 70, 110 and 353 of the Labour Code in order to bring them into conformity with the Committee's recommendations.
31. In a communication dated 13 September 2010, the CCSL expresses its satisfaction at the fact that, with the adoption of a Legislative Decree on 16 June 2010 and its publication on the same day in *Official Journal*, Series I, No. 22, the provisions of Legislative Decree No. 5/2007 of 16 October 2007 concerning sections 15, 70, 110 and 353 of the Labour Code have been amended. The complainant organization considers that the amendments in question meet the concerns which prompted it to present a complaint to the Committee.
32. *The Committee takes due note of this information, and expresses its satisfaction, not only with the legislative amendments that have been made in line with its previous recommendations but also with the tripartite consultation that has been a feature of this process.*

**Case No. 2658 (Colombia)**

33. The Committee examined this case at its meeting in November 2009. On that occasion, noting that, according to the company's statements, there was an agreement, signed in 1997 between the National Association of Telephone and Communications Engineers (ATELCA) and the Bogotá Telecommunications Enterprise (ETB) for the period 1997–2000, which foresaw specific guidelines for wage increases and which, according to the company, remained in force, the Committee considered that the extension to ATELCA's members of the wage clauses of the 2006 agreement between the company and the primary union was a matter for interpretation which had to be settled in accordance with the rules and criteria of national legislation. The Committee recalled, moreover, that the complainant had the right under national legislation to denounce the agreement signed in 1997 if it considered it to be prejudicial. Bearing in mind that the matter was under consideration by the Coordinator of Inspection and Monitoring of the Territorial Directorate of Cundinamarca, the Committee requested the Government to keep it informed of the final outcome of the ongoing administrative proceedings [see the 355th Report, para. 607].
34. In its communication of 12 May 2010, ATELCA takes issue with the Government's reply, which in the complainant's view does not give a true explanation of the facts and disregards the fact that the company ETB usurped ATELCA's representative authority by bargaining collectively, without its authorization, with the other two trade union organizations.
35. In its communication of 21 December 2010, the Government states that the following administrative proceedings have been initiated against the ETB for failure to implement the collective labour agreement concluded with SINTRATELEFONOS: (1) in a written communication dated 6 September 2006 (No. 536459), ATELCA complains of the violation of the fifth clause of the 1984 collective agreement; (2) through an order dated 14 September 2006, the third labour inspectorate was entrusted with the administrative investigation; (3) through resolution No. 03281 dated 14 February 2010, the relevant procedure having been exhausted, a legal and economic dispute was declared to exist between ATELCA and the company ETB as regards the application and interpretation of the fifth clause of the collective agreement concluded with SINTRATELEFONOS; and (4) under these circumstances, the Ministry of Social Protection cannot rule on disputes that have been referred to labour judges.
36. *The Committee notes this information and requests the Government to send its observations on the communication from ATELCA dated 12 May 2010 and to state whether the organization in question has initiated legal proceedings.*

**Case No. 2676 (Colombia)**

37. The Committee examined this case at its June 2010 meeting and on that occasion made the following recommendations [see 357th Report, para. 300]:
- (a) With regard to the refusal of the Ministry of Social Welfare to grant the request for entry in the trade union registry of the trade union organization established on 2 April 2006, the Committee points out that the trade union organization may, if it so wishes, once the omissions and inconsistencies highlighted in the decisions concerned have been rectified, submit a new request for the entry of its founding charter, by-laws and executive committee in the register and requests the Government in that case to register the trade union organization immediately.

- (b) With regard to the allegation that as soon as the administrative authority rejected the request for registration of the trade union, the company dismissed the members of the executive committee and 40 workers who had been involved in the union's establishment or had joined the union, a fact that was verified by the judicial authority in its rulings, the Committee requests the Government to take the necessary steps to have the dismissed workers reinstated if indeed they were dismissed for having established a trade union and, should reinstatement be impossible for objective and compelling reasons, the Committee requests the Government to ensure that the workers receive appropriate compensation, such as to constitute a penalty that acts as a sufficiently dissuasive and effective deterrent against anti-union dismissals. The Committee requests the Government to keep it informed in this regard.

**38.** In its communication dated 13 August 2010, the Government indicates that the Territorial Directorate of Atlántico of the Ministry of Social Welfare certified that “there is no current” request to register a trade union, nor any registered trade union associated with the enterprise COOLITERIAL. Furthermore, the Government states, with reference to Committee recommendation (b), that judicial decisions have been handed down that are adverse to the complainants and that the Government is respecting and complying with the exercise of the duties and responsibilities specific to the separation of public powers.

**39.** *The Committee requests the Government to confirm that the trade union has not submitted a new request to be registered. Furthermore, the Committee requests the Government to provide the text of the judicial decisions on the alleged dismissals, which, according to the Government have been adverse. While awaiting this information, the Committee maintains its previous recommendations.*

### **Case No. 2764 (El Salvador)**

**40.** In its previous examination of the case at its November 2010 session, the Committee made the following recommendations on questions still pending [see 358th Report, para. 490]:

- (a) With regard to the refusal to register the executive committee of the SUTC, the Committee requests the Government to provide a copy of the ruling handed down and firmly expects that it will be handed down in the near future.
- (b) With regard to the obstacles to negotiating a new collective agreement, the Committee requests the Government to respect the principle of collective bargaining and to continue negotiations with the newly elected committee at least until the Administrative Court of the Supreme Court of Justice has handed down a decision regarding the validity of these trade union elections. The Committee requests the Government to keep it informed in this respect.

**41.** In its communication of 5 January 2011, the Union of Construction Workers (SUTC) states that on 14 December 2010 it was informed of the ruling handed down at 2 p.m. on 30 November 2010 by the Administrative Proceedings Chamber of the Supreme Court of Justice, which in its operative provisions stipulates that:

- (a) The resolution issued at 12.00 on 1 February 2010 by the head of the National Department of Social Organizations of the Ministry of Labour and Social Security, refusing the registration of the executive committee of the Union of Construction Workers (SUTC) for the period 2010–11, is hereby ruled to be unlawful;
- (b) As a means of restoring the right that has been infringed, the party against which the complaint has been filed is required to register the aforementioned executive committee and issue the appropriate credentials ...

42. In its communication of 18 February 2011, the Government sends a copy of the ruling referred to by the SUTC and states that, in accordance with that ruling, the Ministry of Labour and Social Security has registered the SUTC executive committee and issued the appropriate credentials for its members. The Government further states that the executive committee has resumed collective bargaining which is currently at the direct negotiation stage.
43. *The Committee notes that in a communication dated 28 April 2011, the National Confederation of Salvadoran Workers (CNTS) provided additional information concerning the pending issues. The Committee requests the Government to provide its observations thereon without delay.*

### **Case No. 2705 (Ecuador)**

44. In its previous examination of this case, at its November 2009 meeting, the Committee reached the following conclusions and made the following recommendations on the issues that were still pending [see 355th Report, paras 747–749]:

The Committee notes that, in the present complaint, the complainant organization, whose Secretary-General is Mr Jaime Arciniega Aguirre, alleges that the Ministry of Labour, in violation of legal and constitutional standards, refused to register the national executive committee of the CEOSL which was elected on 30 and 31 July 2007 and the list of members of the executive committee which had been restructured by the extraordinary meeting of the national executive committee on 8 December 2007; furthermore, in June 2008, the Ministry of Labour registered the executive committee of Mr Jaime Arciniega Aguirre but in September 2008 it registered the other executive committee, undermining the decision rendered by the First Chamber of the Administrative Disputes Court on 1 July 2008 ordering the registration of the executive committee headed by Mr Jaime Arciniega Aguirre.

The Committee takes note of the statements by the Government in which it indicates that, because of an internal dispute within the CEOSL, the registration of the two rival executive committees was refused until the trade union organization settled its differences through its statutory bodies or by decisions that it deemed appropriate, in view of the fact that Article 3 of Convention No. 87 provides that the authorities should refrain from any interference which would restrict the right to elect officials in full freedom or impede the lawful exercise thereof. The Government adds that it appealed against the decisions of the court that ordered the registration of the executive committee headed by Mr Jaime Arciniega Aguirre, as well as against the court order to register the executive committee headed by Mr Eduardo Valdez Cuñas. The Committee observes, however, that according to the documentation provided by the complainant organization, the Ministry of Labour registered the executive committee of Mr Jaime Arciniega Aguirre first and then subsequently registered the rival executive committee. Lastly, the Committee notes that, according to the Government, after having considered the applications for *amparo* (for violation of constitutional rights), on 6 May 2009 the Constitutional Court issued an order to call and hold new elections within a maximum period of 90 days to appoint the new executive committee of the CEOSL; it also ordered the presence of two officials from the Ministry of Labour to act as observers and the assistance of the National Electoral Board.

The Committee recalls that it is not competent to make recommendations on internal dissensions within a trade union organization, so long as the government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization. The Committee also recalls that, when internal disputes arise in a trade union organization, they should be resolved by the persons concerned (for example, by a vote), by appointing an independent mediator with the agreement of the parties concerned, or by intervention of the judicial authorities [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, paras 1114 and 1122]. In this regard, the Committee notes that the internal dispute in the CEOSL has been brought before a judicial authority and that this authority has indicated the steps to be taken to resolve it, namely the holding of elections in the near future. The Committee requests the Government to keep it informed of the outcome of those union elections and expects to receive this information as

soon as possible. The Committee regrets to note that these elections will be conducted almost two years after the internal conflict occurred and the damage that this has caused to the trade union organization and its members.

**45.** In its communication of 21 June 2010, the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) claims that, on the request of the Ministry of Labour Relations, the Constitutional Court issued on 6 May 2009 resolutions Nos 1148-2008-RA and 1172-2008-RA, providing as follows:

- (1) In view of the conflict between two executives of the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL), and, given that two *amparo* proceedings for the protection of constitutional rights have been lodged that are seeking the recognition of the two respective executive committees, with a view to resolving the internal dissention, the following provisions are made:
  - (a) within a maximum period of 90 days elections will be convened and organized to appoint the new national executive committee of the CEOSL, in accordance with the Constitution and the statutory provisions of the trade union confederation in question;
  - (b) the assistance of the National Electoral Council will be requested to organize, manage, monitor and guarantee the democratic event outlined in the previous clause in consultation with the workers affiliated to the CEOSL;
  - (c) the Ministry of Labour and Employment will be requested to appoint two high-level officials to act as observers of the electoral process;
  - (d) the executives in dispute will appoint two delegates from their respective executive committees to coordinate with the National Electoral Council the smooth running of the process to elect the new executive committee of the CEOSL, which will be granted legitimacy.
- (2) Once the electoral process has been carried out in accordance with the above provisions, the Ministry of Labour and Employment will register the members of the new national executive committee of the CEOSL.
- (3) The file will be sent to the originating court so that the legal formalities can be completed.

**46.** The CEOSL highlights the authorities' failure to respect the deadlines established by the Constitutional Court. However, it says that with the aim of overcoming this internal dissention, the representatives of the CEOSL appointed its two delegates to coordinate with the National Electoral Council (CNE) the smooth running of the process to elect the CEOSL's new executive committee. It then goes on to say that regrettably they were despicably deceived by the CNE. The CNE unilaterally drew up "regulations" that were contrary to what had been agreed and that allowed the opposing party to participate with delegates up until 25 August 2009 (419 delegates) while the complainant organization's sector was permitted to participate as per its list up until 31 July 2009 (219 delegates, with the list also including some delegates from the opposing party).

**47.** In communications sent to the CNE, the complainant organization submitted its challenges in due time on 3 September 2009, indicating that several of the organizations included on the list of delegates submitted by the opposing party were not registered with the Ministry and that some organizations had never been affiliated to the CEOSL and, on the contrary, belonged to other trade union confederations.

**48.** It appears from the list of delegates originally submitted by the opposing party that "148 delegates" disappeared and only "224 delegates" ended up voting, including some organizations that had never been affiliated to the CEOSL. Moreover, the Council did not require the organizations to prove their affiliation.

49. Furthermore, the CNE imposed “regulations” that violated all principles and did not allow the complainant organization any involvement in drawing them up. This led to an internal resolution being issued by the majority first-level organizations (20 of the overall 24 federations). All this, against the backdrop of the trade union autonomy guaranteed under the Constitution and in ILO Convention No. 87, resulted in the complainant organization’s sector deciding not to participate in the “elections” under these conditions and addressing an official letter to the CNE on 3 May 2010, informing it accordingly.
50. The CNE, however, proceeded with the “elections”, which were held on 12 June 2010, without the participation of the complainant organization, which did not recognize the elections as valid, devoid as they were of transparency and legality, and constituting an example of state bodies interfering in trade union autonomy.
51. In its communication of 25 November 2010, the Government states that the Ministry of Labour Relations, through its delegates, acted as an observer of the electoral process for the new executive committee of the CEOSL, in accordance with the convocation by the CNE, which conducted this electoral process, in compliance with the resolution handed down by the Constitutional Court. The Government notes that the CNE declared Mr Eduardo Valdez, a representative of one of the executives in the dispute, to be the winner.
52. *The Committee notes the CEOSL’s new allegations and the Government’s new observations. It notes the Government’s statement that the executive committee declared the winner by the CNE is the one led by Mr Eduardo Valdez. The Committee observes, however, that the executive committee that submitted the complaint (led by Mr Jaime Arciniega Aguirre) highlights serious flaws that allegedly marred the process and that resulted in challenges being brought before the CNE as well as the lack of consultation of the complainant organization’s sector regarding the drafting of the regulations by the CNE, which led to this sector not participating in the elections.*
53. *The Committee notes that on many occasions it has questioned the participation of non-judicial bodies (such as the CNE) in the electoral processes of trade union organizations. In this specific case, the CNE participated at the request of the Supreme Court and with the agreement of the complainant organization, and as such its participation was in principle justified, but the same does not necessarily hold true for the CNE’s subsequent actions and decisions. The Committee observes that the complainant organization has alleged serious flaws and a lack of consultation over the electoral regulations drafted by the CNE, and that the sector that it represents submitted challenges. As a result of this situation it decided not to participate in the elections.*
54. *In these circumstances, the Committee considers that it may have been preferable if the authorities had opted for an agreement between both sectors on the conditions and circumstances surrounding the electoral process. The Committee therefore invites the Government to examine the situation with both sectors and to keep it informed in this respect.*

### **Case No. 2680 (India)**

55. The Committee last examined this case at its November 2009 meeting [see 355th Report, paras 867–890]. On that occasion, the Committee made the following recommendations:
- (a) The Committee requests the Government to take the necessary measures to amend sections 5, 6 and 8 of the CCS (RSA) Rules, 1993, in order to ensure the freedom of association rights of civil servants.

- (b) The Committee requests the Government to ensure that the complainants have access to a review and appeal, consistent with freedom of association principles, or, in the absence of such assess, to undertake a full and independent investigation into the sanctions imposed upon Messrs Balachandran, Vijayakumar, and Santhoshkumar. If it is found that the three trade union leaders were sanctioned for having engaged in peaceful demonstrations, the Government should ensure that they are fully compensated for the penalties imposed upon them, including the reinstatement of their prior entitlements and posts. The Committee requests to be kept informed in this regard.
  - (c) The Committee requests the Government to ensure that these matters also be subject to a review and appeal consistent with freedom of association principles or, failing that, to undertake a full and independent investigation into the allegations of numerous and severe sanctions imposed on hundreds of other employees and keep it informed of the outcome. If the investigation finds that the parties concerned were sanctioned for having carried out peaceful demonstrations, the Committee requests the Government to ensure that they are fully redressed for the penalties imposed upon them.
  - (d) The Committee invites the Government to seek the technical assistance of the Office with a view to considering the ratification of Conventions Nos 87, 98, and 151.
- 56.** In its communication dated 22 July 2010, the Government indicates that sections 5, 6 and 8 of the CCS (RSA) Rules, 1993 which reiterate sections 4, 5 and 7 of CCS (RSA) Rules, 1959, have been in vogue for about 50 years now and have withstood the test of time. The Government considers, therefore, that there appears to be no need to amend them. Accordingly, it cannot be construed that conditions imposed by these sections of the CCS (RSA) Rules, 1993 impede the freedom of association rights of the civil servants. The Government reiterates that the Services Associations in the Government Department are not trade unions and, as such, no rights of trade unions have been infringed.
- 57.** As regards the access by the complainants to a right to a review and appeal, the Government indicates that the CCS (CCA) Rules, 1965, constitute a self contained body of rules governing departmental enquiries and provide for appeal, review and revision against the orders passed under the Rules. Further right for redressal of grievances through the Central Administrative Tribunal and other courts of law is also available to a Government servant. The Government further indicates that in the Office of the Accountant General (A&E), Kerala, the aggrieved employees are exercising the above rights.
- 58.** As regards Conventions Nos 87 and 98, the Government indicates that it is not possible to ratify these Conventions as ratification would involve granting certain rights to Government employees against the statutory rules. The Government further indicates that: (i) it has however already implemented spirit behind these Conventions in an effective manner through various domestic laws and regulations; (ii) Government servants in India have an exceptionally high degree of job security flowing from article 311 of the Constitution compared to industrial workers, in addition to the facility of negotiation machinery under JCM and Administrative Tribunals for the redressal of their grievances; and (iii) the Central Government employees also have the right to form and join any association.
- 59.** *The Committee takes note of the information provided by the Government. As regards its recommendations of a legislative nature, the Committee notes with regret the Government's indication that there appears to be no need to amend the CCS (RSA) Rules, as has been requested, and that the Services Associations in the Government Department are not trade unions and, as such, no rights of trade unions have been infringed. The Committee once again recalls in this respect, that the denial of the right of workers in the public sector to set up trade unions where this right is enjoyed by workers in the private sector, with the result that their "associations" do not enjoy the same advantages and privileges as "trade unions", involves discrimination as regards government-employed workers and their organizations as compared with private-sector workers and their*

organizations. Such a situation gives rise to the question of compatibility of these distinctions with Article 2 of Convention No. 87, according to which workers “without distinction whatsoever” shall have the right to establish and join organizations of their own choosing without previous authorization, as well as with Articles 3 and 8, paragraph 2, of the Convention [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, para. 222]. The Committee recalls its conclusions with respect to certain provisions of the CCS (RSA) Rules and requests the Government to keep it informed of the measures taken to amend sections 5, 6 and 8 in order to ensure the rights of civil servants, in accordance with freedom of association principles.

60. As regards the ratification of Conventions Nos 87 and 98, the Committee notes the Government’s indication that it is not possible to ratify these Conventions as it would involve granting of certain rights to Government employees against the statutory rules but that it has already implemented the spirit behind these Conventions in an effective manner through various domestic laws and regulations. The Committee firmly recalls the obligation of all member States to respect and promote freedom of association and the effective recognition of the right to collective bargaining, as fundamental rights under the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The Committee recalls that the technical assistance of the Office remains available to the Government in its future consideration of the ratification of Conventions Nos 87, 98 and 151.
61. As to its recommendations relating to factual issues, the Committee notes the Government’s indication that, in the Office of the Accountant General (A&E), Kerala, the aggrieved employees are exercising their rights under the CCS (CCA) Rules, 1965, which provide for appeal, review and revision. The Committee requests the Government to provide specific information on the current status of the cases of appeal by Messrs Balachandran, Vijayakumar, and Santhoshkumar and the hundreds of other employees that have been sanctioned and to keep it informed of any rulings handed down.

### **Case No. 2301 (Malaysia)**

62. The Committee last examined this case, which concerns the Malaysian labour legislation and its application which, for many years, have resulted in serious violations of the right to organize and bargain collectively, including: discretionary and excessive powers granted to authorities as regards trade union registration and scope of membership; denial of workers’ rights to establish and join organizations of their own choosing, including federations and confederations; refusal to recognize independent trade unions; interference of authorities in internal union activities, including free elections of trade union representatives; establishment of employer-dominated unions; and arbitrary denial of collective bargaining, at its March 2010 meeting [see 356th Report, paras 76–81].
63. On that occasion, the Committee recalled that it has commented upon the extremely serious matters arising out of the fundamental deficiencies in the legislation on many occasions over a period spanning 18 years. The Committee noted with regret that the Industrial Relations Act, 1967, as amended in 2007, had not yet addressed the points upon which it had been commenting for many years (sections 9(5) and 9(6), providing that the Minister’s power to make a decision on trade union recognition cannot be questioned in court, and section 13, which provides that collective bargaining can only start where a trade union has been accorded recognition by the employer). In these circumstances, the Committee, noting further that the Government had not provided a copy of the amended Trade Unions Act, 1959, once again requested the Government to do so and urged the Government to take the necessary measures without delay to fully incorporate its long-standing recommendations concerning the need to ensure that:

- all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels, and for the establishment of federations and confederations;
  - employers do not express opinions which would intimidate workers in the exercise of their organizational rights, such as claiming that the establishment of an association is unlawful, or warning against application with a higher level organization, or encouraging workers to withdraw their membership;
  - no obstacles are placed, in law or in practice, to the recognition and registration of workers' organizations, in particular through the granting of discretionary powers to the responsible official;
  - workers' organizations have the right to adopt freely their internal rules, including the right to elect their representatives in full freedom;
  - workers and their organizations enjoy appropriate judicial redress avenues over the decisions of the minister or administrative authorities affecting them; and
  - the full development and utilization of machinery for voluntary negotiation between employers or employers' and workers' organizations, with a view to regulating terms and conditions of employment by means of collective agreements is encouraged and promoted by the Government.
- 64.** Finally, as regards the 8,000 workers whose representational and collective bargaining rights have been denied, the Committee once again urged the Government to rapidly take appropriate measures and give instructions to the competent authorities so that these workers may effectively enjoy rights to representation and collective bargaining, in accordance with freedom of association principles.
- 65.** In its communication dated 20 October 2010, the Government indicates that it is within the Government's right and privileges not to ratify ILO Convention No. 87 and that it is within the right of each and every independent and sovereign country to choose, retain and practise the system of trade unionism which can best serve its interests so as to ensure its continuous peace and secure society.
- 66.** As concerns union recognition and collective bargaining, the Government indicates that workers in Malaysia have not been denied their rights to enjoy representation and collective bargaining since there is a healthy growth in trade union membership and an increase in the number of collective agreements. It further indicates that, in order to successfully maintain a healthy growth of trade unions and industrial harmony in the country, it proposes to amend certain provisions in the relevant labour laws in order to make it easier and faster to establish trade unions and expedite claims for recognition, and thus facilitate the process of collective bargaining. The Government further indicates that it has taken steps to amend the Industrial Relations Act and the Trade Union Act. Finally, the Government states that the cause of delay in union recognition is mainly due to legal proceedings (judicial review) against the Minister's decision and that the power conferred to the Director General of Trade Unions (DGTU) is intended to facilitate and enable it to have the general supervision, direction and control of all matters relating to trade unions, including deregistration of a trade union.
- 67.** As regards sections 9(5) and 9(6) of the Industrial Relations Act, the Government states that it is not necessary to amend those sections since any aggrieved party has the right to seek legal redress by means of judicial review at the High Court and a right of appeal to the Federal Court. As for the other recommendations made by the Committee, the Government indicates that they may be taken into consideration in the next amendment of

the Industrial Relations Act and that the amended copy of the Trade Union Act will be forwarded once the authoritative text is made available.

68. With regard to the 8,000 workers' representational and collective bargaining rights, the Government once again reiterates that these workers involved through their respective trade union may seek legal redress via the proper channel as provided for under the laws of the country.
69. *The Committee takes due note of the above information provided by the Government. In particular, the Committee notes with interest the Government's indication that it has taken steps to amend the Industrial Relations Act 1967 and the Trade Union Act 1959, and that it proposes to amend certain provisions in the relevant labour laws in order to make it easier and faster to establish trade unions and expedite claims for recognition, thus facilitating the process of collective bargaining. The Committee once again urges the Government to address rapidly the issues raised in its previous examination and summarized above and invites the Government to have recourse to the technical assistance of the ILO in this regard, should it so desire. The Committee recalls that when a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 15], and further firmly recalls the obligation of all member States to respect and promote freedom of association and the effective recognition of the right to collective bargaining, as fundamental rights under the 1998 ILO Declaration on Fundamental Principles and Rights at Work. It considers that this assistance can facilitate the steps the Government is envisaging to bring its law and practice into full conformity with freedom of association principles and Convention No. 98, ratified by Malaysia.*
70. *As regards sections 9(5) and 9(6) of the Industrial Relations Act providing that the Minister's decision on trade union recognition "shall be final and shall not be questioned in any court", the Committee notes that the Government states that it is not necessary to amend those sections since any aggrieved party has the right to seek legal redress by means of judicial review at the High Court and a right of appeal to the Federal Court. Notwithstanding the foregoing, the Committee is bound to once again recall that, where a registrar has to form his own judgement as to whether the conditions for the registration of a trade union have been fulfilled, although an appeal lies against the decisions to the courts, it has considered that the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect, this does not alter the nature of the powers conferred on the authorities responsible for effecting registration, and the judges hearing such an appeal would only be able to ensure that the legislation has been correctly applied. The Committee has drawn attention to the desirability of defining clearly in the legislation the precise conditions which trade unions must fulfil in order to be entitled to registration and on the basis of which the registrar may refuse or cancel registration, and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not [see **Digest**, op. cit., para. 302]. Judges should be able to deal with the substance of a case concerning a refusal to register so that they can determine whether the provisions on which the administrative measures in question are based constitute a violation of principles of freedom of association [see **Digest**, op. cit., para. 304]. The Committee therefore expects the Government to introduce without delay legislation to amend the Trade Unions Act and the Industrial Relations Act, to bring it into full conformity with freedom of association principles, by ensuring that the appeals to the courts against all decisions made by administrative authorities allow a substantive examination of the issues raised.*

71. Finally, in its first examination of the case [see 333rd Report, para. 570], the Committee took note of the situation of 8,000 workers in 23 manufacturing companies whose representational and collective bargaining rights were allegedly denied (in these companies, unions had accepted members but, based on objections raised by the companies, the DGTU ruled that the unions were not permitted to represent the workers; as a result the unions' right to bargain collectively was denied). In this regard, the Committee notes that the Government repeats the information it had previously submitted, to the effect that persons dissatisfied with a decision of the DGTU, for instance, may seek redress through their respective trade union at the ministerial platform or through judicial review by the Malaysian High Court. The Committee recalls that it considers the decisions of the DGTU to be rooted in the legislative framework's restrictions on trade union rights that it has extensively commented upon. Recalling that questions of trade union structure and organization are matters for the workers themselves and that it sees the situation faced by these workers as a concrete example of the fundamental deficiencies of the legislation which, in the end, prevent these workers from exercising their organizational and collective bargaining rights, the Committee, considering the time that has elapsed since its first examination of the case, requests the Government and the complainant to indicate if these workers are currently represented by one or more trade unions and, if so, if they are able to exercise their rights to collective bargaining and conclude collective agreements.

### **Case No. 2601 (Nicaragua)**

72. In its previous examination of the case at its March 2010 meeting, the Committee made the following recommendations on the questions still pending [see 356th Report, para. 1024]:

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

- (a) With regard to the alleged dismissal of Mr José David Hernández Calderón, secretary of promotion and advertising of SEMTIAC, and while noting the Government's statement that the request before the First District Labour Court of Managua is awaiting the Court's ruling, the Committee requests the Government to keep it informed of the decision that is handed down.
- (b) Concerning the alleged dismissal without respect for trade union immunity or legal process of Mr José María Centeno, leader of the SINATRA–DGTT–MTI on 26 April 2007, the Committee calls on the Government to conduct an inquiry into the reasons for terminating his contract and, in the event it is found that the dismissal is due to his legitimate trade union activities, to endeavour to have him reinstated.
- (c) With respect to the alleged transfer of Mr Marcos Mejía López, member of the Executive Committee of the SEMTIAC, the Committee calls on the Government to conduct an inquiry into the reasons for his transfer and, in the event it is found that the transfer was due to his exercise of trade union activities, to take steps to have him transferred back to his previous post.
- (d) As regards the alleged anti-union dismissal of Ms Perla Marina Corea Zamora, Secretary-General of the Independent Workers Trade Union of the Ministry of Transport and Infrastructure, Ms Yerigel Zúñiga Izaguirre, the union's finance secretary, Ms Lila Carolina Alvarado Muñoz, first spokesperson of the watchdog unit of the SEMTIAC, Mr Freddy Antonio Velásquez Luna, Secretary-General of the SITRAMTI and Secretary-General of the FEDETRASEP, Mr Jorge Boanerges Cruz Berríos, organization and information secretary of the SITRAMTI and spokesperson for the FEDETRASEP, Mr Byron Antonio Tercero Ramos, organization, records and agreements secretary of the SINTESESIP–MTI and Mr Francisco Zamora Vivas, finance secretary of the SITRAMTI, and while noting the Government's statement that they had lodged appeals with the courts and that the appeals were awaiting the decision of the Constitutional Chamber of the Supreme Court of Justice, the Committee expects that the judicial authority will shortly hand down its decision and requests the Government to keep it informed of the outcome.

- (e) Relating the allegation that the current administration of the Ministry is infringing article 12 of the collective agreement in force concerning the resources that trade unions need to carry out their activities (computer with access to Internet, printer, office supplies, use of a vehicle, etc.) and that these facilities are made available only to a trade union that follows the party line, the Committee calls on the Government to conduct an inquiry into the matter and, in case of the veracity of the allegation, to take steps to bring the parties together and to ensure full compliance with the clauses of the collective agreement cited by the complainant organization.
73. In its communication of 9 December 2010, the Government states with regard to the alleged dismissal of Mr José David Hernández Calderón that his employment contract was terminated at the Ministry of Transport and Infrastructure (MTI) because he had occupied a position of trust at that institution. He lodged an appeal for constitutional protection (*amparo*) before the Managua Appeals Court. The court, in a ruling dated 20 June 2007, decided that the appellant Mr Hernández Calderón had not exhausted the available administrative channels and that therefore the application for *amparo* could not be admitted.
74. As regards the case of Mr José María Centeno, the Government states that he occupied a position of trust within the MTI as a department transport delegate in Nueva Segovia, and his employment contract was terminated on 12 April 2007 in accordance with article 14 of Act No. 476 concerning the civil service and the administrative career path. Subsequently Mr Centeno received due payment of his final pay and social benefits, which was confirmed by a document dated 2 May 2007.
75. As regards Mr Marcos Mejía López, the Government states that Civil Chamber No. 1 of the Managua Appeals Court ruled on 22 January 2010 that the appeal for *amparo* lodged by Mr Marcos Mejía López and others should be considered null and void.
76. The Government also states that the Supreme Court of Justice did not hand down rulings in favour of Ms Perla Marina Corea Zamora, Ms Yerigel Zúñiga Izaguirre, Ms Lila Carolina Alvarado Muñoz, Mr Freddy Antonio Velásquez Luna, Mr Jorge Boanerges Cruz Berríos, Mr Byron Antonio Tercero Ramos and Mr Francisco José Zamora.
77. As regards the violation of clause 12 of the collective agreement between the MTI and a number of trade unions of the same institution, the Government states that the Ministry has seven trade union organizations, namely: the Trade Union of Workers of MTI (SITRAMTI); Trade Union of Democratic Workers (SITRAD); Trade Union of Public Service Workers of the MTI (SINTESIP–MTI); Trade Union of Employees of the MTI “Andrés Castro” (SEMTIAC); National Trade Union of the SINATRA–DGTT–MTI; Independent Trade Union of Workers of MTI; and National “Heroes and Martyrs” Trade Union of MTI–UNE–STI. The Ministry has stated that its budget is not sufficient to satisfy the demands of all the trade unions mentioned, and the modest resources available to it are therefore distributed in a rational manner among the trade unions in question.
78. The Government also indicates that the collective agreement previously referred to was extended on 11 June 2009.
79. *The Committee notes that for reasons of form or substance the judicial authority has not given rulings in favour of the trade unionists named in its previous recommendations (a), (c) and (d). The Committee will therefore not pursue its examination of these questions unless the complainant organization presents new information, which establishes a breach of Conventions Nos 87 and 98. The Committee also notes that, as regards recommendation (b), the Government states that Mr José María Centeno occupied a position of trust and his employment contract was terminated in accordance with*

*legislation, and that he received final payment of the statutory benefits to which he was entitled.*

- 80.** *As regards the alleged failure to implement article 12 of the collective agreement in force (concerning trade union facilities such as computers, printers and so on) by the MTI, the Committee notes the Government's statement to the effect that its budget is not sufficient to satisfy all the demands of the seven trade unions that operate at the Ministry. The Committee recalls that collective agreements must be respected by the parties to them, especially when, as the Government has stated, the MTI collective agreement has been extended.*

### **Case No. 2169 (Pakistan)**

- 81.** The Committee last examined this case, which concerns allegations of illegal detention of trade union leaders, violations of the right to collective bargaining and acts of intimidation, harassment and anti-union dismissals in the Pearl Continental Hotel, at its meeting in June 2010 [see 357th Report, paras 54–66]. On that occasion, the Committee noted that since the first examination of this case in June 2002, the Government had not provided information on the concrete measures taken to implement any of its recommendations. The Committee strongly urged the Government to take the necessary measures to ensure that two wrongfully dismissed trade unionists, Bashir Hussain and Ghulam Mehboob, are reinstated in their posts without loss of pay or are paid an adequate compensation which would represent a sufficiently dissuasive sanction if reinstatement was not possible. It further requested the Government to instruct the competent labour authorities to undertake an in-depth investigation into the dismissal of nine other trade unionists and to ensure that, if it has been found that there had been anti-union discrimination, to ensure that the workers are reinstated in their posts without loss of pay. The Committee once again urged the Government to conduct an independent inquiry into the alleged beatings of Messrs Aurangzeg and Hidayatullah. The Committee also urged the Government to take the necessary measures in order to promote and facilitate collective bargaining at the Pearl Continental Hotel to take the necessary measures to ensure that the Pearl Continental Hotel Workers' Union (PCHWU) was fully recognized as a collective bargaining agent by the management and to keep it informed in this respect.
- 82.** In a communication dated 3 May 2011, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Association (IUF) submitted additional information regarding the dismissals of Messrs Mehboob and Hussain, and 18 other union members. The IUF indicates that Labour Court No. 2 of Karachi ordered the reinstatement in their posts of the abovementioned workers and joins the relevant judicial decisions dated 26 February 2011 to its communication. The complainant considers that the reinstatement of these workers would constitute an important, if partial step in implementing the Committee's recommendations. The IUF also indicates that the employer immediately filed an appeal of the above decision, and fears that the cases will yet again be delayed, the reinstatement cases being pending since 2002.
- 83.** In a communication dated 25 February 2011, the Government indicates that beating by the police of Mr Aurangzeg and Mr Hidayatullah was reported, and that while Mr Aurangzeg has migrated abroad, the case of Mr Hidayatullah for reinstatement in service was still pending in Labour Court No. 2 in Karachi, together with cases of 26 other workers.
- 84.** With regard to the hotel management's application for cancellation of the union's registration as a collective bargaining agent (CBA), the Government indicates that the application was dismissed by the Labour Court on 18 May 2006 and that the appeal was still pending before the Labour Appellant Tribunal.

85. The Government reiterates that the criminal case lodged by the hotel management against members of the CBA union was dismissed by the Additional Session Judge of South Karachi on 9 February 2009, and was further dismissed in appeal in June 2009. The Government indicates that the concerned workers' dismissal case is now pending before the High Court in Karachi. According to the Government the hearing was to take place on 4 March 2011.
86. *The Committee notes the information provided by the Government and the complainant organization. It notes with regret that, to a large extent, the Government reiterates the information provided previously. The Committee notes the Government's indication that the beatings of Messrs Aurangzeg and Hidayatullah by the police have been reported. The Committee deplores the Government's failure to institute an independent inquiry into this allegation and recalls that in the event of assaults on the physical or moral integrity of individuals, it has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 50]. The Committee therefore strongly urges the Government to conduct an independent inquiry as soon as possible in order to punish those responsible and to give the victims a compensation that would constitute a sufficiently dissuasive sanction. The Committee considers that the fact that Mr Aurangzeg has migrated abroad does not alleviate the obligation of the Government to punish those responsible in order to prevent a repetition of such acts against trade unionists in the future, nor does it eliminate the obligation for appropriate compensation.*
87. *The Committee notes the information provided by the IUF regarding 20 reinstatement cases decided by Labour Court No. 2. It further notes that the Court's remedy not only includes the workers' reinstatement in their posts, but also grants them a compensation of 75 per cent of the benefits lost since their dismissal in 2002. It also notes the IUF's indication regarding the employer's decision to file an appeal following the reinstatement decision. The Committee further notes that even though the criminal cases lodged against trade union members have been dismissed, the reinstatement process of those workers has still not begun. The Committee recalls that justice delayed is justice denied and further recalls that it has always attached great importance to the principle of prompt trial in all cases, including in which trade unionists are charged with criminal offences [see **Digest**, op. cit., para. 105]. The Committee urges the Government to ensure that the appeal is heard without further delay. It also requests to be kept informed of the outcome of the appeal and requests the Government to take the necessary measures to reinstate the 20 workers pursuant to the decision of the Labour Court pending appeal. The Committee notes that in its communication, the Government refers 27 reinstatement cases and therefore understands that seven cases are still pending before the Labour Court. The Committee therefore expects that these cases will be examined without further delay. It further expects that if it is found that there has been anti-union discrimination, to ensure that the workers concerned are reinstated in their posts without loss of pay. If reinstatement is not possible for objective and compelling reasons, the Committee urges the Government to ensure that the workers receive adequate compensation so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests to be kept informed in this respect. It further requests the Government to provide it with a copy of all relevant judicial decisions.*
88. *The Committee notes the information provided by the Government regarding the dismissal of the hotel management's application for cancellation of registration of CBA union by the Labour Court on 18 May 2006 and that the case is still pending on appeal. The Committee recalls from the previous examination of this case that for ten years, hotel employees have been without a collective agreement. The Committee once again draws the Government's*

attention to Article 4 of Convention No. 98 according to which, measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Furthermore, the Committee recalls that employers should recognize, for collective bargaining purposes, the organizations representative of the workers employed by them. The recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [see *Digest*, *op. cit.*, paras 952–953]. The Committee urges the Government to take the necessary measures to ensure that the PCHWU is fully recognized as a collective bargaining agent by the management and to promote and facilitate collective bargaining at the Pearl Continental Hotel and to keep it informed in this respect.

### **Case No. 2229 (Pakistan)**

- 89.** The Committee last examined this case at its meeting in June 2010 [see 357th Report, paras 67–69]. On that occasion, the Committee strongly urged the Government to institute an independent inquiry into the alleged acts of anti-union discrimination against trade union officers of the Employees' Old-Age Benefits Institution (EOBI) Employees' Federation of Pakistan and to take the necessary measures to fully redress those acts, should they be proven to be true.
- 90.** In a communication dated 25 February 2011, the Government indicates that the National Industrial Relations Commission (NIRC) has conducted an independent inquiry and determined the following. The EOBI Employees' Federation applied for an approval of change of its office bearers. The application was denied as this category of workers was excluded from the purview of the Industrial Relations Ordinance (IRO) 2002. The EOBI Employees' Federation then filed a writ petition which is still pending before the Sindh High Court in Karachi. The Government further indicates that since then, the IRO 2002 was repealed by the Industrial Relations Act (IRA) 2008, which allowed employees of the EOBI to form the union of their choice and gave them the right to collective bargaining and the right to strike. Therefore, the EOBI Employees' Federation is now at liberty to apply for registration with the NIRC under the IRA 2008, which "shall hold ground until 30 June 2011". Finally, the Government indicates that the inquiry revealed no acts of anti-union discrimination.
- 91.** *The Committee notes the information provided by the Government regarding the findings of an independent inquiry carried out by the NIRC, and, in particular, that the allegations of anti-union discrimination have not been confirmed. It requests the Government to provide a copy of the findings. Further noting the information provided by the Government on the issue of registration of the EOBI Employees' Federation and recalling that it had dealt with the legislative changes that have occurred in Pakistan in case No. 2799 [see 359th Report, paras 970–991] and that the Committee of Experts on the Application of Conventions and Recommendations dealt with the same at its November–December 2010 session, the Committee requests the Government to indicate whether EOBI Employees' Federation has been registered, can function freely and enjoys collective bargaining rights.*

**Case No. 2399 (Pakistan)**

92. The Committee last examined this case, which concerns dismissals, harassment and violence against members of the Liaquat National Hospital Workers' Union (LNHWU), at its June 2010 session [see 357th Report, paras 70–73]. On that occasion, the Committee deplored the lack of the Government's observations, which only highlighted the Government's failure to take measures to implement the Committee's previous recommendations. It therefore urged the Government to take the necessary measures in order to investigate without delay the allegations of: (1) torture and harassment against trade union members ordered by the management of the Liaquat National Hospital; (2) the abduction, beating and threats carried out against the LNHWU General Secretary, Mr Shahid Iqbal Ahmed, by the police; and (3) the dismissals and suspensions at the hospital. The Committee once again urged the Government, if the allegations of ill-treatment were confirmed, to prosecute and punish the guilty parties and take the necessary measures in order to prevent the repetition of similar acts. In respect of the dismissals and suspensions, the Committee requested the Government, if it was found that the workers were dismissed for the exercise of their trade union activities, to ensure that they were reinstated in their posts with back pay and, if reinstatement was not possible for objective and compelling reasons, that they were paid adequate compensation so as to constitute sufficiently dissuasive sanctions.
93. In a communication dated 25 February 2011, the Government reiterates the information it had previously provided to the effect that all the cases regarding reinstatement and damages to the dismissed workers are still pending in various courts.
94. *The Committee once again regrets the absence of any concrete measures taken by the Government to give effect to the Committee's recommendations in this case. The Committee recalls that the events in this case go back to 2002. Noting the Government's indication that both the reinstatement cases and the lawsuit against the management for damages are still pending, the Committee recalls that justice delayed is justice denied [see **Digest of decisions and principles of the Committee on Freedom of Association**, fifth edition, revised, 2006, para. 105] and strongly urges the Government to take all necessary steps to ensure that the cases, which have been pending for seven years now, are finally heard. The Committee once again urges the Government, if it is found that the workers' dismissals are linked to the exercise of their trade union activities, to ensure that they are reinstated in their posts with back pay and, if reinstatement is not possible for objective and compelling reasons, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions.*
95. *The Committee deplores the lack of information regarding the specific allegations of torture and harassment against members of the LNHWU ordered by the Hospital management, as well as the allegations of abduction, beating and threats against the LNHWU General Secretary, Mr Shahid Iqbal Ahmed by the police. The Committee recalls that in its examination of the case in March 2007, it had noted the Government's indication that pursuant to the Committee's recommendations, the government of Sindh had been asked to conduct an inquiry into the matter of the Liaquat National Hospital and to send a comprehensive report to the Ministry of Labour and Manpower. The Committee deeply regrets that four years later, no information was provided as to the outcome of this investigation. Further recalling that in the event of assaults on the physical integrity of individuals, the Committee has always considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see **Digest**, op. cit., para. 50], the Committee strongly urges the Government to take the necessary measures to investigate these allegations without delay, and if the allegations of*

*ill-treatment are confirmed, to prosecute and punish the guilty parties and take all necessary measures in order to prevent the repetition of similar acts.*

### **Case No. 2677 (Panama)**

- 96.** When it last examined this case at its June 2010 meeting, the Committee made the following recommendations on the issues that remained pending in relation to the refusal to register a workers' organization (SINTUP) in a public university [see 357th Report, para. 79]:

The Committee notes the complainant organization's explanations as to why it chose not to establish itself in accordance with the regulations governing the right to organize in the public sector. In this respect, while it recalls that workers in public or private universities shall have the right to establish organizations of their own choosing and to join them, and the right to collective bargaining, the Committee requests the Government to communicate its observations with regard to the complainant's allegations and, in particular, with regard to the difficulties and restrictions that are damaging associations of public servants. The Committee emphasizes that whatever the legislation covering the right of association of workers in public universities may be, it must fully recognize the rights enshrined in Conventions Nos 87 and 98, and it requests the Government to specify in its reply whether the legislation guarantees those rights, including protection against anti-union discrimination and the right to collective bargaining of workers' organizations in public universities.

- 97.** In its communication dated 1 December 2010, the Government repeats that under Panamanian positive law, there is a clear and well-defined difference between a "trade union organization" and an "association of public servants". The Labour Code does not govern labour relations between public servants and government or public institutions, as stipulated in the final paragraph of article 2, which provides that: "Public employees shall be governed by the administrative career regulations, except where specific provision is made for the application of any rules of the present Code". The Political Constitution of the Republic determines that public servants are persons who are appointed to posts in autonomous, semi-autonomous and other entities, and who are remunerated by the State; the provisions of the Labour Code do not apply to them, but instead those of the Administrative Careers Act. Consequently, the General Labour Directorate, by way of Resolution No. 1208.DOS.2007 of 18 September 2007, ruled not to allow the request to grant legal personality to the complainant organization (SINTUP) on the grounds that it was against the Constitution and the law. This resolution was confirmed by the Court of Second Instance in Resolution No. D.M. 174/2007 of 26 December 2007.

- 98.** The Government goes on to say that for SINTUP to be considered as a trade union organization, the Political Constitution would have to be amended, which would be no easy task according to article 313, Title XIII, of the Constitution, entitled "Constitutional Reform", which establishes the relevant conditions and procedures. The Government reiterates that it respects the Conventions on freedom of association and collective bargaining that it has ratified, which is why it has been making every effort to ensure their full implementation within a framework of dialogue with the social partners. The current labour administration authority within the Ministry of Labour, in view of the current situation and in order to comply with Conventions Nos 87 and 98 on freedom of association and to promote social dialogue, has been examining the possibility of establishing a Higher Labour Council, to be the consultative tripartite arm of the executive body, with the principal aim of regulating dialogue and promoting economic and social cooperation between the public authorities and the employers' and workers' organizations of the country in respect of labour issues, with the technical support of the ILO.

99. *The Committee notes this information. It understands that in accordance with national legislation the complainant organization (SINTUP), which is a workers' organization in a public university, may not be established as a trade union regulated by the Labour Code, but must instead be established as an association and be covered by the Administrative Careers Act. The Committee requests the Government to indicate whether the members of such associations, and in particular those of SINTUP, are guaranteed protection against acts of anti-union discrimination and whether they have the right to collective bargaining and to strike, and, if so, to provide the relevant legal provisions.*

### **Case No. 1914 (Philippines)**

100. The Committee last examined this case at its March 2010 meeting [see 356th Report, paras 137–142]. The case concerns approximately 1,500 leaders and members of the Telefunken Semiconductors Employees' Union (TSEU) who, after being dismissed for their participation in strike action from 14 to 16 September 1995 and having failed to obtain their reinstatement (despite a Supreme Court judgment in that regard), have also been unable to obtain the payment of retirement benefits for the period they worked in the enterprise. During the last examination of this case, the Committee urged the Government to continue to intercede with the parties with a view to reaching, without any further delay, a mutually satisfactory settlement for the payment of retirement benefits to the dismissed workers.
101. In a communication dated 28 March 2010, the complainant requests the good offices of the ILO in its struggle for justice.
102. In a communication dated 15 November 2010, the Government indicates that the Department of Labor and Employment (DOLE), the leader of the dismissed workers and the Federation of Free Workers (FFW) have moved forward with the five take-off points for assistance to the remaining 300 dismissed workers (out of the 1,500) as follows: (i) scholarships were granted to eight dependants of the dismissed workers who qualified under the DOLE Workers' Organization Development Programme; (ii) the efforts towards the requested condonation or restructuring of the outstanding Social Security Service (SSS) loans stalled due to the need for a legal basis to undertake a condonation; other possible ways are still being explored before the SSS board; (iii) the livelihood grant is ready but the project proposal is yet to be submitted; (iv) the qualified dismissed workers or their dependants are being matched for local or overseas work; the leader of the dismissed workers reported positive results; and (v) the Government's attempts to establish contact with Temic Phils. and Telefunken Germany yielded no results; other ways are being explored together with the leader of the dismissed workers.
103. *The Committee notes with interest the award of scholarships to eight dependants of the dismissed workers and requests the Government to provide information on developments in regard to further assistance measures taken or envisaged for the dismissed workers, including the condonation of SSS loans, award of livelihood grants or job placement. The Committee regrets the lack of response from the companies Temic Phils. and Telefunken Germany to the Government's letters calling for assistance and for an exploratory meeting with a view to resolving the issue involving the payment of retirement benefits to the dismissed workers.*
104. *The Committee recalls its previous conclusion to the effect that "there is no doubt in the Committee's mind that the 1,500 or so TSEU members were dismissed and not reinstated subsequently for having participated in strike action" [see 308th Report, para. 667]. Noting that, according to the complainants, the dismissed workers are entitled to the retirement plan which was part of their collective bargaining agreement and had already reached the requisite age and length of service even prior to the strike, the Committee*

*considers that the dismissed workers should not be deprived of their lawfully acquired retirement benefits accrued over years of working for an enterprise. The Committee, therefore, urges the Government to pursue its efforts to establish contact with the companies concerned and to continue to intercede with the parties with a view to finding “out of the box” solutions and reaching, without any further delay, a mutually satisfactory settlement for the payment of retirement benefits to the dismissed workers. Recalling that justice delayed is justice denied, the Committee trusts that, after 16 years, this long-standing case will finally and equitably be resolved. It requests to be kept informed of the progress made in this regard.*

### **Case No. 2488 (Philippines)**

**105.** The Committee last examined this case at its March 2010 meeting [see 356th Report, paras 143–149], at which time it made the following recommendations:

- To initiate exploratory talks without delay between DOLE, the University San Agustin and the USAEU and to keep the Committee informed of their outcome.
- To keep the Committee informed of any ruling handed down concerning the legality of the dismissal of the USAEU committee, and to take active steps to intercede with the parties so that the committee members who were dismissed further to their participation in strike action are reinstated immediately in their jobs under the same terms and conditions prevailing prior to the strike with compensation for lost wages and benefits.
- To keep the Committee informed of any ruling handed down in the legal proceedings for nullification of the 2006 election of union officers, and to ensure that if the allegations of employer interference are confirmed, all necessary measures of redress are taken, including sufficiently dissuasive sanctions.
- To take all necessary measures in respect of the requested independent inquiry into the allegations of anti-union discrimination in the Eon Philippines Industries Corporation and the Capiz Emmanuel Hospital in Roxas City and, if the acts of anti-union discrimination are confirmed, to take measures to ensure that the workers concerned are reinstated in their posts without loss of pay.

**106.** The complainant provided follow-up information in communications dated 25 May, 3 August and 27 December 2010, as well as 23 March 2011. The Government submitted follow-up information in a communication dated 15 November 2010.

**107.** According to both the Government and the complainant, a meeting between the leader of the dismissed faculty members, Government representatives and FFW representatives took place on 12 April 2010 in Iloilo City. The three following items were agreed upon in the discussion: (1) the sending of Government letters to the Court of Appeals to expedite resolution of the pending claims for reinstatement at the University of San Agustin and for nullification of the election of officers in 2006; (2) the need for the dismissed faculty members to submit project proposal(s) to be able to benefit from the Government’s offer of livelihood assistance grant; and (3) the need for the dismissed faculty members to submit resumes to be able to benefit from the Government’s offer of facilitation of employment applications to other government services pending resolution of reinstatement case. A second meeting was held on 15 July 2010 in Iloilo City, the agenda items being the pending application for employment of some members and the different project proposals for livelihood. The complainant qualifies the second meeting as frustrating and degrading, since the Government allegedly tried to convince it to abandon its claims and allotted a very limited time.

**108.** As regards the first item, the Government and the complainant indicate that the Department of Labor and Employment (DOLE) has written to the Court of Appeals to expedite the cases on 4 May 2010. The complainant informs in its communication dated

23 March 2011, that a ruling in favour of the University was handed down concerning the legality of the dismissal of the USAEU committee and that it has filed a motion for reconsideration in a timely fashion. The Government indicates that, in the case relating to the nullification of the election of officers in 2006, a resolution dated 29 July 2010 was issued directing the parties to file simultaneous memorandum.

- 109.** With respect to the livelihood assistance grant, the complainant indicates that one of the options envisaged at the first meeting had been the submission of individual project proposals and that they submitted them on 4 May 2010. According to the Government, the livelihood assistance grant failed to take off, as, contrary to the instructions at the meeting on 12 April 2010 to submit a consolidated project proposal, the dismissed faculty members submitted individual project proposals. The Government adds that the FFW is currently trying to facilitate a consolidated project proposal for the affected officers, and that DOLE has set aside 535,000 Philippine pesos (PHP) (approximately US\$12,370) as initial funding for this purpose, since July 2010. In the complainant's view, the fact that the Government subsequently insisted on a group proposal and the fulfilment of other stringent requirements is a display of insincerity on its part; the complainant also alleges that the Government has never informed it about the sum set aside for the purposes of livelihood assistance.
- 110.** As regards the endorsement or facilitation of the applications for employment with the different government offices, the complainant states that it submitted the resumes two days after the first meeting. According to the Government, the ban for hiring in government offices prior to the 10 May 2010 National Election hindered an immediate DOLE response. Both the complainant and the Government indicate that on 16 and 18 August 2010 the DOLE endorsed several employment applications of Mr Lasola and his group to the Commission on Elections in Region VI (COMELEC) and to the Technical and Educational Skills Authority (TESDA). In its communication dated 23 March 2011, the complainant criticizes that, almost one year after the Government had requested their resumes, none of the dismissed faculty members has been employed, although according to the media there were 50,000 vacancies in Government services after 30 June 2010. The Government explains that COMELEC has no vacancies at the moment but the employment applications will be given priority consideration once there are vacancies, and that hiring at TESDA is yet to commence.
- 111.** Finally, the Government indicates that exploratory meetings with the university management regarding the possibility of reinstatement took place on 12 April, 26 May and 14 July 2010. The University firmly stressed its position that, given the finality of the Supreme Court decision, the reinstatement of Mr Lasola and his group was not part of an exploratory solution but signalled that it was open to talks on extending assistance to the dismissed workers.
- 112.** *The Committee notes the information above. In particular, it notes with interest the points agreed upon by the complainant and the Government at the meeting on 12 April 2010. In this regard, it expects that adequate livelihood assistance will, including by simplifying and accelerating the relevant procedures, be granted without delay to the dismissed workers.*
- 113.** *Furthermore, the Committee notes with regret the decision of the Court of Appeals dated 30 November 2010, according to which the dismissal of the USAEU committee was judged legal on the grounds that the union officers had participated in an illegal strike (the strike being illegal due to defiance of assumption of jurisdiction and return-to-work orders). The Committee recalls that the union officers were dismissed for not having ensured immediate compliance with an assumption of jurisdiction order issued under section 263(g) of the Labor Code which has been repeatedly found to be contrary to freedom of association*

principles. The Committee once again recalls in this regard that it 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 [see 350th Report, para. 199]. Noting that the complainant filed a motion for reconsideration on 24 January 2011, the Committee expects that full account will be taken in practice of the principle above, and requests the Government to continue to take active steps to intercede with the parties for the purpose of conciliating a solution, bearing in mind the Committee's previous recommendations to ensure that the USAEU committee members who were dismissed further to their participation in strike action are reinstated immediately in their jobs under the same terms and conditions prevailing prior to the strike with compensation for lost wages and benefits. In the meantime, noting with interest the Government's indication that the workers whose applications were endorsed for the vacancies at TESDA and COMELEC will have priority in case of future vacancies, the Committee trusts that, pending a mutually satisfactory settlement, the Government's efforts to facilitate the employment of the dismissed union officers will soon bear fruit. It requests to be kept informed of the progress made with a view to a speedy and equitable resolution of this long-standing case.

- 114.** Noting the complainant's indication that a second set of union officers allegedly controlled by the university management was elected on 4 December 2010, the Committee notes with regret that the Government does not provide any information on the Committee's previous recommendations with regard to the allegations of employer interference (financial incentives for trade union members to vote for another committee). 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 of decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, para. 855] and that Article 3 requires the establishment of an effective mechanism of protection in this regard. The Committee requests the Government to keep it informed of any ruling handed down in the ongoing legal proceedings for nullification of the election of union officers. It urges the Government to ensure that if the allegations of employer interference are confirmed, all necessary measures of redress are taken, including sufficiently dissuasive sanctions. The Committee requests to be kept informed of all developments in this respect.
- 115.** Noting finally with deep regret that the Government still does not supply any information on the requested independent inquiry into the allegations of anti-union discrimination in the Eon Philippines Industries Corporation and the Capiz Emmanuel Hospital in Roxas City, the Committee once again urges the Government to take all necessary measures in this respect and, if the acts of anti-union discrimination are confirmed, to take measures to ensure that the workers concerned are reinstated in their posts without loss of pay.

### **Case No. 2249 (Bolivarian Republic of Venezuela)**

- 116.** At its June 2010 meeting, the Committee asked that the requested information be sent as a matter of urgency and without delay on the pending matters. A summary of these conclusions and recommendations are set out below [see 357th Report, paras 89–117]:
- As regards the request to vacate the detention orders against Horacio Medina, Edgar Quijano, Iván Fernández, Mireya Repanti, Gonzalo Feijoo, Juan Luis Santana and Lino Castillo, the Government reports that on 21 December 2004, the Office of the 73rd Prosecutor of the Office of the Public Prosecutor (the national body with competence to handle cases involving corruption, banks, insurance and capital markets), under the responsibility of lawyer Daniel Medina, submitted an indictment against Juan Antonio Fernández Gómez, Horacio Francisco Medina Herrera and Mireya Ripanti de Amaya for committing the offences of civil rebellion, incitement to commit an offence, incitement to break the law and advocating criminal conduct, unlawful interruption of the gas supply, criminal conspiracy and computer espionage, and requested preventive

judicial detention. On 22 December of the same year, a warrant was requested for the arrest of Gonzalo Feijoo Martínez, Edgar Quijano Luengo, Juan Luis Santana López, Edgar Paredes Villegas and Juan Lino Carrillo Urdaneta; the application was granted on the same day, along with the request for preventive judicial detention. Accordingly, as is clear from the above, the competent Office of the Public Prosecutor issued these orders for enforcement by the police; however, the persons concerned are now fugitives from justice. Once again, the Committee recalls that the right to strike in the petroleum sector should be recognized, and considers that it is for the Government to prove in each individual case that an offence has been committed involving the overstepping of trade union rights by the union members concerned. The Committee considers that as this has not been done so far, the union officers and members concerned should be able to return to the country with government assurances that they will not be subject to reprisals. The Committee notes with concern the allegation by UNAPETROL relating to the fabrication of evidence against its officers and requests the Government to send its observations in this regard.

- As regards the situation of members of the UNAPETROL trade union, the Government indicates that these former PDVSA employees, who set up UNAPETROL and were senior and middle managers of the oil company, were the same individuals who were involved in the coup d'état in 2002, rejecting the PDVSA board of directors, which had been legally appointed in accordance with the Petroleum Act (*Official Gazette* No. 37323 of 13 November 2001), and who instigated the illegal and unconstitutional paralysis of the oil industry. Thus, as already stated, the lawful procedures prescribed by law for such cases were instituted against these workers, who participated in illegal activities incompatible with their functions and duties under the employment relationship, and who therefore could hardly be reinstated in the PDVSA today in posts which they are not lawfully entitled to occupy. The Committee reiterates its recommendation above on the legitimacy of the strike in the oil industry and considers that, until the Government has proved in each individual case that offences were committed, the union members should be reinstated in their posts.
- Concerning the alleged reassessment of the dismissal of Gustavo Silva, the Government states that the archives of the Directorate of the National Inspectorate for the Public Sector do not contain any record of proceedings for misconduct against Gustavo Silva; accordingly, no decision has been adopted in this regard. The Government thus requires further information in order to address this request by the Committee on Freedom of Association. The Committee requests the complainant to provide its observations on this matter.
- As regards the case of Cecilia Palma, the Government states that the applicable disciplinary proceedings prescribed by law were instituted against this person, culminating in an administrative decision on 6 November 2002 issued by the competent authority, duly motivated with sufficient grounds. The official concerned was dismissed from her post as lawyer with the National Nutrition Institute on legal grounds of “lack of integrity, acts of violence, insult, insubordination, immoral conduct at work or act detrimental to the reputation or interests of the institution of the Republic concerned”. The judicial authority rejected the remedy of annulment filed by Ms Cecilia Palma against the decision by the administrative authority, considering that she had displayed an extremely serious lack of integrity unrelated to the exercise of trade union rights. There is no record of Ms Palma having filed any other appeals. The Committee requests the Government to send the text of the administrative and judicial decisions in this matter.

**117.** In a communication dated 21 February 2011, the Government states with respect to the requests to vacate the detention orders against Horacio Medina, Edgar Quijano, Iván Fernández, Mireya Repanti, Gonzalo Feijoo, Juan Luis Santana and Lino Castillo, that in 2004, the Office of the Public Prosecutor initiated the respective procedure against these individuals and submitted an indictment for committing the offences of civil rebellion, incitement to commit an offence, incitement to break the law and advocating criminal conduct, unlawful interruption of the gas supply, criminal conspiracy and computer espionage, and requested preventive judicial detention. However, these individuals are now

fugitives from justice. The Government emphatically states that the right to strike in all sectors is not only recognized in the country, but also protected by the Constitution and the laws of the Republic. Article 97 of the Constitution of the Bolivarian Republic of Venezuela establishes the right of all public and private sector workers to strike, subject to the conditions laid down by law. The Labour Act provides broad protection for labour and social rights in the Bolivarian Republic of Venezuela; it specifically establishes the right that the State grants to workers, employers and their organizations, to collective bargaining and to strike (articles 8 and 396), enabling them to exercise the right to bargain collectively and to peacefully solve conflicts. The Constitution itself establishes that strikes must be conducted in accordance with the law and must not cause irreparable damage to the people or institutions (article 496 of the Labour Act). Moreover, workers involved in lawful activities associated with a labour dispute may not be dismissed, transferred or subjected to a worsening in their conditions of work or have any measure taken against them, as stipulated in article 516 of the Act in question. National laws regulate illicit and unlawful conduct targeting the population or institutions and causing irreparable damage or consequences, and consequently fulfil the State's obligation to protect the rights of the country's citizens. Therefore, the regulation and sanction of illicit conduct cannot in any way be perceived to be reprisals by the Government against citizens whose actions or conduct classify as offences in the legislation.

- 118.** In the specific case of the abovementioned citizens – the Government goes on to say – the Public Prosecutor issued the respective indictments and initiated legal proceedings for the alleged offences. In other words a procedure was initiated to individually try the alleged criminal acts. However, the accused individuals' obstruction of justice meant no official conclusions could be reached and they could not be found either innocent or guilty. On another matter, the Government has nothing to say with respect to the baseless charge by UNAPETROL concerning the alleged fabrication of evidence against the officers of that organization. The Government suggests that the Committee on Freedom of Association ask the complainants to provide proof of their claims. All that remains is to confirm the full exercise in the Bolivarian Republic of Venezuela of the rights to strike and to peaceful assembly, and the lack of any restrictions to those rights or to lawful industrial action, other than those established in national legislation.
- 119.** Concerning the situation of members of the UNAPETROL trade union, with regard to which the Committee reiterates its recommendation regarding the legitimacy of the strike in the oil industry, the Government repeats the information provided in the previous point of this reply concerning the recognition and protection of the right to strike in the country.
- 120.** With respect to the case of Cecilia Palma, the Government sends a copy of a ruling handed down by the Second Administrative Disputes Court dated 3 August 2010.
- 121.** *The Committee notes the Government's comments concerning the alleged fabrication of evidence against the officers of UNAPETROL in which it suggests that the complainant organizations provide proof of their claims. The Committee invites the complainant organizations to justify their allegation with the proof available to them.*
- 122.** *The Committee regrets that the complainant organizations have not provided information concerning the alleged reassessment of the dismissal of trade unionist Gustavo Silva and advises that in the absence of that information it will not pursue the analysis of these allegations in its next examination of the case.*
- 123.** *With regard to the dismissal of the FEDEUNEP trade unionist Ms Cecilia Palma (removal owing to lack of integrity, insult and insubordination), the Committee notes the ruling handed down by the Second Administrative Disputes Court dated 3 August 2010, from*

*which it can be gathered that the grounds for her removal, over and above the pursuit of trade union activities, related to actions and insults in a context of political confrontation.*

### **Case No. 2711 (Bolivarian Republic of Venezuela)**

**124.** In its previous examination of the case at its June 2010 meeting the Committee made the following recommendation, among others, on issues that remained pending [see the 357th Report, para. 1189]:

... Considering that the intervention of the CNE in the elections of the executive board of the complainant trade union seriously violates Convention No. 87, the Committee must again urge the Government to exclude any intervention by the CNE in these elections, to substantially amend or repeal the rules relating to the CNE in trade union elections, to respect the elections of the complainant trade union and to refrain from invoking alleged irregularities or appeals to prevent it from bargaining collectively. The Committee requests the Government to take steps to amend the legislation to prevent this type of interference and to keep it informed in this regard ...

**125.** In its communication of 21 February 2011, the Government states with regard to the election of the National Press Trade Union (SNTU) that on 10 December 2009, the union held free and democratic elections in full accordance with the inalienable constitutional right, and that there was absolutely no interference by any authority of the Venezuelan State.

**126.** *The Committee notes this information with interest.*

### **Case No. 2736 (Bolivarian Republic of Venezuela)**

**127.** At its June 2010 meeting, the Committee made the following recommendations on issues that had remained pending concerning the Single Organized National Trade Union of Workers of the Judiciary (SUONTRAJ) [see the 357th Report, para. 1265]:

- The Committee invites the complainant organization to supply additional information with respect: (1) to its allegations concerning the systematic outsourcing of work in the Judiciary, disguised labour relations and recruitment on a fee basis in violation of the collective agreement; and (2) its allegations relating to the restriction of the right of trade union members to take time off to carry out trade union activities.
- The Committee requests the Government to explain for what purpose report No. 138 of 14 July 2009 was drawn up identifying persons attending the meeting organized by the complainant organization, which according to the latter was possibly intended to enable action to be taken that would be prejudicial for the participants.
- The Committee urges the Government to take the necessary steps to have the nine union officials cited in the complaint reinstated in their jobs and to respect the principles referred to in the conclusions with regard to anti-union discrimination and the restructuring process.

**128.** In its communication of 21 February 2011, referring to the dismissal of the nine trade union officials, the Government states that the authorities have handed down rulings in favour of Mr Marcano and Mr Freitas, ordering their reinstatement at work and payment of wage arrears. The Government adds that the other workers mentioned in the complaint have not filed any complaints with the Labour Inspectorate.

**129.** *The Committee notes the Government's information concerning the dismissed trade union officials and notes with interest the reinstatement at work of two of them. The Committee deeply regrets that the Government has not provided the information requested on report*

*No. 138 and therefore once again requests the Government to explain for what purpose report No. 138 of 14 July 2009 was drawn up identifying persons attending the meeting organized by the complainant organization, which according to the latter was possibly intended to enable action to be taken that would be prejudicial for the participants.*

- 130.** *Finally the Committee notes with regret that the complainant organization SUONTRAJ has not submitted the information that it had requested at its June 2010 meeting. The Committee informs SUONTRAJ that if it does not receive the requested information before its next meeting, it will not pursue the examination of these allegations.*

\* \* \*

- 131.** Finally, the Committee requests the governments concerned to keep it informed of any developments relating to the following cases.

| <b>Case</b>                             | <b>Last examination on the merits</b> | <b>Last follow-up examination</b> |
|---|---------------------------------------|-----------------------------------|
| 1991 (Japan)                            | November 2000                         | March 2009                        |
| 2096 (Pakistan)                         | March 2004                            | March 2011                        |
| 2712 (Togo)                             | March 2003                            | March 2011                        |
| 2173 (Canada)                           | March 2003                            | June 2010                         |
| 2241 (Guatemala)                        | March 2011                            | –                                 |
| 2267 (Nigeria)                          | June 2004                             | November 2010                     |
| 2268 (Myanmar)                          | November 2008                         | March 2011                        |
| 2291 (Poland)                           | March 2004                            | March 2011                        |
| 2304 (Japan)                            | November 2004                         | November 2010                     |
| 2341 (Guatemala)                        | March 2011                            | –                                 |
| 2356 (Colombia)                         | November 2009                         | November 2010                     |
| 2383 (United Kingdom)                   | March 2005                            | March 2011                        |
| 2428 (Bolivarian Republic of Venezuela) | March 2006                            | November 2010                     |
| 2433 (Bahrain)                          | March 2006                            | March 2010                        |
| 2434 (Colombia)                         | March 2009                            | November 2010                     |
| 2450 (Djibouti)                         | March 2011                            | –                                 |
| 2459 (Argentina)                        | June 2007                             | November 2010                     |
| 2474 (Poland)                           | March 2007                            | March 2011                        |
| 2478 (Mexico)                           | March 2010                            | March 2011                        |
| 2490 (Costa Rica)                       | November 2008                         | March 2011                        |
| 2512 (India)                            | November 2007                         | March 2011                        |
| 2518 (Costa Rica)                       | March 2010                            | March 2011                        |
| 2540 (Guatemala)                        | November 2008                         | March 2011                        |
| 2575 (Mauritius)                        | March 2008                            | March 2011                        |
| 2590 (Nicaragua)                        | March 2008                            | March 2011                        |
| 2591 (Myanmar)                          | March 2008                            | March 2011                        |
| 2592 (Tunisia)                          | March 2009                            | November 2010                     |
| 2595 (Colombia)                         | June 2009                             | March 2010                        |
| 2604 (Costa Rica)                       | November 2008                         | March 2011                        |
| 2613 (Nicaragua)                        | March 2011                            | –                                 |

| Case                                    | Last examination on the merits | Last follow-up examination |
|---|--------------------------------|----------------------------|
| 2616 (Mauritius)                        | November 2008                  | November 2010              |
| 2626 (Chile)                            | March 2010                     | March 2011                 |
| 2634 (Thailand)                         | March 2009                     | March 2011                 |
| 2638 (Peru)                             | June 2010                      | March 2011                 |
| 2639 (Peru)                             | March 2011                     | –                          |
| 2646 (Brazil)                           | November 2010                  | –                          |
| 2652 (Philippines)                      | March 2010                     | –                          |
| 2654 (Canada)                           | March 2010                     | –                          |
| 2679 (Mexico)                           | June 2010                      | March 2011                 |
| 2686 (Democratic Republic of the Congo) | November 2009                  | November 2010              |
| 2690 (Peru)                             | June 2010                      | –                          |
| 2695 (Peru)                             | March 2010                     | March 2011                 |
| 2700 (Guatemala)                        | March 2010                     | March 2011                 |
| 2701 (Algeria)                          | June 2010                      | –                          |
| 2703 (Peru)                             | June 2010                      | March 2011                 |
| 2716 (Philippines)                      | November 2010                  | –                          |
| 2718 (Argentina)                        | March 2010                     | March 2011                 |
| 2722 (Botswana)                         | June 2010                      | March 2011                 |
| 2725 (Argentina)                        | March 2011                     | –                          |
| 2730 (Colombia)                         | November 2010                  | –                          |
| 2732 (Argentina)                        | November 2010                  | –                          |
| 2735 (Indonesia)                        | November 2010                  | –                          |
| 2737 (Indonesia)                        | November 2010                  | –                          |
| 2744 (Russian Federation)               | June 2010                      | March 2011                 |
| 2754 (Indonesia)                        | March 2011                     | –                          |
| 2755 (Ecuador)                          | June 2010                      | March 2011                 |
| 2756 (Mali)                             | March 2011                     | –                          |
| 2760 (Thailand)                         | March 2011                     | –                          |
| 2769 (El Salvador)                      | March 2011                     | –                          |
| 2782 (El Salvador)                      | March 2011                     | –                          |
| 2783 (Cambodia)                         | March 2011                     | –                          |
| 2799 (Pakistan)                         | March 2011                     | –                          |

**132.** The Committee hopes these governments will quickly provide the information requested.

**133.** In addition, the Committee has just received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2086 (Paraguay), 2153 (Algeria), 2160 (Bolivarian Republic of Venezuela), 2227 (United States), 2228 (India), 2257 (Canada), 2292 (United States), 2355 and 2362 (Colombia), 2382 (Cameroon), 2400 (Peru), 2430 (Canada), 2460 (United States), 2502 (Greece), 2527 (Peru), 2547 (United States), 2559 (Peru), 2567 (Islamic Republic of Iran), 2576 (Panama), 2594 (Peru), 2611 (Romania), 2630 (El Salvador), 2637 (Malaysia), 2651 (Argentina), 2661, 2667 and 2671 (Peru), 2669 (Philippines), 2675 and 2697 (Peru), 2685 (Mauritius), 2698 (Australia), 2699

(Uruguay), 2719 (Colombia), 2724 (Peru), 2742 (Plurinational State of Bolivia), 2768 (Georgia) and 2771 (Peru), which it will examine at its next meeting.

CASE NO. 2726

INTERIM REPORT

**Complaint against the Government of Argentina  
presented by  
the Argentinean Building Workers' Union (UOCRA)**

*Allegations: The complainant alleges the violent occupation and theft of materials from its headquarters in the city of Comodoro Rivadavia, in the Province of Chubut, a firearms attack on the home of an UOCRA leader and on a union headquarters building, temporary detention of leaders and workers who took part in a protest, temporary kidnapping of an UOCRA leader, etc.*

134. The Committee last examined this complaint at its November 2010 meeting and on that occasion presented an interim report to the Governing Body [see 358th Report, approved by the Governing Body at its 309th (November 2010) meeting, paras 172–219].
135. The Government sent its observations in a communication dated 21 February 2011.
136. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Previous examination of the case**

137. At its meeting in November 2010, the Committee made the following recommendations [see the 358th Report, paragraph 219]:
- (a) The Committee notes with concern the gravity of the allegations made in this case (violent repression of protestors, temporary detention of trade union leaders and protestors, firearms attacks on the home of a trade union leader and UOCRA headquarters building, temporary kidnapping with the aim of intimidating a trade union leader and interference by the provincial authorities in the establishment of a trade union, etc.), deeply regrets the climate of violence that emerges from the allegations, and urges the Government to take immediate action to ensure that investigations are carried out into all the allegations and to send its observations and those of the Chubut provincial authorities thereon.
  - (b) The Committee expects that UOCRA can once again use its headquarters in Comodoro Rivadavia. The Committee asks the Government to keep it informed in this respect. The Committee further urges the Government to take the necessary measures for carrying out a thorough investigation into the alleged destruction and misappropriation of UOCRA property and valuables during the occupation of the headquarters and requests the Government to keep it informed in this respect. The Committee awaits the response of the Chubut provincial authorities on these allegations.

- (c) The Committee requests the Government to send its comments on a possible direct contacts mission that should focus its cooperation efforts on freedom of association in the Province of Chubut.
- (d) The Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of this case.

## **B. The Government's reply**

- 138.** In a communication dated 21 February 2011, the provincial Government states first that the Republic of Argentina has a federal political system. As a result of this, the country is represented externally in accordance with article 99 of the national Constitution, and the Government states that its reply is therefore limited to what has already been indicated by the Province of Chubut. It adds that the situation described in this case, which the ILO has described as serious, is not found in any other jurisdiction in the country.
- 139.** The Government states that according to the provincial authorities, the issues raised in the complaint by the Argentinean Building Workers' Union (UOCRA) refer not only to alleged anti-union practices but also places special emphasis on the possible existence of a campaign of persecution against one of its officials, Mr Mateos Suárez, General Secretary of the Puerto Madryn branch of UOCRA. The provincial Government states that UOCRA, in order to substantiate its statements, described what happened on 11 November 2009 when the union decided to block the sole access road into the tourist resort of Puerto Pirámide during a sympathy strike in response to the dispute that had arisen as a result of the dismissal of 34 workers of the company Dragados y Obras Portuarias SA (DYCASA). According to press reports at that time, the union, faced with the dismissal of 34 workers employed by DYCASA, decided to strike in solidarity with the dismissed workers and a call was made to carry on strike action at the entrance to the villa in question.
- 140.** The provincial government goes on to state that some days before, the resort's tourist office made its concerns known to the Governor, given the community's total reliance on tourism and the fact that the action blocked the sole access road, thus posing a potential threat to traders and other inhabitants. The Governor sought to prevent the direct action from proceeding, failing which action would be taken to clear the road. He has reminded the union's leaders that blocking the road is a federal offence. The provincial authorities have stated that in response to what happened, police were sent in to avert possible violence, their orders being solely to maintain peace and public order and to ensure unrestricted access for anyone wishing to enter Puerto Pirámide.
- 141.** The provincial authorities maintain that, when faced with the presence of the police, the strikers reacted in a negative way and this resulted in disturbances which necessitated police intervention to contain the strikers, and that subsequently Mr Mateos Suárez claimed that the provincial authorities had ordered the police to disperse the strikers, disregarding the workers' rights. They stress that police action was confined to reducing violence and did not involve, in the words of Mr Mateos Suárez in repeated statements to the press, "the most blatant and excessive police repression". The events led to the arrest of the union official in question, who was accused of civil disobedience (article 239 of the Penal Code), blocking a highway (article 194 of the Penal Code) and incitement to commit offences (article 209 of the Penal Code).
- 142.** As regards the direct action measures, the provincial authorities claim that UOCRA's action was part of a "solidarity" strike which is not in itself illicit, but requires a degree of caution and discretion in expressing solidarity, which must be linked to the issue over which strike action is being taken. According to the provincial authorities, the direct action took place at the same time as a number of complaints were being made against Mr Suarez, which concerned a number of offences (serious assault, irregular payments and diversion of

workers' money or requests for financial contributions in exchange for agreeing to more flexible working conditions inferior to the normal minimum conditions), and that from then onwards the situation became even more violent. According to the provincial government, this was aggravated by the complaints made by the employers concerned, who eventually resolved to bring the case before the courts with groups of dissidents, and demanded the removal of the official in question on the grounds that they felt he did not represent them.

- 143.** The provincial authorities link these events to a confrontation that took place in November 2009 at the headquarters of the Puerto Madryn branch between a group of unemployed workers and UOCRA officials. On that occasion the police had to intervene in order to secure the premises and prevent them from being occupied by the opposing group. They also claim that the workers stated that they were discriminated against for not thinking like the officials, who prevented them from being hired, and for that reason demanded the removal of these officials. According to the provincial government, the situation provoked a response from the general public, from traders and neighbours in the area, who repudiated what had happened, and this prompted the judicial authority to seek the removal of Mr Suárez, who stands accused of seriously injuring two individuals. In this context, the provincial government's concern is growing, given that the excesses that have occurred threaten members of the general public, who are obliged to seek refuge whenever these groups confront one another (the authorities note that one such incident involved a kindergarten in Puerto Madryn). It adds that given these circumstances and the level of violence that has occurred, police intervention was imperative, not in order to restrict constitutional rights of free expression but to contain the incidents and restore order in the community.
- 144.** The provincial government has repeatedly denied the allegations, and stated that its sole priority is to safeguard public safety and social peace, and for that reason it has urged that trade union issues be resolved peacefully through the appropriate channels; situations of this type nevertheless persist. For example, on 3 December 2009, 17 workers from the company JS Construcciones reported that they were going to be dismissed as a result of pressure from Mr Suárez because they belonged to "Obreros Unidos del Chubut" (United Workers of Chubut), a group within the union that opposed the current UOCRA leadership, as a reprisal for the demonstration in which there had been confrontations and shots fired. It adds that on 5 October 2010, a number of construction workers turned up in order to express their opposition to the provincial representative. The anger of the demonstrators boiled over when the Governor left the municipal building to go to the official car which was surrounded by the group of individuals in question, who blocked his way. As he was unable to go forward, the representative got out of the car and started walking, to the accompaniment of insults from the group. Stones and bottles were thrown, some of which struck and damaged the car's rear window, and the crowd also molested a provincial deputy. The Governor lodged a complaint against UOCRA with the State Prosecution Service.
- 145.** Lastly, the provincial government states that it is clear from the above that there has been no persecution of Mr Mateos Suárez, who has in fact been charged with a number of offences that are being investigated, and for which reason removal of his union immunity is being sought.

### **C. The Committee's conclusions**

- 146.** *The Committee recalls that when it last examined this case at its November 2010 meeting, it noted with concern the gravity of the allegations made in this case, deeply regretted the climate of violence that emerged from the allegations, and: (1) urged the Government to take immediate action to ensure that investigations were carried out into all the allegations*

(violent repression of protestors, temporary detention of trade union leaders and protestors, firearms attacks on the home of a trade union leader and UOCRA headquarters building, temporary kidnapping with the aim of intimidating a trade union leader and interference by the provincial authorities in the establishment of a trade union, etc.), and to send its observations and those of the Chubut provincial authorities; (2) expected that UOCRA could once again use its headquarters in Comodoro Rivadavia; (3) urged the Government to take the necessary measures for carrying out a thorough investigation into the alleged destruction and misappropriation of UOCRA property and valuables during the occupation of the headquarters and requested the Government to keep it informed in that respect; and (4) requested the Government to send its comments on a possible direct contacts mission that should focus its cooperation efforts on freedom of association in the Province of Chubut.

- 147.** *The Committee notes the Government's statements to the effect that the situation referred to in the complaint, which has been described by the ILO as serious, is not found in any other jurisdiction in the country, and states that according to the Government of the province of Chubut: (1) the complaint refers not only to alleged anti-union practices but also to the existence of a campaign of persecution against the General Secretary of the Puerto Madryn branch of the UOCRA, Mr Mateos Suárez; (2) on 11 November 2009, UOCRA decided to block the only access to the tourist resort of Puerto Pirámide during a sympathy strike in response to a dispute following the dismissal of 34 workers of the company Dragados y Obras Portuarias SA (DYCASA); (3) the Governor sought to prevent the direct action from going ahead on the grounds that there was no obvious need to block the road, an act which, as he recalled, constitutes a criminal offence; (4) in response to the actions, police officers were sent to avert possible violence with the sole instruction to maintain peace and public order, and to ensure free passage for anyone wishing to enter the resort Puerto Pirámide; (5) faced with the police presence, the strikers reacted in a negative way; there were disturbances and police intervention became necessary, and this was limited to reducing violence; (6) the events culminated in the arrest of union official Mr Mateos Suárez, who has been accused of civil disobedience, blocking a road, and incitement to commit offences; (7) the direct action took place at the same time as a number of complaints were being made against Mr Suárez (relating to serious assault, irregular payments and diversion of workers' money), and the provincial government links these facts with the confrontation in November 2009 at the headquarters of the Puerto Madryn branch, when the police was obliged to intervene to secure the premises; (8) the judicial authority of the province requested the removal of the trade union immunity of Mr Suárez, who is accused of seriously injuring two individuals; (9) on 5 October 2010 construction workers expressed their opposition to the Governor of the Province, insulted him and threw objects at his official car; and (10) the provincial government has not persecuted Mr Suárez, who has in fact been accused by the courts of a number of offences that are now being investigated.*
- 148.** *The Committee notes the information communicated by the Government of Chubut Province concerning the events that occurred during the demonstration organized by UOCRA acting in solidarity with the dismissed construction workers and concerning the union official Mr Mateos Suárez. The Committee requests the Government to inform it of the outcome of the judicial proceeding under way against the official in question. The Committee regrets that the Government has failed to provide its observations concerning the other 11 union officials and activists who were arrested during the demonstration, namely: (1) Jonathan Suárez, union activist; (2) Benjamín Bustos, trade union activist; (3) Alejandro Jiménez, trade union activist; (4) Richard Villegas, Records Secretary of the Puerto Madryn branch of UOCRA; (5) Eliseo Amaya, DYCASA workers' representative; (6) Diego Paz, trade union activist; (7) Mario Bisoso, dismissed worker of the abovementioned company; (8) Carlos Muñoz, company worker; (9) Darío Valenzuela, dismissed company worker; (10) Jorge Franco, dismissed company worker; and (11) Félix*

*Díaz, representative of the company; and urges the Government to send these observations without delay and in particular to indicate the specific allegations against them, whether or not they have been accused of any offence, and the status of any judicial proceedings against them.*

- 149.** *The Committee deeply regrets that the Government has not provided its observations on the other allegations that had remained pending. Under these circumstances the Committee urges the Government: (1) to take the necessary steps to carry out investigations immediately into the allegations according to which: (i) on 10 June 2009, the home of Mr Ricardo Luis Cheuquepal, a member of the Comodoro Rivadavia branch of UOCRA, was shot at; (ii) at the request of the provincial authorities, a closed criminal case was reopened against members of the Puerto Madryn branch of UOCRA; (iii) at the same time that UOCRA was being discredited and criminalized in order to promote a new trade union, with the assent of the provincial authorities, several businesses began to be attacked by this group and the Comodoro Rivadavia council was also subject to violent actions by armed persons; (iv) a Chubut provincial government official used electronic means to express insulting opinions and assessments about UOCRA members and union officials; (v) the General Secretary of the Trelew branch of UOCRA was kidnapped and, following death threats against his family, was forced to make radical statements against Mr Suárez; and (vi) on 18 November 2009, armed groups known as “Los Dragones” (The Dragons) attacked UOCRA headquarters in Puerto Madryn and Comodoro Rivadavia. The Committee requests the Government: (1) to keep it informed of the outcome of the investigations conducted into all these allegations; (2) to ensure that UOCRA has the use of its union premises in Comodoro Rivadavia and to keep it informed in this regard; and (3) to take the necessary steps to carry out a thorough investigation into the alleged destruction and appropriation of UOCRA property during the occupation of the headquarters, and to inform it accordingly.*
- 150.** *Lastly, the Committee notes with concern that according to the reply from the Government of Chubut Province, there is a climate of tension between the authorities and the construction workers affiliated to UOCRA (according to the provincial government, the Governor was insulted and his car damaged by construction workers), and that according to UOCRA’s statement in the complaint, “actions aiming to discredit it and hamper the free exercise of its trade union functions originated at the highest levels of the provincial government. The malicious intention of such actions was to encourage the creation of a new local body to be organized and to act in conformity with the authorities” [see 358th Report, para. 179].*
- 151.** *Taking the foregoing conclusions into account, the Committee once again requests the Government to agree to a direct contacts mission to help appease the situation and explain to the competent authorities the principles of freedom of association which should guide efforts to resolve the problems that have arisen.*
- 152.** *Noting that the Government limits itself in its reply to the observations made by the provincial Government, the Committee wishes to emphasize that it is the responsibility of the national Government to ensure that the principles of freedom of association are respected in the relevant province.*

## **The Committee’s recommendations**

- 153.** *In the light of its foregoing interim conclusions, the Committee requests the Governing Body to approve the following recommendations:*

- (a) *The Committee requests the Government to inform it of the outcome of the judicial proceedings against the union official Mr Mateos Suárez. The Committee regrets that the Government has not sent its observations on the other 11 union officials and activists who were arrested during the demonstration, namely: (1) Jonathan Suárez, union activist; (2) Benjamín Bustos, trade union activist; (3) Alejandro Jiménez, trade union activist; (4) Richard Villegas, Records Secretary of the Puerto Madryn branch of UOCRA; (5) Eliseo Amaya, workers' representative of Dragados y Obras Portuarias SA (DYCASA); (6) Diego Paz, trade union activist; (7) Mario Bisoso, dismissed worker of the aforementioned company; (8) Carlos Muñoz, company worker; (9) Darío Valenzuela, dismissed company worker; (10) Jorge Franco, dismissed company worker; and (11) Félix Díaz, representative of the company; and urges the Government to send these observations without delay and in particular to indicate the specific allegations against them, whether or not they have been accused of any offence, and the status of any judicial proceedings against them.*
- (b) *The Committee urges the Government: (1) to take the necessary steps to carry out investigations immediately into the allegations according to which: (i) on 10 June 2009, the home of Mr Ricardo Luis Cheuquepal, a member of the Comodoro Rivadavia branch of UOCRA, was shot at; (ii) at the request of the provincial authorities, a closed criminal case was reopened against members of the Puerto Madryn branch of UOCRA; (iii) at the same time that UOCRA was being discredited and criminalized in order to promote a new trade union, with the assent of the provincial authorities, several businesses began to be attacked by this group and the Comodoro Rivadavia council was also subject to violent actions by armed persons; (iv) a Chubut provincial government official used electronic means to express insulting opinions and assessments about UOCRA members and union officials; (v) the General Secretary of the Trelew branch of UOCRA was kidnapped and, following death threats against his family, was forced to make radical statements against Mr Suárez; and (vi) on 18 November 2009 armed groups known as "Los Dragones" (The Dragons) attacked UOCRA headquarters in Puerto Madryn and Comodoro Rivadavia. The Committee requests the Government to keep it informed of the outcome of any investigations into all these allegations; (2) to ensure that UOCRA has the use of its union premises in Comodoro Rivadavia and to keep it informed in this regard; (3) to take the necessary steps to carry out a thorough investigation into the alleged destruction and appropriation of UOCRA property during the occupation of the headquarters, and to inform it accordingly.*
- (c) *The Committee once again requests the Government to agree to a direct contacts mission to help calm the situation and explain to the competent authorities the principles of freedom of association which should guide efforts to resolve the problems that have arisen.*
- (d) *The Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of this case.*

CASE NO. 2743

INTERIM REPORT

**Complaint against the Government of Argentina  
presented by  
the Confederation of Argentine Workers (CTA)**

*Allegations: The complainant organization alleges acts of violence, intimidation and anti-trade union discrimination against workers belonging to the Association of State Workers (ATE) in the National Institute of Statistics and Censuses (INDEC)*

- 154.** The complaint is contained in a communication of the Confederation of Argentine Workers (CTA) dated November 2009.
- 155.** The Government sent its observations in a communication of 28 February 2011.
- 156.** Argentina 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 Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

**A. The complainant's allegations**

- 157.** In its communication of November 2009, the CTA states that it is presenting this complaint against the Argentine State for multiple violations of freedom of association and the rights of workers' organizations and representatives guaranteed under Conventions Nos 87, 98 and 135 and Recommendation No. 143, in the form of acts of discrimination, dismissals of trade union leaders, delegates and activists.
- 158.** The CTA indicates that the National Institute of Statistics and Censuses (INDEC) is a public body, under the Ministry of Economy. According to the information set out on the official website of the institution, it is a technical body responsible for standardizing the direction and exercising overall management of all official statistical activities carried out in the territory of the Argentine Republic. Its creation and functioning are regulated by Act No. 17622, Decree No. 3110/70 and Decree No. 1831/93. The Act confers direct responsibility for the design of the methodology, organization and management of national operations for collecting data through censuses and surveys, the elaboration of basic social and economic indicators and the production of other basic statistics. INDEC is responsible for the development of the methodology and standardization of production of official statistics, thereby ensuring the comparability of information originating from different sources. Because it processes and produces statistics which reflect socio-economic situations of major importance, their periodic reports began to be "sensitive" for the government authorities which, concerned at the impact that such reports could have on public opinion, initiated an aggressive policy of intervention in the Institute. Thus it ordered the replacement of professional technical staff by persons in sympathy with the political authorities who, controversially, made certain changes to the methodology and substituted survey data which resulted in data more in line with the public pronouncements of members of the Government. This was denounced by the workers and public opinion in general quickly noted the clumsy attempts at deception.

- 159.** The CTA adds that although it was in January 2007 that the national Government ordered intervention in the INDEC, prior to that the situation was already not normal due to the fact that the then Director was pressured to disclose the names of the businesses surveyed (that being information protected by statistical confidentiality). The CTA alleges that from January 2007, the “disembarkation” began with the permanent and direct presence of the interveners and the persons reporting to them. From that time onwards, the result was manipulation of public statistics, harassment of workers and systematic destruction of the institution which has continued until this day. The intervention consisted basically of abolishing the Institute’s chief function, which is to produce reliable and accessible statistics produced in a transparent manner in the framework of legal and methodological rules. The first operation subject to intervention was the Consumer Price Index (CPI). On 29 January 2007, a new Director of the Institute was appointed by presidential decree.
- 160.** According to the CTA, the Secretary of Trade and the Director of INDEC said that the body needed to adapt to the policy set by the Government in accordance with its own needs. Thus, from that moment, data would not be published in order to align public policies with reality and the needs demonstrated by the information, but, on the contrary, the Institute would be turned into a political tool of the Government. This situation produced an immediate reaction from everyone, public opinion and the Institute’s workers. That is how the collective dispute to save INDEC began. The CTA adds that, in consequence, and because the active opposition of the Institute’s workers to the manipulation and deception promoted through the Institute constituted a serious obstacle, the Government launched an offensive against the workers and their representatives which took numerous forms. They began to harry and punish the Institute’s workers through dismissals, reassignments, wage reductions, summary proceedings, discriminatory acts, actions in the courts and other forms of harassment, even to the extent of allowing or encouraging physical violence by third parties in INDEC’s sphere of operations.
- 161.** The CTA alleges the following violations of the right to organize.

### ***Physical violence against workers***

- 162.** The CTA indicates that on 22 August 2007, during the 42 day strike by INDEC workers in protest against the situation generated by the intervention and rejecting the reassignment of the Director of the Permanent Household Survey, the workers’ assembly decided to erect a stand at the entrance to the INDEC building, as a trade union action to make society aware of the need to defend public statistics and the workers who opposed the manipulation. The violent intervention by the Federal Police of Argentina (PFA) prevented the stand being erected, and it was confiscated to prevent any possibility of erecting it. The workers were subjected to rough handling.
- 163.** The CTA adds that on 15 May 2008, when a meeting of all the workers employed in the Ministry of Economy was called in the central hall of the Ministry, to present to the Minister 2,500 signatures in support of a claim for a wage increase of 500 pesos (ARS) through the reception desk, those present were brutally beaten by persons recognized to be members of a shock force which usually operated in INDEC. As a result of the attack, the assistant secretary of ATE-Capital, Luis Opromolla, was beaten and suffered various injuries, and two other workers from other parts of the Ministry were left bleeding and the worker, Cynthia Pok, was pushed violently to the ground. These attacks took place in the deliberate absence of the security personnel who normally work in the area and just after all the lights that usually illuminate the area went out. The complaints of threats and injuries are the subject of proceedings in Case No. 22585/08, instructing prosecutor’s office 32, office 114; I-45-14498, instructing prosecutor’s office 45 and 53941, correctional prosecutor’s office 6.

## ***Anti-trade union discrimination – Persecution through judicial means***

**164.** The CTA indicates that there have now been numerous court cases in the dispute that has arisen in INDEC. Two of them are against delegates and workers who were prosecuted by the Institute for taking part in the dispute. These cases are: (a) “Luciano Osvaldo Belforte, defrauding the public administration”, Case No. 128/08, Federal 4, office 7. This case concerns trade union delegates, Mr Belforte and Ms Graciela Bevacqua. The persecution by INDEC intervention was pursued in the criminal courts. In this case, INDEC intervention involved filing a complaint against these workers, alleging that they had committed fraud against the Institute. The charge was that the workers had fraudulently claimed holiday and overtime pay. The judge in the criminal court of first instance tried Mr Luciano Belforte, ATE–INDEC delegate, on the basis of a construction totally alien to the principles of criminal procedural law. On appeal by the accused, the National Criminal Appeal Court quashed the proceedings and upheld the workers, and also reprimanded the judge in the lower court which had accepted the allegations by the INDEC intervention. The Appeal Court quashed the proceeding. The Court emphasized that trial without evidence is a clear example of persecution; (b) *Liliana Haydee Gasco v. State, Ministry of Economy and Production*, summary proceeding, Case No. 13585/2008. In September 2007, INDEC intervention ordered that trade union delegate Liliana Gasco should not be given a desk, computer and telephone at the CPI office. This situation lasted for several months until, as a consequence of legal actions, Ms Gasco was assigned other tasks which were not appropriate to her function as special operations supervisor. The changes in the conditions of work imposed by the employer are expressly prohibited in the case of a trade union delegate or representative (article 52 of the Trade Unions Act, No. 23551). The safeguards for trade union activities set out in the Act were the legal arguments recognized in the judgments in favour of the trade union delegate, both in the lower court, Court No. 1, and the appeal court, Chamber III of the National Labour Court. The Court found that the reinstatement decided in the lower court should be implemented on the same conditions, in the same category and functions as those normally exercised by Ms Liliana Haydee Gasco prior to the change decided by her employer; (c) *Vanina Micello v. State, Ministry of Economy and Production, National Institute of Statistics and Censuses (INDEC)*, Action for *Amparo* (protection), Case No. 13581/08. Here the presiding judge, Dr Gabriela Vázquez, supported by Judge Dr Luis Catardo in a majority judgment, stated that: “On the basis of the material and evidence produced in the documents, I consider that it is proved that INDEC, through its officials, order the reassignment and change of work of staff member Vanina Micello as a reprisal for her exercise of trade union activities. I reach this conclusion, starting from a series of precise and consistent indications that show negative discrimination and, in addition, that the defendant did not show, regarding the burden of proof, that the reassignment was objectively and reasonably justified. In this context, the decision taken by the defendant to reassign Vanina Micello should be declared null and void and it is ordered that she be reinstated in the function that she performed prior to her reassignment.”

**165.** The CTA also refers to the court case of “Luciano Osvaldo Belforte, violation of domicile”, Case No. 69187, Criminal and Correctional Court No. 4, office 67. The employer issued an internal memorandum prohibiting the entry of delegate Belforte to the workplace. Apart from the fact that this legal measure was appealed in the labour courts, the delegate could enter the building as that was the location of the trade union office and he is a member of the internal council. On these grounds, the employer initiated criminal proceedings for “violation of domicile”. The case is still in process.

### ***Attacks on trade union premises***

- 166.** The CTA alleges that on 21 May 2008, the ATE trade union office on the tenth floor of the INDEC main building was attacked. The intruders overturned and scattered fittings, computers, furniture and documents. On 15 July 2008, another even more violent attack occurred, as the intruders attacked and damaged the trade union office (the case is being heard as Case No. 22915/08, contraventional prosecutor's office 7).

### ***Intimidation through police and para-police presence***

- 167.** The CTA indicates that in February 2007, under the pretext peddled by the Institute intervention that it was a matter of security personnel acting as bodyguards to the new Director of the CPI section, the permanent presence of surveillance personnel was observed on the third floor of the building at 609 Roca Street, for the unmistakable purpose of intimidating and controlling workers in the section. A logbook to record the names of workers entering and leaving the section was introduced for the same purpose.
- 168.** On 7 January 2008, the internal walls (and sometimes the external walls also) of the Institute have been continuously covered with defamatory posters against the workers involved in the dispute, whether or not they are members of the Association of State Workers (ATE) internal council.
- 169.** On 10 January 2008, representatives of human rights organizations sent a note to the National Human Rights Secretary expressing their concern at the challenge to trade union rights and workers' right to organize, the use of reprisals in relation to wages, intimidation of various kinds including a campaign of defamation launched from a website called *INDEC que trabaja* (INDEC at work).
- 170.** On 26 February 2008, at the end of a meeting which had been called to inform about the situation in INDEC held at the entrance to the Institute, the entrance doors were closed to prevent those attending the meeting returning to their workplace. (A complaint of prohibition of entry to work was filed, Case No. 72198, correctional prosecutor's office 9, office 114.)

