INTERNATIONAL LABOUR OFFICE

Governing Body

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Part II

CASE NO. 2178

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

Complaint against the Government of Denmark presented by — the Danish Confederation of Trade Unions (LO) — the Salaried Employees' and Civil Servants' Confederation (FTF) and — the Danish Federation of Professional Associations (AC)

Allegations: The complainants allege that the Act on part-time work will intervene in previously concluded collective agreements and will prevent social partners from freely negotiating in future on this matter.

553. This joint complaint is contained in a communication dated 27 February 2002 from the Danish Confederation of Trade Unions (LO), the Salaried Employees' and Civil Servants' Confederation (FTF) and the Danish Federation of Professional Associations (AC).

554. The Government of Denmark transmitted its reply in communications dated 1 May and 17 October 2002.

555. Denmark 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

556. The complainant organizations are the three central organizations of employees in Denmark. They allege that the Bill amending the Act on the Implementation of the EU Directive on Part-Time Work (Bill 104) will invalid restrictions on part-time work negotiated in previous collective agreements and will prevent social partners from freely negotiating on this matter, thus contravening Conventions Nos. 87 and 98, and freedom of

association principles. They submit that Bill 104, which will affect more then 800,000 public employees whose collective agreements were renewed on 1 April 2002, is a statutory intervention in the collective bargaining process, which cannot be justified by a wish for increased recourse to part-time work.

557. According to an LO report on the Danish labour market conditions, prior to the Bill, 96 per cent of the labour market already had access to part-time work; and 386,000 persons are part-time workers, which represents about 14 per cent of the Danish workforce. A large number of collective agreements have dealt with employment matters in relation to part-time work through voluntary bargaining. Almost all existing collective agreements include provisions protecting workers in this respect, for instance: minimum and maximum number of working hours; protection against abuse by the employer of part-time employment; obligation to discuss this issue with workers and representative trade unions in the enterprise. The complainants give as an example article 11 of the largest collective agreement in the private sector, concluded between the Central Organization of Industrial Employees (CO-Industri) and the Confederation of Danish Industries. Except for the minimum 15-hour limit for part-time work, all such negotiated provisions will become invalid and it will not be possible in future to negotiate collective agreement provisions on this subject.

558. When tabling the Bill, the Government stated among its objectives the necessity to ensure that individual workers, in agreement with the employer, had an opportunity to work part time, for instance to take care of sick family members, and to give senior workers the possibility to withdraw gradually from the labour market, rather than having to retire overnight. However, the complainants point out that the Bill overlooks the abovementioned social provisions in collective agreements which already take into account such gradual withdrawal, and that it does not grant a legal claim to part-time work, which the employer may refuse without having to give any reason.

559. On 1 February 2002, the President of the Central Organization of Industrial Employees and the Managing Director of the Danish Industry Association wrote a joint open letter to the Danish Parliament, stating inter alia:

> … when it comes to regulation of conditions on the labour market, such conditions are best regulated by agreement between parties rather than by legislation. … The collective bargaining system has created a framework for stability and development of enterprises to the benefit of employment, exports and living standards. … The Danish model contains a number of built-in balances, which will shift if the Parliament intervenes in the collective agreements by passing legislation. … As parties to collective agreements, we urge the parliamentary parties to respect the division between the agreements and legislation, which is a foundation of the Danish model. Should the Parliament nevertheless want to legislate on collective agreement matters, we urge that this takes place after thorough consultations and in close harmony with the collective agreement parties.

560. According to the complainants, the Bill aims at completely free access to part-time work, thus removing the right to full-time work, with enormous consequences for a number of low-paid workers. Furthermore, the existing guarantees for workers who are already employed on a part-time basis are also removed. These will be left solely to the narrow interests of enterprises. Part-time workers will be guaranteed a minimum employment of not more than 15 hours if the relevant collective agreement so provides.

561. Contrary to the intentions stated by the Government, the Bill does not provide workers with any legal claim to a reduction of working time, since the employer can refuse to give part-time work without giving any reason. Employers have all the rights and may force a worker to accept part-time work. Furthermore, the Bill does not give workers the right to escape part-time work and obtain a full-time position.

562. The amendment represents a permanent intervention in collective agreements. It is a well known fact that during collective bargaining, employers often request increased flexibility in relation to working time; these requests are usually met by trade unions in exchange for concessions in other areas. The Bill favours only employers, which are now given full flexibility without having to make any concessions.

563. The complainants conclude in summary that the legislation:

– will intervene in hundreds of already concluded collective agreements;

– will have a direct impact on collective bargaining for a very long period;

– not only changes collective agreements conditions but entails the complete removal of large parts of collective agreements, which are made invalid;

– has not been negotiated with workers and their organizations;

– will restrict in future the workers' right to freely negotiate collective agreements;

– was not necessary, as the Government's goals could have been attained by voluntary agreements.

B. The Government's reply

564. In its communication of 1 May 2002, the Government states that the purpose of the Bill amending the Act on the Implementation of the EU Directive on Part-time Work, was to ensure that employers and employees who wish to do so could in future conclude agreements on part-time work, without obstacles or restrictions flowing, for instance, from collective agreements. However, existing collective agreement provisions would not be invalidated until the time where such agreement could be denounced.