### ***Reprisals for trade union activity – Changes to conditions of work***

- 171.** On 16 April 2007, Mr Emilio Platzer, an ATE member and one of the first to take legal action in the courts on grounds of manipulation and violation of state secrets, was removed from his workplace. In May 2007, the CPI workers made a complaint about the situation in the sector. It was also raised in a general meeting of INDEC workers and received unanimous support. The complaint was published through the ATE-INDEC email, as a result of which, the then Director of INDEC sought ratification or rectification of their statements under notice that appropriate administrative or judicial proceedings would be initiated. On 13 June 2007, Gabriela Soroka, an ATE member and participant in the meetings, whose job was to monitor price information on food and drinks in the CPI, was dismissed.
- 172.** On 4 July 2007, the Director of the Permanent Household Survey (EPH), Ms Cynthia Pok, together with 16 general coordinators, heads of department and senior technical staff, responsible for the same programme, each sent memos to INDEC management informing it in writing that they did not have the necessary technical conditions to carry out the poverty and extreme poverty calculation based on published facts relating to the CPI. On 6 July 2007, the management intervention ordered the reassignment of Ms Cynthia Pok

from the management of the EPH. On 19 July 2007, the workers declared an active strike in the whole of INDEC challenging the management decision to remove Ms Pok (ATE official). On the same day, the head of personnel administration summoned Ms Camila Morano and Ms Marta R. de Messere, of the EPH management team, to his office. They attended accompanied by ATE-INDEC delegates. At that meeting, the head of personnel informed them that, at the suggestion of the INDEC management, they were “invited” to take all their outstanding holidays (41 and 58 days, respectively).

- 173.** On 11 July 2007, the Ministry of Labour, Employment and Social Security ordered compulsory conciliation, with the unusual feature that it only required the workers to lift the strike, but did not require the employer, as required by law, to suspend the removal of Ms Cynthia Pok. In consequence, the INDEC workers’ meeting, with ATE representation, decided to continue the strike action. On the same day, with the clear intention of intimidating the workers to make them stop the direct action, the recently appointed National Director of Living Standards went to the EPH offices to speak with the staff involved in the strike action, and announced that he would be taking over Cynthia Pok’s office on the seventh floor, despite the fact that his department had a designated office on the second floor. He announced that his action was legal because he had an “order from the President”.
- 174.** On 24 July 2007, the abovementioned Director telephoned Ms Marta Messere, Mr Rodolfo Galván and Mr Leonardo Parodi (EPH technical staff) to come to his office individually, but they decided to refuse, as they were on strike. On the same day, the INDEC management began to send telegrams to the persons involved in the strike action indicating that they should return to work failing which their remuneration would be docked. On 30 July 2007, the workers warned to return to work while they were on strike were summoned to make a statement in a hearing set for 1 August. They appeared at the hearing with the ATE lawyer. At the meeting, pressure was exerted on the technical staff to provide information so that other people could carry out the tasks of the strikers. A shot was fired at the INDEC reception desk on 2 August.
- 175.** On 22 August 2007, the ATE-INDEC delegates issued a communiqué warning public opinion of the irregular way in which public unemployment figures were prepared at that time by the intervention, a study which was not approved by the EPH technical team, on incomplete bases and without strict procedures. That same evening, the INDEC management published on the Internet a communiqué in which it falsely accused the EPH team of erasing data while at the same time admitting that it had intimidated striking workers to obtain information on the processing of data. Also on that day, the INDEC management published a notice indicating that it would make deductions from the strikers’ remuneration. On 24 August 2007, after a committee was set up to initiate dialogue and the strike had been lifted, the EPH section researchers who resumed their duties reported for work in the new Carlos Calvo building. However, they were refused entry and at the same time were told that they should report to the Roca building and sign in. At the Roca building, the personnel director received them and told them that an additional 20 people were being recruited to carry out their tasks, that they would be trained and should take note that there would then be a surplus of survey personnel.
- 176.** On 4 September 2007, part of the staff who did not take part in the strike at all or only partially, and the new workers were rewarded with additional remuneration or bonus. Those persons had been rewarded because they were contracted and collaborated with the INDEC management to carry out the work of colleagues who were on strike. On 6 September 2007, ten working days after the lifting of the strikes, the strikers had still not received the computer codes, which meant that they could not enter the database and, consequently, could not actually resume their work.

177. On 13 September 2007, it became known that a new contingent of possible EPH researchers was being trained in the Carlos Calvo building in Greater Buenos Aires. The intervention, with the support of another trade union, was beginning to incorporate new personnel, in order to intimidate those who had taken part in the strike, with training courses given by people without any experience.
178. The CTA indicates that on 1 November 2007, 13 workers in the CPI and EPH Department were dismissed. All those dismissed had participated in meetings and direct action promoted by the trade union, as well as giving testimony in the case before Federal Judge Canicobra Corral. On 8 November 2007, a document was signed in the INDEC dispute monitoring committee between the Office of the Cabinet of Ministers, the Ministry of Economy and Production and the ATE, in which it was provided that: “the 13 dismissed persons shall be immediately recruited in the Secretariat of Political Economy of the Ministry of Economy”. However, despite that formal obligation, it has not so far been fulfilled.
179. In October 2008, the deputy coordinator of the Economic Groups Survey, Ms Adela Zaltzman, a member of the ATE internal council, was removed from her duties.

### ***Impediments and obstacles to the exercise and development of trade union activity***

180. The ATE indicates that, in addition to the brief summary set out above, other matters have habitually occurred and continued over time, either as reprisals for or to inhibit trade union activity. Among these, particular mention should be made of the permanent and active presence of the shock group installed under the intervention (the current management) before and during meetings and in any other trade union activity carried out by workers, both within the organization or outside.
181. Likewise, and with a clear intention to intimidate, trade union activities or any similar activity are monitored through filming and sound recordings which record their conduct, and the police and shock groups mentioned above even have surveillance systems to monitor these activities.
182. Similarly, any materials relating to trade union action disseminated within the buildings are systematically removed immediately by the cleaning staff, in accordance with the management’s instructions. On the other hand, notices of other unions, political groups, official intervention notices and even anonymous posters (mostly containing defamatory messages against this trade union and its members) are not removed from the walls. For its part, for several months, mass distribution of trade union emails to all INDEC personnel were barred by the intervention of management or, failing that, the trade union was required to inform the authorities of the content in advance, a clear situation of censorship and restriction of freedom of expression. It should be emphasized that the intervention did not treat other trade unions in the same way.
183. Lastly, the CTA states that the facts reported here are in addition to the constant violations of freedom of association which are recurrent in Argentina, many of which have been duly reported to the Committee on Freedom of Association and the subject of reproach by that Committee. These systematic violations are possible thanks to the reluctance of the Argentine State to align domestic law with the minimum standards of freedom of association set out in ILO Conventions Nos 87 and 98 and the prolific doctrine enshrined in the opinions of its supervisory bodies. Finally, it should be borne in mind that, with regard to public employees, Article 4 of ILO Convention No. 151, adopted in Geneva in 1978, extends the right to organize and protection against any acts of anti-union discrimination in their employment to all public employees.

**B. The Government's reply**

**184.** In its communication of 28 February 2011, the Government sent the report prepared by the INDEC). It is stated in the report that it was prepared following the layout proposed by the complainants, both with regard to the facts, acts, circumstances or rules relating to INDEC's actions. INDEC indicates that the CTA's representatives open their complaint by stating that there is "intervention" at two levels: a general level concerning the Institute as a whole and a particular level in the CPI Department within INDEC. It is suggested that these allegations, reproduced by the press on various occasions, are not supported in law or in fact, as described in detail below: (i) lack of legal justification: the supposed intervention is not possible under the Argentine legal system. The National Constitution which governs the powers of the executive authority with regard to interventions relates to other matters than those referred to above. Neither does the complaint refer to any administrative act issued by the executive authority or any other body with delegated powers, which constitutes administrative intervention. It is categorically asserted that there is no administrative act, decree or similar act which ordered any type of intervention, appointed persons to intervene or which justified any irregularities of any kind in the appointment of any official. In addition, it should be noted that it was under a legitimate administrative act (Decree PEN 1076/2007) issued in accordance with recognized constitutional and legal powers, that Ms Ana María Edwin took up the post of Director of INDEC, harmoniously, in succession, without interregnums, as soon as the previous incumbent resigned her functions (resolution No. 18/2007 of the Ministry of Economy). All the preceding directors of the organization were appointed in the same way; (ii) absence of facts: leaving aside the legal aspect, with regard to the facts that, according to the CTA representatives, constitute supposed "intervention", at a general level, INDEC states emphatically that it has no knowledge of and does not possess any records or documentation in support of the versions that "the government authorities initiated an aggressive policy of intervention by the Institute"; (iii) it is important to emphasize that, as will emerge from this report of the facts, many staff of the organization had to deal with various problems in implementing the constitutional and legal mandate entrusted to them, due to incorrect interpretations of the reality, which is fully consistent with the law. It is reiterated, therefore, that it is wholly malicious for the complainant organization to label the current management of the Institute as "intervention". The officials who exercise senior management roles, like the rest of the staff, were appointed in strict compliance with the rules governing this type of subject throughout Argentina. The assertion that INDEC became subordinate to the Secretary of Internal Trade in January 2007 is categorically refuted. The authorities were subordinate and are currently subordinate to the Secretariat of Political Economy and the Ministry of Economy and Public Finance, respectively.

**185.** With regard to the general assertions by the CTA concerning the specific intervention in the CPI Department, INDEC refers, in the first instance, to Decree PEN 100/2007 which appointed Ms Beatriz Paglieri, and the rules and resolutions cited therein, as complete evidence that the complainant's allegations are wrong. Furthermore, it should be pointed out that the appointment was made in accordance with due administrative procedure, like all appointments in the national public service, and is validated constitutionally and legally in the NEP. Like all posts which are not subject to competition, the appointment was on a provisional basis as an exception to the provisions of article 7 of Act No. 26198 and Title III, chapter III and Title IV, article 71, paragraph 1, part 1, of Annex I to Decree No. 993/91, amended 1995. The public offices held by the official in question are detailed below. As a result of her extensive professional experience and qualification, the former Minister of Economy and Production appointed her in January 2007 to INDEC to analyse, on her behalf, the working processes by which the Institute calculated price indexes. It was indicated that, in principle, she would start by analysing the consistency of what is commonly known as the "Consumer Price Index (CPI)". On this basis, she was appointed in February 2007, by Order No. 100, to the post of Director of the CPI Department in

INDEC. INDEC considers that it is extremely damaging that she has been presented to the ILO as an unqualified professional lacking the minimum knowledge necessary to occupy the post to which she was appointed.

- 186.** According to INDEC, the state of the CPI Department when Ms Beatriz Paglieri took up her post was not remotely like that described by the CTA. It presented a highly distorted view of the “state of the art” of the CPI Department prior to the start of her management. With undoubted malicious intent, since the distortions of the reality are too great to assume that they are simply the fruit of an error of judgment, it was sought to mislead the Committee, indicating that the CPI management was a paradise of work, dedication, quality and scientific rigour.
- 187.** According to INDEC, the situation in the area which calculates the CPI in INDEC is very different from the one portrayed, both in these proceedings and through the various media to which the complainants resorted, by those who took advantage of the laxity in the procedures and controls that existed and who were then negatively affected by the greater demands on them in the new ways of working. It is also necessary to emphasize that given the implications which occasioned the development model, especially with regard to the public accounts, the situation described would have lasted for a long time. Taking full responsibility for the harm generated to the population by the application of incorrect methods, steps were taken with skill, speed and efficiency to evaluate the situation and determine the veracity of the information that was being produced. Against this background, the first fundamental element which strikes any observer is that the CPI management did not coordinate actions with the ministries, secretariats of State, or the bodies which make up the National Statistical System (SEN) as determined by Act No. 17622 and its regulatory decree. INDEC, as clearly laid down by law, is the “coordinator” of the SEN and it is obvious that it cannot coordinate what it does not interact with. Furthermore, the CPI management was not fulfilling the functions set out in resolution No. 779/2004 (pursuant to the Ministries Act) with regard to actions to update the weightings for the CPI. In the same vein, it was observed that the management did not apply strictly the methodology using the CPI base 1999=100 to determine the CPI and that it used the Argentine Central Bank to calculate the “Reference Stabilization Coefficient (CER)” which is used, ultimately, as an adjusting factor for Argentine external debt bonds. This means that an error, deliberate or otherwise, which adds a unit to the total of the CPI calculation would modify the assets of bondholders. In addition, the so-called “methodology 13” consisting of the instructions set out in resolution No. 779/2004, determines the need to update the weightings of the products which make up the CPI. In this regard, it is important to recall that the “Quality Management Manual for the elaboration of the National Consumer Price Index and the National Producer Price Index” of the Bank of Mexico indicates the frequency with which the index is updated and the principles guiding its action.
- 188.** In turn, it was found that there was no manual of procedures or good practices for the calculation of the CPI. Nor were the various manuals for researchers, supervisors or data collectors which should guide the field operations updated. The staff assigned to each task did not comply with the provisions of the relevant Manual. The calculation base was the year 1999, with weightings that dated from the 1996 Household Expenditure Survey (ENGH), and informant sources were based on sales volumes defined in the 1994 National Economic Census. INDEC sends examples of problems of measurement that occurred previously.
- 189.** INDEC indicates that having found irregularities, and following instructions from the highest national authority, the matter was reported by Beatriz Paglieri to the Notary General of the Government, through his representative at INDEC headquarters, who drew up the report on the basis of which the notary advised that “there was evidence” of errors

in the report submitted by Marcela Almeida and Emilio Platzer. This unprecedented matter generated a marked animosity towards the official in certain management circles, as it was the first time that a flagrant misrepresentation had been documented. It is worth emphasizing that out of some 100 employees who make up the staff of the CPI management, only 12 were determined to harass and/or boycott the new management. It is very important to emphasize the excellent predisposition presented by the great majority who made up and continue to make up the CPI team which allowed the CPI to be produced on time and in due form. It is no surprise that some of the complaints come from persons who made the “mistakes” reported to the Notary General.

- 190.** INDEC states, in the course of extensive technical explanations, that many of those responsible for the institutional errors in the production of data up to 2006 went on to form the internal council of ATE–INDEC, which provided them with protection in situations when they should have been subject to summary administrative proceedings under the legislation applicable to the national public administration. This defensive conduct was concomitant with all kinds of statements in the media designed to seriously undermine the prestige of the institution, and to generate confusion among the public.
- 191.** According to INDEC, this behaviour was aggravated by a different type of disorder generated both within and outside the Institute, including travel within and outside the country, all aimed at achieving a public position contrary to the official statistics. Worth mentioning in this regard is the false information concerning the reassignment of duties which were never held. Such is the case of Ms Cynthia Pok, self-styled Director of the EPH when there was only an internal arrangement, a rule of the Institute of little legal import, which put her in sole charge of the office of that department. To be in charge of an office involves administering permits relating to staff (absences, holidays, etc.) and responsibility only for work related to office procedures. This function excludes the technical management of a department. The Director of this survey was Ms Clyde Trabucchi, who was actually appointed to the post in an open competition in 1994, an appointment which expired in 1999 and was extended without competition. She was never insolvent or appointed by presidential order as national director for living standards. As in the previous case, she was put in charge of the office of that national department. It is evident that the CTA and Ms Cynthia Pok herself are falsely purporting that she holds public office, a criminal offence under national legislation. In the same vein, cases can be mentioned such as that of Mr Luciano Belforte, who was never head of CPI data collection since there is no such post, or Ms Marcela Almeida, who is said to have been removed from the coordination of the National Consumer Price Index section, a post which does not exist. Moreover, Ms Almeida is not even an INDEC staff member. On the contrary, she was and is contracted by the Government of Buenos Aires City, under a cooperation agreement.
- 192.** INDEC indicates that Ms Paglieri was the victim of an assault by Mr Emilio Platzer on 2 October 2007. When she was in the INDEC building and guarded by two federal police officers, Ms Paglieri was violently pushed by Mr Platzer. It led to the sending of a note to the INDEC management by the Ministry of the Interior, requesting consideration be given to the possibility of imposing a sanction. Finally, and following an instruction on the matter by the Legal Affairs Department, the management decided not to renew his contract with the institution, on the grounds of his failure to observe the standards expected of those who work in the national public administration. INDEC considers that it is particularly relevant to mention these facts and dispositions with respect to the characterization of the conduct of certain members of the ATE–INDEC union who, like Mr Platzer, had no hesitation in resorting to aggression as a result of their animosity against INDEC staff, which had nothing to do with trade union actions. It is important to emphasize that Mr Platzer was no longer working in the CPI Department because he made unacceptable mistakes.

- 193.** INDEC indicates in relation to the alleged replacement of professional technical staff by persons related to the political authorities that primarily, as stated above, the INDEC authorities were appointed by the executive authority under the legislation applicable in the Republic of Argentina.
- 194.** INDEC indicates that the theory that the CTA expresses in its statement and on which it bases an account concerning the unlawfulness of the presence and work of “certain” INDEC staff is incorrect and tendentious. It is incorrect in that it would be nonsense to think that the supposed “intervention” occurred through, for example, the appointment of a new director for the CPI. The reason for the erroneous character is simple: as in any organization, private or public enterprise, there are changes of post which do not reflect any type of “intervention”, but a renewal of personnel in the hierarchy involving a systematic reorganization. This is a far cry from the supposed “destruction” conjectured by the complainant. It is tendentious because it affirms what it seeks to prove, namely, that INDEC is in a state of exception and instability, which the Government was exploiting. The action of the Association of State Workers, ATE-INDEC, accompanied by the homogeneous statements of the media companies, was the only indication, a false one, of a supposed state of exception which, bluntly, does not exist. In fact, these assertions show the desire of the trade union or its representatives to project their influence into matters which are beyond their competence. The Argentine legal system does not contain a constitutional or legal right of an individual, trade union or prospective worker which grants them powers of control of any type over the appointment of the officials whose legitimate presence they are challenging.
- 195.** As regards the alleged physical violence against the workers on 22 August 2007, INDEC indicates that in a biased and false description of the facts, the complainant states: “during the 42 day strike by INDEC workers in protest against the situation generated by the management”. In this respect, we must inform you that INDEC has a total of 1,550 workers. Of those, during August 2007, according to the attendance sheets provided by the Human Resources Department, 185 workers took part in the strike, representing 12 per cent of the total workforce. In addition, only one took part in the strike for ten days, one for eight days, one for five days, six for three days, 39 for two days and 137 for only one day. It thus clearly emerges that the complainant is not telling the truth when it states that there was a strike of 42 days. It is also lying when it speaks in general terms of “the INDEC workers”, as 88 per cent of the workers never took part in the strike in the period mentioned in its complaint, and of the 185 workers who joined the strike, 137 did so for only one day, as mentioned, thus it may be wondered whether this group can be adjudged representative of INDEC workers in general. Furthermore, the total number of ATE-INDEC members is 207 out of a total of 1,550 workers.
- 196.** The complainant also infers the occurrence of a “violent” intervention by the Argentine Federal Police (PFA) preventing the erection of a stand at the entrance to the INDEC building. On this point, by way of preliminary explanation, it should be noted that certain spaces in the Federal Capital are under the jurisdiction of the PFA and that INDEC has no control over the conduct of the PFA or any hierarchical link with it, for obvious reasons of competence. With respect to the facts, we can report that on that date, various persons were observed provoking the security forces, preventing access to the building and causing damage. Of the “rough handling”, there is no real, judicial or administrative evidence whatsoever.
- 197.** As regards the existence of three court cases, Nos 22585/08, I-45-14498 and 53941, all for various injuries, in which the deputy secretary of ATE-Capital, Luis Opromolla, two workers of other areas of the Ministry of Economy (not identified) and Ms Cynthia Pok, all members of ATE-INDEC, were injured, it should be mentioned in relation to the first two cases that these were a single case, namely, No. 71562. The proceedings in question were

initiated on the basis of a complaint stating that in circumstances where Mr Luis Alberto Opromolla, together with other ATE members, were preparing to start a meeting in the main hall of the building, delegates of the UPCN union appeared, among them the accused, Mr Silverio Rafael Figueredo, who suddenly punched Mr Opromolla in the face. In this respect, the court judgment of 8 April put an end to the proceedings. In the hearing, it was stated that as there was no possibility of carrying out any investigation of the evidence to shed light on the charge against Mr Silverio Rafael Figueredo, “to order the case to continue in those circumstances would be an unnecessary and pointless legal expense because of the lack of certainty, from the point of view of legal evidence, represented by the lack of grounds for conviction in the complaint ... it is resolved to dismiss the case against the accused of causing bodily harm, and render harmless his good name and honour”. With respect to the third case mentioned, No. 53941, a different analysis applies but of no less importance. Initiated for the offence of menaces, to which Ms Laura María Cortascini Chisari was supposedly subjected, the accused, Mr Daniel Roberto Poma, was acquitted on 21 September 2009, as it was found that the criminal action was time-barred. Specifically, it was a supposed offence in which proceedings were abandoned because they were contrary to the principle of innocence and double jeopardy, a general guarantee of persons in criminal proceedings.

- 198.** With regard to the case of Mr Luciano Osvaldo Belforte, defrauding the public administration, Case No. 128/08, INDEC indicates that proceedings were taken against Mr Luciano Osvaldo Belforte for receiving his salary with additional remuneration in the months of November 2005 and December 2006, when in reality he was away travelling without the authorization of the relevant INDEC authorities and proceedings were also taken against Ms Graciela Cristina Bevacqua for certifying Mr Belforte’s signatures on the attendance sheets. The complainant, using the expression “pronouncements” as if it were a final decision, summarizes by stating that the appeal court quashed the proceedings in favour of the accused. In this regard, and in total contradiction, on 31 August 2010 it was decided to order the trial of Mr Luciano Osvaldo Belforte, who was granted bail, because he was suspected of the criminal offence of defrauding the public administration on two occasions, and an order was made to freeze his assets to cover the amount of ARS15,000. The case against Ms Graciela Cristina Bevacqua was dismissed. That is the actual state of proceedings.
- 199.** With regard to the trial of Mr Luciano Osvaldo Belforte for violation of domicile, INDEC indicates that the case against the accused was dropped. INDEC recalls that the applicable legislation imposes on its employees the duty to report to their superior or the relevant authorities, acts of which they become aware as a result of or in the course of the exercise of their functions and which could cause harm to the State or constitute an offence.
- 200.** With respect to the alleged violence against the trade union offices, INDEC states that with regard to the facts that supposedly occurred on 21 May 2008, it is a matter of an unsubstantiated account since it lacks any elements to confirm the alleged facts or circumstances. As regards the events which occurred on 15 July 2008, the proceedings in question were initiated on the basis of a complaint against Mr Silverio Rafael Figueredo for allegedly committing the offence of criminal damage as a result of his alleged invasion of offices 1006 and 1007 in the building at 609 Roca Street, Case No. 22915/08. On 24 November 2008, the court dismissed the case, on the grounds that there was no evidence that would lead to a conviction in the case.
- 201.** With regard to the alleged intimidation through the presence of police and para-police officers in February 2007, we can report that the introduction of surveillance personnel in certain sections of INDEC is part of a progressive effort to ensure the complete protection of staff. Concerning the registration log, this is a means of helping to ensure security since, if there is an incident involving the personnel working in the area, the log can be used to

determine which persons entered or left and at what time they did so. Indeed, currently and for some time, for entry to various INDEC buildings, there is a magnetic card which distinguishes between an INDEC staff member and a visitor, as has always been used in the Ministry of Economy and Public Finance. It should be noted that the CTA refers to the presence of security personnel in INDEC both as a form of intimidation and, on the other hand, complains that their absence is an element of insecurity for staff. Finally, INDEC denies that it uses para-police personnel of any kind in INDEC. Such allusions are made with the obvious intention of demeaning the activity of the Institute and its management.

- 202.** In relation to the alleged intimidation, concerning the supposed papering of internal and external walls with defamatory and unsigned posters against workers belonging to ATE–INDEC, it should be noted that as soon as one enters the Institute, the political and trade union diversity of the building can be observed. Posters and notices, some even handwritten, with a variety of content can be seen on noticeboards and walls. There is no prior censorship of freedom of expression as there is full compliance with the constitutional rule on that point. Furthermore, the Institute’s devotion to respect for rights has often led to excessive tolerance of libellous expressions by the ATE–INDEC union.
- 203.** As regards the facts denounced on 26 February 2008, Case No. 72198, involving a complaint of alleged prohibition of entry to work, this is tendentiously invoked with respect to a stage in the proceedings which has already concluded. This case, subsequently referred to Court No. 12, office 23, Case No. 5028/08, was decided. The judgment quashed the actions since they did not constitute the acts in article 158 of the Criminal Code, i.e., there was no coercion or violence of any kind, whether to take part in a strike or a lockout, since INDEC’s doors were simply closed.
- 204.** As regards the alleged reprisals for trade union activity and refusal of workers to consent to the manipulation of official data, and the modification of conditions of work, INDEC states, firstly, that this involves a wide diversity of facts which have certain general characteristics which deserve detailed investigation which is beyond the possibility and competence of the management. It could be mentioned, among other things, that it is not a case of specific claims or allegations which might substantiate any particular violation of rights; they are poorly documented and have few or no references to documents or records. Their diversity and quantity are such that it is extremely difficult, in some cases impossible, to collect relevant information concerning them. Such characteristics, of course, do not mean that they are of no concern to the management. However, addressing them in detail, given that they chiefly concern allegations of unproven facts, is not part of the main function of the organization. INDEC will continue as far as possible to deal with the individual claims of workers, always within the framework of what is established by law and guided by respect for human rights, individual rights and rights at work which under the Constitution and the law affect those who work for the organization or occasionally pass through it. Always within the limits of the possible, it is reported that the alleged failure to assign tasks to Ms Adela Zaltzman is a falsehood, since the post that she is supposed to occupy does not exist in the organization.
- 205.** As regards the alleged active and permanent presence of a shock group established by the management before and during meetings, INDEC states that the so-called “shock groups” referred to by the complainant do not exist in INDEC. The reference to the existence of such groups can only be interpreted as the product of a cynical attitude or ignorance of Argentine history. These defamatory references have a very serious connotation and content linked to de facto regimes which governed the country. Workers’ political and trade union rights and freedoms are assured within INDEC. The CTA also states: “... trade union activities or any similar activity are monitored through filming and sound recordings ...”. INDEC states that no such control exists.

- 206.** As regards the CTA's assertion that all materials relating to trade union activity posted inside the organization's buildings are systematically removed, but communications of other trade unions containing defamatory messages against that trade union and its members are left, INDEC sends photographs of the interior of the INDEC main building, where the posters and flyers which the complainant freely distributes can be seen, together with the aggressive terms the CTA allows itself to use in relation to other trade union demonstrations.
- 207.** With regard to the allegation that for several months the ATE was prevented from sending trade union emails and email circulars to all INDEC personnel in a clear case of prior censorship and restriction of freedom of expression, INDEC states that all the organization's personnel have an email address, and the various trade unions send email circulars to all the staff on a daily basis. This system is part of the democratic policy which is promoted by the way the Institute is managed. Both the publicity material posted inside the building and the email circulars which ATE-INDEC sends to all the staff, are typically offensive and insulting to the organization.
- 208.** INDEC states that the supposed violations of the rights and liberties mentioned in the complaint did not occur. Rather, the actions of a group of staff, who do not even represent all ATE-INDEC members, interrupted certain aspects of the daily work, systematically putting at risk the fulfilment of the responsibilities deriving from the Ministries Act, No. 17622, and the applicable legislation which determines the actions and functions to be carried out by the organization and threatening the full exercise of individual and labour rights of the other workers and persons working in INDEC. The Legal Affairs Department is currently working and will work in the future to guarantee those rights, report and constantly take proceedings against those who violate the legal order and justice within INDEC. The presence of police and security staff in INDEC is purely and simply to ensure the security of people working in the organization, as is the practice in all public bodies. The right to liberty, security, protection against arbitrary arrest and imprisonment, as well as freedom of opinion and expression, the right to meet, to obtain due process in independent and impartial courts and protection of the property of trade unions are exercised respectively by the workers and officials of the institution.
- 209.** INDEC concludes that there were no violations of individual, trade union or labour rights and freedoms of persons who were normally or occasionally related to INDEC on the dates and at the places mentioned in the complaint. The mis-cited court decisions and the feeble complaints divorced from reality are compounded by the absence of facts, resulting in the painting of a picture which totally fails to substantiate the assertions made by the complainant concerning the supposed violations of rights in the institution. A final conclusion can be inferred from the complainant's allegations, namely that it has repeatedly and to excess persisted with its attack on the institution and the management, mentioning terms such as "intervention" on some 25 occasions and peddling falsehoods unsupported by any documentary evidence or arguments.

### **C. The Committee's conclusions**

- 210.** *The Committee observes that in this case, the complainant organization alleges acts of violence (intervention and violent repression by the PFA to prevent the erection of a protest stand at the entrance to INDEC on 22 August 2007; attacks on workers at the meeting of 15 May 2008, causing various injuries to the deputy secretary of ATE-Capital, Mr Luis Opromolla and two other workers, and striking Ms Cynthia Pok), intimidation by means of police presence and prevention of the exercise of trade union activity, attack against a trade union office and anti-union discrimination (initiation of legal proceedings for participating in the dispute between the ATE and the INDEC authorities, reprisals and modification of conditions of employment, etc.) against workers belonging to the ATE.*

211. *In the first place, the Committee observes that the complainant organization and the Government refer to questions of appointment of INDEC personnel and the functioning of the Institute on which, under its mandate, the Committee is not competent to pronounce. The Committee also observes that the Government sends a report by INDEC as its reply.*

**Acts of violence and intimidation through police presence and obstacles to the exercise of trade union activity**

212. *With regard to the allegations relating to the intervention and violent repression by the PFA to prevent the erection of a protest stand at the entrance to INDEC on 22 August 2007, the Committee notes that the INDEC report sent by the Government states: (1) certain spaces in the Federal Capital are under the jurisdiction of the PFA; (2) INDEC has no control over or hierarchical link with the PFA; (3) with respect to the alleged facts, various persons provoked the security forces, preventing access to the building and causing damage; and (4) of the “rough handling”, there is no real, judicial or administrative evidence. In this respect, the Committee regrets that the Government did not send detailed observations and confined itself to providing the point of view and information from INDEC. In these circumstances, the Committee urges the Government to take the necessary steps to ensure that an investigation is carried out without delay into the alleged acts of violence and that if it is found that the police overstepped the mark in the exercise of their functions, measures should be taken to remedy the situation. The Committee requests the Government to keep it informed of developments.*
213. *With regard to the allegations of attacks on workers at a meeting of all the workers employed in the Ministry of Economy, which was held in the central hall of the Ministry to present to the Minister a claim for a wage increase on 15 May 2008, causing various injuries to the deputy secretary of ATE-Capital Luis Opromolla and two other workers and blows suffered by Cynthia Pok, the Committee notes that the INDEC report sent by the Government states: (1) a judicial investigation was initiated on the basis of a complaint stating that in circumstances where Luis Alberto Opromolla, together with other ATE members, were preparing to start a meeting in the main hall of the building, delegates of the UPCN union appeared, and then Mr Silverio Rafael Figueredo punched Mr Opromolla in the face; (2) the court proceedings were ended by a judgment of 8 April 2010 and the accused was acquitted; and (3) another judicial investigation initiated into the offence of threats was concluded on 21 September 2009, when it was found that the criminal action was time-barred.*
214. *Observing that the acquittals mentioned by INDEC of the accused persons do not indicate that the alleged events did not occur, the Committee notes that the investigations failed to identify the perpetrators of the attacks against the trade union leader mentioned and the workers in question. The Committee recalls that the officials and workers belonging to the ATE in the Ministry of Economy or INDEC must be able to hold meetings without fear of attacks.*
215. *As regards the allegations concerning intimidation through the police presence in INDEC in February 2007 recording in a log workers entering and leaving, and the presence of groups of persons (shock groups, according to the CTA) which reported to the INDEC management before and during meetings or during any other trade union activity filming them and making sound recordings, the Committee notes that the INDEC report states that: (1) the introduction of surveillance personnel in certain sections of INDEC is part of a progressive effort to ensure the complete protection of staff; (2) the registration log is a means of helping to ensure security, since if there is an incident involving the personnel working in the area, the log can be used to determine which persons entered or left and at what time they did so; (3) currently for entry to various INDEC buildings, there is a*

magnetic card which distinguishes between an INDEC staff member and a visitor; (4) no para-police personnel or shock groups operate in INDEC and workers' political and trade union rights are assured. While noting the security reasons invoked, the Committee considers that workers' organizations should be able to hold meetings without intimidation and in conformity with the principles of freedom of association and requests the Government to ensure respect for these principles.

**216.** *As regards the alleged obstacles to the ATE's trade union activity in INDEC (impossibility of putting up posters in INDEC because they are removed by cleaning staff, and obstacles to the use of email) the Committee duly notes that INDEC reports that: (1) as soon as one enters the Institute, the political and trade union diversity of the building can be observed, and posters and notices, some even handwritten, with a variety of content can be seen on noticeboards and walls; (2) there is no prior censorship of freedom of expression and the complainant organization freely distributes posters, flyers and leaflets; (3) all the organization's personnel have an email address, and the various trade unions send email circulars to all the staff on a daily basis; and (4) both the publicity material posted inside the building and the email circulars which ATE-INDEC sends to all the staff are typically offensive and insulting to the organization.*

**217.** *As regards the alleged refusal by INDEC to allow entry to workers participating in a meeting which had been called to inform them of the situation in the Institute on 28 February 2008, the Committee notes that INDEC indicates that the criminal complaint initiated in this respect was dismissed.*

### **Violence against an ATE-INDEC trade union office**

**218.** *With regard to the allegations of attacks against the ATE trade union office in the INDEC main building on 21 May and 15 July 2008 (according to the CTA, during the last attack damage was caused to the office) the Committee notes that INDEC indicates that in relation to the alleged attack on 21 May, this is an unsubstantiated account since it lacks any elements to confirm the alleged facts or circumstances and, in relation to the alleged attack on 15 July 2008, judicial proceedings were initiated on the basis of a complaint against Mr Silverio Rafael Figueredo for allegedly committing the offence of criminal damage and, on 24 November 2008, the court dismissed the case, on the grounds that there was no evidence that would lead to a conviction in the case. The Committee observes that the lack of conviction of a person accused as the perpetrator of the alleged acts of violence does not indicate that the alleged events did not occur. In these circumstances, noting that the Government has only provided the observations of INDEC in this regard, the Committee requests the Government to take the necessary measures to ensure that an investigation is carried out into these allegations and to keep it informed of the outcome of this investigation.*

### **Acts of anti-union discrimination (initiation of legal proceedings for participating in the dispute, reprisals and modification of conditions of employment, dismissal and threats of dismissal, etc.) and reprisals against workers affiliated to the ATE in INDEC for participating in a strike**

**219.** *With regard to the initiation of two criminal proceedings against the ATE trade union delegate, Mr Luciano Osvaldo Belforte (one for defrauding the public administration in where, according to the complainant, the trial was quashed on appeal and it was indicated to the judge of first instance that the proceedings without evidence constituted a clear example of persecution; and the other for violation of domicile which is still in progress,*

which was initiated because the delegate entered the trade union office as he was a member of the internal council and his entry had been prohibited), the Committee notes that INDEC states that: (1) in relation to the proceedings for defrauding the public administration, proceedings were taken against Mr Belforte for receiving his salary with additional remuneration in November 2005 and December 2006, while being on trips not authorized by the INDEC authorities and, in total contradiction to the complainant's assertion, on 31 August 2010 it was decided to order his trial without remand because he was suspected of having committed the alleged offence, and an order was made to freeze his assets; and (2) with regard to the trial for violation of domicile, Mr Belforte was acquitted and the applicable legislation imposes on the INDEC management the duty to report acts of which they become aware which could cause harm to the State or constitute an offence. The Committee requests the Government to keep it informed of the final result of the court proceedings against the ATE delegate, Mr Luciano Osvaldo Belforte, for defrauding the public administration. The Committee also requests the Government to inform it whether the delegate in question can freely enter the ATE trade union office in INDEC.

- 220.** As regards the legal proceedings for modification of conditions of work by INDEC initiated by the trade union official, Ms Liliana Haydee Gasco, (the complainant states that both at first and second instance, the judicial authority decided that Ms Gasco should be reinstated in the conditions, category and identical functions as she normally and habitually held prior to the modification decided by the employer) and by the worker Ms Vanina Micello (the complainant organization indicates that the judicial authority considered that it was proved her transfer and the change of work was a reprisal for the exercise of trade union activities and ordered that she should be reinstated in her functions), the Committee observes that the Government has not communicated its observations in this respect. In these circumstances, given that, according to the information supplied by the complainant organization, the judicial decisions ordered the reinstatement in their functions of the trade union official, Ms Liliana Haydee Gasco, and the worker, Ms Vanina Micello, the Committee requests the Government, should this be the case, to ensure compliance with the relevant judicial decisions and to keep it informed in this regard.
- 221.** As regards the numerous alleged acts of anti-union discrimination (transfer of workplace of the ATE member Mr Emilio Platzer; the dismissal of ATE member, Ms Gabriela Soroka; and the removal from her post of ATE delegate, Ms Cynthia Pok) and intimidation and reprisals against ATE members for participating in a strike in protest against the removal of Ms Cynthia Pok from her post and for participating in ATE meetings (in particular it is alleged that 13 workers were dismissed from the CPI and EPH Department on 1 November 2007, that, although there was an order for her immediate recruitment, to date it had not been fulfilled, and that ATE delegates are currently not recognized) the Committee notes that INDEC states that: (1) this involves a wide diversity of facts which have certain general characteristics which deserve detailed investigation which is beyond the possibility and competence of the INDEC management; (2) it is not a case of specific claims or allegations which might substantiate any particular violation of rights and their diversity and quantity are such that it is extremely difficult to collect relevant information; (3) efforts will continue to deal with the individual claims of workers; and (4) it denies the alleged failure to assign tasks to Ms Adela Zaltzman and indicates that the post that she is supposed to occupy does not exist in the organization. In this respect, the Committee urges the Government to send without delay its detailed observations relating to the following allegations: (1) the transfer of workplace of ATE member, Mr Emilio Platzer; (2) the dismissal of ATE member, Ms Gabriela Soroka; (3) the removal from her post of ATE delegate, Ms Cynthia Pok; and (4) the dismissal of 13 workers from the CPI and EPH Department on 1 November 2007.

222. *Lastly, the Committee observes with concern the content of the allegations presented in this complaint which refer to acts of violence and discrimination against trade unionists and attacks on a trade union office which suggest a climate of confrontation between the ATE union (affiliated to the CTA) and the INDEC authorities. In these circumstances, the Committee invites the Government, with a view to achieving harmonious labour relations in the organization, to set up a forum for dialogue in which, among other things, the questions raised in this complaint can be dealt with.*

### **The Committee's recommendations**

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

- (a) The Committee urges the Government to take the necessary steps to ensure that an investigation is carried out without delay into the allegations relating to the intervention and violent repression by the PFA to prevent the erection of a protest stand at the INDEC entrance on 22 August 2007 and that if it is found that the police overstepped the mark in the exercise of their functions, to take measures to remedy the situation. The Committee requests the Government to keep it informed of developments.*
- (b) With regard to the allegations of attacks against the ATE trade union office in the INDEC main building on 21 May and 15 July 2008 (according to the ATE, during the last attack damage was caused to the office), the Committee requests the Government to take the necessary measures to ensure that an investigation is carried out into these allegations and to keep it informed of its outcome.*
- (c) The Committee requests the Government to keep it informed of the final result of the court proceedings against the ATE delegate, Mr Luciano Osvaldo Belforte, for defrauding the public administration. The Committee also requests the Government to inform it whether the delegate in question can freely enter the ATE trade union office in INDEC.*
- (d) Given that, according to the information supplied by the complainant organization, the judicial decisions ordered the reinstatement in their functions of the trade union official, Ms Liliana Haydee Gasco, and the worker Vanina Micello, the Committee requests the Government, should this be the case, to ensure compliance with the relevant judicial decisions and to keep it informed in this regard.*
- (e) The Committee urges the Government to send without delay its detailed observations relating to the following allegations: (1) the transfer of workplace of ATE member, Mr Emilio Platzer; (2) the dismissal of ATE member, Ms Gabriela Soroka; (3) the removal from her post of ATE delegate, Ms Cynthia Pok; and (4) the dismissal of 13 workers from the CPI and EPH Department on 1 November 2007.*
- (f) The Committee invites the Government, with a view to achieving harmonious labour relations in the organization, to set up a forum for dialogue in which, among other things, the questions raised in this complaint can be dealt with.*

CASE NO. 2784

DEFINITIVE REPORT

## **Complaint against the Government of Argentina presented by**

- **the Confederation of Education Workers of Argentina (CTERA) and**
- **the Educational Workers' Association of Neuquén (ATEN)**

*Allegations: The complainant organizations object to a decree of the executive authority of Neuquén province that, in the context of a strike in the education sector, designates education in the province as an essential public service and establishes a system of minimum services*

- 224.** The complaint is contained in a communication dated 18 May 2010 from the Confederation of Education Workers of Argentina (CTERA) and the Educational Workers' Association of Neuquén (ATEN).
- 225.** The Government sent its observations in a communication dated August 2010.
- 226.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

### **A. The complainants' allegations**

- 227.** In their communication of 18 May 2010, the ATEN and the CTERA indicate that a legal and union-related situation has arisen that is prejudicial to state education workers in the province of Neuquén in Argentina, which constitutes a flagrant disregard of internationally accepted principles which, inasmuch as they have been incorporated into Argentina's own legislation, guarantee freedom of association and the right to strike.
- 228.** The complainant organizations state that they are referring to the issuance of Decree No. 735/10 dated 15 May 2010 by the executive authority of Neuquén province concerning the non-recognition of the right to strike, as education has once again been designated as an "essential service", with "minimum staffing levels" being introduced in educational establishments and directors being obliged to report on attendance, thereby preventing teachers in the province from exercising the right to strike and providing for sanctions to be applied to education workers who attempt to take collective and direct action measures.
- 229.** In particular, the complainant organizations indicate that the abovementioned decree, in its operative part, provides as follows:

Section 1: In Neuquén province, education during the period of compulsory schooling is designated as an essential public service.

Section 2: Minimum staffing levels are set for educational establishments, to ensure:

- (a) that the educational establishment can open and that the pupils can remain there throughout the school day;

- (b) that at least 50 per cent of classes, at all levels and structures of the provincial education system, can take place on any given school day.

Section 3: Minimum staffing levels are set for special schools, boarding schools, schools with residential facilities and schools that provide meals, to ensure:

- (a) that the educational establishment can open and that the pupils can remain there with the necessary comprehensive assistance throughout the school day;
- (b) that 100 per cent of classes, and all activities corresponding to these types of schools, at all levels and structures of the provincial education system, can take place on any given school day.

Section 4: In the event of a failure to comply with the provisions of the preceding sections, the competent educational authority may call upon supply teachers and non-teaching staff and may use the mechanisms that it considers necessary to enable educational establishments to operate, as appropriate.

Section 5: The directors or managers of each educational establishment, in their capacity as public servants, must keep a daily record of the attendance and absences of their staff and have a duty to provide information in this regard to the higher authority the following working day.

Section 6: Failure to comply with any of the obligations set out in the present legal standard constitutes a serious offence and carries the penalties established by the legislation in force.

Section 7: The Secretary of State for Education, Culture and Sport and the President of the Provincial Education Council are called upon to determine which mechanisms are needed to put into effect the provisions of the present decree, taking into account the specific needs and characteristics of each educational establishment, the number of pupils and the teaching methods that are used.

Section 8: A copy of the present decree shall be sent to the legislature of Neuquén province, in line with usual practice.

**230.** The complainant organizations allege that, in the light of the above, a blatant violation of freedom of association has been occurring, in particular as a result of the actions of the authorities of Neuquén province, which are trying to exercise functions that are expressly outside their remit. This situation is without doubt due to a transgression of the Constitution and to certain legislative loopholes to which the State of Argentina as a whole must respond. The complainants explain that the labour dispute arose in Neuquén province as a result of the failure of the ATEN and the provincial government to reach a final agreement, despite the existence of a joint agreement reached at the national level between the CTERA and the national Government, dated February 2010, under which a wage increase of more than 23 per cent will be achieved.

**231.** The complainant organizations add that, in accordance with the statutes of the CTERA, which have been duly registered with the National Ministry of Labour, and with the specific provisions of Act No. 23551 on trade union associations, trade unions are guaranteed, in terms of collective freedom of association, the right “to formulate their own action plans and to carry out any lawful activity to defend the interests of workers. In particular, they may exercise the right to bargain collectively, the right to participate, the right to strike and the right to take other forms of legitimate trade union action” (section 5(d) of Act No. 23551). In addition, the national Constitution contains a strong operative clause, establishing a sequence to be followed: “Trade unions are guaranteed the right to enter into collective agreements, to have recourse to conciliation and arbitration and to strike” (section 14bis, second paragraph). It is clear that, according to the Constitution, the first step is to negotiate, reach agreement, restore balance, correct inequities and ensure bargaining parity between unions and employers through the introduction of legislation negotiated as part of a collective agreement; the next step is to establish dispute prevention mechanisms based on conciliation and voluntary arbitration

(although the Constitution does not indicate whether this should be a government activity); and finally, as a last resort, the power of the union to exercise the right to strike (the legitimate use of force). A collective process was foreseen that, even in the worst of cases, should be completed without any legal obstacles.

- 232.** According to the complainant organizations, the national Constitution does not set any limits or conditions, as is the case with other constitutions. Therefore, the collective law institutions provided for by the Constitution are characterized by their strong capacity to act immediately and efficiently. Accordingly, the right to strike may be invoked and exercised even though there is no regulatory act passed by Congress governing this right, because exercising the right to strike does not require legislative regulation. Article 75(22) of the Constitution of Argentina provides for the recognition of the constitutional status of human rights declarations and treaties. Of the human rights instruments, only the International Covenant on Economic, Social and Cultural Rights explicitly refers to the right to strike (section 8.1(d)). Nevertheless, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the American Convention on Human Rights encompass the right to strike as part of the right to freedom of association.
- 233.** The complainant organizations state that there are no ILO Conventions or Recommendations specifically governing the right to strike, but that the right is seen as being implicit in the right to freedom of association enshrined in Conventions Nos 87 and 98 and in the right to collective bargaining enshrined in Convention No. 154. They also state that a new interaction appears in section 24 of Act No. 25877 in relation to disputes concerning essential services: “Essential services are defined as being health and hospital services, the production and distribution of drinking water, electricity and gas and air traffic control. An activity that is not included in the above list may, on an exceptional basis, be designated as an essential service by an independent commission established in accordance with the regulations”. Accordingly, the complainant organizations consider that, according to national legislation, education neither is nor could be an essential service, in view of the above and of the principles of the ILO supervisory bodies. According to the complainant organizations, it is worth mentioning that, on 18 March 2010, the national executive authority issued regulatory Decree No. 362/10 on the Guarantees Commission as provided for under section 24 of Act No. 25877, for the purposes foreseen in that provision, in other words with a view to designating on an exceptional basis activities that do not feature on the abovementioned list.
- 234.** The complainant organizations are truly surprised by the illegal and arbitrary way in which Decree No. 735/10 was issued by the executive authority of Neuquén province, which is clearly in no way in line with the principles of the ILO Committee on Freedom of Association. It cannot be claimed, as is inferred from the issuance of Decree No. 735/10 by the executive authority of Neuquén province, that regulating the right to strike falls within the remit of the provincial authorities. The complainant organizations claim that they do not share the assumptions that are set out in the introductory clauses of Decree No. 735/10, according to which the section 24 in question of Act No. 25877 allows education to be designated as an essential service.
- 235.** The complainants maintain that education is not an essential service, but a social right that should be guaranteed by the State. Decree No. 735/10 of the provincial government constitutes a clear regulatory excess, insofar as it attempts to regulate a constitutional right, but especially insofar as it does not comply with the decisions, guidance and conclusions of the Committee on Freedom of Association. The complainant organizations conclude by indicating that the designation of education as an essential service, the introduction of “minimum staffing levels” and the obligation on the directors of educational

establishments to inform on teaching staff who exercise the right to strike, as provided for under Decree No. 735/10 of the State of Neuquén province, are acts that are in blatant violation of the decisions of the Committee on Freedom of Association.

## **B. The Government's reply**

- 236.** In its communication of August 2010, the Government reports that, according to the executive authority of the province, it is necessary to describe the situation prior to the issuance of Decision No. 735/10. Specifically, the executive authority of the province indicates that for six months prior to the start of the academic year and while industrial action was being taken, negotiations were being held between the complainant trade union, the Board of Education and the provincial government (November and December 2009 and February, March and April 2010). In view of the ongoing disagreement, Decision No. 067/10 was issued on 23 April 2010 calling for compulsory conciliation (Case No. 4070-001974/210 entitled “Secretary of State for Education, Culture and Sports, concerning compulsory conciliation order, teaching dispute”).
- 237.** The provincial government adds that, despite the appeal for compulsory conciliation, the union ATEN refused to recognize the authority of the Office of the Under-Secretary of Labour to convene such conciliation proceedings, did not attend the notified hearings and continued its ongoing industrial action, resulting in a total of 39 days with no classes and the setting up of roadblocks. It indicates that it was under these circumstances that Decision No. 71/10 was issued, closing the conciliation phase and ordering the initiation of examination proceedings. In this instance, and giving priority to the right to education, the executive authority of the province issued Decision No. 735/10, which is challenged in the complaint.
- 238.** The provincial government indicates that, on 20 May 2010, an agreement was signed on wages and the consequent lifting of industrial action. The executive authority of the province states that the teachers’ union did not change its position before the start of the corresponding academic year; in other words, it continued to take direct action, resulting thereafter in the loss of classes with no opportunities for replacement classes, in complete and systematic disregard for existing legal practice. The provincial government’s intention when it issued its decisions, and as has been seen throughout the course of the dispute, was not in any way to limit the right of teachers to strike, but basically to ensure the right of children to education and health, in accordance with the obligations enshrined in the Constitution. Furthermore, it considers that, given the context, the administrative measure that was taken does not warrant any sanction.
- 239.** Finally, with reference to Case No. 2414, the Government considers it important to note that ATEN represents only the teaching staff who are a party to the dispute, and not the directors and deputy directors, who enjoy the status of political officials, in other words representatives of the public authority responsible for running educational establishments.
- 240.** With regard to the Guarantees Commission, which is in fact governed by Decree No. 56/10 (and was established under section 24 of Act No. 25877), the Government indicates that section 24 of Act No. 25877 provided that the obligation to continue to provide a minimum service during a strike or work stoppage is enforceable only in cases where a direct action measure affects the provision of an essential service in accordance with the criteria established in that respect by the supervisory bodies of the ILO, namely, with regard to health and hospital services, the production and distribution of drinking water, electricity and gas and air traffic control. Accordingly, the standard in question provided that only on an exceptional basis can activities other than those listed be designated as essential services, through an independent commission, prior to the opening of the conciliation procedure provided for by law and only under the following circumstances: (a) when the

duration and geographical extent of the interruption of activity mean that the implementation of the measure might endanger the life or safety of all or part of the population; and (b) when it is a public service of vital importance. According to the information provided by the provincial authority, neither of these conditions were fulfilled, and an agreement with the union could be reached, meaning that the dispute did not fit appropriately into the category of situations for which the intervention of the Guarantees Commission is envisaged, in accordance with the provisions of section 24 of Act No. 25877.

### C. The Committee's conclusions

- 241.** *The Committee observes that, in the present case, the complainant organizations object to Decree No. 735/10 dated 15 May 2010 issued by the executive authority of Neuquén province, which establishes that, in Neuquén province, education during the period of compulsory schooling is designated as an essential public service and sets minimum staffing levels (minimum service) for 50 per cent of classes and for 100 per cent of classes in special schools, boarding schools, schools with residential facilities and schools that provide school meals; the complainant organizations also object to the provision of the decree that states that the directors or managers of each educational establishment must keep a daily record of the attendance and absences of their staff and provide this information to the higher authority.*
- 242.** *The Committee notes that, according to the Government, the Neuquén province reported that: (1) it is necessary to describe the situation prior to the issuance of Decision No. 735/10; specifically, for six months prior to the start of the academic year and while industrial action was being taken, negotiations were being held between the complainant trade union, the Board of Education and the provincial government and, in view of the ongoing disagreement, Decision No. 067/10 was issued on 23 April 2010 calling for compulsory conciliation; (2) despite the appeal for compulsory conciliation, the union ATEN refused to recognize the authority of the Office of the Under-Secretary of Labour to convene such conciliation proceedings, took ongoing industrial action – for 39 days no classes were given – and set up roadblocks; (3) it is under these circumstances that Decision No. 71/10, closing the conciliation phase, and Decision No. 735/10, which is challenged in the complaint, were issued; (4) on 20 May 2010, an agreement was signed on wages and the consequent lifting of industrial action; (5) prior to the start of the academic year in question, the teachers' union took direct action, resulting thereafter in the loss of classes with no opportunities for replacement classes, in complete and systematic disregard for existing legal practice; (6) the provincial government's intention when it issued the abovementioned decisions and throughout the course of the dispute was not in any way to limit the right of teachers to strike, but basically to ensure the right of children to education and health, in accordance with the obligations enshrined in the Constitution; (7) Act No. 25877 provided that only on an exceptional basis can activities other than those listed (health and hospital services, the production and distribution of drinking water, electricity and gas and air traffic control) be designated as essential services, through an independent commission, prior to the opening of the conciliation procedure provided for by law and only under the following circumstances: (a) when the duration and geographical extent of the interruption of activity mean that the implementation of the measure might endanger the life or safety of all or part of the population; and (b) when it is a public service of vital importance; and that, as neither of these conditions were fulfilled, and because an agreement could be reached with the union, the dispute did not fit appropriately into the category of situations for which the intervention of the Guarantees Commission is foreseen.*

243. *First of all, the Committee observes that the dispute and the strike that gave rise to Decision No. 735/10, which is contested by the complainant organizations, were settled as a result of an agreement reached by the parties in May 2010. The Committee recalls that it has been called upon in the past to examine a case against the Government of Argentina relating to allegations of limitations on the right to strike in the education sector in Neuquén province and that, on that occasion, it emphasized that the education sector in general does not constitute an essential service in the strict sense of the term and recalled that minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration [see 349th Report, Case No. 2562, paragraph 406]. Furthermore, the Committee has considered that the provision of food to pupils of school age and the cleaning of schools may be considered essential services in the strict sense of the term [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paragraph 585].*
244. *The Committee observes that, in the present case, the Government indicates that the industrial action continued for a period of 39 days and that subsequently Decree No. 735/10 was issued, imposing minimum services, but the Government does not mention holding consultations with the social partners on the scope of the minimum services. Bearing in mind that, in Argentina, the right to strike exists in the education sector in a broad sense, but that in this specific case the organizations of employers and workers concerned were not consulted with regard to the minimum services, the Committee requests with insistence the Government to ensure that, in the future, in the event of a dispute in the education sector in Argentina involving a strike of long duration, measures are taken to ensure that not only the public authorities but also the organizations of workers and employers concerned participate in defining the minimum service. The Committee recalls that this had already been requested previously in the context of Case No. 2562. Accordingly, the Committee requests the Government to confirm that Decree No. 735/10 issued by Neuquén province is no longer in force.*

### **The Committee's recommendation**

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

*The Committee requests the Government to confirm that Decree No. 735/10 issued by Neuquén province is no longer in force. The Committee requests with insistence that, in the future, in the event of a strike of long duration in the education sector in the aforementioned province, the Government will take measures to ensure that not only the public authorities but also the organizations of workers and employers concerned participate in defining the minimum service.*

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CASE NO. 2809

INTERIM REPORT

**Complaint against the Government of Argentina  
presented by  
the Association of Banks' Senior Staff Officers (APJBO)**

***Allegations: The complainant organization  
objects to the decision of the administrative  
authority to refuse to grant it trade union status***

246. The complaint is contained in a communication of the Association of Banks' Senior Staff Officers (APJBO) dated July 2010.
247. The Government sent its observations in a communication dated 1 February 2011.
248. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

249. In its communication of July 2010, the APJBO states that it is a first-level entity with trade union registration granted by resolution No. 483 of 11 April 1994, registered number 1800. It covers the whole country and its membership consists of all managerial staff in national official banks, their successors or organizations which replace them or provide equivalent services, irrespective of their legal form, in the administrative, professional, technical and specialist branches, equipment and services from deputy head of division, head of area or general manager and/or equivalent in the various branches, in post or who on retirement were members of the organization. The complainant organization adds that it is a trade union with nationwide coverage in Argentina which seeks trade union representative status (to be able to engage in collective bargaining) in the Bank of the Argentine Nation.
250. It indicates that this bank is the biggest in the country and its trade union is the Banking Association, whose representative status covers all workers in that activity. This association has a monopoly of collective bargaining. Thus the APJBO does not have even the possibility of having a joint member in the bargaining body. The APJBO has 1,813 paying members, it is affiliated to the Confederation of Argentine Workers (CTA) and has carried on a variety of trade union activities since its foundation. It has been most active in the Bank of the Argentine Nation. All its members are workers in that institution, although the "trade union registration" covers all official banks (meaning those owned by the State at national, provincial or municipal level).
251. The complainant organization states that in order to obtain the maximum recognition allowed under Argentine law, and thus to have full legal capacity as a trade union, the application for representative status as a trade union was begun on 23 March 2004. By an order dated 13 August 2004, it was held that the registration requirements set out in article 23(a) of Act No. 23551 had been fulfilled and the trade union was thereby duly registered. In the framework of the application, it was stated that "... the precise context in which it is sought to obtain trade union representative status is the Bank of the Argentine Nation". By an order of 12 September 2005, the APJBO was required to specify the *differentiated trade union interests* which justified specific representation of the segment of workers which it claimed to represent.

- 252.** On 19 September 2005, a further order was made to send an official letter to the Bank of the Argentine Nation requesting it to inform the relevant authority (the Ministry of Labour, Employment and Social Security – MTEySS) of the number of managerial staff employed by the bank in the six-month period prior to the application. It was also sent to the Banking Association, which requested that the APJBO’s application should be refused at the outset.
- 253.** By an order of 31 July 2006 of the MTEySS, it was suggested that the requirement should be deemed to be fulfilled and a verification hearing under article 25 of the Trade Unions Act (LAS) was fixed, in order to ascertain the number of paying members of the organization in the claimed context. This process was completed on 19 March 2008. Considering the delay and the constant prevarications of the administration, on 26 April 2010, an action for *amparo* for administrative delay was filed in the National Labour Court of First Instance No. 79. On 7 June 2010, the court issued a judgment in the case, No. 14524/10, *Banks’ Senior Staff Officers v. Ministry of Labour, Employment and Social Security, amparo*, which expressly ordered that “pursuant to article 28 of Act No. 19549, the National Executive Power, the Ministry of Labour, Employment and Social Security, is required within ten days to inform the court of the reasons for the delay alleged in the complaint, a copy to be attached in relation to administrative proceeding No. 1985795/04, failing which, the findings in the case will be determined on the evidence before the court ...”.
- 254.** The complainant organization states that on 26 June, resolution No. 659/10 was issued, refusing the application for trade union representative status. The grounds indicate “that the application would mean that the exercise of trade union representation would alter the classification adopted by the trade union, overstepping the bounds of the classifications defined by law and the will of the general meeting to be constituted as a category trade union determined by this authority as applying at the time when it obtained trade union registration”. It also alludes to the provisions of articles 29 and 30 of the Trade Unions Act but, in justifying the refusal, relies only on article 29 and the related articles of the Act.
- 255.** The complainant organization adds that the restrictions imposed by Act No. 23551 on the granting of representative status to trade unions for an office, category, profession or company had led the ILO Committee of Experts to observe that they were incompatible with Articles 2 and 7 of Convention No. 87. The complainants state that the ILO supervisory bodies had, for many years, been making observations concerning Argentine law with respect to certain restrictions on some types of trade union, such as those for a company, office, profession and category. The CEACR has commented on many occasions on the incompatibility of articles 29 and 30 of Act No. 23551 with Article 2 of Convention No. 87. The objections of the ILO Committee of Experts highlight the obstacles which bar access to trade union representative status to trade unions of workers in a single company and workers in a same office, profession or category (articles 29 and 30 of the Act). The complainant organization recalls that article 29 of Act No. 23551 allows the granting of trade union representative status to a trade union of workers in a single company only exceptionally, on the grounds of the lack of another union which has that status in both geographical terms and the activity or category. For its part, article 30 prevents recognition as “most representative” to a “trade union representing an office, profession or category” when there is a pre-existing “activity trade union” which has that status. By that last condition alone, which it is impossible to fulfil in practice, any possibility of workers grouped according to their office effectively exercising collective defence of their rights and interest is rendered merely theoretical. Article 30 adds a second requirement, which is devoid of any objectivity: the clause which requires the existence of “differentiated trade union interests to justify specific representation”.
- 256.** The complainant organization indicates that the impossibility of exercising collective representation is yet one more of the rights denied to organizations which are merely

registered. This case is one of many which show that the Government has made no effort with regard to the urgent requests of the ILO supervisory bodies. In this regard, all have pronounced in the same vein over all the issues raised, namely, amendment of the Trade Union Act, applications for trade union representative status and observations on the social situation. The Argentine Government has not made any comments concerning any of these. The complainant organization alleges that the Government drags out the proceedings which it knows will go against it in the courts, following the precedent of the “ATE” and “Rossi” cases in the Supreme Court of Justice of the Nation, which were the subject of comments by the CEACR in its last report in 2010. This case is evidence of this *modus operandi*: the prevarication method. Although it could have refused the application immediately on its submission giving the same reasons, it preferred to wait almost six years to refuse representative status and, as indicated above, then made it necessary to take legal action to force the administration to resolve the matter (*amparo* for administrative delay).

257. The complainant organization indicates that a special appeal was filed against the decision which refused trade union representative status in the National Labour Appeals Tribunal. As the proceedings justifying the highest number of paying members of the complainant organization have not been completed (article 28 of Act No. 23551), the Tribunal can only decide to continue the proceedings, but cannot make a ruling, even if the application for trade union representative status is decided favourably.

## B. The Government’s reply

258. In its communication of 1 February 2011, the Government states that the Department of Legal Affairs of the MTEySS was consulted about the alleged refusal of the application for trade union representative status. The Department gave the following indications: (1) case No. 1085795/2004 began with the application for trade union representative status submitted by the Association of Banks’ Senior Staff Officers, a first-level trade union registered No. 1800; (2) by decision of the MTEySS No. 659 of 23 June 2010 (the Government attached a copy of the decision to its reply) it was decided to refuse the application submitted by the trade union concerned, based on the jurisprudence of the Attorney General and the provisions of articles 29 and 30 of Act No. 23551; (3) the trade union appealed directly against this decision pursuant to article 62 of Act No. 23551, requesting that articles 29 and 30 of the Act should be declared unconstitutional; (4) the appeal was registered at the National Labour Appeals Tribunal on 18 August 2010, and the case was heard in Court III of the Tribunal (case No. 32284/10); and (5) on 26 October 2010, notice of the proceedings was served on the prosecutor’s office. The Government indicates that it considers it appropriate to await the corresponding judicial decision.

## C. The Committee’s conclusions

259. *The Committee observes that in this case, the complainant organization (which states that it has 1,813 members) is challenging the decision of the administrative authority to refuse its application for trade union representative status (application of 23 March 2004) in the Bank of the Argentine Nation, in order to be able to bargain collectively.*

- 260.** *The Committee notes that the Government states that: (1) the Ministry of Labour and Employment refused the application for trade union representative status submitted by the complainant organization on 23 June 2010, based on the jurisprudence of the Attorney General's Office and the provisions of articles 29 and 30 of the Trade Unions Act No. 23551 of 1988 (the Government sent a copy of the decision which is reproduced as an annex); (2) the complainant organization appealed, seeking a judgment that articles 29 and 30 of Act No. 23551 should be declared unconstitutional; (3) the appeal was registered at the National Labour Appeals Tribunal on 18 August 2010, and on 26 October 2010, notice of the proceedings was served on the prosecutor's office; and (4) it considers it appropriate to await the corresponding judicial decision.*
- 261.** *Firstly, the Committee regrets the long period of time that has passed (over five years) since the complainant organization requested trade union representative status (a status which grants exclusive rights, such as concluding collective agreements) and emphasizes the importance of reaching decisions in such matters within a reasonable length of time. With regard to the substance of the question, to grant or not to grant the trade union representative status to the complainant organization (which requires a comparison of the representativeness of the trade unions existing in the Bank), given that the procedure for determining the representativeness of the trade union concerned via the comparison of its relevant affiliates had not yet been completed, the Committee will examine the substance of the question when it has the judicial decision issued by the National Labour Appeals Tribunal where the appeal filed by the complainant organization is being heard. In these circumstances, the Committee hopes that the judicial authority will shortly pronounce its judgment and requests the Government to send it a copy of the judgment as soon as it is issued.*

### **The Committee's recommendation**

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

*The Committee hopes that the judicial authority will shortly pronounce its judgment in the appeal filed by the APJBO against the administrative decisions which refused trade union representative status and, for the purposes of pronouncing on the substance of the case, requests the Government to send it a copy of the judgment as soon as it is issued.*

## **Appendix**

Buenos Aires, 23 June 2010

Taking into account case No. 085795/2004 of the Ministry of Labour, Employment and Social Security, Act No. 23551 as amended by Act No. 25674 and Act No. 26390, and regulatory decrees Nos 467/88 and 514/03; and

Considering:

That the aforementioned case concerns the application for recognition of trade union representative status by the Association of Banks' Senior Staff Officers dated 23 March 2004.

That by decision No. 438 of 11 April 1994 of the Ministry of Labour and Social Security, the aforementioned entity obtained trade union registration, and is registered under No. 1800.

That the recognized scope of the entity under its trade union registration comprises workers in National Official Banks in the managerial staff category in the administrative, professional, technical and specialized areas, equipment and services, from deputy head of division, head of area

or general manager and/or equivalent in the various branches, operating throughout the Republic of Argentina, in which the National Official Banks have a branch, agency, office or head office.

That according to the grouping defined in the applicant's trade union registration, it adopted the classification set out in article 10(b) of Act No. 23551.

That the applicant had circumscribed the scope of its application to the managerial staff of the Bank of the Argentine Nation.

That the application would mean that the exercise of trade union representation would alter the classification adopted by the trade union, exceeding the classifications defined by law and the will of the general meeting to be constituted as a category trade union determined by this authority as applying at the time when it obtained trade union registration.

That the Attorney General's Office, in a similar case, issued an opinion binding on this department in decision No. 86 of 26 April 2007, from which it is inferred that the application for trade union representative status cannot override the classification adopted by the entity and recognized at the moment when it is constituted as a legal person.

That the stated justification must be taken in conjunction with the provisions of articles 29 and 30 of Act No. 23551.

That the legal decision of the National Department of Trade Unions, on being requested, advised that this application should be refused.

That consequently, pursuant to articles 29 and relevant articles of Act No. 23551, the applicant should be refused trade union representative status, and it should be so recorded and published in the *Official Bulletin*.

That this judgment be issued under the powers conferred by article 23(7) of the Ministries Act, No. 22520 (text regulated by Decree No. 438/92) as amended, and pursuant to the provisions of Decree No. 355/02.

Thus, the Ministry of Labour, Employment and Social Security

Resolves:

Article 1. To refuse the application for trade union representative status submitted by the Association of Banks' Senior Staff Officers, address at 311 Bartolomé Mitre Street, 3rd floor, Buenos Aires.

Article 2. To effect the summary publication without charge of its statutes and the present resolution in the *Official Bulletin*, in the form indicated by resolution No. 12/01 of the National Department of Trade Unions.

Article 3. To register this resolution and communicate, publish and convey it to the National Official Registry, and to file it.

MTEySS resolution No. 659.

CASE NO. 2765

INTERIM REPORT

**Complaint against the Government of Bangladesh  
presented by  
the Bangladesh Cha-Sramik Union (BCSU)**

*Allegations: The complainant alleges interference by the authorities in the election of officers to its Central Executive Committee, as well as the violent suppression of demonstrations organized to protest this interference*

- 263.** The complaint is contained in a communication of the Bangladesh Cha-Sramik Union (BCSU) dated 14 February 2010.
- 264.** The Government sent its observations in communications dated 16 August 2010 and 15 February 2011.
- 265.** Bangladesh has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 266.** In its communication dated 14 February 2010, the BCSU alleges that there has been interference by the Government in its internal affairs, in violation of the tea workers' right to association, electing their own representatives and organizing their administration and activities, as ensured under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
- 267.** More particularly, the complainant alleges that the Government approved an ad hoc committee (comprising of the candidates defeated in the trade union election) replacing the elected Central Executive Committee of the BCSU. This led to the de facto dismissal of the elected Central Executive Committee of the BCSU, giving authority to the so-called ad hoc committee to conduct a new election of the Central Executive Committee and the deliberate omission of the Government to reinstate the Central Executive Committee in its position.
- 268.** The first ever election of the BCSU was scheduled to be held on 26 October and 2 November 2008 in response to the ongoing demand by the tea workers and in due compliance with the Labour Act, 2006. An Election Commission was announced comprising of seven high-ranking government officials under the auspices of the Government. No elections of BCSU committees had ever been held since its establishment. It deserves mention that Mr Rajendra Prasad Boonerjee held different offices, such as President, General Secretary or Adviser in the BCSU without being elected for nearly three decades since 1970. Later on, his son-in-law, Mr Bijoy Boonerjee also held the position of Organizing Secretary of the current ruling party, the Awami League at Srimongal of Moulvibazar District.

- 269.** Workers from almost 156 tea gardens participated in the election. On 2 November 2008, the results of the elections were announced. The Makhon Lal Kamaker – Ramjovan Koiry’s panel was elected to the Central Executive Committee of the BCSU, defeating Bijoy Boonerjee’s panel by an overwhelming majority of votes. The results of the elections were duly communicated to various departments, directorates and secretariats of the Government. The newly elected Central Executive Committee since then has been representing the tea workers before various government authorities. The Central Executive Committee, in consultation with the tea garden owners, brought in an increase in the daily wages from 32.50 Bangladeshi taka (BDT) to BDT48 (approximately US\$0.45–0.67) and two yearly allowances from BDT500 to BDT1,248 (approximately US\$7–17.40).
- 270.** However, the defeated candidates, instead of cooperating, began to plot against the newly elected Central Executive Committee. At their instigation, sham cases have been filed accusing Mr Makhon Lal Karmakers and Mr Ramvojan Koiry of extortion. All of a sudden, on 25 November 2009, Mr Bijoy Boonerjee led 40–50 persons into the Head Office of the BCSU and forcibly occupied it.
- 271.** The Central Executive Committee, to their surprise, came to know that the Assistant Director of Labour, acting on behalf of the Director of Labour, issued a letter dated 24 November 2009 approving the appointment of a so-called ad hoc committee headed by Mr Bijoy Boonerjee, who was clearly defeated in the elections. The said letter also authorized the ad hoc committee to hold and conduct an election of all of the BCSU Central Executive Committee within 120 days. The letter was issued on the basis of the Minutes of a so-called Extra-Ordinary General Meeting on Requisition purported to be held on 12 July 2009. The Central Executive Committee was not at all informed of the Extra-Ordinary General Meeting. Moreover, the decision to form an ad hoc committee as stated in the minutes of the so-called Extra-Ordinary General Meeting was in violation of the BCSU’s constitution. In fact, no such meeting was ever held. The notice and minutes (mandatory under the BCSU’s constitution, articles 16 and 18) are all fabricated so as to give a legal facade to the illegal ad hoc committee. It has been widely reported that the Whip of the ruling party is involved in this matter and giving support to Mr Bijoy Boonerjee.
- 272.** According to the complainant, these acts were done in breach of the constitution of the BCSU, the national legislation and they also constitute flagrant violation of the international legal obligations of the Government to take the necessary measures to ensure the right of workers to organize freely, ensured by Convention No. 87.
- 273.** Immediately after the illegal expulsion of the Central Executive Committee, the tea workers began to mobilize in protest:
- On 26 November 2009, tea workers of 118 tea gardens went on strike demanding reinstatement of the Central Executive Committee. A Memorandum of Demand was presented to the Minister of Labour and Employment demanding reinstatement of the Central Executive Committee of the BCSU through the Upazilla Nirbahi Officer (government official) of Kulauara, Moulvibazar District.
  - On 5 December 2009, a press conference was held by the tea workers under the auspices of their expelled leaders at the Western Hotel in Moulvibazar District town setting out plans for further demonstrations if the demand for reinstatement of the Central Executive Committee were not met.

- On 6 December 2009, a grand rally was organized in Moulvibazar District town in the face of police action. A Memorandum of Demand on behalf of the elected committees of the BCSU was presented to the Prime Minister of Bangladesh through the Deputy Commissioner of Moulvibazar District asking for appropriate remedy.
- On 8 December 2009, the tea workers took part in a demonstration in Sylhet District town and submitted another Memorandum of Demand to the Labour Minister again.
- On 9 December 2009, the tea workers organized a procession. Demonstrations were reported to be held at Kotbari of Sylhet on 13 December 2009.
- On 14 December 2009, the tea workers submitted another Memorandum to the Divisional Commissioner of Sylhet Division.
- On 20 December 2009, the tea workers went on hunger strike, demonstrated and rallied in different places of Moulvibazar District, however, they faced obstruction from the law enforcement agencies. During demonstrations, the police made baton charges on the tea workers causing injury to a number of workers. Finally, the workers presented a Memorandum to the Upazilla Nirbahi Officer of Komolgonj, Moulvibazar District.
- Another demonstration programme of the tea workers held at Srimongal, Moulvibazar District, was forcefully annulled by the police. It has been reported that 11 or more workers were injured due to baton charge.

**274.** On 4 January 2010, a Memorandum of Demand was presented to the Director of Labour. The aforementioned incidents were reported in most of the national daily newspapers of Bangladesh. This situation is yet to be resolved.

## **B. The Government's reply**

**275.** In its communication dated 16 August 2010, the Government indicates that, according to the constitution of the BCSU, it has completed an election on 26 October 2008 and 2 November 2008 by secret ballot on behalf of the BCSU Regulation No. B77. The Government further indicates that, after the election, the defeated party lodged a case against the election before the Labour Court of Chittagong. They urged that the election had been held unconstitutionally and required it to be cancelled.

**276.** According to the Government, on 12 July 2009, a special meeting was called, where 51,000 Tea Plantation workers attended. In that meeting, the workers submitted their “no confidence regarding the implementation of the constitutional objectives and goals” by the BCSU elected committee. During that meeting, an ad hoc committee of 30 members was constituted by the workers. In order to be recognized by the Department of Labour, the ad hoc committee submitted a letter with related papers and a list of its members to the Director of Labour.

**277.** Considering the circumstances, the Director of Labour constituted three individual investigation committees to investigate the reality and justification of the constitution of the ad hoc committee and the overall labour situation in tea plantation areas. The Joint Director of Labour, Chittagong Division, the Deputy Director of Labour, Labour Welfare Division for Tea Industries, Sreemongal, Moulvibazar and the Deputy Commissioner, Moulvibazar were appointed as the head of the three committees.

278. From the inquiry of the three committees, the Director of Labour found the justification, reality and necessity of the ad hoc committee. Therefore, it recorded the ad hoc committee in the Department of Labour's file and directed the holding of a new election, by a letter dated 24 November 2009 (No. RTU (160)/(part-5) 705).
279. Mr Bijoy Hajra, Organizing Secretary of the BCSU and Mr Ramvojan Koiry, General Secretary, aggrieved by the Director of Labour's decision, lodged an IRI case (No. 2 of 2010) before the Second Labour Court at Chittagong against the Director of Labour and others. After hearing the parties, the honourable Labour Court issued an order to suspend the decision of the Director of Labour which recorded the ad hoc committee.
280. Mr Bijoy Boonerjee (ad hoc committee) lodged a Writ Petition (No. 1601 of 2010) before the High Court Division of the Supreme Court. The High Court stayed the decision of the Second Labour Court for six months. The case is now pending with the Labour Court.
281. In its additional communication dated 15 February 2011, the Government indicates that, regarding the allegation of violent suppression of demonstrations to protest against interference in the union election, the Deputy Director of Labour, Srimongal, inquired into the matter and submitted a report to the Department of Labour. In that report, he mentioned that he had interviewed the officer-in-charge of Srimongal Thana, the convener of the BCSU and others. The officer-in-charge of Srimongal Thana had informed him that there was no such record of demonstration to protest against interference in Cha Sramik Union elections nor any violent suppression under his jurisdiction (Srimongal PS). Besides, the convener of the BCSU also stated that no such demonstration or violation occurred at Srimongal and he did not file any case against the Government of Bangladesh to the ILO or elsewhere.

### C. The Committee's conclusions

282. *The Committee notes that this complaint concerns allegations of interference by the authorities in the election of officers to the BCSU's Central Executive Committee, as well as the violent suppression of demonstrations organized to protest this interference. It observes that the Government's reply refers to disputed elections of the BCSU's Central Executive Committee.*
283. *Concerning the allegation of interference by the authorities in the election of officers to the BCSU's Central Executive Committee, the Committee notes that the elections were held on 26 October and 2 November 2008, in response to the ongoing demand by the tea workers, where workers from almost 156 tea gardens participated. On that occasion, the Makhon Lal Karmakers – Ramjovan Koiry's panel was elected to the Central Executive Committee of the BCSU, defeating Bijoy Boonerjee's panel by an overwhelming majority of votes.*
284. *The Committee observes that the complainant and the Government have a contradictory version concerning the special meeting that was subsequently held on 12 July 2009 and which led to the creation of an ad hoc committee and the de facto dismissal of the elected Central Executive Committee of the BCSU, giving authority to the ad hoc committee to conduct a new election of the Central Executive Committee and its approval by the Government, by a letter issued by the Assistant Director of Labour, acting on behalf of the Director of Labour, dated 24 November 2009. According to the complainant, no such special meeting was ever held and, in any case, it would not have been held in conformity with the BCSU's constitution. In the complainant's view, the notice and minutes appear to have been fabricated so as to give a legal façade to the illegal ad hoc committee. Conversely, the Government indicates that 51,000 tea plantation workers did attend that meeting and constituted the ad hoc committee of 30 members following an alleged no confidence vote in the BCSU's elected committee.*

285. *The Committee further notes the complainant's indication that there is no scope for establishing such an ad hoc committee under the BCSU's constitution for any purpose whatsoever let alone carrying out an election of the Central Executive Committee. Moreover, the Labour Act 2006 does not authorize the Government to approve change of officials of a trade union if such changes are made without complying with the constitution of the trade union concerned. The power to dismiss trade union officials/committees solely lies with the trade union concerned. The Committee further notes the complainant's indication that it has on numerous occasions submitted a Memorandum of Demand to the authorities claiming reinstatement of the Central Executive Committee of the BCSU (26 November, 6, 8, 14 and 20 December 2009 and 4 January 2010) but the Government has not taken any steps to reinstate the lawfully elected Central Executive Committee.*
286. *The Committee recalls that any intervention by the public authorities in trade union elections runs the risk of appearing to be arbitrary and thus constituting interference in the functioning of workers' organizations, which is incompatible with Convention No. 87, Article 3, which recognizes their right to elect their representatives in full freedom. More particularly, the removal by the Government of trade unions leaders from office is a serious infringement of the free exercise of trade union rights and measures taken by the administrative authorities when election results are challenged and run the risk of being arbitrary. Hence, in order to ensure an impartial and objective procedure, matters of this kind should be examined by the judicial authorities [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 429, 440 and 444].*
287. *In this regard, the Committee notes that Mr Bijoy Hajra, Organizing Secretary of the BCSU and Mr Ramvojan Koiry, General Secretary, aggrieved by the Director of Labour's decision, lodged an IRI case before the Second Labour Court at Chittagong against the Director of Labour and others and that, after hearing the parties, the Labour Court issued an order to suspend the decision of the Director of Labour that was in favour of the creation of the ad hoc committee. Mr Bijoy Boonerjee (ad hoc committee) lodged a Writ Petition before the High Court Division of the Supreme Court. The High Court stayed the decision of the Second Labour Court for six months and issued a rule calling upon the opposite parties to show cause as to why the impugned order should not be declared to have been made without any lawful authority. According to the Government's indication, the case is now pending with the Labour Court. However, it did not provide any subsequent judgment or any explanations as to how the case went back to the Labour Court. The Committee recalls that, in order to avoid the danger of serious limitation on the right of workers to elect their representatives in full freedom, complaints brought before labour courts by an administrative authority challenging the results of trade union elections should not – pending the final outcome of the judicial proceedings – have the effect of suspending the validity of such elections [see **Digest**, op. cit., para. 441]. In these circumstances, the Committee considers that the Central Executive Committee (Makhon Lal Karmaker – Ramjovan Koiry's panel) should be able to exercise its functions without delay and be recognized by the Government pending any decision by the judicial authorities. The Committee urgently requests the Government to provide a copy of any ruling handed down following the decision of the High Court and to keep it informed of any ruling handed down by the Labour Court in the abovementioned case, as well as to provide any additional information in this regard.*
288. *Concerning the allegations of violent suppression of demonstrations organized to protest the interference by the authorities in the internal affairs of the BCSU, the Committee notes the various demonstrations (strike, press conference, grand rally, demonstration, procession and a hunger strike) organized by the tea workers during the month of December 2009 immediately after the expulsion of the Central Executive Committee. More particularly, the Committee notes that, on 20 December 2009, tea workers went on hunger strike, demonstrated and rallied in different places of Moulvibazar District. However,*

according to the complainant, the tea workers faced obstruction from law enforcing agencies. During the demonstration, the police charged with batons on the tea workers causing injury to a number of them. In addition, another demonstration of the tea workers held at Srimongal, Moulvibazar District, was forcefully annulled by the police and it has been reported that 11 or more workers were injured due to the baton charge. The aforementioned incidents have been reported in most of the national daily newspapers of Bangladesh. The Committee notes that the Government totally denies these allegations on the basis of the inquiry report of the Deputy Director of Labour, Srimongal. The information provided about the inquiry is that the officer-in-charge of Srimongal Thana, the convener of the BCSU's ad hoc committee, Mr Boonerjee, and others, were interviewed. While the inquiry report was not provided, the Government indicates that these two persons stated that there was no such record of demonstrations to protest against interference nor had any violent suppression occurred at Srimongal.

- 289.** *The Committee recalls that workers should enjoy the right to peaceful demonstrations to defend their occupational interests [see **Digest**, op. cit., para. 133]. In general, the use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity. In cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see **Digest**, op. cit., paras 49 and 150]. Considering the contradictory versions of the complainant and the report of the Deputy Director of Labour, Srimongal, with regard to the violent suppression of the demonstration to protest against interference in the union elections on 20 December 2009 in various places of Moulvibazar District and during another demonstration held in the Moulvibazar District, and considering the factual discrepancies between the conclusions of the Deputy Director of Labour and the allegations made and the newspaper clippings provided by the complainant in this regard, the Committee requests the Government to conduct a thorough and independent investigation immediately into all the allegations of violent suppression of demonstration and to keep it informed in this regard.*

### **The Committee's recommendations**

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

- (a) The Committee considers that the Central Executive Committee (Makhon Lal Karmaker – Ramjovan Koiry's panel) should be able to exercise its functions without delay and be recognized by the Government pending any decision by the judicial authorities. The Committee urgently requests the Government to provide a copy of any ruling handed down following the decision of the High Court and to keep it informed of any ruling handed down by the Labour Court in the abovementioned case, as well as to provide any additional information in this regard.*
- (b) Considering the contradictory versions of the complainant and the report of the Deputy Director of Labour, Srimongal, with regard to the violent suppression of the demonstration to protest against interference in union elections on 20 December 2009 in various places of Moulvibazar District and during another demonstration held in the Moulvibazar District, and considering the factual discrepancies between the conclusions of the Deputy Director of Labour and the allegations and newspaper clippings provided by*

*the complainant in this regard, the Committee requests the Government to conduct a thorough and independent investigation immediately into all the allegations of violent suppression of the demonstration and to keep it informed in this regard.*

CASE NO. 2772

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

**Complaint against the Government of Cameroon  
presented by  
the General Union of Workers of Cameroon (UGTC)**

*Allegations: The complainant organization denounces the refusal of the CAMRAIL company to allow an affiliated organization, the Professional Trade Union of Train Drivers of Cameroon (SPCTC) to carry out its activities, as well as the dismissal of workers following a work stoppage*

- 291. The complaint was presented in communications from the General Union of Workers of Cameroon (UGTC) dated 16 March and 29 May 2010.
- 292. The Government sent partial observations in communications dated 6 August and 16 December 2010.
- 293. Cameroon has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

**A. The complainant's allegations**

- 294. In a communication dated 16 March 2010 the UGTC, on behalf of its affiliate, the Professional Trade Union of Train Drivers of Cameroon (SPCTC), denounces the actions taken against the SPCTC by the management of the CAMRAIL railway company and the dismissal of workers following a work stoppage.
- 295. According to information provided by the complainant organization, the SPCTC was established at a time when the train drivers, who then belonged to an action group, were putting forward a number of demands that they had been voicing since 2004. In the face of the company management's silence and the alleged failure of the existing trade unions to defend their interests, the train drivers had brought the matter before the labour inspectorate for the coastal area and the responsible ministries in the hope of finding a solution. Notice of strike action had been lodged by the action group in July 2008.
- 296. The complainant organization states that the President of the SPCTC, Alain Klaus Piper Mba, had informed the management of CAMRAIL of the creation of the trade union by letter of 12 August 2008 and had requested a meeting. By letter of 20 August 2009 the SPCTC informed the management that its President was its sole representative, since the

company had not yet indicated how many representatives it was entitled to. By letters dated 13 August and 11 September 2008 the SPCTC asked the company to deduct its members' contributions from their salaries.

- 297.** According to the complainant organization, the company management informed the SPCTC by letter of 6 October 2008 that the place for social dialogue between the management and its social partners was the joint committee which met twice a year and which, in accordance with the collective agreement, comprised five representatives of the management and 16 representatives of the workers. The management also reminded the SPCTC that the provisions of the collective agreement stipulated that, "until new workers' elections are held in the company, the signatories are not required to offer a seat to the member party on the joint committees and other bodies provided for in the agreement". The management therefore asked the SPCTC to approach the other railway unions. As to the request to dock the union members' contributions from their salaries and pay it into the union's account, the management stated that for administrative and management reasons the company was not in a position to do so.
- 298.** The complainant organization states that on 9 October 2008 the SPCTC wrote to the Ministry of Labour and Social Security to denounce the infringement of its trade union rights by the company. In its letter the SPCTC referred to the attempts that had been made to destabilize the founders of the union ever since they had requested the registrar of trade union to register it in May 2008. The union also denounced the sudden relocation of the SPCTC President to the Ngaoundéré depot, whereas for family reasons he had been previously assigned to Douala. The SPCTC further denounced the letter from the company stating that for administrative and management reasons it was not in a position to deduct union contributions from workers' salaries, while train drivers who had freely decided to resign from their union and join the SPCTC in fact continued to have their contributions deducted and paid over to the established unions. In conclusion, the SPCTC informed the Ministry that the company did not recognize any of its trade union rights despite the fact that it had submitted all the required documents, and that it had no furniture or space in which to function as required under the collective agreement (article 24b). The SPCTC, which claimed that it had subscription slips showing that 70 per cent of the train drivers were union members, had given notice that it would take strike action on 31 October 2008 if the situation was not resolved.
- 299.** The complainant organization stated that on 15 November 2008, following an abortive exchange of correspondence, the drivers went on strike as they had warned the previous July. Following the work stoppage the company dismissed seven of its workers: Koko Mbog Bebel, Chamba Ngassam Cyrille, Mbarga Alexis, Ngah Ndomba Marius, Wangmo Komgjoua William, Yonkou Yonkou and Atsafack Tsangou Paul Raoul.
- 300.** By a communication dated 29 May 2010, the UGTC transmitted a statement that it issued on 23 May 2010 through its President, Alain Klaus Piper Mba. In the statement the SPCTC noted that, in view of the company management's refusal to seek a solution and the failure of the responsible ministry to do anything, the train drivers throughout the entire railway network (Douala, Yaoundé, Bélabo and Ngaoundéré) stopped work on 15 November 2008 at 4 p.m. The drivers remained peacefully at their depots or halted their trains at the nearest station in accordance with safety instructions. The work stoppage lasted three days, from 15 to 18 November 2008, pending resolution of the dispute.
- 301.** The SPCTC noted that the police were present alongside representatives of the management at the Yaoundé depot and that anti-riot forces had used violence against the striking drivers to prevent them from entering the Douala depot on the second day of the work stoppage.

- 302.** On 18 November, five representatives of the train drivers summoned by the Ministry of Transport met representatives of the company management. Following the meeting, the Ministry issued a press release stating that the pending issues would be discussed by the joint committee, which then met from 2 to 12 December 2008.
- 303.** The SPCTC denounces the summoning of seven drivers by the Human Resources Department to a meeting on 5 January 2009 which, according to the union, turned into a makeshift disciplinary inquiry into accusations of participation in incidents that occurred during the work stoppage and ended in their immediate dismissal. At the end of the meeting, which lasted ten minutes, the workers were each handed a letter of dismissal, a copy of the record of the disciplinary meeting and their work certificate. The dismissed workers took the matter to the labour inspectorate but, at the first meeting they held with the company representatives and the labour inspector, men dressed in police uniform broke into the labour inspectorate's premises and presented them with summonses to the Douala police station. Attempts to resolve the issue ended five months later with an official report indicating that no reconciliation had been achieved between the dismissed workers and the company. The SPCTC states that a complaint has been lodged against CAMRAIL for unjustified dismissal and non-payment of dues.
- 304.** The SPCTC states further that, long before the November 2008 work stoppage, its President, Alain Klaus Piper Mba, had been the victim of verbal intimidation by the management. His train had derailed in Makor station on 13 October 2008 because of a mechanical failure, but he and his assistant had nevertheless been dismissed on 13 November 2008 for gross negligence.

## **B. The Government's reply**

- 305.** In a communication dated 6 August 2010, the Government states simply that it does not have the authority to order the reinstatement of dismissed workers or to rule on the alleged unjustified nature of their dismissal. The appropriate authority is the labour court, to which the UGTC can appeal for a ruling on the matter.
- 306.** In a communication dated 16 December 2010, the Government states that, following the CAMRAIL drivers' notice of strike action on 21 July 2008, a mission was despatched to Douala to settle the dispute. The mission concluded that the strike organized by the SPCTC was in violation of articles 158 and 164 of the Labour Code, since the disputes settlement procedure provided for therein had not yet been completed.
- 307.** The Government states further that a letter had been sent to the company's management requesting it to deduct the SPCTC members' contributions from their salaries and pay them into the union's account, to look into the SPCTC's complaints about the train drivers' hours of work and the replacement of the old REFIFERCAM locomotives and to consult the regional labour and social security services about the technical decisions involved.
- 308.** The Government notes, however, that the attempt by the Ministry of Labour and Social Security and the labour inspectorate to bring about a settlement of the dispute proved fruitless, and it is henceforward up to the workers concerned to appeal to the judicial authority to examine the case, as required by law.

## C. The Committee's conclusions

- 309.** *The Committee recalls that the case under examination refers to alleged acts of anti-union discrimination on the part of the management of the CAMRAIL company against the SPCTC, established in 2008, thereby preventing it from carrying out its union activities, and to alleged reprisals for a work stoppage by train drivers in November 2008.*
- 310.** *The Committee observes from the information provided that the SPCTC was established during a labour dispute between the train drivers, who were at that time members of an action group, and the company. It notes that the action group, which since 2004 had been putting forward a number of demands, had subsequently appealed to the labour inspectorate for the coastal area and the responsible ministries (Ministry of Labour and Social Security and Ministry of Transport) in an effort to resolve the dispute, and had given notice of strike action in July 2008.*
- 311.** *The Committee notes that the company management was informed of the establishment of the trade union by letter of 12 August 2008 signed by the SPCTC President, Alain Klaus Piper Mba. Mr Mba asked to meet the management and requested several times that, as required under the Labour Code, the company deduct its members' contributions from their salaries.*
- 312.** *The Committee notes that, by way of a reply, the company informed the SPCTC by letter of 6 October 2008 that the management and its social partners met twice a year in the joint works' committee, which under the terms of the collective agreement consisted of five representatives of the management and 16 representatives of the workers. The company went on to remind the SPCTC that, according to one of the clauses of the collective agreement, "until new workers' elections are held in the company, the signatories are not required to offer a seat to the member party on the joint committees and other bodies provided for in the agreement" and advised the union to approach the other railway unions. Finally, with regard to the request that the company deduct union contributions from its members' salaries and credit the union's account accordingly, the Committee notes that the company replied that because of administrative and management constraints it was not in a position to make such additional arrangements.*
- 313.** *The Committee notes further the SPCTC's allegations that attempts to destabilize the founders of the union had started from the moment the request for its registration was submitted to the registrar of trade unions in May 2008. The union also denounces the sudden relocation of the SPCTC President to the Ngaoundéré depot, whereas for family reasons he had previously been assigned to Douala. The SPCTC President had, moreover, allegedly been threatened by a representative of the management and dismissed for gross negligence in November 2008, following a technical failure that caused the derailment of a train in October 2008 of which he was in command. The Committee notes that the SPCTC denounces the fact that the company claimed not to be in a position to deduct contributions from workers' salaries owing to administrative and management constraints; yet at the same time it continued to deduct the contributions from workers who had freely opted to resign from other trade unions in order to join the SPCTC and to credit them to the established unions. The Committee notes that the SPCTC, which contends that its members account for 70 per cent of train drivers, claims that the company has never recognized its President or granted the union any of its rights. By way of proof, it points out that it has no furniture and no space in which to function, contrary to the requirements of article 24b of the collective agreement.*
- 314.** *The Committee notes that the allegations of anti-union discrimination against the SPCTC and its President were all mentioned in a letter from the union to the Ministry of Labour and Social Security dated 9 October 2008. It observes that, should the allegations made in*

*the SPCTC's letter prove to be true, they would constitute acts of anti-union discrimination. The Committee notes that, according to the information at its disposal, the letter appears to have elicited no reaction, and it requests the Government to inform it of any action that may have been taken by the authorities in response to the SPCTC's letter. If no such action has been taken, the Committee expects that the Government will refer the union's allegations without delay to the labour inspection services and that the necessary inquiries will be conducted to put an end to any acts of anti-union discrimination that may come to light. It further requests the Government to provide information in this respect without delay.*

- 315.** *The Committee notes that, since there had been no change in the situation, the train drivers throughout the railway network began a work stoppage on 15 November 2008 that lasted for three days. Subsequently, five of their representatives met the company management following a summons by the Ministry of Transport. At the end of the meeting, the Ministry issued a press release and the drivers' demands were referred to the joint works' committee, which met between 2 and 12 December 2008.*
- 316.** *The Committee notes that, for its part, the Government states that, upon the submission of notice of strike action by the train drivers in July 2008, a mission was sent to Douala to resolve the dispute. However, the mission reached the conclusion that the November 2008 strike by the SPCTC was a violation of articles 158–164 of the Labour Code since the disputes settlement procedure provided for therein had not been completed. The Committee notes further the Government's statement that it had written to the company management to ask it to deduct the SPCTC members' contributions from their salaries and pay the amount into the union's account, to look into the SPCTC's complaints about the train drivers' hours of work and the replacement of the old REFIFERCAM locomotives and to consult the regional labour and social security services about the technical decisions involved. According to the Government, however, the attempt by the Ministry of Labour and Social Security and the labour inspectorate to bring about a settlement of the dispute had proved fruitless.*
- 317.** *The Committee notes with regret that, although the information concerning the action taken by the Government does show a willingness on the part of the authorities to reach an amicable settlement of the dispute, it is incomplete, notably as regards the dates and chronology of the steps taken by the authorities and by the parties to the dispute, in accordance with the provisions of the Labour Code regarding the settlement of collective labour disputes, and that, in the Committee's view, it does not provide corroboration of the Government's observation that the strike called from 15 to 18 November 2008 was a violation of articles 158–164 of the Labour Code. Moreover, the Committee notes that it is apparent from the letter from the Ministry of Labour and Social Security to the company, and notably its request that it deduct the SPCTC members' union contributions from their salaries, that the union's fundamental right to organize its own affairs raises a genuine issue. The Committee asks the Government to indicate what the current status of the SPCTC is and, specifically, whether the union has its own premises, as called for in CAMRAIL's collective agreement, whether the matter of the deduction of the union members' contributions has been resolved with the company and whether the union is able to conduct its activities without interference, and, if not, to take the necessary measures vis-à-vis the company to remedy the situation without delay.*
- 318.** *The Committee notes the complainant organization's indication that, following the work stoppage from 15 to 18 November 2008, seven drivers were summoned on 5 January 2009 by the Human Resources Department to a meeting which, according to the union, turned into a makeshift disciplinary inquiry into accusations of participation in incidents that occurred during the work stoppage and ended in their dismissal the very same day. The workers concerned were Koko Mbog Bebel (an active member of the SPCTC), Chamba*

Ngassam Cyrille (the SPCTC's officer in charge of the working environment), Mbarga Alexis (National Secretary-General of the SPCTC), Ngah Ndomba Marius (the SPCTC's officer in charge of labour disputes), Wangmo Komgjoua William (Assistant Secretary-General of the SPCTC), Yonkou Yonkou (an active member of the SPCTC) and Atsafack Tsangou Paul Raoul (the SPCTC's officer in charge of communications). The details of the accusations levelled against these trade unionists, according to copies of the record of hearings provided by the complainant organization, are as follows:

- Koko Mbog Bebel, accused of having stolen parts from a locomotive, which he denies and claims witnesses can attest.
- Chamba Ngassam Cyrille, accused of having closed down a depot (no official record available).
- Mbarga Alexis, accused of having stolen parts from the controls of automatic, hand and reverse brakes, which he denies. He is also accused of having returned to the Douala depot without being instructed to do so by a superior, which he justifies by his need for money which he was unable to obtain through the regular channels.
- Ngah Ndomba Marius, accused of having stopped the surveillance of a depot when he was supposed to be on holiday, which he denies, explaining that he was only present because he wanted to consult the duty roster for the next day. He is also accused of not having been on duty on 16 November as he was supposed to be, which he explains by the fact that he could not find out when he was supposed to be on duty because the depot was closed.
- Wangmo Komgjoua William, accused of having gone to Douala without being instructed to do so by a superior, which he justifies by the absence of any schedule because of the work stoppage and by his need to refuel.
- Yonkou Yonkou (no official record available).
- Atsafack Tsangou Paul Raoul, accused of having abandoned his post on 15 November 2008, which he justifies by the work stoppage called by the SPCTC. He is also accused of not having driven a train on 16 November 2008, which he explains by the impossibility of consulting the duty roster because the depot was closed.

**319.** *The Committee notes that the SPCTC refers to several clauses of the collective works' agreement in contesting the dismissals. Specifically, it notes that none of the workers concerned were asked for an explanation until the hearing, whereas article 84a stipulates that an explanation must be requested in respect of any fault liable to incur dismissal. The Committee also notes that, under the collective agreement, "any absence of ten opening days or justified by theft or misuse of equipment shall be assimilated to desertion of one's post and shall constitute in itself a fault liable to incur the termination of a workers' contract without payment of any compensation or notice of termination (article 82b)". The Committee notes also that the SPCTC denounces the company's accusation of gross negligence to justify its dismissal of the seven drivers, inasmuch as the gross negligence was invoked on 5 January 2009 in respect of incidents dating back to 15 and 16 November 2008 and that a ruling based on case law had determined that an accusation of gross negligence becomes null and void one month after the incident concerned and cannot justify dismissal without notice (circular No. 33/S of 11 November 1969).*

**320.** *From the information at its disposal, the Committee concludes that the dismissal of Koko Mbog Bebel (an active member of the SPCTC), Chamba Ngassam Cyrille (the SPCTC's officer in charge of the working environment), Mbarga Alexis (National Secretary-General of the SPCTC), Ngah Ndomba Marius (the SPCTC's officer in charge of labour disputes),*

Wangmo Komgjoua William (Assistant Secretary-General of the SPCTC), Yonkou Yonkou (an active member of the SPCTC) and Atsafack Tsangou Paul Raoul (the SPCTC's officer in charge of communications) appears to be marred by irregularities in terms of the applicable texts and suggests to the Committee that there might be a link between the dismissals and the workers' trade union activities. The Committee notes that the dismissed workers took their case to the labour inspectorate but that the attempt to reach a settlement ended in an official record that conciliation between them and the company had proved fruitless. The Committee notes that a complaint has been lodged against the company for unjustified dismissal and non-payment of amounts due. The Committee requests the Government to keep it informed of the outcome of the complaint lodged against the company for unjustified dismissal of the seven members of the SPCTC.

**321.** *Noting that a judicial proceeding is taking place at the national level, should the anti-union nature of their dismissal prove to be true, the Committee expects the Government to take every necessary measure vis-à-vis the company to ensure that the dismissed trade unionists are reinstated in their jobs with retroactive payment of all wages due. Should it prove that for objective and compelling reasons their reinstatement should not be possible, the Committee requests that the workers concerned receive compensation of an amount that is sufficiently dissuasive sanction against anti-union dismissals. It requests the Government to keep it informed in this respect.*

**322.** *With regard to the case under examination, the Committee trusts in general that the Government will take the necessary steps to obtain information from the relevant employers' organization with a view to having at its disposal the views of the company concerned on the questions at issue.*

### **The Committee's recommendations**

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

- (a) In general terms regarding the case under examination, the Committee expects that the Government will take the necessary steps to obtain information from the relevant employers' organization with a view to having at its disposal the views of the company concerned on the questions at issue.*
- (b) The Committee notes with regret that, though the information concerning the action taken by the Government does show a willingness on the part of the authorities to reach an amicable settlement of the dispute, it is incomplete. The Committee observes that it is apparent from the letter from the Ministry of Labour and Social Security to the company, and notably its request that it deduct the SPCTC members' union contributions from their salaries, that the union's fundamental right to organize its own affairs raises a genuine issue. The Committee asks the Government to indicate what is the current status of the SPCTC and, specifically, whether the union has its own premises, as called for in CAMRAIL's collective agreement, whether the matter of the deduction of the union members' contributions has been resolved with the company and whether the union is able to conduct its activities without interference; and, if not, to take the necessary measures vis-à-vis the company to remedy the situation without delay.*

- (c) *The Committee notes that the allegations of anti-union discrimination against the SPCTC and its President were mentioned in a letter from the union to the Ministry of Labour and Social Security dated 9 October 2008 and observes that, should the allegations made in the SPCTC's letter prove to be true, they would constitute acts of anti-union discrimination. Noting that, according to the information at its disposal, the letter appears to have elicited no response, the Committee requests the Government to inform it of any action that may have been taken by the authorities in response to the SPCTC's letter. If no such action has been taken, the Committee expects that the Government will refer the SPCTC's allegations to the labour inspection services without delay and that the necessary investigations will be carried out to put an end to any acts of anti-union discrimination that may come to light.*
- (d) *The Committee requests the Government to keep it informed of the outcome of the complaint lodged against the company for unjustified dismissal of the seven members of the SPCTC. Should the anti-union nature of their dismissal prove to be true, the Committee expects the Government to take every necessary measure vis-à-vis the company to ensure that the dismissed trade unionists are reinstated in their jobs with retroactive payment of all salaries due. Should it prove that for objective and compelling reasons their reinstatement should not be possible, the Committee requests that the workers concerned receive an adequate compensation, which would represent sufficiently dissuasive sanction against anti-union dismissals. It requests the Government to keep it informed in this respect.*

CASE NO. 2803

DEFINITIVE REPORT

**Complaint against the Government of Canada  
presented by  
the Canadian Union of Public Employees (CUPE)**

*Allegations: The complainant organization alleges that the Government has passed legislation ordering the termination of a legal strike initiated by one of the complainant's constituent local unions, thereby interrupting collective bargaining between the parties, referring the dispute over to compulsory and binding arbitration, violating the union's right to strike, and setting a dangerous precedent of premature government intervention in labour disputes that do not involve essential service industries*

**324.** The Canadian Union of Public Employees (CUPE) submitted its complaint in a communication dated 16 June 2010.

- 325.** In a communication dated 21 December 2010, the Federal Government of Canada transmitted the reply of the Government of the Province of Ontario.
- 326.** Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

## **A. The complainant's allegations**

- 327.** In its communication dated 16 June 2010, the CUPE submits a complaint on behalf of its affiliate branch Local 3903 (the Union). CUPE Local 3903 represents about 3,400 contract faculty, teaching assistants, graduate assistants and research assistants at York University in Toronto. Graduate, research and teaching assistants are full-time graduate students at the University. Much of the graduate student funding is delivered through the collective agreement. The complainant explains that the collective agreement reached in 2005 expired on 31 August 2008. The Union served notice to bargain in July 2008 and met with the employer throughout July, August and September of the same year. The Union's key demand was to increase graduate funding, since a large majority of its members earn below the poverty line. Its second key demand was to increase job security for contract faculty members. The complainant states that since its creation, the University has disproportionately relied upon contract faculty. Considering the fact that a number of contract faculty members have been working at the University for multiple decades, it has become increasingly difficult for the employer to label them a contingent workforce, and yet contract faculty members continue to be hired on four- or eight-month contracts with little job security. Finally, the Union demanded improvements to health benefits and child care, as well as an increase in duration of contracts, so as to align with the rest of the sector.
- 328.** CUPE alleges that the employer refused to respond to any of their monetary demands until 16 September 2008, and even then, issued only a "placeholder" response, indicating that a more meaningful offer would be forthcoming at a later stage of negotiations. The same day, the employer requested that the Union agree to binding arbitration to resolve all outstanding issues. In compliance with the Ontario Labour Relations Act, the Union filed for conciliation and held a strike vote in which an overwhelming majority of members voted to go on strike.
- 329.** A strike date was set for 1 November 2008. The complainant organization alleges that by the end of October, the employer had still not responded to their key demands. The Union postponed the strike date to 6 November 2008. The employer finally presented its first response to the Union's demands on 4 November 2008. However it fell short of the membership's needs and the Union went on strike on 6 November 2008. In response to the strike action, the University cancelled all classes, affecting over 50,000 students.
- 330.** CUPE states that although it repeatedly asked the employer for a meeting, hoping for a quick resolution of the labour dispute, the employer met with the Union on only two occasions in the first two months of the strike – for one day in November and a few days in December. Instead, according to the organization, the employer directed its efforts at getting public support and lobbying the Government to adopt back-to-work legislation.
- 331.** The employer met with the Union for four days at the beginning of January 2009 and presented its final offer. The offer was overwhelmingly rejected by Union members attending the general membership meeting. The complainant organization alleges that instead of continuing to negotiate, the employer responded by filing for a supervised vote

on the same offer with the provincial Government. The vote was held on 19 and 20 January 2009, in which the offer was once again rejected.

- 332.** On 21 January 2009, following the supervised vote, the Premier of Ontario announced he was appointing a special mediator. Bargaining resumed on 22 January 2009. However, according to the complainant, the employer refused to make any move. On 24 January 2009, the mediator called the negotiations off, and the Premier of Ontario announced that since the negotiations were in deadlock, the Government would bring a legislated end to the strike. On 29 January 2009, the Government passed the York University Labour Disputes Resolution Act (Bill 145), ordering the termination of the 85-day strike. As a result, collective bargaining was interrupted and the case was then referred to binding arbitration. The arbitrator conducted six days of mediation in March and April of 2009, during which little progress was made. On the sixth day, he tabled a mediator's recommendation, which he suggested would be his likely position in an arbitration hearing. With few options left, both the Union and the employer signed a memorandum of settlement on 7 April 2009 based on the arbitrator's recommendation. Although the Union's bargaining team and executive sent the deal to the membership without a recommendation, the settlement was ratified two weeks later.
- 333.** CUPE alleges that the employer was never serious about reaching a negotiated settlement through collective bargaining and instead relied on the Ontario Government to violate the Union's members' freedom of association and collective bargaining rights enshrined in Conventions Nos 87 and 98. The complainant organization states that Bill 145 sets a dangerous precedent for Ontario. Although members of the Union are essential to the operation of the University, according to the complainant, they do not constitute an essential service.

## **B. The Government's reply**

- 334.** In a communication dated 21 December 2010, the Government of Canada transmits the comments made by the Ontario Government on this case. The latter recalls that while Canada has not ratified Convention No. 98, the Government of Ontario has great respect for the collective bargaining process and that it is not only the responsibility of employers and unions to resolve their differences at the bargaining table, it is also their right under the applicable provincial legislation. To that end, the Government, through the Ministry of Labour (MOL) provides conciliation and mediation support to parties engaged in collective bargaining. Over the past few years, approximately 97 per cent of negotiations have resulted in settlements with no work stoppages.
- 335.** The Government of Ontario recalls that the parties were engaged in collective bargaining for approximately seven months. From October 2008 through January 2009, the Government provided assistance of the MOL conciliation officers and mediators. Notwithstanding the continued efforts of the MOL mediators, the parties remained deadlocked as the Union rejected the employer's last offer. The provincial Government states that contrary to the assertion made by CUPE, collective bargaining was not interrupted by the adoption of Bill 145, as no actual bargaining was taking place, despite the provincial Government's efforts to assist the parties in resolving their differences through negotiation.
- 336.** The Ontario Government states that the education of over 45,000 students had been disrupted, with classes having been cancelled for more than 11 weeks, and that the completion of the academic year was at serious risk. The Government points out that post-secondary education serves a critical public function, and that an extension or loss of an academic year has significant personal, educational, social and financial implications for students and their families, as well as serious organizational and economic impact on the

University and the broader public. Given these serious concerns and the clear deadlocks in negotiations, the Government considers that public interest required an exceptional and temporary solution to address the matters.

- 337.** The Government of Ontario adds that legislation was introduced only after the parties were given every reasonable opportunity to resolve their differences at the bargaining table. While Bill 145 referred the matters in dispute to a mediator–arbitrator, nothing in the legislation prohibited the parties from continuing to negotiate and, in fact, it specifically encouraged them to do so. The Government indicates that the parties agreed on the appointment of the mediator–arbitrator and that they settled their dispute in the course of the mediation phase of the mediation–arbitration. Therefore, according to the provincial Government, the settlement was not imposed by the mediator–arbitrator, but was agreed to by the parties. The settlement, which sets out the terms of a new collective agreement, was subject to a ratification vote by the Union’s members. On 27 April 2009, the Union announced that its members had ratified the new collective agreement. In the Government’s view, the back-to-work legislation under the circumstances was appropriate and necessary, and effectively facilitated an agreement between the parties.

### **C. The Committee’s conclusions**

- 338.** *The Committee notes that this case concerns back-to-work legislation (the York University Labour Disputes Resolution Act, 2009) adopted by the Government of Ontario to bring to an end an 85-day strike at the York University (the relevant provisions of the Act appear in the appendix).*

- 339.** *The Committee notes that the legality of the strike is not disputed and that the complainant and the Government of Ontario appear to agree generally on the events that led to the adoption of the back-to-work legislation. The preamble to the Act summarizes the main reasons for its adoption and reads as follows:*

...

*The parties have engaged in collective bargaining for approximately seven months for new collective agreements, including conciliation and mediation with the assistance of Ministry of Labour staff, but have failed to resolve their disputes. A vote of the members of the bargaining units represented by the Union in respect of the University’s last offer was conducted. That offer was rejected by all of the bargaining units. Continuing efforts of the Ministry of Labour to assist the parties in resolving their differences through mediation have proved unsuccessful. Negotiations have reached an impasse and the parties are clearly deadlocked.*

*The strike has been ongoing and classes have been cancelled for more than 11 weeks. The education of over 45,000 students has been disrupted and the completion of the academic year is at serious risk. Post-secondary education serves a critical public function. Furthermore, a lengthy extension or loss of an academic year has significant personal, educational, social and financial implications for students and their families as well as serious organizational and economic impacts on the University and the broader public. These negative consequences may be long term in nature and the repercussions could extend beyond the parties, the students and their families. The continuation of these disputes and the resulting disruption in education and its corresponding effects give rise to serious public interest concerns. The interests of students, families and the broader community require that these disputes be resolved. Having regard to these serious circumstances and the clear deadlock in negotiations, the public interest requires an exceptional and temporary solution to address the matters in dispute so that new collective agreements may be concluded through a fair process of mediation–arbitration, staff and students can return to class and the University can resume providing post-secondary education.*

340. *At the outset, the Committee observes that this is the fourth time in the last ten years that it has been called to address the issue of special legislation being adopted to put an end to a lawful strike in the education sector in Canada, Ontario [see Cases Nos 2045, 2145 and 2305 as set out in its 320th, 327th and 335th Reports, respectively]. The Committee notes that in the present case, the Government maintains that the adoption of the back-to-work legislation was justified in order to protect the public interest. While it appreciates the Government of Ontario's concerns set out above, the Committee recalls that the right to strike is one of the legitimate and essential means through which workers and their organizations may defend their economic and social interests [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 521–522]. Furthermore, while the right to strike can be subject to certain limited exceptions, the Committee recalls that the education sector does not fall within these exceptions [see **Digest**, *op. cit.*, para. 587]. The Committee recognizes that unfortunate consequences may flow from a strike in a non-essential service, but considers these do not justify a serious limitation of the right to strike unless they become so serious as to endanger the life, personal safety or health of the whole or part of the population. In examining a previous complaint involving the education sector, the Committee stated that the possible long-term consequences of strikes in the teaching sector did not justify their prohibition [Case No. 2145, para. 303, 327th Report, and **Digest**, *op.cit.*, para. 590]. In this respect, however, the Committee has considered that in cases of strikes of long duration, minimum services may be established in the education sector, in full consultation with the social partners [see **Digest**, *op. cit.*, para. 625].*
341. *The Committee deeply deplores that the Government of Ontario has decided, for the fourth time in about ten years (September 1998, November 2000, June 2003 and January 2009) to adopt ad hoc legislation which brings to an end, in a unilateral manner, a lawful strike in the education sector. The Committee considers that repeated recourse to such legislative restrictions can only in the long term destabilize the labour relations climate, if the legislator frequently intervenes to suspend or terminate the exercise of rights granted to workers and their union by the general legislation.*
342. *In this context, the Committee notes that according to the complainant, although it repeatedly asked the employer for a meeting, hoping for a quick resolution of the labour dispute, the employer met with the Union on only two occasions in the first two months of the strike. According to CUPE, instead of trying to reach a negotiated solution, the employer directed its efforts at getting public support and lobbying the Government to adopt a back-to-work legislation. As regards the allegation of violation of the principle of bargaining in good faith, the Committee notes that the Government indicates that no actual collective bargaining was taking place as the parties were deadlocked due to the Union's rejection of the employers' last offer. As a general rule, the Committee recalls that it is important that both employers and trade unions bargain 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. It further recalls that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see **Digest**, *op. cit.*, paras 935 and 937].*
343. *The Committee further notes that once the offer had been rejected by the Union membership in a vote supervised by the Government on 19 and 20 January 2009, the mediator appointed by the latter on the following day called the negotiations off on 24 January, just three days after assuming his/her duties. The Committee understands (from the publicly available records) that on the very next day, Bill No. 145 was introduced in the Legislative Assembly and given the first reading. On 29 January 2009, the Act providing for a binding mediation–arbitration procedure was adopted. While*

*noting the Government of Ontario's statement that nothing in the legislation prohibited the parties from continuing to negotiate and that the legislation rather encouraged them to do so, the Committee recalls as regards the compulsory nature of the mediation–arbitration process, that recourse to these bodies should be on a voluntary basis [see **Digest**, op. cit., para. 932] and that recourse to compulsory arbitration in cases where the parties do not reach an agreement through collective bargaining is permissible only in essential services in the strict sense of the term [see **Digest**, op. cit., para. 994]. The Committee regrets that despite its recommendations in the previous abovementioned cases to consider establishing a voluntary mechanism which could avoid and resolve labour disputes to the satisfaction of the parties concerned, it appears that adoption of a back-to-work legislation continues to be seen by the Government of Ontario as the only means of dealing with a deadlock in a collective bargaining. The Committee emphasizes that the Government should promote free collective bargaining and considers, as it did in previous cases, that it would be more conducive to a harmonious industrial relations climate if the Government of Ontario would establish a voluntary and effective mechanism which could avoid and resolve labour disputes to the satisfaction of the parties concerned. The Committee therefore once again urges the Government to take steps to encourage the Government of Ontario to establish a voluntary and effective dispute prevention and resolution mechanism rather than having recourse to back-to-work legislation.*

### **The Committee's recommendation**

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

*The Committee once again urges the Government to take steps to encourage the Government of Ontario to establish a voluntary and effective dispute prevention and resolution mechanism rather than having recourse to back-to-work legislation.*

## **Appendix**

### **Relevant provisions of the York University Labour Disputes Resolution Act, 2009**

...

**3(1)** As soon as this Act receives royal assent, the employer shall use all reasonable efforts to operate and continue to operate its undertakings, including any operations interrupted during any lockout or strike that is in effect immediately before this Act receives royal assent.

(2) As soon as this Act receives royal assent, the employer shall terminate any lockout of employees that is in effect immediately before this Act receives royal assent.

(3) As soon as this Act receives royal assent, the bargaining agent shall terminate any strike by employees that is in effect immediately before this Act receives royal assent.

(4) As soon as this Act receives royal assent, each employee shall terminate any strike that is in effect before this Act receives royal assent and shall, without delay, resume the performance of the duties of his or her employment or shall continue performing them, as the case may be.

**4(1)** Subject to section 6, no employee shall strike and no person or trade union shall call or authorize or threaten to call or authorize a strike by any employees.

(2) Subject to section 6, no officer, official or agent of a trade union shall counsel, procure, support or encourage a strike by any employees.

...

**6.** After a new collective agreement with respect to a listed bargaining unit is executed by the parties or comes into force under subsection 19(5), the Labour Relations Act, 1995 governs the right of the employees in that unit to strike and the right of the employer to lock out those employees.

**7(1)** A person, including the employer, or a trade union who contravenes or fails to comply with section 3, 4 or 5 is guilty of an offence and on conviction is liable:

- (a) in the case of an individual, to a fine of not more than \$2,000; and
- (b) in any other case, to a fine of not more than \$25,000.

(2) Each day of a contravention or failure to comply constitutes a separate offence.

**8.** A strike or lockout in contravention of section 3, 4 or 5 is deemed to be an unlawful strike or lockout for the purposes of the Labour Relations Act, 1995.

...

**10.** If this Act applies to the employer and the bargaining agent in respect of a listed bargaining unit, the parties are deemed to have referred to a mediator–arbitrator, on the day this Act receives royal assent, all matters remaining in dispute between them with respect to the terms and conditions of employment of the employees in that unit.

**11(1)** On or before the fifth day after this Act receives royal assent, the parties shall jointly appoint the mediator–arbitrator referred to in section 10 and shall forthwith notify the minister of the name and address of the person appointed.

(2) If the parties fail to notify the minister as subsection (1) requires, the minister shall forthwith appoint the mediator–arbitrator and notify the parties of the name and address of the person appointed.

...

(7) The minister may appoint as a mediator–arbitrator a person who is, in the opinion of the minister, qualified to act.

**12(1)** The mediator–arbitrator has exclusive jurisdiction to determine all matters that he or she considers necessary to conclude a new collective agreement.

(2) The mediator–arbitrator remains seized of and may deal with all matters within his or her jurisdiction until the new collective agreement is executed by the parties or comes into force under subsection 19(5).

(3) The mediator–arbitrator may try to assist the parties to settle any matter that he or she considers necessary to conclude the new collective agreement.

(4) As soon as possible after a mediator–arbitrator is appointed, but in any event no later than seven days after the appointment, the parties shall give the mediator–arbitrator written notice of the matters on which they reached agreement before the appointment.

(5) The parties may at any time give the mediator–arbitrator written notice of matters on which they reach agreement after the appointment of a mediator–arbitrator.

**13(1)** The mediator–arbitrator shall begin the mediation–arbitration proceeding within 30 days after being appointed and shall make all awards under this Act within 90 days after being appointed, unless the proceeding is terminated under subsection 18(2).

(2) The parties and the mediator–arbitrator may, by written agreement, extend a time period specified in subsection (1) either before or after it expires.

...

15(1) An award by the mediator–arbitrator under this Act shall address all the matters to be dealt with in the new collective agreement with respect to the parties and a listed bargaining unit.

16. The award of a mediator–arbitrator under this Act is final and binding on the parties and on the employees.

...

18(1) Until an award is made, nothing in sections 10 to 17 prohibits the parties from continuing to negotiate with a view to making a new collective agreement and they are encouraged to do so.

(2) If the parties execute a new collective agreement before an award is made, they shall notify the mediator–arbitrator of the fact and the mediation–arbitration proceeding is thereby terminated.

...

CASE NO. 2770

DEFINITIVE REPORT

**Complaint against the Government of Chile  
presented by  
the World Federation of Trade Unions (WFTU)**

*Allegations: The complainant organization objects to section 381 of the Labour Code (which, while prohibiting the hiring of workers to replace strikers, provides for some exceptions), and alleges that Cerámica Espejo Ltda hired workers to replace workers striking in January 2010 over a pay claim and that the Chilean police (Carabineros de Chile) provided protection to the company so that it could illegally remove goods from its plant given that the workers in the transport department were on strike*

345. The complaint is contained in a communication from the World Federation of Trade Unions (WFTU) dated 29 March 2010.

346. The Government sent its observations in a communication dated 11 February 2011.

347. Chile 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**

348. In its communication of 29 March 2010, the WFTU states that Chilean legislation contains a series of regulations that are contrary to the conventions and principles of freedom of

association. In this case, the WFTU objects specifically to section 381 of the Labour Code, which stipulates that the replacement of strikers is prohibited, except in certain circumstances.

- 349.** According to the WFTU, the employer may always hire strike-breakers to replace workers who are legitimately exercising their right to strike. Sometimes it is authorized from the first day, at other times from the 15th day of the strike, but in practice strike-breakers begin working from the first day. The WFTU alleges that the outcome of negotiations in Cerámica Espejo Ltda, a company founded in 2002 and an offshoot of Cerámica Espejo S.A., which has been in operation since 1967, is an example of this. The workers submitted their petition to the company in January 2010 and the company indicated its refusal to negotiate, claiming that it did not recognize the trade union. The Labour Inspection, intervening as provided under the law in the case of a dispute, instructed it to negotiate.
- 350.** The WFTU states that the company replied, refusing any form of pay increase, or past or future cost of living rise, and proposing to maintain the current terms for four more years, leaving workers with no practical option but to resort to strike action. The workers exhausted all existing mediation possibilities in an attempt to negotiate with the company, but the company categorically refused any form of negotiation and this led to the strike. The company failed to comply with the provisions of section 381 and, while it offered to pay the bonus stipulated to enable it to hire strike-breaking workers, it did not comply with the other requirements of the Labour Code, namely to offer a Consumer Price Index (CPI) readjustment. The company hired strike-breakers and also redeployed workers performing other duties to replace the strikers. The situation was reported to the Labour Inspection so that it could be verified, but when the inspector arrived at the company, the grinder, a kiln and the storeroom were in operation and the Inspection, having found one vehicle with a hired driver, plus other workers in the week when the strike began, only reported the presence of one strike-breaker, who was the company caretaker. According to the inspectors, they had to consult with their superiors as to whether or not the others were strike-breakers.
- 351.** The WFTU reiterates that the company could not hire strike-breakers and pressure from the workers prompted the Inspection to call for mediation to make the company remove a worker reported by the Inspection as the only strike-breaker, and to seek a negotiated end to the dispute. This mediation took place on the afternoon of the fourth day of the strike. According to the WFTU, the company had achieved its aims during these four days. The company said that it would remove the strike-breaker, which it indeed did that very day, but on the sixth working day it reinstated this strike-breaker, plus hired others.
- 352.** Trade union officials subsequently met on the ninth day of the strike to request that the presence of strike-breakers be verified. The Inspection refused to agree to this revision because it stated that mediation would be sought for the following day. This mediation was called for and the company stated that it was obliged to attend, but that no one could force it to negotiate and reiterated that it did not recognize the trade union because it did not exist. In the meantime, ten days had been completed with strike-breakers.
- 353.** The WFTU stated that the company was unable to operate the departments on strike, including transport and dispatch, as the workers in those departments were on strike, but, despite that, the employers removed goods from the company's plant with the protection of the Chilean police (Carabineros de Chile). The police, whose responsibility was to maintain public order, actually acted as protectors, thereby enabling an offence to be committed, i.e. the illegal replacement of the company driver and dispatcher who were on strike. The WFTU adds that, as these events occurred on four occasions, officials of the United Federation of Workers (FUT) drew the attention of the police to their illegal act. As a consequence, a second lieutenant tried to intimidate and arrest the trade union officials,

which he eventually failed to do. The police were carrying out protection duties to enable the company to remove company products illegally. To put an end to the unlawful police action, the coordinator of the WFTU in Chile went in person to the 11th police station in Lo Espejo to file his claim that police were protecting an employer. In the police station, a lieutenant told him that he was unaware of the regulation governing them and that they made their own decisions on the deployment of forces outside of the community, and that their task was to maintain public order. According to the WFTU, it was a case of the police making believe that there is disorder in the strike area and thus were so taking appropriate action, something which was absolutely untrue. In the light of the lieutenant of the Lo Espejo police station's endorsement of the unlawful action of his subordinates, the trade union official went to the offices of the southern prefecture of the Santiago police. He was subsequently referred to another unit where the Police Prosecutor's Office was located and where he filed the written claim that the police were protecting the employer. Although the claim was received, he was informed that it would be considered later and that he would receive a reply within 20 days.

## **B. The Government's reply**

**354.** In its communication of 11 February 2011, the Government states that, with regard to the comments relating to section 381 of the Labour Code, in its paragraph 1 it is stipulated that: "... the replacement of striking workers shall be prohibited, except when the last offer, formulated in the manner and with the time limit indicated in paragraph 3 of section 372 (two days), provides for at least ...". According to the Government, this makes it very clear that the general rule in this matter is that the replacement of striking workers is prohibited, which is perfectly in line with the provisions of ILO Conventions Nos 87, 98 and 135.

**355.** Notwithstanding the above, the following paragraphs of section 381 state that replacement workers may be hired provided that at least the following specific and explicit legal requirements are met:

- (a) Provisions identical to those contained in the contract, agreement or arbitral award in force, subject to a readjustment equivalent to the percentage change in the CPI determined by the National Institute of Statistics, or another body carrying out this task on its behalf, in the period inclusive from the date of the last readjustment to the date of expiry of the respective instrument.
- (b) A minimum annual readjustment corresponding to the change in the CPI for the duration of the contract, excluding the last 12 months.
- (c) A replacement bonus, which shall amount to the equivalent of four "incentive units" (Unidades de Fomento, UF) for each worker hired as a replacement. The total sum of this bonus shall be paid in equal parts to the workers involved in the strike within five days from the date of the end of the strike.

In this case, the employer may hire workers as it deems necessary to perform the duties of those involved in the strike from the first day of the beginning of the strike.

Furthermore, in this case, the workers may choose individually to return to work from the 15th day of the beginning of the strike.

In the event the employer fails to make an offer as set out in paragraph 1, and within the time limit stated therein, it may hire workers as it deems necessary for the aforementioned purpose, from the 15th day of the beginning of the strike, provided it offers the bonus referred to in paragraph 1, subparagraph c) of section 381. In this case, the workers may choose individually to return to work from the 30th day of the beginning of the strike.

In the event the offer referred to in paragraph 1 of section 381 is delivered after the deadline, the workers may choose individually to return to work from the 15th day of the delivery of the offer, or from the 30th day of the beginning of the strike, whichever of these

falls first. However, the employer may hire workers as it deems necessary to perform the duties of those involved in the strike from the 15th day of the beginning of the strike.

For the purposes of section 381, the employer may make more than one offer, provided that at least one of the proposals meets the requirements set out therein, as applicable, and the bonus referred to in paragraph 1, subparagraph c).

In the event the workers decide individually to return to work, in accordance with the provisions of this section, they must comply with the conditions set forth in the employer's last offer.

Once the employer has exercised the rights stipulated in this section, it may not withdraw the offers referred to therein.

- 356.** In this respect, the Government of Chile notes the comments contained in the complaint on the legal existence of the aforementioned exceptions to the prohibition on hiring replacement workers for strikers. It should be explained, however, that the legislator has envisaged these exceptions exclusively for situations explicitly and specifically provided for in law, and whose application entails a considerable financial burden for the employer, which discourages it from exercising this prerogative, particularly when it is exercised from the first day of the strike.
- 357.** The foregoing is confirmed in Labour Directorate decision No. 2852/157 of 30 August 2002, which states: "... has been envisaged by the legislator to discourage the replacement of workers from the first day of the strike, since it would render it more expensive to do so ... the bonus must be contained in the employer's last offer so that it may exercise its right to replace workers and so that the employees involved may exercise their prerogative to resume their usual work".
- 358.** With regard to the offences attributed to Cerámica Espejo Ltda, the Government states that the company indicated in its letter of observations that, while it is true that it did not offer the minimum annual CPI readjustment, it had offered to pay the replacement bonus of four UF for each worker hired as a replacement. Such an offer legally entitled it to hire replacement workers from the 15th day of the beginning of the strike and to accept strikers from the 30th day, in accordance with section 381 of the Chilean Labour Code. As mentioned by the company in question, this can be verified in memorandum ORD No. 272 of 10 March 2010 of the Communal Labour Inspection of Santiago Sur. The company also stated that it had not redeployed its workers to replace the strikers, since work teams included more workers than just those who were on strike. They also stated that they had only hired one night watchman on the 30th day from the beginning of the strike, when it was already legally permitted to hire replacement workers.
- 359.** The Government states that it is of prime importance to note that it is not in a position to give an opinion on the offences contained in this complaint, since any references made are not supported by documents to enable the establishment of a presumption of truth. It adds that Chile has an efficient institutional structure through the National Labour Directorate, an institution which has fully complied with the law in performing its duties of inspection and mediation; hence, should it transpire that a punishable act has been committed, it can establish the relevant offence and ensure the proper exercise of work-related rights. Based on the foregoing, the Labour Directorate instructed the company to negotiate and verified and reported the existence of a replacement worker, thereby exercising the powers bestowed by Chilean labour law.
- 360.** The Government adds that Chile has also undertaken a fundamental reform of labour justice administration to safeguard all labour rights provided for both in international treaties signed by Chile and in its Constitution. This reform is guided by basic principles, which include the bilateral nature of hearings, orality, publicity, State authority-initiated

proceedings, speciality and immediacy. The claimants did not make use of the mechanisms available to them under the law to ensure respect of their labour rights.

- 361.** Notwithstanding the foregoing, it should be noted that the complaint fails to state how the rights defined in ILO Conventions Nos 87, 98 and 135 have been violated. In this regard, the Government states that it has fully complied with the provisions and principles enshrined in those instruments, recognizing and promoting freedom of association, a fundamental guarantee provided for in paragraph 16, article 19, of the Chilean Constitution. In particular, with regard to Convention No. 87, the right of the workers to form and join the trade union organization in question was respected at all times and the public authorities refrained from any intervention that might restrict this right. With regard to the provisions of Convention No. 98, and in particular Article 4, actions taken by the Labour Directorate were in accordance with the international instrument, as the necessary steps were taken to encourage the full development and utilization of machinery for collective bargaining between employers and workers. Lastly, the Government states that it acted in accordance with ILO Convention No. 135, since the company's worker representatives enjoyed effective protection at all times against any prejudicial act. Their trade union affiliation, participation in the trade union and related activities were especially protected and they were never cut off from the company.
- 362.** The Government states that the guiding principles of collective bargaining have been fully respected which, according to the doctrine, stipulate: (1) it is a fair and peaceful dispute settlement mechanism; (2) its proceedings must allow the parties to exercise the rights to which they are entitled; (3) its provisions must promote a flexible working relationship and prevent the outcome of negotiations from interfering with the legitimate rights of third parties; (4) it must be a technical process, which means that the parties should negotiate with a knowledge of the background to the case and the necessary advice; and (5) this process must also be responsible and inclusive, enabling the parties to agree on mediation and arbitration mechanisms so that a strike would only take place should it be impossible to reach a solution.
- 363.** With regard to the actions of the Chilean police, the Government notes that the company stated that it resorted to police protection for the truck as it left the company, which on one occasion was damaged by Mr Luis Calderón, President of the striking trade union. The company also stated that this person had allegedly cut the electricity supply on four occasions and on three occasions is said to have done the same to the water supply; thus, according to the company, clearly restricting the right to work of those workers who were not on strike.
- 364.** The Government states that the police reported that on the occasion in question the chief of police and his staff were present at the scene, "... interviewing both parties to the dispute, providing an opportunity for them to defend their positions as provided for in law and offering to keep lines of communication with the police open to ensure that public order rules were not transgressed, which is a constitutional and legal obligation of the Chilean police force".
- 365.** In this regard, preventive monitoring mechanisms and patrols are understood to have been put in place to safeguard security and the personal safety of all participants in the dispute, as stated by the police institution in the aforementioned document. During the course of events, police personnel are understood to have gone to the company to verify the claim of non-striking workers, who also expressed concern for their own safety due to their being threatened by striking workers because they were not taking part in the strike, a situation that would lead to the right to work of those workers being affected and restrict their entry into and exit from the company's plant. It should also be noted that the police stated that: "It is not the responsibility of the Chilean police to involve itself in the legal classification

of workers, hence it is not possible to discriminate between usual, permanent workers and legal replacement workers.” To avoid major disputes, the respective chief of police remained in constant communication with both parties to the dispute.

- 366.** Moreover, the Chilean police stated that, on 29 March 2010, Mr José Luis Ortiz Arcos came and introduced himself to its units as an important official of the WFTU in Chile and is alleged to have demanded to have a meeting with high command. He is said to have been in a blind rage and displaying a defiant attitude. Lastly, they stated in their defence that any action taken by the Chilean police was in accordance with the Constitution and Police Constitutional Act No. 19861, since the institution has responsibility for maintaining public order, the personal safety of those involved in disputes and respect for public and private property at all times.
- 367.** The Government states that it is paramount to make further reference to the institutional structure of Chile, as the Chilean police force belongs to this group of bodies. Its primary role is to maintain and guarantee public order, which it adeptly fulfilled by undertaking preventive patrol and monitoring duties to safeguard security and the personal safety of all the participants in the dispute; interviewing both parties and acting as a facilitator for smooth communications. It verified the claims of workers who did not join the stoppage and, in particular, it maintained its independence and impartiality, neither discriminating nor making a legal distinction between workers. The conduct of the Chilean police was perfectly in line with Article 1 of ILO Convention No. 98, as the workers enjoyed adequate protection at all times against any discriminatory act aimed at impairing freedom of association in their workplace.
- 368.** Moreover, according to the Government, it is important to state that the actions of the Chilean police in the case in question are perfectly in line with the criteria set by the ILO to gauge police intervention during the strike, since they were at all times directed at maintaining public order. The Government concludes that at no time has it strayed from the principles enshrined in ILO Conventions Nos 87, 98 and 135 ratified by Chile and neither has it neglected the principles and rules that inspire and govern labour legislation. The actions of the bodies in question, the Chilean police and the Labour Directorate, were at all times in line with their sphere of competence under the rule of Chilean law, with full respect for ratified international treaties.

### **C. The Committee's conclusions**

- 369.** *The Committee notes that the complainant organization in the present case objects to section 381 of the Labour Code (which, while prohibiting the recruitment of workers to replace strikers, provides for some exceptions; these are cited in the Government's reply), and alleges that the company Cerámica Espejo Ltda hired workers to replace workers striking in January 2010 over a pay claim and that the Chilean police force provided protection to the company so that it could illegally remove goods from its plant given that the workers in the transport department were on strike.*
- 370.** *With regard to section 381 of the Labour Code on the replacement of striking workers, the Committee notes that the Government states that: (1) the general rule on this matter provided for in paragraph 1 of the section in question is that the replacement of striking workers is prohibited, but that notwithstanding this, the subsequent paragraphs of section 381 state that replacement workers may be hired provided that the specific and explicit legal requirements are met; and (2) the legislator has envisaged these exceptions exclusively for situations explicitly and specifically provided for in law, and their application entails a considerable financial burden for the employer, which discourages it from exercising the prerogative, particularly when it is exercised from the first day of the*

strike (according to the Government, Labour Directorate decision No. 2852/157 of 30 August 2002 stipulates the aim of discouraging the replacement of strikers).

- 371.** *In this regard, the Committee recalls that on numerous occasions it has emphasized that, if a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 633]. The Committee also notes that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated on several occasions that section 381 of the Labour Code is not in compliance with Convention No. 87 ratified by Chile.*
- 372.** *The Committee also wishes to recall that the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association, and that the employment of persons to perform duties which have been suspended as a result of a labour dispute can, if the strike is lawful, be justified only by the need to ensure the operation of services or industries whose suspension would lead to an acute crisis [see **Digest**, op. cit., paras 632 and 636]. In these circumstances, the Committee requests the Government to take steps to amend section 381 of the Labour Code, so that the hiring of workers to replace strikers will only be possible in the event of strikes in essential sectors or services in the strict sense of the term, in the event of minimum services not being maintained, or in the event of an acute crisis, and to ensure that these amendments are effectively implemented.*
- 373.** *With regard to the allegations relating to the hiring of workers to replace strikers by Cerámica Espejo Ltda (according to the WFTU, the Labour Inspection reported the employment of one worker during the strike), the Committee notes that the Government states that the company reported that: (1) although it is true that it did not offer the minimum annual CPI readjustment, it offered to pay the replacement bonus for each worker hired as a replacement; (2) such an offer legally entitled it to hire replacement workers from the 15th day of the beginning of the strike and to accept strikers from the 30th day, in accordance with section 381 of the Chilean Labour Code (according to the company, this can be verified in memorandum No. 272 of March 2010 of the Communal Labour Inspection of Santiago Sur); and (3) it had not redeployed its workers to replace the strikers, since work teams included more workers than just those who were on strike and only one “night watchman” was hired on the 30th day from the beginning of the strike, when it was already legally permitted to hire replacement workers. The Committee notes that the Government states that: (1) it is not in a position to give an opinion on the facts, since any references made are not supported by documents that would enable the establishment of a presumption of truth; (2) the National Labour Directorate has fully complied with the law in performing its duties of inspection and mediation, and in the exercise of its duties it instructed the company to negotiate and verified and reported the existence of a replacement worker (hired under the powers bestowed by law); (3) a fundamental reform of labour justice administration to safeguard all labour rights provided for both in international treaties signed by Chile and in its Constitution was undertaken, and the claimants did not make use of the mechanisms available to them under the law to ensure respect of their labour rights; and (4) it has fully complied with the provisions and principles enshrined in Conventions Nos 87, 98 and 135.*
- 374.** *In these circumstances, noting that, in the context of the dispute, the company in question had hired a worker (which was verified by the Labour Inspection) to replace a striker in the ceramics sector, which is not an essential service in the strict sense of the term, the Committee requests the Government to ensure that, in the future, workers to replace*

*strikers may only be hired in the event of a strike in essential services in the strict sense of the term, in the event of minimum services not being maintained, or in the event of an acute crisis.*

- 375.** *With regard to the allegation that the Chilean police force provided protection to the company so that it could illegally remove goods from its plant given that the workers in the transport department were on strike, the Committee notes the Government's statement that the company said that it resorted to police protection for the truck as it left the company, as in the past it had been attacked by the president of the striking trade union. The Committee also notes that the Government's indication that the Chilean police reports that: (1) when the events relating to the complaint took place, they were present at the scene, they interviewed both parties to the dispute and provided an opportunity for them to defend their positions as provided for in law and offered to keep lines of communication with the parties open to ensure that public order rules were not transgressed, which is a constitutional and legal obligation of the Chilean police force; (2) in this regard, preventive monitoring mechanisms and patrols were put in place to safeguard security and the personal safety of all participants in the dispute; (3) during the course of the dispute, police personnel went to the company to verify the claim of non-striking workers, who had expressed concern for their own safety due to their being threatened by striking workers; (4) it is not the responsibility of the Chilean police to involve itself in the legal classification of workers, hence it is not possible to discriminate between usual, permanent workers and legal replacement workers; (5) an official of the WFTU introduced himself to police units on 29 March 2010 and is alleged to have been in a blind rage and displaying a defiant attitude; and (6) any action the police took was in accordance with the Constitution and the Police Constitutional Act, since the institution has responsibility for maintaining public order, the personal safety of those involved in disputes and respect for public and private property. Lastly, the Committee notes that the Government states that the actions of the Chilean police were perfectly in line with the criteria set by the ILO to gauge police intervention during the strike. Taking into account all of this information and, in particular, that the police intervention did not lead to disorder or violence and that, according to the police, the non-strikers were being threatened, the Committee will not pursue its examination of this allegation.*

### **The Committee's recommendation**

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

*The Committee requests the Government to take steps to amend section 381 of the Labour Code, so that the hiring of workers to replace strikers will only be possible in the event of strikes in essential services in the strict sense of the term, in the event of minimum services not being maintained, or in the event of an acute crisis and to ensure that these amendments are effectively implemented.*

CASE NO. 2787

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

**Complaint against the Government of Chile  
presented by  
the National Association of Civil Servants of Chiledeportes (ANFUCHID)**

***Allegations: The complainant organization  
alleges the failure to recognize a protocol  
concluded with the National Sports Institute of  
Chile, and the dismissal of 20 civil servants in  
violation of said agreement***

- 377.** The complaint is contained in a communication from the National Association of Civil Servants of Chiledeportes (ANFUCHID) dated 27 May 2010. The complainant provided additional information in a communication dated 14 July 2010.
- 378.** The Government submitted its observations through a communication dated 12 November 2010.
- 379.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

**A. Allegations of the complainant organization**

- 380.** In its communication dated 27 May 2010, ANFUCHID, the trade union organization representing public servants in the National Sport Institute of Chile, stated that it signed an agreement protocol with the National Sports Institute on 9 May 2008. This instrument was signed by the National Director of the Institute and the Legal Director of the General Secretariat of the Government on behalf of the State of Chile; and by the president of ANFUCHID and the chairperson of the National Association of Public Servants (ANEF), on behalf of the employees.
- 381.** The complainant organization indicates that the main thrust of the signed protocol was related to the civil service career (and the attendant obligation to adhere to the selection process for admission to the administration through an open competition); the establishment of a series of joint panels on the improvement of the institution (annual strategic plan, programme for management improvement, etc.); the completion of certain tasks pending (basically with respect to procedural processes whose deadlines have expired); the improvement of workers' rights (limits on dismissal, increase in remunerations, etc.); the respect for trade union rights, and, in general, the rights established under the law respecting associations of public sector employees (Act No. 19296). Furthermore, paragraph 22 of the abovementioned protocol expressly stated that the Institute's failure to comply with this provision would empower ANFUCHID to adopt any necessary measures, taking the provisions established under Convention No. 151 of the International Labour Organization into special consideration.
- 382.** The complainant organization states that on 11 March 2010 the current President of the Republic appointed a new National Director of the Institute, who was assigned to his duties on the very same day. On 11 April 2010, the National Director met with the national board

of ANFUCHID and informed its members that he would not observe the protocol since it had been signed by the previous Director and not by him personally. He, therefore, regarded the instrument as not being legally binding upon himself. The Association alleges that since that statement was made, the Institute has failed to fulfil its obligations under the protocol, particularly with respect to the civil service career, and has recruited at least nine persons outside the open competitive process.

- 383.** The complainant organization adds that when summoned before the Sports Commission in the Chamber of Deputies, the Director reiterated that the protocol was an agreement signed between his predecessor and the Association, and was therefore not his obligation. In fact, on 12 May 2010 he said “this is an agreement signed by the previous Director, Mr Jaime Pizarro, and ANFUCHID. It was an undertaking to which I have not subscribed, it therefore does not bind me to the provisions contained therein”. The Association also alleges that on 25 May 2010 the Director announced the dismissal of 20 public employees, all of whom had been hired on contract. This action expressly violates the 11th clause of the protocol, which states that no List 1 official may be dismissed without undergoing an administrative inquiry to prove fault on the part of the employee.
- 384.** In its communication dated 14 July 2010, ANFUCHID sent a copy of the application for the remedy of protection that it had submitted to the Santiago Court of Appeal.

## **B. The Government’s reply**

- 385.** In a communication dated 12 November 2010, the Government recalls that in accordance with section 7 of Convention No. 151, the framework for negotiations between public authorities and public employees’ organizations are confined to “conditions of employment ... or of such other methods as will allow representatives of public employees to participate in the determination of these matters”. Using the “literal and logical element” as a rule of universally accepted legal hermeneutics, it can be inferred that the scope of the expression “conditions of employment” would scarcely include the option that the powers granted under the law to a public body for the proper discharge of its functions should be constrained by an agreement between public employees and public authorities. Indeed, such powers do not grant an agency the authority to unilaterally establish conditions of employment in the service, but they do convey the authority that is inherent in the responsibilities attached to a position of leadership, such as the appointment or dismissal of staff, provided that such action does not violate provisions expressly established by law. Therefore, section 20(b) of the Sports Act (No. 19712) of 2005 outlines the powers of the National Director, including “the appointment and hiring of staff, the termination of their services, and the adoption of disciplinary measures that are compatible with statutory norms governing such measures”.
- 386.** In keeping with the previous paragraph, the Government also states the hypothesis of limiting the inherent powers of the public agency in question, by virtue of an agreement between that body and the public employees, would violate the principle of lawfulness enshrined in the legal order, and specifically, section 6 of the Political Constitution of the Republic of Chile, which states that “Government agencies shall ensure that their action is governed by the Constitution and the norms enacted in conformity therewith, and safeguard the institutional order of the Republic”. In so doing, the legally conferred powers and prerogatives held by those agencies to properly perform their duties would be waived, and their legal validity under existing domestic legislation would be nullified.
- 387.** Similarly, Act No. 18575, the Organic Constitutional Law on the General Principles for State Administration, whose consolidated, coordinated and catalogued text was enacted by decree through the promulgation of Act No. 19653 of 2000, by the General Secretariat of the Presidency, provides, in section 2, that “action taken by bodies of state administration

shall be governed by the Constitution and domestic law. Such bodies shall act within their competence, and shall have no further powers than those expressly granted by law. Any abuse or excess in the exercise of their authority shall give rise to the corresponding rights of action and appeal”.

- 388.** From the perspective of domestic legislation, the law respecting associations of public sector employees (Act No. 19296) states that the main aims of the abovementioned bodies are to “promote economic advancement and improve the living and working conditions of its members; provide support for the development of members; compile information on the work of the public body concerned regarding the plans, programmes and decisions that relate to its employees; notify the competent authorities of any breaches of the rules on the Administrative Statute and others that establish the rights and obligations of public sector employees; represent employees in the forums in which they are legally entitled to participate, and, at the request of the interested party, facilitate representation of the members when dispute assessments under the relevant Administrative Statute are submitted to the Office of the Comptroller General of the Republic”.
- 389.** As is evident in that provision, the activities of the associations of public sector employees promote the interests of their members, and monitor compliance with the rules governing staff, inter alia, Convention No. 151. There is nothing to infer the existence of powers to restrict the inherent authority of a public body by virtue of a sublegal instrument.
- 390.** As regards the Government’s compliance with the provisions of Convention No. 151 and Act No. 19296 respecting associations of public sector employees, it should be underscored that the public service in question has fully respected the right of its employees to organize, particularly with respect to the provisions of the abovementioned international instrument. It has also ensured adequate protection against all forms of anti-union discrimination related to their employment, and has respected the total independence of the association of public service employees in its rapport with the government authorities. Representatives of recognized public employees’ organizations have been afforded the appropriate facilities to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work. In fact, the association of public employees in question has been able to make all the presentations it deemed relevant, and has enjoyed full autonomy with respect to the public authorities, based on the rules set out in its own by-laws and applicable domestic standards. It is therefore difficult to grasp in what manner, according to the complaint presented by ANFUCHID, freedom of association has been affected.
- 391.** Regarding the specific legal authority of the National Director to hire staff, the Government referred to section 17 of the Administrative Statute, approved by Act No. 18834, which describes entry to the civil service career. This does not mean that the law rules out other modalities for persons to enter the public service. In order to ensure the proper functioning of duties within the public service, there is need for specific powers and prerogatives, which, by their very nature cannot be applied to all workers falling within the ambit of the regulation governing the “civil service career”. Under administrative law, staff may be recruited through modalities that differ from those applicable to the civil service career, such as the option to hire personnel “on contract”, or in positions of “exclusive trust”. Section 20(b) of the Sports Act supports this distinction, inasmuch as it includes “the appointment and hiring of staff, the termination of their services, and the adoption of disciplinary measures that are compatible with statutory norms governing such measures” among the powers of the National Director.
- 392.** Commenting on the specific powers legally conferred on the National Director with respect to dismissals, and on the decision adopted by the National Board to serve dismissal notifications on 20 employees on 24 May 2010 to the effect that their employment would

be terminated as their services to the Institute were no longer required, the Government stated that this situation had emerged within the context of the operational restructuring under way in the National Sports Institute of Chile, and was supported by section 31 of the Organic Constitutional Law on the General Principles for State Administration. The employees who were notified of dismissal had been hired “on contract”, and fell within the scope of Exempt resolution No. 3561 of 24 November 2009, which extends the hiring of employees by incorporating the wording “as long as such services are required”.

- 393.** The Government adds that the Comptroller General of the Republic acknowledged resolution No. 107 issued by the National Sports Institute in 2010, and which contained provisions on the early termination of services performed by public employees on contract that are identified therein, since the resolution was compatible with existing law and jurisprudence in this area. Furthermore, in numerous rulings, case law has consistently indicated that an appointment on contract that uses the wording “until such services are required” creates a juridical link subject to the discretionary power of the public entity in two respects, a treatment that creates two modalities in civil law: a date of expiry (31 December, the date on which all employment “on contract” is terminated), and a resolutive condition (that the services become redundant). These modalities reflect the fundamentally transient nature of duties carried out on contract, a feature that is expressly enshrined in section 3(c), and section 10 of the Administrative Statute, approved by Act No. 18834. This is confirmed by the ruling of the Supreme Court Case No. 25-2004 on remedy for protection (dismissed) of 20 January 2004, which states “that the transient nature of employment on contract has led the Comptroller General of the Republic to rule in similar cases that ‘the functions of staff who are hired on contract must expire automatically on 31 December, unless the contract has been extended, or unless the letter of appointment expressly states an earlier date of expiry’ (Case No. 14120 of 1993); that ‘it is incumbent on the public authority that appoints the public sector employee to independently determine the appropriateness of extending a contract and, if this is not the case, the employee shall cease to perform his or her function by legal mandate’ (14036/93); that ‘a thirty-day period is required only for the purpose of extending the contract, and not for notifying the employee that the contract will not be renewed’. The public authority is entitled to terminate the employment of staff on contract at any time when said contract has been drafted according to the formula ‘as long as such services are required’; the same criterion applies to its extension (1932/92)”. Judicial decision on Case No. 802-93, handed down by the highest jurisdictional body in the Republic, states that “Based on the wording of section 9 of the Administrative Statute, approved by Act No. 18834 (current section 10), employment ‘on contract’ shall only run, as a maximum, up to 31 December of each year, and nothing shall prevent this duration from being shorter. Moreover, the Comptroller General of the Republic has issued a rule, contained in the Interpreted Administrative Statute (folios 33 to 34), which interprets section 9 above as follows: during the period in which a public employee is carrying out his or her duties on contract, he or she shall enjoy the rights enshrined in section 37 of the Administrative Statute (73034/61). Consequently, only the reasons established by decree through Act No. 338 of 1960 (32341/65) shall give cause for the expiration of such functions, unless the contract is worded “as long as such services are required”, in which case, employment shall be terminated with effect from the time the person concerned has been notified of the completion of the procedure prescribed by the relevant decree or resolution (31364/66, 85703/63). Since the challenged Exempt Decree No. 345 is in line with current legal standards, and was issued by the corresponding authority that was acting within the scope of its powers and responsibilities, it cannot be considered that the abovementioned administrative statute is illegal or arbitrary. It is therefore unnecessary to enter into an analysis, if its passage resulted in an infringement of the fundamental rights of the appellant”.

- 394.** The Government highlights the distinction that is made in the case of “career civil servants” who, according to section 81 of Act No. 18834 on the Administrative Statute, and due to the nature of their duties, enjoy employment stability, under section 136 of the abovementioned rule, which also provides precise grounds for dismissal. In the performance of functions established by law, and with the authority conferred upon it under the existing juridical framework, the public body has acted legitimately, and has fully complied with the relevant international treaties.
- 395.** The Government states that the complaint does not explain in what manner Convention No. 87 has been violated, and wishes to underscore that it has fully complied with the provisions and principles enshrined in that instrument. It has recognized and promoted freedom of association as a fundamental safeguard that is enshrined in section 19 of the Political Constitution of the Republic of Chile. As regards remedy for protection submitted by ANFUCHID to the Santiago Court of Appeal alleging that dismissal of the public service employees was arbitrary and illegal, the Government adds that the application for protection was declared admissible by a resolution dated 11 July 2010. It adds, however, that this does not in any way imply a pronouncement by the Court on the purpose of the proceedings; the request for remedy was examined simply because it fulfils the formal requirements to be considered by the Court. The Government reports that pursuant to a decision dated 1 October 2010, the Appellate Court later ruled on the merits of the case presented, dismissing the application for protection, with the award of costs to the appellant. Finally, through a judgment dated 29 October 2010, the Supreme Court confirmed the decision under appeal of 1 October 2010 issued by the Santiago Court of Appeal, thereby resolving the matter currently before the Committee, rendering it inappropriate to initiate new appeals.

### **C. The Committee’s conclusions**

- 396.** *The Committee notes that in the present case, the complainant organization alleges that in violation of the provision of the agreement protocol that had been concluded with the National Sports Institute on 9 May 2008, the authorities that assumed duty on 11 March 2010 proceeded to dismiss 20 public sector employees “on contract” (according to the complainant, the 11th clause of the agreement protocol states that no employee in List 1 may be dismissed without an administrative inquiry to prove fault on the part of the employee), and to hire nine persons without a competitive process (in this case, the complainant does not mention which clause of the agreement protocol has been violated).*
- 397.** *In this regard, the Committee takes note of the Government’s statement that: (1) the Sports Act (No. 19712) of 2005 establishes that the powers of the National Director shall include the appointment and hiring of personnel, the termination of their services and adoption of disciplinary measures in line with the relevant statutory norms; (2) the hypothesis that the limitation of the inherent power of the public body in question through an agreement between this body and the employees would violate the principle of lawfulness enshrined in the legal order, and would therefore waive the powers and prerogatives granted by law for the proper performance of its functions; (3) the Organic Constitutional Law of the General Principles of the State Administration No. 18575 provides that the work of the administrative bodies of the State shall be governed by the Constitution and laws, that such bodies shall act within their competence and shall not be endowed with more powers than those expressly granted by law. Any abuse or excess in the exercise of such powers shall give rise to the relevant rights of action and recourse; (4) section 17 of the Administrative Statute, approved by Act No. 18834, explains the process of entry to the civil service career, but this does not mean that the law does not contemplate other modalities for joining the public service. Indeed, the administrative system allows for the engagement of personnel under terms that differ from those governing the civil service career, such as staff engaged “on contract” and those enjoying positions “of exclusive trust”; (5) the*

decision to dismiss 20 employees because their services were no longer required was presented within the context of ongoing operational restructuring within the Institute, pursuant to section 31 of Act No. 18575 mentioned earlier; (6) the employees in question were hired under the “on contract” regime and Exempt resolution No. 3561 of 24 November of 2009 used the wording “as long as such services are required” for this type of contract; (7) the Comptroller General of the Republic endorsed resolution No. 107 of 2010, adopted by the Institute, that allowed “on contract” services provided by public employees to be terminated early, in line with existing legislation and relevant case-law, which had, in numerous rulings, consistently underscored that an “on contract” appointment that uses the wording “until such services are required” creates a juridical link subject to the discretionary power of the public entity; and (8) ANFUCHID filed an appeal before the Santiago Court of Appeal that was dismissed on 1 October 2010, and upheld by the Supreme Court on 29 October 2010.

**398.** *The Committee takes note of the arguments of the Government to the effect that the clauses of a collective agreement should not restrict the inherent powers of a public body by virtue of legislation, and observes that the response of the Government infers that, otherwise, legal responsibilities would be enforceable with respect to the authorities. Under these conditions, taking into account the Supreme Court decision, which does not give grounds for inferring the existence of anti-union practices, and mindful of the fact that neither the 20 dismissals nor the engagement of nine new employees constituted a violation of the agreement protocol, the Committee will not pursue its examination of these allegations.*

**399.** *In addition, with reference to the allegation by the complainant organization to the effect that the new leadership of the National Sports Institute had informed ANFUCHID that it would not honour the agreement protocol, since it was an undertaking signed by the previous Director and therefore not deemed to be legally binding upon on the new regime, the Committee, noting that the Government’s reply refers only to the allegations relating to the violations of the agreement protocol previously examined, underlines the importance of honouring collective bargaining agreements and requests the Government to provide information on the validity of the agreement protocol concluded with ANFUCHID in 2008, and on the willingness of the National Sports Institute to comply with the said instrument.*

### **The Committee’s recommendation**

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

*The Committee underlines the importance of honouring collective bargaining agreements and requests the Government to provide information on the validity of the agreement protocol concluded with the National Sports Institute and ANFUCHID in 2008, and on the Institute’s willingness to comply with the said instrument.*

CASE NO. 2790

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

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

- **the Single Confederation of Workers (CUT) and**
- **the Confederation of Workers of Colombia (CTC)**

***Allegations: Dismissals of workers following  
the establishment of trade unions in the  
companies TOPTEx SA and DOMESA SA***

- 401.** The complaint is contained in two communications from the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) dated 11 and 17 June 2010.
- 402.** The Government sent its observations in a communication dated 10 January 2011.
- 403.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainants' allegations**

- 404.** In their communication of 11 June 2010, the complainants indicate that the workers of the Tocancipa Textiles Enterprise TOPTEx SA, a private entity, founded the trade union organizations known as SINTRATOPTEx. They add that article 365(2) of the Substantive Labour Code stipulates that “within five working days following the date of the constituent meeting the union shall submit to the Ministry of Labour and Social Security a written application for union registration accompanied by the following documents” this obliges persons founding unions to register the new entity as soon as possible after the date of establishment. The complainants also indicate that the period of trade union immunity for workers is two months from the date on which the union is registered.
- 405.** The complainants indicate that as a result of that stipulation, the company waited for the two-month period to elapse and then dismissed all the workers; specifically ten union leaders and 19 members were dismissed following the establishment of the union SINTRATOPTEx. The complainants have provided a list with the names and functions of the dismissed workers.
- 406.** The complainants also indicate that workers of the DOMESA SA enterprise set up a union which was registered with the Ministry of Social Protection on 29 April 2010, and its president and six members of its executive committee were immediately dismissed. The dismissal was also announced of 15 of the founder members. Lastly, in their communication of 17 June 2010, the complainants state that the 27th Municipal Criminal Court of Bogotá DC acknowledged the violation of Convention No. 87 by the company. In a decision of 8 June 2010, the Court awarded formal protection for the fundamental rights of 12 workers and ordered the company to reinstate the workers in question.

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**B. The Government's reply**

- 407.** In its communication of 10 January 2011, the Government states that it requested information from TOPTEX SA on the allegations. The company acknowledges that the workers founded the union SINTRATOPTEX. The company also agrees with the union's point concerning the period of union immunity, since in its view the union should be duly constituted within that period.
- 408.** As regards the alleged dismissals, the Government indicates that the company denies the allegation and maintains that the company did not dismiss any of the workers who belonged to the union.
- 409.** As regards the evidence presented by the complainants, and in particular the list of ten union leaders and 19 members dismissed following the establishment of the union SINTRATOPTEX, the Government indicates that according to the company, the document in question cannot be regarded as evidence because it is no more than a claim by the union, and that is it not accurate in that none of the workers mentioned in the list has been dismissed, and all are still working at the company.
- 410.** As regards the allegations concerning the company DOMESA SA, the Government explains that the facts on which these complaints are based relate to the manner in which the majority of the union's executive committee members were dismissed following the official notification of the union's establishment (29 April 2010), in some cases for a specific reason and in others without any justification being given; dismissals continued on the following day and, in all, some 30 workers were dismissed.
- 411.** According to the Government, the Ministry of Social Protection, in order to respond to the complaint, in the context of the administrative inquiry undertaken by the Office of Coordinator of the Group for the Disputes Settlement and Conciliation notes that on 29 April 2010, the Trade Union of Workers of DOMESA SA (SINTRADOMESA) was registered with the Ministry under No. JD 1-09-2010 of Cundinamarca Territorial Directorate. It was also confirmed that the union was established in accordance with the relevant legal requirements and that Colombia's Political Constitution, in its articles 38 and 39, stipulates that "workers and employers have the right to establish trade union organizations or associations, without any intervention by the State, and legal recognition of such bodies shall be effected through the mere fact of registration of the formal instrument of establishment". This is confirmed by the certificate issued by the coordinator of the Ministry's trade union registry group, which states precisely that the union was registered and had sent the appropriate document, and therefore met the legal requirements for establishing unions, this being one of the functions of the labour inspectors.
- 412.** The Government also states that the Office of Coordinator of the Group for the Disputes Settlement and Conciliation of the Ministry of Social Protection fined the company 25,750,000 pesos, a sum equivalent to 50 times the current minimum wage, to be paid to the National Learning Service (SENA). The Government emphasizes that, as it can be observed, the Ministry of Social Protection has adopted a number of measures to protect freedom of association, and recalls that the country's legal system protects that right, beginning with the Political Constitution and including the Substantive Labour Code and the criminal law. As regards the latter, it should be recalled that Law No. 1309 of 2009, at the Government's initiative, increased the penalty for this type of offence.
- 413.** Lastly, the Government notes that there are social dialogue forums available in the country to reconcile parties in dispute. The Special Committee for the Handling of Conflicts (CETCOIT) has played a crucial role in re-establishing trust between the parties; for this reason, it is envisaged that a CETCOIT subcommittee will be set up to deal with this case,

and the Governing Body is therefore invited to decide that the case does not call for further examination but should be dealt with by the CETCOIT.

### C. The Committee's conclusions

414. *The Committee notes that in the present case, the complainants allege the anti-union dismissal of workers following their establishment of trade unions at two enterprises.*
415. *The Committee notes that according to the complainants: (1) workers of TOPTEX SA set up a union SINTRATOPTEX; (2) the company waited until the two-month period of trade union immunity had elapsed and then dismissed all the workers (see the attached list of workers dismissed, comprising ten union officials and 19 members).*
416. *The Committee also notes that according to the Government, the company: (1) acknowledges that the workers founded the union SINTRATOPTEX; (2) agrees with the union's point regarding the period of trade union immunity, and considers that by the time that period has elapsed the union should be well established; (3) denies the dismissals and maintains that none of the union members were dismissed; (4) claims that the evidence put forward by the complainants cannot be regarded as real evidence as it is no more than an assertion by the union, and is inaccurate, given that none of the workers included in the list has been dismissed and all remain employed at the company.*
417. *Noting the total contradiction between the statements made by the complainant and those of the company on the dismissals, the Committee requests the Government to investigate the allegations and determine whether or not the workers allegedly dismissed are still working at the company (as the company maintains), and to keep it informed in this regard.*
418. *The Committee also notes that according to the complainants: (1) some workers at DOMESA SA set up the trade union SINTRADOMESA which was registered with the Ministry of Social Protection on 29 April 2010; (2) the president of the union and six members of the executive board were immediately dismissed; (3) the 27th Municipal Criminal Court of Bogotá DC acknowledged the violation of Convention No. 87 by the company and on 8 June 2010, the judge officially declared the fundamental right of 12 workers to be protected and ordered the company to reinstate the workers in question.*
419. *The Committee also notes that the Government states that: (1) SINTRADOMESA was registered on 29 April 2010 with the Ministry of Social Protection under registration No. JD 1-09-2010 of the Cundinamarca Territorial Directorate, and on that day 30 workers were dismissed including the majority of members of the union's executive committee, in some cases without any reason being given, in others for specific reasons; (2) the Office of Coordinator of the Group for Conflict Settlement and Conciliation of the Ministry of Social Protection fined the company 25,750,000 pesos, the equivalent of 50 times the legal monthly minimum wage, in order to protect the right of association; and (3) it is planned that a subcommittee of the Special Committee for the Handling of Conflicts will be set up to deal with this case.*
420. *The Committee wishes to emphasize that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 799].*

**421.** *The Committee notes that the company was fined, reinstatement of the dismissed workers was ordered, and it is planned that a subcommittee of the Special Committee for the Handling of Conflicts will be set up to deal with this case. Under these circumstances, the Committee requests the Government to indicate whether the dismissed workers have been reinstated in accordance with the ruling of the 27th Municipal Criminal Court of Bogotá, and to keep it informed of the discussions and conclusions of the aforementioned subcommittee.*

### **The Committee's recommendations**

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

- (a) Noting the total contradiction between the statements made by the complainant and those of the company TOPTEX SA on the dismissals, the Committee requests the Government to investigate the allegations and determine whether or not the workers allegedly dismissed are still working at the company (as the company maintains), and to keep it informed in this regard.*
- (b) As regards the dismissals that occurred at the company DOMESA SA, the Committee requests the Government to indicate whether the dismissed workers have actually been reinstated in accordance with the ruling of the 27th Municipal Criminal Court of Bogotá DC and to keep it informed of the discussions and conclusions of the subcommittee of the Special Committee for the Handling of Conflicts that is to deal with this case.*

CASE NO. 2791

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

**Complaint against the Government of Colombia  
presented by  
the National Union of Mining and Power Industry Workers  
(SINTRAMIENERGETICA)**

*Allegations: Dismissal of trade union leaders in the company Drummond Ltd, after a strike which was declared illegal by the judicial authority*

- 423.** The complaint is contained in a communication of the National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA) received on 14 June 2010.
- 424.** The Government sent its observations in two communications dated 14 January and 4 May 2011.
- 425.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Allegations of the complainant organization**

- 426.** The complainant organization indicates that on 21 March 2009 there was an industrial accident in the *Pribbenow* coal mine (Cesar Department) in which Mr Dagoberto Clavijo Barranco died. The mine is operated by the company Drummond Ltd Colombia (referred to below as “the company”). The mine workers reacted and stopped work, demanding that the company should provide safe working conditions. The protest was later joined by the workers at Puerto Drummond in the municipality of Ciénaga, Magdalena Department. The SINTRAMIENERGETICA leaders then entered into mediation and requested the company to find solutions to the workers’ requests. The complainant organization emphasizes that the stoppage was not decided because of that fatality alone but came on top of 14 deaths of workers in industrial accidents as well as hundreds of accidents causing disabilities and occupational diseases to the workers. It indicates that, on repeated occasions, the workers and the trade union had presented claims relating to safety, but these claims, claims which rightly denounced risks of accidents which endangered their lives, were ignored by the company.
- 427.** The complainant organization recognizes that the stoppage was not a strike declared in accordance with the requirements of Colombian law, but a spontaneous stoppage by workers with occupational claims which was not promoted by the complainant organization. The workers exercised their right to protest. The complainant organization states that, subsequently, the company filed a claim against SINTRAMIENERGETICA in a special proceeding to have the “strike” declared illegal. The complainant indicates that the Valledupar High Court declared the stoppage illegal and defined it as a strike. That ruling was upheld by the Supreme Court of Justice despite the fact that many of the fundamental rights of the workers and the SINTRAMIENERGETICA leaders accused of promoting the supposed strike were violated.
- 428.** The complainant organization states that the judgment of the Supreme Court of Justice became final in November 2009 and the company said that it would take disciplinary actions against 35 SINTRAMIENERGETICA officials and grass-roots activists in three sections. In total, the company dismissed 19 workers as a consequence of the declaration that the strike was illegal (seven officials from the Ciénaga section, five officials and two grass-roots activists from the El Paso section and two officials and two grass-roots activists from the Chiriguaná section). Among the dismissed workers, nine showed symptoms of occupational diseases acquired in the company for whom it was necessary to bring actions for protection (*tutela*) because they had been dismissed when sick without compliance with the full legal requirements. As well as disregarding the workers’ right to protest, falsely representing the stoppage and converting it into a strike, treating the spontaneous reaction of the workers as a stoppage planned by the trade union and violating the right to due process, the company failed to comply with a regulation issued by the Ministry of Social Protection. According to the complainant organization, the said regulation provides that the company should have passed the list of workers accused of participating in the illegal strike to the Ministry of Social Protection which had the function of: (i) investigating the degree of participation of those workers and determining individually whether the participation was active or passive, and (ii) recommending to the company the type of measure that it could adopt, namely: (a) exoneration for not having participated; (b) a disciplinary sanction for passive participation; or (c) dismissal for active participation, on a case-by-case basis at the discretion of the investigator. Only then could the company dismiss anyone.
- 429.** The complainant organization indicates that the company took advantage of these decisions to dismiss the SINTRAMIENERGETICA officials. Indeed, one company director even commented that the first to be dismissed would be the officials who had gone to the

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United States in the past to push a claim against the company for financing paramilitary groups to assassinate two presidents and a vice-president of the union.

- 430.** According to the complainant organization, the Ministry of Social Protection, despite being aware of these violations by the company, did nothing to restore the rights of the workers who were dismissed in contempt of the regulation issued by that Ministry, in application of the law which allows the dismissal of workers who participate in a strike which has been declared illegal, thus allowing a breach of the rights of workers belonging to SINTRAMIENERGETICA.
- 431.** The complainant organization also presents supporting evidence to corroborate the facts. Firstly, it is clear that the company's workers do not forget the deaths of their workmates who died in industrial accidents or from occupational diseases attributable to the company. Thus, the stoppage by the workers is a reaction to the pain they felt at those deaths.
- 432.** Furthermore, the complainant organization gives full details of tragic accidents related to occupational risks in recent years, up to 2009, and recalls that in the past trade union leaders were murdered and other trade unionists had to move away after death threats.
- 433.** The complainant organization states that the list of cases reported to the authorities is rather long and almost always the local and regional labour authorities adopted a negligent posture, maintaining that they are unable to investigate and punish the company, despite the legal powers that they possess.
- 434.** The complainant organization indicates that, up to now, only two sanctions are known to have been applied by the courts of first instance against the company in industrial accident cases, thus it is obvious that the legislation on employer responsibility is not applied. It adds that the employer's responsibility is indisputable, both in relation to the death of Dagoberto Clavijo Barranco in 2009, and in relation to the stoppage which occurred as a reaction to the death. The complainant organization sums up the situation by indicating that, although the stoppage by the workers does not conform to the provisions of Act No. 1210 of 2008, in that it was not a legally convened strike, neither is it possible to blame the trade union for supposedly "promoting" the stoppage in an illegal way, since it was a spontaneous "heat of the moment" reaction brought on by collective anger and indignation at the death of a worker following the company's failure to fulfil its obligations with regard to industrial safety, thus confirming the employer's responsibility in relation to this stoppage.

## **B. The Government's reply**

- 435.** In its communications dated 14 January and 4 May 2011, the Government recalls that the allegations on industrial safety and health, which abound in the complaint, are outside the Committee's remit, especially bearing in mind that the complaint does not allege that the situations involving industrial safety and health indicated by the complainant in any way constitute a violation of the applicable collective agreement between the company concerned and the complainant trade union. Thus the allegations on these matters are beyond the Committee's remit.
- 436.** The Government adds that the declaration that stoppages and strikes are illegal is a matter for the respective courts and, on appeal, the Supreme Court of Justice, as laid down in Act No. 1210 of 2008, thereby accepting the requirements of the ILO supervisory bodies. In this regard, it was the judicial authority which defined the collective stoppages at the *Pribbenow* mine and the suspension of the company's operations. Furthermore, the parties to the proceeding, the plaintiff and the defendant, have opportunities in the proceedings to

argue the facts and provide evidence in support, and to make use of the relevant appeal processes.

**437.** The Government emphasizes that, as can be seen from the court judgments issued in this case, in proceedings in which the Government plays no part, the declaration of illegality of the stoppage was based on the fact, proved in the proceedings, that it had been conducted in a violent manner. The court, in its judgment provided by the Government in its communication dated 4 May 2011, after hearing the arguments, came to the conclusion that "... there is no doubt that violence reigned in that strike". That assertion was based on considerable evidence produced by the claimant, including "thirty-eight statements prepared and signed by various persons describing situations which they had actually witnessed during the stoppage; they are marked by descriptions of the use of physical and/or verbal violence by the striking workers ... death threats ...". The court further indicates that "the situation described in those statements are documented by numerous pictures that testify those acts ...". The Government recalls the many occasions on which the Committee has referred to the protection that the Organization's instruments, in particular Conventions Nos 87 and 98, grant to legitimate trade union activities, that is, those conducted in a peaceful manner. In the opinion of the Government, in this case, as can be seen from the abovementioned judgments, that protection does not apply and thus the declaration of illegality does not represent any violation of those Conventions. The Government considers this as sufficient reason to request the Committee to invite the Governing Body to decide that the case does not justify further examination.

**438.** The Government also emphasizes that the court does have the power to declare the stoppage illegal. The workers allege that, because it was a stoppage and not a strike, the court did not have the power to declare it illegal. This point, addressed in the judgments of both the court and the Supreme Court, coincides with the statements of the ILO supervisory bodies that a distinction cannot be made between protection granted by the legislation to strikes and stoppages, with respect to which any declaration of their illegality must be determined by an independent body which enjoys the confidence of the parties, such as judges. The Supreme Court stated the following: "in the light of the decision of the court to declare illegal the collective work stoppage which SINTRAMIENERGETICA held in the *Pribbenow* mine, and the suspension of operations during 23, 24, 25, 26 and 27 March 2009 and in Puerto Drummond on 23 and 24 March 2009, the only criticism that the appellant actually makes against the substantive arguments in the proceeding revolves around the conceptual and semantic difference between the concepts of 'strike' and 'stoppage', since it considers that the court can only decide on the legality or otherwise of the former, but that, it says, is not the case decided by the court. That argument is irrelevant, because, in any case, the grounds of the judgment include the fact that neither the law nor the case law differentiate on the substance and that *in consequence, under Colombian law, any collective work stoppage is a strike, without distinguishing between whether the event does or does not satisfy the definition set out in article 429 of the Consolidated Labour Act (CST).*"

**439.** Moreover, the Government states that the conduct of the stoppage did not comply with the prior procedures stipulated in the legislation. The Government recalls the Committee's pronouncements which endorse the existence of prior procedures established by law for the holding of strikes and in respect of which the court, citing the Supreme Court of Justice, stated: "... with respect to the initiation and conduct (of the collective work stoppage), there is no doubt that the abovementioned legal rules for the strike in an economic collective dispute must also be satisfied in this second type of collective cessation of work for failure (by the employer) to fulfil obligations, since in the case of a strike which has been balloted and decided, the time limit for its execution, which must be called minimum two working days and maximum without exceeding ten working days following its declaration". In other words, the decision to stop work should have been adopted by a

ballot by the workers, and that did not happen in this case, thus the prior requirements were not met. On this point, the Government recalls Article 8 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to point out that SINTRAMIENERGETICA should have respected national legislation when it carried out its trade union activity. Likewise, it considers that this legislation does not diminish, and has not been applied in such a way as to diminish, the guarantees set out in Convention No. 87. At least, up to now, the Organization's supervisory bodies, and especially the Committee of Experts, have not expressed any comments to the Government in this regard, among other things, because everything shows that the workers have never complained to the Committee of Experts about national laws in this connection.

440. The Government indicates that, given that the courts, not the Ministry of Social Protection, were responsible for declaring the strike illegal, and that the said declaration was based on the fact that the stoppage had been conducted in a violent manner, the dismissal of the workers did not constitute an act of discrimination as laid down in Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
441. With respect to the allegations concerning due process, the Government underlines that, according to the complainant: (i) some workers were dismissed without regard for their state of health or without the company concerned complying with the "full legal requirements"; (ii) the company failed to follow "the procedures established by the Ministry of Social Protection to allow the dismissal of workers who participate in a strike classified as illegal"; and (iii) "many workers involved were deprived of the right to defence in the proceedings, as they did not have the opportunity to make individual statements". The Government states, with respect to point (i), that the company indicated that the workers cited in the complaint presented their respective actions for *tutela*. In relation to point (ii), as indicated on previous occasions and in accordance with Act No. 1210 of 2008, which gave the courts powers to declare a strike illegal, the Ministry no longer had the power to pronounce on the dismissal of workers after such a declaration. The Act offers workers the guarantee that their rights under the Constitution, the law and collective agreements will be respected, as two instances were created in which they could be heard. It is not up to the Ministry to intervene in any aspects of such proceedings. As regards point (iii), in relation to the violation of due process, the Government recalls that, in the Colombian legal system, there are legal means of recourse against such rulings.
442. With respect to the judicial proceedings, the Government confirms that the Supreme Court of Justice decided an appeal in cassation against the judgment of 21 July 2009 handed down by the Civil Family and Labour Division of the Valledupar High Court, referring to the qualification of the collective suspension or stoppage of work led by the trade union SINTRAMIENERGETICA at the *Pribbenow* mine and at Puerto Drummond, and upheld the judgment in all its aspects in a ruling of 29 September 2009. SINTRAMIENERGETICA sought clarification on 14 October 2009, but that request was refused in an order dated 1 December 2009, and the judgment became final on 16 December 2009. SINTRAMIENERGETICA filed an action for *tutela*, which was heard by the Criminal Cassation Division of the Supreme Court of Justice, which found that the judicial proceedings were fully in accordance with the legal order, and there had been no violations of any fundamental right. According to the Government, the company informed it that 12 workers had filed an action for *tutela* for alleged violation of due process. The judge ordered their reinstatement and the company complied with the order, which is now being appealed. Another trade unionist, in an appeal, failed to obtain an order for reinstatement. The national Government respected the ruling in line with the separation and independence of the judiciary in the case. The effects of the judgment of the Supreme Court of Justice and the dismissals deriving from the declaration that the stoppage of work was illegal can only be challenged in the courts of the Republic.

443. The Government further emphasizes that the Ministry of Social Protection has issued various standards on occupational risks and health which are mandatory for all companies in the country, including major coal mining companies such as the company in question. These standards are intended to prevent, protect and look after workers affected by diseases and accidents which happen to them in the course of or as a consequence of their work. In addition to standards of a general character which must be applied by all companies in the country, there is Decree No. 1335 of 1987 which sets out the regulations on safety in underground workings and Decree No. 2222 of 1993 which establishes the regulations on occupational safety and health in opencast mining. The Government also gives details of the actions of the Ministry of Social Protection in application of the permanent occupational health programme, and the various fines imposed on the company, administrative actions and prosecutions carried out.
444. The Government concludes that it complies with and respects the judicial decisions made in relation to the special process of qualification of a collective work stoppage and the judgment which declared it illegal and the confirmation of the judgment, respectively. With regard to the supervision, monitoring and control of prevention of occupational risks in the company by the Ministry of Social Protection, in application of the permanent occupational health programme, the Government reiterates that it has acted in accordance with the law.

### C. The Committee's conclusions

445. *The Committee observes that in this case the complainant organization alleges dismissals of trade union officials in the company Drummond Ltd Colombia for a spontaneous work stoppage by the workers (not promoted by the trade union) arising from a fatal accident at work in the Pribbenow mine in 2009 (according to the complainant organization because of defective safety conditions in the mine and the lack of measures taken by the authorities and the company despite requests by the trade union), which was subsequently classified as an illegal strike by the judicial authority. According to the allegations, the company took advantage of this spontaneous stoppage by the workers to dismiss trade union leaders and unionists for anti-union purposes. According to the complainant organization, the number of workers who had died in recent years from occupational accidents or diseases totalled 16, not counting the large number of workers with occupational diseases. The Committee also observes that the Government gives details of the actions of the Ministry of Social Protection in application of the permanent occupational health programme, and the various fines imposed on the company, and the administrative proceedings and prosecutions carried out. The Committee emphasizes that its powers are confined to allegations of violations of trade union rights and not questions of safety and health at work. The Committee considers that it is not competent to pronounce on the violation of the ILO Conventions on conditions of work, as such allegations do not refer to freedom of association.*
446. *The Committee notes the detailed information provided by both the complainant organization and by the Government in relation to the facts which led to the work stoppage and the measures and actions taken in that respect.*
447. *The Committee notes that the complainant organization indicates that: (1) the work stoppage that took place in the company was not a strike but a spontaneous protest following the death of a colleague, thus it did not fulfil the legal conditions for a strike, that is, prior submission of a set of claims and collective bargaining; (2) the Valledupar High Court declared the stoppage illegal and classified it as a strike, and that ruling was upheld by the Supreme Court of Justice despite the fact that during the process many of the fundamental rights of the affiliated workers and the SINTRAMIENERGETICA officials accused of promoting the supposed strike were violated; (3) when the work stoppage was*

classified by the judicial authorities as an “illegal strike”, the company dismissed many trade union officials and activists of SINTRAMIENERGETICA for participating in the strike; and (4) the company did not comply with a regulation issued by the Ministry of Social Protection which states that the company should have passed the list of workers accused of participating in the illegal strike to the Ministry of Social Protection which had the function, firstly, of investigating the degree of participation of those workers and determining individually whether the participation was active or passive, and, secondly, recommending to the company the type of measure that it could adopt, namely: (a) exoneration for not having participated; (b) a disciplinary sanction for passive participation; or (c) dismissal for active participation, on a case-by-case basis at the discretion of the investigator.

- 448.** *The Committee also notes that the Government states that: (1) the declaration that the stoppages and strikes are illegal is a matter for the respective courts and, on appeal, the Supreme Court of Justice, as laid down in Act No. 1210 of 2008; (2) the parties to the proceeding, the plaintiff and defendant, have opportunities in the proceedings to argue the facts and provide evidence in support, and to make use of the relevant appeal processes; (3) according to the judgments in this case, the declaration of the illegality of the stoppage (during 23, 24, 25, 26 and 27 March 2009 and in Puerto Drummond on 23 and 24 March 2009) was based on the fact, substantiated by evidence, that the stoppage had been conducted in a violent manner, thus the protection available under Conventions Nos 87 and 98 did not apply; (4) the decision to stop work should have been adopted by a ballot by the workers, and that did not happen in this case, thus the prior conditions for a legal strike have not been fulfilled; (5) the dismissal of the workers was not an act of anti-union discrimination, given that the courts are responsible for declaring a strike illegal, and not the Ministry of Social Protection, and that the said declaration was based on the fact that the stoppage had been conducted in a violent manner; (6) the company stated that 12 workers filed an action for tutela for alleged violation of due process; the judge ordered their reinstatement and the company complied with the order, which is now being appealed; and (7) the legislation does not diminish and has not been applied in a manner which diminishes the guarantees set out in Convention No. 87. The Committee notes that, referring to the alleged spontaneous work stoppage, the Government states that the Supreme Court attributes that to the complainant organization. The Government indicates that the declaration of the legality or otherwise of a strike is a matter for the courts and not the Ministry of Social Protection.*
- 449.** *The Committee observes that according to the Government the stoppage of work by the workers was considered an illegal strike by the judicial authority (including the Supreme Court of Justice which, contrary to the allegations, attributes the stoppage to the activities of the complainant organization) because the ballot required by the legislation had not been carried out and acts of violence had occurred.*
- 450.** *With regard to the alleged anti-union character of the dismissals which occurred after the strike and, according to the complainant organization, on the grounds of the work stoppage, the Committee notes that the Government indicates that the dismissals were not acts of anti-union discrimination since the declaration of illegality of the strike is a matter for the courts and not the Ministry of Social Protection, and the said declaration was based on the fact that the stoppage had been conducted in a violent manner. The Committee observes that, according to the complainant organization, the number of dismissed strikers to date amounts to 19 (15 officials and four trade unionists). The Committee further notes that, according to the Government, the company informed it that 12 of the dismissed trade unionists filed an action for tutela for supposed violation of due process and the judge ordered their reinstatement and the company complied with the order, which is now the subject of an appeal.*

451. *Noting that the company complied with the court order to reinstate the 12 trade union officials and trade unionists and that the company has appealed that decision, the Committee requests the Government to keep it informed of the result of the appeal. Lastly, the Committee notes that, according to the Government, the company stated that one trade unionist did not, on appeal, obtain an order for reinstatement and requests the Government to indicate if the remaining six trade unionists have initiated legal actions in relation to their dismissal.*

### **The Committee's recommendation**

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

*Noting that the company has complied with the court order to reinstate 12 trade union officials and trade unionists and that the company has appealed that decision, the Committee requests the Government to keep it informed of the result of the appeal. Lastly, the Committee notes that, according to the Government, the company stated that one trade unionist did not, on appeal, obtain an order for reinstatement and requests the Government to indicate if the remaining six trade unionists have initiated legal actions in relation to their dismissal.*

CASE NO. 2801

INTERIM REPORT

### **Complaint against the Government of Colombia presented by the National Union of Food Workers (SINALTRAINAL)**

***Allegations: Anti-union practices, acts of discrimination against trade unionists by the company Santandereana de Aceites SA (CI SACEITES SA), including pressure to give up their trade union membership, collective agreement with non-unionized workers***

453. The complaint is contained in two communications from the National Union of Food Workers (SINALTRAINAL) dated 17 June 2009, received in the Office on 2 July 2010.

454. The Government sent its observations in a communication dated 31 January 2011.

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

#### **A. Allegations of the complainant organization**

456. In its communication of 17 June 2009, the complainant organization indicates that the workers of the company CI Santandereana de Aceites SA (CI SACEITES SA), organized

in a trade union, have been the victims, since 2005, of numerous anti-union acts and practices contrary to collective bargaining. More recently, the complainant organization explains that on 14 January 2008, it submitted a set of claims to the company and on 10 February called a meeting of trade union members during which they voted to convene the compulsory arbitration tribunal as a legal means of resolving the dispute in the bargaining of the set of claims. On 10 September 2008, by Resolution No. 003452, the Ministry of Social Protection ordered the constitution of the compulsory arbitration tribunal. Over a year later, the tribunal has not reached a decision, which the complainant union interprets as a protraction to allow the employer to gain time as a tool to exert pressure on the unionized workers who, meanwhile, have not received wage increases and are denied other rights, while the non-union workers received wage rises through a collective accord. This pact with non-union workers, which was renewed for the period 21 September 2007 to 20 September 2009, seeks to duplicate SINALTRAINAL and prevent workers from organizing in a trade union.

- 457.** In addition, the complainant organization alleges that on 16 December 2007, Henry Trujillo, José Samuel Duarte Ballesteros and Julio César Almeyda Barón, all workers employed by the company, joined SINALTRAINAL and from that moment the company renewed its persecution of unionized workers. The worker Julio César Almeyda Barón was dismissed in December 2006 after his return from sick leave and a process of removing the trade union status was initiated in order that a judge could authorize the termination of his contract of employment. According to the complainant organization, the proceeding is in progress in the Fourth Labour Court, Bucaramanga.
- 458.** The complainant organization emphasizes that on 15 August 2008, the Fourth Labour Court, Bucaramanga, gave notice that the claim by the company for removal of trade union status from Julio César Almeyda Barón would be received and a hearing date was fixed. In these circumstances, the company manager verbally refused the worker leave to prevent him appearing before the judge and told him that he should leave the trade union or he would end up in prison, as happened to an ex-employee of his in another company where he was also a manager, and that in some cases trade unionists turned up dead but nobody knew why they were killed. The complainant organization stated that in the face of this refusal by the company, he requested leave to appear before the judge in writing. The manager granted the leave on condition that the worker obtained a certificate from the court.
- 459.** The complainant organization states that, on 4 August 2008, the union member José Samuel Duarte Ballesteros, a company worker, was at his workplace carrying out his normal activities and when he opened the desk drawer to take out a pen, the technical manager came up and because there was a sheet of paper with a numbers game, SUDOKU, in the desk, the manager accused the worker of an offence, saying that he had caught him in the act of playing a game. The worker said that it was not true. On 5 August 2008, the human resources management department called the worker to a disciplinary hearing, but the hearing was postponed to 8 August 2008 because the worker was sick, and on 12 August 2008, the worker was notified of the unilateral and unfair decision by the company to suspend his contract of employment for eight days.
- 460.** Furthermore, on 1 April 2008, the company issued a memorandum giving instructions to assign new normal functions of the worker, Henry Trujillo, a SINALTRAINAL member, tasking him with going to other offices to carry documents to the administrative area and open a gate to the boiler section, resulting in the worker being open to an accusation of failing in his duties of supervising and controlling the entry of vehicles loading and unloading raw materials. The head of human resources management notified the worker that he was prohibited from entering the boiler area and assigned the job to another worker. The complainant organization emphasizes that the worker was prohibited from moving

within the company's installations to prevent communication with other workers because he was a member of SINALTRAINAL. On 16 April 2008, SINALTRAINAL notified the company that this constituted persecution and violation of freedom of association and the right to organize.

**461.** In addition, on 25 April 2008, the complainant organization requested the company for a meeting of the SINALTRAINAL claims committee, with advice and representation of the trade union's executive board, to deal with subjects such as, among other things, respect for the contract of the worker Julio César Almeyda Barón regarding removal of his trade union status. On 30 April 2008, the head of human resources management, representing the company, pressured the members of the SINALTRAINAL claims committee to hold the meeting without the participation of the trade union delegates and officials. In the light of these events, SINALTRAINAL informed the Ministry of Social Protection, but there has been no pronouncement to date.

**462.** The complainant organization also reports many other acts of anti-union discrimination:

- on 18 January 2008, a communication was sent to the company because it had refused education support for the children of the unionized workers José Samuel Duarte Ballesteros, Henry Trujillo and Julio César Almeyda Barón;
- on the same day, a letter was sent to the company because it had refused holiday assistance to the unionized worker Henry Trujillo and a request for work clothes and shoes for the unionized worker Julio César Almeyda Barón was submitted, as he had not been allowed to change his clothes and had been refused a locker;
- on 15 February 2008, in reprisals against unionized workers, the company removed Julio César Almeyda Barón from the list of those in receipt of medical assistance, although that was an acquired right;
- on 3 February 2009, the company refused medical assistance to the unionized worker Jhon Fredy Salazar. It again refused work clothes and a locker to the unionized worker Julio César Almeyda Barón. In addition, the company discriminated against six unionized workers (among them Julio César Almeyda Barón, Henry Trujillo and José Samuel Duarte Ballesteros), as they paid a productivity premium to all non-union workers, violating the right to equal treatment by denying that right because that premium had been paid since 2002 under the heading of productivity bonus;
- in accordance with article 23 of the Constitution, the company was presented with a claim requesting the granting of an employee life insurance policy to the worker José Alfredo Parra Oliveros. On 7 January 2009, the unionized worker was prohibited from taking documents to the union notice board, on the grounds that he was leaving his workplace and for that reason the trade union was summoned to the claims committee on 14 January 2009;
- on 16 February 2009, the company was requested to relocate the trade union notice board, as the place where it was located was in a place which intimidated the workers, as it was placed next to the offices of the company management, who drew up lists of those who came to read it and prohibited employees from seeing the content of the trade union notice board;
- on 12 March 2007, the company hired the company "Temporing" to carry out raids on workers' houses, on the grounds that the social welfare coordinator did not have enough time to carry out the visits ordered by the management. Many workers, out of fear created by the company, were obliged to allow company officials into their

homes to question and intimidate their families, take photographs and film the interior of the houses. In the light of these abuses, the complainant organization reported these events to the prosecutor's office on 4 February 2008. The case was shelved.

- 463.** The complainant organization indicates that the company terrorized workers, telling them that due to the set of claims presented by SINALTRAINAL, it had decided to sell the shares of a company called "Arroz Diana" and began to notify the supposed termination of the contracts of employment of those working in the company as a strategy to allow the sacking not only of the people belonging to a trade union but also to juggle the jobs of those who are still not unionized. In response to this, the company Employees Fund (FESA LTDA) received a notice from the board of directors prohibiting loans to any member until May 2009 as the policies of the new owners could change the procedures for the operation of FESA LTDA.

## **B. The Government's reply**

- 464.** In its communication of 31 January 2011, the Government states that it requested information from both CI SACEITES SA and the regional management of Santander with the objective of providing an appropriate reply to the Committee.
- 465.** With regard to the alleged permanent industrial disputes and difficulties faced by workers to obtain recognition of their labour rights, the company replies that it has always maintained an atmosphere of respect for workers' rights, whether or not they are members of the trade union. In addition, the company describes the different policies which it implements to prevent worker/employer disputes, such as the management's open-door policy. It also points out that the trade union exercises in full its trade union rights of collective bargaining and promotion of the trade union through the company notice board.
- 466.** As regards the trade union's assertion that the company exerts pressure on workers who are members of the trade union to give up their membership, the company replies that the assertion is not true and that if workers give up their trade union membership, they do so freely and of their own volition, evidence of which is that some workers who are trade union members still belong to the company at the present time.
- 467.** With respect to the subsequent complaint mentioning Mr Henry Trujillo, Mr José Samuel Duarte Ballesteros and Mr Julio César Almeyda Barón, the company replies that, while these workers decided to join SINALTRAINAL at some point in time, that in no way resulted in any type of retaliation or persecution against them. The assertion in this respect is without any substance. The company goes on to explain and justify the reason for its decisions relating to each of the above workers.
- 468.** In the case of Julio César Almeyda Barón, the company replies that it called the employee to account for the excessive bills for the mobile phone owned by the company which had been allocated to him to carry out his duties and for which it had to pay the bills. Due to the employee's misuse of this work tool, the company decided to terminate his contract of employment, but nevertheless respecting his union status and observing due process. The proceedings at first instance are currently pending a decision in the Bucaramanga High Court.
- 469.** In the case of José Samuel Duarte Ballesteros, the company replies that during working hours and in the course of his duties, the worker was caught in the act in activities which had nothing to do with his work. Once the disciplinary procedure had been carried out, the company considered that there was a disciplinary offence and applied the sanction provided for the purpose in the company's internal rules. The disciplinary procedure was applied in the same way as to any worker whose conduct departs from the norm.

- 470.** In the case of Henry Trujillo whose job, at the time to which the communication refers, was security assistant, the company replies that in the light of the objective needs of the company, on 15 April 2008, he was assigned functions involving going to other offices to carry documents to the management area and to open the door of the boiler section. That is the objective truth which reflects the company's possibilities. That these new functions should result in "the worker being open to an accusation of failing in his duties of supervising and controlling the entry of vehicles" is mere supposition and as such, lacks any rational substance. Moreover, the company indicates that it is not true that the head of human resources management imposed the prohibitions on the worker concerning the places to which he went in the manner indicated. The reason for asking him to remain at his post was purely and simply a matter of efficiently performing the tasks for which he was hired.
- 471.** In the case of Julio César Almeyda Barón, the company replies that, according to the communication sent on 9 February 2009 to Julio César Almeyda Barón, it is clear that the worker refused to use the equipment supplied. Under the legislation, "a worker is obliged to use clothing and shoes provided by the employer in his work and if he fails to do so, the employer is relieved of the need to supply it thereafter", and he was provided with two equipments during that year. In addition, Julio César Almeyda Barón was informed that the company provided a locker for the exclusive use of the technical area and stores, because those workers needed to change from their work clothes at the end of the working day and store their protective equipment, which are not required for an administrative function.
- 472.** In the case of José Alfredo Parra Oliveros, it should be emphasized that where there is a group life insurance policy for company workers, the claim that it should be granted to a particular worker is invalid.
- 473.** The company explains that workers have two extra-judicial instruments at their disposal, the arbitration award and the collective accord. Each of the workers has a free choice of these instruments. The rights that derive from these instruments will be applied to the persons who choose them according to their choice.
- 474.** With respect to the relocation of the notice board, the company states that the place where it is located was chosen by the workers themselves in 2005, and at no time has a list of people coming to see it been drawn up, so the reason for such fear is inexplicable. The installation of a second notice board was authorized but so far the workers have not made use of it.
- 475.** The acts of the "Temporing" company, which is denounced as raiding houses of workers, who allowed the entry of their personnel for fear of some type of retaliation by the company, are described as an invasion of their privacy. The company states that the company's objective was not such. "Temporing" was hired to support payroll processes. It was envisaged that the company would make home visits to management and security control staff, as set out in the company's policies and rules. The staff could allow or refuse the company visit and their decision was respected.
- 476.** With regard to the allegation that the company terrorized workers with the sale of the shares of the company "Arroz Diana", the company denies the argument and assures that it informed all the workers that there would be no changes in the production side of the company. It states that FESA LTDA is a separate legal entity from the company and for that reason it does not interfere in any way in its lending policies, thus it cannot be accused of prohibiting the granting of loans.

477. Lastly, with respect to the conduct of managers in relation to union members because of their membership of the trade union, the company states that it has always respected the decision of its workers to join a trade union, thus ensuring harmonious labour relations with the workers.
478. The Government indicates that the Ministry of Social Protection, through its local offices, carried out investigations into the lodged complaints as follows:
- in case No. DI 0265 of 2005, an investigation into alleged anti-union persecution was carried out, and the investigation exonerated the company in Resolution No. 593 of 2006;
  - in case No. 14313-0015 of 2010, an investigation was initiated into violation of the collective agreement, and a decision is pending in this case.

### C. The Committee's conclusions

479. *The Committee observes that in this case, the complainant organization alleges anti-union practices and acts of discrimination against trade unionists in the company CI SACEITES SA including pressure to give up their trade union membership and practices contrary to collective bargaining, including the conclusion of a collective accord with non-union workers.*
480. *With regard to the allegations relating to collective bargaining, the Committee notes that, according to the complainant organization: (1) over a year had passed since the presentation of the set of claims (2008) without the Compulsory Arbitration Tribunal, whose intervention was decided by the workers, issuing an arbitral award; and (2) the company signed a collective accord with non-union workers to duplicate SINALTRAINAL and prevent workers from joining the trade union.*
481. *The Committee also notes that the Government indicates that the Ministry of Social Protection, through its local offices, initiated an investigation into the alleged violation of the collective agreement and that a decision from the Minister in this investigation is pending.*
482. *The Committee wishes to point out, in general terms, that with respect to the allegations that legal proceedings are usually too long, the Committee has recalled the importance that it attaches to the need to resolve proceedings rapidly, given that justice delayed is justice denied [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 105]. The Committee emphasizes the importance of the proceeding concluding promptly and that the tribunal should pronounce on the set of claims. In addition, observing that collective bargaining with a trade union and a collective accord signed with non-union workers coexist in the same company, the Committee points out that the Collective Agreements Recommendation, 1951 (No. 91), emphasizes the role of workers' organizations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organization exists [see **Digest**, op. cit., para. 944]. In these circumstances, the Committee requests the Government to take appropriate measures to ensure that the proceeding in progress in the Compulsory Arbitration Tribunal is completed promptly and that it should send it a copy of the arbitral award issued. In addition, the Committee requests the Government to send it the results of the investigation into the alleged violation of a collective agreement in which the Minister's decision is pending, and expects that the investigation will include the alleged use of a collective accord for anti-union purposes.*

- 483.** *In relation to the alleged proceedings for the dismissal of trade unionists or pressure on workers to give up their union membership, the Committee notes that, according to the complainant organization, when the workers Henry Trujillo, José Samuel Duarte Ballesteros and Julio César Almeyda Barón joined the union in December 2007, the company renewed its persecution of the unionized workers and some gave up their membership. The Committee notes that, according to the company, if the workers gave up their union membership, it was freely of their own volition, and other unionized workers were still working in the company at the present time.*
- 484.** *In the case of Julio César Almeyda Barón, the Committee notes that, according to the complainant organization, the worker was dismissed in December 2006 after his return from sick leave and a process of removing his trade union status was initiated in order that a judge could authorize the termination of his contract of employment, and the proceedings are in progress in the Fourth Labour Court, Bucaramanga. The Committee notes that, according to the company: (1) due to the employee's misuse of his telephone, the company decided to terminate his contract; (2) despite this, the company decided to respect his trade union status and the application of due process; and (3) the proceedings at first instance are currently pending a decision in the Bucaramanga High Court.*
- 485.** *In the case of José Samuel Duarte Ballesteros, the Committee notes that, according to the complainant organization, he was at his workplace carrying out his normal activities and when he opened the desk drawer to take out a pen, the technical manager came up and because there was a sheet of paper with a numbers game, SUDOKU, in the desk, the manager accused the worker of an offence for which his contract of employment was suspended. The Committee notes that, according to the company, during working hours and in the course of his duties, the worker was caught in the act in activities which had nothing to do with his work and the disciplinary proceedings current at the time were applied.*
- 486.** *In the case of Henry Trujillo, the Committee notes that, according to the complainant organization, the company assigned him the tasks of travelling to other offices to take documents to the administrative area and open a gate to the boiler section, resulting in the worker being open to an accusation of failing in his duties of supervising and controlling the entry of vehicles loading and unloading raw materials, and that the head of human resources management notified the worker that he was prohibited from entering the boiler area and assigned the job to another worker. The Committee notes that, according to the company, his functions were changed in the light of the company's needs and it was not true that the head of human resources management prohibited the worker from entering the boiler area in the course of his movements as indicated. The reason for asking him to stay at his post was purely and simply to ensure that the tasks for which he was hired were performed efficiently.*
- 487.** *In the case of Julio César Almeyda Barón, the Committee notes that, according to the complainant organization, a request for a locker, uniform and work shoes was submitted so that the worker could change his clothes to work and was refused (on two occasions). The Committee notes that, according to the company, the worker refused to use the equipment supplied and was informed that a locker was allocated for the exclusive use of the technical and store areas, because of the need of the personnel in those areas to change their work clothes.*
- 488.** *In the case of José Alfredo Parra Oliveros, the Committee notes that, according to the complainant organization, the company was presented with a claim requesting the granting of an employee life insurance policy to the worker José Alfredo Parra Oliveros. According to the company, the claim that a life insurance policy should be granted to one worker in particular was not valid.*

- 489.** *In relation to the relocation of the notice board, the Committee notes that, according to the complainant organization, the company was requested to relocate the trade union notice board, as the place where it was located intimidated the workers, as it was placed next to the offices of the company management, who drew up lists of those who came to read it and prohibited employees from seeing the content of the trade union notice board. The Committee also notes that, according to the company, the place where it is located was chosen by the workers themselves in 2005, and at no time has a list of people coming to see it been drawn up, and the installation of a second notice board was authorized but so far the workers have not made use of it.*
- 490.** *With regard to the “Temporing” company, the Committee notes that, according to the complainant organization, that company was contracted to carry out raids on workers’ houses, on the grounds that the social welfare coordinator did not have enough time to carry out the visits ordered by the management. Many workers, out of fear created by the company, were obliged to allow company officials into their homes to question and intimidate their families, take photographs, film the interior of the houses. The Committee notes that, according to the employer, the “Temporing” company was hired to support payroll processes and staff could allow or refuse the company visit and that their decision was respected.*
- 491.** *In relation to the allegation that the company terrorized workers with the sale of the shares of the company “Arroz Diana”, the Committee notes that, according to the complainant organization, the company began to notify the supposed termination of the contracts of employment of those working in the company, as a strategy to allow the sacking not only of the workers belonging to a trade union but also to juggle the jobs of those who were still not unionized. The Committee notes that, according to the company, it had informed all the workers that there would be no changes in the production side of the company. In addition, the Committee notes that, according to the complainant organization, in response to the possible sale of shares in the company, the company FESA LTDA received a notice from its board of directors prohibiting loans to any member until May 2009 as the policies of the new owners could change the procedures for the operation of FESA LTDA; while the company indicates that FESA LTDA was a separate legal entity from the company and for that reason it did not interfere in any way in its lending policies.*
- 492.** *In relation to the different behaviour of the company’s managers towards members of the trade union, the Committee notes that, according to the complainant organization, the head of human resources management, representing the company, pressured the members of the SINALTRAINAL claims committee to hold the meeting without the participation of the trade union delegates and officials, while the company indicates that it had always respected the decision of its workers to join a trade union.*
- 493.** *Furthermore, the Committee notes that the Government indicates that the Ministry of Social Protection, through its local offices, carried out various administrative investigations, including one for alleged anti-union persecution, in which the company was exonerated in Resolution No. 593 of 2006. The Committee emphasizes, however, that the resolution predated the allegations that it has just examined.*
- 494.** *Noting the extensive contradictions between the statements of the complainant organization and those of the company concerning alleged acts of discrimination against trade unionists and alleged threats of imprisonment and death, the Committee requests the Government to take steps to determine the veracity of these allegations and to inform it of the results.*

## The Committee's recommendations

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

- (a) *The Committee requests the Government to take appropriate measures to ensure that the proceeding in progress in the Compulsory Arbitration Tribunal is completed promptly and that it should send it a copy of the arbitral award issued. In addition, the Committee requests the Government to send it the results of the investigation into the alleged violation of a collective agreement in which the Minister's decision is pending, and expects that the investigation will include the alleged use of a collective accord for anti-union purposes.*
- (b) *Noting the extensive contradictions between the statements of the complainant organization and those of the company concerning alleged acts of discrimination against trade unionists and alleged threats of imprisonment and death, the Committee requests the Government to take steps to determine the veracity of these allegations and to inform it of the results.*

CASE NO. 2746

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

### **Complaint against the Government of Costa Rica presented by the Banco Popular Employees' Union (SIBANPO)**

*Allegations: Anti-trade union practices by the employer in order to undermine and destabilize the union and its officials, including the refusal to grant trade union leave and the suspension of funds provided for under the collective agreement; the bringing of criminal charges against the union's Secretary-General, and the harassment of one of the union's members*

- 496.** The complaint is contained in a communication dated 10 November 2009 from the Banco Popular Employees' Union (SIBANPO), which presented additional information in a further communication in February 2010.
- 497.** The Government sent its observations in communications dated 24 January and 1 April 2011.
- 498.** Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainant's allegations

- 499.** In its communication dated 10 November 2009, SIBANPO explains that it represents employees of the Banco Popular y de Desarrollo Comunal, a corporate public body that has successively concluded a number of collective labour agreements with the union, the latest of which was signed on 1 December 2008. SIBANPO alleges that, because of its active role in trade union affairs, the union and its leaders have for some time been confronted by a series of arbitrary anti-union and discriminatory measures that have been backed or perpetrated by the employers' representatives of Banco Popular, including the general manager, in attempts to undermine and destabilize the trade union. These anti-union measures have taken many different forms: persecution of union officials, harassment, arbitrary disciplinary sanctions, unjustified denial of leave to carry out union activities, the bringing of baseless criminal charges against them by higher institutional bodies, unlawful administrative requirements, denial of freedom of expression, etc. Specifically, SIBANPO alleges that its requests for paid trade union leave, as provided for in the collective agreement so that some of its members can assist in training activities and other strictly union activities, have been denied without any ground for doing so (Human Development and Organizational Directorate communications (ref. Nos DDHO-047-2009 of 20 January 2009, DDHO-541-2009 of 16 June 2009, DDHO-432-2009 of 13 May 2009 and DDHO-640-2009 of 14 July 2009), copies of which were attached). In addition, leave requests submitted by members of SIBANPO's electoral committee have on several occasions been denied, thereby disrupting the work of this extremely important union body (Human Development and Organizational Directorate communications (ref. Nos DDHO-430-2009 of 11 May 2009, DDHO-388-2009 of 29 April 2009 and DDHO-897-2009 of 6 October 2009); a number of leave requests for SIBANPO executives have also been refused (communication ref. No. DDHO-460-2008 of 9 May 2008). Predictably, the employer "justifies" these decisions on the grounds that the Bank's work would suffer if the requests were granted.
- 500.** SIBANPO further alleges that on 12 June 2008, following the Bank's internal auditor's report AG-606-2007 and on instructions from the general manager, the director of the legal department, who is the Bank's legal representative, lodged criminal charges with the Office of the Public Prosecutor against Ms Oriette Zonta Elizondo, SIBANPO's Secretary-General, on the grounds that the Bank considered that part of the funds it transferred to SIBANPO in accordance with section 72 of the collective agreement in force were used not for the purposes for which they were intended, i.e. for activities designated as social, cultural and sporting activities for the Bank's employees, but for activities of interest only to the trade union, which were identified in the report.
- 501.** According to the complainant, the auditor's report states that part of the funds corresponding to the first advance payment for 2006 were used to finance advisory services that the union claimed were paid out of its own funds, whereas in fact the money was used to pay for the services of an expert to organize a cultural event and to train the workers in subjects of general institutional interest (development banking and projects of direct relevance to the Bank itself). SIBANPO states that, in accordance with section 72 of the collective agreement, the advance was authorized by the general manager himself, who nevertheless gave instructions for charges to be lodged with the Office of the Public Prosecutor (communication ref. No. GGC-1319-2006).
- 502.** The misleading auditor's report also states that another part of this 2006 advance was used to pay invoices for food, equipment, transport and training services in some of the Bank's branches and that part of the second advance for the same year was spent on end-of-year activities in several of the Bank's offices. According to the auditor's strange criterion, these funds could not be spent on the union's own activities, even though the activities it

organized were for the direct benefit of the Bank's employees. Here again, the auditor's assessment is not in keeping with section 72 of the collective agreement.

- 503.** As for the funds that were transferred in 2005, the report claims that part of the money was used to pay for the end-of-year party for the Bank's employees, which it again claims was a strictly trade union affair. However, the conclusions drawn in the auditor's report are altogether unacceptable, as there is no doubt that these occasions are social and cultural events whose financing is covered by section 72 of the collective agreement.
- 504.** In conclusion, SIBANPO observes that the criminal charges were eventually restricted to the question of the advisory service – which were training activities – and the 2005 end-of-year staff party and were disallowed by the Criminal Court of the Second Judicial Circuit of San José on 7 September 2009.
- 505.** According to SIBANPO, the purpose of all this was to discredit the union and undermine its leaders' credibility with the employees.
- 506.** On another issue, SIBANPO states that, on 6 July 2007, the Judicial Investigation Body (OIJ) ordered a search of the offices of the internal auditors and of the Bank's national management board, after criminal charges had been brought by a Costa Rican journalist on the grounds that a person under contract to the Bank had gone to two offices of the Costa Rican Electricity Institute (ICE) with a forged document authorizing the Institute to provide him with information regarding the journalist's incoming and outgoing telephone calls.
- 507.** The story, which was reported the following day in *La Nación*, one of the newspapers with the biggest circulation in Costa Rica, caused a national outcry. As the article pointed out, "the internal auditor of Banco Popular, with the authorization of its management board, engaged the services of two private detectives to investigate recent "leaks" to the press." The article went on to state that one of the detectives, a former agent of the Judicial Police Assault Force, had been convicted of abuse of authority and has been one of the defendants in a case concerning the death of an alleged gangster who died a few hours after being arrested and taken to judicial police headquarters (a copy of *La Nación* of 7 July 2007 was attached).
- 508.** The article published by *La Nación*, which was clearly very serious, caused great concern among the staff of Banco Popular, who felt obliged to question the Bank's national management board about the story. The last paragraph of their communication read as follows:

The employees of Banco Popular request, along with its clients, seek clarification of the alleged incidents, which are such as could cause a loss of confidence in the Bank. If any such action had been perpetrated by any other employee, the same auditor's report would in no uncertain terms have called for an official administrative inquiry into the matter. We therefore believe that the national management board must take appropriate steps, treating everybody on an equal footing irrespective of their position in the Bank, so as to arrive at the truth of the matter and, above all, correct the poor image of the Bank given by the auditor's recruitment of a private investigation company (a copy of SIBANPO's communication ref. No. 316-S-2007 was attached.)

- 509.** SIBANPO adds that, following this communication, the Bank's internal auditor brought criminal charges against the union's Secretary-General, Ms Oriette Zonta Elizondo, for libel, injury and defamation.

- 510.** The case was brought before the Criminal Court of the First Judicial Circuit of San José, which on 6 October 2008 handed down decision No. 1267 absolving Ms Oriette Zonta Elizondo of any blame and responsibility and citing the right of any union official to express his or her views on a public issue of national interest, and ruled she had not acted incorrectly.
- 511.** An appeal was lodged against the decision, but the appeal was rejected by the Third Chamber of the Supreme Court of Justice on 28 August 2009.
- 512.** Since then, the general manager of Banco Popular has repeatedly demanded that the union return part of the funds that it used in accordance with section 72 of the collective agreement to finance social, cultural and sporting activities (communications ref. Nos GGC-407-2009 of 11 March 2009 and GGC-407-2009 of 24 April 2009). Moreover, the general manager has taken the unilateral decision to suspend the transfer of funds under section 72 for the periods of 2008 and 2009. This has seriously compromised the union's plans and programmes (communication ref. No. GGC-0640-2009) and is designed to destabilize the union's finances and disrupt its social, cultural and sporting activities. The management's demands are altogether unacceptable, for the following reasons:
- (a) Regarding the demands that the union reimburse funds that have been transferred to it, the Bank's repeated demands are quite clearly inadmissible as they are based on irregular operational rules that were modified unilaterally without the union being consulted or even informed at any time.
  - (b) Regarding the reimbursement of 3 million colones (CRC), it has been clearly shown that the sum was spent on the professional services of an expert who provided training for the employees of Banco Popular on matters of interest to the Bank (restructuring, draft Development Bank Act). The purpose for which these funds – which at the time had been duly authorized by the general manager himself – were used is altogether in conformity with the rules and regulations laid down in section 72 of the collective agreement.
  - (c) As to the other funds whose reimbursement is being demanded, these were earmarked for activities conducted at the end of 2005 in several of the Bank's offices. In 2007, funds were transferred at the end of the year to SIBANPO, which it spent on cultural and sporting events, but the administration again decided to change the rules for their use without consulting or even informing the union. In Budget Department communication ref. No. SPR-415-2009, the general manager claims that it was the third time that SIBANPO had had to revise its accounts, but the fact is that, although the union submitted its account before the deadline, the administration changed the rules. Obviously, the union's invoices did not conform to changes that were introduced subsequently.
- 513.** The general manager's demands are in any case unfounded, since the purpose for which the transferred funds were used is entirely in accordance with section 72 of the collective agreement and with the invoices that were submitted along with all the relevant documentation.
- 514.** Furthermore, union member Ms Fressy Chavarría Marchena, who until 2009 was the Disputes Secretary of SIBANPO's Executive Committee, has been a victim of systematic and insidious harassment. She was unjustly sanctioned several times, on one occasion on the basis of evidence that had been obtained illegally by the administration (communication ref. No. DDHO-1062-2006 of 27 June 2006) – namely, details of her Internet access that were divulged by officials responsible for computer security, as stated

in a letter to Ms Chavarría dated 1 April 2008. Her work productivity has also been questioned for no valid reason and without any preliminary investigation, and on a number of occasions she has been unjustly denied leave to take part in union activities (communication ref. No. DDHO 0264-2009 of 18 March 2009). Finally, the Director of the Human and Organizational Development Department of Banco Popular ordered the initiation of administrative proceedings against Ms Chavarría on the grounds that on 27 March 2009, while on sick leave, she attended a seminar on “The impact of the financial and economic crisis on companies’ human resources strategies”. Ms Chavarría’s participation in the seminar was financed by SIBANPO as being of interest to the workers and to the union itself. SIBANPO adds that, because of the constant harassment suffered by Ms Chavarría, a complaint was lodged with the Ombudsperson setting out the repeated occasions on which she had been harassed.

**515.** Finally, the complainant organization states that it is applying to the Committee on Freedom of Association because the senior management of Banco Popular is orchestrating an increasingly intense campaign against SIBANPO and engaging systematically in anti-union practices.

**516.** In its communication of February 2010, SIBANPO refers to a letter from the general manager dated 22 December 2009 (enclosed) demanding illegally that the union reimburse the sum of CRC10,617,579 for the year 2006, which had been transferred and duly authorized in accordance with section 72 of the collective agreement, This sum was earmarked for training activities organized by SIBANPO and for end-of-year social activities in which all the Bank’s employees took part whether or not they were union members. SIBANPO again draws attention to the Bank’s persistent attempts to force the union to reimburse funds which had been rightly transferred to it under the collective agreement and which had been duly authorized by the general management, completely disregarding the fact that the criminal courts have already ruled once and for all that the union had not acted improperly.

## **B. The Government’s reply**

**517.** In its communications dated 24 January and 1 April 2011, the Government summarizes the principal allegations made by the complainant organization, as follows: (a) the trade union has been the target of arbitrary anti-union and discriminatory measures promoted or carried out by representatives of the employer organization, the Banco Popular; (b) unjustified denial or restriction of paid union leave for officials and members of other bodies of the union; (c) lodging of criminal charges against the union’s Secretary-General in connection with the administration of union funds; (d) criminal charges against the union Secretary-General for libel, injury and defamation; and (e) arbitrary administrative orders by management with the aim of destabilizing the union financially and undermining the union’s social, cultural and sports programmes.

**518.** The Government indicates that it communicated a copy of the complaint to the general manager of the Banco Popular y de Desarrollo Comunal to enable it to address the allegations, which it did through a detailed report (sent with the Government’s reply), and emphasizes that the law provides for transparency in the public service, underpinned by provisions for establishing, operating, maintaining, developing and assessing internal monitoring systems, in accordance with Act No. 8292.

**519.** With regard to the alleged arbitrary measures of an anti-union and discriminatory character, promoted or carried out by management representatives of the Bank, the complainant organization does not give any specific information that might be indicative of such arbitrary measures, and it is therefore difficult to address vague and unfounded claims. At any event, the management emphasizes that it acknowledges the protection

provided by the law to all workers against any harmful act including dismissal. Similarly, the Constitutional Court acknowledges the right of employers to reorganize their companies and cut costs in order to achieve economic stability, which is in accordance with the constitutional right to engage in free trade, provided that the fundamental rights and liberties of citizens are not infringed. It is thus important to ensure a balance between those two areas of constitutional rights.

- 520.** With regard to the alleged denial and/or restriction of paid union leave for officials and members of other union bodies, the Government states that according to the Bank's report of 6 September 2010, paid trade union leave both for union officials and for rank and rank file members is governed by clauses 63–66 and 70 and 71 of the collective agreement in force in the Banco Popular. In that regard, the Bank's management states that it has not granted 100 per cent of the union leave that has been claimed, but that it cannot be claimed that the aim was to undermine the functioning of the union. The Bank's management indicates in its report that when such leave has been refused, the decision was justified by the necessity of ensuring, in specific circumstances, the effective functioning of the public service intended to benefit citizens in accordance with ILO Convention No. 135, according to which "The granting of such facilities shall not impair the efficient operation of the undertaking concerned." The percentage of union leave applications actually granted is as follows:

| Result of application      | Worker hours | Percentage |
|----------------------------|--------------|------------|
| Leave granted              | 808.5        | 89.10      |
| Leave not granted          | 84           | 9.25       |
| Applications not processed | 15           | 1.65       |
| Total                      | 907.5        | 100.00     |

- 521.** Consequently, taking into consideration the fact that leave applications not processed are those that are not granted because the official in question is on holiday and/or on sick leave, or the officials concerned are non-union members or indicate a wish not to participate, in only 9.25 per cent of the applications processed was leave refused, and in every case for work-related rather than anti-union reasons.
- 522.** As regards the allegation that the internal audit report of the Bank is biased and wishes to discredit the union and undermine its credibility with its members, the Government states that Costa Rica is a State based on the rule of law, whose civil servants are governed by public laws and regulations and by the principles of probity, respect and adherence to the law. In that regard, the Bank's management states that: "... it is this framework that should guide the actions of the Bank's management, the General Auditor, the Legal Affairs Director, and the Secretary-General of the complainant union". It adds that there is an overriding obligation to report acts that are contrary to the sound administration of public funds and that the internal audit contested by the complainant was produced in that legal context.
- 523.** Giving further details, and referring to the auditor's report, the Bank's management in its report states that:

It is not relevant here whether or not the funds available to the union under section 72 of the collective agreement were properly administered.

What must be considered here is whether or not, once the Bank's General Auditor had established that they were not being administered properly, the criminal charges brought by the Bank constitute an infringement of freedom of association because their purpose, as the

complaint has claimed, was to “discredit the union and cause it to lose credibility among the workers [...]”. The internal auditors of the State banks, like those of the Banco Popular, are sufficiently independent, even within the Bank’s own management structure, to ensure that in order to remove them, the approval of the Comptroller General of the Republic is required. That is intended to ensure that they have sufficient autonomy to be able to investigate issues such as the administration of public funds even if administered by their own employer. The General Internal Inspection Act No. 8292 of 31 June 1992 provides that: “Section 25. Independence in respect of function and judgement: Officials of the Internal Audit Office shall carry out their functions in full independence in respect of their functions and judgements in relation to the management hierarchy and to other bodies of the administration”.

It follows that in the event that the general manager of the institution in question does not concur with the report, he or she is not free to refuse to implement it, to order it to be shelved, or to seek changes to it, other than by the procedures established by the Law itself.

- 524.** The management of the Bank acknowledges, on the other hand, that according to section 72 of the collective agreement in force, the Bank is required to allocate 0.10 per cent of the annual budget allowed for expenditure on staff services to the development of social, cultural and sports programmes for all workers; for that purpose public funds are made available to the union to allow it to organize events in accordance with the collective agreement. At the time of the events in question, however, the internal auditor’s report drew attention to certain irregularities on the part of the Secretary-General of SIBANPO in connection with the administration of the public funds in question, on the grounds that approval had been given for the use of public funds remitted under the terms of section 72 of the collective agreement in order to cover costs arising from the union’s own activities.
- 525.** In the light of the recommendations made in the internal audit, and in order to allow the appropriate investigation to be carried out with regard to the accounting and monitoring of the administration of public funds, the Bank’s management lodged a formal criminal complaint with the prosecution service against that union’s Secretary-General on 12 June 2008. Subsequently, on 7 September 2009, the Criminal Court of the Second Judicial Circuit of San José, set aside the complaint on the grounds that there was insufficient evidence of any irregularities in the facts referred to by the Bank’s auditor.
- 526.** It is clearly the case that the union officials, like any other citizen, must enjoy the presumption of innocence, and must be ensured due process of law and be judged with the minimum delay by an impartial and independent judicial authority. This has been made clear by the Committee on Freedom of Association.
- 527.** However, the Committee has also indicated that it behoves the Government to show that the measures it has adopted are not motivated by the union’s activities. The Committee has also stated that union office does not confer legal immunity or other such privileges.
- 528.** All the above requirements were respected by the Bank’s management, as the Secretary-General was not denied the rights and guarantees due to her in a criminal case or those covered by the constitutional principle of due process; it is therefore not possible to conclude that there was any violation or infringement of freedom of association.
- 529.** The allegations made by the union are thus inaccurate in claiming that the Secretary-General’s trade union rights and freedoms were infringed, since the facts must be seen in context, not in isolation and without taking into account the background and various indicators which appeared to warrant objective investigation by a court of law as an independent body.
- 530.** As regards the events of 6 July 2007 in the offices of the internal auditor and the board of directors of the Bank, and the criminal charges brought against the Secretary-General of SIBANPO by another Bank employee, the Government states that, according to the

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general management, the disputes in question are such as would not be welcome to any company or institution, but that they do not come under the managerial remit of the employer. Freedom of opinion and expression are inherent aspects of freedom of association. Those rights must not, however, be regarded as absolute and unlimited. The Committee on Freedom of Association has stated that:

The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities. Nevertheless, in expressing their opinions, trade union organizations should respect the limits of propriety and refrain from the use of insulting language.

- 531.** In the judgement of the Bank, in a case like this one, the employer could not exercise any form of control on information prior to its dissemination, but can do so once it has been made available.
- 532.** It should also be noted that the management of the Bank, in its report, drew attention to the fact that the person in this case who initiated the judicial proceedings was another worker, a colleague of the union's Secretary-General, rather than the management. From that perspective, it cannot be regarded as a violation of freedom of association, as the worker was seeking redress for what he considered to be an attack on his honour under the terms of national criminal law.
- 533.** With regard to the specific aspects of this case, the Bank's management state that: "... in cases of protest demonstrations in the context of labour relations, it is essential to strike the appropriate balance between the right of workers to act freely in defence of their own ideas and opinions, and the mandatory respect, among other things, that is due to the dignity and honour of persons at the workplace".
- 534.** To date, as the union has indicated in its complaint, a ruling has been given in these proceedings to the effect that the charges were unfounded and the procedure complied with the applicable constitutional and legal rules.
- 535.** As regards the reimbursement of certain sums transferred under section 72 of the collective agreement for the period 2008–09, the Government notes that the Bank's management in its report stated that SIBANPO was asked to reimburse the funds, a decision based on recommendations made by the Bank's internal audit office which must be implemented once endorsed by the director.
- 536.** In the same vein, the report in question warns the general management of the Bank that: "unjustified failure to honour internal monitoring obligations by the director and subordinate managers and staff carries administrative liability under the terms of section 39 of the General Internal Audit Act".
- 537.** According to section 39 of the Act in question, managers, subordinate staff and other public officials incur administrative liability if through their actions or omissions they undermine the internal auditing system or fail to take appropriate action to establish, maintain, improve and assess such a system in accordance with the applicable technical regulations.
- 538.** Similarly, the Act in question stipulates that managers and subordinate staff also incur administrative and civil liability if they obstruct or delay the auditor, deputy auditor and other internal audit office staff in carrying out their tasks,

- 539.** It follows from the above that, although the report contains recommendations, if the director of the Bank deems them to be consistent with the Bank's own rules and such as to allow the Bank to operate in a financially efficient manner, they must be implemented in accordance with the General Internal Audit Act No. 8292.
- 540.** Consequently, the actions of the Bank's general management were consistent with its obligations, given that the director and other officials are obliged, as public officials, to ensure that public funds are properly administered. That in no way constitutes unfair or discriminatory labour practice by the Bank's management, as the complainant organization claims.
- 541.** In any event, the Government is clear about the need to punish anti-union practices and does not hesitate to apply the full rigour of the law in cases where such acts can be shown to have occurred.
- 542.** The Government is working on improvements in national legislation in order to safeguard, to a greater extent, respect for the rights of unionized workers, in accordance with the constitutional guarantees of due process and legitimate defence, as has been indicated in its reports submitted in reply to questions regarding Cases Nos 2490 and 2518 that have been before the Committee.
- 543.** As regards the alleged acts of discrimination against members of SIBANPO's Executive Committee by the management of the Bank, the Government states that the union presenting the complaint refers, in general terms, to discrimination by the Bank against members of its Executive Committee, especially in the specific case of the Secretary-General, Ms Oriette Zonta Elizondo, on the grounds referred to in previous paragraphs, and in the case of the union's Disputes Secretary, Ms Fressy Chavarría Marchena.
- 544.** As regards the latter case, the Bank's general management states that the official in question is the subject of a disciplinary investigation because of her attendance at a training seminar under the heading: "The impact of the financial and economic crisis on human resources strategies in companies", although she was unable to work at the time for health reasons. Nevertheless, in accordance with the views of the Bank's general management and for the sake of presenting evidence suggesting a misrepresentation of the facts, some of the management's statements are set out below.

Firstly, although no one can question the fact that freedom of association is a fundamental right, it is not absolute but subject to certain limits.

When the conduct of a trade union representative or member goes beyond what is indispensable to that fundamental right, he or she cannot be protected and consequently must accept the disciplinary liability that may ensue from that conduct.

This is the case that concerns us here. Ms Chavarría Marchena requested union leave on 10 March 2009 to attend a training course in her area of activity but was informed on 18 March by her superiors that leave was not granted because she was required to finish some prior work. Following a further request, explanations were given of the work-related reasons for the refusal. On 26 March, Ms Chavarría reported being incapacitated for health reasons as of that day, and until 2 April, and on 27 March she attended the training course for which she had requested leave.

Given these facts, a minimum of reasoning ability would suggested that further scrutiny was warranted in order to corroborate the truth or otherwise of the reported incapacity. Even if her health were known to be poor, the compatibility of the latter with her attendance at the course would be questionable. The Bank decided to report what had happened to the preliminary commission to enable it to ascertain whether or not there was sufficient evidence to justify disciplinary proceedings. The preliminary commission is an internal bipartite body created under the collective agreement concluded with the complainant organization and has the mandate, as its title suggests, of carrying out preliminary investigations into reports of

contraventions of labour agreements and standards with a view to determining whether there is insufficient evidence to justify disciplinary proceedings against a Bank employee. Once the commission had been briefed on the case at an ordinary session No. 20-2009 on 17 June 2009, its members decided unanimously to order the establishment of a steering body for proceedings against Ms Chavarría Marchena. The unanimous decision was thus also supported by the vote of the SIBANPO representative, that is, Ms Chavarría's own trade union colleague, who was the nominated representative of the complainant organization's Secretary-General. That the complainant union should accuse its own representative of an anti-union act is absurd.

In addition, on 23 July this year, the Steering Body for the Administrative Proceedings set a date by which Ms Chavarría could submit such evidence as she might consider appropriate for her defence, and she also had the right to attend the hearing accompanied by a union representative. Until such time as the proceedings are concluded, it will not be possible to know with certainty whether there was any misconduct or what the appropriate sanction, if any, would be, but the procedure adopted for the investigation is governed by the General Law on Public Administration, which guarantees citizens due process and the constitutional right of defence.

The same procedure applied with regard to the warning issued to Ms Chavarría for reportedly accessing Internet sites unrelated to her work; as was reported in official communication No. DDHO-393-2009 dated 30 April 2009, when the report was received from the Bank's Information Technology Department, she was given the opportunity to formulate her defence after the contents of the report referring to her had been passed on, the evidence was examined, and finally the appropriate sanction was imposed, as is the case with any other employee of the Bank who commits the same offence.

It is generally understood that with banks, IT security is far more delicate and requires more stringent preventive checks than are considered usual in other forms of economic activity.

- 545.** The Government concludes by stating that it has been shown that the actions of the management of the Bank and its board of directors was in no way motivated by anti-union considerations, and indeed was based on the recommendations made by the internal audit office, and the administrative and judicial procedures followed under the relevant constitutional and legal provisions. All this, in the view of the general management, was aimed at achieving better internal functioning and more appropriate management of public funds.
- 546.** In the light of the substantive and legal reasoning set out above, the Government requests that the Committee on Freedom of Association reject the complaint of SIBANPO, given that the actions of the management representatives of the Bank are consistent with the principles of law that prevail in Costa Rica and with the principles and rights ensuing from freedom of association and that the measures taken were not motivated by anti-union reasons.

### **C. The Committee's conclusions**

- 547.** *The Committee observes that in this case the complainant organization alleges that Banco Popular y de Desarrollo Comunal (BPDC), which is a public entity, has been conducting a campaign to undermine and destabilize SIBANPO and its leaders by means of a series of anti-union acts. The Committee observes that many of the alleged incidents have been submitted to the judicial authorities and that the criminal charges brought against the union's leaders have been dismissed, namely: (1) a criminal charge against the Secretary-General alleging the use of funds transferred to the union by the Bank for purposes other than those provided for in the collective agreement – rejected by decision of the judicial authority on 7 September 2009; and (2) a criminal charge brought by the Bank's representatives against the same union leader for libel, injury and defamation – dismissed by the judicial authority in its ruling of 6 October 2008, and again on appeal on 28 August*

2009, on the grounds that she was exercising her right as a union leader to express her views on a public matter implicating the Bank. As regards point (1), the Committee notes the statements made by the Bank's general management to the effect that the criminal charge against the union's Secretary-General was made when the internal audit office found evidence of apparent irregularities perpetrated by the union official in the use of the public funds in question, which had been transferred under section 72 of the collective agreement; unjustified failure to meet the obligations in respect of internal auditing is a matter of administrative responsibility for the employer under the terms of the General Internal Audit Act; the resulting complaint thus has no anti-union objective and was not upheld by the judicial authority. As regards the charge against the same union official for libel, injury and defamation, the Committee notes that according to the Bank's management, the charge was made by a colleague of the official in question in an attempt to obtain redress for what he considered to be an attack on his honour, and not by the Bank's management, which has confirmed that the charge was rejected by the judicial authority. Taking into account the judicial rulings which did not uphold the two criminal charges in question, the Committee will not pursue its examination of these allegations.

- 548.** *The Committee also notes that the complainant alleges that: (1) between March and April 2009, the Bank demanded the reimbursement of funds that had been transferred to the union to finance social, cultural and sporting activities under the collective agreement; and (2) the Bank decided unilaterally to suspend the transfer of funds scheduled under the collective agreement for the periods of 2008 and 2009. The Committee notes that, according to the Bank's management, the reimbursement of these sums by the union was demanded by the Bank as a result of enforceable recommendations made by the internal audit office, and did not constitute discriminatory or unfair practice.*
- 549.** *In its latest communication of February 2010, the complainant alleges that the Bank is also demanding repayment of CRC10,617,579 for 2006, an amount which was likewise transferred to the union in accordance with the collective agreement and which SIBANPO states was spent on training activities organized by the union and on social activities in which all the Bank's employees took part, whether or not they were union members. The complainant notes that this latter demand totally disregards the decision of the judicial authority on 7 September 2009 rejecting a previous complaint by the Bank against the union's Secretary-General for the same reason.*
- 550.** *The Committee wishes to point out that, although collective agreements are mandatory, it is not in a position to determine whether each of the payments made by a trade union from funds transferred to it by an employer for training or for social and cultural activities conformed to the rules laid down in the collective agreement. Moreover, the Committee believes that, the constant resort to the courts to resolve disputes between the union and the Bank deriving from the lodging of criminal charges – even though the charges against the union were dismissed – has deteriorated relations between the parties concerned, because of the length of the judicial proceedings (two years), and has hampered the normal exercise of trade union rights. The Committee suggests that the complainant organization and the Bank consider the possibility of setting up a joint committee under the collective agreement to verify periodically the legality of the activities financed by funds whose management the collective agreement assigns to the trade union. The Committee requests the Government to pass on this recommendation to the complainant trade union and to the Bank and to keep it informed of any development in this regard.*
- 551.** *Regarding the Bank's alleged refusal without reason to allow members of the complainant organization to take paid union leave, in violation of the terms of the collective agreement, the Committee notes that, according to SIBANPO, several of its members have been denied leave to carry out training and other activities and that its officials and the members of its electoral committee have likewise been refused leave. The Committee notes that, according*

to the Bank's management, 89.10 per cent of leave requests were granted, and refusals were justified on work-related grounds rather than being for any anti-union motives. The Committee emphasizes in this regard that it is not in a position to verify whether or not in each specific case the Bank's refusal to grant trade union leave conformed to the terms of the collective agreement. Consequently, the Committee suggests that disputes over trade union leave provided for in the collective agreement be submitted to a joint committee, which could be presided over by an independent personality so as to ensure that SIBANPO can in practice use its right to union leave under the collective agreement without prejudice to the smooth running of the Bank. The Committee requests the Government to pass on this recommendation to the trade union and to the Bank and to keep it informed of developments.

**552.** *Regarding the allegations concerning Ms Fressy Chavarría Marchena, until recently SIBANPO's Disputes Secretary, the Committee notes that Ms Chavarría has allegedly been the victim of constant harassment at work: questions of her work productivity, denial of leave, several administrative sanctions – including on one occasion on the basis of evidence obtained illegally by the management – and initiation of disciplinary proceedings for attending a SIBANPO seminar on the impact of the financial crisis while on sick leave, even though her attendance was funded by the union. The Committee notes the Government's statement to the effect that, according to the management of the Bank, the trade union leave requested on 10 March 2009 for the purpose of attending a training course in the worker's area of competence could not be granted because the worker in question had to complete some prior work. Subsequently, according to the Bank, she reported sick, but on the following day attended the training course, and administrative proceedings against her were therefore initiated by a unanimous decision of an internal tripartite commission which included a vote in favour of that measure by the representative of the complainant organization, who had been nominated by the union official. The Committee requests the Government to keep it informed of the outcome of the aforementioned administrative proceedings. The Committee also notes that, according to the Bank's management, the trade union official in question was given a warning in the context of a procedure which respected the right of defence and had been instituted because the individual concerned had accessed Internet sites unrelated to her work.*

**553.** *In general terms, the Committee notes that this case refers to a substantial number of disputes between the Bank and the trade union. The Committee trusts that both parties will make an effort to improve the climate of their labour relations and will in the very near future establish the dispute settlement mechanisms suggested in the conclusions outlined above.*

## **The Committee's recommendations**

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

- (a) The Committee suggests that the complainant organization and the Bank consider the possibility of setting up a joint committee under the collective agreement to verify periodically the legality of the activities financed by funds whose management the collective agreement assigns to the trade union. The Committee requests the Government to pass on this recommendation to the complainant trade union and to the Bank and to keep it informed of any developments in this respect.*

- (b) *The Committee suggests that disputes over trade union leave provided for in the collective agreement also be submitted to the joint committee referred to in the preceding paragraph, whose chairperson could be an independent personality so as to ensure that SIBANPO can in practice exercise its right to union leave under the collective agreement without prejudice to the smooth running of the Bank. The Committee requests the Government to pass on this recommendation to the trade union and to the Bank and to keep it informed of developments in this respect.*
- (c) *The Committee requests the Government to keep it informed of the outcome of the administrative proceedings against the Disputes Secretary of the complainant organization.*
- (d) *In general terms, the Committee notes that this case refers to a considerable number of disputes between the Bank and the trade union. The Committee trusts that both parties will make an effort to improve the climate of their labour relations and will in the very near future establish the disputes settlement machinery suggested in the recommendations above.*

CASE NO. 2767

DEFINITIVE REPORT

### **Complaint against the Government of Costa Rica presented by**

- **Rerum Novarum Workers' Confederation (CTRN)**
- **JAPDEVA Workers' Union (SINTRAJAP)**
- **General Confederation of Workers (CGT)**
- **Costa Rican Workers' Movement Confederation (CMTC)**
- **Costa Rican Confederation of Democratic Workers (CCTD)**
- **Juanito Mora Porrás Social Confederation (CSJMP) and**
- **Limón Workers Federation (FETRAL)**

*Allegations: Attempts by the authorities and the employer to dismiss a trade union executive board in the course of the modernization of the country's port*

- 555.** The complaint was lodged in March 2010 in a communication from the Rerum Novarum Workers' Confederation (CTRN), JAPDEVA Workers' Union (SINTRAJAP), General Confederation of Workers (CGT), Costa Rican Workers' Movement Confederation (CMTC), Costa Rican Confederation of Democratic Workers (CCTD), Juanito Mora Porrás Social Confederation (CSJMP) and the Limón Workers Federation (FETRAL).
- 556.** The Government sent its observations in communications dated 29 September 2010 and 2 February 2011.
- 557.** Costa Rica has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainants' allegations

- 558.** In their March 2010 communication, the CTRN, SINTRAJAP, CGT, CMTC, CCTD, CSJMP and FETRAL allege that the Government of Costa Rica, through the President of the Republic and employers' sector, has launched an anti-union campaign aimed at getting rid of SINTRAJAP, affiliated to the CTRN. SINTRAJAP has long been a fierce defender of the labour rights of its affiliated members, all of whom are currently facing the prospect of dismissal so as to make way for the privatization of the docks. The union has had to contend with the national radio and television channels where it has been attacked by the President of the Republic who demanded that it hold a trade union assembly to inform the workers about the privatization of the docks, when it has already held four such assemblies at which the workers voiced their opposition to privatization, precisely because of the detrimental impact it would have on their social and labour conditions.
- 559.** The complainant organizations state that the former President of the Republic went on a national radio and television channel to attack SINTRAJAP and its leadership publicly and in the most disrespectful and insulting terms that could only damage the image of the trade union and its executive board.
- 560.** On 13 February 2009, following the pattern set by the President of the Republic, the then Minister of Public Works and Transport informed the press and television of the Government's position on trade unions, stating: "The Government is declaring war to the trade unions of Limón and invites the private entrepreneurs to close ranks in order to allow the concession of the new Caribbean dock to a private company. In two or three weeks the Government will be putting a new dock in Limón out to tender". In the words of the Minister of Transport, "this will be the first shot in a battle that is going to last all year and one of whose aims is to get rid of the dockworkers' union in the Caribbean". The Minister met with representatives of the chamber of employers and told them in the harshest terms that it was a war in which no quarter would be shown. The Government has been working on a plan to put the construction of the new docks out to tender, for a total cost of 880 million dollars. The existing port facilities will be modernized and, though they will remain in the hands of the State, they will operate under a new system, with no trade unions and with no collective agreements.
- 561.** The executive president of JAPDEVA threatened to take the union to court on the grounds that it was preventing the docks from being put out to tender. In order to follow this objective, the executive president plotted with the Ministry of Labour and with a group of pro-Government workers who call themselves the "mediator group", to which the President referred in his broadcast on national television. The complaint was lodged with the courts through the National Labour Inspectorate which, backed by the Ministry of Labour, accused the union of unfair labour practices – an offence which does not even exist in the law, except in relation to an employer. The self-styled mediator group was used as a front to lodge a request for court protection (*amparo*) with the Constitutional Chamber, where it alleged that the union refused to convene an assembly, which, as the Constitutional Chamber recognized when it rejected the request, was quite untrue.
- 562.** In the *Diario Extra* of 19 January 2010, the President of the Republic published an article in which he stated: "More and more employees are backing the Government's proposal to put the docks out to tender. In exchange for the union backing down and allowing a private company to take over the running of the docks, we have offered them US\$137 million in compensation, in other words tens of thousands of colones for each worker just for agreeing to give up".

**563.** To get rid of SINTRAJAP's executive board, the Government's established a strategy to eliminate the union's leaders and it used the mediator group as a front to oust the existing board, which was appointed by the workers for the period 2009–11. The sequence of events was as follows:

- (1) In accordance with its by-laws, the union convened a mid-term assembly at the workplace on 8 January 2010. One of the hirelings of the self-styled mediator group (Mr Ivansky Blackwood Sharpe), who was subsequently appointed to the spurious executive board, requested the Ministry of Health to suspend their assembly because the venue did not meet the necessary requirements.
- (2) The Ministry of Health ordered the union to suspend the assembly. The union accordingly cancelled the assembly, as failure to comply with an order from the Ministry would have exposed it to penal charges. The mediator group thereupon got together a group of workers and held its own assembly, despite the fact that the union's by-laws and the Labour Code stipulate that assemblies can only be convened by the executive board through its Secretary-General, failing which the assembly is unlawful.
- (3) At its assembly, which was attended by a mere 284 workers out of the union's 1,500 members, the mediator group dismissed the existing executive board and approved the decision to put the docks out to tender.
- (4) When the spurious executive board presented the record of the assembly (which had dismissed the legitimate executive board appointed for the period 2009–11) to the Department of Social and Labour Organizations, the trade union federations held a meeting with the Ministry of Labour at which they presented a document giving the legal grounds for recognizing neither the assembly nor the spurious executive board (i.e. that it did not comply with the legal and statutory requirements and procedures). In spite of this, the Ministry of Labour and Social Security declared the assembly to be valid and registered the spurious executive board (immediately granting it legal personality) without even informing the legitimate executive board (the Secretary-General of which is Mr Rolando Blear Blear), so that it could rule on the assembly's decision to dismiss the existing executive board. By failing to communicate its decision to the members of SINTRAJAP's executive board, the assembly violated their right of self-defence and to due process.

## **B. The Government's reply**

**564.** In its communication dated 29 September 2010, the Government stated that the allegations were no longer relevant since the members of SINTRAJAP's executive board, in the exercise of their constitutional right of appeal to the courts provided for under the country's legal system, have lodged a series of complaints in order to clarify the situation within the trade union:

- (1) administrative complaint No. 10-641-1027-CA, requesting the suspension of the decision dismissing the complainants from SINTRAJAP's executive board, the cancellation of the registration of a new board and the reinstatement of the complainants;
- (2) request for the protection of the courts (*amparo*) No. 10-3819-0007-CO, alleging the violation of due process;

- (3) application No. 10-008049-007 for the amendment of the JAPDEVA collective agreement authorizing the payment of compensation to be declared unconstitutional on the grounds that it constituted an unlawful use of public funds;
- (4) request for the protection of the courts (*amparo*) No. 10-3500-0007-CO alleging the violation of due process and the interference of the Ministry of Labour and Social Security and the Ministry of Health in trade union affairs; and
- (5) request for the protection of the courts (*amparo*) No. 10-2977-0007-CO, alleging the violation of due process and of the principle of trade union autonomy.

**565.** The Government states that the Constitutional Chamber recently ruled on two of the above cases, ordering the cancellation of the “agreements reached at the ordinary general assemblies of SINTRAJAP held on 8, 15 and 19 January 2010, as well as of the appointment of a new executive board”.

**566.** Recognizing the primacy of the principles of freedom of association and in accordance with the rulings of the highest juridical institution, the Government consequently ordered the cancellation of the registration of the executive board appointed at the assemblies cited by the Constitutional Chamber and accordingly registered and reappointed the previous executive board, by resolution No. 280/J-7/DOS/2010 adopted at 2.40 p.m. on 26 August 2010 by the Department of Social and Labour Organizations of the Ministry of Labour and Social Security. It is clear from the above that the Ministry of Labour and Social Security has, with due expediency, re-established the juridical situation as requested by the complainants in the two cases ruled upon by the highest juridical institution, thereby resolving the complainants’ allegations. Moreover, on 6 September 2010, the Constitutional Chamber dismissed one of the requests for the protection of the courts that had been lodged and ruled that it was not competent to revise the JAPDEVA collective agreement, as was requested in the application to have it declared unconstitutional. Notwithstanding the above, the parties concerned – JAPDEVA as the employer and the reinstated trade union – are currently engaged in a process of renegotiating the collective agreement, with the participation of the Ministry of Labour as facilitator.

**567.** The courts of justice are still examining the dispute, stage by stage, in accordance with the requirements of due process of law.

**568.** The Government states that it cannot be concluded from the complainants’ allegations and from the circumstances surrounding the situation within SINTRAJAP that it failed in any way to comply with the labour legislation in force and with the fundamental Conventions of the ILO.

**569.** The Government stresses that, although it considers that all the public institutions and their departments involved in the present case acted in accordance with the law and with the principle of legality, they are at the same time subject to the control of the Constitutional Chamber as the highest juridical institution.

**570.** Thus, as indicated above, the Constitutional Chamber has already ruled on specific points raised by the complainants, and the Government therefore considers that the present complaint is no longer relevant and contentious issues have been resolved by the competent legal and administrative institutions.

**571.** Nevertheless, in order to clarify the sequence of events, the Government has the following observations to make regarding the complainants’ allegations.

- 572.** The Government rejects the accusation that it conducted an alleged campaign to discredit and eliminate SINTRAJAP, which it considers a purely subjective appreciation lacking in any legal foundation or evidence. It is not true that there is a Government campaign to discredit and eliminate the union.
- 573.** The measures taken by the Government were legitimate and part of a regulatory and technical context involving the modernization of Costa Rica's ports as a key element in the country's socio-economic development.
- 574.** In order to make it quite clear that none of the steps were taken for anti-union motives, it is necessary to refer in general terms to the process of modernization of the national ports.
- 575.** With regard to the modernization of the country's ports, it is the courts of law that are competent to authorize a process of this nature. The Constitutional Chamber has for its part voted on the legality of the planned expansion and modernization of the ports and determined that, so long as the collective agreement is amended to include the cost of compensating workers who lose their jobs as a result, the process could be authorized in the normal course of events.
- 576.** Regarding the main point raised by the complainants, it is important to know that one of the main thrusts of the National Development Plan for 2006–10 was the modernization of the ports of the Caribbean seaboard, with a view to generating employment and export income and thus mitigating to a large extent the social and labour backwardness of the province of Limón, where the poverty index is a matter of grave concern.
- 577.** Costa Rica has for years been falling behind in its investments in port facilities for handling ships on the Caribbean seaboard, and as a result it is becoming less competitive in terms of foreign trade.
- 578.** That being so, the Government has the major responsibility of adopting measures to reverse the situation. The country does not, however, have the resources to expand the port system as proposed in the Ports Master Plan, which has been authorized by the General Comptrollers' Office, the highest supervisory body of the State.
- 579.** The construction of Limón's new container terminal alone entails an investment of almost US\$1 billion, while at least US\$100 million dollars are needed to modernize fully the services currently afforded by the Limón-Moín port complex. The funding of these projects is to be made possible by means of financial arrangements determined by the country's legal system – the first by means of a public service franchise (Act No. 7762) and the second by putting the management of public services out to tender (Administrative Contract Act, section 74). The first project is well under way, since the Cartel has already received the backing of the Public Services Regulatory Authority and the General Comptrollers' Office, which are responsible for overseeing public expenditure.
- 580.** Regarding the representation of SINTRAJAP, the Government notes that the records of the Department of Social and Labour Organizations of the Ministry of Labour show Ronaldo Blear was the union's Secretary-General from 31 January 2009 to 31 January 2010.
- 581.** With regard to the refusal of the executive board of SINTRAJAP to convene an assembly, the modernization of the port of Moín involves a process of management of the public service in which the only change concerns the port operator. For the modernization process to take place, the existing employees of JAPDEVA have to be compensated. Initially, compensation was set at 1.7 million colones per worker for each year under contract to JAPDEVA up to a maximum of 20 years, and 1 million colones for each additional year. SINTRAJAP's previous executive board raised the issue at a union assembly, which

rejected the proposal and demanded US\$500,000 per employee, which the Government authorities rejected as unreasonable and disproportionate. Subsequently, the Government raised its offer to 2.7 million colones per year under contract up to a maximum of 20 years. However, the union's executive board refused to submit this new proposal to an extraordinary union assembly, which is the union's highest authority, thereby restricting its members in the exercise of the rights inherent in freedom of association and trade union autonomy.

- 582.** SINTRAJAP's by-laws entitle a group of members to collect signatures to request that the executive board convene an extraordinary assembly. A group of the union's members accordingly collected signatures from 25 per cent of the union membership and requested the convening of an extraordinary assembly. Article 15 of the union's by-laws reads as follows:

Twenty-five per cent of the union's members may request the executive board to take appropriate steps to convene an extraordinary general assembly ... The executive board ... must do so within eight days of receiving the request.

Moreover, article 12 of the by-laws states the following:

The highest authority of the union is the general assembly, which shall meet ordinarily once a year and in extraordinary session when the union's executive board or 25 per cent of its members so determine.

- 583.** Receiving no reply to their request that an assembly be convened in accordance with the union's by-laws and considering that their fundamental rights were thus denied, the union members concerned requested the intervention of the Ministry of Labour and Social Security which, in accordance with section 608 and other relevant articles of the Labour Code, initiated proceedings against the executive board for violation of the labour legislation.
- 584.** For greater clarity, reference should be made to statement No. DNI-UAL-018-10 issued by the National Labour Inspectorate to the following effect:

Considering that the labour inspectorate have ascertained that 25 per cent of the signatories, as active members of SINTRAJAP, fulfilled the requisite conditions to convene an assembly under article 15 of the union's by-laws and that they were nevertheless and without justification denied the possibility of doing so on 20 October 2009, the National Labour Inspectorate deems that the said provision has been violated. It reached this determination on 6 November 2009 and accorded the default party three days to comply with the provision, but this, according to labour inspectorate report No. SJ-DNI-0321-09 of 19 November 2009, it failed to do. Considering that workers have a constitutional right to organize in order to further and defend their interests, whether individually or collectively, and that any act that limits or restricts that right is in violation of the labour legislation in force, the National Labour Inspectorate on 19 November 2009 brought a charge before the courts of law of Limón citing an infringement of the labour laws.

- 585.** When the charge was brought before the competent jurisdiction on 29 December 2009, SINTRAJAP's executive board convened an ordinary assembly – at which one of the items on the agenda concerned the question of compensation – to be held at 1 p.m. on 8 January 2010 at the union's headquarters.
- 586.** The Government adds that on 7 January 2010, a member of SINTRAJAP, Mr Ivansky Blackwood Sharpe, wrote to the regional headquarters of the Ministry of Health in Limón to request it, prior to the holding of the assembly, to verify whether the union's premises were suitable for the holding of the assembly, given the number of participants that were expected to attend and the limited space available. The matter was duly taken up by the

Ministry, which in report No. HA-ARS-L-RS-19-2010 of the Health Directorate for Limón province declared that “no activity is authorized on SINTRAJAP’s premises located in the city centre of Limón”. It will be appreciated from the foregoing that the complainants’ claim that the Ministry of Health suspended the holding of the assembly is untrue. On the contrary, it was altogether within the Ministry’s competence to recommend that the assembly not be held on the premises chosen by SINTRAJAP because of the limited space available and in the interests of the participants’ health, so that, given the large attendance that was expected at the assembly, the executive board might seek an appropriate solution.

**587.** More specifically, the report of the Health Directorate for the province of Limón stated:

According to the regulations governing mass concentrations of people, and given the fact that all the members of the union have been invited to attend a mid-term ordinary assembly at 1 p.m. on 8 January 2010 (an expected 1,000 participants) and that prior inspection of the premises indicates that there is not enough space for such an assembly, the Health Directorate does not recommend that over 1,000 people meet in an area of 150 square metres, which it deems insufficient for so many participants.

**588.** In keeping with proper legal proceedings, the Ministry of Health at no time suspended the assembly or prevented it from taking place; it simply expressed its opposition to the venue on the understanding that the assembly could be held elsewhere, inasmuch as it has the legal obligation, under the General Health Act and the rules and regulations governing the issuance of health permits (executive decree No. 34728-S and amendments), to ensure the protection and betterment of the health of the population.

**589.** As to the assemblies that were held on 8, 15 and 29 January 2010, as noted above the Ministry of Health did not in any way prevent their being held but merely objected to the venue for reasons of public health while leaving open the option of choosing some other venue.

**590.** Although the complainants state that the executive board cancelled the assembly the day before it was being held, not all the workers were aware of that fact. Consequently, members of the union turned up at the chosen venue and, seeing that there was no quorum, set a new date for a second assembly in accordance with section 345(h) of the Labour Code and with the legislation in force. This explains how they met in assembly and, after establishing that there was not the necessary quorum for the initial assembly (two-thirds of the union membership), they decided to convene a second assembly, as provided for in the union’s by-laws, to be held at 8 a.m. on 15 January in one of the warehouses belonging to JAPDEVA.

**591.** The workers were informed by circular, email and fax that the assembly was convened for 8 a.m. on 15 January 2010 but, since attendance at this second assembly was less than 50 per cent of the union members plus one (according to the official record, there were 550 members present), the participants decided unanimously to convene a third assembly at 9 a.m. the same day with as many union members as were present, as provided for in the Labour Code.

**592.** For the above reasons, the Government considers that the situation stems from a dispute between union members and the executive board deriving from the latter’s failure to comply with the statutory provisions by refusing to convene an extraordinary assembly where the workers could decide for themselves matters that directly concerned them. Quite clearly, the Government did not play any part in the holding of the assemblies and the confusion stemmed directly from the attitude of the members of the executive board.

- 593.** With regard to the role of the Ministry of Labour and Social Security, the Ministry – as the body responsible for the registration of trade unions – has no authority under the country’s legislation to act as an administrative police force, by virtue of the principles of trade union autonomy and independence embodied in article 60 of the Constitution and in ILO Convention No. 87, which has been duly approved and ratified by Costa Rica. That said, the Constitutional Chamber of the Supreme Court of Justice has on numerous occasions recognized the authority of the Ministry of Labour in terms of registration and, through its Department of Social Organizations and at the request of the newly appointed executive board, the Ministry duly registered the agreements that were officially submitted to it.
- 594.** According to established case law, the principle of freedom of association prevents any administrative measure being taken that is liable to affect the existence of a trade union, unless it is by the courts pursuant to sections 350 and 351 of the Labour Code. The Ministry only has the authority to determine whether the legal requirements have been met in the documents submitted to it (this is implicit in section 344 of the Labour Code) as any issues that may arise among the union members with respect to anomalies in the conduct of an assembly, that are not recorded in the documentation submitted, must be referred by the union members to the labour courts.
- 595.** Notwithstanding the above, as already mentioned, the Department of Social Organizations proceeded to cancel the registration of the executive board appointed at the assemblies referred to above, and to register and reinstate the previous executive board, in accordance with resolution No. 280/J-7/DOS/2010 of 26 August 2010. For these reasons, the Government repeats that it considers that the present complaint is no longer relevant, inasmuch as the SINTRAJAP’s executive board has been reinstated in compliance with the ruling of the highest juridical institution of the country.
- 596.** With regard to the alleged non-compliance with the principle of due process of law and trade union autonomy, the Government notes that in their resolutions the highest courts of the land, namely, Constitutional Chamber 11 and Second Chamber 12, possess an extensive and detailed case law on the subject of due process. Articles 41 and 39 of the Constitution and article 8 of the American Convention on Human Rights declare that this is a fundamental right of all people, and the Government of Costa Rica is the supervisory institution responsible for monitoring issues of constitutionality and legality. According to that case law, due process comprises the right to be notified of the nature and purpose of proceedings, to be given a hearing, to prepare and exercise one’s defence and to present evidence in one’s defence, as well as the right of access to all information concerning the proceedings, the right to a just and reasoned ruling, the right to be notified of such ruling and the right of appeal against it. However, the situation described by the complainants with regard to the convening and holding of the assembly and the adoption of agreements is a matter that concerns only the union’s members and its executive board. In accordance with the principle of freedom of association as embodied in the Constitution and in international instruments, the Government has no authority to intervene in such matters. Consequently, if any disagreement arises in the conduct of union activities, it is strictly for the workers themselves to apply to the courts of law responsible for guaranteeing law and order, if they consider that their rights have been violated. In the exercise of this right and in accordance with the country’s labour legislation, the members of SINTRAJAP’s executive board initiated a series of legal proceedings aimed at arriving at the truth of the matter, most of which have already been resolved – except for one administrative dispute that is currently before the courts.
- 597.** The Government has acted in conformity with the principles of legality and of freedom of association embodied in the Constitution, in accordance with the rulings of the highest juridical institution, thereby restoring the juridical situation called for by the complainants in two cases corresponding to the allegations presented by the complainants, which were

resolved with all due expediency. It is thus established that Costa Rica fully guarantees access to justice and the protection of the rights which all workers possess, irrespective of union membership. The Government reiterates that the modernization of the country's ports is not designed to eliminate trade unions but that is part and parcel of the country's economic development policy. In the light of the recent rulings of the Constitutional Chamber, the Ministry of Labour has convened meetings with the reinstated executive board of SINTRAJAP, under the chairmanship of Mr Ronaldo Blear, in order to reach agreements through transparent social dialogue.

- 598.** In its communication of 2 February 2011, the Government states that on 21 January 2011 SINTRAJAP trade union elections were held and for the fourth consecutive period the union members elected the executive board headed by Mr Ronaldo Blear Blear, who will continue for a further two years in the post of Secretary-General of the JAPDEVA Workers' Union.
- 599.** The Government also states that to date three decisions (attached) have been handed down by the Constitutional Chamber in response to the requests for the protection of the courts (*amparo*) lodged by the complainant trade union organization and reported on by the Government in its reply concerning this case. It was clear from these documents that the public institutions had complied with both prevailing labour legislation and ILO fundamental Conventions, and that the circumstances surrounding the allegations were the result of matters relating to the internal organization of the trade union and its members.
- 600.** The Government notes that the applicants had free access to the judicial and administrative authorities to address the aspects with which they disagreed. It also states that both the employer JAPDEVA and the trade union officials of SINTRAJAP, recently appointed for a further two-year period, had been able to sustain dialogue in negotiating the collective agreement, and that the Ministry of Labour and Social Security had participated in a social dialogue facilitation role.
- 601.** The Government concludes by asking that case No. 2767 be set aside in its entirety.

### **C. The Committee's conclusions**

- 602.** *The Committee observes that in the case under examination the complainant organizations allege: (1) that the former President of the Republic and former Minister of Public Works and Transport made anti-union statements during the process of modernization (i.e. privatization and mass dismissals) of the JAPDEVA docks, with the intention of putting aside SINTRAJAP's executive board which was opposing privatization and which subsequently demanded much higher compensation for the dismissals than the authorities were prepared to offer; (2) that the authorities and the executive president of JAPDEVA used a group of workers (the self-styled mediator group) to have the SINTRAJAP executive board dismissed at an illegal union assembly and to appoint a new board backed by the authorities and the employer; and (3) that the Ministry of Labour registered the new executive board in connivance with the authorities and dismissed the legitimate board. The Committee notes that the Government denies the anti-union nature of the measures adopted and describes the allegations as stemming from a dispute between the union's executive committee and a group of union members who, according to the Government, took action when the board failed to inform the workers of the employer's second compensation offer; the Government notes that one of the assemblies organized by the said group of workers was attended by 550 union members.*
- 603.** *With regard to the alleged anti-union statements of the authorities concerning the modernization of JAPDEVA, the Committee notes the following statements in the press reproduced by the complainants:*

- *In Diario Extra of Tuesday 19 January 2010, the President of the Republic reportedly stated:*

*More and more employees are backing the Government's proposal to put the docks out to tender. In exchange for the union backing down and allowing a private company to take over the running of the docks, we have offered them US\$137 million in compensation, in other words tens of thousands of colones for each worker just for agreeing to give up.*

- *On 13 February 2009, the then Minister of Public Works and Transport informed the press and television of the Government's position on the trade unions, as follows:*

*The Government is declaring war to the trade unions of Limón and invites the private entrepreneurs to close ranks in order to allow the concession of the new Caribbean dock to a private company. In two or three weeks the Government will be putting a new dock in Limón out to tender. In the words of the Minister of Transport, this will be the first shot in a battle that is going to last all year and one of whose aims is to get rid of the dockworkers' union in the Caribbean. The Minister met with representatives of the chamber of employers and told them in the harshest terms that it was a war in which no quarter would be shown. The Government has been working on a plan to put the construction of the new docks out to tender, for a total cost of \$880 million. The existing port facilities will be modernized and, though they will remain in the hands of the State, they will operate under a new system, with no trade unions and with no collective agreements.*

- 604.** *The Committee considers that, although the authorities are entitled to inform the public of their policies and decisions and also to give their opinion on the position adopted by the trade unions, for example when the latter oppose a privatization process involving a large number of dismissals, the statements reported seem to have gone beyond the mere exercise of freedom of speech by explicitly urging members to resign from the union and by advocating a new trade union system.*
- 605.** *The Committee notes that, although the Government states that there is no anti-union campaign and that the steps it took had no such anti-union objective as putting aside the trade union, it does not deny the statements cited in the allegations which, in so far as they are liable to encourage workers to leave the union or have the effect of destroying the union, are contrary to the right of workers to join the union of their own choosing, in accordance with Article 2 of Convention No. 87. The Committee emphasizes the importance that the authorities' statements to the media should not seek to influence the right of workers to join organizations of their own choosing.*
- 606.** *Regarding the alleged use by the authorities and by the executive president of JAPDEVA of a group of workers (the self-styled mediator group) to dismiss SINTRAJAP's executive board by means of illegal assemblies, in violation of the union's by-laws, and to appoint a new board backed by the authorities, as well as the subsequent registration by the Ministry of Labour of the board sponsored by the mediator group, the Committee notes the Government's statement that the Supreme Court ordered the previous executive board to be reinstated and the registration of the second board to be cancelled, and that the Ministry of Labour immediately complied with the order. The Committee points out that the allegations emphasize the interference of the Ministry of Public Works and Transport and Ministry of Health. According to the complainants, the latter suspended one of the assemblies called by SINTRAJAP's legitimate executive board because the venue did not meet requirements and agreed to the mediator group holding an assembly (attended by only 286 of the 1,500 members of the union) which thereupon appointed a spurious executive committee that the Ministry of Labour promptly registered. The Committee observes that the Government offers a very different version of events, according to which the venue chosen (150 square metres) was too small for over 1,000 participants and that, in accordance with the relevant regulations and at the request of a member of SINTRAJAP (from the mediator group), the Minister of Health raised an objection to the venue in the*

*interests of public health and recommended that the assembly not be held there, but did not suspend the assembly. In the Government's view, the problem stemmed from a dispute between a number of union members (according to the Government, the second assembly was attended by 550 union members and was convened because the union's executive board had not informed the workers of the employer's second offer of compensation for dismissal) and the new executive board, and the authorities were not involved in the assemblies. The Government makes the point that the Ministry of Labour – which is not empowered to act as an administrative police force – registered the agreements submitted to it but later cancelled the registration of the new executive board following the ruling of the judicial authority. Thus, the Government is of the view that the problem that was at the heart of the complaint has been resolved.*

**607.** *The Committee notes the court rulings sent by the Government on this matter. The Committee lists below the facts that the Constitutional Chamber of the Supreme Court of Justice considers to have been established:*

- (a) On 29 December 2009 the executive board of SINTRAJAP in office at the time convened a mid-term general assembly to be held on 8 January 2010.*
- (b) By way of official communication HA-ARS-L-RS-19-2010 of 7 January 2010, the Ministry of Health's Health Directorate for Limón province refused SINTRAJAP authorization to hold its mid-term general assembly on 8 January 2010 as the proposed location did not have the appropriate technical or sanitary facilities.*
- (c) On 8 January 2010, the Secretary-General of SINTRAJAP informed the members of the trade union organization that the general assembly scheduled for that day had been cancelled.*
- (d) On 8 January 2010 a group of SINTRAJAP members agreed to convene a second ordinary general assembly of the organization to be held on 15 January 2010.*
- (e) On 15 January 2010, during the third ordinary general assembly of SINTRAJAP, a member made a motion to remove the entire executive board in office at that time from their positions on the board, which was accepted by the majority of those present.*
- (f) On 15 January 2010 a group of SINTRAJAP members fixed 29 January 2010 as the date on which to continue the organization's ordinary general assembly, and appointed the new ad hoc executive board, transferring to them the duties of the executive board members removed on 25 January 2010.*
- (g) On 25 January 2010 the new executive board of SINTRAJAP notified the members of the previous executive board that they had been granted a hearing on 29 February 2010.*
- (h) On 29 January 2010 a group of SINTRAJAP members proceeded with the mid-term ordinary general assembly.*
- (i) From 20 January to 25 January 2010 the leaders of the previous executive board of SINTRAJAP met with various officials from the Ministry of Labour and Social Security.*
- (j) On 29 January 2010 the previous executive board removed from SINTRAJAP did not attend the hearing granted it by the new ad hoc board.*
- (k) By way of decision 038-DOS-2010 handed down at 3 p.m. on 19 February 2010, the Ministry of Labour and Social Security registered the ordinary general assemblies held by a group of SINTRAJAP members on 8, 15 and 29 January 2010. The appointment of the new executive board was also registered.*
- (l) On 22 February 2010, the Ministry of Labour and Social Security sent the appellant (Mr Ronaldo Blear, Secretary-General of the union) decision 038-DOS-2010 handed down at 3 p.m. on 19 February 2010.*

**608.** *The Committee notes that in these rulings the Constitutional Chamber of the Supreme Court of Justice decided: (1) to reinstate the Secretary-General of the union and other members of the executive board in their duties because the assembly held on 15 January*

2010 did not give them the opportunity to exercise their (constitutional) right to defend themselves (the Supreme Court did not however rule on whether or not the officials had engaged in conduct that would merit their removal); (2) to annul the Ministry of Labour's decision to register the provisional executive board and to reinstate the current executive board. The Committee understands that that annulment of the ministerial decision does not in itself imply a reproach to the Ministry as, in accordance with legislation, the Ministry of Labour must confine itself to verifying compliance with procedural requirements when it registers an executive board of a union (according to the Government's statements, only the judicial authority can examine the substance of the case).

- 609.** *The Committee also notes that the Supreme Court has declared as established that: (a) on 4 January 2010 the Health Directorate for Limón province received a complaint from worker and service-lift operator Mr Ivansky Blackwood Sharpe indicating that the premises of the JAPDEVA Workers' Union was too small to accommodate its 1,279 members who had been convened for a mid-term workers' general assembly on 8 January 2010, as the premises could in fact only accommodate about 100 people; (b) in response to the complaint an inspection was carried out that identified the following sanitary anomalies: the size of the structure is approximately 150 square metres and there is seating for 80 people; it is located on the third floor, has mixed ventilation and has no emergency stairs; and (c) given the above, on 7 January 2010 the acting Director of the Health Directorate for Limón province and the environmental management expert for the area informed the appellant that the authorization to hold a mid-term general assembly of the JAPDEVA Workers' Union on 8 January 2010 had been refused for technical and sanitary reasons. The Supreme Court also considered that the "refusal to grant permission to carry out mass activities that exceed the capacity of the premises in question as established by the Ministry of Health does not injure any fundamental rights, and this activity can only be authorized if it is in accordance with the law, in other words, if the permits and authorization required for activities of this kind have been granted".*
- 610.** *Given these circumstances and the judicial decisions mentioned, and taking into account that the executive board of SINTRAJAP was reinstated in its functions and that the trade union and the employer are engaged in a collective bargaining process, the Committee will not pursue its examination of the allegations.*

### **The Committee's recommendation**

- 611.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

**Complaint against the Government of El Salvador  
presented by**

- **the Trade Union Confederation of El Salvador Workers (CSTS)**
- **the Trade Union Federation of Food, Beverage, Hotel, Restaurant and Agro-Industry Workers of El Salvador (FESTSSABHRA) and**
- **the General Trade Union of Workers in the Fishing and Allied Industries (SGTIPAC)**

*Allegations: Anti-union dismissals, acts of intimidation against trade unionists in the Calvoconservas El Salvador SA de CV company, and establishment of a trade union made up of the company's heads and trusted staff*

**612.** The Committee last examined this case at its March 2010 meeting [see 356th Report, approved by the Governing Body at its 307th Session, paras 700–717].

**613.** In the absence of any reply from the Government, the Committee has been obliged to postpone its examination of the case on two occasions. At its meeting in November 2010 [see 358th Report, para. 5], the Committee addressed 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 (1972), approved by the Governing Body, it may present a report on the substance of the case at its next meeting even if the information or observations requested have not been received in due time. To date the Government has not sent any information.

**614.** El Salvador has ratified 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**

**615.** At its March 2010 meeting, the Committee made the following recommendations [see 356th Report, para. 717]:

- (a) As regards the allegations of anti-union dismissal of Ms Berta Aurelia Menjivar (founder member of the trade union branch), Mr Joaquín Reyes (member and former union official), Mr José Antonio Valladares Torres and Mr Roberto Carlos Hernández (union officials), and non-payment of wages owed to them, the Committee requests the Government to keep it informed of the final outcome of the legal proceedings against Mr José Antonio Valladares Torres and to send a copy of the court rulings already given regarding the other union officials concerned.
- (b) Concerning the alleged intimidation against trade unionists, in particular the stationing inside the plant of armed guards who called on workers not to join the SGTIPAC, the Committee requests the Government to conduct an investigation without delay into these allegations and to keep it informed of the final outcome.
- (c) As regards the alleged recognition as a legal entity of a trade union (the Union of Workers of Calvoconservas El Salvador SA de CV) within the company, comprising company heads and trusted individuals, as well as the negotiation of a collective

agreement between that union and the company, the Committee once again requests the Government to conduct an investigation without delay into these allegations and to keep it informed of the final outcome.

## **B. The Committee's conclusions**

- 616.** *The Committee observes that in this case the complainant organizations allege anti-union dismissals, acts of intimidation against trade unionists and anti-union practices at a company (recognition of an employer-controlled trade union and negotiation of a collective agreement with that trade union).*
- 617.** *The Committee deeply regrets to note that, despite its urgent appeal, the Government has not provided any information, and urges it to comply with the Committee's earlier recommendations, reproduced above, without further delay.*
- 618.** *The Committee requests the Government to obtain information on the pending questions through the employers' organization concerned.*

## **The Committee's recommendation**

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

- (a) *The Committee deeply regrets to note that, despite its urgent appeal, the Government has not provided any information, and urges it to comply with the Committee's earlier recommendations, reproduced below, without further delay.*
- *As regards the allegations of anti-union dismissal of Ms Berta Aurelia Menjivar (founder member of the trade union branch), Mr Joaquín Reyes (member and former union official), Mr José Antonio Valladares Torres and Mr Roberto Carlos Hernández (union officials), and non-payment of wages owed to them, the Committee requests the Government to keep it informed of the final outcome of the legal proceedings against Mr José Antonio Valladares Torres and to send a copy of the court rulings already given regarding the other union officials concerned.*
  - *Concerning the alleged intimidation against trade unionists, in particular the stationing inside the plant of armed guards who called on workers not to join the SGTIPAC, the Committee requests the Government to conduct an investigation without delay into these allegations and to keep it informed of the final outcome.*
  - *As regards the alleged recognition as a legal entity of a trade union (the Union of Workers of Calvoconservas El Salvador SA de CV) within the company, comprising company heads and trusted individuals, as well as the negotiation of a collective agreement between that union and the company, the Committee once again requests the Government to conduct an investigation without delay into these allegations and to keep it informed of the final outcome.*

*(b) The Committee requests the Government to obtain information on the pending questions through the employers' organization concerned.*

CASE NO. 2818

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

**Complaint against the Government of El Salvador  
presented by  
the Trade Union of Municipal Workers and Employees  
of El Salvador (SITESMUES)**

*Allegation: Refusal to grant legal personality to a trade union of workers employed in municipal authorities*

- 620.** The complaint is contained in a communication from the Trade Union of Municipal Workers and Employees of El Salvador (SITESMUES) dated 9 October 2010.
- 621.** The Government sent its observations in a communication dated 30 November 2010.
- 622.** El Salvador 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**

- 623.** In its communication dated 9 October 2010, the SITESMUES states that, according to a notarized record issued on 27 February 2010, the trade union was established in the presence of 51 founding members, who are employees of the municipal authorities of San Salvador, Chalchuapa, Atiquizaya, Rosario de Mora and Apopa. The chairperson of the provisional executive committee submitted an application in due legal form on 8 March 2010 to the Ministry of Labour and Social Security for approval of the by-laws and the granting of legal personality to the trade union.
- 624.** The complainant organization states that the application was submitted in accordance with the applicable legislation, under section 73(1) of the Civil Service Act, which provides that "Public servants have the right to associate freely to defend their common economic and social interests, by establishing professional associations or trade unions, in keeping with the powers and restrictions laid down in the Constitution of the Republic, international conventions and this Act," read together with section 76 of the Act, which defines a trade union as "a permanent association consisting of at least 35 public servants employed in the same institution of the public administration ...". The complainant organization adds that the Ministry of Labour rejected the application made by SITESMUES by decision No. 28/2010 of 26 April 2010, on the grounds that the incipient trade union failed to comply with the requirements laid down in the abovementioned section 76 of the Civil Service Act, since, as indicated in the notarized record issued on 27 February 2010, it was established by workers who said they were employed by different municipal authorities, and thus did not meet the requirement laid down in that section to the effect that the public servants establishing a trade union must be employed in the same institution of the public administration, in this case the same municipal authority.

625. The complainant organization states that the chairperson of the provisional executive committee, together with representatives of other trade unions of municipal employees, wrote to the Minister of Labour and Social Security requesting a meeting to discuss the issue of the refusal to grant it legal personality. No reply has been received to date.

## B. The Government's reply

626. In its communication dated 30 November 2010, the Government states that the stance taken by the current administration of the Ministry of Labour and Social Security has been one of respect for the right to work and hence the human right of freedom of association of working men and women, as well as respect for the rule of law. However, in the case presented by SITESMUES, the Government points out that section 76 of the Civil Service Act provides that “for the purposes of this Act, ‘trade union’ means a permanent association consisting of at least 35 public servants employed in the same institution of the public administration, in order to study, improve and protect their common economic and social interests”; this requirement has not been met by the trade union in question, as its founding members belong to five different municipal authorities. Nonetheless, according to the Government, each of the municipal authorities can establish its own trade union.

627. The Government points out that Article 8(1) of ILO Convention No. 87 provides that “In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.” In other words, the Convention offers the possibility of applying each country’s domestic legislation in regard to compliance with its requirements; thus, the Convention, being general in scope, does not go into specific aspects or situations, such as the minimum number required to establish a trade union, or the situation occurring in the present case, i.e. the possibility of public servants – municipal employees – of different municipal authorities being founding members of a single trade union.

628. The Government adds that it has begun a process of revision and amendment of the Civil Service Act, which will include revision of Chapter XI on collective labour law (sections 73–119), and an analysis of section 76 mentioned above with a view to amending it so that it will not constitute an obstacle to the unionization of officials and employees working in different municipal authorities. The Government highlights the fact that, in order to help strengthen and ensure respect for the right of freedom of association, it held a consultation on 9 August 2010 with the International Labour Standards Department of the ILO (which is actively involved in the process of revision of the Civil Service Act) concerning the direct application of Convention No. 87 to the present case.

629. The Government concludes by stating that, starting on 24 July 2009, the Ministry of Labour has granted legal personality to 55 public sector unions in line with its intention and commitment to make progress on promoting the rights to organize and collective bargaining, which are the fundamental pillars of justice and social peace.

## C. The Committee's conclusions

630. *The Committee observes that in this case the complainant organization alleges refusal by the authorities to grant legal personality to a trade union of workers employed in different municipal authorities.*

631. *The Committee notes that, according to the complainant organization: (i) according to a notarized record issued on 27 February 2010, the trade union was established in the presence of 51 founding members, who are employees of the municipal authorities of San Salvador, Chalchuapa, Atiquizaya, Rosario de Mora and Apopa; (ii) in March 2010 an*

application was submitted for approval of the by-laws and the granting of legal personality to the trade union; (iii) the Ministry of Labour rejected the application made by the trade union, on the grounds that it failed to comply with the requirements laid down in section 76 of the Civil Service Act, since the incipient trade union was established by workers who said they were employed by different municipal authorities; and (iv) a letter was sent to the Minister of Labour and Social Security requesting a meeting, but no reply has been received to date.

**632.** *The Committee notes further the Government's statement to the effect that, starting in July 2009, it has granted legal personality to 55 public sector unions. It also notes that, in the present case, the Government states that: (i) section 76 of the Civil Service Act provides that "for the purposes of this Act, 'trade union' means a permanent association consisting of at least 35 public servants employed in the same institution of the public administration, in order to study, improve and protect their common economic and social interests"; (ii) this requirement was not met by the trade union in question, as its founding members belong to five different municipal authorities; and (iii) it has begun a process of revision and amendment of the Civil Service Act, which will include revision of Chapter XI on collective labour law (sections 73–119), and an analysis of section 76 mentioned above with a view to amending it so that it will not constitute an obstacle to the unionization of officials and employees working in different municipal authorities.*

**633.** *The Committee wishes to emphasize that the issue of conformity of section 76 of the Civil Service Act with ILO Convention No. 87 has been raised on a number of occasions in which the Government had already expressed its firm intention to comply with the principles of Convention No. 87 and said that work was under way on amendment of the Civil Service Act. The Committee stresses once again in this regard that, under Article 2 of Convention No. 87, workers have the right to establish organizations of their own choosing, including organizations grouping together workers from different workplaces and different cities. The Committee adds that, with regard to restrictions limiting all public servants to membership of unions confined to that category of workers, it is admissible for first-level organizations of public servants to be limited to that category of workers on condition that their organizations are not also restricted to employees of any particular ministry, department or service, and that the first-level organizations may freely join the federations and confederations of their own choosing [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 335 and 337]. The Committee again requests the Government, in consultation with the most representative workers' and employers' organizations, to accelerate the procedure for amending the legislation, ensuring that it fully guarantees respect of the principles of freedom of association for municipal employees, and expects that in the very near future the SITESMUES will be able to represent employees of several municipal authorities. The Committee requests the Government to keep it informed of the status of the amendment process and to accept rapidly the technical assistance of the ILO aimed at ensuring that the trade union in question may effectively represent employees of several municipalities.*

### **The Committee's recommendation**

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

*The Committee again requests the Government, in consultation with the most representative workers' and employers' organizations, to accelerate the procedure for amending the legislation, ensuring that it fully guarantees respect of the principles of freedom of association for municipal employees, and expresses the firm hope that in the very near future the SITESMUES*

*will be able to represent employees of several municipal authorities. The Committee requests the Government to keep it informed of the status of the amendment process and to accept rapidly the technical assistance of the ILO aimed at ensuring that the trade union in question may effectively represent employees of several municipalities.*

CASE NO. 2361

INTERIM REPORT

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

- **the Union of Workers of the Chinautla Municipal Authority (SITRAMUNICH)**
- **the National Federation of Trade Unions of State Employees of Guatemala (FENASTEG)**
- **the Union of Workers of the Directorate General for Migration (STDGM) and**
- **the Union of Workers of the National Civil Service Office (SONSEC)**

*Allegations: Refusal of the Mayor of Chinautla to negotiate a collective agreement and dismissal of 14 union members and a union leader; reorganization of sections of the Ministry of Education with the possible elimination of posts with the aim of destroying the union that operates in that Ministry; measures taken by the Directorate General for Migration to dismiss union leader Mr Jaime Roberto Reyes Gonda without court authorization; dismissal of 16 members of the Union of Workers of the “José de Pineda Ibarra” National Centre for Textbooks and Educational Material as a result of a reorganization ordered by the Minister of Education and action taken to dismiss all members of the union’s executive committee*

**635.** The Committee last examined this case at its meeting of June 2010 and submitted an interim report to the Governing Body [see 357th Report, paras 661–676 approved by the Governing Body at its 308th Session].

**636.** In the absence of a reply from the Government, the Committee had to defer the examination of this case on two occasions. At its March 2011 meeting [see 359th Report, para. 5], the Committee addressed an urgent appeal to the Government stating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report (1972), approved by the Governing Body, it could present a report on the substance of this case at its next meeting even if the observations or information requested had not been received in due time. To date the Government has not sent any information.

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

#### A. Previous examination of the case

638. In its previous examination of the case, the Committee made the following recommendations [see 357th Report of the Committee, para. 676]:

- (a) With regard to the allegations relating to the dismissal of 16 members of the Union of Workers of the “José de Pineda Ibarra” National Centre for Textbooks and Educational Material and the action taken to dismiss all the members of the executive committee in the context of a process of reorganization by the Minister of Education, the Committee urges the Government once again to provide information, including figures, indicating whether the dismissal affected only unionized workers or whether the reorganization process and subsequent dismissal also affected other workers of the institution in question. The Committee also requests the Government to send a copy of the decision of the Constitutional Court which refused the appeal for *amparo* filed by the executive committee of the union.
- (b) With regard to the collective dispute of an economic and social nature in the Chinautla Municipal Authority, which was the subject of a complaint filed with the judicial authority, and in the course of which 14 trade union members (who according to the Government are still working) and the union leader, Mr Marlon Vinicio Avalos, were dismissed, the Committee urges the Government to inform it without delay concerning the situation in the collective dispute in Chinautla Municipality, whether collective bargaining has taken place and whether the six workers with respect to whom a decision had been reached have been reinstated, and to send information on the situation of the other dismissed workers, including Mr Marlon Vinicio Avalos.
- (c) With regard to the allegations of SITRAMUNICH, according to which the Chiquimula Municipal Authority dismissed or requested the termination of the contracts of employment of several workers (in particular members of the union) and made the payment of wages conditional on resignation of the workers, despite the existence of two judicial proceedings on a “collective dispute of a social and economic nature” (convocation of collective bargaining), whereby any termination of a contract of employment must be authorized by the judge, and noting the designation of a Conciliation Tribunal, the Committee requests the Government to ensure that, while the Conciliation Tribunal is sitting, no further dismissals or terminations of workers’ contracts occur in the Chiquimula Municipal Authority and that payment of wages is not made conditional on resignation by the workers or signing of a fixed-term contract. The Committee also requests the Government to take the measures necessary to reinstate those workers who were dismissed without the authorization of the judge, in defiance of a judicial decision on a “convocation to collective bargaining” which prohibits any termination of contracts without judicial authorization, with payment of the wages due. The Committee requests the Government to keep it informed in this respect and to inform it of the decision of the Conciliation Tribunal.

#### B. The Committee’s conclusions

639. *The Committee notes that in the present case, the complainants have alleged the dismissal of 16 members of the Union of Workers of the “José de Pineda Ibarra” National Centre for Textbooks and Educational Material following a reorganization ordered by the Minister of Education, and actions aimed at bringing about the dismissal of all the members of the union’s executive committee; refusal by the Mayor of Chinautla to negotiate a collective agreement, and dismissal of 14 union members and one union leader; and the termination of employment contracts of a number of workers by the Chiquimula municipal authorities.*

640. *The Committee notes with regret that, despite the urgent appeal, the Government has not provided any information, and accordingly urges it to implement without further delay the Committee's previous recommendations reproduced above.*

### **The Committee's recommendations**

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

*The Committee notes with regret that, despite its urgent appeal, the Government has not provided any information, and accordingly urges it to implement without further delay the Committee's previous recommendations, which are reproduced below.*

- *With regard to the allegations relating to the dismissal of 16 members of the Union of Workers of the “José de Pineda Ibarra” National Centre for Textbooks and Educational Material and the action taken to dismiss all the members of the executive committee in the context of a process of reorganization by the Minister of Education, the Committee urges the Government once again to provide information, including figures, indicating whether the dismissal affected only unionized workers or whether the reorganization process and subsequent dismissal also affected other workers of the institution in question. The Committee also requests the Government to send a copy of the decision of the Constitutional Court which refused the appeal for amparo filed by the executive committee of the union.*
- *With regard to the collective dispute of an economic and social nature in the Chinautla Municipal Authority, which was the subject of a complaint filed with the judicial authority, and in the course of which 14 trade union members (who according to the Government are still working) and the union leader, Mr Marlon Vinicio Avalos, were dismissed, the Committee urges the Government to inform it without delay concerning the situation in the collective dispute in Chinautla Municipality, whether collective bargaining has taken place and whether the six workers with respect to whom a decision had been reached have been reinstated, and to send information on the situation of the other dismissed workers, including Mr Marlon Vinicio Avalos.*
- *With regard to the allegations of SITRAMUNICH, according to which the Chiquimula Municipal Authority dismissed or requested the termination of the contracts of employment of several workers (in particular members of the union) and made the payment of wages conditional on resignation of the workers, despite the existence of two judicial proceedings on a “collective dispute of a social and economic nature” (convocation of collective bargaining), whereby any termination of a contract of employment must be authorized by the judge, and noting the designation of a Conciliation Tribunal, the Committee requests the Government to ensure that, while the Conciliation Tribunal is sitting, no further dismissals or terminations of workers' contracts occur in the Chiquimula Municipal Authority and*

*that payment of wages is not made conditional on resignation by the workers or signing of a fixed-term contract. The Committee also requests the Government to take the measures necessary to reinstate those workers who were dismissed without the authorization of the judge, in defiance of a judicial decision on a “convocation to collective bargaining” which prohibits any termination of contracts without judicial authorization, with payment of the wages due. The Committee requests the Government to keep it informed in this respect and to inform it of the decision of the Conciliation Tribunal.*

CASE NO. 2709

INTERIM REPORT

**Complaint against the Government of Guatemala  
presented by  
the Movement of Trade Unions, Indigenous Peoples  
and Agricultural Workers of Guatemala (MSICG)  
represented by the following organizations:**

- the Altiplano Agricultural Workers’ Committee (CCDA)
- the General Confederation of Workers of Guatemala (CGTG)
- the Unified Trade Union Confederation of Guatemala (CUSG)
- the National Trade Union and People’s Coordinating Body (CNSP)
- the National Front for the Defence of Public Services and Natural Resources (FNL) and
- the Guatemalan Workers’ Trade Union (UNSITRAGUA)

**supported by  
the International Trade Union Confederation (ITUC)**

*Allegations: Anti-union dismissals and acts of intimidation following the establishment of the Trade Union of the National Institute of Forensic Sciences (SITRAINACIF)*

**642.** The complaint was presented in a communication dated 20 April 2009 by the Movement of Trade Unions, Indigenous Peoples and Agricultural Workers of Guatemala (MSICG), represented by the following organizations: the Altiplano Agricultural Workers’ Committee (CCDA), the General Confederation of Workers of Guatemala (CGTG), the Unified Trade Union Confederation of Guatemala (CUSG), the National Trade Union and People’s Coordinating Body (CNSP), the National Front for the Defence of Public Services and Natural Resources (FNL) and the Guatemalan Workers’ Trade Union (UNSITRAGUA). The International Trade Union Confederation (ITUC) expressed support for the complaint in communications dated 27 August 2009 and 17 February 2010.

**643.** In the face of the Government’s failure to respond, the Committee was twice obliged to postpone examination of the case. At its meeting of March 2011 [see 359th Report, para. 5], the Committee made an urgent appeal to the Government, indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report (1972), approved by the Governing Body, it might present a report on the substance of this case at

its next meeting even if the observations or information requested had not been received. To date, the Government has not provided any information.

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

#### **A. Allegations of the complainant organization**

- 645.** In its communication of 20 April 2009, the MSICG states that the National Institute of Forensic Sciences (INACIF), a public institution operating autonomously, was established to carry out investigations and scientific analyses of crimes and evidence. On its establishment, it took control of services such as the State morgues and laboratories, which had previously been run by the Department of the Public Prosecutor. Its work involves high risks for workers' health and requires appropriate safety and hygiene equipment, which have not been provided.
- 646.** By the same token, the INACIF is a permanent institution carrying out permanent tasks in support of scientific forensic investigations; the nature of the tasks it performs requires specialized personnel, but INACIF officials have resorted to disguising the employment relationship by hiring the majority of staff on a temporary basis, simply to avoid having to set money aside for labour liabilities and to keep workers in a constant state of job insecurity and thereby prevent them from forming or joining a trade union.
- 647.** Given these working conditions and the non-existence of a trade union organization defending their basic rights, the workers decided to found a union. The complainant organization states that the workers ultimately notified the General Labour Inspectorate, on 15 April 2008, that they were in the process of establishing a union. On the same day, the employees promoting the union's establishment were prevented from entering their place of work and were told by the private security guards that they had been ordered not to let the workers in. On 16 April, the General Labour Inspectorate was asked to assign a labour inspector to observe the working conditions of the employees (Ms Evelyn Jannette García Caal, Ms Dora María Caal Orellana and Ms Ana Verónica Lourdes Morales). The labour inspectors presented themselves to the INACIF personnel department in an endeavour to ascertain the employees' working conditions, but the INACIF officials refused to provide any information, saying this would be done in a conciliatory hearing. In the face of this situation, the labour inspectors presented themselves on 18 April 2008, with the employees, directly at their places of work, where the security agents handed them internal work note No. 031-2008, which barred the employees from entering on the grounds that they were no longer employed by the INACIF, even though until that time the employees had received no notification that they had been dismissed.
- 648.** The MSICG states that, having ascertained that they had indeed been dismissed, the employees asked the labour and social welfare courts to reinstate them. In the same manner, the INACIF dismissed 13 other employees who had helped found the trade union. These were: Mr Byron Minera, Mr Carlos Rubio, Mr Ellison Barillas, Mr Flavio Díaz, Ms Irma Palma, Mr Jorge Hernández, Mr Leonel Pérez, Ms Lesly Escobar, Ms Lucrecia Solórzano, Ms María Girón, Mr Mario Yaguas, Mr Minor Ruano and Mr Oscar Velázquez. In response to their dismissal, the workers filed an application for reinstatement with the labour and social welfare courts, which ruled in their favour but, in executing the orders, the INACIF officials had recourse to what were in essence delaying tactics.
- 649.** The MSICG expresses particular concern that the employer had access to the list of workers participating in the union's founding, which implies that the information was leaked in some way, either by the Inspectorate or the General Labour Directorate of the

Labour and Social Welfare Ministry, given that the dismissals were selective and specifically targeted those who were organizing the union and those working most closely with them.

- 650.** The complainant organization states that, on 30 April 2008, Ms Miriam Gutiérrez de Monroy filed a petition with the General Labour Directorate objecting to the establishment of the Trade Union of INACIF (SITRAINACIF), an act that in itself constitutes a clear violation of freedom of association and of the principle of non-interference. In resolution No. 416-2008 of 6 May 2008, the General Labour Directorate declared the employer's opposition to the founding of the trade union null and void. The latter appealed that decision. The outcome of the appeal has not been notified.
- 651.** The MSICG adds that, from 17 to 19 April 2008, the interim Secretary-General of SITRAINACIF, Ms Evelyn Jannette García Caal, was subjected to harassment and persecution by an unidentified person riding a motorbike and by individuals in a pick-up truck who followed her until her arrival at UNSITRAGUA headquarters and also when she left. A complaint was filed with the Department of Public Prosecution, but to date she has not even been summoned to confirm its validity. The INACIF officials are exerting pressure on the employees who were not dismissed for having taken part in the union's founding, threatening them with dismissal. At the same time, in response to the fact that the workers are exercising their right to freedom of association, the employer has instituted criminal proceedings against the union's interim Secretary-General and against Ms María Girón.
- 652.** The complainant organization states that the SITRAINACIF members have learned unofficially that the union's application for registration has been definitely set aside on the grounds that it failed to meet certain prior requirements for registration stipulated by the General Labour Directorate, even though there is no legal basis for those requirements and the paperwork in the file makes them superfluous. According to the complainant organization, there has been no notification of the outcome of the appeal filed by the employer, of a deadline for meeting the requirements, or of a resolution indicating that the application was to be definitely set aside. In the face of this situation, the interim executive committee submitted a petition clarifying the matter of the requirements and renewing its application for the trade union's registration. There was no response to that request and the union received no further information, even though more than a month went by. In March 2009, a forum for dialogue was set up at the Ministry of Labour and Social Welfare to seek solutions to the INACIF problem, but the trade union's interim Secretary-General was prevented from attending because she refused to agree that the trade union did not exist and that it was functioning only as a "worker collective". She was replaced by two colleagues whose participation was agreed to by the employer and who accepted the initial premise of the trade union's non-existence. At that forum, at which representation for all workers had not been defined, the only point discussed was the reinstatement of workers who accepted the trade union's non-existence, not that of those who insisted that the union was in the process of being established.
- 653.** The complainant organization considers that this situation, far from providing a solution to the problem of the violation of freedom of association, worsens it with the approval of the Ministry of Labour and Social Welfare itself. At the same time, an adjudicatory court revoked the reinstatement of the trade union's interim Secretary-General on the same terms as it confirmed the reinstatement of an employee who is now helping to represent the "worker collective".

## B. The Committee's conclusions

654. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainant's allegations even though it has been requested several times, including through an urgent appeal, to present its comments and observations on this case.*
655. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
656. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].*
657. *The Committee urges the Government to send its observations on the allegations without further delay.*
658. *The Committee observes that the complainant organization in this case alleges anti-union dismissals and acts of intimidation following the establishment of SITRAINACIF on 15 April 2008.*
659. *The Committee notes in particular that the trade union organization states that: (1) given the working conditions at the National Institute of Forensic Sciences and the absence of a trade union organization to defend their rights, the Institute's employees decided to establish a trade union; (2) 16 workers were dismissed and requested their reinstatement, which was ordered by the labour and social welfare courts; (3) without abiding by the reinstatement orders, the employer used delaying tactics when it came to implementing the orders; (4) a petition presented to the General Labour Directorate opposing SITRAINACIF's constitution was declared null and void; (5) an appeal was filed but no notification given of the outcome; (6) the application for trade union registration was set aside definitively; (7) the interim Secretary-General of SITRAINACIF was harassed and persecuted, and those acts were denounced to the Department of the Public Prosecutor, which has to date taken no action; criminal proceedings have also been taken against her, in reaction to the exercise of the right to freedom of association; (8) workers who took part in the establishment of SITRAINACIF were threatened with dismissal; and (9) a forum for dialogue was set up in March 2009 at the Ministry of Labour and Social Welfare to find solutions, but the interim Secretary-General of the trade union was unable to attend because she did not accept that the trade union did not exist.*
660. *With regard to the dismissal of the 16 INACIF workers, the Committee observes that, according to the allegations, their reinstatement was ordered by the labour and social welfare courts. The Committee requests the Government to indicate whether the workers have indeed been reinstated and, should this not be the case, to take the measures required to give effect to the court orders as soon as possible.*
661. *With regard to SITRAINACIF's application for registration as a trade union, the Committee observes, first, that a petition presented to the General Labour Directorate opposing SITRAINACIF's constitution was declared null and void, second, that an appeal was filed but no notification given of the outcome, and lastly, that the application for*

registration was set aside definitively. The Committee recalls that Convention No. 87 applies to all workers with the sole possible exception of the armed forces and police. It has emphasized the importance that it attaches to the fact that workers and employers should in practice be able to establish and join organizations of their own choosing in full freedom [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, para. 310]. The Committee requests the Government to take all necessary measures without delay to ensure that the trade union is immediately registered if, as it appears, it meets all the legal requirements for registration.

- 662.** *With regard to the alleged threats, harassment, persecution and judicial action owing to the exercise of trade union rights, the Committee observes that various acts were denounced to the Department of the Public Prosecutor but that, according to the allegations, no action has been taken to date. The Committee emphasizes that the exercise of trade union rights must be fully guaranteed and that this excludes any kind of pressure or threat. It requests the Government to communicate the status of the complaints made to the Department of the Public Prosecutor by the trade union's interim Secretary-General.*
- 663.** *With regard to the alleged criminal proceedings against the trade union's interim Secretary-General, the Committee requests the Government to forward its observations on the matter and to communicate the status of those proceedings.*
- 664.** *With regard to the forum for dialogue that met to seek solutions and at which, according to the allegations, the trade union's interim Secretary-General was prevented by the Government from participating, the Committee requests the Government to take the measures required to ensure that the parties involved, in particular their freely chosen representatives (in the present case, the trade union's interim Secretary-General, Evelyn Jannette García Caal), are able to attend for the purpose of reaching an agreement with no pressure and asks to be kept informed of developments in that regard.*

## **The Committee's recommendations**

- 665.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee urges the Government to send its observations on the allegations without further delay.*
  - (b) With regard to the dismissal of the 16 INACIF workers, the Committee requests the Government to indicate whether the workers have indeed been reinstated and, should this not be the case, to take the necessary measures to give effect to the orders of the labour and social welfare courts as soon as possible.*
  - (c) With regard to the application for trade union registration of the SITRAINACIF, the Committee requests the Government to take all necessary measures without delay to ensure that the trade union is immediately registered if, as it appears, it meets all the legal requirements for registration.*
  - (d) The Committee requests the Government to communicate the status of the complaints filed with the Department of the Public Prosecutor by the trade union's interim Secretary-General.*

- (e) *With regard to the alleged criminal proceedings against the trade union's interim Secretary-General, the Committee requests the Government to provide its observations on the matter and to communicate the status of those proceedings.*
- (f) *With regard to the forum for dialogue that met to find solutions and which, according to the allegations, the trade union's interim Secretary-General was prevented by the Government from participating, the Committee requests the Government to take the necessary measures to ensure that the parties involved can meet with a view to reaching an agreement without pressure and to keep it informed in that respect.*

CASE NO. 2775

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

**Complaint against the Government of Hungary  
presented by  
the Democratic League of Independent Trade Unions (LIGA)**

*Allegations: The complainant organization alleges that members of its affiliate, the Allied Trade Union of Air Transport (LESZ) have been subject to acts of anti-union discrimination, including harassment, intimidation and dismissal on grounds of trade union membership and participation in strikes. The complainant also alleges that the legislation does not adequately protect against acts of anti-union discrimination*

- 666.** The complaint is contained in communications from the Democratic League of Independent Trade Unions (LIGA) dated 3 March and 23 August 2010.
- 667.** The Government forwarded its response to the allegations in a communication dated 29 October 2010.
- 668.** Hungary has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 669.** In a communication dated 3 March 2010, the complainant organization alleges that members of its affiliate, the Allied Trade Union of Air Transport (LESZ), have been subject to acts of anti-union discrimination, including harassment, intimidation and dismissal on grounds of trade union membership and participation in strikes. The complainant also alleges that the legislation does not adequately protect against acts of anti-union discrimination.

**670.** The complainant organization states that members of LESZ, a representative trade union at the airport of Budapest that is present in several companies (Celebi Ground Handling Hungary Kft (Celebi GHH Kft), RÜK Kft and Budapest Airport Zrt), have been discriminated against for years because they are union members or hold trade union offices; this can especially be experienced at times of dismissals. All three employers are aware which employees are LESZ members, as the companies are commissioned by the union members to deduct their trade union membership fees from their wages and transfer them to LESZ.

## **1. Celebi Ground Handling Hungary Kft**

**671.** According to the complainant, since 2006 (after three strikes), the employer has continually taken discriminative actions against union members, with the result that LESZ has lost 80–90 per cent of its members.

- (a) The complainant organization indicates that, after the solidarity strike in December 2008, the employer terminated the employment of several trade union leaders and members participating in the strike, indicating redundancy due to reduced traffic as the reason in the notice of dismissal, while hiring new workers to their places. The employees concerned are: Péter Huszka, Gábor Dobrovinszky, József Béres, Béla Bálint, István Farkas, József Mucsi, Miklós Varga, László Dömötör, András Péter Fazekas, János Szigeti, Péter Márkus, Gábor Kenyeres and Rudolf Faragó, all of whom were trade union members. According to the complainant, the employment of the LESZ members was terminated on 5 and 6 March 2009, whereas the employer had already placed on 27 January an advertisement in the newspaper for positions where the dismissed members were working. The complainant organization also states that Ferenc Borgula, trade union officer, was already laid off by the employer during the strike talks, in the middle of the negotiations, by ordinary dismissal.

Furthermore, the complainant indicates that the majority of the claims filed with the Budapest Labour Court are still pending. Until now, the parties were able to settle the legal dispute by mutual agreement in two cases (Ms Orsolya Cserhati and Ms Krisztina Simon); since these employees provided satisfactory evidence that the reasons for termination were wrongful, the employer was willing to reach an agreement with them. Concerning the claim filed by Jozsef Mucsi and other former employees (36.M.16191/2009/28), the court established that the termination of employment was not justified as the reason for termination was invalid; however, the court did not consider the assertion that the employer discriminated the employees on the basis of union membership (termination due to participation in a strike) as founded and required the employees to provide satisfactory evidence supporting the assertion.

- (b) According to the complainant, during the works council elections in 2008, several LESZ members who were candidates (e.g. Imre Péter Kis, Zoltán Morva, László Ordasi, Lajos Szabó, Éva Feketéné Zsidai) were intimidated by the employer, and as a result of the pressure, stood down from trade union representation or resigned from the union. The employment of LESZ member László Cserháti was terminated by the employer when it turned out that he would stand for election.
- (c) The complainant states that further LESZ members have been constantly harassed at their workplace because they are union members and, as a result, have either agreed to the termination of their employment (Ferencné Szolnoki, József Fazekas) or their employment was terminated by the employer indicating other reasons (Attila Mercz, Marica Mezei). Attila Nagy, another union member, is at the moment on sick leave

due to stress and psychological fatigue, which in the complainant's view is the consequence of harassment by the employer.

**672.** To substantiate these allegations, the complainant annexes to the complaint statements of seven dismissed employees.

## **2. RÜK Kft**

**673.** The complainant indicates that, in 2008, after months of harassment, several union members (Csaba Daróczy, István Koós, József Krizsán, Attila Mátyás and János Radóczy) and two union officials (János Szlifka and István Téglás) signed the termination of their employment by mutual agreement.

**674.** To substantiate these allegations, the complainant annexes to the complaint a statement from one dismissed employee.

## **3. Budapest Airport Zrt**

**675.** According to the complainant, union members working in the Department of Passengers' Safety and Health and in the Armed Security Services have been permanently harassed and intimidated by the employer or have experienced other types of disadvantages because of their trade union membership and activities. As a result of the employer's behaviour, the membership of LESZ has dropped drastically, partly because the employment of union members was terminated and partly because union members left LESZ after experiencing the employer's intimidating behaviour.

### **(a) Harassment**

**676.** The complainant organization states that trade union officials Péterné Rózsa and Péter Bihari who participated in the strike in December 2008, were constantly harassed by the employer continually trying to find fault in their work.

### **(b) Strike participation**

**677.** The complainant indicates that the employer did not renew the fixed-term employment of several union members working in the Department of Passengers' Safety and Health, whose employment contract expired after the strike in December 2008, or did not enter into a new employment contract with them (Ágnes Szathmári, Katalin Jávor, Dániel Linguár, Róbert Tóth, László Icsó, Kitti Szekeres). These trade union members had participated in the strike. According to the complainant organization, the employer had renewed, in the past their fixed-term contracts several times in a row, almost automatically, and was satisfied with their work. Moreover, none of the employees concerned had worked for the employer for more than five years, so there would not have been a legal obstacle to employing them again. Given that, after termination of their employment relationship, the employer hired new employees for their positions, and the employment contracts of those fixed-term employees who had not participated in the strike were renewed or transformed into permanent contracts by the employer, it is, in the complainant's view, obvious that the reason why their contracts have not been renewed is the participation of the relevant employees in the strike.

**678.** The complainant organization further states that, after the strike, the employer also terminated the employment of Katalin Zsekov and Anikó Hirmann, two union members, indicating reduced capacity as the reason, while new employees were hired for their positions, replacing them. In the case of these two workers there is a labour dispute still

ongoing before the Labour Court to establish the legitimacy of the voluntary termination of employment.

(c) Members resigning from the trade union due to being threatened

**679.** In the Healthcare Centre, where LESZ used to have 17 members out of the 35 employees, including 3 officials, today LESZ has no longer any members, since, according to the complainant, all of them have left the union as a result of the constant threats by the employer.

**680.** The complainant organization also indicates that the reason behind the employer's behaviour is the fact that after December 2007, Edit Kranczné Majoros, a newly elected trade union official, who also became a member of the works council, together with two other union officials, openly protested against the violations of law experienced at the workplace, and asked the employer both face to face and in writing to solve the problem. Subsequently, the employer, instead of jointly looking for a solution, allegedly started a war on the trade union, keeping employees constantly under pressure and urging LESZ members to leave the union.

**681.** According to the allegations, the pressure was further intensified by the redundancy process that started in autumn 2008. A rumour spread among employees that mainly union members would be made redundant by the employer, and, as a result, seven LESZ members immediately left the trade union. The complainant states that, afterwards, the employer dismissed seven workers, six of whom were union members, and that trade union officials Éva Csontos and Edit Kranczné Majoros who were continually harassed by the employer (constant checks at the workplace with the aim of finding fault in their work), signed the termination of their employment by mutual agreement after losing their union membership. In January 2009, the remaining four LESZ members also resigned from the union, worried about their jobs.

**682.** The complainant organization further reports that Edit Kranczné Majoros went to the Equal Treatment Authority (EBH) in October 2009 because of the employer's discriminative attitude; the procedure is ongoing (EBH/1645/2009/3) at the appeal level because her complaint was refuted in the first instance. In the complainant's view, it is typical of the hostile way the employer is swaying employees' opinion against the trade union that after the redundancy process, those employees who had left the union asked the employer by way of a letter on their own initiative – for fear of being dismissed – to dismiss Ms Majoros, one of the most active union leaders, indicating that her activities create disorder and weaken the unity among employees. In the case of Ms Andrea Kiss (13.M.5234/2008), the court of first instance ruled against the plaintiff but the employee has not yet received the court decision in writing.

**683.** To substantiate these allegations, the complainant annexes to the complaint statements of four dismissed employees.

### ***The Hungarian legislation***

**684.** As regards national legislation, the complainant organization explains that Act XXII of 1992 concerning the Labour Code prohibits employers from terminating the employees' employment, or discriminating against them and mistreating them in any other way on the grounds of their trade union affiliation or trade union activities (section 26(3)). Act CXXV of 2003 on equal treatment and the promotion of equal opportunity (Equal Opportunities Act) also prohibits direct or indirect discrimination on the grounds of interest representational activities (section 8(s)). Act LXXV of 1996 on labour inspection (Labour

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Inspection Act) regulates in section 3(d) the protection of equal treatment, and Act II of 1989 on the right to organize protects the right to organize.

- 685.** According to the complainant, while the above legislation guarantees employees' right to organize and requires the employer to respect the principle of anti-union discrimination, it is not effectively enforced in practice. Employees do not have at their disposal legal or other means or procedures to effectively take steps against the open or disguised illegal discriminative behaviour of the employer. In the complainant's view, there are no effective, proportionate and quick sanctions that would – as a result of their weight and consequences – be appropriate to prevent the abovementioned violations and serve as proper deterrents for employers, and there is no possibility to expose the intimidating behaviour of the employer.
- 686.** The complainant organization also indicates that the consequence of the procedures before the Equal Treatment Authority and the Labour Inspection cannot be the reinstatement of the illegally dismissed employees, as the authorities can only impose sanctions (e.g. fines) on the employers. Reinstatement of the employment relationship can only be requested before labour courts by the harmed worker in person and employees have to cover the costs of the court procedure if they lose the case.
- 687.** The complainant states that it is extremely difficult to prove the anti-union behaviour of the employer when fixed-term contracts come to an end, despite the “reversed burden of proof” provisions. The LESZ members had been affected by this kind of behaviour while being employed on fixed-term contracts.
- 688.** Thus, the complainant organization believes that, as a result of a lack of effective sanctions, the employer can essentially harass and threaten workers on the grounds of their trade union affiliation and activities (as illustrated in the case of LESZ), which severely violates the right to organize. In its view, Hungarian legislation is not in line with Convention No. 98 (Article 1), since the existing general anti-discrimination provisions cannot provide effective protection against anti-union dismissals and other anti-union behaviour. The complainant calls on the Government to introduce sanctions and other measures which make it possible to eliminate, reduce or prevent negative discrimination on grounds of trade union affiliation or activities.
- 689.** According to the complainant organization, the enclosed employee's statements illustrate that the employers created an anti-union environment at the workplaces, and that joining the union or pro-union activities contributed to the termination of employment, in spite of the fact that the official reason for the termination did not refer to pro-union activities. In addition to complaining about wrongful dismissal, the relevant employees also refer to discrimination on the basis of union membership.
- 690.** Finally, the complainant indicates that the majority of the relevant legal proceedings have been pending for more than one year; in most cases the plaintiffs are still waiting for the first instance ruling. According to national labour legislation, if the plaintiff is able to prove discrimination on the basis of union membership or pro-union activities, the employer – upon request of the employee – has to reinstate the employee. According to the complainant, however, many employees did not request reinstatement as legal proceedings were protracted and the employees had to find new employment to earn regular income; reinstatement is generally rare because legal proceedings take a long time. The complainant also states that the legal provisions do not provide for any special compensation for employees who have been terminated on the basis of union membership; in such cases employees are entitled to receive the same compensation as any employee whose dismissal was unfair.

**B. The Government's reply**

- 691.** The Government considers that the statement of the LIGA that national legislation is not in conformity with Conventions Nos 87 and 98 lacks legal grounds. In its view, the Hungarian legislation guarantees via a detailed institutional system the trade unions' right to organize and prohibits the negative discrimination of persons by reason of their membership or office held in a trade union; there are appropriate legal remedy procedures and extensive sanctions to ensure employers' compliance with the regulations.
- 692.** The Government presents in its reply the relevant Hungarian legislative acts.
- 693.** Accordingly, the Equal Opportunities Act classifies membership in an interest representation organization in the category of protected characteristics on the basis of which no employees shall be subject to negative discrimination.
- 694.** This principle stemming from the constitutional freedom of association is also laid down in the Labour Code, which specifies a number of cases in which discrimination is prohibited, including: (i) the employment of an employee may not be rendered contingent upon his membership in any trade union, on whether or not the employee terminates his previous union membership, or on whether or not he agrees to join a trade union of the employer's choice; (ii) the employment of an employee shall not be terminated, and the employee shall not be discriminated or mistreated in any other way on the grounds of trade union affiliation or activity; (iii) it is forbidden to render any entitlement or benefit contingent upon affiliation or lack of affiliation with a trade union; and (iv) employers must not request employees to reveal their trade union affiliation.
- 695.** In the case of infringements arising from discrimination, both the trade union and the employee concerned are entitled to use a number of legal instruments. Both the trade union and the employee may resort – in administrative proceedings – to the labour inspectorate or the EBH.
- 696.** Pursuant to the Labour Inspection Act, the labour inspectorate may inspect in administrative proceedings initiated upon request the following: (i) the employer's compliance with rules ensuring the organization of a trade union with the purpose of protecting the economic and social interests of employees; (ii) the employer's compliance with rules relating to the labour law protection of an employee holding an elected trade union office; and (iii) the employer's compliance with rules pertaining to the fulfilment of employer's obligations relating to measures disapproved by the trade union. If the violation of rights is established, the authority calls upon the employer to observe the rules and stop the infringement of rights within a specific deadline. It may also impose a labour fine, which may amount to a sum between 30,000 Hungarian forint (HUF) (approximately US\$163) and HUF2,000,000 (approximately US\$10,918) even if only one employee is concerned. In the event that several employees are affected and a number of regulations are violated, the upper limit of the fine increases to HUF8,000,000 (approximately US\$43,669). Finally, if the infringement of rights is repeated within three years' time, a fine of up to HUF20,000,000 (approximately US\$109,170) may be imposed. In the first two cases of infringement described above, it is compulsory to apply the most rigorous sanction, i.e. the labour fine. The violation of the above rules is also regarded as an infraction, and the employer committing the offence may be penalized by a fine of up to HUF100,000 (approximately US\$546).
- 697.** According to the Equal Opportunities Act, a trade union may file an action with EBH for non-compliance with the principle of equal treatment under the right of so-called "claim enforcement in the public interest", if the violation of the principle of equal treatment or the direct threat of a violation is based on a characteristic that is an essential feature of the

individual and affects a larger group of persons that cannot be determined accurately. An example for this is when employees are threatened by negative discrimination by the employer on the grounds of their trade union membership or affiliation to a trade union. If the EBH has established that the provisions ensuring the principle of equal treatment have been violated, it may order that the situation constituting a violation of law be eliminated, prohibit the further continuation of the conduct constituting a violation of law, order that its decision establishing the violation be published, and impose a fine. The amount of the fine may vary between HUF50,000 (approximately US\$273) and 6,000,000 (approximately US\$32,748). If the application is rejected, the offended party only has to bear the procedural costs if the authority establishes that it acted in bad faith.

- 698.** The labour inspectorate and the EBH are required to observe the general administrative time limit, so they must adopt a decision within 22 working days from the date of submission of the application. In the event that the labour inspectorate imposes a labour fine, the employer shall, under Act XXXVIII of 1992 on public finance (Public Finance Act), not be entitled to any state aid from the central budget or extra-budgetary funds for a period of two years. The same applies to employers who have been fined upon the final decision of the labour authority or the EBH for reason of non-compliance with the requirement of equal treatment, provided that the infringement was repeated at the same workplace within two years. As an ancillary sanction, the acting authorities publish the names and key data of the employers excluded from state aid.
- 699.** The Government explains that, in administrative proceedings no compensation may be claimed. A claim for the recovery of pecuniary and non-pecuniary damage caused by the infringement may be lodged to the labour or civil court in the form of a lawsuit. According to the Labour Code both the trade union and the employee are entitled to file an employment-related legal action to enforce their claims arising under the Labour Code or their collective bargaining agreement. In addition, under the Code of Civil Procedure, a trade union may enter the labour dispute as a party even if otherwise it has no legal capacity.
- 700.** The Government highlights the fact that in labour disputes most employees are subject to a so-called employees' cost allowance (Decree No. 73/2009). Accordingly, from the date of submission of the claim throughout the entire duration of the lawsuit, including the enforcement procedure, employees enjoy full cost exemption, i.e. exemption from duties; exemption from having to provide an advance for the costs arising during the proceedings (witness fees, expert fees, the fees of guardians ad litem and interpreters, public defender's fees, cost of remote hearings and inspections, etc.) and, unless the Code of Civil Procedure provides otherwise, from the payment of such costs; exemption from providing security for costs; claim for authorization of the appointment of a public defender, where permitted by law. The Decree further specifies the income level at which the employee is eligible for the cost allowance; this applies when the employee's average monthly gross income arising from his employment relationship affected by the labour dispute does not exceed the amount equivalent to twice the average monthly gross income in the national economy – as published by the Central Statistical Office – in the second year preceding the date indicated above. According to the Government, the Decree sets the criteria of eligibility for the employees' costs allowance at such a high limit that most of the employees (who earn less than a monthly gross income of HUF400,000 (approximately US\$2,183)) are entitled to it.
- 701.** The Government further reports that, in line with the obligation of legal harmonization with the European Union, in all actions initiated by reason of non-compliance with the requirement of equal treatment – with the exception of criminal proceedings and infraction proceedings – the rules of evidence are applicable in a special manner and are more beneficial for the injured party. In the proceedings, the injured party is only required to render probable (not prove) the following circumstances: (i) it suffered a disadvantage; and

(ii) at the time of the violation of law it possessed – actually or as assumed by the offending employer – any of the protected characteristics. In the Government's view, in cases of discrimination relating to trade union membership, rendering the above probable should not cause any difficulty. The employer may be exempted from liability if there is evidence that: (i) the circumstances rendered probable by the injured party did not prevail; or (ii) the principle of equal treatment has been observed; or (iii) the employer was not obliged to observe the principle of equal treatment in respect of the relevant relationship. If unable to prove any of the above, the employer will be held liable for non-compliance with the principle of equal treatment (so-called reversed burden of proof).

**702.** The Government calls particular attention to the fact that trade union officials are entitled to further special labour law protection against unilateral measures of the employer whereby an official may be torn away from the community where he fulfils interest representation tasks. This protection means that the employer may take such unilateral measures only with the involvement of the superior trade union body (the body competent in the procedure must be established on the basis of the union's statute; if this is not possible, the entitlement regarding the labour law protection shall be exercised by the trade union body in which the official conducts his activities). There are three separate levels of protection.

**703.** In the strongest form of protection, the employer's action will not become effective unless the superior trade union body has given its prior consent. This is required for the following actions concerning an elected trade union official: (i) temporary assignment; (ii) posting for at least 15 working days; (iii) extraordinary temporary assignment; (iv) reassignment, if this means that the employee will hold a post at another workplace; and (v) termination of employment by the employer by way of ordinary dismissal. In case of ordinary dismissal of a union official without prior consent from the superior trade union body, the union is entitled to file a demurrer. Should the parties fail to agree with respect to the demurrer, the contested action cannot be executed until final decision of the court. According to the Government, the judicial practice in this regard amounts to prohibition of termination, i.e. in the absence of the trade union's consent the ordinary dismissal does not enter into effect.

**704.** On the second level of protection, the immediately superior trade union body is entitled to express its opinion previously. This case applies to the extraordinary dismissal of an official. On the third level of protection, the superior body is entitled to be notified in advance in the following cases: (i) application of the legal consequences set forth in section 109 of the Labour Code (disciplinary liability); and (ii) transfer to another workplace of an official employed in a position subject to transfer.

**705.** According to the Labour Code, elected trade union officials are entitled to labour law protection for the duration of their term, effective as from the time of election, even if the court registration of a properly established trade union takes place only at a later date. In addition, they continue to be protected for a period of one year following the expiration of their term, provided that they held the office for at least six months. Succession of the employer does not affect the labour law protection of the official. The Government underlines that compliance with the labour law provisions is inspected by the labour inspection authority, and that non-compliance entails a labour fine, which also means the exclusion of the employer from state aid schemes for a period of two years.

**706.** According to the Government, the fact that, in this specific case, there are several court proceedings ongoing as well as an EBH action where the rejecting decision is currently under judicial review, proves that the persons concerned have had the opportunity to apply for legal remedy. The Government notes that there is no reference as to whether the parties have initiated labour inspection, which might have been the fastest procedure. In the Government's view, even if there has been a violation of rights on the employers' part, this

does not imply that the Hungarian legislation is not in harmony with the requirements laid down in the ILO Conventions. Both the trade union and its members have access to various forms of legal remedy by way of administrative and court proceedings, if in their opinion they have suffered an infringement of the trade union's right to organize or have been discriminated for exercising such right. The Government reiterates that the court actions initiated by the injured parties against the violations proves that in Hungary the democratic enforcement of rights does work. The relevant laws prescribe strict sanctions if an infringement is established. In this context, the Government draws particular attention to the Public Finance Act, under which an employer infringing labour-related rights may be excluded from significant financial state aid.

- 707.** In conclusion, the Government states that it lays special emphasis on guaranteeing trade unions the right to organize, protecting union members and officials, and, in particular, prohibiting negative discrimination. The enforcement of Conventions Nos 87 and 98 is given high priority so as to ensure the proper operation of labour relations in Hungary. The Government highlights that the content of these Conventions is considered as the basic values of labour law and Hungarian legislation guarantees their enforcement by means of an extensive set of rules and regulations, efficient procedures and rigorous sanctions.
- 708.** As to the additional documents submitted by the LIGA, the Government notes that in view of the ongoing court proceedings, the complainant organization asked the plaintiffs to make witness statements in order to prove the contested behaviour of the employer. In these statements, the parties concerned claim that they have been forced to leave their workplace on the grounds of their trade union activity. The Government reiterates that there is no relation between the transposition of ILO Conventions into national legislation and the statements of employees who allege to have suffered an infringement of their rights by their employer due to their trade union affiliation. The Government stresses that these are individual cases, and that both the trade union and its members have access to various forms of legal remedy through administrative and court proceedings, should they believe that their right to organize has been violated or that they have been discriminated for exercising such right.
- 709.** With respect to the interim ruling (36.M.1691/2009/28.) forwarded by the complainant, the Government indicates that the court established that the defendant employer terminated the employment relationship of the four plaintiff employees unlawfully. The employer had indicated operational grounds as reason for their ordinary dismissal, i.e. reorganization due to a decline in sales (number of passengers) and subsequent redundancy. However, the court found that, on the one hand, no redundancy actually occurred and, on the other hand, the termination of employment lacked reasonable cause. The court further established that the plaintiffs had proved their trade union membership and that they suffered a loss, while the defendant failed to fulfil its obligation to provide evidence of compliance with the principle of equal treatment. In the case of one employee, the court held that the employer abused its right (the employment relationship was terminated by reason of sick leave).
- 710.** As regards court decisions in general, the Government emphasizes that national courts are independent from any other authorities, and that the decisions adopted by them in individual cases are binding for every party (the authorities and private individuals alike). The Government again draws attention to the fact that, if any rights are violated in a specific case and the injured party takes legal action against such violation, it means that the democratic enforcement of rights does work in Hungary.
- 711.** In respect of the above, the Government forwards the replies received from the three employers concerned and from the Confederation of Hungarian Employers and Industrialists (MGYOSZ).

- 712.** Accordingly, Budapest Airport Zrt and RÜK Kft generally indicate that they have always been committed to orderly industrial relations and observed the trade union rights stipulated by law; annually, 150 coordination and consultation meetings take place and information is provided on all changes affecting a larger group of employees. In their view, the reason LIGA failed to attach any favourable final court ruling is that its claims are unfounded. According to both companies and the MGYOSZ, national legislation fully complies with ILO Conventions. All three employers as well as the MGYOSZ consider that, if any trade union feels that its rights have been violated, it should turn to the appropriate forums for legal remedy.
- 713.** More specifically, Budapest Airport Zrt strongly refutes the claim that it has discriminated against employees on the basis of their trade union membership or office or that it has terminated employment relationships on such grounds. It vehemently rejects the accusations of harassment and intimidation. The allegation that the decrease in the LIGA membership is due to termination, harassment and intimidation was deemed unfounded by EBH and is not supported by the relevant numbers (outsourcing projects did not only affect union officials but all employees at the affected unit and did not entail a significant change in the rate of organization of employees). As regards the alleged harassment, the employer states not to be aware of any cases or procedures aiming at finding fault in the work of certain union officials. Concerning the December 2008 strike, the company stresses that almost 100 per cent of the employees in the field of passenger screening were in favour, so it could not possibly differentiate between employees on that basis during the redundancy process. When the definite term of employment expires, the employment relationship undoubtedly ends, and the employer has no further employment obligations. The company further highlights that none of the listed employees decided to turn to the court or any other authority, and that the majority of the passenger screening personnel is still made up of employees who participated in the December 2008 strike. Regarding the termination of the union members Katalin Zsekov and Anikó Hirmann after the strike and subsequent hiring of new employees, the employer states that the headcount reduction which already took place in September was justified by objective reasons (passenger shortfall) and affected several employees, and that the rehiring in December was for a period of two months due to unforeseen reasons. With respect to members allegedly resigning from the union due to threats, Budapest Airport Zrt refers to the EBH findings in the case of Ms Majoros, in particular that the company did not threaten her on account of her union membership or status as union official, and that the decrease in members was not due to the employer. According to the employer, Ms Majoros asked for the termination of her employment by mutual agreement owing to the foul relationship with her colleagues, and the decrease in membership was the result of a conflict between the employees and the union official, as illustrated by the joint letter of several employees. While confirming the restructuring process, the company underlines that there was no redundancy list showing LESZ members upfront, and that most of the affected employees left the company under much better conditions than termination of employment by mutual agreement.
- 714.** Similarly, RÜK Kft strongly refutes the claim that it has discriminated employees on the basis of their union membership or office or that it has terminated employment relationships on such grounds. While confirming a reduction of staff from 72 in 2006 to 39 in 2010 to sustain its position within a very competitive market, the employer stresses that the union was consulted on the issue beforehand and that those difficult decisions were taken diligently, in accordance with the relevant laws and solely based on each individual's overall performance within the company. Each employee's situation was analysed, and a potential pre-retirement plan was considered where appropriate. The company indicates that in each case it came to an agreement with the employees dismissed, including a fair indemnity payment, and strongly refutes, as untrue, the accusation that the named employees were forced to sign the termination by means of harassment. The company also highlights the fact that the listed employees account for less than 25 per cent of the

released workforce, which illustrates that LESZ members have not been discriminated; this also applies for the time they have been working for the company.

- 715.** Celebi GHH Kft also confirms that, in order to improve efficiency, there has been significant internal restructuring resulting in jobs contracting, collective redundancy and much other reorganization. Among those lay-offs, only the 2006 terminations of employment qualified as collective redundancy, and the employer conducted the negotiations prescribed by law and informed the Government. As to the 2009 lay-off, the company points out that the turnover had decreased by 30 per cent compared to 2008 due to recession, and thus, additional employments had to be terminated by ordinary notice with reference to reorganization and workforce redundancy. However, the group affected by the lay-off was larger than alleged by the complainant, and the employer did not take account of participation in strike. The company acknowledges that the reorganization measures might have led to a decrease in union membership but stresses that this could not be attributed to the alleged unlawful conduct but to justified workforce redundancy. The company further states that certain dismissals referred to by the complainant were due to the employee behaving in a way that made it impossible to maintain the employment relationship (e.g. commitment of crime), that no employees were dismissed on the grounds of strike participation or union membership/office, and that most of them were dismissed in response to the flight decrease.
- 716.** Finally, the MGYOSZ asserts that labour relations are sound at both affiliated companies (Budapest Airport Zrt and RÜK Kft). Relations between the employer and workers' organizations are continuous and regular, and they consult over future changes affecting employees in accordance with national law. In its view, the allegations are not grounded.

### C. The Committee's conclusions

- 717.** *The Committee notes that, in the present case, the complainant alleges that members of its affiliate, the LESZ, have been subjected to acts of anti-union discrimination, including harassment, intimidation and dismissal on grounds of trade union membership and participation in strikes. The complainant also alleges that the legislation does not adequately protect against acts of anti-union discrimination.*
- 718.** *The Committee notes that, according to the complainant, the general anti-union discrimination provisions are not effectively enforced in practice and cannot provide effective protection against anti-union dismissals and other anti-union behaviour, since employees do not have at their disposal legal or other means or procedures to effectively take steps against the open or disguised illegal discriminative or intimidating behaviour of the employer, and there are no effective, proportionate and quick sanctions that would serve as proper deterrents for employers. The Committee notes from the allegations that no special compensation is stipulated for employees who have been terminated on the basis of union membership and that the latter receive the compensation generally granted in case of unfair dismissal. The Committee also notes that consequence of the procedures before the Equal Treatment Authority (EBH) and the labour inspectorate cannot be the reinstatement of the illegally dismissed employees, as the authorities can only impose sanctions (e.g. fines), and that reinstatement can only be requested before labour courts, where employees have to cover the costs of the court procedure if they lose the case. Despite the "reversed burden of proof" provisions, it is extremely difficult to prove anti-union behaviour when fixed-term contracts come to an end. Finally, the Committee notes the complainant's indication that the majority of the relevant legal proceedings are pending for more than one year, and that in general, reinstatement is rarely requested because legal proceedings are protracted and employees need to find new employment.*

- 719.** *The Committee notes the presentation of the relevant Hungarian legislative acts in the Government's reply, especially the Equal Opportunities Act (prohibition of negative discrimination on the basis of membership in an interest representation organization) and the Labour Code (prohibition of discrimination and dismissal on the basis of trade union affiliation or activity). It also notes the Government's indications concerning the relevant judicial procedure in case of claims for reinstatement or compensation (emphasis being put on the recently introduced cost allowance for employees) and the relevant administrative procedures (labour inspectorate or EBH), which may entail remedial measures within a specific deadline and/or a fine (but no compensation) and might result in the withdrawal of state aid for a company under the Public Finance Act. Furthermore, the Committee notes that the Government highlights the reversed burden of proof in cases of discrimination relating to trade union membership, where the injured party is only required to render probable that it suffered a disadvantage and that it possessed at that time one of the protected characteristics, and the employer needs to prove that it has observed the principle of equal treatment or that it was not obliged to observe it in respect of the relevant relationship. It notes from the Government's reply that trade union officials are entitled to special labour law protection according to which the employer may take unilateral measures only with the involvement of the superior trade union body, e.g. prior consent in case of ordinary dismissal (otherwise the union is entitled to file a demurrer; should the parties fail to agree, the contested action cannot be executed until final decision of the court; according to the Government, the judicial practice in this regard amounts to prohibition of termination) and prior request for opinion in case of extraordinary dismissal. The Committee notes the Government's conclusion that the allegation that national legislation is not in conformity with Conventions Nos 87 and 98 lacks legal grounds, and that, even if there has been a violation on the employers' part, this does not imply that the Hungarian legislation is not in harmony with ILO requirements. It notes that in the Government's view, the fact that the injured parties have initiated administrative and court proceedings against the alleged violations proves that the democratic enforcement of rights does work in Hungary. As regards court decisions in general, the Government emphasizes that national courts are independent from any other authorities, and that the decisions adopted by them in individual cases are binding for every party (authorities and private individuals alike).*
- 720.** *As regards the allegedly ineffective protection against anti-union dismissals, the Committee notes that, although there is no specific provision prohibiting the dismissal of trade union officials during their period of office, section 28 of the Labour Code provides for special labour law protection of union officials, as described by the Government. The ordinary dismissal of a union official requires the consent of the trade union, and in the case of extraordinary dismissal, section 28 provides that the employer must request the trade union's opinion beforehand. Extraordinary notice may be given by the employer if it is considered that the employee has "engaged in conduct rendering further existence of the employment relationship impossible" (section 96). The Committee considers that the situations envisaged under this provision should be limited to extraordinary circumstances. The Committee also recalls that one way of ensuring the protection of trade union officials is to provide that these officials may not be dismissed, either during their period of office or for a certain time thereafter except, of course, for serious misconduct [**Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 804].*
- 721.** *With respect to the reversed burden of proof, the Committee notes the relevant mechanism contained in section 19 of the Equal Opportunities Act and described by the Government. It further notes with interest that, according to ruling 36.M.16191/2009/28, after establishing that in view of the subsequent rehiring and the lack of restructuring there was no need for the redundancy measures and thus no reasonable basis for the termination, the court also examined the allegations of anti-union discrimination and ruled in favour of the*

plaintiffs, given that they were able to prove their trade union membership and the link between the suffered prejudice and their union membership, and that the employer was unable to prove that the principle of equal treatment had been observed, as it became clear that one of the selection criteria in the redundancy process had been union membership (although the court did not establish a causal link between the dismissal of the plaintiffs and their participation in the strike of December 2008).

- 722.** Concerning the alleged lack of effective remedy measures in cases of anti-union discrimination (particularly as regards compensation), the Committee considers that, in the event that reinstatement, which should be the privileged option, is no longer possible for objective and compelling reasons, it should be ensured that the injured worker is paid full and adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals and other acts of anti-union discrimination. The Committee recalls that it has always emphasized that the compensation should be adequate, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future [*Digest*, op. cit., para. 844].
- 723.** As to the allegedly protracted judicial proceedings which usually lead to rather rare requests for reinstatement, the Committee, noting that according to the complainant's communication dated 23 August 2010 most of the plaintiffs were, after at least one year, still waiting for the first-instance ruling, recalls that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned. In a case in which proceedings concerning dismissals had already taken 14 months, the Committee requested the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasized that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts [*Digest*, op. cit., paras 826 and 827]. In the light of the above principles, the Committee trusts that the legal proceedings referred to will be concluded as soon as possible and invites the Government to review with the social partners the delays invoked in proceedings related to anti-union discrimination and to take any necessary measures to accelerate the time for their handling.
- 724.** Furthermore, the Committee expresses concern at the above allegations of individual acts of anti-union discrimination (including dismissals, harassment and intimidation of union officials and union members), as a result of which LESZ has lost, according to the complainant, virtually all its members at Celebi GHH Kft and a considerable part of its members at the two other companies. It also notes that the complaint as well as the statements of dismissed employees annexed to the complaint refer to numerous acts of interference. In this regard, the Committee notes with regret that the Government has only referred to the relevant legal provisions, but has not itself responded to the complainant's allegations with respect to the specific cases of alleged interference and anti-union discrimination. It notes the replies from the three employers as well as the MGYOSZ, forwarded by the Government, in which they refute as unfounded LIGA's allegations that they have discriminated against employees on the basis of their trade union membership, office or activity; have terminated employment relationships on such grounds, or have harassed or intimidated union members and officials; and state that unions should turn to the appropriate forums for legal remedy if they feel that their rights have been violated. The Committee requests the Government to provide its own observations with respect to the specific cases of alleged interference and anti-union discrimination.

**Celebi GHH Kft**

- 725.** *In particular, the Committee notes that, according to the complainant, since 2006 (after three strikes), Celebi GHH Kft has taken discriminative action against union members. In particular, the Committee notes from the allegations that, after the solidarity strike in December 2008, the employer terminated, on 5 and 6 March 2009, the employment of the following trade union members who had participated in the strike indicating redundancy due to reduced traffic as the reason in the notice of dismissal, while hiring other workers into their positions (advertisement in the newspaper already placed on 27 January for their positions): Péter Huszka, Gábor Dobrovinszky, József Béres, Béla Bálint, István Farkas, József Mucsi, Miklós Varga, László Dömötör, András Péter Fazekas, János Szigeti, Péter Márkus, Gábor Kenyeres and Rudolf Faragó. The Committee also notes the complainant's indication that Ferenc Borgula, union officer, was already laid off by the employer during the strike talks, in the middle of negotiations. Furthermore, the Committee notes that, according to the complainant, during the works council elections in 2008, several LESZ members who were candidates (e.g. Imre Péter Kis, Zoltán Morva, László Ordasi, Lajos Szabó, Éva Feketéné Zsidai) were intimidated by the employer, and as a result, stood down from trade union representation or resigned from the union, and that LESZ member László Cserháti was dismissed when it turned out that he would stand for election. Also, the Committee notes from the allegations that LESZ members have been constantly harassed at their workplace due to their union membership, and, as a result, have agreed to the termination of their employment (Ferencné Szolnoki, József Fazekas), were dismissed for other reasons (Attila Mercz, Marica Mezei) or are on sick leave (Attila Nagy).*
- 726.** *The Committee notes from the statements of dismissed employees annexed to the complaint that: (i) according to union official Ferenc Borgula, he was officially dismissed based on purported threats to damage aircraft that had been the result of a mistranslation during a meeting with the employer at the end of August 2008, but, in his view, the dismissal was actually due to the fact that the union protested against the workforce reduction initiated by the employer and threatened to take industrial action; the employer consulted the union, as required by law, about the intended extraordinary dismissal and LESZ protested against it emphasizing that the termination was based on anti-union discrimination; he lodged a complaint indicating that the reason for termination was his position as union official but court proceedings are still pending; (ii) according to union official Attila Mercz, his extraordinary dismissal was officially attributed to a minor mistake but was actually due to his protests against the alleged policy of the employer to hire cheap contract workers and to replace the regular workforce which did not accept salary cuts; he lodged a complaint indicating that the grounds for dismissal were discriminatory but court proceedings are still pending; moreover, the employer refused him the access to work premises, did not grant him the same wage increase as other workers, failed to deduct union dues from wages following a strike and removed union announcements from the bulletin board; (iii) according to union member László Cserháti, his ordinary dismissal was officially based on company restructuring and turnover reduction but was actually due to his candidature at the works council elections; he lodged a complaint indicating that the reason for termination was his nomination by LESZ for the works council elections but court proceedings are still pending; (iv) according to union member József Mucsi, the official grounds for the ordinary dismissal of himself and three other colleagues was workforce reduction but the actual reason was trade union membership, as illustrated by the subsequent hiring of workers for the same jobs and the fact that only union members were dismissed at that time (the court ruled in their favour); moreover, the employer distributed disaffiliation forms, encouraged employees to cancel the deduction of union dues from their wages, set up less favourable work schedules with shorter breaks and unpredictable working times for union members and made abusive statements against the union; (v) according to union official Ferencné Szolnoki, she agreed to the termination of*

her employment due to insults and discrimination suffered as union official; moreover, the employer discriminated union members by assigning them more work or not respecting their holiday wishes, removed union announcements from the bulletin board, prohibited the distribution of the news bulletin, openly suggested to members to quit the union and distributed disaffiliation forms; (vi) according to union members Orsolya Cserhádi and Kristina Simon, the official grounds for their ordinary dismissal was collective redundancy but the actual reason was trade union membership, as illustrated by the subsequent hiring of contract workers to fill in the vacancies (the courts ruled in their favour as they could prove the subsequent hiring and thus the invalidity of the reason for dismissal).

- 727.** *The Committee notes from its reply that the company: (i) confirms that, due to the need to improve efficiency, there has been significant internal restructuring resulting in collective redundancy, lay-offs, jobs contracting and other reorganization (inter alia, the turnover had decreased by 30 per cent in 2009 compared to 2008 due to the recession, increasing the need for additional lay-offs); (ii) points out that it conducted the negotiations prescribed by law and informed the Government of the 2009 lay-off; (iii) underlines that the lay-offs did not exclusively affect LESZ members but rather a much larger number of employees which shows that employees have not been discriminated against on account of union membership or strike participation; and (iv) indicates that certain dismissals referred to by the complainant were due to the employee behaving in a way that made it impossible to maintain the employment relationship (e.g. commitment of crime).*
- 728.** *As regards the termination of employment of several union members, the Committee notes the company's indication that it has conducted the consultations required by law in connection with lay-offs, while the complainant does not provide information in this regard. It observes however, that the company does not comment on the alleged hiring of workers to fill the positions of the union members dismissed in March 2009, and notes that in the judicial proceedings concerning union members Orsolya Cserhádi and Kristina Simon, who were dismissed on grounds of collective redundancy, the court ruled in favour of the plaintiffs, since they were apparently able to prove the subsequent hiring of workers and thus the invalidity of the reason for termination. The Committee further notes that, with respect to the complaint filed by the union members József Mucsi, József Béres, Béla Bálint and István Farkas, the court ruled in their favour establishing that, in view of inter alia the subsequent hiring of workers, there was no need for the redundancy measures and thus no reasonable basis for the termination, and while no causal link was found between the dismissal and the participation in the December 2008 strike, the court established anti-union discrimination on the basis of union membership, as one of the selection criteria in the redundancy process had been the affiliation to LESZ. The Committee recalls that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. It would also like to stress that acts of anti-trade union discrimination should not be authorized under the pretext of dismissals based on economic necessity [see **Digest**, op. cit., paras 771 and 795]. The Committee trusts that the above principles will be fully taken into account in practice. In this regard, the Committee asks the Government and the complainant to indicate whether the nine remaining union members dismissed in March 2009 have initiated judicial proceedings and, if so, to keep it informed of their final outcome. It also expects that the ongoing court proceedings concerning László Cserhádi will be concluded expeditiously and requests to be kept informed of the final ruling as soon as it is handed down. The Committee expects that, should it be found that the abovementioned union members were dismissed due to their trade union affiliation or legitimate trade union activities (such as candidature at works council elections), they will be reinstated in their position without loss of pay or, in the event that, given the time elapsed, their reinstatement would be impossible for objective and compelling reasons, they will receive adequate*

compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals.

- 729.** *As regards the termination of employment of union officials Ferenc Borgula, Attila Mercz and Marica Mezei, the Committee recalls that, on the one hand, the principle that a worker or trade union official should not suffer prejudice by reason of his or her trade union activities does not necessarily imply that the fact that a person holds a trade union office confers immunity against dismissal irrespective of the circumstances. On the other hand, the Committee reiterates that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate that they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [Digest, op. cit., paras 799 and 801]. The Committee considers that it is for the relevant courts to undertake the necessary fact-finding and decide whether: (i) the purported threats by Mr Borgula to damage aircraft are actually the result of a mistranslation or constitute serious misconduct; and (ii) the mistake made by Mr Mercz is actually minor or justifies extraordinary dismissal. It asks the Government and the complainant to indicate whether Ms Marica Mezei has initiated legal proceedings. The Committee expects that full account will be taken of the above principles during the judicial review and trusts that the court proceedings relating to these cases will be concluded without further delay. The Committee requests to be kept informed of the final rulings as soon as they are handed down and expects that, should it be found, after examination of the alleged anti-union discrimination, that the union officials were dismissed due to their position and exercise of legitimate trade union activities, they will, given that they have found new employment, receive adequate compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals.*
- 730.** *As regards the alleged intimidation and harassment of a union official and union members who were candidates in the works council elections by means of threats of redundancy and constant checks at the workplace to find fault in their work, with the aim that they sign the termination of their employment by mutual agreement, resign from the union or stand down from trade union representation for the works council elections, the Committee asks the Government and the complainant to indicate whether any of the abovementioned employees have initiated judicial proceedings and, if so, to keep it informed of their final outcome. The Committee recalls that acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize [Digest, op. cit., para. 786]. The Committee expects that, in the future, full account will be taken of the above principle in practice.*
- 731.** *The Committee notes with concern that the statements of dismissed employees annexed to the complaint depict a general anti-union climate at the company (e.g. distribution of disaffiliation forms by the employer, less work assigned to non-union members, more favourable work schedules for non-union members with longer breaks and more predictable working times, etc.). The Committee recalls that, as regards allegations of anti-union tactics in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, it considers such acts*

to be contrary to Article 2 of Convention No. 98, which provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration. In this regard, the Committee points out that the existence of legislative provisions prohibiting acts of interference on the part of the authorities, or by organizations of workers and employers in each other's affairs, is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice [*Digest*, *op. cit.*, paras 858 and 861]. The Committee expects that the above principles will be fully taken into account in practice and, with reference to the relevant observations concerning acts of interference that the Committee of Experts on the Application of Conventions and Recommendations has been making for many years, the Committee requests the Government to adopt specific legislation ensuring the adequate protection of workers' organizations against acts of interference by the employer and establishing rapid appeal procedures coupled with effective and dissuasive sanctions against such acts.

## **RÜK Kft**

- 732.** *With respect to RÜK Kft, the Committee notes that in 2008, allegedly due to months of harassment, several union members (Csaba Daróczy, István Koós, József Krizsán, Attila Mátyás and János Radóczy) and two union officials (János Szlifka and István Téglás) signed the termination of their employment by mutual agreement.*
- 733.** *The Committee notes from the statement of a dismissed employee annexed to the complaint that, according to union official Tibor Kovács: (i) János Szlifka, István Téglás and István Lakner (all three union officials) were summoned twice by the employer who conveyed them the company's intention to dismiss them and offered them two options, either termination of their employment by mutual agreement or, as ordinary dismissal was difficult due to their statutory protection, a dismissal under more unfavourable conditions; (ii) following private individual meetings with the employer, János Szlifka and István Téglás gave in to the pressure and consented to the termination of their employment by mutual agreement, whereas István Lakner was not terminated and refrained from union-related activities ever since; and (iii) the union was hitherto unable to replace the two union officials because union members no longer trust the statutory protection and fear retaliatory measures.*
- 734.** *The Committee notes from its reply that the company: (i) confirms that, due to the need to achieve a sustainable position in a very competitive market, it had to lay off employees in recent years; (ii) points out that the union was consulted on the issue beforehand; (iii) indicates that those difficult decisions were taken diligently, in accordance with the relevant laws and solely based on each individual's overall performance within the company; (iv) underlines that the lay-offs affected not exclusively the seven named LESZ members but a total of 33 employees; and (v) stresses that in each case the company came to a voluntary agreement with the employees dismissed, including a fair indemnity payment.*
- 735.** *The Committee notes that the statement of a dismissed employee annexed to the complaint refers to union officials being intimidated into signing the termination of their employment by mutual agreement, which would allow the employer to circumvent their statutory protection. The Committee asks the Government and the complainant to indicate whether any of the abovementioned five union members and two officials has initiated judicial proceedings against the employer. If so, the Committee expects that full account will be taken in practice of the principle recalled above concerning acts of harassment and intimidation and requests the Government to keep it informed of their final outcome.*

**Budapest Airport Zrt**

- 736.** *As to Budapest Airport Zrt, the Committee notes the complainant's allegations that: (i) union officials Péterné Rózsa and Péter Bihari who had participated in the strike in December 2008 were constantly harassed by the employer who continually tried to find fault in their work; (ii) as regards several union members working in the Department of Passengers' Safety and Health who had participated in a strike, the employer did not renew the fixed-term employment of those whose employment contract expired afterwards (Ágnes Szathmári, Katalin Jávori, Dániel Linguár, Róbert Tóth, László Icsó, Kitti Szekeres), although there was no legal obstacle to the hitherto almost automatic renewal and the employer was satisfied with their work; the employer also terminated the employment of Katalin Zsekov and Anikó Hirmann from the same department indicating reduced capacity as the reason; in the complainant's view the reason was the participation in the strike, given that the employer hired new employees for the positions of the eight abovementioned union members, and the contracts of fixed-term employees who had not participated in the strike were renewed or transformed into permanent contracts; and (iii) following protests emanating from two union officials in December 2007, the employer's intimidating behaviour (especially during the 2008 redundancy process when a rumour spread that mainly union members would be made redundant) resulted in 11 out of 17 LESZ members from the Health Department resigning from the union; the employer subsequently dismissed seven workers of whom six were union members (thus reducing to nil the number of union members in the department), and union officials Éva Csontos and Edit Kranczné Majoros who had been continually harassed by the employer (constant checks at the workplace with the aim of finding fault in their work) signed the termination of their employment by mutual agreement.*
- 737.** *The Committee notes from the statements of dismissed employees annexed to the complaint that: (i) according to union member Katalin Zsekov, his ordinary dismissal and that of four other colleagues was officially based on workforce reduction but was actually due to his participation in the strike of 2007, which is illustrated by the fact that after a few weeks the employer converted the fixed-term contracts of 74 employees into indefinite contracts; (ii) similarly, according to union member Andrea Kiss, her ordinary dismissal was officially based on workforce reduction but was actually due to her union membership, which is illustrated by the fact that the redundancy measure did not affect non-union members but only employees who did not give up their union membership and that employees who left the union are still working for the employer; the employer offered the choice between ordinary dismissal and termination by mutual agreement, the latter providing more favourable termination benefits; her intention is to lodge appeal against the court's ruling in favour of the employer, which established that the invoked reason of collective redundancy was valid; (iii) according to union official Edit Kranczné Majoros, the LESZ board raised shortcomings at the workplace orally and in writing with the employer and, following rumours concerning possible redundancies targeting union members, wrote to the employer requesting information but received no answer; subsequently, colleagues requested her and two other union officials to give up their statutory protection given the upcoming lay-off, and, in view of their refusal, left the trade union, wrote a letter to the employer distancing themselves from the union and its officials; after the employer signalled the intention to terminate her employment, the same colleagues complained in writing to the employer that they could not work with her, allegedly motivated by fear of losing their jobs; redundancy measures only affected LESZ members and, finally, none of the 17 members continued working for the employer; after the employer confronted her with a list of alleged omissions and wrongdoings, she finally accepted the offer of termination by mutual agreement and filed a complaint with EBH for workplace harassment, which was not successful; (iv) according to union Vice-President Zoltán Molnár, the employer continually tried to create discord between employees and union officials as illustrated by the case of Ms Majoros (e.g. by spreading the rumour that*

*as union official she could not be dismissed due to statutory protection), or by the fact that when he tried to make use of the time off for union officials the employer told employees that they needed to take over his work and perform additional duties.*

- 738.** *The Committee notes from its reply that the company: (i) confirms that, due to passenger shortfall, there has been outsourcing and headcount reduction; (ii) underlines that the outsourcing projects did not cause a significant change in the rate of organization of employees and did not exclusively affect LESZ members but all employees at the affected unit; (iii) indicates that almost all employees in the field of passenger screening were in favour of the December 2008 strike, so it could not possibly differentiate on that basis during the redundancy process, and the majority of that personnel is still made up of employees who participated in the strike; (iv) when the definite term of employment expires, the employment relationship undoubtedly ends, and the employer has no further employment obligations; (v) none of the employees on fixed-term contracts decided to turn to the court or any other authority; (vi) as regards union members Katalin Zsekov and Anikó Hirmann, the headcount reduction affected a total of five employees and already took place in September 2008 (i.e. before the strike of December 2008), and the subsequent hiring of workers in December replacing them was for a definite term of two months due to unforeseen reasons; and (vii) the decrease in union members was not due to threats from the employer but the result of a conflict between the employees and the union official, and Ms Majoros asked for the termination of her employment by mutual agreement owing to the foul relationship with her colleagues.*
- 739.** *With respect to the alleged non-renewal of fixed-term contracts following the December 2008 strike, the Committee notes that the company expressed the view that there is no further employment obligation when the definite term of employment expires and, while commenting on the subsequent hiring of workers replacing Mr Zsekov and Mr Hirmann, did not comment on the alleged subsequent hiring of workers to fill the positions of the non-renewed contract workers. The Committee wishes to reiterate that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of Convention No. 98 [see **Digest**, *op. cit.*, para. 785]. The Committee asks the Government and the complainant to indicate whether any of the contract workers named above has initiated judicial proceedings. As to the alleged dismissal of union members Katalin Zsekov and Anikó Hirmann following the strike, the Committee understands from the allegations and the statement of a dismissed employee annexed to the complaint that the dismissal was linked to the strike action in 2007 (and not to the December 2008 strike). Noting that the court ruled in favour of Katalin Zsekov establishing that the invoked reason of collective redundancy was invalid in view of the subsequent conversion of fixed-term into indefinite contracts, the Committee asks the Government and the complainant to indicate whether Anikó Hirmann has initiated judicial proceedings. The Committee expects that all pending judicial proceedings relating to the abovementioned union members will be concluded without delay and that full account will be taken in practice of the principles recalled above concerning anti-union dismissal or non-renewal of contract. It requests the Government to keep it informed of the final outcome of ongoing legal proceedings. The Committee expects that, should it be found that the union members concerned were dismissed due to their union membership or exercise of legitimate trade union activities (e.g. participation in strike action), they will be reinstated in their position without loss of pay or, in the event that, given the time elapsed, their reinstatement would be impossible for objective and compelling reasons, they will receive adequate compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals.*
- 740.** *As regards the alleged intimidation of union members in the Healthcare Centre by means of threats of redundancy, with the aim that they resign from the union or sign the termination of their employment by mutual agreement, the Committee notes that the company indicates that outsourcing projects affected entire units or divisions and that it*

does not provide information concerning consultations undertaken in this regard with LESZ, whereas the statement of the dismissed union official Edit Majoros points to the absence of consultations with the union. The Committee wishes to recall that it has always requested that, in the cases where new staff reduction programmes are undertaken, negotiations take place between the enterprise concerned and the trade union organizations [see *Digest*, op. cit., para. 1082]. Noting with concern that, according to the allegations and two statements, eleven, i.e. more than two-thirds, of the 17 union members in the Healthcare Centre have resigned from the union out of fear for their job and the redundancy measures in the Healthcare Centre targeted exclusively union members reducing to nil the number of union members in that unit, whereas the employer indicates that the decrease in union members was due to an internal conflict between the union members and union official Edit Majoros, the Committee requests the Government to institute an independent inquiry to establish the facts and to ensure that any acts of intimidation or harassment identified are adequately remedied and, where appropriate, that sufficiently dissuasive sanctions are imposed so that such acts do not recur in the future. The Committee asks the Government to keep it informed of developments in this regard. As regards the alleged harassment of Ms Majoros, while noting the indication of the union official that the court ruled at first instance and appeal level in favour of the company because witnesses testified in support of the employer, colleagues still employed declined to testify against their employer, and her witnesses were not considered by the court as they no longer worked for the company, the Committee takes due note of the fact that the court decisions at first instance and appeal levels established that no harassment took place.

- 741.** Finally, the Committee expresses concern at the fact that, according to the allegations made by the complainant, in the already completed proceedings concerning Andrea Kiss, the courts have examined the validity of the reason for termination (workforce reduction), but have chosen not to consider the allegation of discrimination on grounds of trade union membership. The Committee recalls that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see *Digest*, op. cit., para. 818]. The Committee trusts that this principle will be taken into account in practice, in a manner so as to ensure that allegations of anti-union discrimination which are put forward are effectively considered by the courts in their review, and requests the Government to forward the decision on appeal as soon as it is rendered.

## **The Committee's recommendations**

- 742.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a)** The Committee expects that the judicial proceedings referred to will be concluded without delay and invites the Government to review with the social partners the delays invoked in proceedings related to anti-union discrimination and to take any necessary measures to accelerate the time for their handling.
  - (b)** The Committee requests the Government to provide its own observations with respect to the specific cases of alleged interference and anti-union discrimination.

**Celebi GHH Kft**

- (c) *With respect to the termination of employment of several union members, the Committee trusts that the principles set out in its conclusions will be fully taken into account in practice. In view of the successful complaint filed by József Mucsi and three other union members, the Committee asks the Government and the complainant to indicate whether the nine remaining union members dismissed in March 2009 (Péter Huszka, Gábor Dobrovinszky, Miklós Varga, László Dömötör, András Péter Fazekas, János Szigeti, Péter Márkus, Gábor Kenyeres and Rudolf Faragó) have initiated judicial proceedings and, if so, to keep it informed of their final outcome. It also expects that the ongoing court proceedings concerning László Cserháti will be concluded expeditiously and requests to be kept informed of the final ruling as soon as it is handed down. The Committee expects that, should it be found that the abovementioned union members were dismissed due to their trade union affiliation or legitimate trade union activities (such as candidature at works council elections), they will be reinstated in their position without loss of pay or, in the event that, given the time elapsed, their reinstatement would be impossible for objective and compelling reasons, they will receive adequate compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals.*
- (d) *As regards the termination of employment of union officials Ferenc Borgula, Attila Mercz and Marica Mezei, the Committee asks the Government and the complainant to indicate whether Ms Marica Merzei has initiated legal proceedings. The Committee requests to be kept informed of the final rulings as soon as they are handed down and expects that, should it be found, after examination of the alleged anti-union discrimination, that the union officials were dismissed due to their position and exercise of legitimate trade union activities, they will, given that they have found new employment, receive adequate compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals.*
- (e) *With respect to the alleged intimidation and harassment of a union official and union members who were candidates in the works council elections, the Committee asks the Government and the complainant to indicate whether any of the abovementioned employees have initiated judicial proceedings and, if so, to keep it informed of their final outcome.*
- (f) *As regards the general anti-union climate alleged by the complainant, the Committee expects that the principles concerning acts of interference set out in its conclusions will be fully taken into account in practice and, with reference to the relevant observations that the Committee of Experts has been making for many years, the Committee requests the Government to adopt specific legislation ensuring the adequate protection of workers' organizations against acts of interference by the employer and establishing rapid appeal procedures coupled with effective and dissuasive sanctions against such acts.*

**RÜK Kft**

- (g) *The Committee asks the Government and the complainant to indicate whether any of the abovementioned five union members and two officials has initiated judicial proceedings against the employer in regard to the alleged acts of harassment and intimidation, and, if so, to keep it informed of their final outcome.*

**Budapest Airport Zrt**

- (h) *With respect to the alleged non-renewal of fixed-term contracts following the December 2008 strike, the Committee asks the Government and the complainant to indicate whether any of the contract workers Ágnes Szathmári, Katalin Jávor, Dániel Linguár, Róbert Tóth, László Icsó, Kitti Szekeres has initiated judicial proceedings. As to the alleged dismissal of union members Katalin Zsekov and Anikó Hirman following strike action, and noting the court ruling in favour of Katalin Zsekov, the Committee asks the Government and the complainant to indicate whether Anikó Hirman has initiated judicial proceedings. The Committee requests the Government to keep it informed of the final outcome of any ongoing legal proceedings, and in particular to forward the decision on appeal concerning Andrea Kiss as soon as it is rendered.*
- (i) *As regards the alleged intimidation of all union members in the Healthcare Centre, the Committee requests the Government to institute an independent inquiry to establish the facts and to ensure that any acts of intimidation or harassment identified are adequately remedied and, where appropriate, that sufficiently dissuasive sanctions are imposed so that such acts do not recur in the future. The Committee asks the Government to keep it informed of developments in this regard.*

CASE NO. 2777

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

**Complaint against the Government of Hungary  
presented by  
the Democratic League of Independent Trade Unions (LIGA)**

*Allegations: The complainant organization alleges that the detailed requirements for the registration of trade unions (including content requirements for trade union constitutions) imposed by courts have resulted in the delay of registration of the Szent Flórián Association of Firefighters and the delay or refusal of registration of many other affiliates*

743. The complaint is contained in a communication from the Democratic League of Independent Trade Unions (LIGA) dated 5 May 2010.
744. The Government forwarded its response to the allegations in a communication dated 29 October 2010.
745. Hungary 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**

746. In a communication dated 5 May 2010, the complainant organization alleges that the detailed requirements for the registration of trade unions (including content requirements for trade union constitutions) imposed by courts have resulted in the delay of registration of the Szent Flórián Association of Firefighters and the delay or refusal of registration of many other affiliates. According to the complainant, the court procedures hindered the establishment of trade unions and interfered with their autonomy to an extent that seriously violates freedom of association.
747. As regards the Szent Flórián Association of Firefighters (Szent Flórián Tuzolto Vegyilet), the complainant indicates that it was established on 22 September 2009 as an employee interest representation organization for firefighters and that it submitted an application for registration by the Csongrad County Court three days later (Pk.60.147/2009). The court ordered the trade union to provide corrections first on 12 October and then on 30 November 2009 because it had found that the union's constitution did not conform to certain provisions of Act II of 1989 on the right to organize. Due to the two orders for corrections, the trade union had to convene its members again on two more occasions after the founding assembly in order to amend the constitution as requested. According to the complainant, since the trade union members are firefighters with an uninterrupted work order and a complicated and uneven timetable, this meant extra difficulties, which in itself endangered the registration of the union. The court order registering the trade union only became legally binding on 2 February 2010, four months after the corrections ordered by the court had been completed, and it was only then that the organization could start operating.

**748.** In its orders to correct and amend the constitution, the court had objections to 24 points in the constitution and formulated detailed instructions not only concerning the trade union's organization and operation but also its membership and scope of organization. The complainant enumerates three requirements that were the most difficult to meet.

- (i) The original constitution intended to establish a nationally organized trade union for employees and former employees working in fire service and civil protection (constitution, section I/8). The court, however, declared that the trade union could not be representative at the national level, because the organization had been established in a workplace in Hodmezovasarhely. It found that this provision of the constitution does not comply with the law and ordered the trade union to amend the constitution. As a result, the trade union could not develop into a national professional organization for firefighters.
- (ii) The court limited the possible scope of membership by prescribing that those persons who do not fall under the scope of Act XLIII of 1996 on the service status of professional members of the armed services (Hszt.), but fall under the scope of other acts regulating employment relationships (for example as public employees or civil servants), are not allowed to become members of the trade union. The court explicitly prescribed that the trade union should only have members who are in an employment relationship with a state or municipal agency (sections I/7 and II/1).
- (iii) The court held that the provision of the constitution (section VI/2), stating that if the trade union is dissolved the remaining property can be divided among the members, should be deleted.

**749.** The complainant believes that the court orders described above violate Articles 2 and 3(1) of Convention No. 87, according to which workers' organizations shall have the right to draw up their constitutions and rules, and workers, 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. By restricting the scope of organizing the trade union to workers falling under the scope of Act XLIII of 1996 on the service status of professional members of the armed services (Hszt.), the court unlawfully made a distinction between workers with different employment relationships, but working in similar or the same areas or professions.

**750.** Furthermore, as regards other affiliates, the complainant indicates that their registration was also delayed or hindered by court procedures. The courts requested member organizations to correct the following main "deficiencies".

- (i) Use of headquarters: The Vas County Court (Pk.60.118/2007/2) requested the Independent Trade Union of Savings Cooperatives (Takarekszövetkezetek Független Szakszervezete) on two occasions, on 7 January and 20 February 2008, to amend its constitution within a 45-day and then a 15-day limitation period. On the first occasion the court enumerated the deficiencies it had perceived under ten main points and five sub-points, on seven pages, and when all of them had been corrected, the court was still dissatisfied with the trade union's certificate of entitlement to use its headquarters. In order to register the trade union, the court insisted that it should enclose a document concerning the property assigned as headquarters which confirms the trade union's title to use the headquarters, including a less than three-month-old copy of the title deed and a written declaration by the owners of the property stating that they put the property assigned as headquarters at the trade union's disposal for this purpose. The trade union obtained and enclosed the requested title deed within the deadline set for deficiency correction, while also correcting the other deficiencies. At this point, the court objected that, according to the title deed, the property had

several owners, who had not all declared that they permitted the property to be used for trade union purposes, and thus requested the enclosure of further certifications. The Metropolitan Court of Budapest also asked for a copy of the title deed to allow the use of headquarters (7.Pk.60.231/2006), and the Gyor-Moson-Sopron County Court requested an agreement to the use of the headquarters as a private document providing full evidence (Pk.T.60.170/2008/2).

- (ii) Determination and rate of membership fees: The Gyor-Moson-Sopron County Court requested the Independent Trade Union of Private Security Employees (Maganbiztonsagi Munkavallalok Fuggetlen Szakszervezete) to change the rate of fees (Pk.T.60.170/2008/2). The court objected that the rate of 1 per cent of members' gross wages, determined in a uniform manner for each member, violates the principle of democratic operation, since determining membership fees as a wage percentage means that fees will vary from one member to another.
- (iii) Employer's agreement: The Metropolitan Court of Budapest explicitly required the Independent Trade Union of Electronic Workers (Elektronikai Munkavallalok Fuggetlen Szakszervezete) (7.Pk.60.231/2006) to enclose the employer's agreement to the establishment of the trade union, as a condition for registration.
- (iv) Other trade union operation requirements: The courts asked for detailed regulations in the unions' constitutions concerning the expulsion of members, the termination of a membership relationship, or, for example, the operation of the supervisory committee including the way its agenda is communicated (Vas County Court Pk.60.118/2007). The Metropolitan Court of Budapest requested that the constitution should include the manner of convening the board meetings and the auditing committee meetings, and the manner of communicating their agenda (7.Pk.60.231/2006).
- (v) Form and deadline of correcting deficiencies: The application for registration can only be submitted on an official form which, unless completed correctly by the applying trade union, can in itself be a reason for the court to refuse the registration. There is no official guidance for completing the form, so the courts themselves determine the criteria, e.g. definition of the purpose of the social organization under point I/5 in form number 1014 (Vas County Court Pk.60.118/2007/2) or inclusion of the application form in a private document providing full evidence (Gyor-Moson-Sopron County Court). Moreover, the court orders contain highly prejudicial warnings reminding unions that if they miss the 15- to 30-day or, in certain cases, 45-day deadline for correcting the deficiencies, no certification will be accepted, and the court will refuse to register the trade union. As the orders for deficiency correction require the amendment of the constitution, the founding assembly needs to be reconvened, which in turn involves a lot of effort, costs and organizing. It is often difficult to find a suitable date, given that the courts demand exactly the same persons to participate at the reconvened assembly who were present as founders at the founding assembly. If the participants are not the same, the whole founding procedure must be restarted, including the election of officers (Gyor-Moson-Sopron County Court, Pk. 60.170/2008/2). All this must be certified with the attendance register, including the signature of those present, and their address.

**751.** The complainant believes that the court procedures and practices described above violate Articles 2 and 3(2) of Convention No. 87, as they do not allow trade unions to draw up their constitutions and define themselves their manner of operation, and because no previous authorization should be prescribed for the establishment of a trade union. According to the complainant, the practice of Hungarian courts also violates Article 8(2) of Convention No. 87, according to which the rights provided for in the Convention cannot be impaired by the law of the land. The cases described demonstrate that the manner in which the law is applied restricts the establishment and registration of trade unions.

- 752.** Pursuant to section 25(2) of Act II of 1989 on the right to organize, section 11 regulating the establishment of the highest body as well as of the executive and representative bodies within the organizational order of social organizations, does not cover trade unions and employers' interest representation organizations. The provisions of Chapter II and III of the Act regulating the constitution of social organizations and the members' rights and responsibilities are applicable to trade unions and are usually cited by courts when objecting to the rules of a trade union's constitution. According to section 6(1), the constitution of a social organization shall ensure its democratic operation based on the principle of self-governance and promote the realization of members' rights and responsibilities. According to the complainant, courts particularly cite this section to be able to examine the organization and operation of trade unions, thus evading in effect the prohibitive rule formulated in section 25(2) and prescribing unrestricted and detailed content requirements for trade union constitutions.
- 753.** Although the law allows for appealing against the order of the Court of First Instance rejecting registration, this only makes the procedure even longer, preventing the trade union from actually starting operating. Having to repeatedly convene the general assembly and the members' meeting as a result of several orders to correct deficiencies not only means an expensive procedure requiring a lot of effort but also discourages members from establishing a trade union. The order to correct deficiencies cannot be appealed against. Thus, the trade union either meets the requirements of the court or its registration is refused.
- 754.** The complainant indicates that it turned to the Chief Justice of the Supreme Court on two occasions, on 26 April 2006 and then on 1 July 2009, asking him to examine the controversial practice experienced at the courts and to make the necessary steps in order to change the situation. The first letter was answered on 11 May 2006 by the then Chief Justice of the Supreme Court who did not express dissatisfaction with the practice of the courts. The second letter has not been answered by the newly appointed Chief Justice.
- 755.** In light of the above, the complainant organization requests that the Committee on Freedom of Association examine the complaint and that the Governing Body call on the Hungarian Government to implement measures or introduce legal regulations that can guarantee the right to freedom of association with special emphasis on the right of trade unions to be registered, to freely draw up their constitution and to freely operate in compliance with Convention No. 87.

## **B. The Government's reply**

- 756.** The Government does not agree with the statement of the LIGA that national legislation is not in conformity with Convention No. 87. When registering trade unions, courts evaluate the application for registration only from the aspect of legality. The relevant law sets out a strict deadline for the procedure, and upon the court's failure to meet such deadline the application must be approved with the original content. If the rules of procedure are not observed, the applicants are entitled to resort to legal remedy, as appropriate.
- 757.** The Government states that the starting point in reviewing national legislation is Act XXII of 1992 on the Labour Code, according to which all employee organizations whose primary function is the promotion and protection of employees' interests related to their employment relationship, shall be construed as trade unions. In legal terms, a trade union is an association (social organization) which has a special purpose: the protection of employee interests. Therefore, in addition to the Labour Code, Act II of 1989 on the right to organize is also applicable to trade unions. In other words, associations whose aim is to promote and protect the interests of employees are entitled to the trade union rights defined in the Labour Code, and, since a trade union is a type of association, are subject to the rules

pertaining to associations as regards their foundation, organization and operation. Thus, a trade union may be established, if: (i) at least ten founding members have decided to establish the organization; (ii) have adopted its statutes; and (iii) have elected its managing and representative bodies.

- 758.** The Government indicates that a trade union is deemed to have been founded upon its registration by the county court (or the Municipal Court of Budapest) in the territorial jurisdiction of which the trade union is established. The application for registration must be filed by the person authorized to represent the trade union on the form designated for this specific purpose. In the Government's view, the use of this form does not make it more difficult to compile the application but rather easier. The Government highlights that it is compulsory to approve the application if the founders have fulfilled all requirements set out in the Act so, in this respect, the court has no discretionary powers. The union officially comes to existence upon the entry into force of the decision on its registration, and it may commence its activity as of the date thereof (section 4 of Act II of 1989).
- 759.** According to the Government's reply, the court adopts a decision on the registration of the trade union in a non-litigious procedure within 60 days from the date of receipt of the application. Should the court fail to meet its decision-making obligation within the specified deadline, the so-called "principle of automatic registration" comes into effect. Based on this principle, the court executive officer is required to take the necessary action in order to have the application evaluated within eight days after the expiry of the deadline; otherwise the registration becomes effective with the content of the application on the ninth day following expiry of the original deadline. If the application is incomplete, the court may order the applicant to remedy deficiencies within 30 days from receipt of the application. The court must allow sufficient time – a maximum of 45 days – for remedying deficiencies, which may be extended by a further 15 days upon request, if found reasonable. In the event that the applicant fails to remedy deficiencies within the deadline or remedies them partially or incorrectly, no application for continuation with justification may be lodged, and the court will reject the application upon a final ruling (section 15 of Act II of 1989).
- 760.** Pursuant to Act III of 1952 on the Code of Civil Procedure, no appeal may be lodged against rulings adopted in the course of the proceedings, including orders calling for the remedy of deficiencies (section 233(3)(b) of the Code of Civil Procedure). The Government considers, however, that if the applicant trade union was of the opinion that there is no need to remedy any deficiencies, and if in the absence of remedy the court rejected the application, the applicant could lodge an appeal against the court's decision. The Government states that it has no information as to whether the unions concerned have exercised their right to legal remedy.
- 761.** According to the Government's reply, trade unions – as all associations – are independent legal entities and have the right to determine their own internal organizational structure. Thus, Act II of 1989 contains only a few principles laid down with respect to the organizational structure, and trade unions may act within the framework of those principles at their own discretion. For example, trade unions must operate in a democratic way, on the basis of self-government (section 6(1)). They are required to specify their internal organizational structure in the statute, and are also free to set forth the terms and conditions of membership. The statute of the union must provide for the following: (i) the name of the trade union according to section 7(2) (which must differ from the name of other civil society organizations already registered and operating in a similar sphere of activity in the territory of Hungary); (ii) its purpose (that is, the exclusive purpose of representing employees' interests); (iii) its registered seat; and (iv) its organizational structure according to section 6(2).

- 762.** In the Government's view, when courts evaluate the applications for registration, they only check whether the applications comply with the legal requirements summarized above. In practice, this is an extremely detailed and thorough investigation because every association is a legal entity, which is entitled to pursue an economic activity – even if it is not their primary activity – and may therefore gain substantial earnings. In this regard, it is in the public interest to ensure that these organizations operate in compliance with the law. The Government states that the same applies to the certification of the use of registered seats: it is a prerequisite of legal operation that the legal entity can certify its right to use the real property designated as its registered seat. Obviously, the courts do not check whether the chosen seat is suitable for the activity; they only require a certification of the right to use it. The Government stresses that such thorough control is not only applied to trade unions but to any other associations as well.
- 763.** Finally, the Government explains that the right to organize means that the trade union has an organization independent from the employer, so it may have organizational units that operate at lower (e.g. principal place of business) or higher (e.g. county) levels than those of the employer. The Labour Code sets forth that employees are entitled to organize trade unions within the work organization, and it is the trade union's right to operate bodies inside any work organization and to involve its members in the operation of such bodies. Unless otherwise provided for by the statute of the trade union, these bodies of workplaces or principal places of business may operate as independent legal entities as well. Trade unions have the right to establish or join leagues or confederations, including international leagues. The organization and operation of such leagues, as well as their registration and legal capacity are subject to the rules applicable to trade unions.
- 764.** In summary, the Government is of the view that regulating the registration procedure of trade unions guarantees their freedom to organize and allows acting courts only a minimum degree of review for the purposes of legitimacy. On the other hand, the Government notes that in some cases the attached rulings do raise an objection to the application for registration, which is not reasonable in respect of the above legislation, in particular the requirement that the employer must consent to the establishment of the trade union (this would only be justified if the trade union takes the employer's name). Similarly, the Government does not agree with the acting court in that the membership fee cannot be determined as a percentage of the member's wage. However, in such cases of misinterpretation of law where the acting court goes beyond the limits of its powers of review set forth in the above legislation, the Government highlights the possibility to lodge an appeal against the decision rejecting the application for registration with a court of second instance.

### **C. The Committee's conclusions**

- 765.** *The Committee notes that, in the present case, the complainant alleges that the detailed requirements for the registration of trade unions (including content requirements for trade union constitutions) imposed by courts have resulted in the delay of registration of the Szent Flórián Association of Firefighters and the delay or refusal of registration of many other affiliates.*
- 766.** *The Committee notes from the complainant's allegations that the Szent Florian Association of Firefighters submitted an application for registration by the Csongrad County Court on 25 September 2009, and that the court objected to 24 points in the union's constitution and issued two orders to amend the constitution. The Committee notes that, as a result, the union had to convene its members who are firefighters on two occasions after the founding assembly, which was costly and difficult to organize. The court order registering the trade union became legally binding four months after the corrections ordered by the court had*

been completed. The Committee notes that the following three requirements were particularly difficult to meet:

- (i) *the court ordered to amend the union's constitution, which intended to establish a nationally organized trade union for employees and former employees working in the fire service and civil protection, holding that under the law the union could not be representative at the national level because it had been established in a workplace; as a result, the trade union could not develop into a national professional organization for firefighters;*
- (ii) *the court limited the possible scope of membership by prescribing that those persons who did not fall under the scope of Act XLIII of 1996 on the service status of professional members of the armed services, but fell under the scope of other acts regulating employment relationships (for example as public employees or civil servants), were not allowed to become members of the trade union, and explicitly prescribed that the union should only have members who are in an employment relationship with a state or municipal agency; and*
- (iii) *the court held that the provision of the constitution according to which if the trade union was dissolved the remaining property could be divided among the members, should be deleted.*

**767.** *Furthermore, as regards other affiliates, the Committee notes the complainant's indication that their registration was also delayed or hindered, as courts requested them to correct the following deficiencies.*

- (i) *Use of headquarters: The Vas County Court requested the Independent Trade Union of Savings Cooperatives to correct deficiencies (enumerated on seven pages), and in particular expressed dissatisfaction with the union's certificate of entitlement to use its headquarters and insisted that it should enclose a document confirming the union's title to use the property assigned as headquarters, including a less than three-month-old copy of the title deed and a written declaration by the owners that they put the property assigned as headquarters at the union's disposal. Although the union obtained and enclosed the requested title deed and corrected the other deficiencies within the deadline, the court objected that, according to the title deed, the property had several owners, who had not all declared that they permitted the property to be used for union purposes, and thus requested the enclosure of further certifications. The complainant indicates that the Metropolitan Court of Budapest and the Gyor-Moson-Sopron County Court issued similar orders.*
- (ii) *Determination and rate of membership fees: The Gyor-Moson-Sopron County Court requested the Independent Trade Union of Private Security Employees to change the rate of fees, objecting that the rate of 1 per cent of members' gross wages violates the principle of democratic operation, since determining membership fees as a wage percentage means that fees will vary from one member to another.*
- (iii) *Employer's agreement: The Metropolitan Court of Budapest explicitly required the Independent Trade Union of Electronic Workers to enclose the employer's agreement to the establishment of the union, as a condition for registration.*
- (iv) *Other operational requirements: The courts asked for detailed regulations to be included in the unions' constitutions, for example on the expulsion of members, termination of membership relationship, operation of the supervisory committee including the way its agenda is communicated; the manner of convening the board and auditing committee meetings as well as the manner of communicating their agenda.*

- 768.** *The Committee also notes that the application for registration can only be submitted on an official form, which, unless properly completed, can in itself be a reason for the court to refuse the registration; however, there is no official guidance for completing the form, so the courts themselves determine the criteria, e.g. definition of the purpose of the social organization. Moreover, the complainant states that if the unions miss the 15- to 30-day or, in certain cases, 45-day deadline for correcting the deficiencies, the court will refuse registration. As the orders for deficiency correction require the amendment of the constitution, the founding assembly needs to be reconvened, which in turn involves a lot of effort, costs and organizing, given that the courts demand exactly the same persons to participate at the reconvened assembly who were present as founders at the founding assembly.*
- 769.** *Finally, the Committee notes from the allegations that the prohibitive rule according to which section 11 regulating the organizational order of social organizations does not apply to trade unions (section 25(2) of Act II of 1989), is effectively evaded in that courts cite section 6(1) when examining the organization and operation of unions and prescribing detailed content requirements for their constitutions. In the complainant's view, although the law allows for appeal against orders rejecting registration, this would only lengthen the procedure preventing the union from actually starting operating. On the other hand, having to repeatedly convene the general assembly as a result of several orders to correct deficiencies which cannot be appealed against, not only means a costly procedure requiring a lot of effort but also discourages members from establishing a trade union. Thus, the union either meets the court requirements or its registration is refused. The complainant indicates that it turned to the Chief Justice of the Supreme Court in 2006 and 2009 calling for steps to change the controversial practice experienced at court. The reply to the first letter did not express dissatisfaction with the court practice. The second letter remained unanswered.*
- 770.** *The Committee notes the Government's statement that national legislation is in conformity with Convention No. 87. The Government explains that associations whose aim is to promote and protect the interests of employees are entitled to the trade union rights defined in the Labour Code, and, since a trade union is a type of association, are subject to the rules pertaining to associations as regards their foundation, organization and operation. Unions – as all associations – are independent legal entities and have the right to determine their own internal organizational structure. Thus, Act II of 1989 contains only a few principles laid down with respect to the organizational structure, and trade unions may act within the framework of those principles at their own discretion. For example, trade unions need to operate in a democratic way, on the basis of self-government. They are required to specify their internal organizational structure in the statute, and are also free to set forth the terms and conditions of membership. The statute of the union must provide for: (i) the name of the trade union; (ii) its purpose (that is, the exclusive purpose of representing employees' interests); (iii) its registered seat; and (iv) its organizational structure.*
- 771.** *The Committee further notes the Government's indication that, when registering trade unions, courts evaluate the application for registration only from the aspect of legality, that is, they only check whether the applications comply with national legislation. In practice, this is an extremely detailed and thorough investigation because every association is a legal entity, which is entitled to pursue an economic activity – even if it is not their primary activity – and may therefore gain substantial earnings. The Government concludes that it is in the public interest to ensure that these organizations operate in compliance with the law and highlights that the courts have no discretionary powers and have to approve the application, if the founders have fulfilled all requirements set out in Act II of 1989.*

772. *As regards the application form for registration, the Committee notes that, according to the Government, the use of this form by the court does not make it more difficult to compile the application but rather easier.*
773. *Concerning the deadline for remedying deficiencies, the Committee notes from the Government's reply that, if the application is incomplete, the court may order the applicant to remedy deficiencies within 30 days from receipt of the application. The court must allow sufficient time (maximum 45 days) for remedying deficiencies, which may be extended by 15 days upon request, if found reasonable. In the event that the applicant fails to remedy deficiencies within the deadline or remedies them partially or incorrectly, the court will reject the application. The Government further indicates that the deadline for this non-litigious procedure is 60 days from the date of receipt of the application, and that, if the court fails to adopt a decision on the union registration within the deadline, the application must be approved with the original content ("principle of automatic registration").*
774. *The Committee also notes that, in the Government's view, if the rules of procedure are not observed, the applicants are entitled to resort to legal remedy, as appropriate. While no appeal may be lodged against orders calling for the remedy of deficiencies pursuant to the Code of Civil Procedure, the Government considers that, if the applicant union was of the opinion that there was no need to remedy any deficiencies, and if in the absence of remedy the court rejected the application, the applicant could lodge an appeal against the court's decision. The Government states that it has no information as to whether the unions concerned have exercised their right to legal remedy.*
775. *The Committee notes the information provided by the Government as regards the matters qualified by the courts as deficiencies to be remedied by the relevant union:*
- (i) Use of headquarters: The Government considers that it is a prerequisite of legal operation that the legal entity (not only trade unions but any other association) certify its right to use the real property designated as its registered seat; thus, while courts do not check whether the chosen seat is suitable for the activity, they require a certification of the right to use it.*
  - (ii) Employer consent: The Government acknowledges that the court's objection to the application for registration on the grounds that the employer must consent to the establishment of the trade union, is not reasonable in respect of national legislation but considers that in such cases of misinterpretation of law, the union has the possibility to file an appeal against the decision rejecting the application for registration with a court of second instance.*
  - (iii) Membership fee: Similarly, the Government does not agree with the acting court's view that the membership fee cannot be determined as a percentage of the member's wage but again highlights the possibility to lodge an appeal against the decision.*
776. *The Committee takes note of the underlying legislation (Act II of 1989 on the right to organize), in particular: section 6(1) providing that the constitution of an association shall ensure its democratic operation based on the principle of self-governance and promote the implementation of the members' rights and responsibilities; section 6(2) according to which the statute of an association must provide for the name of the association, its purpose, its registered seat and its organizational structure; section 8 providing that membership is open to Hungarian nationals and residents; section 11 regulating the structure of a social organization (establishment of the highest body as well as of the executive and representative bodies); and section 25(2) according to which section 11 does not apply to trade unions. The Committee observes that the above legislation would*

not appear to contain prescriptive content requirements for union constitutions or provisions regulating the internal functioning of unions with a level of detail which would pose a serious risk of interference by the public authorities.

777. As regards the manner of applying the provisions of Act II of 1989, the Committee notes the divergent views of the parties to the complaint. While the complainant organization believes that the practice of the courts is to ignore the prohibitive rule in section 25(2) of the Act (that is, the non-application to trade unions of section 11 regarding structure) by examining the organization and operation of unions and prescribing detailed content requirements for their constitutions, the Government states that the courts evaluate the application for registration strictly from the point of view of legality.

778. The Committee wishes to draw attention in this regard to the following considerations trusting that they will be taken into account in the future.

- (i) *Membership:* While noting that the court limited the union's membership to persons falling under Act XLIII of 1996 on the service status of professional members of the armed services, the Committee observes that the scope of this Act appears to go beyond members of the armed forces and the police. The Committee recalls that firefighters should be afforded the right under Article 2 of Convention No. 87 to establish and join the organization of their own choosing, including the right to be able to form or join higher-level organizations with a membership that is no longer restricted but may also encompass firefighters covered by general labour law.
- (ii) *Property division:* Given that the Committee has repeatedly held that, when a union ceases to exist, its assets could be handed over to the association that succeeds it or distributed in accordance with its own rules; but where there is no specific rule, the assets should be at the disposal of the workers concerned (see **Digest of decisions and principles of the Freedom of Association Committee**, *op. cit.*, para. 707), the Committee, while recognizing that there might be relevant national legislation that applies, considers that provisions of by-laws concerning devolution of trade union property in case of voluntary dissolution should not, as a general rule, hinder registration of a union.
- (iii) *Membership fee:* Recalling that questions concerning the financing of trade union and employers' organizations, as regards both their own budgets and those of federations and confederations, should be governed by the by-laws of the organizations, federations and confederations themselves (see **Digest**, *op. cit.*, para. 473), the Committee expresses concern at the court's objection to the determination of the membership fee as a wage percentage and considers that this matter should be left to the union by-laws, including the expression of union dues in the form of a wage percentage;
- (iv) *Employer consent:* The Committee notes that the Government and the complainant organization appear to agree that the employer's consent to the establishment of the union should not be required as a condition for registration. Indeed, the Committee considers that such a requirement would constitute a clear violation of the principles of freedom of association;
- (v) *Use of headquarters:* Noting that both the Government and the complainant appear to accept the general requirement for a certificate of the union's entitlement to use its headquarters, the Committee expresses concern at the detailed demands from the court for additional documents mentioned in the complainant's allegations, which resulted in a delay in the registration procedure. The Committee considers that registration should be a mere formality and recalls that although the founders of a trade union should comply with the formalities prescribed by legislation, these

formalities should not be of such a nature as to impair the free establishment of organizations (see *Digest*, op. cit., para. 276). It therefore requests the Government to ensure that the rules governing the registration of social organizations as regards headquarters use do not operate in a manner as to impede the free exercise of the right to organize.

- (vi) *Inclusion of provisions on member expulsion, termination of membership, operation of committees, etc.:* The Committee recalls that, under Article 3(1), workers' organizations shall have the right to draw up their constitutions and rules, and that any obligation on a trade union to base its constitution on a compulsory model (apart from certain purely formal clauses) would infringe the rules which ensure freedom of association [see *Digest*, op. cit., para. 384]. It considers that, while the imposition of provisions on the expulsion of members or termination of membership could be justified with the objective of protecting the interests of union members by clearly establishing the relevant rules, the prescription of detailed content requirements regarding the operation of the supervisory committee, the manner of convening board and auditing committee meetings, or the manner of communicating their agenda, would appear to constitute undue interference by public authorities.

**779.** *In light of the above, the Committee more generally observes that, while the courts cite the provisions of Act II of 1989 (particularly its section 6(1)) as the legal basis for the orders to remedy the matters qualified as deficiencies, the relevant court orders would appear to go well beyond the requirements contained in the Act. Noting in addition that, according to section 4(1), registration may not be refused if the founders have met all requirements prescribed by the Act, the Committee recalls that, to guarantee the right of workers' organizations to draw up their constitutions and rules in full freedom, national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities (see *Digest*, op. cit., para. 371). The Committee also wishes to recall its general principles indicating that, although the registration procedure very often consists in a mere formality, there are a number of countries in which the law confers on the relevant authorities more or less discretionary powers in deciding whether or not an organization meets all the conditions required for registration, thus creating a situation which is similar to that in which previous authorization is required; similar situations can arise where a complicated and lengthy registration procedure exists, or where the competent administrative authorities may exercise their powers with great latitude. The Committee considers that these factors are such as to create a serious obstacle for the establishment of a trade union and lead to a denial of the right to organize without previous authorization. In view of the complainant's indication that the court orders to amend the constitution have entailed delays and additional financial and logistical demands on the unions concerned, the Committee wishes to reiterate that the formalities prescribed by law for the establishment of a trade union should not be applied in such a manner as to delay or prevent the establishment of trade union organizations, and that any delay caused by authorities in registering a trade union constitutes an infringement of Article 2 of Convention No. 87 (see *Digest*, op. cit., paras 279 and 296).*

**780.** *The Committee therefore expects that all necessary measures will be taken to guarantee respect in practice for the principles of freedom of association set out above, and to ensure that provisions regulating the structure of social organizations in a broader sense are not unduly extended to trade unions and that the procedure for registering trade unions consists in a mere formality, in both law and practice. In particular, the Committee requests the Government to take the necessary steps to ensure that guidance is adopted, including through the review of the rules governing the registration of social organizations in consultation with the social partners concerned, which would ensure a clear and simple understanding of the concrete statutory conditions to be met by the unions for the purposes*

*of registration and of the specific criteria to be applied by courts when deciding whether or not those conditions have been fulfilled. The Committee urges the Government to keep it informed of any developments in this regard.*

## **The Committee's recommendations**

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

- (a) In regard to certain matters qualified as deficiencies to be remedied for the purposes of registration, the Committee expects that, in the future, account will be taken of the principles set out in its conclusions relating to the scope of union membership, devolution of trade union assets, determination of union dues, employer's consent to union establishment, use of headquarters and content requirements for by-laws.*
- (b) The Committee expects that all necessary measures will be taken to guarantee respect in practice for the principles of freedom of association set out in its conclusions, and to ensure that provisions regulating the structure of social organizations in a broader sense are not unduly extended to trade unions and that the procedure for registering trade unions consists in a mere formality, in both law and practice.*
- (c) In particular, the Committee requests the Government to take the necessary steps to ensure that guidance is adopted, including through the review of the rules governing the registration of social organizations in consultation with the social partners concerned, which would ensure a clear and simple understanding of the concrete statutory conditions to be met by the unions for the purposes of registration and of the specific criteria to be applied by courts when deciding whether or not those conditions have been fulfilled. The Committee urges the Government to keep it informed of any developments in this regard.*

CASE NO. 2508

INTERIM REPORT

**Complaints against the Government of the Islamic Republic of Iran presented by**

- the International Trade Union Confederation (ITUC) and
- the International Transport Workers' Federation (ITF)

*Allegations: The complainants allege that the authorities and the employer committed several and continued acts of repression against the local trade union at the bus company, including: harassment of trade unionists and activists; violent attacks on the union's founding meeting; the violent disbanding, on two occasions, of the union general assembly; arrest and detention of large numbers of trade union members and leaders under false pretences (disturbing public order, illegal trade union activities); the mass arrest and detention of workers (more than 1,000) for planning a one-day strike. The complainant organizations also allege that the authorities have arrested Mr Mansour Osanloo, chairperson of the union executive committee, on very serious charges (including contacts with Iranian opposition groups abroad and instigating armed revolt against authorities), and that he had been detained for over six months as of the time of the filing of the complaint and is being denied due legal process*

**782.** The Committee last examined this case in May 2010, when it presented an interim report to the Governing Body [see 357th Report, paras 677–692 approved by the Governing Body at its 308th Session].

**783.** The Government sent its observations in a communication dated 18 March 2011.

**784.** The Islamic Republic of Iran has not ratified either the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Previous examination of the case**

**785.** In its previous examination of the case, the Committee made the following recommendations [see 357th Report, para. 692]:

- (a) The Committee welcomes the efforts by the Minister of Labour and Social Affairs to obtain a pardon for SVATH President Mansour Osanloo and expresses the firm expectation that these developments will lead to Mr Osanloo's imminent release from

prison. Recalling, moreover, that it had previously concluded that Mr Osanloo's detention from 22 December 2005 to 9 August 2006 and the treatment received during this period constitute not only interference with his trade union activities, but an extremely grave violation of his civil liberties as well, the Committee once again expects the Government to carry out the necessary independent investigation in this regard as a matter of urgency. Additionally, it once again expects the Government to provide full particulars as to the current state of Mr Osanloo's health.

- (b) The Committee requests the Government to indicate whether Mr Madadi is still in prison and, if so, to take the necessary steps to ensure his immediate release. It further requests the Government to institute an independent investigation without delay into the allegations of ill-treatment to which he had been subjected while in detention. More generally, the Committee requests the Government to take the necessary steps to ensure the safety of both Mr Osanloo and Mr Madadi and to keep it informed of the steps taken in this regard.
- (c) The Committee once again urges the Government to ensure that the charges against Ata Babakhani, Naser Gholami, Abdolreza Tarazi, Golanreza Golam Hosseini, Gholamreza Mirzaee, Ali Zad Hosein, Hasan Karimi, Seyed Davoud Razavi, Yaghob Salimi, Ebrahim Noroozi Gohari, Homayoun Jaberi, Saeed Torabian, Abbas Najand Koodaki and Hayat Gheibi are immediately dropped and that, if any of them are still being detained, that they be immediately released. Furthermore, the Committee once again urges the Government to provide any court judgments rendered in respect of these workers.
- (d) The Committee must firmly insist that the legislation be brought into conformity with freedom of association principles, particularly those concerning trade union multiplicity, in the very near future and urges the Government to provide detailed information in this respect. The Committee further once again urges the Government to deploy all efforts as a matter of urgency so as to allow for trade union pluralism, including through the de facto recognition of the SVATH union pending the introduction of the legislative reforms.
- (e) The Committee calls on the Government as a matter of urgency to fully recognize the right of public protest and expression as an integral corollary of freedom of association. It expresses the firm expectation that the Government will, in the very near future, avail itself of the technical assistance of the Office to ensure that the principles in the code of practice for managing and redeveloping trade union demonstrations, as well as the rules and regulations governing the holding of demonstrations and assemblies, guarantee freedom of association rights, including the right of workers' organizations to carry out peaceful demonstrations without fear of arrest, detention or indictment by the authorities for engaging in such activity.
- (f) The Committee requests the Government to transmit a detailed report of the findings of the SGIO and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005, as soon as they are produced. It once again requests the Government, in the light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities.
- (g) The Committee once again urges the Government to take the necessary measures to ensure that the 13 trade unionists found to have been wrongfully dismissed by the Tehran Dispute Settlement Board – and all other trade unionists who have not yet been reinstated and were found to have been the subject of anti-union discrimination – are fully reinstated in their positions without loss of pay.
- (h) The Committee once again requests the Government to immediately institute a full and independent judicial inquiry into the attacks on union meetings in May and June 2005, in order to clarify the facts, determine responsibilities, prosecute and punish those responsible and thus prevent the repetition of such acts. It further requests the Government to keep it informed of developments in this regard and provide a copy of the court's judgment in the action initiated by the union concerning these attacks once it is handed down.

- (i) The Committee, noting that three years have elapsed since its first examination of this case, and noting furthermore the seriousness of the matters contained therein – in particular the allegations of grave violations of civil liberties against numerous individuals – calls the Governing Body’s special attention to the extremely grave situation relating to the trade union climate in the Islamic Republic of Iran.
- (j) The Committee calls the Governing Body’s attention to the extreme seriousness and urgent matter of this case.

## B. The Government’s reply

**786.** In its communication of 18 March 2011, the Government indicates that, in order to enhance social dialogue and strengthened trade unions activities, the Ministry of Labour and Social Affairs has undertaken pervasive efforts at provincial and national levels to amend its regulations and labour policies for the promotion of independent trade unions and employers’ organizations, and to comply with the recommendations of the Committee.

**787.** Broadly, the Government indicates that it embarked on a series of practical initiatives to promote sound labour relations and mentioned among its achievements:

- a circular from the Supreme Chief of the Judiciary to all relevant departments and courts throughout the country stressing the need to educate and upgrade judges and judicial staff on labour relations conflicts;
- the revision of a number of rulings and verdicts issued by courts on cases of workers arrested following protests in Khuzestan, Kurdistan and Tehran provinces;
- the placement of Mansour Osanloo, President of the Tehran Vahed Bus Company (SVATH) union, and Ibrahim Madadi, Vice-President of the SVATH, on a list of amnesty to seek their freedom through the Office of the Supreme Chief of the Judiciary;
- a comparative examination of the existing laws and regulations so as to bring them into conformity with ILO Conventions; and
- a proposal on the formation of a selective committee to exchange ideas on executive approaches on open cases of workers and employers under investigation.

**788.** Regarding the Committee’s request for Mr Osanloo’s full particulars as to his current state, as well as its request to take the necessary steps to ensure the immediate release of Mr Ibrahim Madadi, the Government states that it has called for a special sitting of the Parole and Pardon Committee to examine the possibility of granting amnesty to a number of workers, including both Mr Osanloo and Mr Madadi. In this regard, the Government confirmed that their names have been duly included in the list to be examined by the Amnesty Committee through letters Nos 9000/6349/100 and 9000/6350/100 dated 10 May 2010 respectively and that their pardon is presently under consideration. The Government also states that, like any other inmates, they have the legitimate constitutional right to designate lawyers to defend their cases before court. In fact, the two have already assigned their lawyers and their cases have been fairly and impartially heard on their merits and the punishments levied against them were attributed to breach of civil law. Moreover, they still have the right by law to lodge an appeal to the higher court.

**789.** Furthermore, with regard to the Committee’s request to provide full particulars as to the current state of Mr Osanloo’s health, the Government indicates that the Ministry of Labour and Social Affairs met with the High Council for Human Rights to discuss the alleged infringements upon the rights of Mr Osanloo during his detention. It states that the

members of the Council acknowledged the evidence provided by the authorities that Mr Osanloo receives adequate medical assistance, when and where necessary, that his physical condition seems not to have been aggravated during imprisonment and that whenever he complained about his heart problems he was treated in specialized hospitals outside the prison. Other testimonies from Mr Osanloo's wife and lawyer confirmed his stable physical condition, despite sporadic feebleness.

- 790.** The action of the Ministry of Labour has gone far beyond its legal jurisdiction and constituency in trying to settle the cases of dismissed or detained workers from the SVATH. Despite some ambiguities and suspicion as to the real intention of some workers still in detention, the Ministry of Labour has constantly approached different governmental structures to find a legal way to expedite their freedom.
- 791.** The Government reiterates that it has approached the respective representatives of the judicial branch through several meetings to seek possible means that could help settle the cases of trade union activists of the SVATH. The Government underlines that the new Minister of Labour undertook to settle the cases by arranging a meeting with the Supreme Chief of the Judiciary. The Ministry of Labour and Social Affairs was assigned to closely follow each individual case of the detained workers on their merits with the High Council for Human Rights. This initiative led the court to address controversial labour disputes with a reasonable approach taking into account requirements of relevant ILO Conventions, in particular Convention No. 87.
- 792.** With regard to other SVATH workers, the Government indicates that it has conducted investigations on the complaints lodged by the workers and the verdicts issued by the Dispute Settlement Board upon examination of their cases. A number of workers have decided to lodge complaints before the Tribunal of the Administrative Justice based on article 18 of the Law of Administrative Justice. As a result, the indictment of eight workers by the court of first hearing were later abrogated by the Tribunal of Administrative Justice which ruled for their reinstatement, due compensation and reimbursement of due wages and benefits for the time off work. However, the Government also indicates that – to its profound regret – for a number of cases, the plea for the abrogation of the ruling of the Dispute Settlement Board was not approved by the Tribunal which found the dismissals to be in line with article 27 of the Labour law. Therefore the Tribunal upheld the dismissals for the following workers: Soltan Ali Shekari, Gholamreza Khani, Gholamreza Fazeli, Vahab Mohammadi Zangi, Hossein Alizadeh, Nematollah Amirkhani and Yaqoub Salimi. The Government adds that throughout the legal proceedings, it did not spare its efforts to make sure that the dismissed workers received the wage due in arrears. Moreover the Government states that it would help by all means the workers to get back to work.
- 793.** Regarding the recommendation of the Committee urging the Government to ensure that the charges against a number of trade union activists are immediately dropped and that, if any of them are still being detained, that they be immediately released, the Government provides full particulars concerning the release of Ata Babakhani, Naser Gholami, Abdolreza Tarazi, Golamreza Golam Hosseini, Gholamreza Mirzaee, Ali Zad Hosein, Hasan Karimi, Seyed Davoud Razavi, Yaghob Salimi, Ebrahim Noroozi Gohari, Homayoun Jaber, Saeed Torabian, Abbas Najand Koodaki and of Hayat Gheibi for whom the Government specifies that there was no file against the latter.
- 794.** Concerning the Committee's expectations that the legislation will be brought into conformity with freedom of association principles, in particular to allow for trade union pluralism, the Government indicates that an initial and concrete step toward this objective is its support to the first Confederation of Iranian Workers' Trade Union, which took shape in October 2010 with the participation of 264 workers' unions. This Confederation constitutes the second national institution of workers' union along with the High Assembly

of Workers' Representatives of the Islamic Republic of Iran founded in 2009. The Confederation was officially registered as a workers' organization with the Ministry of Labour and Social Affairs.

795. With regard to the draft code of practice on the management and control of trade union and labour-related protests, the Government indicates that the Ministry of Labour and Social Affairs stands at the final stage of developing directives in this respect. It also foresees the need for adequate training of the enforcement authorities and would seek the assistance of the Office in this regard.

### C. The Committee's conclusions

796. *The Committee recalls that the present case that it has been examining for more than three years concerns acts of harassment against members of the Tehran Vahed Bus Company (SVATH) union, including: demotions, transfers and suspensions without pay of union members; acts of violence against trade unionists; and numerous instances of the arrest and detention of trade union leaders and members.*

797. *With respect to Mansour Osanloo, the President of the SVATH, the Committee acknowledges the continuing efforts by the Minister of Labour and Social Affairs to obtain the granting of a pardon for Mr Osanloo. It notes that the Head of the Judiciary has accepted the Minister's request for such a pardon which, according to the Government, is presently under consideration. The Committee deeply deplores that more than five years have elapsed since his conviction and despite the Committee's regular call for his release, he remains in prison. The Committee deeply regrets that one year has now elapsed since the Ministry's laudable initiative to obtain Mr Osanloo's pardon and urges the competent authorities to take the necessary steps for his immediate release from prison and the dropping of any remaining charge. Recalling, moreover, that it had previously concluded that Mr Osanloo's detention from 22 December 2005 to 9 August 2006 and the treatment received during this period constituted not only interference with his trade union activities, but an extremely grave violation of his civil liberties as well, the Committee once again expects the Government to carry out the necessary independent investigation in this regard, having the confidence of all parties concerned, as a matter of urgency.*

798. *Furthermore, while taking note of the Government's statement that Mr Osanloo receives adequate medical assistance, when and where necessary, that the High Council for Human Rights acknowledged that his physical condition seems not to have been aggravated during imprisonment and that testimonies from Mr Osanloo's wife and lawyer confirmed his stable physical condition, the Committee expects that the Government will take all necessary measures to provide proper medical attention to Mr Osanloo and considers that the ongoing allegations in relation to the state of his health further attest to the need to ensure his immediate release.*

799. *With respect to Mr Ibrahim Madadi, Vice-President of the SVATH, the Committee takes due note of the information provided by the Government that the Ministry of Labour and Social Affairs has called for a special sitting of the Parole and Pardon Committee to examine the possibility of granting him amnesty. In this regard, according to the Government, Mr Madadi has been duly included in the list to be examined by the Amnesty Committee through letter No. 9000/6350/100 dated 10 May 2010 and such pardon is presently under consideration. The Committee, while expressing the firm hope that these developments will lead to Mr Madadi's imminent release from prison and the dropping of any remaining charge, deeply deplores the fact that he would have served much more than the two years prison term for which he was initially sentenced by the Revolutionary Court in October 2007, this in spite of the Committee's systematic recommendation for his*

*release. The Committee expects that Mr Madadi will have his rights restored and that he will be compensated for the damage suffered.*

- 800.** *Furthermore, the Committee deeply regrets that the Government has once again failed to provide any indications concerning the allegations of ill-treatment to which Mr Madadi had been subjected while in detention, and once again urges the Government to institute without delay an independent investigation into this serious matter and to keep it informed in this regard.*
- 801.** *With regard to pending cases of trade union activists of the SVATH, the Committee takes note of the actions of the Ministry of Labour in trying to settle the cases of dismissed or detained workers with other governmental structures, and that the Ministry was assigned to closely follow each individual case of the detained workers on their merits with the High Council for Human Rights. This initiative led the court to address controversial labour disputes with a reasonable approach taking into account requirements of relevant ILO Conventions, in particular Convention No. 87. The Committee further notes, from the Government's report, that in seven cases of dismissed workers, the Tribunal of Administrative Justice upheld the verdict issued by the Dispute Settlement Board, while in eight other cases the indictment of eight workers by the court of first hearing were later abrogated by the Tribunal of Administrative Justice which ruled for their reinstatement, due compensation and reimbursement of due wages and benefits for the time off work.*
- 802.** *With regard to its previous request to the Government to ensure that the charges against a number of trade union activists are immediately dropped and that, if any of them were still detained, that they be immediately released, the Committee takes due note of the Government's full particulars concerning the release of Ata Babakhani, Naser Gholami, Abdolreza Tarazi, Golamreza Golam Hosseini, Gholamreza Mirzaee, Ali Zad Hosein, Hasan Karimi, Seyed Davoud Razavi, Yaghob Salimi, Ebrahim Noroozi Gohari, Homayoun Jaber, Saeed Torabian, Abbas Najand Koodaki, and for Hayat Gheibi for whom the Government specifies that there was no file against the latter. The Committee however observes from the information provided that for a number of trade unionists, in spite of their release, the Revision Court upheld the verdict issued against them by the court with reference to article 610 of the Islamic punishment Law (conspiracy to commit offences against the security of the State). In this regard, the Committee urges once again the Government to ensure without delay that trade unionists may fully exercise their freedom of association rights, including the right to peaceful assembly, without fear of sanction by the authorities, and to ensure in particular that trade unionists are not arrested or detained and that charges are not brought against them for engaging in legitimate trade union activities. Recalling that it has also been called upon to examine cases with similar serious allegations concerning employers' organizations, the Committee wishes to emphasize that this general principle should also be fully guaranteed with respect to employers' representatives.*
- 803.** *In its previous comments, the Committee had noted the proposed amendments to article 131 of the Labour Law which appeared to permit trade union multiplicity, including at the workplace and national levels, and requested the Government to keep it informed of the progress made in adopting these amendments. In its latest reply, the Government indicates that an initial and concrete step toward the objective of trade union multiplicity is its support to the first Confederation of Iranian Workers' Trade Union, which was established on 13 October 2010 with the participation of 264 workers' unions. According to the Government, this Confederation constitutes the second national institution of workers' union along with the High Assembly of Workers' Representatives (HAWR) founded in 2009. It was officially registered as a workers' organization with the Ministry of Labour and Social Affairs. The Committee observes that the Government's reply suggests that any creation of organizations outside the existing structures remains*

impossible. In this respect, the Committee recalls that the principle of trade union pluralism, which the Iranian Government has been called to ensure in law and in practice on many occasions, is grounded in the right of workers to come together and form organizations of their own choosing, independently and with structures which permit their members to elect their own officers, draw up and adopt their by-laws, organize their administration and activities and formulate their programmes without interference from the public authorities and in the defence of workers' interests. Consequently, the Committee once again urges the Government to indicate any progress made in adopting amendments to the Labour Law so as to allow for trade union pluralism and expects the Government to deploy all efforts as a matter of urgency, including through the *de facto* recognition of the SVATH without delay pending the introduction of the legislative reforms. The Committee takes due note of the Government's indication of its repeated requests for technical assistance and training and expects that the ILO will respond positively once the necessary conditions are met to enable a mission to meet with all parties concerned in the various cases against the Government of the Islamic Republic of Iran, including with those who continue to be detained contrary to the Committee's repeated recommendations.

**804.** *With regard to the draft code of practice on the management and control of trade union and labour-related protests, the Committee observes that the Government merely indicates that the Ministry of Labour and Social Affairs stands at the final stage of developing directives in this respect and that the need for adequate training of the enforcement authorities would lead to its seeking the assistance of the Office in this regard. While recalling that in its previous comments it noted that the code stipulates that the relevant authorities and the Ministry of Labour and Social Affairs are ready to exchange experiences and use the training of international institutions in the management of trade union demonstrations, the Committee calls on the Government once again as a matter of urgency to fully recognize the right of public protest and expression as an integral corollary of freedom of association. The Committee expects that the Government will avail itself of the technical assistance of the Office to ensure that the principles in the code of practice for managing and controlling trade union demonstrations, as well as the rules and regulations governing the holding of demonstrations and assemblies, fully guarantee freedom of association rights, including the right of workers' organizations to carry out peaceful demonstrations without fear of arrest, detention or indictment by the authorities for engaging in such activity.*

**805.** *While noting that the Government has once again failed to provide information with regard to the following recommendations, the Committee further recalls them, as summarized below, and urges the Government to provide full information on their implementation:*

- *The Committee requests the Government to transmit a detailed report of the findings of the State General Inspection Organization (SGIO) and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005, as soon as they are produced. It once again requests the Government, in the light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities.*
- *The Committee once again requests the Government to immediately institute a full and independent judicial inquiry into the attacks on union meetings in May and June 2005, in order to clarify the facts, determine responsibilities, prosecute and punish those responsible and thus prevent the repetition of such acts. The Committee requests the Government to keep it informed of developments in this regard, as well*

*as to provide a copy of the court's judgment in the action initiated by the union concerning these attacks once it is handed down.*

- 806.** *Finally the Committee, noting that four years have elapsed since its first examination of this case, and noting furthermore the seriousness of the matters contained therein – in particular the yet unresolved grave violations of civil liberties against numerous trade unions leaders and members – calls the Governing Body's special attention to the extremely grave situation relating to the trade union climate in the Islamic Republic of Iran.*

### **The Committee's recommendations**

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

- (a) *The Committee acknowledges the continuing efforts by the Minister of Labour and Social Affairs to obtain the granting of a pardon for Mr Osanloo. It notes that the Head of the Judiciary has accepted the Minister's request for such a pardon which, according to the Government, is presently under consideration. The Committee deeply deplores that more than five years have elapsed since his conviction and despite the Committee's regular call for his release, he remains in prison. The Committee deeply regrets that one year has now elapsed since the Ministry's laudable initiative to obtain Mr Osanloo's pardon and urges the competent authorities to take the necessary steps for his immediate release from prison and the dropping of any remaining charge. The Committee expects that the Government will take all necessary measures to provide proper medical attention to Mr Osanloo and considers that the ongoing allegations in relation to the state of his health further attest to the need to ensure his immediate release. Recalling, moreover, that it had previously concluded that Mr Osanloo's detention from 22 December 2005 to 9 August 2006 and the treatment received during this period constituted not only interference with his trade union activities, but an extremely grave violation of his civil liberties as well, the Committee once again expects the Government to carry out the necessary independent investigation in this regard, having the confidence of all parties concerned, as a matter of urgency.*
- (b) *The Committee expresses the firm hope that the call from the Ministry of Labour and Social Affairs for a special sitting of the Parole and Pardon Committee to examine the possibility of granting Mr Madadi amnesty will lead to his imminent release from prison and the dropping of any remaining charge. The Committee however deeply deplores the fact that he would have served much more than the two-year prison term for which he was initially sentenced by the Revolutionary Court in October 2007, this in spite of the Committee's systematic recommendation for its release. The Committee expects that Mr Madadi will have his rights restored and that he will be compensated for the damage suffered. Furthermore, the Committee deeply regrets that the Government has once again failed to provide any indications concerning the allegations of ill-treatment to which Mr Madadi had been subjected while in detention, and once again urges the Government to institute without delay an independent investigation into this serious matter and to keep it informed in this regard.*

- (c) *The Committee must firmly insist that the legislation be brought into conformity with freedom of association principles, particularly those concerning trade union multiplicity, in the very near future and once again urges the Government to indicate any progress made in adopting amendments to the Labour Law so as to allow for trade union pluralism and expects the Government to deploy all efforts as a matter of urgency, including through the de facto recognition of the SVATH without delay pending the introduction of the legislative reforms.*
- (d) *The Committee calls on the Government once again as a matter of urgency to fully recognize the right of public protest and expression as an integral corollary of freedom of association. The Committee expects that the Government will avail itself of the technical assistance of the Office to ensure that the principles in the code of practice for managing and redeveloping trade union demonstrations, as well as the rules and regulations governing the holding of demonstrations and assemblies, guarantee freedom of association rights, including the right of workers' organizations to carry out peaceful demonstrations without fear of arrest, detention or indictment by the authorities for engaging in such activity.*
- (e) *The Committee requests the Government to transmit a detailed report of the findings of the SGIO and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005, as soon as they are produced. It once again requests the Government, in the light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities.*
- (f) *The Committee once again requests the Government to immediately institute a full and independent judicial inquiry into the attacks on union meetings in May and June 2005, in order to clarify the facts, determine responsibilities, prosecute and punish those responsible and thus prevent the repetition of such acts. It further requests the Government to keep it informed of developments in this regard and provide a copy of the court's judgment in the action initiated by the union concerning these attacks once it is handed down.*
- (g) *The Committee takes due note of the Government's indication of its repeated requests for technical assistance and training and expects that the ILO will respond positively once the necessary conditions are met to enable a mission to meet with all parties concerned in the various cases against the Government of the Islamic Republic of Iran, including with those who continue to be detained contrary to the Committee's repeated recommendations.*
- (h) *The Committee, noting that four years have elapsed since its first examination of this case, and noting furthermore the seriousness of the matters contained therein – in particular the yet unresolved grave violations of civil liberties against numerous trade unions leaders and members – calls*

*the Governing Body's special attention to the extremely grave situation relating to the trade union climate in the Islamic Republic of Iran.*

CASE NO. 2747

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

### **Complaint against the Government of the Islamic Republic of Iran presented by**

- **the International Trade Union Confederation (ITUC) and**
- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)**

*Allegations: The complainant organizations allege that several officers of the Haft Tapeh Sugar Cane Workers' Union had been arrested, convicted and handed down prison sentences in connection with the organization of a strike in 2007 and the creation of a union in June 2008. The officers concerned were also dismissed from the Haft Tapeh Sugar plantation and refinery*

- 808.** The complaint is contained in a communication dated 4 December 2009 from the International Trade Union Confederation (ITUC) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF).
- 809.** The Government submitted its observations in a communication dated 23 February 2011.
- 810.** The Islamic Republic of Iran 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 complainants' allegations**

- 811.** By their communication dated 4 December 2009, the ITUC and the IUF presented a complaint against the Government of the Islamic Republic of Iran on behalf of the IUF affiliate, the Haft Tapeh Sugar Cane Workers' Union. By way of background, the complainant organizations relate that the state-owned Haft Tapeh sugar plantation and refinery in the city of Shush has experienced increasing social unrest since 2007. Its workers have repeatedly had to resort to strikes and other actions to claim extensive wage arrears and protest deteriorating working conditions. In 2007, a three-week strike in September ended with the management's promise to pay a month's arrears, but workers were again obliged to take action in October over the same issue. The complainant organizations allege that security forces were deployed to break the strike and that many activists were arrested. Among the arrested were Ali Nejati, President; Feridoun Nikoufard, Vice-President; Mohammed Heydari Mehr, Representative for Industry Affairs; Ghorban Alipour, Secretary; Nejat Dehli, Treasurer; and Jalil Ahmadi, Member of the Board of Directors. All six were charged with threatening national security in November 2007. The complainant organizations indicate that the charges against Nejat Dehli were withdrawn and the charges against others were not pursued until the beginning

of 2009. The complainants indicate that it appears that the charges had been initially shelved, but were reviewed and pursued mainly due to the low turnout at the Islamic Labour Council elections held on 24 February 2009. On 19 March 2009, all five were sentenced to one year of imprisonment. Following the appeal before Dezful court, Second Chamber, on 11 October 2009, trade union President, Ali Nejati, and the Executive Committee members Feridoun Nikoufard, Ghorban Alipour and Jalil Ahmadi were each sentenced to six months of immediate imprisonment and received six months suspended sentences over five years, during which time they are barred from union activity or holding any trade union office. Mohammed Heydari Mehr received a four-month term with eight months suspended sentence.

- 812.** The complainant organizations further allege that on 5 May 2008, thousands of workers from every department of the enterprise stopped working to protest against non-payment of wages for two months. A petition to the provincial labour department signed by thousands of workers triggered mass arrests and repeated interventions by the police, security forces and Revolutionary Guards. The strike lasted until 16 June at which time workers formed an independent trade union, elected officers and agreed to return to work for 15 days to test the management's promise to pay three months' unpaid wages. The complainants allege that the same five persons – Ali Nejati, Feridoun Nikoufard, Ghorban Alipour, Mohammed Heydari Mehr and Jalil Ahmadi – were arrested in December 2008 and charged with creating an illegal trade union in June 2008. The court hearing took place from 13 to 29 February 2009. Other persons were arrested during this period. On 22 February 2009, Rahim Beshag, a member of the Executive Board was arrested and on 28 February 2009, the house of Reza Rakhshan, public relations officer, was searched prior to his arrest on the same day. Reza Rakhshan was released on 6 March. Mohammed Heydari Mehr, Ghorban Alipour, Feridoun Nikoufard, and Jalil Ahmadi were arrested around 2 or 3 March 2009. Ali Nejati had to go into hiding following the raid on his house on 28 February, but was arrested on 8 March. He was held for over a month in solitary confinement in the notorious Intelligence Detention Centre in the city of Ahwaz. His wife was able to visit him briefly for the first time only on 6 April 2009. He was detained and interrogated on charges he was already heard on. Upon his release on 14 April 2009, his employment at the enterprise was terminated without compensation and since then, he was unable to obtain work anywhere in Shush or the wider area.
- 813.** On 7 April 2009, hundreds of workers of the enterprise went on strike again, among other reasons, to reclaim the two months of wages arrears and to protest against the arrest of Ali Nejati.
- 814.** The sentences in connection with the creation of the union were pronounced on 14 April 2009. All abovementioned involved trade union leaders were sentenced to a year in prison and were prohibited from engaging in trade union activities. While they were not taken in to serve the sentences, pressure was exerted on them to resign from the union.
- 815.** On 2 May 2009, the lawyer of the union, Mohammad Olyaifard, appealed against the sentences. On 25 September 2009, Mohammed Heydari Mehr, Ghorban Alipour, Feridoun Nikoufard, and Jalil Ahmadi were cleared of all charges. Ali Nejati is still awaiting the outcome of his appeal in this case. Should he be sentenced in this case, the suspension of his first sentence connected to the 2007 strikes will be revoked and he will have to serve the full sentence. The complainants also allege that Reza Rakhshan was summoned to Dezful court to answer to charges of “propaganda against the State”, “relationship with anti-government persons” and the “establishment of the union”. He is still awaiting the verdict.
- 816.** The complainants further indicate that after the verdicts issued on 11 October 2009 in the case linked to the strike actions in 2007, the employer prevented those who had been

sentenced from entering the workplace and asked them to report to prison. On 5 November 2009, Feridoun Nikoufard and Jalil Ahmadi were arrested and were sent to the Dezful prison to serve their sentence. On 7 November, Mohammed Heydari Mehr and Ghorban Alipour were summoned to court, where they were arrested and brought to Dezful prison to serve their sentence. Ali Nejati was arrested on 14 November, and brought to the same prison to serve his sentence.

- 817.** On 18 November 2009, the lawyer of the union wrote on behalf of the union to the IUF and the ITUC asking for international solidarity. Shortly thereafter, he himself received a summons to court dated 17 November 2009. He is charged with “propaganda against the State”, “slandering the judiciary” and “publication of lies and agitating public opinion”. He was to appear before Branch 26, Province of Tehran Revolutionary Court on 9 December 2009.
- 818.** On 1 December 2009, all jailed officers of the union received letters informing them that their employment was terminated “for failure to report to work”.
- 819.** In view of the pattern of systematic and repeated violations of trade union rights, the complainant organizations consider that the Iranian Government should immediately act to ensure that all jailed officers of the Haft Tapeh Union are released with full restoration of their right to participate in trade union activity and that they are reinstated in their positions of employment with full compensation. They further request that the Government act to ensure that the right of all employees of the enterprise to freely join a trade union of their choice and engage in collective bargaining is fully respected by the employer in line with the principles of freedom of association.

## **B. The Government’s reply**

- 820.** In a communication dated 23 February 2011, the Government explains by way of context to this case that the issue of a wage-setting mechanism and its implementation policies in developing countries are invariably affected by a series of parameters such as the trend and the extent of the repercussions of globalization, the access to the international market, the success in the absorption of foreign direct investment, and the degree of their vulnerability to the horrendous impacts of the financial crisis, such as skyrocketing international and national inflation. It is common knowledge that these factors have had an irrefutable role in deteriorating the labour relations environment around the globe and have literally caused a lot of social unrest and turmoil. The Government, however, mindful of the essence of social justice in implementing its macroeconomic policies, has adopted prudent pre-emptive and protective measures by setting viable unemployment compensation schemes for workers and helping to restructure and renovate enterprises, thus successfully curbing dire consequences of the labour crises.
- 821.** The Government reiterates its full commitment to the observance of principles of freedom of association and underscores its unfailing obligations to rescue troubled enterprises grappling with problems such as wage arrears. The Government adds that it would spare no efforts whatsoever to guarantee the sustainability of such enterprises by ensuring the amicable settlement of their prevailing labour disputes and the due remittance of wage arrears.
- 822.** According to the Government, this case may well be attributed to the faltering trade union activities characterized by faulty and feeble union training and education, as well as incoherent and inconsistent trade union orientation and organization at the workplace. Under volatile economic circumstances and production hardship, effective collective bargaining would be presumably disrupted and the climate of misunderstanding prevail, if the trade unions and the employer do not address the issue in a mutually beneficial and

constructive manner. Regrettably, education to promote social dialogue, collective bargaining and dispute settlement for the Iranian workers' and employers' organization that undeniably could have improved the existing labour relations situation in the Islamic Republic of Iran has not been provided by the Office for almost a decade now.

- 823.** Cognizant of the essence of the ILO standards and fundamental principles and rights at work and mindful of the imperatives of the implementation of the Islamic Republic of Iran's Decent Work Country Programme (national document), the Government has attempted to further harmonize initiatives of the different organs of state governance, namely legislative, judiciary and administrative bodies for the protection of the rights of the social partners. On that premise, the Government has further escalated its measures for the strengthening of genuine trilateral decision-making at national level, as well as the workplace level. In this case, through the promotion of altruistic social dialogue with the most representative workers' organizations at the Haft Tapeh enterprise, the Government constructively intervened to settle the long pending labour disputes in a mutually beneficial and acceptable manner, and helped halt the lodging of complaints with the judiciary and through extensive negotiations that could encourage the judiciary to either revoke or abate the faulty workers' verdicts.
- 824.** Within the framework of the national Decent Work Country Programme, which includes the improvement of labour relations and the amendment of the Labour Law and the Law on Social Security, the Government is determined to revisit labour relations so as to promote a coherent structure and appropriate legal procedures complying with the principles of relevant ILO Conventions adapted to the prevailing national circumstances. In particular, the Government declares its adherence to the following guidelines:
- creating a flexible environment to settle disputes between workers and employers by helping to streamline the interests of both sides;
  - reinforcing unemployment insurance plan, as an integral part of social security and job security schemes for workers;
  - strengthening tripartism;
  - providing for conditions and imperatives of new working environment, intrinsic of the technological changes while meeting the specific requirement of production of goods and provision of services; and
  - reinforcing workers' and employers' associations while ensuring the legal right of trade union protests.
- 825.** Upon founding the "High Assembly of Workers' Representatives of the Islamic Republic of Iran" in 2009, the Nationwide Confederation of the Iranian Workers' Unions, as the single biggest national institution of workers' unions also took shape on 13 October 2010 with the participation of 264 workers' unions throughout the country. The new Confederation is established in accordance with the requirements of the international labour standards and relevant national regulations. The Government hopes that the new Confederation will play a pivotal role in strengthening freedom of association and tackling workers' various challenges such as minimum wage setting, unemployment benefits schemes, etc., on a tripartite basis.
- 826.** The Government, observant of the need for closer and constant supervision of the implementation of obligations arising from the ratified ILO Conventions, and particularly the fundamental ones, proceeded to establish a working group that is meant to provide for a wider space for streamlining the applications of ILO standards in the country. The rules of procedure of this new body were adopted by the Cabinet of Ministers on 22 October

2010. This working group is entrusted with ensuring proper coordination among various bodies of governance, identifying any legislation and/or rules and regulations contravening provisions of fundamental ILO Conventions, promoting ILO causes, and addressing any shortcomings or complaints in respect to the application of the relevant ILO standards by the social partners.

- 827.** In compliance with Article 8 of Convention No. 87 and Article 3 of Convention No. 98, and mindful of the need for making the distinction between trade union and politically driven activities, the Government has embarked on drafting an instruction for the relevant authorities to define their functions and jurisdiction in their coping with trade union protests, industrial actions, demonstrations, etc. Having extensively discussed the content and provisions of the said instruction, the Workers' Affairs Committee of the National Security Council unanimously approved it and submitted it to the State Security Council on 15 May 2010 for final approval.
- 828.** For the purpose of reducing and amicably settling workers' and employers' disputes which, under the present volatile economic circumstances, is mainly the result of shortage of liquidity, employers' accrued debts to banks and other government affiliated organizations, the Government has formed the "Committee for extending judicial support to enterprises". Judges and penal bodies have been requested to refer the cases of troubled enterprises under their consideration to this Committee. In order to prevent closing down of the units in financial or technical troubles and to ensure their sustainability, the Government, by resorting to the Law of Renovation of Industries, provided the affected enterprises with the cash to pay the workers' wages in arrears and to restart the discontinued productive activities. As a rule, workers' back wages are given unconditional priority over any other debt when addressing financially troubled enterprises.
- 829.** The Haft Tapeh Sugarcane Industries Company is one of the largest industrial enterprises of the Islamic Republic of Iran. Having lost its product price competitiveness and its ever increasing overhead production costs, coupled with old technology and machinery, the company has been wrestling with a large array of fiscal problems. Wage arrears due to shortage of liquidity and accrued and accumulated debts to the banks and other organizations such as the social security organization and electrical and water utilities, etc., has further exacerbated labour relations. According to the Government, the occurrence of industrial actions and the incessant protests seem to, among other external factors, also be rooted in the improper reflection of trade union demands, the absence of a most representative workers' organization and resort of a minor group of dissident workers to unjustified means to reach their seemingly justified cause. Apparently, the latter group had chosen to push the management for an unconditional acceptance of their requests through ways other than constructive dialogue, negotiations, mediation and dispute settlement mechanisms.
- 830.** In line with the provisions of the ILO fundamental Conventions, the Government maintains that it is imperative for the management and the Government, if necessary, to enter into negotiation with the real and genuine most representative workers' association in any given enterprise so as to promptly and positively respond to their needs in the legal context of labour relations. This also holds true for the Haft Tapeh as the single biggest strategic sugar plant of the Islamic Republic of Iran that provides thousands of sustainable employment opportunities.
- 831.** Further to the measures taken to protect trade union rights, the Government has strived to fully exercise its constitutional responsibilities in ensuring social security and establishing at the plant peaceful labour relations. Under the volatile circumstances permeating the single biggest sugar plant in the country, the Government expected its social partners to help maintain peace in the troubled unit and demonstrate self-restraint in seeking their

legitimate cause by observing the national law. A small minority of protesting dissident workers who, at the initial stages, along with other workers, embarked on legitimate industrial action in demanding their wage arrears, later deviated from the path of a genuine and legitimate trade union activity and, while having no formal workers' representation, chose to bypass the dispute settlement mechanism provided in the legislation and ventured into a territory prone to social and political unrest.

**832.** Realizing the gravity of workers conditions and identifying the roots of their initial protests and objections, the Government strived to help return the situation to normality by intervening to settle the then prevailing global problems of the enterprise, including its labour relations disputes and the legitimate workers' claims to their back wages. The President of the Islamic Republic of Iran and his cabinet ministers were fully involved in the support process and spared no genuine and constructive efforts to bring the plant back to normal working condition. As a result, different production lines began their operations and workers resumed their work.

**833.** By pursuing effective negotiations with the judicial authorities, the Ministry of Labour and Social Affairs (MLSA) succeeded in paving the grounds for the due hearing of the complaints lodged against a small number of the protesting workers mentioned in the case. Committed to safeguard the interest of the dismissed and/or detained workers, the Government actively sought the approval of the head of the judiciary to hold hearings to address the appeal of the affected workers. As a result, the court revisited the verdicts and the relevant rulings were abrogated, suspended or drastically abated. Copies of these decisions are attached to the Government's reply. The following measures had also been taken by the Government:

- The MLSA intervened and urged the Minister of Intelligence to adopt a common approach for the reinstatement of the dismissed workers of the Haft Tapeh.
- MLSA officials conducted thorough negotiations with the enterprise's management and required it to observe the provisions and principles reiterated in the fundamental labour Conventions and the national legislation with regards to the rights of workers to establish their associations.
- The MLSA incessantly kept an eye on solving the cash flow problem of the company through prioritizing the granting of necessary bank facilities for the payment of the overdue wages.
- The MLSA attempted to ensure the immediate reinstatement of the dismissed workers mentioned in the case. In this respect, the MLSA addressed, to the Organization for expansion and renovating of industries affiliated to the Ministry of Industries, a request to take urgent action for the reinstatement of the Haft Tapeh dismissed workers. A copy of the letter is attached to the Government's reply.

**834.** Thanks to the commitment of the Minister of Labour and his entrenched adherence to the fundamental principles and rights at work and the flexibility, understanding and mercy shown by the judiciary, the Government could finally secure the reinstatement of Messrs Ali Nejati, Feridoun Nikoufard, Mohammed Heydari Mehr, Ghorban Alipour and Reza Rakhshan who had been dismissed from their jobs on the grounds of continued absence. It is now decided legally and irrefutably that, immediately upon completion of the administrative process, the mentioned workers shall return to their posts in compliance with the provisions provided under the dispute settlement arrangements of the Labour Law. Furthermore, the Director of the MLSA regional office in Shush held numerous talks with the contending party so as to seek a mutually acceptable solution of the conflict and secure a speedy timetable for the reinstatement of the dismissed workers. As an impartial mediator, he had also successfully convinced both the employer and the representative of

the workers' association to resort to constructive social dialogue to solve labour disputes in the future.

- 835.** In view of the constructive and extensive measures adopted by the Government for the promotion of the fundamental principles and rights at work, the amicable settlement of the problems arising from the back wages in Haft Tapeh and the dire consequences of its heated labour disputes, the reinstatement of the dismissed workers and abrogation and abatement of the verdicts thereof, the Government deems to have fulfilled its obligations arising from Convention No. 87 and looks forward to hearing about the official closure of this case.

### **C. The Committee's conclusions**

- 836.** *The Committee notes that in this case, the complainant organizations, the ITUC and the IUF, allege that several officers of the Haft Tapeh Sugar Cane Workers' Union – the IUF affiliate – had been arrested, convicted and handed down prison sentences in connection with the organization of a strike in 2007 and the creation of a union in June 2008. The officers concerned were also allegedly dismissed from the Haft Tapeh Sugar plantation and refinery.*
- 837.** *The Committee observes that the allegations in this case refer to a situation where the workers' attempt to create a union at the enterprise led to the union being declared illegal and its leaders heavily sanctioned. This allegation would appear to once again raise the issue of genuine representation of workers and of the illegality of the coexistence of different types of workers' representation. The Committee notes that the Government, without explicitly mentioning the Haft Tapeh Sugar Cane Workers' Union or responding directly to the allegation that the related sentences imposed upon its leaders were in connection with the creation of the union, refers to a minor group of dissident workers and the absence of a most representative workers' association at the enterprise.*
- 838.** *The Committee notes that the Government refers to the establishment of the High Assembly of Workers' Representatives (HAWR) in 2009, and the Nationwide Confederation of Iranian Workers' Unions on 13 October 2010, as the single biggest national institution of workers' unions. With regard to the latter, the Committee notes the Government's indication that this institution was created with the participation of 264 workers' unions throughout the country. The Committee recalls that in a recently examined case concerning the Islamic Republic of Iran, referring to article 131 of the Labour Code (considered below) it raised doubts about the nature of the Centre of Workers' Representatives (CCR) and the HAWR as genuine workers' organizations [see Case No. 2807, para. 701 of the 359th Report]. The Committee further observes that the Government's reply suggests that any creation of organizations outside the existing structures remains impossible. In this respect, the Committee recalls that the principle of trade union pluralism, which the Iranian Government has been called to ensure in law and in practice on many occasions, is grounded in the right of workers to come together and form organizations of their own choosing, independently and with structures which permit their members to elect their own officers, draw up and adopt their by-laws, organize their administration and activities and formulate their programmes without interference from the public authorities and in the defence of workers' interest.*
- 839.** *The Committee further recalls that it has considered the issue of organizational monopoly, as enshrined in article 131 of the Labour Law, on several occasions and concluded that the organizational monopoly required by the law appeared to be at the root of the freedom of association problems in the country [see Cases Nos 2508 and 2567]. The Committee recalls that in Case No. 2508, while the Government confirmed that the existing legal framework did not permit the existence of both an Islamic Labour Council and a union at*

the same enterprise, it expressed its intention to amend the Labour Law to address this issue [see 346th Report, para. 1190, Case No. 2508]. In its subsequent report, the Committee observed that the draft amendments to the Labour Laws provided within the framework of Case No. 2567, would still appear to maintain a restrictive choice between being either represented by a workers' guild or by a workers' delegate [see 359th Report, para. 95]. The Committee therefore expects that the Government will deploy all efforts for the rapid amendment of the labour legislation in a manner so as to bring it into full conformity with the principles of freedom of association, by ensuring that workers may freely come together without government interference, and to form organizations of their own choosing. The Committee requests the Government to indicate the measures taken or envisaged to amend article 131 of the Labour Law.

840. The Committee is deeply alarmed that the exercise of the right to organize and the right to strike by workers at the state-owned Haft Tapeh sugar plantation and refinery in the city of Shush appears to have resulted in arrests, prison sentences against the accused trade union leaders and their dismissals from the enterprise. The Committee notes the Government's indication that it actively sought the approval of the head of the judiciary for holding hearings to address the appeal of the affected workers, which as a result, led to the court revisiting the verdicts and the relevant rulings being abrogated, suspended or drastically abated. The Committee also notes the MLSA's request addressed to the Organization for expansion and renovating of industries to take urgent action for the reinstatement of the Haft Tapeh dismissed workers. It also notes the Government's indication that it succeeded in securing the reinstatement of Messrs Ali Nejati, Freidoun Nikoufard, Mohammed Heydari Mehr, Ghorban Alipour and Reza Rakshan. The Committee nevertheless wishes to recall that no one should be penalized for establishing or attempting to establish a trade union organization, or for carrying out or attempting to carry out a legitimate strike. The Committee recalls that while principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike, the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, paras 660, 667 and 671]. The Committee therefore requests the Government to take the necessary measures to ensure that any worker who had been imprisoned in connection with the creation of a trade union in June 2008 and organization of industrial action, is paid adequate compensation for the damages suffered. It further urges the Government to take the necessary measures to ensure that the prohibition to engage in trade union activities imposed on Ali Nejati, Feridoun Nikoufard, Ghorban Alipour, Mohammed Heydari Mehr, Jalil Ahmadi, Rahim Beshag, Reza Rakhshan and any other person is immediately lifted and that the union is allowed to function. The Committee requests the Government to indicate the steps taken in this regard.
841. The Committee notes the allegation of the use of police and security forces to break workers' strikes. In this respect, the Committee recalls that the use of police for strike-breaking purposes is an infringement of trade union rights and that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order [see **Digest**, op. cit., paras 643 and 647]. The Committee requests the Government to ensure the application of this principle in the future. In this respect, the Committee refers to Case No. 2323 [see Report No. 354] wherein the Committee took note of the initiatives taken by the Government through the measures taken by the MLSA to draft and promote a code of practice on the management and control of labour-related and trade union protests and demonstrations. The Committee

recalls that on that occasion, it requested the Government to inform it of the progress made concerning its finalization and adoption and to provide full particulars on the matters provided therein, including the rules and regulations and to provide copies of any written documents pertaining to measures taken to ensure that adequate instructions are given to the competent authorities so as to eliminate the use of excessive violence when controlling demonstrations. The Committee notes the Government's indication that, mindful of the need for making the distinction between trade union and politically driven activities, it has proceeded to draft an instruction for the relevant authorities to define their functions and jurisdiction in their coping with workers' trade union protests, industrial actions, demonstrations and the like. Having extensively discussed the content and provisions of the said instruction, the Workers' Affairs Committee of the National Security Council unanimously approved and submitted it to the State Security Council on 15 May 2010 for final approval. The Committee requests the Government to provide a copy of the instruction on the management and control of labour-related and trade union protests and demonstrations. In this context, the Committee wishes to point out that a general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice. Trade union organizations may wish, for example, to express publicly their opinion regarding the Government's economic and social policy. Furthermore, while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies [see *Digest*, *op. cit.*, paras 503 and 529].

- 842.** *With regard to the dismissals of Messrs Ali Nejati, Feridoun Nikoufard, Ghorban Alipour, Mohammed Heydari Mehr and Jalil Ahmadi, the Committee understands that the reinstatement of the first four workers has been secured. It deeply regrets that the Government did not reply to the allegation of dismissal of Mr Jalil Ahmadi. The Committee recalls that the dismissal of workers on grounds of trade union activities violates the principles of freedom of association. It further recalls that the dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98. When trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against [see *Digest*, *op. cit.*, paras 661 and 662]. The Committee requests the Government to confirm that the abovementioned workers, including Mr Jalil Ahmadi, have been reinstated in their posts without loss of pay and are paid compensation for the damages suffered.*
- 843.** *The Committee notes with concern that the complainants allege that charges of "propaganda against the State", "relationship with anti-government persons", "establishment of the union" were filed against Reza Rakhshan, the union's public relations officer, and charges of "propaganda against the State", "slandering of judiciary" and "publication of lies and agitating public opinion" were filed against Mohammad Olyaifard, the lawyer of the union. The Committee also notes that the Government did not address those allegations in its reply. The Committee expresses its deep concern at the allegations of harassment and intimidation of the union public relations officer and its lawyer. The Committee considers that trade union organizations have the right to retain services of public relations professionals and lawyers to represent their interests and rights, including before the courts, and that in the exercise of such functions, these professionals should not be subjected to threats or intimidation. In light of the above, the Committee urges the Government to drop the charges against Reza Rakhshan and Mohammad Olyaifard and to provide it with detailed information concerning their status.*

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## The Committee's recommendations

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

- (a) *The Committee expects that the Government will deploy all efforts for the rapid amendment of the labour legislation in a manner so as to bring it into full conformity with the principles of freedom of association, by ensuring that workers may freely come together without government interference, and to form organizations of their own choosing, and requests the Government to indicate the measures taken or envisaged to amend article 131 of the Labour Law.*
- (b) *The Committee requests the Government to take the necessary measures to ensure that any workers who had been imprisoned in connection with the organizing and carrying out of an industrial action, and the creation of a trade union in June 2008, is paid adequate compensation for the damages suffered. It further urges the Government to take the necessary measures to ensure that the prohibition to engage in trade union activities imposed on Messrs Ali Nejati, Feridoun Nikoufard, Ghorban Alipour, Mohammed Heydari Mehr, Jalil Ahmadi, Rahim Beshag, Reza Rakhshan and any other person is immediately lifted and that the union is allowed to function. The Committee requests the Government to indicate the steps taken in this regard.*
- (c) *The Committee requests the Government to ensure the application of freedom of association principles with regard to the police intervention during the course of the strike and once again requests the Government to provide a copy of the instruction on the management and control of labour-related and trade union protests and demonstrations that it was elaborating.*
- (d) *The Committee requests the Government to confirm that Messrs Ali Nejati, Feridoun Nikoufard, Ghorban Alipour, Mohammed Heydari Mehr and Jalil Ahmadi have been reinstated in their posts without loss of pay and are paid compensation for the damages suffered. It requests the Government to keep it informed in this respect.*
- (e) *The Committee urges the Government to drop the charges against Messrs Reza Rakhshan and Mohammad Olyaifard and to provide it with detailed information concerning their status.*

CASE NO. 2717

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

**Complaint against the Government of Malaysia  
presented by  
the Malaysian Trades Union Congress (MTUC)**

*Allegations: The complainant organization alleges that the British American Tobacco Company (BAT) re-classified existing posts within the company in order to prevent employees who were members of the British American Tobacco Employees Union (BATEU) from retaining their union membership. Following this re-designation exercise, a 2007 decision of the Director General of the Department of Trade Union Affairs and Industrial Relations (DGTU) ruled that the BATEU could represent only 15 employees out of the company's total workforce of 1,000 rendering the union effectively unable to function*

- 845.** The Committee last examined the substance of this case at its March 2010 meeting when it presented an interim report to the Governing Body [see 356th Report, paras 803–846, approved by the Governing Body at its 307th Session].
- 846.** The Government provided new information in a communication dated 20 October 2010.
- 847.** Malaysia 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. Previous examination of the case**

- 848.** In its previous examination of the case, the Committee made the following recommendations [see 356th Report, para. 846]:
- (a) The Committee requests the Government to take the necessary measures to amend the Industrial Relations Act, 1967 so as to ensure that: (1) the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss; and (2) managerial and supervisory staff have the right to establish their own associations for the purpose of engaging in collective bargaining.
  - (b) The Committee requests the Government to take the necessary measures, including a review of the 14 December 2006 and 7 March 2007 decisions of the Ministry of Human Resources, to ensure that the exclusions from the BATEU's union membership are limited to supervisory staff genuinely representing the interests of employers. The Committee requests to be kept informed of the progress made in this respect.

- (c) The Committee, recalling its long-standing recommendations on legislative reform in Case No. 2301, urges the Government to take the necessary measures to amend sections 2(1) and 26(1) of TUA so as to ensure that all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels.
- (d) Noting that the BATEU appealed the decisions of the Minister of Human Resources and the DGTU to the High Court over two years ago, the Committee firmly expects that its conclusions will be drawn to the High Court's attention when it reviews these cases and that its rulings will be issued in the near future and will ensure the right of all workers to form and join the organization of their own choosing, including those workers in BAT Malaysia's wholly owned subsidiaries. It requests the Government to keep it informed of developments in this regard and to transmit a copy of the judgements once they have been handed down.

## B. The Government's reply

- 849.** In a communication dated 20 October 2010, the Government transmitted a copy of the rulings issued by the High Court concerning the applications by the British American Tobacco Employees Union (BATEU) against the decision of the Minister of Human Resources on the capacity issue of a process specialist and against the decision of the Director General of the Department of Trade Union Affairs and Industrial Relations (DGTU) on BATEU's incapacity to represent employees in the subsidiaries. It also provided its observations on the previous recommendations of the Committee.
- 850.** With regard to the Committee's request to amend the Industrial Relations Act (IRA) so as to ensure that the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, the Government indicates that there is currently no legal definition for the managerial, executive, confidential and security capacity, and that it has started compiling inputs from the social partners in order to define the four categories of workmen as stated in subsection 9(1) of the Act.
- 851.** Concerning the Committee's request for measures, including a review of the 14 December 2006 and 7 March 2007 decisions of the Ministry of Human Resources, to ensure that the exclusions from BATEU's union membership are limited to supervisory staff genuinely representing the interests of employers, the Government states that there are no provisions under the IRA which allows it to review the decisions of the Minister or by the DGTU once they have been made. It indicates that a review could only be made by virtue of an application for judicial review before the High Court, and recalls that BATEU's application has been dismissed and the latter has not lodged any appeal against the ruling.
- 852.** With regard to the judgment of the High Court concerning the applications from BATEU against the decisions of the Minister of Human Resources and the DGTU, in its ruling of 15 July 2010, the High Court rejected BATEU's appeals against the decision of the DGTU that the trade union was no longer qualified to represent employees of the British American Tobacco Company (BAT)-owned subsidiaries, as the word "establishment" referred to one legal entity and did not cover subsidiaries.

## C. The Committee's conclusions

- 853.** *The Committee recalls that the present case involves allegations that the BAT in Malaysia reclassified existing posts within the company in order to prevent employees who were members of the in-house trade union – namely BATEU – from retaining their membership. According to the complainant, out of 175 existing process technician posts, 31 were reclassified as process specialist ones; following the announcement of the posts, union members were allegedly harassed into applying for them and 109 process technician*

*positions were subsequently made redundant. The complainant also stated that there were no significant differences between the duties and functions of the two.*

- 854.** *The Committee notes from the Government's reply that there is currently no legal definition for the managerial, executive, confidential and security capacity, and that it has started compiling inputs from the social partners in order to define the categories of workmen as stated in subsection 9(1) of the IRA. The Committee, recalling once again that all measures should be taken so as to ensure that: (1) the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss; and (2) managerial and supervisory staff have the right to establish their own associations for the purpose of engaging in collective bargaining, expects the Government to inform it in the near future of concrete measures taken to amend the IRA in view of the above principles.*
- 855.** *Concerning its request for measures, including a review of the 14 December 2006 and 7 March 2007 decisions of the Ministry of Human Resources to ensure that the exclusions from BATEU's union membership are limited to supervisory staff genuinely representing the interests of employers, the Committee notes the statement from the Government that there are no provisions under the IRA which allows it to review the decisions referred to by the Committee once they are made. It notes that, according to the Government, a review of the decisions can only be made by virtue of an application for judicial review before the High Court. While noting that BATEU's applications on both issues had been dismissed, the Committee however observes that the rulings of the High Court were made on the basis of provisions of the IRA which are presently put in question. The Committee recalls that it previously queried whether the newly created process specialist position could be genuinely seen as meeting the criteria for managerial staff, particularly as the indications provided made no reference to the authority to appoint, dismiss or exercise disciplinary control over others. In these conditions, and pending the introduction of the legislative reform mentioned above which would clarify the different categories of workers falling under union representation, the Committee requests the Government to make every effort to consult with the company and the trade union concerned so as to determine the supervisory staff genuinely representing the interests of employers which could be excluded from BATEU's union membership. The Committee requests the Government to keep it informed of the outcome of the consultations. In the meantime, the Committee expects that the trade union will be able to work and function freely.*
- 856.** *With regard to its long-standing recommendations on legislative reform (previously raised in Case No. 2301), the Committee had urged the Government to take the necessary measures to amend sections 2(1) and 26(1) of the Trade Union Act of 1959 (TUA), so as to ensure that all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels [see 333rd Report, paras 586–599 and 356th Report, paras 76–81]. The Committee notes from the information provided in October 2010 by the Government in Case No. 2301 that it has taken steps to amend the IRA and the TUA, and that it proposes to amend certain provisions in the relevant labour laws in order to make it easier and faster to establish trade unions and expedite claims for recognition, thus facilitating the process of collective bargaining. The Committee urges once again the Government to address without delay the issues raised. It expects the Government to inform it in the near future of concrete amendments to the TUA that ensure that all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels.*

**857.** *The Committee recalls that it previously expressed its firm expectation that its conclusions would be drawn to the High Court's attention when it reviewed the applications from BATEU against the decisions of the Minister of Human Resources and the DGTU and that the Court's rulings would ensure the right of all workers to form and join the organization of their own choosing, including those workers in BAT Malaysia's wholly owned subsidiaries. The Committee takes due note of the ruling of 15 July 2010 of the High Court rejecting BATEU's appeals of the decision of the DGTU that the trade union was no longer qualified to represent employees of BAT-owned subsidiaries, concluding that the word "establishment" referred to one legal entity and did not cover subsidiaries. The Committee recalls that under Article 2 of Convention No. 87, workers have the right to establish organizations of their own choosing, including organizations grouping together workers from different workplaces and different cities [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 335]. The Committee expects that workers in BAT Malaysia's wholly owned subsidiaries are able to exercise the right to form and join the organization of their own choosing, whether at primary level or by grouping together workers from different workplaces or cities.*

**858.** *The Committee invites the Government to have recourse to the technical assistance of the ILO with regard to the legislative reforms under way, should it so desire.*

### **The Committee's recommendations**

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

- (a) The Committee, recalling once again that all measures should be taken so as to ensure that: (1) the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss; and (2) managerial and supervisory staff have the right to establish their own associations for the purpose of engaging in collective bargaining, and expects the Government to inform it in the near future of concrete measures taken to amend the IRA in view of the above principles.*
- (b) The Committee requests the Government to make every effort to consult with the company and the trade union concerned so as to determine the supervisory staff genuinely representing the interests of employers which could be excluded from BATEU's union membership, pending the introduction of the legislative reform which would clarify the different categories of workers falling under union representation. The Committee requests the Government to keep it informed of the outcome of such consultations. In the meantime, the Committee expects that the trade union will be able to work and function freely.*
- (c) The Committee expects the Government to inform it without delay of concrete amendments to the TUA that ensure that all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels.*
- (d) The Committee expects that workers in BAT Malaysia's wholly owned subsidiaries are able to exercise the right to form and join the organization of their own choosing, whether at primary level or by grouping together workers from different workplaces or cities.*

- (e) *The Committee invites the Government to have recourse to the technical assistance of the ILO with regard to the legislative reforms under way, should it so desire.*

CASE NO. 2766

DEFINITIVE REPORT

**Complaint against the Government of Mexico  
presented by  
the Union of Workers in Higher Intermediate Education  
in the Federal District (SUTIEMS)**

*Allegations: Non-renewal of contracts of members of the complainant union because of their participation in a union meeting*

- 860.** The complaint is contained in a communication from the Union of Workers in Higher Intermediate Education in the Federal District (SUTIEMS) dated 21 December 2009.
- 861.** The Government sent its observations in a communication dated 18 October 2010.
- 862.** Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 863.** In its communication dated 21 December 2009, the SUTIEMS and a group of affiliated workers employed in the central offices of the Institute for Higher Intermediate Education of the Federal District (IEMSDF) requested the General Secretary of the complainant union with the organization's secretary to visit the Institute's premises in order to present the various activities of the union and to report on the situation with regard to the revision of the collective labour agreement then in force; the meeting took place on 3 November 2009 at the Institute's premises.
- 864.** On 15 December 2009, the Institute's Director-General for Legal Affairs, Mr Aurelio Alfredo Reyes García, issued to the members of the workers' group, which included affiliates Pablo Galeote García and Nayeli Flores Sandoval, a verbal invitation to a meeting on labour issues; at that meeting, they were informed that, according to the instructions of the Institute's Academic Director, Mr Alberto Ceciliano Hernández, they would be without work as of 1 January 2010 because they had attended the union meeting held on 3 November 2009.
- 865.** The complainant union states that the affiliated workers had not committed any offence, since the meeting of 3 November 2009 had been held outside working hours to ensure that it did not affect the daily work of the Institute, and there is nothing in their record that could justify termination of their employment contracts. From the time of the meeting on 3 November until 15 December 2009, in contravention of ILO Conventions Nos 87 and 135, the workers who attended the union meeting were subjected to persecution and harassment, and were told that for attending the meeting, they would be unemployed from 1 January 2010.

**866.** The complainant organization sets out the background to these dismissals, noting that the workers at the Institute who are members of the SUTIEMS had expressed their disagreement with the Institute authorities owing to the fact that the collective agreement governing labour relations at the Institute had been concluded with a minority union and flouted the rights of a large number of the Institute's workers. For that reason, the group of workers in question sought the assistance of the SUTIEMS and requested information on the revision of the collective agreement as it relates to the workers who had been excluded from its terms.

## **B. The Government's reply**

**867.** In its communications of 18 October 2010, the Government states that the complainant union, SUTIEMS, argues in general terms that there have been violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Workers' Representatives Convention, 1971 (No. 135), with regard to the protection and facilities that must be provided for workers' representatives in enterprises, but gives no specific details. Nowhere in the communication is there any attempt to link the acts that are claimed to constitute infringements of freedom of association of the SUTIEMS to the provisions of the international Conventions which might be applicable, the result being a total lack of clarity regarding the nature of the allegations being made against the various authorities concerned. This notwithstanding, the Government indicates its willingness to reply to the allegations made by the complainant.

**868.** The Government states that the evidence put forward to substantiate the complaint does not include any documentation to corroborate the statements made by the SUTIEMS; there is no corroborating evidence that Mr Pablo Galeote García and Mr Nayeli Flores Sandoval attended the union meeting of 3 November 2009, nor that they were dismissed as a result of that meeting with effect from January 2010.

**869.** The Government notes that according to the IEMSDF, no managerial or higher official held any meeting with Mr Pablo Galeote García and Mr Nayeli Flores Sandoval, whose employment contracts were for a fixed term ending on 31 December 2009. It is therefore not true that the IEMSDF authorities terminated their contracts, and there is therefore no repressive attitude, as the SUTIEMS claims.

**870.** As regards the allegation that the SUTIEMS members have been subjected to persecution and harassment, the Government indicates that the claims made by the SUTIEMS are not sufficient to prove that such incidents have taken place because the union fails to provide any specific information as to what that involved. The IEMSDF states in this respect that it has at all times respected the right of its workers to associate, as illustrated by the collective agreement concluded with the SUTIEMS which governs labour relations between the Institute and its employees; it is therefore not true that the IEMSDF authorities have initiated a campaign of persecution and harassment against the SUTIEMS members who attended the union meeting of 3 November, as they are aware of their right.

**871.** Lastly, the Government states that the SUTIEMS has also failed to mention that while a collective agreement was at one point concluded with a minority union, at that time the minority union in question was the only one with legal personality and thus entitled to enter into a collective agreement; that entitlement was lost once it was claimed by the complainant union (SUTIEMS) before the local conciliation and arbitration board.

**872.** In the light of the foregoing facts, the Government requests the Committee to set aside the present complaint.

### **C. The Committee's conclusions**

- 873.** *The Committee observes that in the present complaint, the complainant union alleges that two of its members were warned by the Director-General for Legal Affairs of the IEMSDF on 15 December 2009, that they would cease to have employment from 1 January 2010 onwards because they had attended a union meeting with the General Secretary of the complainant union and another official, the aim of the meeting being to ascertain the situation with regard to the revision of the collective agreement in force at that time concluded between a minority union and the Institute authorities. According to the complainant union, this was an anti-union reprisal, given that the meeting in question was held outside working hours.*
- 874.** *The Committee notes the Government's statements to the effect that: (1) the complainant union argues in general terms that there have been violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Workers' Representatives Convention, 1971 (No. 135), with regard to the protection and facilities that must be provided for workers' representatives in enterprises, but gives no specific details, and there is no attempt to relate the acts that are claimed to constitute infringements of the freedom of association of the SUTIEMS to the provisions of the international Conventions which might be applicable; (2) it is not true that Mr Pablo Galeote García and Mr Nayeli Flores Sandoval were dismissed, because their contracts of employment with the IEMSDF expired on 31 December 2009, and there was therefore no anti-union discrimination or any violation of their labour rights; (3) it is not true that there has been persecution and harassment against the IEMSDF employees affiliated to the SUTIEMS, given that, as the documentation submitted by the union itself shows, the workers concerned were able to carry on their union activities without any restrictions beyond those provided for by law; and (4) it is the complainant union that is currently party to the collective agreement, not the previous minority union.*
- 875.** *The Committee observes that, while the complainant union maintains that the non-renewal of the employment contracts of the two union members in question constitutes reprisal for their meeting with two union officials, the IEMSDF (the employer of the two union members) denies that there was any anti-union discrimination and that there had been any meeting with a senior official to inform them that their contracts were not going to be renewed, and emphasizes that the employment contracts of these two workers were of fixed-term and ended on 31 December 2009 in accordance with the terms of the contacts.*
- 876.** *The Committee notes that the complainant has not provided the supplementary information which it has been invited to provide. In these circumstances, the Committee will not pursue its examination of the case.*

### **The Committee's recommendation**

- 877.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

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CASE NO. 2774

DEFINITIVE REPORT

**Complaint against the Government of Mexico  
presented by  
the Single Trade Union of Workers of the  
Potosí Glassworks Company (SUTEIVP)  
supported by  
the International Federation of Chemical, Energy, Mine and  
General Workers' Unions (ICEM)**

*Allegations: Anti-union dismissals at the Potosí  
Glassworks Company and failure of the  
authorities to take appropriate action*

- 878.** The complaint was presented in a communication from the Single Trade Union of Workers of the Potosí Glassworks Company (SUTEIVP) dated 22 March 2010. The International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) associated itself with the complaint in a communication dated 6 May 2011.
- 879.** The Government sent its observations in a communication dated 2 March 2011.
- 880.** Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 881.** In its communication dated 22 March 2010, the SUTEIVP alleges that on 19 January 2008 its Secretary-General presented the competent authority with a list of demands and notice of strike action against the Potosí Glassworks Company (*Industria Vidriera del Potosí, SA de CV*), in order to obtain compensation for its violations of the collective labour agreement entered into with the company. The complainant organization adds that since 26 January 2008, the company has dismissed 207 employees, 14 of whom were members of the union's executive board or of its vigilance and justice committee, with no legal justification whatsoever. Thereupon, the competent authorities declared publicly that the company was entitled to dismiss whoever it wished. The trade union and its dismissed members accordingly appealed to the relevant juridical authorities to defend their rights.
- 882.** According to the complainant organization, the Secretariat of Labour and Social Welfare of the government of the State of San Luis Potosí (STPS-SLP) failed to take appropriate measures in defence of the rights guaranteed under ILO Conventions Nos 87 and 135, and publicly justified the dismissal of hundreds of workers, including union officials. It claims that this is part of a series of measures aimed at depriving the workers of union representation, which is why the company, under the pretence of taking administrative action, has dismissed members of the union's executive board, who are recognized as such by the authorities. By failing or refusing to take action in recognition of this basic right, the authorities responsible for the administration of justice in labour matters have left the members of the SUTEIVP without any means of defence.

**883.** The complainant organization believes that the company's measures are its response to a series of steps taken fully within its legal rights by the union, such as its notice of strike action to demand the revision of the collective agreement.

## **B. The Government's reply**

**884.** In its communication dated 2 March 2011, the Government states that, though the SUTEIVP makes general allegations concerning violations by the STPS-SLP of the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Workers' Representatives Convention, 1971 (No. 135), it does not relate the specific violations to the provisions of the Conventions, or does it explain what they consist of, which makes it difficult to examine the matter properly.

**885.** While the Potosí Glassworks Company is domiciled in the city of San Luis Potosí, the labour jurisdiction by which it is bound is federal, by virtue of article 123/XXXI/20(a) of the Mexican Constitution. The STPS-SLP thus has no jurisdiction over labour disputes between the company and its workers. The Government concludes that the SUTEIVP's complaint against that authority has no juridical foundation.

**886.** The Government observes, however, that the STPS-SLP has made its mediation and conciliation services available to the federal labour authorities, albeit merely by way of offering suggestions and serving as a safeguard for the parties to the dispute, in order to maintain stability in the State in terms of industrial relations. The Government adds that the registration of the SUTEIVP's executive board on the basis of which it claims accreditation lapsed on 4 August 2008, as indicated in the registration form. Consequently, the SUTEIVP currently has no formal legitimacy.

**887.** With regard to the alleged failure of the authorities to act in defence of the rights of the workers of the Potosí Glassworks Company, the Government states that there was no such failure on the part of the Federal Conciliation and Arbitration Board, since pursuant to the Board's ruling No. IV-79/2008 the SUTEIVP lost its title to the company's collective labour agreement to the Autonomous Union of Commercial, Industrial, Customs and Allied Employees (SATEC) as it no longer represented the majority of the workers. The decision of the Federal Conciliation and Arbitration Board was based on a meeting held on 9 May 2008 when, at the request of the 478 participants present, a recount was held in which the voting was as follows: for the plaintiff (SATEC), 378 votes; for the defendant (SUTEIVP), 21 votes; abstentions, 79 votes. Given that the vote was not challenged, on 14 May 2008 the plaintiff (SATEC) was recognized as titleholder of the collective labour agreement.

**888.** The Government points out that several channels were open to the SUTEIVP to defend its rights, which it in fact used to provoke incidents and lodge indirect appeals for protection of its trade union rights, alleging procedural errors. These appeals were dismissed, primarily because it was unable to show that it represented a majority of the workers and thus that it was entitled to be the titleholder of the collective agreement. The foregoing demonstrates that the Federal Conciliation and Arbitration Board attended promptly to the matter and at all times protected the interests of the workers and unions in determining which of the latter held the title to the disputed collective agreement. There was thus no such failure of the authorities to act as alleged by the SUTEIVP, nor any violation of Conventions Nos 87 and 135.

**889.** Regarding the dismissal of workers, the Government states that the Potosí Glassworks Company has informed it that, for economic reasons linked to a drop in demand for its products, it has taken a number of steps to maintain the productivity and efficiency of its

plant. These included shutting down one of its four production ovens. As a result of the shutdown, several workers had to be dismissed; in doing so, the company complied with its obligation to compensate them in accordance with the Federal Labour Act. Consequently, since the workers have been duly compensated, it cannot be considered that they have been unjustifiably dismissed.

**890.** For the purposes of the said compensation, on 26 January 2008, the company accordingly deposited, with the Special Board No. 34 of the Federal Conciliation and Arbitration Board, the full amount of final salary and compensation due to each of the 180 workers concerned. Some 150 of these collected the amount due to them from the Special Board and each of them signed a voluntary termination agreement. The workers who did not accept the compensation lodged individual appeals with the competent authorities, which are currently sub judice.

**891.** In conclusion the Government states that:

- the Federal Conciliation and Arbitration Board took action promptly to protect the interests of the workers at all times and gave the trade unions the opportunity to determine which of them was entitled to hold the title to the disputed collective agreement. The authorities were therefore not guilty of the failure to act alleged by the SUTEIVP, and Conventions Nos 87 and 135 have thus not been violated;
- it is not true that the STPS-SLP failed to take action to protect the workers' rights, given that constitutionally the power to do so lies with the Federal Conciliation and Arbitration Board, which at all times defended the interests of the trade union and of its members; and
- the SUTEIVP lost its title to the collective labour agreement because it no longer represented a majority of the workers, in favour of the SATEC.

**892.** In the light of the foregoing, the Government requests that the Committee rule that the present case does not call for further examination.

### **C. The Committee's conclusions**

**893.** *The Committee notes that in the present case the complainant alleges that since 26 January 2008 the Potosí Glassworks Company has dismissed 207 employees, 14 of whom were members of the union's executive board, or of its vigilance and justice committee, after the union presented the company on 19 January 2008 with a list of demands and notice of strike action. According to the complainant organization, there is no legal justification for the dismissals, which continue to deprive the workers of union representation owing to the failure of the authorities to take appropriate action.*

**894.** *The Committee notes the Government's statement that: (1) the company has informed it that the dismissals were for economic reasons following a drop in demand for its products that obliged it, inter alia, to shutdown one of its four ovens; (2) 180 workers were dismissed, of whom some 150 received the compensation due to them and signed a voluntary termination agreement, while the remainder lodged individual appeals with the authorities that are currently sub judice; (3) in May 2008, by a broad margin, the complainant organization lost to the SATEC its title to the collective agreement, without any objection being raised to the vote carried out by the workers according to the law; and (4) the San Luis Potosí authorities have assisted the federal labour authorities (to whom the matter was submitted) in the process of mediation and conciliation between the parties, by offering suggestions and serving as a safeguard for the parties to the dispute.*

- 895.** *The Committee concludes that the versions of events provided by the complainant and by the Government are very different, the former claiming that the large number of dismissals aimed at denying the workers trade union representation following the submission of a list of demands and notice of strike action, while the Government refers to a collective dismissal for economic reasons owing to the need to shut down one of the company's ovens.*
- 896.** *The Committee notes that, according to information provided by the Government, 150 workers signed an agreement with the company and received compensation and that only 30 workers or so lodged official appeals that are currently sub judice.*
- 897.** *In the light of the foregoing, and observing that 30 workers decided to resolve the issue of their dismissal through judicial channels, the Committee emphasizes the importance of their appeals being ruled upon within a reasonable period of time; it trusts that the relevant judicial authority will issue its ruling in the very near future and that, if it transpires that the dismissals were for anti-union reasons, appropriate steps will be taken to remedy the situation.*

### **The Committee's recommendation**

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

*The Committee emphasizes the importance of the judicial appeals being ruled upon within a reasonable period of time; it trusts that the relevant judicial authority will issue its ruling on the dismissal of certain workers in the very near future and that, if it transpires that the dismissals were for anti-union reasons, appropriate steps will be taken to remedy the situation.*

CASE NO. 2802

DEFINITIVE REPORT

**Complaint against the Government of Mexico  
presented by  
the National Trade Union of Workers in Higher Education  
and Decentralized Public Institutions (UNTEMS)**

***Allegations: Non-renewal of the contracts of members of the complainant organization for attending a union meeting***

- 899.** The complaint was presented in communications dated 16 and 18 December 2009 from the National Trade Union of Workers in Higher Education and Decentralized Public Institutions (UNTEMS). The organization sent additional information in a communication dated 22 February 2010.
- 900.** The Government sent its observations in a communication dated 18 October 2010.

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

## A. The complainant's allegations

902. In its communications dated 16 and 18 December 2009, UNTEMS alleges that on 15 December 2009, the Director for Legal Affairs of the Graduate College of the State of Chiapas, Jorge E. Ross Coello, formally summoned members of the complainant organization, Juan Luis Romero Gálvez and Alonso Castro Azamar, to a meeting on labour issues to discuss two constitutional principles, one concerning the non-retroactivity of sanctions against individuals and the other the guarantee of legality. However, at the meeting Jorge E. Ross Coello informed them that he had been personally instructed by the Director-General of the College, Rodrigo Antonio Váldez Avendaño, to ask them both to hand in their resignation for 31 December 2009. This the workers refused to do, as there was no legal or administrative grounds for them to do so, and certainly no reason connected with their work that justified their resigning.

903. UNTEMS states that this repressive attitude towards its members came on the heels of a meeting at which one of its representatives had informed the Director for Legal Affairs of the union's existence and of the intention of employees of the College to join it.

904. UNTEMS goes on to explain that in recent months employees of the College had manifested their dissatisfaction with the union of which they were members at the time because of the apathy with which it had handled the institution of a single salary for employees of the College throughout the country and the matter of their declining salaries. A group of employees had therefore decided to resign from their existing union and join UNTEMS (the complainant organization), which has almost 30 members in the 21 States of Mexico.

905. UNTEMS claims that from that moment on the workers had been facing a repressive attitude on the part of the Director for Legal Affairs, who on 15 December 2009 brought pressure to bear on them to resign as from 31 December for having made public their decision to leave their existing trade union, the Single Union of Employees of the Graduate College of the State of Chiapas (SUICOBACH), which no longer represented them, and to join UNTEMS.

906. UNTEMS also denounces circular CBC.DJ.2009.0027 (copy of which it attached) issued by the Director for Legal Affairs of the College on 16 December 2009 in which he refused to recognize any trade union other than SUICOBACH, which is the titleholder of the collective labour agreement.

907. In its communicated dated 22 February 2010, UNTEMS states that Rafael Alonso Vázquez and Juan Luis Romero Gálvez have since been dismissed from the College.

## B. The Government's reply

908. In its communication dated 18 October 2010, the Government states that, although UNTEMS makes general allegations concerning violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Workers' Representatives Convention, 1971 (No. 135), it does not specify which violations it is referring to and nowhere in its complaint does it establish any link between the Government's alleged violations of the organization's freedom of association and the provisions of international labour standards that they might concern. UNTEMPS'

recriminations against various Mexican authorities are thus totally vague. Nevertheless, the Government wishes to reply to the allegations presented.

- 909.** With regard to the allegation that the Director for Legal Affairs of the Graduate College of Chiapas summoned Juan Luis Romero Gálvez, Alonso Castro Azamar and Rafael Alonso Vázquez to a meeting to dismiss them, the Government states that UNTEMS cites as proof a copy of communications from the Director for Legal Affairs dated 15 December 2009, summoning Juan Luis Romero Gálvez and Alonso Castro Azamar to a meeting the same day and a copy of a communication dated 14 January 2010, informing the area coordinators of the College of the termination of its employment relationship with Rafael Alonso Vázquez and Juan Luis Romero Gálvez. The Government states that neither of these documents indicates that the Director for Legal Affairs requested their resignation, however.
- 910.** With regard to Juan Luis Romero Gálvez and Rafael Alonso Vázquez, the Government states that their employment contracts with the Graduate College ran from 16 July to 31 December 2009. As to Alonso Castro Azamar, it denies that he was dismissed in December 2009 since he continued in his employment until 1 July 2010, when he was seconded to the Subdirectorate of Higher Education responsible for academic matters and where he retained his “B” technician grade; as from 5 July 2010, he ceased going to work of his own volition. It is therefore false to claim that Juan Luis Romero Gálvez, Rafael Alonso Vázquez and Alonso Castro Azamar were asked to resign.
- 911.** With regard to the allegation that the Graduate College adopted a repressive attitude towards workers for having made public their decision to resign from the trade union (by way of proof the complainant organization refers to a copy of circular CBC.DJ.2009.0027 of 16 December 2009), the Government points out that UNTEMS fails to mention that by circular CBC.DJ.2009.0029 of 18 December 2009 (a copy of which it attached) the Director for Legal Affairs of the College annulled circular CBC.DJ.2009.0027.
- 912.** The Government states that the Graduate College of the State of Chiapas denies that there is any repression within its walls or a preference for one trade union over another, or that any of its workers are being harassed, since no attempt has ever been made to restrict their freedom to join the trade union of their choosing. The College complies fully with Article 358 of the Federal Labour Act, to the effect that no one can be obliged to join or not to join a trade union.
- 913.** The fact that several employees of the College should have voiced their dissatisfaction with SUICOBACH and should therefore have joined UNTEMS shows clearly that there is a conflict between the two unions for the title to the collective agreement (currently held by SUICOBACH for the period 2010–12). In its *Digest of decisions and principles*, the Committee on Freedom of Association has stated that “A matter involving no dispute between the Government and the trade unions, but which involves a conflict within the trade union movement itself, is the sole responsibility of the parties themselves.” Despite this, the Graduate College has on several occasions met the members of both trade unions to discuss matters.
- 914.** It can thus be concluded that there has been no repression or harassment of UNTEMS members, that its claims that the Government is not complying with ILO Conventions and violating freedom of association are false and unsubstantiated, since in fact the supposed dispute referred to by UNTEMS is a conflict between trade unions on which it is not for the Committee to rule. In the light of the foregoing, the Government requests that the case be considered closed.

## C. The Committee's conclusions

- 915.** *The Committee observes that in this case the complainant organization alleges that the Director for Legal Affairs of the Graduate College of the State of Chiapas asked Mr Juan Luis Romero Gálvez and Mr Alonso Castro Azamar to hand over their resignation and that this followed a meeting between UNTEMS' Secretary-General and the Director for Legal Affairs, at which the latter was informed of the existence of the trade union and of the intention of employees of the College to join it and to resign from their existing union (SUICOBACH) because of the apathy with which it had tackled the issue of the workers' declining salaries. The complainant organization states that on 14 January 2010, UNTEMS members Juan Luis Romero Gálvez and Rafael Alonso Vázquez (an employee who was not mentioned in the initial complaint) were dismissed from the Graduate College.*
- 916.** *The Committee notes the Government's explanation that: (1) the complainant organization has not presented any document proving that the Director for Legal Affairs of the College asked for the resignation of Mr Rafael Alonso Vázquez and Mr Juan Luis Romero Gálvez; (2) the employment contracts of these two employees ran from 16 July to 31 December 2009, and it is therefore untrue that they were asked to resign; (3) it is not true that Mr Alonso Castro Azamar was dismissed in December 2009, since he continued working until 1 July 2010 when he stopped going to work of his own volition; and (4) the College denies that there is any repression within its walls or a preference for one trade union over another, or that any of its workers are being harassed since no attempt has ever been made to restrict their freedom to join the trade union of their own choosing.*
- 917.** *In the light of the explanations provided by the Government, the Committee does not intend to pursue its examination of the allegations any further, especially since the complainant organization has not informed it of any judicial appeal that it might have lodged with the authorities and has not made use of its right to submit additional information.*
- 918.** *The Committee notes further the allegation that the Director for Legal Affairs of the Graduate College issued a circular on 16 December 2009 (which the complainant organization attached) which read as follows:*

*The single trade union that is officially and legally recognized by the Federation and by the local State Conciliation and Arbitration Board is SUICOBACH, whose Secretary-General is Víctor Manuel Pinot Juárez. The area directors of educational establishments and all the teaching and administrative personnel under their responsibility are accordingly requested to comply with this provision and to ensure that no group or committee other than those of SUICOBACH be given access to any such establishment.*

- 919.** *The Committee underlines that the circular was not in conformity with the freedom of association principle. The Committee notes, however, the Government's statement that the above circular was annulled by order of the Director for Legal Affairs two days later, on 18 December 2009, and that, according to the Graduate College, it has on several occasions met the members of the complainant organization and of SUICOBACH to discuss matters. The Committee also notes that, according to the Government, there is a dispute between the two trade unions as to which should be the titleholder (currently SUICOBACH) of the collective agreement, which is due to lapse in 2012.*

## The Committee's recommendation

- 920.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

CASE NO. 2533

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

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

- **the Federation of Fishing Industry Workers of Peru (FETRAPEP)**
- **the National Federation of Mine, Metal and Steel Workers of Peru (FNTMMSP) and**
- **the General Confederation of Workers of Peru (CGTP)**

*Allegations: The complainant organizations allege dismissals and suspensions of trade union officials and members, as well as obstruction of collective bargaining in fishing industry enterprises; collective bargaining with minority unions in a mining enterprise; and violations of trade union rights in a textile company*

- 921.** The Committee last examined this case at its meeting in March 2010 and on that occasion submitted an interim report to the Governing Body [see 356th Report, paras 1050–1074, approved by the Governing Body at its 307th Session].
- 922.** The Government sent new observations in communications dated 26 February 2010 and 7 February 2011.
- 923.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Previous examination of the case**

- 924.** When it examined this case at its meeting in March 2010, the Committee made the following recommendations [see 356th Report, para. 1074]:
- (a) As to the allegations regarding the enterprise Pesquera San Fermín SA concerning the dismissals of the last general secretaries of FETRAPEP, Mr Eugenio Caritas and Mr Wilmert Medina Campos, and of member Mr Richard Veliz Santa Cruz and the pre-dismissal letters sent to Mr Juan Martínez Dulanto, records and archives secretary, Mr Ronald Díaz Chilca, discipline, culture and sport secretary, and Mr Freddy Medina Soto, member, the Committee hopes that the inspection of the enterprise referred to by the Government will be carried out without delay and that it will cover all the pending allegations. The Committee requests the Government to keep it informed in this regard.
  - (b) The Committee yet again urges the Government to inform it of the outcome of the inspection visits to the enterprise Alexandra SAC regarding the allegations of non-recognition of the union and harassment of its members.
  - (c) The Committee requests the Government to: (1) take the necessary steps, as ordered by the judicial authority, to reinstate all those workers belonging to the Union of Workers of CFG Investment SAC at the Chancay plant dismissed for anti-union reasons – including eight members of the executive committee and the members of the committee negotiating the list of claims and the 11 union members who were reinstated only to be

yet again dismissed; (2) put an end to the acts of anti-union discrimination involving wage increases granted exclusively to non-unionized workers; (3) reinstate negotiations concerning the list of claims, should the trade union organization so wish; and (4) report on the enforcement of the fine imposed on the enterprise for anti-union acts. The Committee requests the Government to keep it informed regarding any steps taken in this regard.

- (d) The Committee expresses the hope that the process of registering the amendments to FETRAPEP's by-laws and its official records will be completed as quickly as possible, and requests the Government to keep it informed in this regard.
- (e) With regard to the allegations presented by the CGTP (non-recognition of the Single Union of Workers of Textiles San Sebastián SAC, refusal to apply the check-off facility for the collection of union dues, refusal to provide a notice board, refusal to bargain collectively, outsourcing of production with a view to restricting the exercise of freedom of association, transfer of unionized workers, and dismissal of the union's General Secretary, secretary for workers' rights and another member), the Committee notes that fines have been imposed on the enterprise due to the challenges filed, and instructions have been issued regarding their collection. The Committee once again urges the Government to take the necessary measures without delay to ensure that the enterprise reinstates the dismissed officials and workers with the payment of wage arrears, recognizes the union, rectifies the anti-union measures taken against it, and refrains from adopting any such measures in the future. The Committee requests the Government to keep it informed of developments.

## **B. The Government's replies**

**925.** In its communication of 26 February 2010, the Government recalls that in its previous reply it had explained the action undertaken by the administrative labour authority, involving inspections which revealed that the companies concerned by the complaint had contravened social and labour standards as a result of which they had been the subject of proceedings which had resulted in fines which in a number of cases had been paid.

**926.** The Government refers, first, to the allegations regarding the company Pesquera San Fermín SA concerning the dismissals of the last general secretaries of the FETRAPEP, Mr Eugenio Caritas and Mr Wilmert Medina Campos, and of union member Mr Richard Veliz Santa Cruz, and pre-dismissal letters sent to Mr Juan Martínez Dulanto, records and archives secretary, Mr Ronald Díaz Chilca, discipline, culture and sport secretary, and Mr Freddy Medina Soto, member, and to the inspection visits at the company Alexandra SAC to investigate allegations of non-recognition of the union and harassment of its members. In this regard the Government indicates that the labour inspectorate carried out an inspection visit and found that Pesquera San Fermín SA was no longer operating at the premises visited, and for that reason it was proposed that the inspection order should be set aside, given that the company COPEINCA SA was now operating at that location and one of the company's workers, who did not identify himself, indicated that the company Pesquera San Fermín SA had been closed down. The Government points out that according to the labour inspection directorate, no inspection orders were issued for the company Alexandra SAC.

**927.** The Government refers to the recommendation by the Committee requesting that the Government take the necessary steps, as ordered by the judicial authority, to reinstate all those workers belonging to the Union of Workers of CFG Investment SAC at the Chancay plant (SITRACICH) dismissed for anti-union reasons, including eight members of the executive committee and the members of the committee negotiating the list of claims and the 11 union members who were reinstated only to be yet again dismissed; put an end to the acts of anti-union discrimination involving wage increases granted exclusively to non-unionized workers; reinstate negotiations concerning the list of claims, should the trade union organization so wish; and report on the enforcement of the fine imposed on the

enterprise for anti-union acts. The Committee requested the Government to keep it informed of any steps taken in that regard. In this regard, the Government indicates that following an inspection on 1 July 2009, the company was fined a total of 18,216 Peru nuevos soles (PEN). The company lodged an appeal, and as a result the labour inspection directorate decided to partially revoke the aforementioned ruling since the labour inspectors had not demanded to put an end to discriminatory practices and to adjust the wages of unionized workers in line with those of their non-unionized fellow workers. The fine was reduced to PEN12,144, but the other points were confirmed.

- 928.** As regards the other previous labour inspection in 2008, the penalty procedure with regard to one specific point was set aside in view of the fact that the delivery of payslips of 17 workers by the company concerned was conformed.
- 929.** In the labour inspection of 2009, as regards the alleged non-recognition of the trade unions, it was found that in fact there were two recognized unions at the company: the SITRACICH, to which the complaint before the Committee refers; and the Union of Workers of Pesquería CFG Investment SAC PISCO; both of these have been duly registered. The labour inspection confirmed that union dues had been deducted from pay and credited to SITRACICH, and a collective agreement had been signed with the union in question for the period 2006–10.
- 930.** It has also been confirmed that to date, workers Orlando Ojeda Cañamero, Marcelino Flores Sánchez, Juan Carlos Duque Centi and Marcos Rosas Cáceres have been reinstated in their position by court order. As regards the dismissals of trade union officials and members, it is on record that judicial proceedings to annul the dismissals were initiated by a group of workers, but there is as yet no information on the status of those proceedings, and information on this will be provided as soon as it is received.
- 931.** As regards the Committee's recommendation expressing the hope that the process of registering the amendments to the by-laws and the registration of the official records of the executive committee of the trade union of the CFG Investment of the Planta Chancay would be concluded in the near future, the Government indicates that the Union Registration Division on 20 February 2009 approved the amendments to the by-laws and issued the automatic registration record of the executive committee membership headed by its General Secretary Wilmert Medina Campos, for the period 19 February 2009 to 18 February 2010.
- 932.** As regards the measures adopted to verify the allegation regarding non-recognition of the Single Union of Workers of Textiles San Sebastián SAC, and the refusal by that company to apply the check-off facility, refusal to bargain collectively, the transfer of unionized workers and dismissals of union officials, including the general secretary and the secretary for defence, among others, the Government indicates that an inspection visit at the company gave rise to a contravention notice with a proposed fine of PEN5,325.
- 933.** The Government concludes that it is clear from the above that when companies have infringed social and labour standards, they have been subjected to penalty proceedings and appropriate fines have been recommended. As regards the issue of alleged arbitrary dismissals that are now the subject of judicial proceedings. The Government indicates that it should be noted that accordingly to section 4 of the unified text of the Organic Law respecting the Judiciary, the administrative labour authority must refrain from giving any ruling on the issue and failure to adhere to this would mean criminal liability for the officials concerned. Nevertheless, the judicial authority will be requested to report on the outcome of all proceedings linked to the complaint that has been made and this will be communicated to the ILO.

934. In its communication dated 7 February 2011, the Government states that the enterprise Pesquera San Fermín SA has been taken over by Corporación Pesquera Inca, which maintains an employment relationship with three of the trade union officials and trade unionists mentioned in the complaint; two trade unionists went to work for other enterprises and the remaining one (Mr Wilmert Medina) has initiated legal action for wrongful dismissal, which is currently being processed. The Government also indicates that the enterprise Alexandra SAC has merged with the enterprise CFG Investment SAC, where a number of labour inspections have been carried out, which found that trade union leave was regularly granted, salary increases were no longer given for anti-union motives and trade union dues were still being deducted; according to the last labour inspectorate report there are no longer any anti-union practices at the enterprise. Lastly, with respect to the enterprise Textiles San Sebastián SAC, the Government states that it has ordered a further investigation into the CGTP's allegations in order to provide the ILO with the necessary information.

### C. The Committee's conclusions

935. *As regards the allegations concerning Pesquera San Fermín SA (dismissal of the two last general secretaries of FETRAPEP and one member, and pre-dismissal letters sent to other union officials and a union member), the Committee notes that in accordance with its recommendations, the Government ordered an inspection visit at the company's premises and found that it was no longer operating at the location in question; the enterprise in question had been taken over by Corporación Pesquera Inca, which maintains an employment relationship with three of the trade unionists and trade union officials; two trade unionists went to work for other enterprises and the remaining one (Mr Wilmert Medina) has initiated legal action for wrongful dismissal, which is currently being processed. In these circumstances, the Committee requests the Government to keep it informed of the outcome of the action for wrongful dismissal initiated by the trade union official Mr Wilmert Medina.*
936. *As regards the alleged non-recognition by the company Alexandra SAC of the trade union, the Committee notes the Government's statement to the effect that this enterprise was transferred to the enterprise CFG Investment SAC. This matter will be addressed in the following paragraph, which provides information about the signing of a collective agreement.*
937. *As regards the allegations concerning CFG Investment SAC at the Chancay plant, the Committee notes with interest that according to the Government the labour inspectorate has found that the union mentioned in the complaint (SITRACICH) and another union have been duly registered and recognized, that SITRACICH benefits from the check-off of trade union membership dues, and has concluded a collective agreement for the period 2006–10. The Committee notes that following a labour inspection which found that anti-union practices had taken place, the company was fined PEN12,144 (US\$3,886) and ordered to end all discriminatory acts, and to adjust the pay of unionized workers in line with that of other workers (as the Committee had requested). The Committee notes that between December 2009 and January 2010 the labour inspectorate found that trade union leave was regularly granted, salary increases were not given for anti-union motives and trade union dues were still being deducted, concluding that no anti-union practices were taking place.*
938. *As regards the alleged dismissal of eight members of the executive committee, the members of the committee negotiating the list of claims and 11 union members who were reinstated and then dismissed again, the Committee notes that the Government reports the reinstatement of four trade unionists and the fact that the others have initiated judicial proceedings, of which the Committee will be kept informed, and that the administrative*

authority must refrain from giving any ruling on such dismissals which are the subject of judicial proceedings, and by doing so an official would make himself liable to criminal proceedings. Under these circumstances, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings initiated following the dismissal of trade union officials and members working at the company CFG Investment SAC, and expects that the judicial authority will give a ruling on these dismissals without delay.

- 939.** Moreover, the Committee notes with interest the fact that, as it had requested, the Trade Union Registration Division approved the amendments to the by-laws of the trade union of the CFG Investment of the Planta de Chancay, and the union's executive committee has been registered.
- 940.** Lastly, as regards the allegations concerning the enterprise Textiles San Sebastián SAC, the Committee wishes to reiterate its previous conclusions on the allegations in question: [see 356th Report, paras 1071 and 1072]:

With regard to the allegations presented by the General Confederation of Workers of Peru (CGTP) (non-recognition of the Single Union of Workers of Textiles San Sebastián SAC, refusal to apply the check-off facility for the collection of union dues, refusal to provide a notice board, refusal to bargain collectively, outsourcing of production with a view to restricting the exercise of freedom of association, transfer of unionized workers, and dismissal of the union's General Secretary, secretary for workers' rights and another member), the Committee, while taking note of the fine of PEN103,500 (US\$36,315.79) imposed on the enterprise, and taking into account the fact that the veracity of the allegations has been confirmed by the administrative authority, once again requested the Government, in addition to implementing the sanction imposed, to take the necessary measures without delay to ensure that the enterprise reinstates the dismissed officials and workers with the payment of wage arrears, recognizes the union, rectifies the anti-union measures taken against it, and refrains from adopting any such measures in the future. The Committee further requested the Government to promote collective bargaining between the parties and to keep it informed of developments. In this regard, the Committee notes that the Government states that: (1) the Regional Directorate of Labour and Employment Promotion of Lima-Callao states in official letter No. 450-009-MTPE/2/12.1 of 12 March 2009 that it submitted a copy of the proceedings to the Office for the Administration of Fines for enforcement of said fine, thus concluding that procedure No. 1756-2007 had been completed and was closed; and (2) its response takes account of the active participation of the Administrative Labour Authority in the process of dealing with the issue raised by FETRAPEP and the CGTP, referring to various inspection activities that were carried out, the results of which demonstrate that when the enterprises concerned have violated social and labour laws they have been sanctioned, it being recommended that the corresponding fines be imposed, with the corresponding enforcement processes currently ongoing.

In these circumstances, while noting that instructions have been issued regarding the collection of the fines imposed, the Committee once again requests the Government to take the necessary measures without delay to ensure that the enterprise reinstates the dismissed officials and workers with the payment of wage arrears, recognizes the union, rectifies the anti-union measures taken against it, refrains from adopting any such measures in the future and promotes collective bargaining between the parties. The Committee requests the Government to keep it informed of developments in this regard.

- 941.** The Committee notes that the Government in its most recent reply reiterates that the last labour inspection visit to the company in December 2009 gave rise to a contravention notice (failure of a company representative to appear, despite having been invited), with a fine of PEN5,325 (US\$1,704). The Committee regrets that the company has obstructed the work of the labour inspectorate. The Committee also expresses its concern that, according to the annexes provided by the Government, a visit by the labour inspectorate to the company's premises on 13 January 2010 found no activity at all at those premises. The Committee notes that the Government has ordered a further inspection of the enterprise in order to verify the CGTP's allegations and provide the ILO with the necessary

information. In these circumstances, and pending further information from the Government, the Committee reiterates its previous recommendation, as follows:

*With regard to the allegations presented by the CGTP (non-recognition of the Single Union of Workers of Textiles San Sebastián SAC, refusal to apply the check-off facility for the collection of union dues, refusal to provide a notice board, refusal to bargain collectively, outsourcing of production with a view to restricting the exercise of freedom of association, transfer of unionized workers, and dismissal of the union's General Secretary, secretary for workers' rights and another member), the Committee notes that fines have been imposed on the enterprise due to the challenges filed, and instructions have been issued regarding their collection. The Committee once again urges the Government to take the necessary measures without delay to ensure that the enterprise reinstates the dismissed officials and workers with the payment of wage arrears, recognizes the union, rectifies the anti-union measures taken against it, and refrains from adopting any such measures in the future. The Committee requests the Government to keep it informed of developments. [See 356th Report, para. 1074(e).]*

**942.** *The Committee further requests the Government to establish whether the company in question still exists.*

### **The Committee's recommendations**

**943.** *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 keep it informed of the outcome of the action for wrongful dismissal initiated by the trade union official Mr Wilmert Medina against the enterprise San Fermín SA (subsequently taken over by another enterprise).*
- (b) As regards the alleged dismissal by the company CFG Investment SAC of eight members of the executive committee, the members of the committee negotiating the list of claims, and 11 union members who had been reinstated and then dismissed again, the Committee notes that according to the Government, four union members have been reinstated and the others have initiated judicial proceedings. The Committee requests the Government to keep it informed of the outcome of the judicial proceedings initiated following the dismissal of union officials and members working at the company, and expects that the judicial authority will give a ruling on those dismissals without delay.*
- (c) Lastly, with regard to the allegations presented by the CGTP (non-recognition of the Single Union of Workers of Textiles San Sebastián SAC, refusal to apply the check-off facility for the collection of union dues, refusal to provide a notice board, refusal to bargain collectively, outsourcing of production with a view to restricting the exercise of freedom of association, transfer of unionized workers, and dismissal of the union's General Secretary, secretary for workers' rights, and another member), the Committee notes that fines have been imposed on the enterprise as a result of the complaints that have been lodged, and instructions have been issued regarding their collection (including a recent fine for obstructing the activity of the labour inspectorate), but expresses its concern that according to the Government's annexes, a labour inspection visit at the company's premises on 13 January 2010 found that there was no activity at the premises in*

*question. The Committee, as it did in its previous examination of the case, once again urges the Government to establish whether the company in question still exists and, if so, to take the necessary measures without delay to ensure that the enterprise reinstates the dismissed officials and workers with the payment of wage arrears, recognizes the union, rectifies the anti-union measures taken against it, refrains from adopting any such measures in the future, and encourages collective bargaining between the parties. The Committee requests the Government to keep it informed of any measures adopted in that regard.*

CASE NO. 2664

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

**Complaint against the Government of Peru  
presented by  
the National Federation of Miners, Metalworkers and  
Steelworkers of Peru (FNTMMSP)**

*Allegations: The complainant organization alleges that, as a result of the declaration by the administrative authority that a strike was illegal, numerous trade union leaders and members in the mining sector were dismissed; it also alleges that, against this backdrop, two trade union members were murdered*

- 944.** The Committee last examined this complaint at its June 2010 meeting and on that occasion presented an interim report to the Governing Body [see the 357th Report, approved by the Governing Body at its 308th Session, paras 802–815].
- 945.** The Government sent its observations in a communication dated 7 February 2011.
- 946.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Previous examination of the case**

- 947.** In its previous examination of the case, the Committee made the following recommendations [see the 357th Report, para. 815]:
- (a) The Committee requests the Government to take steps to ensure that in future an independent body with the confidence of the parties involved, rather than the administrative authority, is responsible for declaring strikes illegal. The Committee requests the Government to keep it informed of any measures adopted in this regard.
  - (b) As regards the allegations regarding the dismissal of several union leaders and many trade union members in the mining sector following their participation in strikes that were declared illegal by the administrative labour authority, the Committee requests the Government to take the necessary measures to ensure that an investigation into those

allegations is conducted without delay and, if it is found that the workers were dismissed solely because of their participation in the aforementioned strikes, to take the necessary measures to reinstate the 17 workers dismissed by the Southern Peru Copper Corporation and the nine workers dismissed by the mining company Barrick Misquichilca SA, with payment of the wages owed to them, or, if reinstatement is not possible, to take steps to ensure they receive full compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals. The Committee requests the Government to keep it informed in this regard.

- (c) As regards the murders of Manuel Yupanqui and Jorge Huanaco Cutipa, the Committee expects that the investigation currently under way before the national police and the Public Prosecutor will yield specific results without delay and make it possible to identify those responsible. The Committee requests the Government to keep it informed in this regard.
- (d) As regards the allegations regarding the arrest of trade union officials Pedro Candori and Claudio Boza Huanhuayo and trade union member Eloy Poma Canchari for their presumed involvement in the death of a police officer on 24 November 2008 during a roadblock operated by workers of the mining company Casapalca, the Committee requests the Government to send its observations on the matter without delay.
- (e) The Committee calls the Governing Body's attention to the extreme seriousness and urgent nature of this case.

## B. The Government's reply

**948.** In its communication of 7 February 2011, the Government states with regard to the unionized workers dismissed by the Southern Peru Copper Corporation (SPCC) that through official communication No. 1236-2010-2JMI-PJ dated 16 December 2010, the Second Mixed Chamber of the Moquegua Higher Court stated that: (1) Guillermo César Palacios Castillo; (2) Juan José Valdivia Herrera; (3) Jorge Carlos Manchego Alcázar; (4) Jorge Fernando Cavaglia Stapleton; (5) José Tiburcio Lozada Huamna; (6) Juan Flavio Pinto Quispe; and (7) Jacinto Yataco Rejas, were reinstated on 19 October 2009. The reinstatement notice dated 19 October 2009 confirmed that the judicial reinstatement order had been implemented.

**949.** The Government adds that:

- through official communication No. 1236-2010-2JMI-PJ dated 16 December 2010, the Mixed Chamber of Moquegua reported that the application for constitutional protection (*amparo*) lodged by: (1) Jaime Aranibar Aranibar; (2) Orlando Bailón Mamani; (3) Juan Aníbal Chui Choque; (4) César Miguel Delgado Fuentes; (5) Pelagio Espinoza Quiroga; (6) Luis Alfredo Hostia Mendoza; (7) Félix Octavio Marca Madueño; (8) Román Teodoro More Peña; (9) Alberto Salas Rivera; and (10) Adolfo Sosa Sairitupa, and the relevant case file, were referred to the Constitutional Court as the company had initiated its own constitutional grievance proceedings;
- as background to the circumstances referred to above, a copy of the ruling resulting from the hearing, dated 11 July 2009 and handed down by the Mixed Chamber of Moquegua, which partially upheld the ruling of 11 June 2009 that the request for *amparo* was justified in respect of the demand for reinstatement of: (1) Jaime Aranibar Aranibar; (2) Orlando Bailón Mamani; (3) Juan Aníbal Chui Choque; (4) César Miguel Delgado Fuentes; (5) Pelagio Espinoza Quiroga; (6) Luis Alfredo Hostia Mendoza; (7) Félix Octavio Marca Madueño; (8) Román Teodoro More Peña; (9) Alberto Salas Rivera; and (10) Adolfo Sosa Sairitupa, but rescinded the ruling in respect of the demand for payment of costs by the company is provided.

**950.** As regards the unionized workers dismissed by the mining company Barrik Misquichilca SA, the Government indicates that in an unnumbered communication of 8 November 2010 the company states that:

- the proceedings to annul the dismissals and enforce payment of wages initiated by Isaac Godofredo Cueto Lagos against Barrik Misquichilca SA, set out in file No. 391-2008, have been concluded; a copy is provided of Resolution No. 5 of 24 November 2008 by which the Tenth Labour Court of Lima approved the application to withdraw from the proceedings by Isaac Godofredo Cueto Lagos, as a result of which Mr Cueto concluded a court settlement with the company. As a result the proceedings were declared closed and the case was filed.
- the constitutional protection proceedings (*amparo*) initiated by the following former workers: (1) Cusipuma Ñañez, Jorge Abel; (2) Chirapo Mamani, Evaristo; (3) Mendoza Quispe, Javier Miguel; (4) Pachao Eyerbe, Alfredo Concepción; (5) Pérez Barreto, Juan Sebastián; (6) Romero Lucero, Roberto Martín; (7) Vílchez Torres, Didhier Alberto; and (8) Zaconett Quesquesana, Juan Pío, set out in file No. 49944-2008, are still pending a final ruling. A copy is provided of Resolution No. 5 of 22 April 2010, through which the Fifth Civil Chamber of Lima revoked the ruling upholding the *amparo* application and declared it to be irreceivable. Subsequently, the former workers in question initiated their own constitutional grievance proceedings to challenge the resolution. The case is currently still pending a ruling by the Constitutional Court.

**951.** As regards the investigations carried out by the national police and the Public Prosecution Service into the killings of trade union members Jorge Huanaco Tutuca and Manuel Yupanqui Ramos, the Government indicates that official communication No. 514-2010-MTPE/2 sought information from the Ministry of the Interior and that the information provided will be communicated in good time to the ILO.

**952.** As regards the order to detain trade union officials Pedro Candori and Claudio Boza Huanhuayo and union member Eloy Poma Canchan, the Government indicates that on 12 February 2010, the General Confederation of Workers of Peru (CGTP) made a complaint against the Peruvian State for violation of freedom of association of Pedro Candori and Claudio Boza Huanhuayo. In the complaint, the CGTP alleges that Mr Candori and Mr Boza were held in custody for presumed culpable homicide and sought their immediate release (Case No. 2771). The Government states in particular that:

- in an unnumbered resolution dated 25 March 2010, the 46th Court (for defendants in custody) of the Lima Higher Court of Justice ordered the modification of the detention order against Pedro Candori and Claudio Boza Huanhuayo, who were facing trial for an alleged offence against the life, body and health of another (culpable homicide of Captain Giuliano Carlo Villareal Lobatón). The order was replaced with a summons to appear in court, which ordered their immediate release from custody.
- through official communication No. 143-2010-46-FPPL-MP-FN, the provincial criminal prosecutor of Lima stated that on 11 June 2010 the 46th Criminal Court of Lima halted the case and ordered that it be filed, in response to the petition of the provincial prosecutor in order No. 72-2010 of 2 March 2010; and
- subsequently the other party appealed against the order to halt the proceedings. The case is currently pending a ruling by the Second Higher Criminal Chamber.

## C. The Committee's conclusions

953. *The Committee takes note of the Government's observations.*

### Recommendation (a)

954. *The Committee had recalled 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**, fifth (revised) edition, 2006, para. 628], and requested the Government to adopt measures to ensure that in future, an independent body which would have the confidence of the parties involved, rather than the administrative authority, would be responsible for declaring strikes illegal; the Committee requested the Government to keep it informed of any measures adopted in that regard. The Committee notes that the Government supplies no information in that regard. The Committee reiterates its previous recommendations, and once again requests the Government to indicate what are the legal basis on which the Ministry of Labour may declare a strike illegal.*

### Recommendation (b)

955. *As regards the allegations regarding the dismissal of several union leaders and many trade union members (named in the complaint) in the mining sector (17 at one company and nine at another) following their participation in strikes that were declared illegal by the administrative labour authority, the Committee notes with interest the Government's information to the effect that as regards the SPCC, seven workers who had been dismissed were reinstated on 19 October 2009. The Committee also notes with interest that as regards the other ten workers dismissed from the same company, the Government states that: on 11 July 2009, the Mixed Chamber of Moquegua partially confirmed the ruling of 11 June 2009 which upheld the application for constitutional protection (amparo) and ordered the reinstatement of the workers; and (2) on 13 December 2010, the Mixed Chamber of Moquegua stated that the request for amparo submitted by the workers and the case file were referred to the Constitutional Court, as the company had been allowed to initiate proceedings of its own for constitutional grievance. The Committee expects that the Constitutional Court will hand down a ruling quickly, and requests the Government to ensure that the order is given effect without delay. The Committee requests the Government to keep it informed in this regard.*

956. *As regards the dismissal of nine workers at the mining enterprise Barrik Misquichilca SA, the Committee notes the Government's indication that the company has stated that: (1) the proceedings to annul dismissal and ensure payment of wages initiated by Isaac Godofredo Cueto Lagos against the company have been concluded thanks to a court settlement; and (2) the constitutional protection (amparo) proceedings initiated by eight workers are still pending a ruling. The Committee expects that the judicial authority will give a ruling shortly, and requests the Government to keep it informed in this regard.*

### Recommendation (c)

957. *As regards the murders of union members Manuel Yupanqui and Jorge Huanaco Cutipa, concerning which the Committee had taken note of the investigations that were under way before the national police and the Public Prosecutor, the Committee notes the Government's indication according to which it has requested information from the Ministry of the Interior. The Committee recalls that the absence of any ruling constitutes de facto impunity which exacerbates the climate of violence and insecurity and is extremely prejudicial to trade union activities. The Committee deeply regrets that the Government is unable to state that the investigations have resulted in the arrest of those*

responsible for the killings, and requests the Government to keep it informed in this regard.

#### Recommendation (d)

**958.** *As regards the allegations regarding the detention of trade union officials Pedro Candori and Claudio Boza Huanhuayo and trade union member Eloy Poma Canchari for their presumed involvement in the death of a police officer on 24 November 2008 during a roadblock operated by workers of the mining company Casapalca, the Committee notes the Government's indication that the allegations in question have been made in the context of Case No. 2771 [see the 359th Report, Case No. 2771]. Taking this information into account, the Committee will continue its examination of the allegations in the framework of that case.*

#### The Committee's recommendations

**959.** *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 steps to ensure that in future an independent body with the confidence of the parties involved, rather than the administrative authority, is responsible for declaring strikes illegal, and to provide information on the legal basis on which the Ministry of Labour may declare a strike illegal.*
- (b) The Committee expects that the Constitutional Court will give a ruling quickly on the dismissal of ten workers from the SPCC, and requests the Government to take the necessary measures to give it effect without delay. The Committee requests the Government to keep it informed in this regard.*
- (c) As regards the appeal lodged with the Constitutional Court by eight workers dismissed from the Barrik Misquichilca SA mining company, the Committee expects that the judicial authority will give a ruling shortly and requests the Government to keep it informed in this regard.*
- (d) As regards the murders of Manuel Yupanqui and Jorge Huanaco Cutipa, concerning which the Committee had taken note of the investigations that were under way before the national police and the Public Prosecutor, the Committee notes the Government's indication according to which it has requested information from the Ministry of the Interior. The Committee deeply regrets that the Government is unable to state that the investigations have resulted in the arrest of those responsible for the killings, and requests the Government to keep it informed in this regard.*
- (e) The Committee draws the special attention of the Governing Body to this case because of the extreme seriousness and urgency of the matters dealt with therein.*

CASE NO. 2757

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

### **Complaint against the Government of Peru presented by**

- **the General Confederation of Workers of Peru (CGTP)**
- **the Autonomous Confederation of Workers of Peru (CATP) and**
- **the Single Confederation of Workers of Peru (CUT)**

***Allegations: Legal restrictions and difficulties in the exercise of the right to organize and collective bargaining for certain categories of workers***

- 960.** The complaint is contained in a communication from the General Confederation of Workers of Peru (CGTP), the Autonomous Confederation of Workers of Peru (CATP) and the Single Confederation of Workers of Peru (CUT) dated 17 December 2009.
- 961.** The Government sent its observations in a communication dated 8 February 2011.
- 962.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainants' allegations**

- 963.** In their communication dated 17 December 2009, the complainant organizations indicate that national conditions resulting from the application of the national legislation respecting the right to organize and collective bargaining, as well as the application in practice of a policy articulated around undermining the exercise of these rights, are impeding and creating obstacles for a large number of workers in the collective negotiation of their terms and conditions of employment, and that the State has not taken any measures to modify or resolve this situation. The complainant organizations indicate that the following cases are of particular concern: workers with temporary contracts, workers who are victims of employment intermediation and outsourcing, State workers covered by the public careers system and State workers governed by private sector employment rules. In these latter cases, despite their right to organize and collective bargaining being set out in law, the workers are not able to assert these rights effectively in practice. The complainant organizations emphasize that the law and practice referred to have resulted in a drastic fall in the union membership rate and in the coverage of collective bargaining at the national level.

#### ***Lack of recognition of the right to organize in law and practice***

- 964.** *Workers in micro-enterprises.* The complainant organizations indicate that the labour market is characterized by a concentration of over one quarter of the working population in micro- and small enterprises of between one and 20 workers (24.1 per cent) and one-fifth in so-called micro-enterprises. Small and micro-enterprises are subject to specific and different legal rules, with lower standards of protection than those envisaged by the general

rules applying to other workers. The recent reform of the legislation by Legislative Decree No. 1086 provides that “workers in small enterprises shall exercise collective rights in accordance with the rules governing employment in private activities”, but contains no reference to the exercise of the trade union rights of workers in micro-enterprises, who are not covered by legal provisions for the exercise of their right to freedom of association.

**965.** The complainant organizations indicate that, in accordance with the legal rules, 20 workers are required to establish an enterprise union, which implies that those who work in enterprises with fewer than 20 workers cannot establish this type of union. Nevertheless, although the law envisages the establishment of branch unions, which could make it possible for workers in enterprises with fewer than 20 workers to engage in collective bargaining at the branch level, there currently exist very few unions at this level as the legislation decisively discourages the establishment of this type of union by preventing collective bargaining at the sectoral level. Moreover, the Act on collective labour relations provides that, in the event of disagreement between the parties concerning the level at which collective bargaining is first undertaken, it shall take place at the enterprise level. According to the complainant organizations, this demonstrates that the legislation favours enterprise unions and collective bargaining at the enterprise level. There accordingly exists a situation of contradiction designed to prevent in practice access to collective bargaining for the majority of workers in the Peruvian economy.

**966.** *Workers engaged under training arrangements.* The complainant organizations explain that, despite the fact that training arrangements involve the provision of personal and subordinate services, Act No. 28518 does not contain any reference to the possibility of establishing trade unions or engaging in collective bargaining. This means that the workers covered by the Act are prevented from establishing trade union organizations and engaging in collective bargaining and, in practice, there are no trade unions for workers engaged under training arrangements.

**967.** *State workers covered by Administrative Services Contracts (CAS).* The complainant organizations point out that over 60,000 workers in the public administration are covered by this new system of contracts regulated by Legislative Decree No. 1057. This system of engagement, which is of a temporary nature, does not include provisions respecting the exercise of the right to freedom of association of the workers concerned. Moreover, these contracts can be renewed at will and without any limit by employers in public bodies and, according to the complainant organizations, the renewal of contracts is subject to the condition that the workers do not establish or join trade unions. In practice, no trade union organizations for workers covered by the CAS system are registered with the Ministry.

**968.** *Undeclared workers.* The complainant organizations add that a high percentage of the wage-earning population provide services without enjoying the protection afforded by the labour legislation. According to the data of the Ministry of Labour, in 2007, 62.6 per cent of wage earners did not have any type of employment contract. Indeed, the smaller the size of the enterprise unit, the higher the percentage of undeclared workers. The complainant organizations emphasize that there are also high rates of undeclared workers in larger enterprises operating in the formal economy. The lack of political will by the State to enforce the declaration of workers is having a direct impact on the possibility of exercising the right to freedom of association.

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**Workers who, despite the recognition of their right to organize and collective bargaining, are limited in the exercise of these rights in practice**

- 969.** *Workers with temporary contracts.* The complainant organizations indicate that the legislation that is in force encourages the use of temporary contracts. They emphasize the drastic fall in the unionization rate corresponding to the unparalleled increase in temporary contracts, which shows that temporary workers are in a particularly vulnerable situation with regard to anti-union discrimination. In light of this special vulnerability, in the opinion of the complainant organizations, special and reinforced protection should be provided to ensure the effective observance of the right to freedom of association.
- 970.** *Workers subject to outsourcing and employment intermediation.* The complainant organizations indicate that the main effect of outsourcing and employment intermediation in a context of trade union organization at the enterprise level promoted by the law is the fragmentation of production units and the reduction in the number of potential members of enterprise unions, as well as the decline in the coverage of collective bargaining. The complainant organizations add that the law provides that where there is no previous bargaining, in the absence of agreement between the parties on the bargaining level, it shall take place at the enterprise level. Furthermore, if there has already been previous bargaining at the enterprise level, the level at which bargaining takes place cannot be changed without the agreement of the parties. Accordingly, although workers are formally able to negotiate at the enterprise level, such bargaining is not effective as it does not enable workers to enjoy real participation in decisions affecting their terms and conditions of employment.
- 971.** *State workers without participation in the determination of their terms and conditions of employment.* Finally, the complainant organizations indicate that, in the case of State workers covered by the public careers system and by the labour rules governing the private sector, even where their right to establish unions is recognized, their possibilities of engaging in collective bargaining are restricted by various means. The rules applicable to State workers governed by the public careers system formerly envisaged a consultation procedure for the formulation of draft changes to the single remuneration system in the public administration. However, the provisions establishing this participation machinery were repealed, as a result of which trade union organizations do not have any mechanism through which they can participate in the determination of remuneration conditions. Nor is it possible to negotiate conditions of work which do not imply additional budgetary allocations.
- 972.** Moreover, although the Government frequently indicates that the General Labour Bill is currently being examined and that it will take into account the observations made by the ILO supervisory bodies, in reality approval of the Bill is not being promoted, despite the support of 85 per cent of the social partners in a social dialogue process. The General Labour Bill has been among the draft legislations due to be examined by Parliament for over four legislatures, without it actually being included on the agenda of the sessions of the Congress.

**B. The Government's reply**

- 973.** In its communication dated 8 February 2011, the Government indicates that, with a view to promoting freedom of association, the following action has been taken through the Ministry of Labour and Employment Promotion:

- on 18 February 2010, the Office for Consultations with Trade Unions was established with the following functions: (i) to provide legal guidance on collective rights and administrative procedures of interest to them; and (ii) to offer formats and models for by-laws. During the period from February to December 2010, consultations were held with trade unions on 499 occasions;
- on 1 February 2010, a new system was established for the registration of trade union organizations which reduced the processing time from a maximum of three days to three hours from the application being lodged by the officers of the parties to the automatic registration certificate being issued;
- during the period from July 2006 to December 2010, a total of 458 trade unions were registered by the Trade Union Registry Division;
- monthly meetings have been held with the most representative trade union confederations, federations and unions in the country to address their labour-related problems and resolve them immediately, thereby maintaining industrial peace;
- similarly, the claims made by workers' and employers' organizations are duly addressed in the National Labour and Employment Promotion Council (CNTPE), which is the natural forum for dialogue on social and labour issues, as it is the tripartite advisory body of the Ministry of Labour and Employment Promotion.

**974.** The Government adds that four interpretation criteria have been published for application by officials of the Ministry of Labour and Employment Promotion and regional governments with a view to: (i) guaranteeing collective bargaining in any private labour relationship, including where the State is the employer and the trade union represents workers in public employment; (ii) respecting the trade union independence set forth in the rules of trade union organizations, thereby contributing to consolidating trade union organization; (iii) promoting collective bargaining, and allowing the possibility of delegating the representation of trade unions to those that they freely and explicitly select to engage in collective bargaining on their behalf; and (iv) guaranteeing the establishment and registration of trade unions.

**975.** The Government adds that other mechanisms have been introduced: (i) an early warning system for collective disputes at the national level, with a view to addressing, preventing and resolving such disputes in due time; and (ii) an alternative “non-regulated” dispute settlement mechanism known as “extra-procedural meetings”. This mechanism constitutes an additional effort to find an agreed solution to the dispute. It is a mechanism that is designed more to achieve solutions of equity and labour harmony than the strict application of the law; (iii) the General Directorate of Fundamental Rights at Work and Occupational Safety and Health, which is responsible for formulating public policies and developing action to promote fundamental rights at work, including freedom of association and collective bargaining; and (iv) dispute settlement machinery has been promoted and consolidated through conciliation and extra-procedural settlements, based on the training of the responsible officials and the development of basic guidelines for action.

### ***Lack of recognition of the right to organize in law and practice***

**976.** *Workers in micro-enterprises.* The Government indicates that Legislative Decree No. 1086 recognizes in section 3 the right of workers to establish trade unions and non-interference with the right of workers to choose and join, or not, legally established organizations. Accordingly, all workers covered by these provisions enjoy the explicit right to organize, in accordance with the Single Codified Text of the Act on collective labour

relations and its corresponding regulations. The Government adds that it is not valid to argue that the number of workers in this type of enterprise is a limiting factor on the exercise of the right to organize, as the legislation provides that enterprises in which the number of workers is below that required to establish a union may select two delegates to the employer and to the labour authorities.

- 977.** *Workers covered by training arrangements.* The Government explains that vocational training arrangements are special types of agreements combining theoretical and practical learning through the performance of planned activities of capacity building and vocational training. In accordance with the special rules respecting training arrangements, any of five types of agreements for such arrangements may be concluded, each for a specific duration. The parties are under the obligation to comply with the specific requirements set out in each of the arrangements, as is the case for the corresponding plans and programmes for each type of vocational training. The Government emphasizes that these agreements are not subject to the labour legislation in force, but to specific provisions respecting vocational promotion and training, which remains the case provided that such arrangements do not constitute an employment relationship. Finally, the Government indicates that training arrangements do not give rise to labour-related benefits as they do not constitute an employment relationship, unless they meet one of the conditions set out in the rules which change the nature of the relationship.
- 978.** *State workers covered by CAS.* The Government indicates that administrative services contracts are a special arrangement specific to State administrative law. The right to freedom of association for persons covered by CAS was recognized by the Constitutional Court in the plenary jurisdictional ruling dated 31 August 2010 (case No. 00002-2010-PI/TC) and its clarification of 11 October 2010, which found that the necessary regulations needed to be issued so that workers covered by the CAS system could exercise the right to organize and to strike, as set out in article 28 of the Constitution. According to the Government, the ruling indicates that section 1 of Legislative Decree No. 1057 shall be interpreted so that the CAS system is understood as a “special” system of labour contracts for the public sector.
- 979.** *Undeclared workers.* The Government explains that the Ministry of Labour and Employment Promotion, with a view to reducing the informality rate, has undertaken inspection campaigns as part of the Plan for the Declaration of Workers on the Payroll (*Plan Reto*), with the objectives of: (i) extending the coverage of labour inspection to sectors that are not covered by any labour legislation and do not have access to social security; and (ii) strengthening continued guidance and inspection action in various economic sectors with a view to the massive integration of workers into electronic registration and the reduction of the existing informality rate in the country. The Government emphasizes that between December 2008 and December 2010, in the context of the *Plan Reto*, over 34,000 enterprises were inspected, resulting in the registration of almost 41,000 workers.
- 980.** *Precarious and vulnerable workers.* The Government indicates that the new Labour Procedures Act (Act No. 29497) has been approved and was published on 15 January 2010, and constitutes a major reform in this area. A fundamental principle of the reform is the holding of oral hearings, which will make it possible to speed up judicial procedures, reducing them to six months. The new Labour Procedures Act includes the following machinery in relation to freedom of association and collective bargaining: (i) trade unions can participate in labour procedures to represent themselves in defence of collective rights and their leaders and members; (ii) trade unions act in defence of their leaders and members without the need for special authorization for representation, although the claim or challenge must identify each member individually with her or his respective claims; (iii) claims deriving from breaches of the right to non-discrimination in access to

employment or violations of the prohibition of forced and child labour may be lodged by a trade union; and (iv) the trade union, workers' representatives, or any worker or provider of services in the context may act as plaintiffs in cases of breaches of the rights of freedom of association, collective bargaining, strike, occupational safety and health and, in general, when a right corresponding to a group or category of service providers is affected. The Government adds that, as from January 2010, the Ministry of Labour and Employment Promotion has been implementing a programme for the dissemination of the provisions of the new Act at the national level and has coordinated training for trade union leaders. The new Labour Procedures Act is currently being implemented progressively in the judicial districts of the country, and is being welcomed by the parties to procedures.

**981.** *Workers with temporary contracts.* The Government indicates, with regard to the system of employment contracts for non-traditional exports, criticized by the trade union confederations as being one of the types of temporary contract affecting trade union organization, that Legislative Decree No. 22342, the Act to promote non-traditional exports, was developed in the context of a policy to promote non-traditional exports and to create enterprises. For this purpose, special labour rules were adopted under which enterprises may recruit personnel, in the numbers that they require, to cater for the demand for non-traditional exports, provided that the volume of exports amounts to at least 40 per cent of their production. The specific requirements set out in the respective law have to be complied with when this type of contract is concluded. Nevertheless, with a view to ensuring compliance with the conditions established in the Act, and to ensure that it is not open to abuse by export enterprises, in 2008 the Ministry of Labour and Employment Promotion developed guidelines No. 002-2008-MTPE/2/11.4 on "Action to be taken by the labour inspectorate in textile sector enterprises", with a view to preventing the abuse of contracts by textile sector enterprises and achieving compliance with their socio-labour and occupational safety and health obligations.

**982.** The Government adds that the Constitutional Court, in its ruling in Case No. 01148-2010-PA/TC, provided a number of clarifications on the constitutionality of the special labour rules for non-traditional export products envisaged in Legislative Decree No. 22342, including the conditions under which model labour contracts concluded under these special labour rules are no longer covered by the system. In this respect, the Constitutional Court specified that: (i) it is constitutional for workers in an enterprise exporting non-traditional products to be covered by the special labour rules established by Legislative Decree No. 22342; and (ii) a labour contract subject to specific conditions concluded under the special labour rules established by Legislative Decree No. 22342 will no longer be considered to be covered by those rules if it does not explicitly set out the objective reason for the contract, which may be an export agreement, a purchase order or an export production programme. The Government specifies that these rules are currently subject to debate in the Congress of the Republic, as two legislative initiatives have been tabled with the objective of repealing them. The opinions on the draft legislation, which is being given priority, are awaiting examination by the Plenary of the Congress. The Labour Commission has issued a favourable opinion, while that of the Foreign Trade Commission is unfavourable. The Government finally indicates that the national legislation guarantees that workers covered by specific types of contracts and those subject to the rules of the non-traditional export system have the same rights as workers with contracts without limit of time, and that these rights include the right to organize, to collective bargaining and to strike.

**983.** *Workers subject to outsourcing and employment intermediation.* The Government indicates that contracts which envisage the sending of personnel to productive units or the premises of the principal enterprise are not intended to affect the labour rights of workers. Workers engaged under outsourcing arrangements, irrespective of the type of labour contract used, enjoy the right to freedom of association, collective bargaining and to strike.

The Government indicates that the legislation prohibits the use of outsourcing for the purpose of limiting or prejudicing freedom of association, the right to collective bargaining, trade union activities, striking workers or the employment situation of leaders protected by their trade union status. The Government also emphasizes that, in accordance with the law, employment intermediation is void in law where its objective is to undermine or limit the exercise of the collective rights of workers. Accordingly, protection of the exercise of collective rights is guaranteed for workers in these situations. The Government concludes that both sets of rules recognize the right to organize, collective bargaining and to strike, guarantee that it is exercised in a democratic manner and ensure compliance with the fundamental rights of workers.

- 984.** *Workers in the public administration.* The Government emphasizes that the law guarantees the right to freedom of association and collective bargaining of workers in the public sector. Article 42 of the Political Constitution recognizes the right to organize and to strike of public servants, and provides that this does not include State officials exercising decision-making authority or those engaged in positions of trust and executive posts, or members of the armed forces and the national police force. The exercise of the right to collective bargaining by public servants is covered by two sets of regulations, depending on their employment status, whether private or public. The Government indicates that workers in State entities and/or enterprises covered by private employment rules are governed by the provisions of the Single Codified Text of the Act on collective labour relations (TUO of the LRCT), as approved by Supreme Decree No. 010-2003-TR. Nevertheless, the exercise of these rights by public servants must not be in breach of the specific rules restricting their exercise, in accordance with section 1 of the TUO of the LRCT. It adds, with reference to public servants, employees and workers covered by the administrative careers employment system (Legislative Decree No. 276), that they are able to negotiate all matters, with the exclusion of remuneration, as bargaining on remuneration is subject to the limits established by the corresponding budgetary laws.
- 985.** *Promotion of collective bargaining and legislative amendments.* In this respect, the Government indicates that the General Labour Bill is before the Congress of the Republic awaiting adoption. Various legislative amendments were proposed, in particular relating to the Act on collective labour relations and to collective bargaining. The Government adds that the determination of the level of bargaining for unions was discussed by the National Labour and Employment Promotion Council when it examined the General Labour Bill, although consensus was not reached on the issue. The proposal made by the Government at that time left the determination of the bargaining level to the parties, although the Labour Commission of the Congress of the Republic issued an opinion with a replacement text that is awaiting examination by the Plenary of the Congress and which provides that where agreement is not reached, bargaining shall take place at the enterprise level.

### **C. The Committee's conclusions**

- 986.** *The Committee observes that in the present case the complainant organizations allege legal restrictions and difficulties in practice in the exercise of the right to organize and to collective bargaining for certain categories of workers, which is resulting in a decrease in membership rates and in the coverage of collective agreements.*
- 987.** *The Committee notes that according to the complainant organizations: (1) a very significant number of workers do not enjoy explicit recognition of their right to organize and to collective bargaining (workers in micro-enterprises, workers covered by training arrangements, State workers under CAS and undeclared workers); and (2) many workers are not able to give effect to these rights due to difficulties in practice, gaps in the legislation or legal restrictions (workers with temporary contracts, workers subject to*

*outsourcing and employment intermediation, undeclared workers and State workers covered by the labour rules for the private sector).*

- 988.** *The Committee also notes the detailed comments provided by the Government, including the following information: (1) all the categories of workers referred to by the complainant organizations enjoy in law the right to freedom of association and collective bargaining; (2) with regard to collective bargaining and the amendments sought to the Act on collective labour relations, various proposals have been made; and (3) the General Labour Bill is before the Congress of the Republic awaiting adoption.*

### **Lack of recognition of the right to organize in law and practice**

- 989.** *Workers in micro-enterprises. The Committee notes that, according to the complainant organizations, the recent reform of the legislation by Legislative Decree No. 1086 provides that “workers in small enterprises shall exercise collective rights in accordance with the employment rules for private activities”, but contains no reference to the exercise of the trade union rights of workers in micro-enterprises, who are not covered by legal provisions governing their right to freedom of association. The Committee notes that, according to the Government, Legislative Decree No. 1086 recognizes in section 3 the right of workers to establish trade unions and non-interference with the right of workers to choose and join, or not, legally established organizations. Accordingly, all workers covered by these provisions enjoy the explicit right to organize, in accordance with the Single Codified Text of the Act on collective labour relations and its corresponding regulations. The Committee notes in particular the allegation by the complainant organizations that the law provides for the establishment of branch unions, which could make it possible to engage in collective bargaining at that level for workers in enterprises with fewer than 20 workers, but that there currently exist very few unions at that level as the legislation decisively discourages the establishment of this type of union by raising obstacles to collective bargaining at the sectoral level. Micro-enterprises are not sufficiently well represented to be able to enter into bargaining at the enterprise level due to the insufficient number of members, and they encounter obstacles at the sectoral level. The Committee emphasizes the Government’s indication that the determination of the level of bargaining for unions is a matter which was discussed in the National Labour and Employment Promotion Council when it examined the General Labour Bill, but that no consensus was reached, for which reason the Government proposed to amend the legal provisions. The Committee observes that the text which will be examined by the Plenary of the Congress once again limits bargaining to the enterprise level in the event that agreement is not reached on the level of collective bargaining, which was not envisaged in the Government’s proposal. The Committee recalls that the issue of the level of collective bargaining was examined previously in a case relating to Peru (Case No. 2375), in which it found that the level of collective bargaining could be referred to the judicial authorities, for which reason the principle that the determination of the level of collective bargaining is to be left to the parties concerned would be respected in view of this possibility [see 338th Report, November 2005, para. 1222]. The Committee expects that the Government will take the necessary measures to ensure that the determination of the level of collective bargaining is left to the parties concerned.*
- 990.** *Workers covered by training arrangements. The Committee notes that, according to the complainant organizations, Act No. 28518 does not contain any reference to the possibility to establish trade unions or engage in collective bargaining. This implies that the workers covered by the Act are prevented from establishing trade union organizations and from engaging in collective bargaining. The Committee notes that, according to the Government, the agreements concluded (training contracts) are not subject to the labour legislation in force, but to specific provisions respecting vocational promotion and*

training, which remains the case on condition that such arrangements do not constitute an employment relationship. The Committee emphasizes that this issue has already been addressed during the examination of Case No. 1796 and draws the Government's attention to the fact that, in accordance with Article 2 of Convention No. 87, ratified by Peru, all workers – with the sole exception of members of the armed forces and the police – should have the right to establish and join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example, in the case of agricultural workers and self-employed workers in general, who should nevertheless enjoy the right to organize [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 254]. In the Committee's opinion, persons hired under training agreements should have the right to organize. The status under which workers are engaged with the employer, as apprentices or otherwise, should not have any effect on their right to join workers' organizations and participate in their activities [see **Digest**, *op. cit.*, paras 258 and 259]. The Committee therefore requests the Government to take the necessary measures to ensure that this right is guaranteed for the workers concerned in both law and practice.

991. *State workers covered by Administrative Services Contracts.* The Committee notes that, according to the complainant organizations, this system of temporary contracts, governed by Legislative Decree No. 1057, does not include provisions respecting the exercise of the right to freedom of association of the workers concerned. The Committee also notes, in the same way as the Committee of Experts on the Application of Conventions and Recommendations at its session in November–December 2010 in relation to the application of Convention No. 87, that the right to freedom of association of persons covered by CAS was recognized by the Constitutional Court in its plenary ruling dated 31 August 2010 (Case No. 00002-2010-PI/TC) and the clarification dated 11 October 2010, which found that the necessary regulations needed to be issued so that workers covered by the CAS system could exercise the right to organize and to strike, as set out in article 28 of the Constitution. The Committee requests the Government to indicate whether the above regulations have been issued in accordance with the ruling of the Constitutional Court and, if not, to take the necessary measures for their adoption as soon as possible.

**Workers who, despite the recognition of their right to organize and to collective bargaining, are limited in the exercise of these rights in practice**

992. *The Committee notes that, according to the complainant organizations, these difficulties encountered in practice concern three categories of workers, namely: (1) workers with temporary contracts; (2) workers engaged under outsourcing and employment intermediation arrangements; and (3) workers in the public administration.* The Committee also notes the Government's indication that, with a view to promoting freedom of association, monthly meetings have been held with the most representative trade union confederations, federations and unions in the country to address their labour-related problems and resolve them immediately, thereby maintaining industrial peace. The Committee requests the Government to include these difficulties in the points to be discussed during these meetings with the employers' and workers' organizations concerned. The Committee also notes the Government's indication that the General Labour Bill is before the Congress of the Republic awaiting adoption. Various amendments were proposed to the Act on collective labour relations and its regulations. The Committee requests the Government to keep it informed of current legislative reforms and expects that the Committee's conclusions and recommendations will be taken into account when amending the provisions referred to by the complainant organizations with a view to improving the exercise in practice of the rights of freedom of association and collective bargaining.

## The Committee's recommendations

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

- (a) With regard to bargaining levels, the Committee expects that the Government will take the necessary measures to ensure that the determination of the level of bargaining is left to the parties concerned.*
- (b) The Committee requests the Government to take the necessary measures so that the right to organize is guaranteed in both law and practice for persons hired under training agreements.*
- (c) The Committee requests the Government to indicate whether the necessary regulations have been issued so that State workers covered by CAS are able to exercise the right to organize and to strike, in accordance with the ruling of the Constitutional Court, and, if not, to take the necessary measures for their adoption as soon as possible.*
- (d) With regard to the difficulties encountered in practice, the Committee requests the Government to include these difficulties in the points for discussion for inclusion in the meetings with the employers' and workers' organizations concerned.*
- (e) The Committee requests the Government to keep it informed of current legislative reforms and expects that the Committee's conclusions and recommendations will be taken into account when amending the provisions referred to by the complainant organizations with a view to improving the exercise in practice of the rights of freedom of association and collective bargaining.*

CASE NO. 2810

DEFINITIVE REPORT

### **Complaint against the Government of Peru presented by the Autonomous Confederation of Peruvian Workers (CATP)**

***Allegations: Refusal by the authorities to negotiate a list of demands presented by the Trade Union of Employees of the Prime Minister's Office (SITRA PCM)***

**994.** The complaint is contained in a communication from the Autonomous Confederation of Peruvian Workers (CATP) dated 26 July 2010.

**995.** The Government sent its observations in a communication dated 7 February 2011.

996. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

#### A. The complainant's allegations

997. In its communication dated 26 July 2010, the CATP states that employees of the public administration in Peru have not been granted increases in their base salaries for over 15 years. The CATP indicates that its affiliate, the Trade Union of Employees of the Prime Minister's Office (SITRA PCM), represents employees of the Prime Minister's Office (a public body that is part of the executive branch of the central Government of Peru) who are subject to the provisions of Legislative Decree No. 276 on public servants of the central Government.
998. The complainant adds that SITRA PCM presented its first list of demands for 2010, covering the affiliated public servants in communication No. 006-2010-SITRA-PCM/JD, dated 5 March 2010 (file No. 201006196). More than four months later, no reply has been received to date. The complainant states that the absence of a reply from the administrative authority implies a clear act of defiance or lack of desire to engage in good-faith dialogue to find a fair and reasonable compromise between the need to preserve the autonomy of the bargaining parties as far as possible, on the one hand, and the duty of governments to take the necessary steps to overcome their budgetary difficulties, on the other.
999. The CATP points out that the Prime Minister's Office is the main employer among national government bodies, as it is responsible for developing the national general policies governing the State of Peru. It therefore has the obligation and the duty to abide by Conventions to which the State is a party, especially those relating to the promotion and guarantee of the fundamental rights that support trade unions. Freedom of association and collective bargaining are fundamental human rights supporting every worker affiliated to a trade union, which should be guaranteed and promoted by any authority representing the State and having the status of an official and an employer. The budgetary powers vested in the legislative authority should not have the effect of preventing the application of collective agreements concluded directly by that authority on its behalf; however, to the contrary, ever since SITRA PCM was established, obstacles have been placed in the way of the trade union activities of its officers, who are denied the trade union immunity to which they are entitled.
1000. The complainant affirms that, in a social and democratic State governed by the rule of law, the right to bargain collectively is inherent in the right to freedom of association, since the exercise of that right empowers trade unions, enabling them to achieve their essential objective of representing, defending and promoting their members' interests and making the principle of equal opportunity in employment possible, real and effective. In addition, the exercise of the right to collective bargaining is a means of realizing the goal of well-being and social justice in relations between employers and workers, within a framework of good-faith dialogue, wide-ranging discussion, economic coordination and fiscal balance. By failing to reply to SITRA PCM's request, the employer has disregarded the fundamental right to freedom of association and collective bargaining, in violation of the provisions of the Conventions signed and ratified by the State of Peru and the principles stated by the Committee on Freedom of Association.
1001. Lastly, the complainant indicates that Act No. 27411, the General Act on the national budgetary system, in force in Peru, prohibits, in its seventh transitional provision, indexing and increases in pay scales, benefits and bonuses. Act No. 29465, concerning the Budget for the fiscal year 2010, prohibits in subsection 6(1) of section 6 the increase or adjustment of remuneration, bonuses or allowances of any kind in public bodies at the three levels;

there was no consultation of any kind on these laws or on wage fixing in the public sector. These laws make it impossible for public sector trade unions to request approval of their lists of demands asking for financial increases, contrary to the Conventions approved and signed by Peru.

## **B. The Government's reply**

- 1002.** In its communication dated 7 February 2011, the Government states that, by communication No. 5494-2010-PCM/SG dated 8 November 2010, the Prime Minister's Office informed the trade union that, under the new administration that took office in September 2010, there was every intention to respond to the trade union officers and engage in a smooth process of coordination, in order to better address their demands, within the legal framework established by the legislation in force.
- 1003.** The Government adds that the State of Peru, within its regulatory framework, affords full protection to public sector employees, providing for special regulation of the collective bargaining process. In that regard, article 42 of the Political Constitution recognizes the right of public servants to organize and to strike, and stipulates that this does not include public servants of the State with decision-making powers and those in positions of trust or executive posts, as well as members of the armed forces and the national police. The fact that that article does not expressly recognize the right of public servants to bargain collectively cannot necessarily be taken to mean that they do not have that right, since the constitutional provision cited above should be interpreted with other provisions of the Constitution and international treaties and agreements on the subject ratified by Peru, as is the case of the ratified ILO Labour Relations (Public Service) Convention, 1978 (No. 151).
- 1004.** The Government affirms that ILO Convention No. 151 recognizes the right of these workers to bargain collectively and provides that ratifying States shall encourage and promote machinery for negotiation between the State and public employees' organizations. From this it may be concluded that public servants' trade unions have the right to bargain collectively and that this is a constitutionally derived right.
- 1005.** The Government states that the exercise of the right of public servants to bargain collectively is subject to dual regulation, depending on whether they are governed by the labour law applicable to the private or the public sector. Employees of state bodies and/or enterprises subject to private sector labour law are covered by the provisions laid down in the Consolidated Act on collective labour relations, approved by Supreme Decree No. 010-2003-TR. However, under section 1 of the Consolidated Act, the exercise of those rights by public servants shall not be contrary to specific provisions restricting it. In the case of public servants, employees and permanent workers subject to the unified system of remuneration, their right to organize, which includes collective bargaining, is governed by Supreme Decree No. 003-82-PCM, section 4 of which provides that that right cannot be exercised by a trade union in an unrestricted manner, but within the limits laid down by the law.
- 1006.** The Government points out, lastly, that the Prime Minister's Office has expressed its willingness to initiate dialogue with the complainant trade union with a view to finding a rapid solution to its demands, indicating that it will act within the scope of its remit. The Government intends to provide timely information on developments in the present case.

### C. The Committee's conclusions

- 1007.** *The Committee observes that the complainant organization alleges that SITRA PCM presented a list of demands in March 2010 and that no reply has been received to date from the administrative authority.*
- 1008.** *The Committee notes that the Government states that: (1) the State of Peru, within its regulatory framework, affords full protection to public sector employees, providing for special regulation of the collective bargaining process in constitutional and lower ranking provisions; (2) article 42 of the Political Constitution recognizes the right of public servants to organize and to strike, and stipulates that this does not include public servants of the State with decision-making powers and those in positions of trust and executive posts, as well as members of the armed forces and the national police; (3) the fact that that article does not expressly recognize the right of public servants to bargain collectively cannot necessarily be taken to mean that they do not have that right, since the constitutional provision cited above should be interpreted with other provisions of the Constitution and international treaties and agreements on the subject ratified by Peru, as is the case of ILO Convention No. 151; and (4) the right to organize and bargain collectively of public servants, employees and permanent workers subject to the unified system of remuneration is governed by Supreme Decree No. 003-82-PCM, section 4 of which provides that the right to bargain collectively cannot be exercised in an unrestricted manner, but within the limits laid down by the law.*
- 1009.** *The Committee also notes with interest from the Government's reply that by communication dated 8 November 2010 the Prime Minister's Office stated that the new administration which took office in September 2010 has every intention to respond to the trade union officers and engage in a smooth process of coordination, in order to better address their demands and find a rapid solution to them, within the legal framework established by the legislation in force. In these circumstances, the Committee hopes that SITRA PCM and the Prime Minister's Office will be able to reach agreement in the near future and requests the Government to keep it informed.*

### The Committee's recommendation

- 1010.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

*The Committee hopes that SITRA PCM and the Prime Minister's Office will be able to reach agreement in the near future and requests the Government to keep it informed.*

CASE NO. 2813

INTERIM REPORT

**Complaint against the Government of Peru  
presented by  
the Single Union of Workers and Employees of Tubos y Perfiles  
Metálicos SA TUPEMESA (SINUTOE–TUPEMESA)**

*Allegations: The complainant organization alleges that between February and April 2010, after attempting without success to notify Tubos y Perfiles Metálicos SA TUPEMESA of the establishment of the trade union, ten officials and members of the trade union were dismissed and that in pursuing its policy of annihilating the trade union, on 16 July 2010, the company dismissed four more members*

- 1011.** The complaint is contained in a communication from the Single Union of Workers and Employees of Tubos y Perfiles Metálicos SA TUPEMESA (SINUTOE–TUPEMESA) dated 31 May 2010. The complainant organization sent new allegations in a communication dated 15 October 2010.
- 1012.** The Government sent its observations in a communication dated 7 February 2011.
- 1013.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 1014.** In its communication of 31 May 2010, SINUTOE–TUPEMESA states that it was established on 14 February 2010 and that it requested to be registered with the Ministry of Labour and Employment Promotion on 16 February of the same year. The registration certificate was obtained on the same date.
- 1015.** The complainant organization alleges that, on 16 February, it tried to notify the company of the establishment of the trade union, but the company refused to accept it. According to the complainant organization, on the same day the company's Head of Human Resources summoned the workers belonging to the union, instructed them to withdraw from membership of the union and threatened them with dismissal. The complainant organization alleges that he subsequently moved them to a place behind his offices, blackmailed them with insults and threats and forced them to sign blank pieces of paper, stating that they would be used as a guarantee that they would resign from the union.
- 1016.** The complainant organization states that it requested the Labour Inspection to intervene and that, when this intervention took place, the company presented documents with forged signatures of the trade union members stating that they had signed the winding up of their social security benefits. The complainant alleges that on 17 February, without justification and without a formal notice being issued, the company security staff refused entry to three trade union members, Messrs Roberto Pablo Mendiola Chacón, Héctor Paul Roque

Romero and Juan Manuel Atoche Silva (Social Assistance and Welfare Secretary), claiming that general management's instruction was to not allow them entry to work because they had established a trade union.

- 1017.** The complainant organization states that, on 22 February 2010, it tried again, without success, to inform the company of the establishment of the trade union. On the same day, Mr Santos Miguel Ventura Cobeñas, Secretary-General, was refused entry, and security staff told him that this was because he was guilty of having encouraged the other workers to form a trade union. On 23 February, the police statement about this dismissal was made.
- 1018.** The complainant organization alleges that subsequently the company refused entry to Mr Jhoan Luis Vigil Quispe, Occupational Health and Safety Secretary, on 2 March; Mr Antonio César García Manta, Press, Information and Public Relations Secretary, on 3 March; Messrs Gregory Santos Huamán, Defence Secretary, Julio Enrique Lujan Muñoa, Economics Secretary, and Marco Antonio Bolívar Flores on 7 April; and Mr Jhonny Henry Damiano Laupa on 20 April 2010 (according to the complainant, the company had undertaken not to dismiss him in front of the Labour Inspection).
- 1019.** The complainant organization emphasizes that hearings were held in the offices of the Ministry of Labour (on 8, 16 and 23 April) with representatives of the company and the trade union, but that the company neither justified the dismissals nor denied having violated freedom of association. The complainant organization states that, on 23 April 2010, the labour administrative authority ordered the company to reinstate all of the dismissed workers and, by way of confirmation of this requirement, it summoned the parties again on 30 April 2010.
- 1020.** In its communication dated 15 October 2010, the complainant organization states that on 30 April 2010, the Ministry of Labour and Employment Promotion provided it the final report relating to violation report No. 928-2010-MTPE/2/12.3, produced as a result of inspection order No. 5712-2010. According to the complainant organization, it is evident from the text of the report that the company has violated the trade union's constitutional rights to freedom of association. The complainant organization adds that, under the *amparo* judicial proceedings instituted by the ten dismissed officials and workers, in contesting the appeal the company stated that the appellants were dismissed unilaterally by the company. The complainant organization states that, on 12 October 2010, the Second Mixed Court specialized in Constitutional Matters found the appeal of the ten dismissed workers to be well founded and ordered their reinstatement, but that to date they have not been reinstated.
- 1021.** The complainant organization also alleges that, in pursuing its policy of annihilating the trade union, on 16 July 2010, it dismissed four more unionized workers (Messrs Martín Tuesta Oliveira, Luis Alberto Luyo Manco, Luis Alberto Agapito Hernández and Ronald Edgar Camac Inga). According to the complainant organization, these dismissals are part of a manoeuvre to prevent the trade union from continuing (which needs a minimum of 20 workers to exist, as stipulated in legislation).

## **B. The Government's reply**

- 1022.** In its communication of 7 February 2011, the Government reports on actions taken by Peru in relation to the case. As regards the labour sector, the First Subdirectorato of Labour Inspection of the Ministry of Labour and Employment Promotion, in subdirectoral resolution No. 602-2010-MTPE/1/20.41, dated 13 September 2010, imposed on the company TUPEMESA a fine of 13,428 nuevos soles (PEN) for non-compliance in the following areas: (a) acts directed at hindering and restricting the right to organize, and interfering in the establishment and maintenance of the complainant trade union

organization (serious offence); (b) dismissals of trade union officials and union members (serious offence); and (c) failure to display a permanent attendance register to monitor staff entry and exit (minor offence). The Government adds that the notice to pay was issued in procedural decision dated 8 November 2010 to the company being penalized so that it could pay the fine imposed, after approval of the Court of First Instance's ruling.

**1023.** As regards the judiciary, in letter No. 14-2010AA JM-VES-CSJLS/OTT, the Mixed Court of Villa El Salvador issued a copy of the *amparo* proceedings relating to freedom of association brought by Messrs Santos Miguel Ventura Cobeñas, Juan Manuel Atoche Silva, Antonio César García Manta, Jhoan Luis Vigil Quispe, Roberto Pablo Mendiola Chacón, Héctor Paul Roque Romero, Gregory Santos Huamán, Julio Enrique Lujan Muñoa, Marco Antonio Bolívar Flores and Jhonny Henry Damiano Laupa, stating the following: (a) on 12 October 2010, the Mixed Court of Villa El Salvador handed down a judgment finding the appeal lodged to be founded and ruling that the defendant should reinstate the workers involved in their posts, in the same position and at the same pay level that they occupied and enjoyed at the time of their dismissal; and (b) on 25 October 2010, TUPEMESA appealed against the judgment, the application was approved in decision No. 07, of 7 November 2010, and the case was referred to the relevant Labour Chamber. This is the current state of proceedings.

**1024.** The Government states that, as the case is currently going through the courts, in accordance with section 4 of the Organization Act on the Judiciary, as approved in Supreme Decree No. 017-93-JUS, concerning the binding nature of court decisions and principles of justice administration, the administrative authority cannot attend to cases awaiting decision by the judiciary. Notwithstanding the above, the Government will inform the Committee in due course on developments in these proceedings.

### C. The Committee's conclusions

**1025.** *The Committee notes that the complainant organization alleges that between February and April 2010, after attempting without success to notify the company Tubos y Perfiles Metálicos SA (TUPEMESA) of the establishment of the trade union, ten officials and members of the trade union were dismissed (mentioned by name) and that, in pursuing its policy of annihilating the trade union, on 16 July 2010, the company dismissed four more members (also mentioned by name).*

**1026.** *In this regard, the Committee notes that the Government states that: (1) the First Subdirectorato de Labour Inspection of the Ministry of Labour and Employment Promotion imposed on the company the fine of PEN13,428 for non-compliance in the following areas: (a) acts directed at hindering and restricting the right to organize, and interfering in the establishment and maintenance of the complainant trade union organization (serious offence); (b) dismissals of trade union officials and union members (serious offence); and (c) failure to display a permanent attendance register to monitor staff entry and exit (minor offence); (2) the Mixed Court of Villa El Salvador handed down a judgment finding the appeal lodged by the ten dismissed trade union officials and union members under the amparo proceedings relating to freedom of association to be founded and, on 12 October 2010, ordered the defendant to reinstate the workers involved in their posts in the same position and at the same pay level that they occupied and enjoyed at the time of their dismissal; (3) on 25 October 2010, the company appealed against the judgment and the case was referred to the relevant Labour Chamber; and (4) the case is currently going through the courts and the administrative authority cannot attend to cases awaiting decision by the judiciary.*

**1027.** *Deeply regretting the acts of anti-trade union discrimination reported by the Labour Inspection and by the judicial authority in the Court of First Instance, the Committee requests the Government to: (1) inform it as to whether the company has paid the fine imposed by the administrative authority; (2) in the event that the judicial authority of the Court of Second Instance confirms the judgment ordering the reinstatement of the ten dismissed officials and members in their posts, take steps to ensure that the company complies with this judgment immediately; and (3) take the necessary steps without delay to ensure that the company recognizes SINUTOE–TUPEMESA immediately. The Committee requests the Government to keep it informed in this regard.*

**1028.** *The Committee also regrets that the Government has not sent its observations in relation to the allegation that, in pursuing its policy of annihilating the trade union, the company has allegedly dismissed four more union members on 16 July 2010. In these circumstances, the Committee requests the Government to institute an inquiry without delay into these allegations and to keep it informed of developments in this regard and, if it is confirmed that the dismissals were anti-trade union in nature – as happened with regard to the dismissals referred to in the previous paragraph – to take all steps at its disposal to ensure the reinstatement of the workers in question and to penalize the company in relation to these offences.*

### **The Committee's recommendations**

**1029.** *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) Deeply regretting the acts of anti-trade union discrimination reported by the Labour Inspection and by the judicial authority in the Court of First Instance, the Committee requests the Government to: (1) inform it as to whether the company TUPEMESA has paid the fine imposed by the administrative authority; (2) in the event that the judicial authority of the Court of Second Instance confirms the judgment ordering the reinstatement of the ten dismissed officials and members in their posts, take steps to ensure that the company complies with this judgment immediately; and (3) takes the necessary steps without delay to ensure that the company recognizes SINUTOE–TUPEMESA immediately. The Committee requests the Government to keep it informed in this regard.*
- (b) The Committee requests the Government to institute an inquiry without delay into the allegations that four members of the complainant organization were dismissed on 16 July 2010 and to keep it informed of developments in this regard and, if it is confirmed that the dismissals were anti-trade union in nature, to take all steps at its disposal to ensure the reinstatement of the workers in question and to penalize the company in relation to these offences.*

CASE NO. 2745

INTERIM REPORT

**Complaint against the Government of Philippines  
presented by  
Kilusang Mayo Uno (KMU)**

*Allegations: The complainant alleges the implementation of an unofficial “no union, no strike” policy by the Philippines Export Processing Zones Authority (PEZA), in collusion with local and national government agencies. Elements of the anti-union policy include: illegal dismissal of trade unionists, restrictive union registration processes, the closure of companies to obstruct union formation and collective bargaining, interference by local government authorities in union affairs and violation of civil liberties – including assaults, threats, intimidation, harassment, blacklisting, criminalization, abduction and murder of trade unionists*

- 1030.** The complaint is contained in a communication of the Kilusang Mayo Uno (KMU) dated 30 September 2009.
- 1031.** As the Government had not replied at its meeting in May–June 2010, the Committee was obliged to postpone its examination of this case and addressed an urgent appeal for its comments and indicated that even in the absence of these observations, it would present a report at its next meeting on the substance of this case. The Government submitted partial observations in a communication dated 15 November 2010. The Committee launched again an urgent appeal in March 2011 for the Government’s complete observations. To date, no further information has been received.
- 1032.** The Philippines has ratified the Freedom of Association and Protection of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant’s allegations**

- 1033.** The complainant alleges that in the export processing zones (EPZs), an unofficial “no union, no strike” policy exists and is implemented with vigour by the Philippines Export Processing Zones Authority (PEZA) in collusion with local and national government agencies. Moreover, the Government’s policy to provide an environment that is attractive and conducive to foreign investment leads to the systematic denial of trade union rights in the EPZs and industrial enclaves; extreme exploitative conditions also exist as low wages, back-breaking jobs, long hours of work, non-payment of overtime and other benefits, and repressive practices. The EPZs implement their own rules, operating like a separate entity excluded from Philippine labour laws, and the Department of Labor and Employment (DOLE) does not enforce the labour legislation in the EPZs. Elements of the anti-union

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policy include: illegal dismissal of trade unionists; restrictive union registration processes; the closure of companies to obstruct union formation and collective bargaining; interference by local government authorities in union affairs; and violation of civil liberties – including assaults, threats, intimidation, harassment, blacklisting, criminalization, abduction and murder of trade unionists.

- 1034.** Very few have succeeded in establishing a union inside the EPZs and enclaves. Even with a union, they still face obstacles in negotiating with management. Companies refuse to recognize unions, let alone negotiate with them for a collective bargaining agreement. In many cases, companies resort to closures either of the whole company or of strategic departments where most unionists are located, downsize their operation and retrench union leaders and active members. In some cases, employers have resorted to putting up their own “sweetheart” or company unions in order to avoid independent and progressive unions.
- 1035.** When unions have successfully organized, union leaders and members have been harassed, intimidated and violently attacked by EPZ security, police, and paramilitary groups. Unions have been busted through the illegal dismissal and closure of companies.
- 1036.** On several occasions, when workers voted to go on strike, the Secretary of Labor issued “assumption of jurisdiction” and “return to work” orders. In the case of the Aichi Forging Company Employees Union-1-Independent, one of the reasons given for the issuance of the assumption of jurisdiction was: “As the company is located in an economic zone, the work stoppage may also undermine the Government’s efforts to promote and encourage foreign and local investments in order to generate employment and spur economic development”.
- 1037.** Collective actions, such as strikes and picket protests, are often met with brutal dispersal. The EPZ authorities and security impose food blockades to paralyse strikes and deny them support mechanisms ultimately leading to the defeat of the strikes.
- 1038.** In Cavite province, where the nation’s largest EPZs are found, the father and son team of Governor Maliksi and Mayor Maliksi have actively and openly collaborated with the Philippine National Police (PNP) and EPZ companies in ensuring the “no union, no strike” policy is effectively enforced. Workers, before they can be employed in the EPZs, must attend forums on the “evils of militant trade unionism” and Maliksi openly campaigned for the Mayoral office by promising companies they would remain “militant union and strike free”. Leaders from affiliate unions of the KMU have been vilified as terrorists and the national government has filed criminal charges against them alleging they are members of the New People’s army in far away islands.
- 1039.** These schemes are intended to not only hamper union organizing and intimidate workers into not joining unions, but to keep the EPZs and enclaves union free particularly from those that are progressive, militant, independent and nationalist in orientation.
- 1040.** Though unwritten, the existence of the “no union, no strike” policy in the EPZs and industrial enclaves is common knowledge. This policy was developed in the Southern Tagalog region and is being perfected by the combination of repressive political and industrial climate involving government machineries from national to village level under the pretext of maintaining industrial peace and protection of foreign investments and economy. In the Mactan Export Processing Zone (MEPZ) in Cebu, the “no union, no strike” policy has so far been successful in preventing the formation of any unions within the MEPZ.

**1041.** The complainant then goes on to make the following specific complaints. This “no union, no strike” policy, specifically violating Conventions Nos 87 and 98, is implemented through several forms. The complainant alleges the following.

***Alleged obstacles to the effective exercise in practice of trade-union rights and the “no union, no strike” policy***

Illegal dismissals

- *Sun Ever Lights Labor Union-Independent (SELLUI).* The Japanese-owned electronics company, in affirmation of the decision issued by the National Labor Relations Commission (NLRC), fired 170 union members.
- *Workers Union of Daiho Philippines Incorporated-Independent (WUDPI-Independent).* Daiho management simultaneously terminated 106 workers in both its factories in Laguna Technopark and Lima technology in Batangas on 19 February 2009.
- *Samahang Manggagawa ng Enkei (SME).* The Japanese company Enkei Philippines terminated 47 of its employees who attended the union’s general membership meeting on 19 June 2006.
- *Aniban ng Manggagawang Inaapi sa Hanjin Garments-Independent (AMIHAN-Independent).* In successive waves, more than 200 workers were illegally dismissed in the process of union formation.
- *Golden Will Fashion Phils. Workers’ Organization-Independent (GWFPWO-Independent).* The company dismissed all remaining 103 union members effective 15 August 2009 due to a dubious retrenchment policy.
- *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery Incorporated-Independent (TPMA-Independent).* The company dismissed 31 union officers and members in the process of union recognition.
- *Nagkakaisang Manggagawa sa Chong Won (NMCW-Independent).* The Korean-owned garments factory illegally dismissed 116 workers.
- *Anita’s Home Bakeshop Workers Union, an affiliate of the Alliance of Nationalist Genuine and Labor Organization (ANGLO-KMU).* A total of 33 workers were illegally dismissed, including 11 union officers.

Company closure

- *Sensuous Lingerie Unified Labor Organization (SULO-Independent).* The company declared closure in the middle of negotiations for a collective bargaining agreement.
- *GWFPWO-Independent.* The Chinese-owned company announced a six-month vacation followed by closure amidst collective bargaining negotiations while engaged in an illegal operation.
- *NMCW-Independent.* The company closed down operations in May 2007 during the workers’ strike.

- When the *Goldilocks Ant-Bel Workers Association* was registered on 1 November 2008, management responded the next month with the illegal closure of the unionized branch.

#### Restrictive processes in union registration and recognition

- *WUDPI-Independent*. The DOLE Region IV-A cancelled the union's registration.

#### Non-implementation of Labor Department and court decisions

- *SELLUI*. The Sun Ever Lights management refuses to implement the reinstatement order issued by the NLRC, dated 14 July 2008.
- *SME*. The Commissioner of the Third Division of the NLRC issued an order reinstating 47 workers to employment with full back wages, dated 29 May 2007.

#### Interference of local government units (LGUs) with union affairs

- *SELLUI*. The PEZA and municipal government sent units of the PNP to intimidate and disperse workers' protest actions from 30 November to 1 December 2004.
- *Nagakaisang Manggagawa sa Hoffen Industries-OLALIA* (NMHI-OLALIA-KMU). Local government officials at different levels tried convincing workers to stop the union organizing in the factory in favour of business.
- *AMIHAN-Independent*. The municipal government ordered the PNP to enforce a food blockade and intimidation and dispersal of workers on strike.
- *Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc.-Independent (SMMSCI-Independent)*. Local village officers convinced union members to withdraw support from the union.
- *GWFPWO-Independent*. Right after the union was registered with the DOLE, local government officials came to the factory and campaigned against union organizing and pushed for a labour management council (LMC) instead.
- *Samahan ng Manggagawa sa EDS Mfg, Inc.-Independent (SM-Emi-Ind)*. Corrupt former leaders in the union were used by the Office of the Provincial Governor (OPG) and specifically by the Remulla clan, a political dynasty in Cavite. This resulted in serious corruption of union funds. When a new set of union leaders and members tried to rebuild the union, their efforts were mauled by OPG and its controlled union leaders. In 2002, the intra-union dispute began which later became an inter-union dispute.

#### Assumption of jurisdiction orders denying the right to strike

- *Aichi Forging Company Employees Union-1-Independent (AFCEUI-1 Independent)*. The Secretary of Labour issued an assumption of jurisdiction order on the union's notices of strike on the grounds of the collective bargaining agreement (CBA) deadlock and unfair labour practice.
- *TPMA-Independent and Pag-asa at PIMA-Independent*. The DOLE issued three assumption of jurisdiction orders on 23 December 2003, 1 October 2004 and 6 February 2009.

***Alleged attacks to life and liberty, illegal arrest and detention, harassment, intimidation, criminalization and killings in relation to freedom of association***

## Assault against picket lines and union collective actions

- *SELLUI*. Elements of the Special Warfare Action Group (SWAG) of the PNP, along with the Emirates security guards, the Regional Special Action Force-PNP, and the PNP-Binan dispersed the peaceful protest of women workers.
- *AMIHAN-Independent*. DOLE dispersal. Elements of the PNP dispersed workers from PAMANTI (Solidarity of Workers in Southern Tagalog-KMU) peacefully aired their grievances to the DOLE on the night of 6 March 2008, resulting in the death of one protester due to internal haemorrhage a month later.
- *PIMA-Independent*. On 4 February 2009, the strike of Asia Brewery workers was violently dispersed by PNP led by PNP Cabuyao Chief Moises Pagaduan.

## Threat, intimidation and harassment

- *SELLUI*. Elements of the SWAG of the PNP man the production lines to monitor the activities of union members.
- *SMMSCI-Independent*. Members of the Philippine National Police Provincial Mobile Group (PNP-PMG) were stationed inside production lines and the whole factory compound during the process of petition for certification election (PCE).
- *Kaisahan ng mga Manggagawa sa Phils. Jeon-Independent (KMPJ-Independent)*. The assault and abduction of the union president and shop steward from the picket line.
- *SULO-Independent*. Two busloads of about 100 elements of the PNP of Calamba City, Laguna prevented workers from participating in strike voting on 16 May 2008.
- *AFCEUI-I Independent*. The management tripled the size of its security forces and deployed intelligence operatives while negotiations for the CBA were occurring.

## Abduction

- *Normelita Galon and Aurora Afable, President and Shop Steward of KMPJ-Independent, respectively*. Both were gagged, blindfolded, and forcibly taken from their picket line by armed elements allegedly upon orders of the management and PEZA. They were thrown in a muddy area outside the Cavite Export Processing Zone eventually pressuring the workers to call off the strike.

## Blacklisting, vilification of union members as terrorists

- *WUDPI-Independent*. The names and enlarged pictures of employees were posted on entrance gates of EPZs the day after they were dismissed from their jobs, barring them from entry and restricting them from seeking employment in other companies in the EPZs.
- Photos of 30 members of the ANGLO-KMU were posted on the company bulletin board. They were labelled as “a terrorist group”.

## Criminalization

- PAMANTIK-KMU Chairman Romeo Legaspi and other officers charged with attempted murder, multiple murders and multiple frustrated murders in various courts.
- 6 March 2008. Dispersal of workers in front of the DOLE. Five injured protesters detained and accused of false charges.
- Christopher Capistrano, union Vice-President of Hanjin Garments, charged with criminal cases before the Binan Regional Trial Court.
- Ricardo Cahanap, union Vice-President of Phils. Jeon, and 33 union leaders of Chong Won and Phils. Jeon workers' union charged with direct assault and grave coercion.
- *GWFPWO-Independent*. Twenty-five union officers and members charged with qualified theft.
- Declard Cangmaong, arrested and detained without warrant on charges of “multiple murder with quadruple frustrated murder and damage to government property” by elements of the Philippine army (PA) and the Criminal Investigation and Detection Group (CIDG) on 21 September 2009.

## Militarization

- *SELLUI*. Fully armed elements of the SWAG of the PNP-manned union officers and members in the company production lines. On another occasion, from 30 November to 1 December 2004, elements of the Laguna Industrial Peace Police Action Group (LIPPAG) of the PNP enforced the dispersal of women workers.

## Killings

- Gerardo “Gerry” Cristobal and Jesus “Butch” Servida, former union Presidents of SM-Emi-Independent in Cavite, were killed respectively on 10 March 2008 and 11 December 2006.

## B. The Government’s reply

**1042.** In its communication dated 15 November 2010, the Government requested the Committee to postpone the examination of the case so as to allow the Tripartite Industrial Peace Council (TIPC), constituted pursuant to the recommendation of the ILO High-level Mission, to do its work with respect to the issues raised in this case.

**1043.** The Government further indicates that pursuant to the operational guidelines of the TIPC Monitoring Body, the employers’ and workers’ organizations, parties to the complaint, and concerned government agencies were furnished with copies of the complaint. In this regard, letters dated 5 May 2010 were sent to the managements concerned requesting information/comments on the allegations presented in the said KMU complaint. Another letter request, dated 8 October 2010, was sent to those who failed to provide the requested information/comments. The Government further indicates that the comments would be consolidated towards the end of 2010 for case profiling by the Inter-Agency Small Group and for discussion in the Tripartite Executive Committee of the Monitoring Body prior to submission for deliberation by the members of the TIPC Monitoring Body in the first quarter of 2011. The Government attached a matrix showing the information/comments initially gathered from the addressees, as well as information provided by competent

bodies such as the Commission on Human Rights (CHR) and PEZA. This detailed information is attached herewith as an appendix.

- 1044.** In its communication, the Government further indicates that actions have been taken in key areas of concern, notably addressing the issue of impunity and exploring “out of the box” solutions to long-standing cases and that a legislative reform to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights has been progressing as committed by the Government in response to the ILO High-level Mission in October 2009.
- 1045.** There are two pending draft bills before the national TIPC. The first bill seeks to amend article 263(g) of the Labor Code which authorizes the Secretary of Labor (and the President) to assume jurisdiction over labour disputes imbued with national interest. It limits the assumption of jurisdiction to the ILO’s concept of “essential services” and removes the criminal sanction for mere participation in an illegal strike on grounds of non-compliance with the administrative requirements. The second bill incorporates amendments that further liberalize the exercise of trade union rights by relaxing the requirements for registration of independent unions and federations. It repeals the requirements of prior authorization for receipt of foreign assistance. These two draft bills are undergoing tripartite consultation. The bill on the exercise of trade union rights has been approved by the Tripartite Executive Committee for plenary discussion in the TIPC. With respect to the draft bill amending articles 263(g), 264 and 272, no consensus has been found so far. The two draft bills are eyed to be filed with the appropriate committees of both Houses of the 15th Congress by the first quarter of 2011, as soon as tripartite consensus is reached. The DOLE is looking at the early part of 2011, in the first quarter, to start the labour law drafting and creation of the small tripartite-plus committee.
- 1046.** Meanwhile, Department Order No. 40-G-Q3, amending Department Order No. 40, series of 2003, was approved by the TIPC and issued on 29 March 2010. It became effective on 26 April 2010, providing a guideline in the exercise of the assumption of juridical power of the Secretary of Labor, contemplated in article 263(g) of the Labor Code, as amended. A copy of the Department Order No. 40-G-Q3 was provided by the Government.
- 1047.** In addition, the directive that was given to the DOLE, alongside the directive to “promote not only the constitutionally protected rights of workers but also their right to participate in the policy-making process” is, together with the NLRC, to “reform the labour arbitration and adjudication systems by streamlining procedures, removing red tape, and at the same time, restore integrity and fairness in the system. Ensure that 98 per cent of all pending labour cases are disposed of with quality decisions by April 2011”. A copy of the 22-point labour and employment agenda of President Aquino was provided by the Government. In this regard, the DOLE is implementing a package of reforms in the labour arbitration and adjudication system. The approach is two-pronged. The first approach consists of reforms in the existing system by ensuring transparency, efficiency and integrity in the labour dispute settlement system, and the second approach consists of reforms intended to transform the traditional American-based conflictual and litigious labour relations system towards one that is reflective of the Asian and Philippine culture of consensus building. Under the second approach, the major reform is the de-judicialization of the labour dispute settlement system through alternative dispute resolution (ADR) using a 30-day mandatory conciliation mediation of all labour cases DOLE-wide. Department Order No. 107-10 has been issued, a copy of which was provided by the Government and became effective on 26 October 2010. Industry-based conciliation mediation through the industry tripartite councils at the national and local levels is also being developed. At the heart of de-judicialization is the promotion of inclusive tripartism and social dialogue through the reconstitution of the TIPCs at the national and regional levels. The Bukluran ng Manggagawang Filipino (BMP) and the KMU have already conveyed interest in

participating in the NTIPC and in the TIPC Monitoring Body. The strengthening/reactivation or creation of industry tripartite councils nationwide towards industry self-regulation, governed by industry voluntary codes of good labour management practices, is also being undertaken. The package of reforms has the support of the sectors as expressed in national TIPC Resolution No. 3, Series of 2010, a copy of which was transmitted by the Government.

- 1048.** Finally, the Government indicates that the revised DOLE–PNP–PEZA guidelines on the conduct of PNP personnel, economic zone police and security guards, company security guards and similar personnel during labour disputes, a copy of which was transmitted by the Government, is nearing completion and that it is expected to be signed anytime before the end of 2010 as tripartite consultations have already been undertaken.

### **C. The Committee’s conclusions**

- 1049.** *The Committee notes that the present case concerns allegations of the denial of the right to organize, strike and collective bargaining in the Philippines EPZs, special economic zones, industrial enclaves and related areas due to the implementation of an unofficial “no union, no strike” policy by the PEZA, in collusion with the local and national government agencies. Elements of anti-union policy include allegations of: illegal dismissal of trade unionists; restrictive union registration processes; the closure of companies to obstruct union formation and collective bargaining; interference by local government authorities in union affairs; and violation of civil liberties – including assaults, threats, intimidation, harassment, blacklisting, criminalization, militarization, abduction and murder of trade unionists in more than 15 different companies.*

- 1050.** *The Committee notes that according to the Government, pursuant to the operational guidelines of the TIPC Monitoring Body, the employers’ and workers’ organizations, parties to the complaint, and concerned government agencies were furnished with copies of the complaint. In this regard, letters dated 5 May 2010 were sent to the managements concerned requesting information/comments on the allegations presented in the said KMU complaint. Another letter request, dated 8 October 2010, was sent to those who failed to provide the requested information/comments. The Government further indicates that the comments would be consolidated towards the end of 2010 for case profiling by the Inter-Agency Small Group and for discussion in the Tripartite Executive Committee of the Monitoring Body prior to submission for deliberation by the members of the TIPC Monitoring Body in the first quarter of 2011. No additional information was provided by the Government in this regard.*

- 1051.** *The Committee also notes that some issues raised by the complainant have been examined by the Committee previously in Case No. 2528, 359th Report, paragraphs 1093–1134. These elements concern the extrajudicial killings of Gerardo “Gerry” Cristobal and Jesus “Butch” Servida, former Presidents of SM-Emi-Independent in Cavite, who were killed respectively on 10 March 2008 and 11 December 2006, and will not be raised in the present case.*

### **Interference by the public authorities**

- 1052.** *The Committee notes that in Cavite province, where the nation’s largest EPZs are found, Governor Maliksi and his son, Mayor Maliksi, have allegedly actively and openly collaborated with the PNP and EPZ companies in ensuring the “no union, no strike” policy is effectively enforced. Workers, before they can be employed in the EPZs, must attend forums on the “evils of militant trade unionism” and Maliksi openly campaigned for the Mayoral office by promising companies they would remain “militant union and strike*

free". The Committee notes with concern these allegations and recalls that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively. The Committee considers that legal provisions on EPZs should ensure the right to organize and bargain collectively for workers [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 266]. The Committee notes the Government's indication that a legislative reform to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights has been progressing as committed by the Government in response to the ILO High-level Mission in October 2009. The Committee requests the Government to keep it informed in this regard and to indicate the specific measures envisaged to ensure the full and effective exercise of labour rights in the EPZs.

**1053.** The Committee further notes the allegations of interference of LGUs into internal union affairs. More particularly, the Committee notes:

- (a) the allegations that local government officials at different levels allegedly tried convincing workers to stop union organizing in Nagkakaisang Manggagawa sa Hoffen Industries-OLALIA factory (Hoffen). The Committee notes that the Government indicates that the CHR NCR office will be conducting a motu proprio investigation on the human rights violations (HRV) aspect of the case, that the company categorically does not have knowledge of interference by local government officials in union organizing and that a collective agreement exists between the company and PAFLU-HEWU until 30 November 2013;
- (b) the allegations that local village officers convinced union members to withdraw support from the union at Samahan ng Manggagawa sa Mariwasa Siam Ceramics, Inc. (Siam Ceramics). The Committee notes the Government's indication that no case was filed with the CHR and that the CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case;
- (c) the allegations that right after the GWFPWO-Independent was registered with the DOLE, local government officials came to the factory and campaigned against union organizing and pushed for a labour-management council instead. The Committee notes the Government's indication that no case was filed with the CHR, that the CHR NCR office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case and that the company states that they invited Mr Maliski for peaceful talks with the union; and
- (d) the allegations that at Samahan ng Manggagawa sa EDS Mfg, Inc. (EDS Inc.) corrupt former leaders in the union were used by the OPG and specifically by the Remulla clan, a political dynasty in Cavite. This resulted in serious corruption of union funds. When a new set of union leaders and members tried to rebuild the union, their efforts were mauled by OPG and its controlled union leader. The Committee notes that the Government indicates that the CHR NCR office will be conducting a motu proprio investigation on the HRV aspect of the case and that the PEZA indicates that the case concerns an inter- and intra-union dispute that does not involve the company.

**1054.** The Committee recalls in this regard that respect of principles of freedom of association requires that the public authorities and employers exercise great restraint in relation to intervention in the internal affairs of trade unions [see **Digest**, op. cit., para. 859]. The Committee requests the Government to keep it informed of the investigation conducted by the CHR and to take all the necessary measures to ensure full respect of this principle. Finally, the Committee understands from the information provided by the Government that

these cases were scheduled to be discussed by the TIPC in the first quarter of 2011. The Committee therefore urges the Government to provide information on the progress made by the TIPC in these cases without delay.

### **Anti-union discrimination**

**1055.** *The Committee notes the complainant's allegations that on various occasions, companies in the EPZs closed down either the whole company or strategic departments where most unionists were located following the recognition of a union. More particularly, the Committee notes:*

- (a) *the allegations that Sensuous Lingerie declared closure in the middle of the negotiations for a collective bargaining agreement. The Committee notes the Government's reply that according to PEZA, the 605 workers affected by the closure were absorbed by Carina Apparel, a sister company of Sensuous Lingerie and that those not qualified were given separation pay;*
- (b) *the allegations that Golden Will Fashion Philippines announced a six-month vacation followed by closure amidst collective bargaining negotiations and the company dismissed all remaining 103 union members effective 15 August 2009 due to a dubious retrenchment policy. The Committee notes the Government's reply that according to PEZA, the company had temporarily shut down due to the global financial crisis from March to August 2009. It filed a final notice of retrenchment to the DOLE and made payment to the workers in accordance with the law. Some did not yet receive their payment. The company deposited with the NLRC the remaining separation pay for employees. According to PEZA, the company maintains one person to be contacted by workers to get payment. With no buyers, the company closed and filed cancellation of its PEZA registration; and*
- (c) *the allegations that when the Goldilocks Ant-Bel Workers Association was registered on 1 November 2008, the management responded the next month with the closure of the unionized branch. The Committee notes the Government's reply that the CHR NCR office certifies that no case was filed and no motu proprio investigation was conducted. According to the management of Goldilocks Ant-Bel Marketing Inc. is an independent contractor and it has no authority to bind the franchiser or Goldilocks Bakeshop in any manner. The company has absolutely no control nor authority over any aspect of the franchisee's operations including the supervision of employees, formulation and implementation of labour-management policies and practices.*

**1056.** *The Committee recalls that workers in EPZs – despite the economic arguments often put forward – like other workers, without distinction whatsoever, should enjoy the trade union rights provided for by the freedom of association Conventions [see **Digest**, op. cit., para. 264]. On the other hand, the Committee must recall the importance it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see **Digest**, op. cit., para. 934]. Further, while the genuine closure of companies is not contrary to the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement, the closure and lay-off of employees specifically in response to the exercise of trade union rights is tantamount to the denial of such rights and should be avoided. The Committee urges the Government to ensure that the Labour Code, which governs the relationship between labour and management in the registered enterprises in the EPZs, is applied in practice. The Committee requests the Government to keep it informed of the investigations conducted by the CHR and to indicate the progress made by the TIPC in these cases.*

**1057.** *The Committee further notes the allegations of anti-union discrimination and more particularly cases concerning illegal dismissals of trade union members in the following enterprises:*

- (a) *Daiho Philippines Inc., where the management allegedly simultaneously terminated 106 workers in both its factories in Laguna Technopark and Lima Technology in Batangas on 19 February 2009. The Committee notes the Government's indication that according to PEZA, the management filed a notice of retrenchment to DOLE 4A on 18 February 2009 due to financial losses and this took effect on 21 March 2009. It offered fair and justified separation pay. No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case;*
- (b) *Hanjin Garments-Independent where it was alleged that, in successive waves, more than 200 workers were dismissed in the process of union formation. The Committee notes that no information was provided by the Government in this regard;*
- (c) *Asia Brewery, where the company allegedly dismissed 31 union officers and members in the process of union recognition. The Committee notes the Government's indication that no case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case;*
- (d) *NMCW-Independent, where the factory dismissed 116 workers. The Committee notes the Government's indication that according to PEZA, the company closed in February 2007 and filed an insolvency case. The lawyer of the workers was appointed to distribute assets of the company; and*
- (e) *Anita's Home Bakeshop, where a total of 33 workers were dismissed, including 11 union officers. The Committee notes the Government's indication that according to the management, the alleged illegal dismissal of ANGLO members is pending before NLRC RAB VII or the NLRC Division 4 in Cebu City.*

**1058.** *The Committee further notes that in the case of Sun Ever Lights, according to the complainant, in affirmation of a decision issued by the NLRC, the company fired 170 union members. The Government confirms that the NLRC issued a decision upholding management's right to terminate employees who participated in an illegal strike. The Committee further notes that, according to the complainant, the company also refuses to implement a reinstatement order issued by the NLRC on 14 July 2008. The Committee notes the Government's indication that a motion for writ of execution of the NLRC decision is before the NLRC.*

**1059.** *Likewise, the Committee notes the allegations that Enkei Philippines terminated 47 of its employees who attended the union's general membership meeting on 19 June 2006 and, although the Commissioner of the Third Division of the NLRC issued an order reinstating the workers with full back wages on 29 May 2007, the company refuses to reinstate the union members. The Committee notes that according to the Government's indication, no case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.*

**1060.** *The Committee reminds the Government that it is responsible for preventing all acts of anti-union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned. Cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-*

union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders and members dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see *Digest*, op. cit., paras 817 and 826].

- 1061.** *In view of the principles enunciated above, the Committee urges the Government, should the allegations in respect of Enkei Philippines be true as regards the 2007 Order for Reinstatement, to ensure that the union members who were dismissed are reinstated immediately in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits, in conformity with the order for reinstatement. In the case of Sun Ever Lights, noting that according to the Government a motion for writ of execution of the NLRC decision is pending with the NLRC, the Committee requests the Government to keep it informed of any developments in this regard. The Committee further requests the Government to keep it informed of the progress made by the TIPC in these cases.*
- 1062.** *Concerning the other abovementioned allegations of illegal dismissals, the Committee requests the Government to carry out independent investigations of dismissals and, if it finds that they constitute anti-union acts, to take measures to ensure the reinstatement of the workers concerned. If reinstatement is not possible for objective and compelling reasons, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-trade union dismissals. The Committee further requests the Government to keep it informed of the investigations conducted by the CHR and to indicate the progress made by the TIPC in these cases. In addition, in the case of Anita's Home Bakeshop, the Committee urges the Government to keep it informed of any judgment handed down by the NLRC RAB VII or the NLRC Division 4 in Cebu City.*

### **Denial of the right to strike**

- 1063.** *The Committee notes the allegations that on several occasions when workers voted to go on strike, the Secretary of Labor issued "assumption of jurisdiction" and "return to work" orders. In the case of the Aichi Forging Company, one of the reasons given for the issuance of the assumption of jurisdiction was: "As the company is located in an economic zone, the work stoppage may also undermine the Government's efforts to promote and encourage foreign and local investments in order to generate employment and spur economic development".*
- 1064.** *The Committee notes the Government's indication that actions have been taken in key areas of concern, and that the first bill that seeks to amend article 263(g) of the Labour Code, which authorizes the Secretary of Labor (and the President) to assume jurisdiction over labour disputes imbued with national interest, is undergoing tripartite consultation but a consensus has so far not been reached in this regard. Recalling that freedom of association principles equally apply to workers in EPZs, the Committee requests the Government to keep it informed of the ongoing legislative reform and expects that the Government will take the necessary measures to ensure the full respect for the trade union rights of EPZ workers. The Committee further requests the Government to indicate the progress made by the TIPC in the case of the Aichi Forging Company and that of the company Nagkakaisang Manggagawa sa Chong Won, where the company is alleged to have closed down operations in May 2007 during a strike.*

**Blacklists**

**1065.** *The Committee notes that:*

- (a) *according to the complainant, the names and enlarged pictures of employees of Daiho Philippines were posted on the entrance gates of EPZs the day after they were dismissed from their jobs, barring them from entry and restricting them from seeking employment in other companies in the EPZs. The Committee notes the Government's indication that according to the management, the company gave the list of retrenched employees to LTI and LIMA Securities for the company's security and to further avoid the retrenched employees entering the factory premises and remaining within the vicinity of the company; and*
- (b) *according to the complainant, the photos of 30 members of the Anita's Home Bakeshop Workers Union-Anglo-KMU were posted on the company's bulletin board, labelled as a "terrorist group". The Committee notes the Government's indication that according to the management, the company is not located in any EPZ, special economic zone, or in the areas specifically stated in the KMU report. The company vehemently denies charges of blacklisting or the vilification of ANGLO members as terrorists. According to the company, it is a victim of the tug-of-war between AHBIEA and ANGLO-KMU. There was no HRV case filed with the CHR Region 7 office but it has conducted a motu proprio investigation and submitted a status report. Since proper agencies of the Government took cognizance on the issues raised, it was recommended that the CHR would monitor the progress of the case.*

**1066.** *The Committee recalls that the restriction of a person's movements to a limited area, accompanied by the prohibition of entry into the area in which his or her trade union operates and in which he or she normally carries on trade union functions, is inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions and all practices involving blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices [see **Digest**, *op. cit.*, paras 129 and 803]. The Committee requests the Government to keep it informed of the outcome of the investigation conducted by the CHR and to indicate the progress made by the TIPIC in these cases.*

**Extrajudicial killings, assault and abduction of trade unionists**

**1067.** *The Committee notes the allegations that on many occasions, the PEZA and municipal government sent units of the PNP and/or the SWAG, Emirates security guards, the Regional Special Action Forces-PNP to intimidate and/or disperse workers during protests, strikes or on picket lines. It is alleged that these events led to the assault, abduction and killing of trade union members on certain occasions.*

**1068.** *More particularly, the Committee notes the following cases:*

- (a) *Hanjin Garments, where the police allegedly dispersed workers who were peacefully airing their grievances, resulting in the death of one protester. The Committee notes the Government's indication that according to Laguna PPO, the Cabuyao MPS has no record of the incident in its blotter; and*
- (b) *Kaisahan no mga Manggagawa sa Phils., where the union President, Normelita Galon, and Shop Steward, Aurora Afable, were gagged, blindfolded, and forcibly taken from the picket line by the armed elements, allegedly upon orders of the*

management and PEZA, and thrown in a muddy area outside the Cavite Export Processing Zone. The Committee notes the Government's indications that according to PEZA, strikers were pushed away from the gates.

- 1069.** *The Committee deplores the gravity of these allegations. It notes however the Government's indication that action has been taken in key areas of concern, notably to address the issue of impunity and exploring "out of the box" solutions to the long-standing cases.*
- 1070.** *The Committee is bound to recall 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 [see **Digest**, op. cit., para. 43]. A climate of violence, such as that surrounding the murder or disappearance of trade union leaders, or one in which the premises and property of workers and employers are attacked, constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities [see **Digest**, op. cit., para. 46]. In this respect, the Committee considers that facts imputable to individuals bring into play the State's responsibility owing to the State's obligation to prevent violations of human rights. Consequently, governments should endeavour to meet their obligations regarding the respect of individual rights and freedoms, as well as their obligation to guarantee the right to life of trade unionists [see **Digest**, op. cit., para. 47]. It also emphasizes that the absence of judgments against the guilty parties creates in practice a situation of impunity which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see **Digest**, op. cit., para. 52]. In addition, in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see **Digest**, op. cit., para. 49].*
- 1071.** *The Committee therefore requests the Government to establish an independent judicial inquiry and proceedings before the competent courts as soon as possible with regard to the allegations of abductions, disappearances and the killing of a protester with a view to shedding full light onto the relevant facts and circumstances, and to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. The Committee firmly expects that the investigation and trials will proceed without delay and in full independence, so that all responsible parties may be identified and punished before the competent courts as soon as possible and a climate of impunity be avoided. The Committee requests to be kept informed in this respect and requests the Government to indicate the progress made by the TIPC in these cases.*

### **Harassment and interference: Militarization of the workplace**

**1072.** *The Committee notes the following cases alleged by the complainant:*

- (a) *Sun Ever Lights, where PEZA and municipal government allegedly sent units of PNP to intimidate and disperse workers' protest actions from 30 November until 1 December 2004. The Committee notes the Government's indication that according to PEZA, the company requested the assistance from the Ecozone developer who asked the LIPAG to monitor peace and order during the three-day rally. Workers refused to leave the premises. They were allowed to stay but were refused re-entry once they went out of the gates. PEZA guards were roving within the vicinity and the developer guards were on 24-hour duty. No case was filed with the CHR. The CHR*

*Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case;*

- (b) Hanjin Garments, where the municipal government allegedly ordered the PNP to enforce a food blockade, and the intimidation and dispersal of workers on strike. The Committee notes the Government's indication that according to Laguna PPO, the alleged workers' strike in Hanjin Garments on 25–26 January 2008, where the Cabuyao Municipal Government ordered the PNP to enforce a food blockade. is not true. The Cabuyao MPS has no record of the incident in its blotter;*
- (c) Asia Brewery, where on 4 February 2009, the strike was alleged to have been violently dispersed by PNP. The Committee notes the Government's indication that according to Laguna PPO, it is not true that the strike was met with violent dispersals. No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case; and*
- (d) Sensuous Lingerie, where two busloads of about 100 elements of the PNP of Calamba City, Laguna, allegedly prevented workers from participating in strike voting on 16 May 2008. The Committee notes the Government's indication that according to PEZA, the union's officers and active members prevented shuttle buses of outgoing workers to pass through the gates and forced workers to allegedly cast their vote whether to declare a strike or not. No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.*

**1073.** *The Committee deeply regrets the allegations of involvement of the army and police in the dispersal of the picket line and union collective actions. The Committee recalls that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order [see **Digest**, *op. cit.*, para. 647]. Noting that the Government has provided information contrary to these allegations, the Committee therefore requests it to take all necessary measures for an independent investigation to be carried out in the abovementioned incidents alleged by the complainant with a view to identifying and punishing those responsible without further delay. The Committee requests the Government to keep it informed of the investigations conducted by the CHR and to indicate the progress made by the TIPC in these cases.*

**1074.** *The Committee further requests the Government to give adequate instructions to the law enforcement authorities so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations. In this regard, the Committee notes the Government's indication that the revised DOLE–PNP–PEZA guidelines in the conduct of PNP personnel, economic zone police and security guards, company security guards and similar personnel during labour disputes is nearing completion and that it was expected to be signed before the end of 2010, as tripartite consultations had already been undertaken. The Committee requests to be kept informed of any development in this respect.*

**1075.** *The Committee further notes the allegations of a prolonged presence of the army inside the workplaces in the following enterprises:*

- (a) Sun Ever Lights, where elements of the SWAG of the PNP allegedly man the production lines to monitor the activities of union members. The Committee notes the Government's indication that no case was filed with the CHR and that the CHR*

*Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case;*

- (b) Siam Ceramics, where members of the PNP-PMG were allegedly stationed inside production lines and the whole factory compound during the process of petition for certification election. The Committee notes the Government's indication that according to the management, the company never engaged the members of the PNP-PMG to be stationed inside the production lines or the whole factory compound during the process of certification. DOLE 4A issued a resolution dated 28 October 2005 dismissing related protests in the conduct of the election for lack of merit. No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case; and*
- (c) Aichi Forging Company, where the management allegedly tripled the size of its security forces and deployed intelligence operatives while negotiations for the CBA were occurring. The Committee notes the Government's indication that according to PEZA, the security force was increased because of pilfering and not because of union activities.*

**1076.** *The Committee expresses deep concern at the allegations of a prolonged presence of the army inside workplaces which, if true, and depending on the circumstances, is liable to have an intimidating effect on the workers wishing to engage in trade union activities, and to create an atmosphere of mistrust which is hardly conducive to harmonious industrial relations. All appropriate measures should therefore be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind [see **Digest**, op. cit., para. 35].*

**1077.** *The Committee therefore requests the Government to take urgent measures, including the issuance of appropriate instructions, to bring an end to any continuing military presence inside the workplaces. The Committee requests the Government to keep it informed of the investigations conducted by the CHR. The Committee further requests the Government to indicate the progress made by the TIPIC in these cases.*

## **Arrest and detention**

**1078.** *The Committee notes that according to the complainant, false charges were filed against an important number of labour leaders and unionists. These alleged cases involved trumped-up charges against leaders and active union members at the onset of union formation, during collective bargaining negotiations, picket protests, and strikes. Aside from the local company level, regional and provincial leaders were also criminally charged and tagged as members of the CPP-NPA.*

**1079.** *The Committee recalls that in cases involving the arrest, detention or sentencing of a trade union official, the Committee, taking the view that individuals have the right to be presumed innocent until found guilty, has considered that it was incumbent upon the Government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned [see **Digest**, op. cit., para. 94].*

**1080.** *More particularly, the Committee notes the following cases:*

- (a) PAMANTIK-KMU Chairman Romeo Legaspi and other officers charged with attempted murder, multiple murders, and multiple frustrated murders in various courts. The Committee notes the Government's indication that the case of Romeo Legaspi is under investigation;*

- (b) *Asia Brewery where, on 6 March 2008, five injured protesters were allegedly detained and falsely accused. The Committee notes the Government's indication that according to Laguna PPO, Rodrigo Perez, together with three others, was charged with malicious mischief when he and his companions smashed two plastic windows and punctured all the tyres of a shuttle bus at the Asia Brewery on 4 October 2004 and Bonifacio Fenol et al. were charged with grave disobedience for throwing stones at a group of policemen who tried to pacify them during the strike that transpired in front of Asia Brewery on 4 February 2009. No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case;*
- (c) *Christopher Capistrano, union Vice-President of Hanjin Garments, charged with criminal cases before the Binan Regional Trial Court. The Committee notes the Government's indication that according to Laguna PPO, Christopher Capistrano, together with three others, was involved in an altercation with Cabuyao policemen who tried to pacify them during the strike that occurred on 6 February 2008. They were charged with direct assault and physical injury;*
- (d) *Ricardo Cahanap, union Vice-President of Phils. Jeon, and 33 union leaders of Chong Won and Phils. Jeon workers' union were charged with direct assault and grave coercion. The Committee notes the Government's indication that according to PEZA, all criminal charges were dismissed in 2009;*
- (e) *Golden Will Fashion, where 25 union officers and members were charged with qualified theft. The Committee notes the Government's indication that according to PEZA, the investigation shows that garments ready for shipping were missing and there was admission on the part of the workers that they had stolen the garments; and*
- (f) *Declard Cangmaong, allegedly arrested and detained without a warrant on charges of "multiple murder with quadruple frustrated murder and damage to government property" by elements of the PA and CIDG on 21 September 2009. No information was provided by the Government in this regard.*

**1081.** *The Committee requests the Government to communicate the texts of any judgments handed down in these cases. The Committee further requests the Government to ensure that all relevant information is gathered in an independent manner so as to shed full light on their situation and the circumstances surrounding their arrest. Should it be determined that they were arrested in relation to their trade union activities, the Committee requests the Government to take the necessary measures to ensure that they are immediately released and all charges dropped. The Committee requests the Government to keep it informed of the investigations conducted by the CHR and to indicate the progress made by the TIPC in these cases and to provide information on all the alleged cases.*

## **The Committee's recommendations**

**1082.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee deplores the gravity of the allegations in this case. It notes however the Government's indication that actions have been taken in key areas of concern, notably to address the issue of impunity and exploring "out of the box" solutions to the long-standing cases.*

- (b) *As regards the alleged interference by the public authorities, the Committee:*
- (i) *notes the Government's indication that a legislative reform to further strengthen trade unionism and remove obstacles to the effective exercise of labour rights has been progressing as committed to by the Government in response to the ILO High-level Mission in October 2009 and requests the Government to keep it informed in this regard and to indicate the specific measures envisaged to ensure the full and effective exercise of labour rights in EPZs;*
  - (ii) *requests the Government to take the necessary measures to ensure that public authorities do not intervene in relation to the internal affairs of trade unions;*
  - (iii) *requests the Government to keep it informed of the investigations conducted by the CHR;*
  - (iv) *understands from the information provided by the Government that these cases were scheduled to be discussed by the TIPC in the first quarter of 2011 and urges the Government to indicate the progress made by the TIPC in these cases without delay.*
- (c) *As regards the alleged anti-union discrimination, the Committee:*
- (i) *requests the Government to keep it informed of the investigations conducted by the CHR and requests the Government to indicate the progress made by the TIPC with respect to these various cases;*
  - (ii) *urges the Government, should the allegations concerning the 2007 reinstatement order be true, to ensure that the union members who were dismissed by Enkei Philippines are reinstated immediately in their jobs under the same terms and conditions prevailing prior to their dismissal with compensation for lost wages and benefits, in conformity with the order for reinstatement; requests the Government to keep it informed of any developments in this regard and to indicate the progress made by the TIPC in this case;*
  - (iii) *noting the contradictory information provided by the parties in the case of Sun Ever Lights, requests the Government to review this matter and keep it informed of developments and to indicate the progress made by the TIPC in this case;*
  - (iv) *requests the Government to carry out independent investigations in respect of the other abovementioned allegations of illegal dismissals and, if it finds that they constitute anti-trade union acts, to take measures to ensure the reinstatement of the workers concerned; if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficient dissuasive sanction for anti-trade union dismissals. The Committee requests the Government to keep it informed of the investigations conducted by the CHR and to indicate the progress made by the TIPC in these cases;*

- (v) *urges the Government to keep it informed of any judgment handed down by the NLRC RAB VII or the NLRC Division 4 in Cebu City in the case of ANGLO-KMU.*
- (d) *With respect to the alleged denial of the right to strike, the Committee requests the Government to keep it informed of the ongoing legislative reform and expects that the Government will take the necessary measures to ensure the full respect for the trade unions rights of EPZ workers. It further asks the Government to indicate the progress made by the TIPC with respect to the cases revised.*
- (e) *As regard the alleged blacklists, the Committee requests the Government to keep it informed of the investigation conducted by the CHR and to indicate the progress made by the TIPC with respect to the cases revised.*
- (f) *The Committee requests the Government to establish an independent judicial inquiry and proceedings before the competent courts as soon as possible with regard to the allegations of abductions, disappearances and killing of a protester, with a view to shedding full light onto the relevant facts and circumstances, and to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. The Committee requests to be kept informed in this respect and requests the Government to indicate the progress made by the TIPC in relation to these cases.*
- (g) *The Committee requests the Government to take all necessary measures for an independent investigation to be carried out into the various incidents of harassment and the militarization of the workplace, alleged by the complainant, with a view to identifying and punishing those responsible without further delay. It requests the Government to keep it informed in this regard and to indicate the progress made by the TIPC in these cases.*
- (h) *The Committee further requests the Government to give adequate instructions to the law enforcement authorities so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations and to bring to an end any continuing military presence inside the workplaces and requests to be kept informed of any developments in relation to the revised DOLE-PNP-PEZA guidelines in the conduct of PNP personnel, economic zone police and security guards, company security guards and similar personnel during labour disputes.*
- (i) *With respect to the alleged arrests and detentions, the Committee:*
  - (i) *requests the Government to communicate the texts of any judgments handed down in relation to: the charges brought against Pamantik-KMU Chairman Romeo Legaspi and other union officers; the detention of five injured protesters at Asia Brewery; the criminal case against Christopher Capistrano, Vice-President of AMIHAN-Independent; the charges against Ricardo Cahanap, union Vice-President of Phils. Jeon, and 33 leaders of Chong Won and Phils. Jeon workers' union; the charges against 25 union officers and members of GWFPWO-Independent; and the arrest and detention of Declard Cangmaong;*

- (ii) requests the Government to ensure that all relevant information is gathered in an independent manner so as to shed full light on their situation and the circumstances surrounding their arrest and, should it be determined by the court that they were arrested in relation to their trade union activities, requests the Government to take the necessary measures to ensure that they are immediately released and all charges dropped;*
- (iii) requests the Government to keep it informed of the investigations conducted by the CHR and to indicate the progress made by the TIPC in these cases and to provide information on all alleged cases.*
- (j) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.*

## Appendix

### Case No. 2745 Kilusang Mayo Uno

| Complainants/victims | Issue   | Included in another case | With profile | Remarks   |
|----------------------|---|--------------------------|--------------|---|
| SELLUI               | Illegal dismissal; non-implementation of Labor Department and court decisions; interference of LGU; and harassment (assault, militarization, criminalization) | X                        | X            | <p><b>PEZA</b></p> <ul style="list-style-type: none"> <li>■ <b>Illegal dismissal:</b> NLRC issued a decision on 14 July 2008 upholding management's right to terminate those who participated in the illegal strike.</li> <li>■ <b>Non-implementation of Labor Department and court decisions:</b> A motion for writ of execution of the NLRC decision is pending with NLRC.</li> <li>■ <b>Interference of LGUs:</b> Company requested assistance from the Ecozone developer who asked the LIPAG to monitor peace and order during the three-day rally. Workers refused to leave the premises. They were allowed to stay but were refused re-entry once they went out of the gates. PEZA guards were roving within the vicinity and the developer guards were on 24-hr duty.</li> </ul> <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ <b>Interference of LGUs:</b> No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.</li> </ul> <p><b>LAGUNA PPO</b></p> <ul style="list-style-type: none"> <li>■ There are no records of this incident at this PPO since the strike happened inside the Industrial Estates and under the control of the PEZA which has jurisdiction of the area.</li> </ul> |
| WUDPI-Independent    | Illegal dismissal, restrictive processes in union registration; and vilification (harassment) of union members  | X                        | X            | <p><b>PEZA</b></p> <ul style="list-style-type: none"> <li>■ <b>Illegal dismissal:</b> Daiho management filed a notice of retrenchment to DOLE 4A on 18 February 2009 due to financial losses and this took effect on 21 March 2009. It offered fair and justified separation pay.</li> </ul> <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ <b>Illegal dismissal:</b> No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.</li> </ul> <p><b>Management</b></p> <ul style="list-style-type: none"> <li>■ <b>Vilification:</b> The company gave the list of retrenched employees to LTI and LIMA Securities for the company's security and to further avoid the retrenched employees entering the factory premises and remaining within</li> </ul>   |

| Complainants/victims | Issue  | Included in another case | With profile | Remarks  |
|----------------------|--|--------------------------|--------------|--|
| SME                  | Illegal dismissal and non-implementation of Labor Department and court decisions | X                        | X            | <p>the vicinity of the company.</p> <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ <b>Non-implementation of Labor Department and court decisions:</b> No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.</li> </ul>   |
| AMIHAN-Independent   | Illegal dismissal; interference of LGU; harassment and criminalization           | 2528                     | V            | <p>See AMIHAN against Hanlin Garments. Incorporated and Edison Aloiedan et al. case under Case No. 2528.</p> <p><b>LAGUNA PPO</b></p> <p>The alleged workers' strike in Hanjin Garments on 25–26 January 2008 where the Cabuyao Municipal Government ordered the PNP to enforce food blockade was not true. The Cabuyao MPS has no record of the incident in its blotter.</p> <p>It is true that Christopher Capistrano, together with three others, was involved in an altercation with Cabuyao policemen who tried to pacify them during the strike that transpired on 6 February 2008. They were charged with direct assault and physical injuries.</p>   |
| GWFPWO-Independent   | Illegal dismissal/closure; interference of LGU; and criminalization              | X                        | X            | <p><b>PEZA</b></p> <ul style="list-style-type: none"> <li>■ <b>Illegal dismissal:</b> Company had temporary shutdown due to GFC from March–August 2009. It filed a final notice of retrenchment to the DOLE and gave payment to workers according to law. Some did not get their payment yet. Company deposited to NLRC remaining separation pay for employees. According to PEZA's ZM at FCIE, Golden Will maintains one person to be contacted by workers to get payment.</li> <li>■ <b>Company closure:</b> With no buyers, Golden Will closed and filed cancellation of its PEZA registration.</li> <li>■ <b>Interference of LGUs:</b> Golden Will states that they invited Governor Maliksi for peaceful talks with the union.</li> <li>■ <b>Criminalization:</b> Investigation shows that garments ready for shipping were missing and there was admission on the part of the workers that they stole the garments.</li> </ul> <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ <b>Interference of LGUs:</b> No case was filed with the CHR. The CHR NCR office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.</li> </ul> |

| Complainants/victims                         | Issue   | Included in another case | With profile | Remarks   |
|--|---|--------------------------|--------------|---|
| <b>TPMA-Independent and PIMA-Independent</b> | Illegal dismissal; militarization; assault; and criminalization | X                        | X            | <p><b>CHR</b><br/>No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.</p> <p><b>LAGUNA PPO</b><br/>It is not true that the strike in Asia Brewery was met with violent dispersals. Rodrigo Perez, together with three John Does, was charged with malicious mischief when he and his companions smashed two plastic windows and punctured all the tyres of a shuttle bus at the Asia Brewery on 4 October 2004. Bonifacio Fenol et al. were charged with grave disobedience for throwing stones at the group of policemen who tried to pacify them during the strike that transpired in front of Asia Brewery on 4 February 2009.</p>   |
| <b>NMCW-Independent</b>                      | Illegal dismissal/closure and criminalization                   | 2528                     | V            | <p><b>PEZA</b><br/>CC-09–34, all criminal cases were dismissed in 2009. Company closed in February 2007 and filed insolvency case. Lawyer of the workers was appointed to distribute assets of the company.</p>   |
| <b>ANGLO-KMU</b>                             | Illegal dismissal and vilification of union members             | X                        | X            | <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ <b>Vilification:</b> There was no HRV case filed with the CHR Region 7 office but has conducted a motu proprio investigation and submitted a status report. Since proper agencies of the Government took cognizance on the issues raised, it is recommended that the CHR will monitor the progress of the case. As to the issues of HRV, the CHR central office has directed the CHR Region 7 office to conduct a motu proprio investigation.</li> </ul> <p><b>Management</b></p> <ul style="list-style-type: none"> <li>■ The company is not located in any EPZ, special economic zone or in the areas specifically stated in the KMU report. The alleged illegal dismissal of ANGLO members is pending before NLRC RAB VII or the NLRC Division 4 in Cebu City. The company vehemently denies charges of blacklisting, vilification of ANGLO members as terrorists. The company is a victim of the tug-of-war between AHBIEA and ANGLO-KMU.</li> </ul> <p><b>CEBU CITY PPO</b></p> <ul style="list-style-type: none"> <li>■ The Cebu City PPO neither dispatched personnel to quell any disturbance nor intervened in the ongoing labour-dispute.</li> </ul> |

| Complainants/victims                          | Issue                          | Included in another case | With profile | Remarks  |
|---|--------------------------------|--------------------------|--------------|--|
| <b>SULO-Independent</b>                       | Company closure and harassment | X                        | X            | <p><b>PEZA</b></p> <ul style="list-style-type: none"> <li>■ <b>Company closure:</b> 605 workers affected by the closure were absorbed by Carina Apparel, sister company of Sensuous Lingerie. Those not qualified were given separation pay.</li> <li>■ <b>Threat/intimidation/harassment:</b> The union officers and active members prevented shuttle buses of outgoing workers to pass through the gates and forced workers to allegedly cast their vote whether to declare a strike or not.</li> </ul> <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ <b>Threat/intimidation/harassment:</b> No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.</li> </ul> <p><b>LAGUNA PPO</b></p> <p>There are no records of this incident at this PPO since the strike happened inside the industrial estates and under the control of the PEZA which has jurisdiction of the area.</p> |
| <b>Goldilocks Ant-Bel Workers Association</b> | Company closure                | X                        | X            | <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ The CHR NCR office certifies that no case was filed with the same office and no motu proprio investigation was conducted.</li> </ul> <p><b>Management</b></p> <p>Ant-Bel Marketing Inc. is an independent contractor and has no authority to bind franchiser or Goldilocks Bakeshop in any manner. Goldilocks has absolutely no control nor authority over any aspect of franchisee's operations including the supervision of employees, formulation and implementation of labour-management policies and practices.</p>  |
| <b>NMHI-OLALIA-KMU</b>                        | Interference of LGU            | X                        | X            | <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ The CHR NCR office will be conducting a motu proprio investigation on the HRV aspect of the case.</li> </ul> <p><b>Management</b></p> <ul style="list-style-type: none"> <li>■ The company does not categorically have knowledge of interference by local government officials in union organizing. If the complaints, if true, happened outside the company, Hoffen has no knowledge or information about it and has no way of confirming such reports. Also, workers do not seem discouraged in organizing unions. A CBA exists between the company and PAFLU-HEWU until 30 November 2013 (soft copy of the letter attached).</li> </ul>  |

| Complainants/victims                               | Issue   | Included in another case                 | With profile                                  | Remarks   |
|--|---|--|---|---|
| <b>SMMSCI-Independent</b>                          | Interference of LGU and harassment              | X  | X   | <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ <b>Threat/intimidation/harassment:</b> No case was filed with the CHR. The CHR Region 4 office will be conducting a motu proprio investigation on the labour-related HRV aspect of the case.</li> </ul> <p><b>Management</b></p> <ul style="list-style-type: none"> <li>■ <b>Threat/intimidation/harassment:</b> The company never engaged the members of the PNP-PMG to be stationed inside the production lines and whole factory compound during the process of CE. DOLE 4A issued a resolution dated 28 October 2005 dismissing related protest in the conduct of the election for lack of merit.</li> </ul> |
| <b>EDS sa Mfg, Inc.-Independent</b>                | Interference of LGU                             | X  | X   | <p><b>CHR</b></p> <ul style="list-style-type: none"> <li>■ The CHR NCR office will be conducting a motu proprio investigation on the HRV aspect of the case.</li> </ul> <p><b>PEZA</b></p> <ul style="list-style-type: none"> <li>■ The cases filed at the ILO concern inter- and intra-union disputes that do not involve the company. The company cannot give any update on the matter. However, it recommends contact with Mr Ricardo Pangilinan, union President of Samahan ng Manggagawa sa EMI-Independent.</li> </ul>  |
| <b>AFCEUI-1-Independent</b>                        | Harassment                                      | X  | X   | <p><b>PEZA</b></p> <ul style="list-style-type: none"> <li>■ <b>AJ:</b> Decision issued on 10 March 2010. Ten days given to negotiate CBA. CBA signed on 27 March 2010. All issues settled.</li> <li>■ <b>Threat/intimidation/harassment:</b> Security force was increased because of pilferages and not because of ILO activities.</li> </ul>   |
| <b>PAMANTIK-KMU</b>                                | Assault against picket line and criminalization | Cases of Hega, Deonida and Abhan in 2528 | Cases of Hega, Deonida and Abhan with profile | The case docketed as UA No. 08C-02358-63 is pending before the Office of Assistant City Prosecutor Cecilia B. Parallag.   |
| <b>Kaisahan mga Manggagawa sa Phils. Jeon Inc.</b> | Harassment, abduction and criminalization       | 2528                                     | V   | <p><b>PEZA</b></p> <p>Strikers were pushed away from the gates. All criminal cases dismissed.</p>   |
| <b>Gerry Cristobal EMI-Yazaki</b>                  | Killing   | 2528                                     | V   | Court records also show that no case was filed on the incident.   |
| <b>Jesus "Butch" Servida EMI-Yazaki</b>            | Killing   | 2528                                     | V   | Task Force 211 wrote to the victim's organization to request assistance in obtaining information which could help in the conduct of evaluation and/or investigation. To date, no reply has been made on the request.  |

| <b>Complainants/victims</b>                        | <b>Issue</b>    | <b>Included in another case</b> | <b>With profile</b> | <b>Remarks</b>                    |
|--|-----------------|---------------------------------|---------------------|-----------------------------------|
| <b>Romeo Legaspi</b><br>PAMANTIK-KMU Chairman      | Criminalization | 2528                            | V                   | Under investigation.              |
| <b>Declard Canmaong</b><br>No info. on affiliation | Criminalization | X                               | X                   | Gather information for profiling. |

CASE NO. 2712

INTERIM REPORT

**Complaint against the Government of  
the Democratic Republic of the Congo  
presented by  
the Congolese Labour Confederation (CCT)**

***Allegations: Abduction and arbitrary detention  
by the special services of three trade unionists,  
including the President of the Congolese Labour  
Confederation***

**1083.** The Committee last examined this case at its June 2010 meeting and presented an interim report to the Governing Body [see 357th Report, approved by the Governing Body at its 308th Session (2010), paras 1071–1087].

**1084.** At its March 2011 meeting [see 359th Report, para. 5], the Committee made an urgent appeal to the Government, indicating that, in accordance with the procedural rule set out in paragraph 17 of its 127th Report, approved by the Governing Body (1972), it could present a report on the substance of the case at its next meeting even if the information or observations requested had not been received in time. The Government has not sent any information to date.

**1085.** The Democratic Republic of the Congo has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

**A. Previous examination of the case**

**1086.** In its previous examination of the case, in June 2010, deploring that, despite the time that had elapsed, the Government had not provided any information on the allegations, the Committee made the following recommendations [see 357th Report, para. 1087]:

- (a) The Committee deplores that the Government has still not replied to the complainant organization's allegations, despite having been invited on a number of occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future.
- (b) The Committee urges the Government to hold an independent inquiry without delay to elucidate the reasons for the arrests of the two CCT trade unionists, Mr Richard Kambale Ndayango and Mr Israël Kanumbaya Yambasa, and of the President of the organization, Mr Nginamau Malaba, on 11, 16 and 19 January 2009, respectively, by ANR agents; to ascertain the charges laid against them to justify their detention; and, if it is found that they were detained solely for reasons linked to their legitimate union activities, to release them immediately and punish those responsible in a manner sufficiently dissuasive to prevent any recurrence of such acts in the future, and compensate them for any lost wages.

- (c) The Government is requested to provide copies of the relevant court decisions in this case, including the decision of 26 February 2009 of the Kinshasa/Gombe magistrate's court, the decision of the appeals court for which a hearing was set for 13 March 2009, and to indicate any follow-up action taken.
- (d) The Committee urges the Government to hold an inquiry without delay into the allegation that the three trade unionists concerned were held in custody for one month before obtaining a hearing and were subjected to inhumane and degrading treatment, and to indicate the outcome.
- (e) The Committee requests the Government or the complainant organization to indicate the follow-up action taken on the complaint filed by the CCT with the Attorney-General of the Republic on 28 January 2009.
- (f) The Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of the present case.

## **B. The Committee's conclusions**

- 1087.** *The Committee deeply deplores the fact that, despite the time that has elapsed since the complaint was presented in April 2009, the Government has still not replied to the allegations of the complainant organization, despite having been invited on several occasions, including by means of two urgent appeals, to present its observations on the allegations in reply to the recommendations made by the Committee in its previous examination of the case [see 356th and 359th Reports, para. 5].*
- 1088.** *In these circumstances, and in keeping with the applicable procedural rule [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the Committee finds itself obliged to present once again a report on the substance of the case without being able to take into account the information it hoped to receive from the Government.*
- 1089.** *The Committee reminds the Government once again that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them [see the Committee's first Report, para. 31].*
- 1090.** *The Committee notes with deep regret that the Government has still not provided any information whatsoever concerning three consecutive complaints presented since 2009, which have already been examined in the absence of a Government reply and which relate to serious violations of freedom of association. The Committee expects the Government to be more cooperative in future.*
- 1091.** *The Committee finds itself obliged to reiterate its previous recommendations and firmly expects the Government to provide information without delay, given the extreme seriousness and urgent nature of the matters dealt with in this case.*

## **The Committee's recommendations**

- 1092.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee deeply deplores the fact that, despite the time that has elapsed since the complaint was presented in April 2009, the Government has still not replied to the allegations of the complainant organization, despite having been invited on several occasions, including by means of two urgent appeals, to present its observations on the allegations in reply to the recommendations made by the Committee in its previous examination of the case [see 356th and 359th Reports, para. 5]. The Committee notes with deep regret that the Government has still not provided any information whatsoever concerning three consecutive complaints presented since 2009, which have already been examined in the absence of a Government reply and which relate to serious violations of freedom of association. The Committee expects the Government to be more cooperative in future.*
- (b) *The Committee urges the Government to hold an independent inquiry without delay to elucidate the reasons for the arrests of the two CCT trade unionists, Mr Richard Kambale Ndayango and Mr Israël Kanumbaya Yambasa, and of the President of the organization, Mr Nginamau Malaba, on 11, 16 and 19 January 2009, respectively, by ANR agents; to ascertain the charges laid against them to justify their detention; and, if it is found that they were detained solely for reasons linked to their legitimate union activities, to release them immediately and punish those responsible in a manner sufficiently dissuasive to prevent any recurrence of such acts in the future, and compensate them for any lost wages.*
- (c) *The Government is requested to provide copies of the relevant court decisions in this case, including the decision of 26 February 2009 of the Kinshasa/Gombe magistrate's court, the decision of the appeals court for which a hearing was set for 13 March 2009, and to indicate any follow-up action taken.*
- (d) *The Committee urges the Government to hold an inquiry without delay into the allegation that the three trade unionists concerned were held in custody for one month before obtaining a hearing and were subjected to inhumane and degrading treatment, and to indicate the outcome.*
- (e) *The Committee requests the Government or the complainant organization to indicate the follow-up action taken on the complaint filed by the CCT with the Attorney-General of the Republic on 28 January 2009.*
- (f) *The Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of the present case.*

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CASE NO. 2714

INTERIM REPORT

**Complaint against the Government of the Democratic Republic of the Congo**  
**presented by**  
**the Congolese Labour Confederation (CCT)**

*Allegations: Harassment and intimidation of trade union leaders through disciplinary measures and suspensions in reprisal for making a petition*

- 1093.** The Committee last examined this case at its June 2010 meeting and presented an interim report to the Governing Body [see 357th Report, approved by the Governing Body at its 308th Session (2010), paras 1104–1120].
- 1094.** At its March 2011 meeting [see 359th Report, para. 5], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rule set out in paragraph 17 of its 127th Report, approved by the Governing Body (1972), it could present a report on the substance of the case at its next meeting even if the information or observations requested had not been received in time. The Government has not sent any information to date.
- 1095.** The Democratic Republic of the Congo has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

**A. Previous examination of the case**

- 1096.** In its previous examination of the case, in June 2010, deploring that, despite the time that had elapsed, the Government had not provided any information on the allegations, the Committee made the following recommendations [see 357th Report, para. 1120]:
- (a) The Committee regrets that the Government has not replied to the complainant's allegations, despite having been invited on a number of occasions, including by means of an urgent appeal, to present its comments and observations on this case. The Committee urges the Government to be more cooperative in the future.
  - (b) The Committee urges the Government without delay to provide detailed information on the reasons for the disciplinary measures applied against Mr Basila Baelongandi and Mr Bushabu Kwete, CCT union officials, in June 2008 and January 2009, indicating in particular whether they remain suspended and, if so, why. If it is found that the measures in question were motivated solely by their legitimate trade union activities, the Committee expects that the officials in question will be reinstated without delay and paid the wages arrears and other benefits owed to them, and that the Government will ensure that such acts of anti-union discrimination will not recur in future. If reinstatement is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the trade union leaders are paid an adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination.

- (c) The Committee requests the Government to provide its observations without delay on the summons issued by the prosecution service for Mr Bushabu Kwete to attend a hearing and, in particular, the reasons for the summons in question.
- (d) The Committee, recalling that it is for trade unions to appoint their own representatives on consultative bodies, requests the Government to reply without delay in detail to the complainant's allegations concerning the appointment of a trade unionist who, according to the complainant, has no union mandate, to the Bonus Allocations Committee.
- (e) The Committee requests the Government, or the complainant, to provide information on the composition of the bodies within the General Directorate for Administrative, Judicial and State Revenues (DGRAD) and to clarify the role of the unions in that regard.

## **B. The Committee's conclusions**

**1097.** *The Committee deeply deplores the fact that, despite the time that has elapsed since the complaint was presented in April 2009, the Government has still not replied to the allegations of the complainant organization, despite having been invited on several occasions, including by means of two urgent appeals, to present its observations on the allegations in reply to the recommendations made by the Committee in its previous examination of the case [see 356th and 359th Reports, para. 5].*

**1098.** *In these circumstances, and in keeping with the applicable procedural rule [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the Committee finds itself obliged to present once again a report on the substance of the case without being able to take into account the information it hoped to receive from the Government.*

**1099.** *The Committee reminds the Government once again that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them [see the Committee's first Report, para. 31].*

**1100.** *The Committee notes with deep regret that the Government has still not provided any information whatsoever concerning three consecutive complaints presented since 2009, which have already been examined in the absence of a Government reply and which relate to serious violations of freedom of association. The Committee expects the Government to be more cooperative in future.*

**1101.** *The Committee finds itself obliged to reiterate its previous recommendations and firmly expects the Government to provide information without delay.*

## **The Committee's recommendations**

**1102.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee deeply deplores the fact that, despite the time that has elapsed since the complaint was presented in April 2009, the Government has still not replied to the allegations of the complainant organization, despite having been invited on several occasions, including by means of two urgent appeals, to present its observations on the allegations in reply to the recommendations made by the Committee in its previous examination of the*

*case [see 356th and 359th Reports, para. 5]. The Committee notes with deep regret that the Government has still not provided any information whatsoever concerning three consecutive complaints presented since 2009, which have already been examined in the absence of a Government reply and which relate to serious violations of freedom of association. The Committee expects the Government to be more cooperative in future.*

- (b) The Committee urges the Government without delay to provide detailed information on the reasons for the disciplinary measures applied against Mr Basila Baelongandi and Mr Bushabu Kwete, CCT union officials, in June 2008 and January 2009, indicating in particular whether they remain suspended and, if so, why. If it is found that the measures in question were motivated solely by their legitimate trade union activities, the Committee expects that the officials in question will be reinstated without delay and paid the wages arrears and other benefits owed to them, and that the Government will ensure that such acts of anti-union discrimination will not recur in future. If reinstatement is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the trade union leaders are paid an adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination.*
- (c) The Committee requests the Government to provide its observations without delay on the summons issued by the prosecution service for Mr Bushabu Kwete to attend a hearing and, in particular, the reasons for the summons in question.*
- (d) The Committee, recalling that it is for trade unions to appoint their own representatives on consultative bodies, requests the Government to reply without delay in detail to the complainant's allegations concerning the appointment of a trade unionist who, according to the complainant, has no union mandate, to the Bonus Allocations Committee.*
- (e) The Committee requests the Government, or the complainant, to provide information on the composition of the bodies within the DGRAD and to clarify the role of the unions in that regard.*

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

- the Inter-Trade Union Assembly–Workers’ National Convention (PIT–CNT)
- the Confederation of Civil Service Trade Unions (COFE) and
- the Association of Livestock, Agriculture and Fisheries Officials (AFGAP)

*Allegations: The complainant organizations allege that three trade union leaders were suspended with loss of earnings for their action in the context of a dispute (publication of a press release)*

- 1103.** The complaint is contained in a communication dated 24 May 2010 from the Inter-Trade Union Assembly–Workers’ National Convention (PIT–CNT), the Confederation of Civil Service Trade Unions (COFE) and the Association of Livestock, Agriculture and Fisheries Officials (AFGAP). These organizations sent further information in a communication dated 12 July 2010.
- 1104.** The Government sent its observations in communications dated 1 November 2010 and 2 March 2011.
- 1105.** 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**

- 1106.** In its communication dated 24 May 2010, the PIT–CNT, the COFE and the AFGAP indicate that they are formulating a complaint against the Government of Uruguay for violation of the principles contained in ILO Conventions Nos 87, 98 and 151. The complainants indicate that animal health officials belong to the livestock departments of the Ministry of Livestock, Agriculture and Fisheries and perform duties relating to supervision and control of the health status of livestock production in the country. Within the Association of Livestock, Agriculture and Fisheries Officials they comprise a core group whose representatives are elected by secret ballot. The animal health officials’ working hours are eight hours per day, Monday to Friday but, on account of the duties they perform, they work outside the regular timetable, practically “to order” and on a “full-time basis”, including Saturdays and Sundays.
- 1107.** Since March 2008 the animal health officials, in their core group within the AFGAP and in conjunction with the association’s representatives, began to hold talks with the authorities in the context of negotiations to deal with two basic elements which are problematic in the officials’ work: the lack of human resources and the salary payable for overtime worked, whether for working or non-working days, including rest days. Their complaint essentially called for compliance with the terms of the legislation in force in the country, in the form of “public order” regulations, inasmuch as the latter may not be disregarded, even if so agreed by the parties concerned (section 30 of Act No. 14189 and Regulatory Decree No. 472/976). The complainants point out that the Ministry of Livestock, Agriculture and Fisheries in general and the livestock departments in particular have a serious human

resources problem. In the decade preceding the term of office of the current Government which began in 2005, the livestock departments lost almost 30 per cent of their officials and, in the last three years, they have seen a reduction of nearly 10 per cent in the numbers of officials. Moreover, in the livestock departments, according to a survey carried out by the Ministry itself, 214 officials comprising 20 per cent of the total staff are due to reach retirement age in 2011.

- 1108.** Even though systems were approved during this government term for the entry of new officials, the AFGAP claims that these were insufficient to ensure that the livestock departments are able to duly perform their assigned duties and in the course of time maintain the health status currently enjoyed by the country. In general terms of age, 65 per cent of officials are over 50 years of age and 20 per cent are over 60. In the livestock departments, the average age is around 55 years. Age becomes a key factor in the performance of the duties attached to posts in the Animal Health Department. This is illustrated by the job profile featuring in the call for applications to the department, which contains the following wording: “Physical effort – Duties involve intensive and sustained physical effort, often producing fatigue or tension owing to pressure of work”. With regard to working conditions, it states: “Duties are performed under conditions where there is a high risk of serious accidents or injury to physical and/or mental health”.
- 1109.** Maintenance of the health status, which implies constant inspection with regard to diseases such as foot-and-mouth disease, brucellosis and others, requires the maintenance of a system of constant epidemiological vigilance and the capacity for attending immediately or rapidly to any incident in the field of veterinary health. The system calls for adequate human resources with salaries that cover overtime worked outside the regular timetable and also on non-working or rest days.
- 1110.** From June 2008, in the context of the trade union to which these workers belong, it was decided, as a union measure, to “work to rule”, i.e. according to the standard timetable of eight hours per day, in view of the lack of response from the ministerial authorities to the demands described above.
- 1111.** The complainants indicate that on Sunday, 5 October 2008, in the city of Artigas, the Animal Health Department received a notification of a suspected outbreak of foot-and-mouth disease. The veterinary technician therefore implemented the contingency plan established by the Ministry to respond to notifications of foot-and-mouth disease. On the morning of Monday, 6 October, the preliminary conclusion reached was that it was not an outbreak of foot-and-mouth disease but of brucellosis, and this was subsequently confirmed by the results of the clinical analysis.
- 1112.** In the context of the union measures adopted by the union leaders of the committee representing the animal health officials, Mr Martín Altuna, Mr Carlos Fuellis and Mr Guillermo Strasser, decided to issue a press release, which read as follows:

The representative committee of animal health officials hereby states that at 13.14 hours today, Sunday 5 October, an animal health veterinary technician received notification of a suspected outbreak of foot-and-mouth disease. The animal health officials will attend to this suspected outbreak during their normal working hours, namely tomorrow Monday 6 October, leaving the office at 08.00 hours.

This statement was published in various press outlets on the morning of Monday, 6 October.

- 1113.** On 8 October 2008, the Director-General of the Secretariat of the Ministry of Livestock, Agriculture and Fisheries, exercising the powers delegated by the Minister, an agronomic engineer, decided to order the opening of proceedings for an administrative investigation.

Section (VI) of the decision states that “the Minister, agronomic engineer Mr Ernesto Agazzi, requests the implementation of an administrative investigation in order to determine whether the erroneous statement was published by officials of this State Secretariat, since there would appear to be a violation in this case of section 264 of Act No. 16736, as amended by section 197 of Act No. 17296, which obliges ministry officials to maintain confidentiality with regard to any information obtained in the performance of their inspection duties”, enquiries having been received from international organizations and communication media.

- 1114.** The administrative investigation concluded that there had been administrative misconduct on the part of the union leaders. The Ministry of Livestock, Agriculture and Fisheries therefore issued decisions dated 26 January 2009 ordering administrative proceedings with respect to the three union leaders who issued the press release, together with preventive suspension from duty and withholding of 50 per cent of earnings. The investigative proceedings concluded with the issuing of the decisions of 11 June 2009, which imposed a penalty on the union leaders “... for a period of 60 days with a corresponding loss of earnings, to be deducted from the period of preventive suspension served, on grounds of serious administrative misconduct”.
- 1115.** The union measure adopted by the officers of the representative committee of animal health officials, the core group within the AFGAP, and supported and upheld as legitimate by the association and by all unionized officials of the core group, constitutes a union measure adopted as part of the exercise of the fundamental human rights of freedom of association and freedom of expression, established in articles 57 and 29, respectively, of the Constitution of the Eastern Republic of Uruguay and in ILO Conventions Nos 87, 98 and 151.
- 1116.** It goes without saying that if fundamental rights are to be effective, they must be closely interlinked, and consequently none of these rights can be exercised fully if there is no mutual co-existence with the others. This interrelationship between freedom of association and civil and political liberties was highlighted in the resolution of the 54th Session (1970) of the International Labour Conference, concerning trade union rights and their relation to civil liberties.
- 1117.** The complainants state that in the present case the trade union leaders who were investigated and suspended from duty on a preventive basis, with the withholding of half their earnings, and subsequently penalized with a 60-day suspension with the corresponding loss of earnings, acted in the context of a dispute and in line with a union measure adopted by an assembly of the union, according to which the press was informed of the contradiction between the contractual conditions applying to officials of the Ministry of Livestock, Agriculture and Fisheries and the needs of the system. The decision of the assembly of 16 June 2008, which was endorsed by the national assembly of officials on 23 July 2008, held in the city of Durazno, consisted of not attending to suspected outbreaks of diseases outside the usual duty hours and informing the press of the contradiction between the contractual conditions of work and the needs of the system.
- 1118.** The decisions issued by the Ministry of Livestock, Agriculture and Fisheries, ordering disciplinary proceedings with suspension from duty of the union leaders concerned and concluding with decisions imposing a 60-day suspension with the corresponding loss of earnings, constitute a violation of ILO Conventions Nos 87, 98 and 151.
- 1119.** By a communication of 12 July 2010, the PIT–CNT, the COFE and the AFGAP state that the decisions imposing penalties on the union officers of the representative committee of animal health officials of the AFGAP, Mr Martín Altuna, Mr Carlos Fuellis and Mr Guillermo Strasser, were challenged through administrative appeals, submitted in due

time and form, to have them overturned and referred to higher authority. The appeals were expressly rejected through the issuing of the respective decisions, and thus the administrative channels were exhausted, resulting in the judicial appeal for annulment being brought before the Administrative Disputes Tribunal.

- 1120.** Trade union representative Mr Carlos Fuellis filed an appeal for annulment before the Administrative Disputes Tribunal against the Executive Authority – Ministry of Livestock, Agriculture and Fisheries, submitting the application in due time and form on 26 March 2010, which was then classified as No. 156/2010. At present the case is at the evidentiary stage. In brief, the matter covered by the complaint was the subject of the abovementioned administrative appeals, filed by the three union representatives, and these were rejected. The appeal for annulment was filed only by union representative Mr Carlos Fuellis and is at present at the evidentiary stage.

## **B. The Government's reply**

- 1121.** In its communication dated 1 November 2010, the Government declares that, in the context of union measures implemented by officials of the Animal Health Division (DSA) of the Ministry of Livestock, Agriculture and Fisheries, a notification was received on 5 October 2008 at the Animal Health Department in the Department of Artigas concerning a suspected outbreak of foot-and-mouth disease. Accordingly, in the context of the union measure being implemented, it was decided to issue a press release, which read as follows: “The representative committee of animal health officials hereby states that at 13.14 hours today, Sunday 5 October, an animal health veterinary technician received notification of a suspected outbreak of foot-and-mouth disease. The animal health officials will attend to this suspected outbreak during their normal working hours, namely tomorrow Monday 6 October, leaving the office at 08.00 hours”.
- 1122.** The Government points out that the above statement was published in various press outlets on the morning of Monday, 6 October 2008. During the morning of the same day, the preliminary conclusion reached was that it was not an outbreak of foot-and-mouth disease but of brucellosis, and this was subsequently confirmed by the clinical analysis.
- 1123.** On 8 October 2008 the Director-General of the Secretariat of the Ministry of Livestock, Agriculture and Fisheries, exercising the powers delegated by the Minister, decided to order the opening of proceedings for an administrative investigation, with section (VI) of the decision stating as follows: “The Minister, agronomic engineer Mr Ernesto Agazzi, requests the implementation of an administrative investigation in order to determine whether the erroneous statement was published by officials of this State Secretariat, since there would appear to be a violation in this case of section 264 of Act No. 16736, as amended by section 197 of Act No. 17296, which obliges ministry officials to maintain confidentiality with regard to any information obtained in the performance of their inspection duties”, enquiries having been received from international organizations and communication media.
- 1124.** The Government indicates that its primary considerations are set out below, with further comments to follow shortly. In examining the proceedings conducted by the Ministry of Livestock, Agriculture and Fisheries, the aspects mentioned by the PIT–CNT, the COFE and the AFGAP were borne in mind and it was only after it was concluded that the actions deemed to be administrative misconduct were not covered by trade union immunity that the conditions were met for imposing the administrative penalty.
- 1125.** The professional who conducted the administrative investigation stated clearly in her conclusions that she had investigated various aspects, including: “The existence of a suspected outbreak of foot-and-mouth disease”, “delay in attending to a suspected case of

foot-and-mouth disease”, and “finally, publication of the statement in public communication media”. The first two aspects, which were obviously very serious, were deemed not to constitute administrative misconduct that could be ascribed to the officials, but the third aspect was considered to fulfil the conditions for misconduct that could incur a penalty.

- 1126.** Secondly, it should be pointed out that the conduct displayed by the officials was in clear violation of the terms of section 264 of Act No. 16736 of 5 January 1996, as amended by section 197 of Act No. 17296 of 21 January 2001, which states as follows: “Unless otherwise authorized explicitly in writing by the directors of the executive unit, officials of the Ministry of Livestock, Agriculture and Fisheries shall be obliged to maintain confidentiality with regard to any information obtained in the performance of their inspection duties. Furthermore, they shall maintain secrecy with regard to any administrative or judicial actions of which they have knowledge.” The aforementioned legal provision clearly prohibits officials from acting in the manner of the officials involved in the case in question, and this does not cease to apply despite claims of trade union immunity.
- 1127.** The officials were informed of the report of the suspected outbreak of foot-and-mouth disease in the performance of their inspection duties and therefore had no authority to divulge the news in the way they did. In similar situations, the Administrative Disputes Tribunal has evaluated the legality of the steps taken by the Administration, declaring explicitly that penalties imposed in accordance with the aforementioned legal provision do not conflict with the terms of ILO Conventions Nos 87, 98 and 154. The Tribunal has maintained that the legal prohibition (section 264 of Act No. 16736) is very specific and legitimately limits rights which generally apply to every inhabitant of the country (articles 7, 29, 53 and 54 of the Constitution of the Republic and provisions of the ILO Conventions having force of law).
- 1128.** Finally, the Government points out that in the case in question the officials could have perfectly well asserted their rights and made a public statement, saying that a report had been received which would be attended to during their normal working hours, namely on Monday, 6 October 2008. In this way their rights would not have been affected at all, particularly that of freedom of association, as highlighted by the resolution of the 54th Session (1970) of the International Labour Conference, concerning trade union rights and their relation to civil liberties, including in particular those of freedom of opinion and expression and the right to hold opinions without being harassed and to investigate and receive information and disseminate it without any limitation on boundaries and by any means of expression. In the present case compatibility could very well have been established between trade union freedoms and compliance with national law, inasmuch as mentioning the type of suspected outbreak which had been reported did nothing to enhance the defence of union rights. It would have been perfectly possible to comply with the obligation to maintain confidentiality with regard to the information received in the course of duty and at the same time defend trade union rights.
- 1129.** In its communication of 2 March 2011 the Government reiterates that the Ministry of Livestock, Agriculture and Fisheries, before investigating the administrative proceedings, bore in mind the aspects relating to freedom of association and only after concluding that the actions deemed to be administrative misconduct were not covered by trade union immunity did it proceed accordingly.
- 1130.** The Government adds that as regards the claims which lay behind the union measure adopted by the workers, of which inaccurate versions ended up in the public domain, it should be noted that the definition of the work regime in the DSA are the subject of analysis in the restructuring of the Directorate-General for Livestock Services (DGSG) of

the Ministry of Livestock, Agriculture and Fisheries, as are the scope of any agreements reached with the roundtable for dialogue held with the association of DGSG officials and the subsequent validation thereof. When the five-year budget for the DGSG was being drawn up, a proposal was made for a new work regime, in which the pay claims put forward by the officials of the DSA would be taken into consideration.

- 1131.** As regards the pay structure, in the previous five-year period the following considerations were put forward: (a) to promote fair pay on the basis of guidelines laid down by the Ministerial Cabinet; (b) to increase the minimum pay levels for the lowest categories on the pay scale for officials; and (c) to improve pay for the categories carrying the greatest levels of responsibility in the department. Even though the DGSG has a problem in relation to pay inequalities between its divisions, the Administration intends to reduce differences during the five-year period on the basis of the concept of equal pay for equal work. As regards biosecurity and personal protective equipment (PPE), major investments have been made in equipment for the protection of staff and biosecurity equipment has been distributed for use in health emergencies in all DSA areas and premises throughout the country. Training courses in various subjects for DGSG staff have been conducted, in which DSA officials have participated, on an exclusive basis in some and together with DGSG officials in others. Work is thus in progress and will continue in the future to take into consideration the demands of the officials of the State Secretariat referred to above.
- 1132.** In view of the above, the Government reiterates that in the case in question the penalty imposed by the Administration did not violate trade union rights inasmuch as the legal provisions in force and especially those allegedly violated in the case in question did not harm basic guarantees in the area of freedom of association. Moreover, as regards the rights which deal with adequate protection against acts of anti-union discrimination in relation to employment, it should be pointed out that in the present case there have been no acts of anti-union discrimination.
- 1133.** Consequently, the Government declares that there has been no violation of ILO Conventions Nos 87, 98 and 151, inasmuch as the penalties imposed on the officials of the Ministry of Livestock, Agriculture and Fisheries relate not to the trade union measures established but to failure to comply with a provision of national law (section 264 of Act No. 16736 of 5 January 1996, as amended by section 197 of Act No. 17296 of 21 January 2001), and this in no way harmed trade union rights or civil liberties.

### C. The Committee's conclusions

- 1134.** *The Committee observes that the complainant organizations allege that in the context of a dispute at the Animal Health Department of the Ministry of Livestock, Agriculture and Fisheries three trade union leaders of the representative committee of animal health officials in the AFGAP decided to issue a press release (mentioning that a notification had been received of a suspected outbreak of foot-and-mouth disease which would be attended to during normal working hours) and that as a result the administrative authority imposed a penalty on them of a 60-day suspension with loss of earnings.*
- 1135.** *The Committee notes the Government's statements to the effect that: (1) the press release in question was published in various media outlets on 6 October 2008 and the same day it was concluded that it was not a case of foot-and-mouth disease but of brucellosis; (2) on 8 October it was decided to order the opening of administrative investigation proceedings to determine whether the erroneous news was published by officials of the Secretariat of the Ministry of Livestock, Agriculture and Fisheries since, if that was the case, there would be a violation of the provisions of section 264 of Act No. 16736, which obliges Ministry officials to maintain confidentiality with regard to any information obtained in the performance of their inspection duties; (3) the professional who conducted the*

administrative investigation stated in her conclusions that she had investigated various aspects, including the publication of the news in the public communication media, and considered that the conditions had been fulfilled for misconduct liable to incur a penalty; (4) Act No. 16736 prohibits officials from acting in the manner of the officials involved in the case, and those provisions do not cease to apply in spite of claims of trade union immunity, and only after it was concluded that the actions deemed to be administrative misconduct were not covered by trade union immunity were the conditions fulfilled for imposing the administrative penalty; (5) the officials noted the report of the suspected outbreak of foot-and-mouth disease in the performance of their inspection duties and were therefore not authorized to divulge the news in the manner they did; (6) the Administrative Disputes Tribunal has evaluated the legality of the proceedings of the Administration, explicitly declaring that penalties imposed in conformity with the abovementioned legal provisions do not conflict with ILO Conventions Nos 87, 98 and 154 and that the prohibition set out in section 264 is very specific and legitimately limits rights generally enjoyed by all inhabitants of the country; (7) the officials could very well have asserted their rights and issued a communication to the public, explaining that a report had been received which would be attended to during normal working hours, given that mentioning the type of suspected outbreak that had been reported did nothing to enhance the defence of trade union rights; and (8) the penalties imposed on the officials have nothing to do with the adopted trade union measures.

**1136.** *The Committee notes all this information and in particular the Government's claim that the trade union leaders violated the provisions of the legislation relating to professional secrecy and the officials' duty of confidentiality. Moreover, the Committee observes the statement from the complainants that the three union leaders in question (Mr Martín Altuna, Mr Carlos Fuellis and Mr Guillermo Strasser) filed administrative appeals to have the decisions overturned and referred to higher authority which were expressly rejected and that only Mr Carlos Fuellis filed an appeal for annulment before the Administrative Disputes Tribunal against the Executive Authority (Ministry of Livestock, Agriculture and Fisheries) on 26 March 2010, which is currently at the evidentiary stage.*

**1137.** *In view of the above, the Committee considers that the substance of the allegations in the present case is not related to the exercise of trade union rights, and it will therefore not pursue the examination of these allegations.*

### **The Committee's recommendation**

**1138.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

CASE NO. 2422

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

**Complaint against the Government of  
the Bolivarian Republic of Venezuela  
presented by  
the Single National Union of Public, Professional,  
Technical and Administrative Employees of the Ministry  
of Health and Social Development (SUNEP–SAS)  
supported by  
Public Services International (PSI)**

*Allegations: Refusal of the authorities to negotiate a draft collective agreement or lists of demands with SUNEP–SAS; refusal to grant trade union leave to SUNEP–SAS officials; dismissal proceedings against trade unionists; and other anti-trade union measures*

- 1139.** The Committee examined this case at its November 2010 meeting and presented an interim report to the Governing Body [see the 358th Report, paras 911–933, approved by the Governing Body at its 309th meeting in November 2010].
- 1140.** The Government sent new observations in a communication dated 21 February 2011.
- 1141.** The Bolivarian Republic of 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. Previous examination of the case**

- 1142.** At its November 2010 meeting, the Committee made the following recommendations on the pending issues [see 358th Report, para. 933]:
- (a) Expressing its deep concern at the problems faced by the complainant in exercising its trade union rights, the Committee again urges the Government to open a direct, constructive dialogue with SUNEP–SAS on the pending issues: reform of the union’s rules; elections to the executive committee; exercise of the right to engage in collective bargaining; taking of union leave; payment of the authorities’ debts to the union for the implementation of educational and social programmes; and confiscation of union premises.
  - (b) The Committee expects that a prompt solution to these issues can be found and that the Government will guarantee the trade union rights of SUNEP–SAS, and requests the Government to keep it informed in this regard.
  - (c) The Committee requests the Government, if recourse to the CNE in trade union elections is voluntary, as the Government has stated, to give clear explanations and assurances in writing to SUNEP–SAS that it can hold its elections without any intervention by the authorities, and to transmit a copy of such a communication.

- (d) In view of the fact that the judicial authority of the first level ordered the reinstatement of union official Mr Yuri Girardot Salas Moreno (although this decision was quashed at second level), that the grounds for dismissal were the taking of union leave to which he was not entitled and that there is nothing in the legal ruling to suggest that the union official acted in bad faith, the Committee urges the Government to take steps to reinstate him without delay and to ensure that he receives full compensation, including payment of lost salary and other benefits.

## **B. The Government's reply**

- 1143.** In its communication of 21 March 2011, the Government states, with regard to the points raised by the Committee regarding the situation of the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) (with regard to direct dialogue, reform of the union's statutes, elections to the executive committee, exercise of the right to collective bargaining, entitlements to union leave, payment of debts to the union, and confiscation of union premises), that SUNEP-SAS held elections to its executive committee on 15 February 2011 and that to date no draft collective agreement has been submitted. The Government reiterates that there is no question of a refusal by the health authorities or the Government itself to enter into dialogue or bargain collectively with the organization; it is simply that any trade union organization is required to satisfy established legal criteria in order to be authorized to represent workers in the discussions and negotiations leading to collective labour agreements and, thus, once the union has submitted its proposed text of a collective agreement in accordance with the law, the text will be discussed with the appropriate authorities.
- 1144.** As regards the alleged confiscation of union premises, the Government states that it has no information on this point and suggests that the Committee seek further and more specific information in this regard in order to be able to examine this allegation.
- 1145.** As regards the Committee's recommendation concerning Mr Yuri Girardot Salas Moreno, in view of the fact that the judicial authority of the first level ordered the reinstatement of the union official but the decision was rescinded by a higher level court, the Government notes with interest the Committee's recommendation, which reflects primarily the fact that in the Bolivarian Republic of Venezuela the rule of law prevails, given that the individual in question availed himself at all times of the appropriate legal avenues of redress, and in this case the judicial authority has responded promptly to his complaint against the Ministry of People's Power for Health; he was thus able, as the Committee itself acknowledges, to win at first instance his claim for reinstatement in his post in the Ministry. The Government states that the citizen in question acted correctly in bringing his case before the courts, which is the appropriate channel for obtaining redress for rights allegedly violated by the Government.
- 1146.** In the same line of events, the legal representative of the Ministry of People's Power for Health lodged an appeal before the Second Court for Administrative Disputes against the ruling given on 19 December 2007 by the Sixth Higher Court for Administrative Disputes of the Capital District. On 25 March 2010, the Second Court for Administrative Disputes upheld the appeal lodged by the Ministry of People's Power for Health and rescinded the original ruling, quashing the administrative action initiated by Mr Yuri Girardot.
- 1147.** The Government adds that the citizen in question did not avail himself of the right to seek a review of the ruling, for which a period of six months is allowed under law, and his employment at the Ministry of People's Power for Health was consequently legally terminated. Given the final and enforceable nature of the ruling, the executive is not in a position to disregard a decision of the judiciary.

### C. The Committee's conclusions

- 1148.** *Allegations regarding the complainant organization's difficulties in exercising its trade union rights. The Committee notes the Government's statements to the effect that SUNEP-SAS held elections to its executive committee on 15 February 2011; once the union submits its proposed text of a collective agreement, in accordance with the law, the text will be discussed with the appropriate authorities.*
- 1149.** *The Committee trusts that, in its new situation, the complainant organization, in the context of exercising the right to collective bargaining, will be able to initiate direct and constructive dialogue with the health authorities on other questions raised with the Committee (entitlements to union leave, payment of debts owed by the authorities to the union, and implementation of educational and social programmes under the terms of previous collective agreements), and trusts that a solution will be found quickly. The Committee requests the Government to keep it informed in this regard.*
- 1150.** *In addition, and noting the Government's request, the Committee requests the complainant organization to supply as much information as possible on the alleged confiscation of union premises, in order to enable the Government to provide complete information.*
- 1151.** *Allegations concerning the dismissal of a trade union official. The Committee takes due note of the Government's statements to the effect that : (1) the union official, Mr Girardot Salas Moreno, did not lodge a final appeal against the appeal ruling which rescinded the reinstatement order given by the court of first instance; and (2) Mr Girardot Salas Moreno did not seek a review of the final appeal ruling within the legally stipulated period of six months, and as a result that ruling is now final and enforceable; the Government states that, consequently, it is not in a position to disregard the ruling of a judicial authority by, for example, adopting measures requested by the Committee to reinstate the individual in question.*

### The Committee's recommendations

- 1152.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee trusts that, in its new situation, the complainant organization, in the context of exercising the right to collective bargaining, will be able to initiate direct and constructive dialogue with the health authorities on certain questions raised with the Committee (entitlements to union leave, payment of debts owed by the authorities to the union, and implementation of educational and social programmes under the terms of previous collective agreements), and trusts that a solution will be found quickly. The Committee requests the Government to keep it informed in this regard.*
- (b) *Lastly, and noting the Government's request, the Committee requests the complainant organization to supply as much information as possible on the alleged confiscation of union premises, in order to enable the Government to provide complete information.*

CASE NO. 2674

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

**Complaint against the Government of the  
Bolivarian Republic of Venezuela  
presented by  
the Venezuelan Workers' Confederation (CTV)**

*Allegations: Obstacles to collective bargaining  
with public sector trade unions and actions by  
the authorities to expropriate trade union  
federations affiliated to the CTV or deprive them  
of their premises*

**1153.** The Committee examined this case at its November 2010 meeting and presented an interim report to the Governing Body [see 358th Report, paras 934–953, approved by the Governing Body at its 309th Session (November 2010)].

**1154.** The Government sent new observations in a communication dated 21 February 2011.

**1155.** The Bolivarian Republic of 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. Previous examination of the case**

**1156.** At its November 2010 meeting, the Committee made the following recommendations on the matters which remained pending [see 358th Report, para. 953]:

- (a) The Committee again requests the Government to engage in collective bargaining with FEDEUNEP and FETRASALUD or to allow them to participate in bargaining in their respective sectors, and to keep it informed in this regard.
- (b) The Committee invites the complainant organization to send comments and further information regarding the allegations relating to the status of the FETRAFALCON and FETRAMERIDA premises, taking particular account of the Government's latest reply.
- (c) The Committee invites the complainant organization to send its comments on:
  - (1) the Government's new reply to the allegations concerning the FETRAMIRANDA trade union federation and recalls that in its recommendation regarding this allegation, it asks the Government to remove the occupiers and to guarantee FETRAMIRANDA's use of the premises until the dispute regarding ownership of the property is resolved; and
  - (2) the current status of the building in which the former headquarters of the aforementioned federation were located.

**B. The Government's reply**

**1157.** In its communication dated 21 February 2011, as regards collective bargaining with the National Single Federation of Public Employees (FEDEUNEP) and the National Federation of Health Workers (FETRASALUD), the Government states that the executive committee of FEDEUNEP is in "electoral default", since the last elections have been held

on 25 October 2001, in order to elect the committee for a five-year term. There is no indication in the federation's records that any new elections have been held since that date.

**1158.** On 21 February 2007, FEDEUNEP submitted a draft collective bargaining agreement, on which the Directorate of the National Inspectorate for the Public Sector of the People's Ministry of Labour and Social Security made some observations to which the trade union was to respond within 15 days, in line with the relevant legislative provisions. However, the trade union did not rectify the issues stipulated in the observations made by the abovementioned directorate, leading to the suspension of discussions relating to the draft collective bargaining agreement, in line with the principle of a prescriptive time limit on legal acts, as the trade union had failed to rectify any errors or omissions within the 15-day time limit, as established under section 50 of the Administrative Procedures Act. This provides further confirmation of the fact that there has been no refusal by the authorities or the Government to engage in collective bargaining with this organization; it is a question of compliance with the requirements laid down in national legislation. Once the situation has been rectified, bargaining in relation to the draft collective labour agreement can take place, in line with national labour legislation and in strict compliance with Convention No. 98.

**1159.** With regard to FETRASALUD, the Government informs the Committee that elections were last held on 21 September 2001, when an executive committee was elected for a five-year term which expired on 21 September 2006, in accordance with the provisions of article 19 of the trade union's own statutes. The Government wishes to point out that FETRASALUD submitted a draft collective agreement on 12 September 2007, to be discussed with the Ministry of People's Power for Health, the National Institute of Nutrition (INN), the Autonomous Institute of Caracas University Hospital, the Dr Rafael Rangel National Institute of Hygiene, the Venezuelan Social Security Institute (IVSS), the Ministry of Education Staff Pensions and Welfare Institute (IPASME), and the National Social Insurance Institute (INASS). Negotiations relating to the abovementioned draft collective agreement were suspended on 13 October 2009 because the executive committee lacked the authority to engage in collective bargaining, or discuss collective agreements, on behalf of the workers. Therefore, the Government states that there has been no refusal on the part of the Government to initiate collective bargaining with this trade union organization; it is a matter of strict compliance with the relevant legislation in the field and efforts to safeguard workers' representation in that sector, and all other sectors in the country.

### C. The Committee's conclusions

**1160.** *With regard to the allegations relating to FETRAFALCON, FETRAMERIDA and FETRAMIRANDA, the Committee notes with regret that, despite the request issued in November 2010, the complainant organization has not provided the requested information. Under such circumstances, the Committee informs these organizations that if they fail to submit the relevant information in time for its next meeting, the Committee will no longer pursue its examination of the issues and allegations which remain pending.*

**1161.** *By way of clarification, the Committee reiterates its previous conclusions relating to these allegations [see 358th Report, paras 949–951]:*

- *As regards the Committee's recommendation regarding payment to the FETRAFALCON federation for the expropriated building using the amicable settlement mechanism and more generally regarding settlement of Falcón State's debts to the federation, the Committee notes the Government's statements to the effect that the representatives of FETRAFALCON already received the payment corresponding to the sale registration and the payment for the land. The Committee notes the Government's statement,*

however, that FETRAFALCON has given no evidence of being the owner of the outbuildings and that, consequently, according to the law, the Falcón State executive cannot make the payment relating to the outbuildings until FETRAFALCON proves that it owns them. The Committee requests the complainant organization to send its comments and provide further information in this respect.

- As regards the allegation relating to the occupation of the FETRAMERIDA federation premises (in which it is claimed that a group of people linked to the Government seized the federation headquarters and since then has continued to occupy them, preventing the legitimate tenants from making use of the premises), the Committee observes that the complainant organization has not provided the additional information requested. The Committee notes the Government's additional observations to the effect that the former FETRAMERIDA headquarters building is currently being used by a group from the Bolivarian University of Venezuela and consequently the allegation that a group of people linked to the Government seized the FETRAMERIDA headquarters is false. The Committee again requests the complainant to provide further details in relation to the allegations.
- As regards the allegations concerning the seizure by court order in 2007 of the FETRAMIRANDA federation headquarters at the request of the regional government, the eviction of the trade unions from the premises and the subsequent occupation by Government supporters, the Committee notes the Government's statements to the effect that: (1) the seizure order was issued by the court because the federation in question failed to present any deed of ownership; and (2) there is no indication that this property of the Venezuelan State is being "occupied by Government supporters". The Committee recalls that in its recommendation regarding this allegation it asked the Government to remove the occupiers and to guarantee FETRAMIRANDA's use of the premises until the dispute regarding ownership of the property is resolved. The Committee invites the complainant to send its comments on the Government's new reply and on the current status of the building in which its headquarters were located.

**1162.** *With regard to the Committee's recommendation requesting the Government once again to engage in collective bargaining with FEDEUNEP and FETRASALUD or to allow them to participate in bargaining in their respective sectors, the Committee notes the Government's statements which indicate that: (1) the refusal to negotiate with FEDEUNEP is due to the trade union's failure to take on board the observations of the Ministry of People's Power for Labour and Social Security and the fact that it is in "electoral default"; and (2) the refusal to engage in collective bargaining with FETRASALUD also stems from the fact that its executive committee is in electoral default (failure to elect the executive committee before the end of its term of office), as its mandate has expired years ago, and thus, under existing legislative provisions, does not have the authority to engage in collective bargaining.*

**1163.** *The Committee wishes to refer to its previous conclusions [see 358th Report, para. 948]:*

*With regard to the alleged refusal by the authorities to negotiate with FEDEUNEP on a draft framework agreement to regulate working conditions in the public sector, and the authorities' alleged refusal to let FETRASALUD participate in collective bargaining in its sector since 2000, the Committee regrets to observe that the Government justifies its refusal on the grounds that both federations have been in "electoral default" since 2006 because they have not provided evidence of executive committee elections since that year. The Committee wishes to point out, in this regard, that it has repeatedly criticized the intervention of the National Electoral Council (which is not a judicial body) in elections to trade union executive committees.*

*In various earlier cases, the Committee has observed how this body and its activities have stymied the results of trade union elections until lengthy procedures with uncertain outcomes have been resolved, and that this type of intervention has had a negative impact on organizations belonging to the CTV; it is therefore not surprising that these union organizations disown the electoral system guided by the National Electoral Council, which has itself been the subject of many objections, not only from the Committee on Freedom of*

Association, but also from the Committee of Experts and the Conference Committee on the Application of Standards, for its violations of Article 3 of Convention No. 87. In particular, the Committee would like to refer to the conclusions of the Committee on the Application of Standards in its June 2009 discussion of the application of Convention No. 87, in which it urged the Government to take the necessary measures without delay to ensure that intervention of the National Electoral Council in proceedings of union elections, including its intervention in cases of complaints, was only possible when the organization explicitly so requested, and to take active steps to amend all the legislative provisions incompatible with the Convention to which the Committee of Experts had objected. The Committee on the Application of Standards also requested the Government to intensify social dialogue with representative organizations of workers and employers. This being the case, and bearing in mind that the federations within the CTV unite numerous organizations and thousands of workers, the Committee requests the Government to bargain with FEDEUNEP and FETRASALUD or to allow them to participate in bargaining in their respective sectors, and to report to it in this regard.

- 1164.** *Mindful of the fact that the draft collective agreements were submitted by these organizations a number of years ago and may no longer be valid, the Committee requests the Government to provide FEDEUNEP and FETRASALUD with written guarantees that they will be able to hold elections without any intervention by the National Electoral Council, including with regard to resources, as it is not a judicial body and does not enjoy the confidence of a large number of trade union organizations in the country. The Committee expects that the FEDEUNEP and FETRASALUD executive committee elections will take place without delay and that, in the future, the authorities will engage in collective bargaining with these organizations. The Committee requests the Government to keep it informed in this regard.*

### **The Committee's recommendations**

- 1165.** *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 guarantee in writing that FEDEUNEP and FETRASALUD can hold executive committee elections without any involvement by the National Electoral Council, including with regard to resources, as it is not a judicial body and does not enjoy the confidence of a large number of trade union organizations in the country. The Committee expresses the firm hope that the FEDEUNEP and FETRASALUD executive committee elections will take place without delay and that, in the future, the authorities will engage in collective bargaining with these organizations. The Committee requests the Government to keep it informed in this regard.*
- (b) *The Committee informs the complainant organization that it will not proceed with the examination of the allegations relating to FETRAFALCON, FETRAMERIDA and FETRAMIRANDA unless they submit the relevant information in time for the next meeting of the Committee.*

CASE NO. 2727

INTERIM REPORT

**Complaint against the Government of  
the Bolivarian republic of Venezuela  
presented by  
the Workers' Confederation of Venezuela (CTV)**

*Allegations: The Venezuelan Workers' Confederation (CTV) alleges: (1) that the Office of the Attorney General has brought charges of boycotting against six workers of the enterprise *Petróleos de Venezuela SA (PDVSA)* for staging protests to demand their labour rights; (2) that protests have been criminalized and legal proceedings initiated at various enterprises, and that union officials have been dismissed in connection with these protests; (3) the murder of union officials in the construction industry; and (4) the persistent refusal by the public authorities to bargain collectively in a number of sectors*

**1166.** The Committee last examined this case at its meeting in November 2010, when it submitted an interim report to the Governing Body [see 358th Report, paras 954–983, approved by the Governing Body at its 309th Session held in November 2010].

**1167.** The Government sent additional observations in a communication dated 21 February 2011.

**1168.** The Bolivarian Republic of 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. Previous examination of the case**

**1169.** In its previous examination of the case in November 2010, the Committee made the following recommendations concerning the outstanding issues [see 358th Report, para. 983]:

- (a) The Committee expresses its grave concern about the serious allegations of murders of workers and union officials, which it deeply regrets, and urges the Government to act diligently and swiftly to resolve these cases fully.
- (b) With regard to the allegations concerning the murder of three officials of the Bolivarian Union of Workers in the Construction Industry in El Tigre (Mr Wilfredo Rafael Hernández Avile, general secretary, Mr Jesús Argenis Guevara, organizational secretary, and Mr Jesús Alberto Hernández, culture and sports secretary) and of two trade union delegates in the Los Anaucos area in June 2009 (Mr Felipe Alejandro Matar Iriarte and Mr Reinaldo José Hernández Berroteran), the Committee requests the Government to intensify the judicial proceedings and investigations of the Office of the Attorney-General in order to identify and severely punish the perpetrators, instigators and accomplices. The Committee requests the Government to keep it informed on the

developments of the proceedings and expects that they will yield results in the near future.

- (c) Concerning the allegations in relation to the contract killings of more than 200 workers and union officials in the construction sector, the Committee requests the trade union to provide the Government without delay with a list of these murders and the circumstances thereof so that the Government can undertake the appropriate investigations without delay.
- (d) As regards the allegations concerning the Office of the Attorney-General's preparation of criminal charges against and detention of six workers at PDVSA because, during a protest in defence of their labour rights, they paralysed the enterprise's activities, the Committee requests the Government or competent authorities to take the necessary measures to have the criminal proceedings brought against the six union officials at PDVSA dropped and to ensure their release without delay. The Committee also requests the Government to take the necessary steps to amend section 139 of the Act for the Defence of Persons in Accessing Goods and Services so that it does not apply to services which are not essential in the strict sense of the term and so that in no event may criminal sanctions be imposed in cases of peaceful strikes. The Committee requests the Government to keep it informed in this regard. The Committee draws the attention of the Committee of Experts to the legal aspects of this case.
- (e) With respect to the allegations concerning the criminalization of protests, the initiation of judicial proceedings at various enterprises in the oil, gas and steel sectors, and the dismissal of union officials as a result of these protests (according to the CTV, judicial proceedings were started against 27 workers at the state holding PDVSA, 25 workers at the "Alfredo Maneiro" Orinoco steelworks for staging a protest in defence of their labour rights and ten trade union delegates of the "El Palito" refinery were dismissed after 600 workers decided to stop work as a result of failure to abide by commitments under the collective agreement. According to the CTV, workers at the enterprises Gas PetroPiar and Gas Comunal have also been affected), the Committee again requests the complainant to send the text of the accusations allegedly made against the union members in question.
- (f) With regard to the criminal court proceedings against 110 workers for claiming their rights, the Committee again requests the complainant organization to supply additional information concerning these allegations, specifically, the names of those involved and the activities they are alleged to have undertaken, so that the Government can send its observations in this regard.
- (g) The Committee again invites the complainant organization to indicate whether the collective bargaining rights of its affiliates have been respected in the bargaining processes mentioned by the Government.
- (h) The Committee calls the Governing Body's attention to the extreme seriousness and urgent nature of this case.

## B. The Government's reply

**1170.** In its communication dated 21 February 2011 the Government states, first and foremost, that it is concerned at the degree of incongruence and inconsistency between the conclusions and recommendations of the Committee on Freedom of Association and the designation of Case No. 2727 as "extremely serious and urgent". In particular, the Committee notes that it has received information from the Venezuelan Government on Case No. 2727 which it intends to examine at its next meeting, yet in paragraph 983 of its 358th Report it agrees with the Government and requests the complainant organization to provide detailed information to the Government on its allegations and on the circumstances surrounding them without delay, so that the Government can conduct the relevant investigations. In point of fact, four of the Committee's six recommendations (namely, (c), (e), (f) and (g)) call on the complainant organization specifically to provide information. As to the other two recommendations brought to its attention, the Government has since 2009, when the complaint was first presented, informed the Committee of developments in

the relevant inquiries and on the steps taken regarding the incidents that took place in El Tigre, in the state of Anzoátegui, and in the Los Anaucos area. It has also informed the Committee of the legal proceedings brought by the Office of the Attorney-General against six former Petróleos de Venezuela SA (PDVSA) employees on suspicion of criminal activities. In the light of the foregoing, and as the Government stated at the 309th Session of the Governing Body when the report of the Committee on Freedom of Association was adopted, it categorically rejects the Committee's designation of this case as "extremely serious and urgent", given that the Committee has yet to examine the latest replies from the Government and that the complainant organization has still not supplied the information requested of it – always bearing in mind that four of the Committee's six recommendations concern it directly.

- 1171.** The Government goes on to refer to recommendations (a) and (b) of the Committee, in which it recommends, in regard to the serious allegations of murders of workers and union officials, that the Government "act diligently and swiftly to resolve these cases fully" and that it "intensify the judicial proceedings and investigations of the Office of the Attorney-General in order to identify and severely punish the perpetrators, instigators and accomplices". On this point the Government observes that the complaint was presented in June 2009 and was subsequently transmitted to the Government, which sent its reply in October of the same year, i.e. only months after the complaint was presented. In this initial reply, the Government informed the Committee of the investigations being conducted by the Office of the Attorney-General, together with the names of the investigating bodies concerned, and of the steps taken by the Scientific, Penal and Criminal Investigating Body. In March and May 2010 the Government sent additional replies on the case, thus fulfilling its obligation to keep the Committee abreast of developments. In its replies it informed the Committee of the names of the persons allegedly responsible for the incidents, of the charges brought by the investigating bodies, of the crimes involved, of the state of the proceedings and of the hearings that had been held.
- 1172.** Specifically, with respect to the murder of Mr Wilfredo Rafael Hernández, Mr Jesús Argenis Guevara and Mr Jesús Alberto Hernández on 24 June 2009, in the state of Anzoátegui, the Government states that on 25 November 2009 the Office of the Attorney-General requested that the case be closed in accordance with section 318(3), and pursuant to section 48(1), of the Code of Criminal Procedure, since criminal proceedings against the accused, Mr Pedro Guillermo Rondón, had been dropped following his death while committing a common crime. Similarly, with respect to the death of David Alexander Zambrano and Freddy Antonio Miranda Avendaño in the Los Anaucos area of the state of Miranda, the Government informed the Committee that on 17 December 2009 the Office of the Attorney-General charged Mr Richard David Castillo and Mr Jorge Mizael López with aggravated homicide and illegally bearing a firearm; the latter were currently awaiting trial and a hearing had been set for 13 April 2011.
- 1173.** In the light of the foregoing, the Government states that it is at a loss to explain the Committee's contention that it should "act diligently and swiftly to resolve these cases fully", "intensify the judicial proceedings and investigations of the Office of the Attorney-General" and "punish the perpetrators, instigators and accomplices" since together with the competent institutions it has proceeded with all the diligence and celerity that these cases warrant, with the sole purpose of clarifying the incidents. The Government emphasizes that the Office of the Attorney-General and the other institutions concerned have conducted their respective investigations and are instituting judicial proceedings against the suspects who, should they be found guilty, will be punished in accordance with the law and as determined by the relevant authority.

- 1174.** This being so, the Government is unable to comprehend the Committee's injunctions, as it considers that in this and in all other cases it has acted with the utmost celerity, transparency and diligence in its efforts to clarify the matters at issue and that it has moreover always demonstrated its willingness to cooperate with this supervisory body of the ILO by providing it with the information it has requested.
- 1175.** With regard to the alleged indictment and arrest of six employees of PDVSA-GAS (Larry Antonio Pedroza, José Antonio Tovar, Iván Ramón Aparicio Martínez, Jaffet Enrique Castillo Suárez, Rey Régulo Chaparro Hernández and José Luis Hernández Álvaro), their arrest was due to the fact that these workers were charged with boycotting, a punishable offence under section 139 of the Act for the Defence of Persons in Accessing Goods and Services. After investigation and in conformity with the due process of law, the Office of the Attorney-General brought formal charges against the six employees. A preliminary hearing was postponed to 3 March 2011.
- 1176.** The Government states that the Act for the Defence of Persons in Accessing Goods and Services is designed to defend, protect and safeguard the rights and interests of individuals and groups in accessing goods and services, in order to meet the population's needs and protect social peace, justice, and the right to life and health of the population. Specifically, section 139 of the Act stipulates that anyone who carries out an action or is responsible for an omission that impedes the production, manufacture, importation, warehousing, transport, distribution or sales of commodities classified as being of prime necessity shall be liable to a prison term of six to ten years. Neither this Act nor any other curtails the right to strike or imposes criminal sanctions for staging a peaceful strike that does not affect commodities classified as prime necessities for the population. On the contrary, the Act protects the people's right of access to goods and products classified as prime necessities and punishes anyone who endangers their production and distribution. The Government cannot therefore accede to the Committee's recommendation that it annul the criminal charges brought against persons who committed crimes that are punishable under the country's laws and regulations, as this would be tantamount to the State condoning situations of impunity and would run counter to the values and principles embodied in the Venezuelan Constitution.
- 1177.** The Government states further that the Committee argues that gas is not an essential service for the population. However, the Government insists that any activity in relation to gas and its sale constitutes in the Bolivarian Republic of Venezuela an essential service of prime necessity for the population, inasmuch as its interruption could endanger people's lives, safety or health. The Government wishes to inform the Committee that most homes in the country use gas to cook, which means that interrupting its supply and sale is a breach of the right to food and, therefore, of the Venezuelan population's right to health and to life.

### **C. The Committee's conclusions**

- 1178.** *Before it examines the substance of the issues still pending and noting that the Government challenges the inclusion of the case in the category of "extremely serious and urgent" cases, given the information provided, notably on the current legal proceedings, and that it is awaiting additional information from the complainant organization, the Committee wishes to emphasize that some of the alleged incidents – incidents that have been recognized by the Government itself – relate to the murder of trade union officials. The Committee also notes that the consideration of serious and urgent cases in its reports is decided upon after an objective discussion that takes into account all the known facts.*

**1179.** *With regard to recommendations (c), (e), (f) and (g) requesting additional information from the complainant organization, the Committee regrets that for the third time the organization has failed to send the information and informs it that, if it fails to do so before the next consideration of the case, the Committee will not be in a position to pursue its examination of the allegations.*

**1180.** *The Committee therefore reiterates its earlier recommendations to the complainant organization:*

- *concerning the allegations in relation to the contract killings of more than 200 workers and union officials in the construction sector, the Committee requests the trade union to provide the Government, without delay, with a list of these murders and the circumstances thereof so that the Government can undertake the appropriate investigations without delay;*
- *with respect to the allegations concerning the criminalization of protests, the initiation of judicial proceedings at various enterprises in the oil, gas and steel sectors, and the dismissal of union officials as a result of these protests (according to the Workers' Confederation of Venezuela (CTV), judicial proceedings were started against 27 workers at the state holding PDVSA, 25 workers at the "Alfredo Maneiro" Orinoco steelworks for staging a protest in defence of their labour rights and ten trade union delegates of the "El Palito" refinery were dismissed after 600 workers decided to stop work as a result of failure to abide by commitments under the collective agreement; according to the CTV, workers at the enterprises Gas PetroPiar and Gas Comunal have also been affected), the Committee again requests the complainant to send the text of the accusations allegedly made against the union members in question;*
- *with regard to the criminal court proceedings against 110 workers for claiming their rights, the Committee again requests the complainant organization to supply additional information concerning these allegations, specifically, the names of those involved and the activities they are alleged to have undertaken, so that the Government can send its observations in this regard;*
- *the Committee again invites the complainant organization to indicate whether the collective bargaining rights of its affiliates have been respected in the bargaining processes mentioned by the Government.*

**1181.** *With regard to the allegations concerning the murder of three officials of the Bolivarian Union of Workers in the Construction Industry in El Tigre (Mr Wilfredo Rafael Hernández Avile, general secretary, Mr Jesús Argenis Guevara, organizational secretary, and Mr Jesús Alberto Hernández, culture and sports secretary) and of two trade union delegates in the Los Anaucos area in June 2009 (Mr Felipe Alejandro Matar Iriarte and Mr Reinaldo José Hernández Berroteran), the Committee wishes to recall that it had requested the Government to intensify the judicial proceedings and investigations of the Office of the Attorney-General in order to identify and severely punish the perpetrators, instigators and accomplices. The Committee had also requested the Government to keep it informed of developments in the proceedings and trusts that they will yield results in the near future.*

**1182.** *The Committee notes the Government's observation that the complaint was presented in June 2009 and was subsequently transmitted to the Government, which sent its reply in October of the same year, i.e. only months after the complaint was presented, and that in this initial reply the Government informed the Committee of the investigations being conducted by the Office of the Attorney-General, together with the names of the*

investigating bodies concerned, and of the steps taken by the Scientific, Penal and Criminal Investigating Body. The Committee further notes the Government's indication that in March and May 2010, it sent additional replies on the case, thus fulfilling its obligation to keep the Committee abreast of developments, and that in these replies the Government informed the Committee of the names of the persons allegedly responsible for the incidents, of the charges brought by the investigating bodies, of the crimes involved, of the state of the proceedings and of the hearings that had been held.

- 1183.** *The Committee notes that, in particular, the Government states that: (1) with respect to the murder of Mr Wilfredo Rafael Hernández, Mr Jesús Argenis Guevara and Mr Jesús Alberto Hernández on 24 June 2009, in the state of Anzoátegui, the Office of the Attorney-General requested on 25 November 2009 that the case be closed in accordance with section 318(3) of the Code of Criminal Procedure and pursuant to section 48(1) of this Code, since the criminal proceedings against the accused, Mr Pedro Guillermo Rondón, had been discontinued following his death while committing a common crime; and (2) with respect to the death of Mr David Alexander Zambrano and Mr Freddy Antonio Miranda Avendaño in the Los Anaucos area of the state of Miranda, the Office of the Attorney-General on 17 December 2009 submitted an indictment against Mr Richard David Castillo and Mr Jorge Mizael López, for committing aggravated homicide and illegally bearing a firearm who were currently awaiting trial, a hearing having been set for 13 April 2011.*
- 1184.** *The Committee also notes the Government's comment that it is at a loss to explain the Committee's contention that it should "act diligently and swiftly to resolve these cases fully", "intensify the judicial proceedings and investigations of the Office of the Attorney-General" and "punish the perpetrators, instigators and accomplices", inasmuch as Government and the competent institutions had proceeded with all the diligence and celerity that the cases warranted, with the sole purpose of clarifying the incidents and that the relevant investigations had been conducted and judicial proceedings instituted against the suspects who, should they be found guilty, would be punished in accordance with the law and as determined by the relevant authority. The Committee draws the Government's attention to the fact that its recommendations are intended to ensure the conviction in a court of law of those responsible for the murder of trade unionists and that the Government informed it only recently of the hearing that had been scheduled for 13 April 2011 in the case of the murder of two such trade unionists.*
- 1185.** *The Committee firmly trusts that judicial sentences will be handed down on the perpetrators, instigators and accomplices in the near future. The Committee requests the Government to keep it informed in this regard.*
- 1186.** *With regard to the allegations concerning the Office of the Attorney-General's preparation of criminal charges against and detention of six workers at PDVSA because, during a protest in defence of their labour rights, they paralysed the enterprise's activities, the Committee wishes to recall that it had requested the Government or competent authorities to take the necessary measures to have the criminal proceedings brought against the six union officials at PDVSA dropped and to ensure their release without delay. The Committee also requested the Government to take the necessary steps to amend section 139 of the Act for the Defence of Persons in Accessing Goods and Services so that it does not apply to services which are not essential in the strict sense of the term and so that in no event may criminal sanctions be imposed in cases of peaceful strikes. The Committee drew the attention of the Committee of Experts to the legislative aspect of this case.*

**1187.** *The Committee notes the Government's comments on these recommendations and, notably: (1) that the six employees of PDVSA–GAS (Larry Antonio Pedroza, José Antonio Tovar, Iván Ramón Aparicio Martínez, Jaffet Enrique Castillo Suárez, Rey Régulo Chaparro Hernández and José Luis Hernández Álvaro) were arrested on the charge of boycotting, which is a punishable offence under section 139 of the Act for the Defence of Persons in Accessing Goods and Services, and that, upon investigation and in conformity with the due process of law, the Office of the Attorney-General brought formal charges against the six workers, a preliminary hearing having been postponed to 3 March 2011; (2) that the Act for the Defence of Persons in Accessing Goods and Services is designed to defend, protect and safeguard the rights and interests of individuals and groups in accessing goods and services in order to meet the population's needs and protect social peace, justice, and the right to life and health of the population and that section 139 of the Act stipulates that anyone who carries out an action or is responsible for an omission that impedes the production, manufacture, importation, warehousing, transport, distribution or sales of commodities classified as being of prime necessity shall be liable to a prison term of between six and ten years; (3) that neither this Act nor any other curtails the right to strike or imposes criminal sanctions for staging a peaceful strike that does not affect commodities classified as prime necessities for the population and that, on the contrary, the Act protects the people's right of access to goods and products classified as prime necessities and punishes anyone who endangers their production and distribution; (4) that the Government cannot therefore accede to the Committee's recommendation that it annul the criminal charges brought against persons who committed crimes identified in the country's laws and regulations and punishable accordingly, inasmuch as this would be tantamount to the State condoning situations of impunity and would run counter to the values and principles embodied in the Venezuelan Constitution; (5) while the Committee observes that gas is not an essential service for the population, the Government insists on this point, that any activity in relation to gas and its sale constitutes in the Bolivarian Republic of Venezuela an essential service of prime necessity for the population, inasmuch as its interruption could endanger people's lives, safety or health; and that most homes in the country use gas to cook, which means that interrupting the supply and sale of this product is deemed to be a breach of the right to food and, therefore, of the Venezuelan population's right to health and to life.*

**1188.** *The Committee regrets that the Government has not complied with the recommendations formulated in its previous examination of the case and can only reiterate the arguments it advanced on that occasion. The Committee therefore refers once again to the following conclusions that it reached at the time [see 358th Report, paras 977–979]:*

*As regards the allegations concerning the Office of the Attorney-General's filing of criminal charges for the offence of boycotting and the subsequent detention of six workers of the PDVSA enterprise (Mr Larry Antonio Pedroza, trade union delegate, Mr José Antonio Tovar, Mr Juan Ramón Aparicio, Mr Jafet Enrique Castillo Suárez, Mr Roy Rogelio Chaparro Hernández and Mr José Luis Hernández Alvarado) because, during a protest to demand their labour rights, they paralysed the enterprise's activities (according to the Unitary Federation of Workers in the Petrol, Gas and Similar Industries of Venezuela (FUTPV), the Office of the Attorney-General is being used by the Government), the Committee noted that the Government had stated that, on 12 June 2009, a group of workers, as part of a demonstration, paralysed the plant's gas canister filling activities, affecting the sale of a commodity of prime necessity, for which they were arrested. On 13 June 2009, the Second Court of First Instance of the Criminal Judicial Circuit of the state of Miranda summoned them to appear at a hearing, during which the 16th Prosecutor qualified the events as a boycott under section 139 of the Act for the Defence of Persons in Accessing Goods and Services, which states: "Anyone who, jointly or individually, plans or carries out an action or is responsible for an omission that directly or indirectly impedes the production, manufacture, importation, warehousing, transport, distribution or sales of commodities classified as being of prime necessity shall be liable to a prison term of between six and ten years". The*

Committee also noted that the Government indicated that section 139 of the aforementioned Act does not apply to the right to peaceful assembly [see 356th report, para. 1649].

The Committee notes that in its latest reply the Government reiterates these statements and adds that the judicial authority has set the preliminary hearing for 2 June 2010. It states that because gas is used in most homes to cook, the interruption of the supply and sale of this product constitutes a breach of the right to food and therefore the right to health and to life of the population. The Committee notes that in the Government's opinion this issue involves a service that is essential and of prime necessity, whose interruption could endanger people's lives, safety or health. Finally, the Committee notes that the Act does not impose sanctions for holding a strike which does not affect commodities of prime necessity for the population, which the law must protect.

In this regard, the Committee underlines that the activity of filling and selling gas canisters does not constitute an essential service in the strict sense of the term – i.e. where the interruption of a service could endanger the life, personal safety or health of all or part of the population, for which the exercise of the right to strike or the interruption of activities can be totally prohibited – and even less so when the argument put forward is that this is a product that most homes use to cook. The Committee also considers that the peaceful exercise of those trade union rights should not be the subject of criminal proceedings or result in the detention of trade union officials who have organized these strikes on boycotting charges, as is the present case, by virtue of section 139 of the Act for the Defence of Persons in Accessing Goods and Services. This being the case, the Committee recalls that the detention of trade union officials and members for carrying out legal trade union activities constitutes a violation of freedom of association. The Committee, noting that the Government declares that it cannot discontinue the criminal proceedings, recalls that the public authorities must respect the ratified ILO Conventions. The Committee requests the Government or the competent authority once again to take the necessary measures to discontinue the criminal proceedings brought against the six trade union officials of the PDVSA Gas Comunal and to release them without delay. The Committee requests the Government to keep it informed in this regard. The Committee also requests the Government to take the necessary steps to amend section 139 of the Act for the Defence of Persons in Accessing Goods and Services (which includes criminal sanctions for the paralysis of activities) so that it does not apply to services which are not essential in the strict sense of the term, and so that in no event criminal sanctions are imposed in cases of peaceful strike. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations once again to the legal aspect of this case. The Committee requests the Government to keep it informed in this respect.

**1189.** *Under these circumstances, the Committee reiterates its earlier conclusions and recommendations regarding these matters.*

## **The Committee's recommendations**

**1190.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee expresses its grave concern about the serious allegations of murders of workers and union officials, which it deeply regrets.*
- (b) With regard to the allegations concerning the murder of three officials of the Bolivarian Union of Workers in the Construction Industry in El Tigre (Mr Wilfredo Rafael Hernández Avile, general secretary, Mr Jesús Argenis Guevara, organizational secretary, and Mr Jesús Alberto Hernández, culture and sports secretary) and of two trade union delegates in the Los Anaucos area in June 2009 (Mr Felipe Alejandro Matar Iriarte and Mr Reinaldo José Hernández Berroteran), the Committee firmly trusts that judicial sentences will be handed down on the perpetrators, instigators and*

*accomplices in the near future. The Committee once again requests the Government to keep it informed in this regard.*

- (c) *As regards the allegations concerning the Office of the Attorney-General's preparation of criminal charges against and detention of six workers at PDVSA because, during a protest in defence of their labour rights, they paralysed the enterprise's activities, the Committee requests the Government or competent authorities to take the necessary measures to have the criminal proceedings brought against the six union officials at PDVSA dropped and to ensure their release without delay. The Committee also requests the Government to take the necessary steps to amend section 139 of the Act for the Defence of Persons in Accessing Goods and Services so that it does not apply to services which are not essential in the strict sense of the term and so that in no event may criminal sanctions be imposed in cases of peaceful strikes. The Committee requests the Government to keep it informed in this regard. It once again draws the attention of the Committee of Experts to the legislative aspect of this case.*
- (d) *The Committee regrets that for the third consecutive time the complainant organization has failed to send the additional information requested in its earlier conclusions and recommendations and informs it that, if it fails to do so before the next consideration of the case, the Committee will not be in a position to pursue its examination of the allegations. The Committee reproduces its earlier recommendations below:*
- Concerning the allegations in relation to the contract killings of more than 200 workers and union officials in the construction sector, the Committee requests the trade union to provide the Government, without delay, with a list of these murders and the circumstances thereof so that the Government can undertake the appropriate investigations without delay.*
  - With respect to the allegations concerning the criminalization of protests, the initiation of judicial proceedings at various enterprises in the oil, gas and steel sectors, and the dismissal of union officials as a result of these protests (according to the CTV, judicial proceedings were started against 27 workers at the state holding PDVSA, 25 workers at the "Alfredo Maneiro" Orinoco steelworks for staging a protest in defence of their labour rights and 10 trade union delegates of the "El Palito" refinery were dismissed after 600 workers decided to stop work as a result of failure to abide by commitments under the collective agreement; according to the CTV, workers at the enterprises Gas PetroPiar and Gas Comunal have also been affected), the Committee again requests the complainant to send the text of the accusations allegedly made against the union members in question.*
  - With regard to the criminal court proceedings against 110 workers for claiming their rights, the Committee again requests the complainant organization to supply additional information concerning these allegations, specifically, the names of those involved and the activities*

*they are alleged to have undertaken, so that the Government can send its observations in this regard.*

- *The Committee again invites the complainant organization to indicate whether the collective bargaining rights of its affiliates have been respected in the bargaining processes mentioned by the Government.*
- (e) *The Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of the matters dealt with in this case.*

CASE NO. 2763

INTERIM REPORT

**Complaint against the Government of the  
Bolivarian Republic of Venezuela  
presented by  
the Single National Union of Public Employees of the  
Corporación Venezolana de Guayana (SUNEP-CVG)**

*Allegations: Obstacles to exercising the right to bargain collectively and to strike, the arrest and prosecution of trade unionists for carrying out trade union activities, the criminalization of trade union activities*

- 1191.** The Committee last examined this case at its November 2010 meeting and presented an interim report to the Governing Body [see 358th Report, paras 984–1016, approved by the Governing Body].
- 1192.** The Single National Union of Public Employees of the Corporación Venezolana de Guayana (SUNEP-CVG) sent new allegations in communications dated 1 and 21 March 2011.
- 1193.** The Government sent its observations in a communication dated 22 February 2011.
- 1194.** The Bolivarian Republic of 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. Previous examination of the case**

- 1195.** At its November 2010 meeting, the Committee made the following recommendations on the issues that remained pending [see 358th Report, para. 1016]:
- (a) Regarding the alleged obstacles to the exercise of the right to strike (the complainant organization alleges that as the Puerto Ordaz labour inspectorate has not followed the legal procedure with regard to the list of demands presented by SUNEP-CVG more than three years ago calling for the enforcement of the collective agreement and for other rights, it has not been possible to lawfully exercise the right to strike in the Corporación Venezolana de Guayana (CVG)), the Committee notes that the Government has not supplied observations with regard to this allegation and therefore the Committee requests

it to address, without delay, the list of demands by SUNEP-CVG so that the union can bargain collectively with the enterprise and perhaps lawfully exercise the right to strike.

- (b) With regard to the allegations concerning the (temporary) detention and criminal prosecution of the SUTRA-CVG union leaders, Ronald González and Carlos Quijada and the unionists Adonis Rangel Centeno, Elvis Lorán Azocar and Darwin López, the Committee urges the Government to urge the judicial authority to give due consideration to the fact that the trade unionists in question were staging a peaceful protest calling for the enforcement of the collective agreement and requests the Government to inform it of the judgement handed down in relation to these trade unionists.
  - (c) With regard to the allegation concerning the criminal prosecution of the SUTISS-Bolívar trade union leaders, Juan Antonio Valor, Leonel Grisett and Jhoel José Ruiz Hernández, the Committee notes that the Government has not supplied observations in this respect and requests it to send them without delay.
  - (d) With regard to the allegation concerning the criminal prosecution in 2006 of the employees of the enterprise Camila CA, Richard Alonso Díaz, Osmel José Ramírez Malavé, Julio César Soler, Agdatamir Antonio Rivas, Luis Arturo Alzota Bermúdez, Argenis Godofredo Gómez and Bruno Epitafio López, the Committee requests the Government to supply a copy of the judgement that is handed down and notes that as the complaint dates back to 2006 it can only regret the delay in the court proceedings.
- ...
- (f) With regard to the allegation that, on 14 March 2008, the national guard and the Bolívar State Police brutally repressed a gathering of steelworkers from Ternium-Sidor who were calling for improvements to the collective agreement that was being negotiated, resulting in several wounded, dozens of criminal prosecutions and the destruction by the authorities of 32 vehicles belonging to the workers, the Committee, while noting that, according to the Government, a group of some 80 workers was blocking the traffic with cars and burning tyres and throwing heavy objects at the members of the national guard unit, injuring several officers, and requests the Government to supply a copy of the judgement that is handed down, notes the delay in the legal proceedings and requests the Government to carry out an investigation into the allegations concerning the excessive use of public force which resulted in serious injuries and property damage.
  - (g) With regard to the alleged detention since September 2009 and criminal prosecution of trade union leader Rubén González for protesting against the failure by CGV Ferrominera Orinoco CA (Puerto Ordaz) to honour the commitments set out in the collective agreement, the Committee considers that the events as alleged by the Government against the union leader do not justify his preliminary detention or house arrest since September 2009 and requests that he be released without delay pending judgement and appropriately compensated for his inappropriate detention. The Committee requests the Government to supply a copy of the judgement that is handed down.

## B. New allegations from the complainant

**1196.** In its communication dated 1 March 2011, the complainant organization reports that on 28 February 2011, the general secretary of the trade union of CGV Ferrominera Orinoco (SINTRAFERROMINERA), Mr Rubén González, was sentenced by a criminal court judge to a prison term of seven years, six months, 22 days and seven hours for having exercised the right to strike and freedom of association in general. The complainant organization adds that the judgment handed down will only be published after ten days and that it will be sent to the Committee. The complainant organization requests the Committee to reach a conclusion as a matter of urgency in order for the sentence to be reviewed and the Government to take effective measures to release Mr Rubén González as soon as possible, and to avoid any future action by the State criminalizing trade union activities.

- 1197.** In its communication of 21 March 2011, the complainant organization states that after it had informed the Committee on Freedom of Association of Mr Rubén González's prison sentence, he was unexpectedly released three days after being sentenced, by decision of the criminal division of the Supreme Court of Justice, a copy of which is attached. However, the trade unionist has been released on parole and prohibited from leaving the country without court authorization, which shows the extent to which the judiciary is controlled by the Government. What happened was that, faced with the angry response of the public to the conviction, expressed in serious and potentially long-lasting protests, the criminal division of the Supreme Court of Justice promptly took over the case, through the procedure known as writ of certiorari (*avocamiento*), and overturned the judgment handed down by the court of first instance on the grounds that it was "unfounded". The complainant organization points out that it is important to note the timing of the criminal division's manoeuvre and the content of its decision: the division took over the examination of the case file before it could even have taken cognizance, technically speaking, of the judgment it overturned, since that judgment had not even been published (at the hearing only the substantive part had been read, and the judge had given a summary of the considerations of fact and law on which the decision was founded).
- 1198.** As regards the content of the decision handed down by the criminal division, it merely demonstrates why the judgment of the court of first instance was unfounded, but fails to stipulate that Mr Rubén González was falsely accused, or to address the criticism levelled by the supervisory bodies against these accusations, in particular with regard to security zones. Neither does it take account of the constitutional and legal provisions on freedom of association and the right to strike. The new judge will thus feel justified in basing his judgment on a purely criminal approach. In conclusion, Mr Rubén González's legal status has not changed, since in effect the conviction was overturned, but he is still subject to proceedings and awaiting a new judgment, with the added circumstance that the judgment will be handed down by a criminal court judge of the Caracas metropolitan area, some 700 kilometres from Mr Rubén González's place of residence. His defence will thus be more difficult in every sense and more expensive. The criminal division condescended to take into consideration the fact that Mr Rubén González deserved to be tried in freedom and therefore granted him release on parole, on its own initiative; but it should be recalled that he was deprived of freedom for 17 months in obscure circumstances.

### **C. The Government's reply**

- 1199.** As regards the SUNEP-CVG list of demands and collective bargaining, the Government states that according to information provided by the Alfredo Maneiro labour inspectorate in Puerto Ordaz, Bolívar State, a list of demands presented by the SUNEP-CVG is currently being negotiated with the Corporación Venezolana de Guayana (CVG) and only four of the 21 initial bargaining items remain to be discussed.
- 1200.** As regards the SUTRA-CFG union leaders Ronald González and Carlos Quijada and the unionists Adonis Rangel Centeno, Elvis Loran Azocar and Darwin López, the Government states that, as a result of the events that occurred on 6 October 2009 on the premises of the preschool establishment of the CVG, the Office of the Public Prosecutor filed charges against the persons concerned and, at the preliminary hearing, ordered a precautionary measure consisting in prohibiting the disruption or hindrance of work at the enterprise. The case has now gone to trial and the oral hearing is scheduled for 13 March 2011.
- 1201.** As regards the SUTISS-Bolívar trade unionists Juan Antonio Valor, Leonel Grisett and Jhoel José Ruiz Hernández, and the employees of the Camila CA enterprise Richard Díaz, Osmel Ramírez Malavé, Julio César Soler, Agdamatir Antonio Rivas, Luis Arturo Anzola, Argenis Godofredo Gómez and Bruno Epitafio López, the Government states that on 29 September 2006, the Office of the Public Prosecutor received a complaint from the

representatives of the enterprise, alleging that, on 26 August 2006, the individuals in question violently and without the authorization or consent of any representative of the enterprise forcefully took possession of six machines and refused to return them, paralysing the industrial activities being carried out in various parts of the enterprise. On 21 July 2007, the Office of the Public Prosecutor charged the abovementioned individuals with aggravated misappropriation, restriction of the freedom to work and taking the law into their own hands, as provided in the Venezuelan Penal Code. At the preliminary hearing, held on 25 September 2009, the charges were admitted and a precautionary measure consisting of the requirement to report periodically to the court was applied; the persons concerned are thus free, and the order was issued for the case to go to trial. The public oral hearing was scheduled and deferred on several occasions owing to failure of the accused parties to appear. The Office of the Public Prosecutor reported that on 11 January 2011 the accused individuals presented themselves at the trial court and a date is to be fixed by the judicial authority for the oral hearing.

**1202.** As regards section 56 of the Organic National Security Act, the Government states that this Act of 2002 is intended to regulate the activity of the State and society with respect to security and full defence, in accordance with constitutional guidelines, principles and objectives. The security of the nation is fundamental to full development, and is the condition, status or situation which ensures that the population, institutions and each of the persons that make up the State and society enjoy and exercise the rights and guarantees in the economic, social, political, cultural, geographic, environmental and military spheres of the constitutional principles and values. The State and society are jointly responsible for the security and full defence of the nation, and the different activities carried out in the economic, social, political, cultural, geographic, environmental and military spheres shall be aimed at guaranteeing the fulfilment of the national interests and objectives laid down in the Constitution and laws. The scope of full defence and security is circumscribed by the provisions laid down in the Constitution and the laws of the Republic, and in the international treaties, covenants and conventions signed and ratified by the Republic. Specifically, section 56 of the Act regulates and penalizes the organization, instigation or execution of activities intended to disrupt or adversely affect the organization and operation of public services, military facilities, core industries and enterprises or the social and economic life of the country.

**1203.** As regards the acts carried out by the national guard and the police on 14 March 2008, as a result of a gathering of workers of Ternium-Sidor, the Government states that these acts occurred when a group of individuals were obstructing vehicle traffic with private cars and burning tyres, throwing heavy objects at the members of the national guard, injuring several officers (Raúl Mora, Alexander Marin Bucarelo, Pastran Comentes). The demonstrators threw stones, bottles and iron briquettes, resulting in action by the national guard and the state police, and the detention of several persons for these acts of violence and the alleged obstruction and closure of thoroughfares; the court ordered the initiation of ordinary proceedings without imposing any custodial measures.

**1204.** As regards the detention of Mr Rubén González, the Government states that on 26 September 2009, as the Committee on Freedom of Association already knows, the Office of the Public Prosecutor charged that individual with public order offences such as incitement to commit an offence, illegal assembly, restriction of freedom to work, and breach of the special security zone arrangements. The court received the charges and ordered the house arrest of the accused. As regards the precautionary measure imposed on 19 January 2010, the competent court issued a finding of non-compliance, and therefore revoked it, setting 15 March 2010 as the date of the preliminary hearing, which the defence counsel for the accused failed to attend. The hearing was subsequently held in the court of preliminary proceedings (*Tribunal de Control*), which admitted the charges brought by the Office of the Public Prosecutor against Mr Rubén González, and consequently, the case is

currently under trial. The trial began on 3 November 2010. On 22 February 2011, hearing No. 27 was held in the competent criminal court; the closing session of the trial is scheduled for 28 February, when a ruling may be handed down by the judge. The trial is thus in full progress.

**1205.** As regards the alleged criminalization of trade union protest action and public demonstrations, the Government categorically rejects, once again, the assertion that criminalization of protest action is a Venezuelan Government response to public demonstrations. The Venezuelan legal system and the State guarantee and protect, in practice and in law, the right to protest, to hold public demonstrations and to strike, in accordance with the national Constitution and the law, in so far as such demonstrations do not cause irreparable damage to the population or to institutions. The proceedings initiated by the Venezuelan state authorities against the persons referred to by the complainant organization in the present complaint, were in response to illegal acts and conduct, and not to activities related to the exercise of trade union rights. In this regard, ILO Convention No. 87 stipulates the trade union rights that should be guaranteed for workers for the exercise of full freedom of association, as follows:

- without distinction whatsoever, to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization;
- to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes;
- to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

**1206.** Article 8 of the same Convention No. 87 provides that “In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.”

**1207.** In this country, each of the rights laid down in Convention No. 87 on freedom of association is respected and guaranteed, and in no case does the discharge by the Venezuelan state authorities of their responsibilities to ensure compliance with national law have a detrimental and deterrent effect on the exercise of trade union rights, as pointed out by the Committee itself.

**1208.** The Government states that neither the Committee on Freedom of Association nor any supervisory body of the ILO can call for the law and sentences to be applied to some and not to others, when there are acts that are classified as offences or illegal acts penalized under Venezuelan law and which warrant investigation in order to secure a conviction where applicable or acquittal where this is not the case.

#### **D. The Committee’s conclusions**

**1209.** *With regard to the alleged obstacles to the exercise of the right to strike (the complainant organization alleges that, as the Puerto Ordaz labour inspectorate has not followed the legal procedures with regard to the list of demands presented by the SUNEP-CVG more than three years ago calling for the enforcement of the collective agreement and for other rights, it has not been possible to lawfully exercise the right to strike in the CVG), the Committee notes the Government’s statement to the effect that the list of demands presented by the SUNEP-CVG is currently being negotiated with the CVG and only four of the 21 initial bargaining items remain to be discussed. In view of the lengthy delay in the bargaining process, the Committee expects that the collective agreement will be signed as soon as possible and requests the Government to keep it informed in this regard.*

- 1210.** *With regard to the allegations concerning the (temporary) detention and criminal prosecution of the SUTRA-CVG union leaders Ronald González and Carlos Quijada and unionists Adonis Rangel Centeno, Elvis Lorán Azocar and Darwin López, the Committee had urged the Government, in its previous examination of the case, to urge the judicial authority to give due consideration to the fact that the trade unionists in question were staging a peaceful protest calling for the enforcement of the collective agreement and requested the Government to inform it of the judgment handed down in relation to those trade unionists. The Committee notes that the Government states that the Office of the Public Prosecutor filed charges against those individuals as a result of the events that occurred on 6 October 2009, on the premises of the preschool establishment of the CVG and that, at the preliminary hearing, a precautionary measure was ordered consisting in prohibiting the disruption or hindrance of work at the enterprise; the trial is now under way, according to the Government, and the oral hearing is scheduled for 13 March 2011. The Committee reiterates its previous conclusions and requests the Government to inform it of the judgment handed down by the judicial authority.*
- 1211.** *With regard to the allegations concerning the criminal prosecution of the SUTISS-Bolívar trade union leaders Juan Antonio Valor, Leonel Grisett and Jhoel José Ruiz Hernández, and the criminal prosecution in 2006 of the employees of the enterprise Camila CA, Richard Alonso Díaz, Osmel José Ramírez Malavé, Julio César Soler, Agdatamir Antonio Rivas, Luis Arturo Alzota Bermúdez, Argenis Godofredo Gómez and Bruno Epitafio López, the Committee takes note of the statements by the Government, according to which: (1) on 29 September 2006, the Office of the Public Prosecutor received a complaint from the representatives of the enterprise alleging that, on 26 August 2006, the individuals in question violently and without the authorization or consent of any representative of the enterprise forcefully took possession of six machines and refused to return them, paralysing the industrial activities being carried out in various parts of the enterprise; (2) on 21 July 2007, the Office of the Public Prosecutor charged the abovementioned individuals with aggravated misappropriation, restriction of freedom to work and taking the law into their own hands, as provided in the Venezuelan Penal Code; at the preliminary hearing, held on 25 September 2009, the charges were admitted and a precautionary measure applied consisting of the requirement to report periodically to the court; the persons concerned are thus free, and the order was issued for the case to go to trial. The public oral hearing was scheduled and deferred on several occasions owing to failure of the accused parties to appear; and (3) the Office of the Public Prosecutor reported that on 11 January 2011, the accused individuals presented themselves at the trial court and a date is to be fixed by the judicial authority for the oral hearing.*
- 1212.** *The Committee urgently requests the Government to communicate the judgment handed down in regard to these trade union leaders and workers and, in view of the fact that the events in question date back to 2006 and that these trade unionists are required to report periodically to the court, expects that the judgment will be handed down in the near future. In this regard, the Committee recalls that justice delayed is justice denied.*
- 1213.** *With regard to the allegation that, on 14 March 2008, the national guard and the Bolívar State Police brutally repressed a gathering of steelworkers from Ternium-Sidor who were calling for improvements to the collective agreement that was being negotiated, resulting in several wounded, dozens of criminal prosecutions and the destruction by the authorities of 32 vehicles belonging to the workers, the Committee, having noted in its previous examination of the case that, according to the Government, a group of some 80 workers was blocking traffic with cars and burning tyres and throwing heavy objects at the members of the national guard unit, injuring several officers, requested the Government to supply a copy of the judgment that is handed down, noted the delay in the judicial proceedings and requested the Government to carry out an investigation into the allegations concerning the excessive use of public force which resulted in serious injuries*

and property damage. The Committee notes the Government's reply to the effect that: (1) it reiterates that these acts occurred when a group of individuals were obstructing vehicle traffic with cars and burning tyres, throwing heavy objects at the members of the national guard, injuring several officers (Raúl Mora, Alexander Marin Bucarelo, Pastran Comentes); (2) according to the Government, the demonstrators threw stones, bottles and iron briquettes, resulting in action by the national guard and the state police, and the detention of several persons for these acts of violence and the alleged obstruction and closure of thoroughfares; the court ordered the initiation of ordinary proceedings without imposing any custodial measures. The Committee reiterates its conclusions in the previous examination of the case.

- 1214.** *With regard to the allegation concerning the detention since September 2009 and criminal prosecution of union leader Rubén González, for protesting against the failure by the enterprise CGV Ferrominera Orinoco CA (Puerto Ordaz) to honour the commitments set out in the collective agreement, the Committee considered in its previous examination of the case, that the events, as alleged by the Government, do not justify his preliminary detention or house arrest since September 2009 and requested that he be released without delay pending judgment and appropriately compensated for the damages suffered. The Committee notes that the Government reiterates that on 26 September 2009, the Office of the Public Prosecutor charged that individual with public order offences such as incitement to commit an offence, illegal assembly, restriction of freedom to work, and breach of the special security zone arrangements, and that the court received the charges and ordered the house arrest of the accused. The Committee notes that the Government states that, as regards the precautionary measure (house arrest) imposed on 19 January 2010, the competent court issued a finding of non-compliance, and therefore revoked it, setting 15 March 2010 as the date of the preliminary hearing, which the defence counsel for the accused failed to attend. The hearing was subsequently held in the court of preliminary proceedings (Tribunal de Control), which admitted the charges brought by the Office of the Public Prosecutor against Mr Rubén González, and consequently the case is currently under trial. The Committee notes that the Government concludes by stating that the trial began on 3 November 2010; on 22 February 2011, hearing No. 27 was held in the competent criminal court; the closing session of the trial is scheduled for Monday 28 February, when a ruling may be handed down by the judge in this case, and that the trial is thus in full progress.*
- 1215.** *The Committee takes note of the new allegations of the complainant organization to the effect that on 28 February 2011, trade union leader Rubén González was sentenced by a criminal court judge to a prison term of seven years, six months and 22 days, although he was unexpectedly released on parole three days after being sentenced, the judgment having been overturned by decision of the criminal division of the Supreme Court of Justice on the grounds that it was unfounded; the trade union leader is thus awaiting a new judgment, which will be handed down by a criminal court judge 700 kilometres from his place of residence (the complainant organization points out that he was deprived of freedom for 17 months).*
- 1216.** *The Committee regrets the delay in the criminal proceedings relating to the trade union leader Rubén González and the lack of adequate grounds for the judgment handed down by the judge in the case, and requests the Government to inform it of the new criminal judgment to be handed down. The Committee reiterates its previous recommendation, considering that the events, as alleged by the Government, do not justify his preliminary detention or house arrest since September 2009, and requests that he be appropriately compensated for the damages suffered.*

## The Committee's recommendations

1217. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) In view of the lengthy delay in the bargaining process, the Committee expects that the collective agreement between the SUNEP-CVG and the Corporación Venezolana de Guayana (CVG) will be signed as soon as possible and requests the Government to keep it informed in this regard.*
- (b) With regard to the allegations concerning the (temporary) detention and criminal prosecution of the SUTRA-CVG union leaders Ronald González and Carlos Quijada and unionists Adonis Rangel Centeno, Elvis Lorán Azocar and Darwin López, the Committee again urges the Government to draw to the attention of the judicial authority the need to give due consideration to the fact that the trade unionists in question were staging a peaceful protest calling for the enforcement of the collective agreement and requests the Government to communicate the judgment handed down in relation to these trade unionists.*
- (c) With regard to the allegations concerning the criminal prosecution of the SUTISS-Bolívar trade union leaders Juan Antonio Valor, Leonel Grisett and Jhoel José Ruiz Hernández, and the criminal prosecution in 2006 of the employees of the enterprise Camila CA Richard Alonso Díaz, Osmel José Ramírez Malavé, Julio César Soler, Agdatamir Antonio Rivas, Luis Arturo Alzota Bermúdez, Argenis Godofredo Gómez and Bruno Epitafio López, the Committee requests the Government to communicate without delay the judgment handed down in regard to these trade union leaders and workers and, in view of the fact that the events in question date back to 2006, and that these trade unionists are required to report periodically to the court, expects that the judgment will be handed down in the near future. In this regard, the Committee recalls that justice delayed is justice denied.*
- (d) With regard to the allegation that, on 14 March 2008, the national guard and the Bolívar State Police brutally repressed a gathering of steelworkers from Ternium-Sidor who were calling for improvements to the collective agreement that was being negotiated, resulting in several wounded, dozens of criminal prosecutions and the destruction by the authorities of 32 vehicles belonging to the workers, the Committee, noting once again that, according to the Government, a group of some 80 workers was blocking the traffic with cars and burning tyres and throwing heavy objects at the members of the national guard unit, injuring several officers, once again requests the Government to supply a copy of the judgment that is handed down, notes the delay in the judicial proceedings and requests the Government to carry out an investigation into the allegations concerning the excessive use of public force which resulted in serious injuries and property damage.*

- (e) *The Committee regrets the delay in the criminal proceedings relating to the trade union leader Rubén González (currently on parole) and the lack of adequate grounds for the judgment handed down by the judge in the case, and requests the Government to inform it of the new criminal judgment to be handed down. The Committee reiterates its previous recommendation, considering that the charges against this leader do not justify his preliminary detention or house arrest since September 2009, and requests that he be appropriately compensated for the damages suffered.*

Geneva, 7 June 2011

(Signed) Professor Paul van der Heijden  
Chairperson

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|-----------------------------|---------------|----------------|
| <i>Points for decision:</i> | Paragraph 153 | Paragraph 844  |
|                             | Paragraph 223 | Paragraph 859  |
|                             | Paragraph 245 | Paragraph 877  |
|                             | Paragraph 262 | Paragraph 898  |
|                             | Paragraph 290 | Paragraph 920  |
|                             | Paragraph 323 | Paragraph 943  |
|                             | Paragraph 344 | Paragraph 959  |
|                             | Paragraph 376 | Paragraph 993  |
|                             | Paragraph 400 | Paragraph 1010 |
|                             | Paragraph 422 | Paragraph 1029 |
|                             | Paragraph 452 | Paragraph 1082 |
|                             | Paragraph 495 | Paragraph 1092 |
|                             | Paragraph 554 | Paragraph 1102 |
|                             | Paragraph 611 | Paragraph 1138 |
|                             | Paragraph 619 | Paragraph 1152 |
|                             | Paragraph 634 | Paragraph 1165 |
|                             | Paragraph 641 | Paragraph 1190 |
|                             | Paragraph 665 | Paragraph 1217 |
|                             | Paragraph 742 |                |
|                             | Paragraph 781 |                |
|                             | Paragraph 807 |                |