565. In its communication of 17 October 2002, the Government points out that since the submission of the complaint significant amendments were made to Bill 104 before its adoption on 4 June 2002 as the Act on Part-Time Work ("the Act"). The Government consulted the interested parties prior to the adoption of Bill 104, and negotiated with LO before making final amendments.

566. As regards the background for the legislative amendment, the Government explains that, in the biggest bargaining field in the private labour market, covered by the Danish Employers' Confederation (DA) and LO, 35 per cent of employees had free access to part-time work; about 6 per cent had no access to part-time work at all (for instance in the graphic sector) and 59 per cent only had restricted access to part-time work (restricted access means, for example, that a full-time employee can only take on a part-time job if another full-time job is established at the same time, as is the case in the industrial sector). There has been in recent years a trend towards a higher degree of freedom in this respect but there remained a number of sectors without access to part-time work, or with so many restrictions that it was virtually excluded for most of the employees concerned. The Government considers that such prohibitions and restrictions in collective agreements are not in harmony with a modern flexible labour market; it also wanted to permit employees better to reconcile working and family life, to care for sick relatives and to permit the gradual withdrawal of senior workers. The Government therefore found it necessary to adopt a legislation on the subject.

567. The Government confirms that the Act does not take effect until the existing collective agreements expire and, therefore, does not intervene in or invalid existing collective agreements.

568. The Act provides that an employee and the employer are free to agree that the employee works part time irrespective of the existence of any direct or indirect prohibitions or restrictions on this right, for instance by virtue of collective agreements, custom or practice. It is however still possible to maintain an upper limit of 15 hours per week. As this requires an agreement between the employer and the employee, neither of them may unilaterally require part-time work: there is thus no statutory right to work part time.

569. While the Act ensures the individual right of employees to conclude an agreement with the employer on part-time work irrespective of any rules on this issue in the relevant collective agreement, existing restrictions in a collective agreement concerning access to part-time work still apply if there is no agreement between the employee and the employer.

570. Under section 4(2) of the Act, it is up to the employees to decide whether they wish to be accompanied by an adviser, shop steward or local trade union representative, when negotiating with the employer about part-time work. The employee also has the right not to be accompanied by an adviser.

571. Under section 4(3) of the Act, if an employee is dismissed for refusing or requesting to work part time, he is entitled to compensation, which supplements the general protection against unfair dismissal. This protection extends to cases where an employee is dismissed because the employer, instead of having one full-time employee, prefers to split the job into two part-time jobs. In addition, section 4(a)(4) of the Act establishes a presumption and a reversal of the onus of proof in cases of dismissal related to a refusal or a request to work part time.

572. As regards some of the specific points raised by the complainants, the Government confirms the figures given by the complainants on the percentages of employees facing prohibitions or restrictions, or on the contrary who have free access to part-time work. It points out however that the restrictions are so stringent as to exclude in practice the possibility to work part time: this means that only about 35 per cent of collective agreements allow free access to part-time work.

573. The Government acknowledges that there is no statutory right to part-time work, as this was indeed not the intention of the Act, and stresses the voluntary nature of the agreement. For instance, if an employee leaves the job, it cannot be filled automatically by another part-time employee if this is contrary to the provisions of the collective agreement. On the related argument that employees are deprived of the right to return to full-time work after a period of part-time work, the Government reiterates the voluntary nature of the agreement, which means that the employee may stipulate that the agreement is conditional to his right to resume full-time duties at a later date.

574. Regarding the complainants' arguments about existing provisions for gradual retirement of senior workers, the Government replies that these provisions are not always implemented in individual enterprises as they are operative only if local agreements to this effect have been concluded. Furthermore, it is often a condition of application of these rules that the senior workers in question have a reduced working capacity.

575. As regards the complainants' argument that the Act has the effect of cancelling the right of access to full-time work, the Government states that one of the amendments introduced during the parliamentary process was that agreements on part-time work made in spite of restrictions contained in collective agreements can only be concluded *during* the

employment relationship. This means that employers may not advertise part-time jobs in cases where the collective agreement does not allow free access to such work, and that they must comply with any restrictions laid down in collective agreements. If that were not so, an employer could unilaterally decide that the job in question should be part time and the prospective employee would have no choice.

576. On the complainants' argument that the Act removes all guarantees for those employees already working part time, including their right not to be forced to work fewer hours, the Government states that nobody can be forced to work part time and the individual employee can refuse to work fewer hours. The Government also refers in this connection to its above remarks on the employees' right to be accompanied by an adviser during the negotiations with the employer about part-time work.

577. The Government further states that there were consultations with interested parties before the Bill was tabled, which led to amendments on the basis of, inter alia, supplementary discussions with LO. During the discussion of the Bill in Parliament, negotiations also took place with LO about a provision of the Act which would provide that it should be set aside in the case of collective agreements containing similar rights as those laid down in the Act. After a number of negotiation rounds, LO chose not to accept such a compromise and the Act was adopted without such a provision.

578. The Government concludes that:

– the Act is not retroactive and does not interfere with already existing collective agreements;

– the social partners may choose to ensure that the collective agreements are in accordance with the Act, for instance by including a clause providing that despite the restrictions mentioned in the agreement "the individual employee, during the employment relationship, may always conclude an agreement about part-time work";

– the Act is within the framework of the conditions that the legislature may lay down for the right to collective bargaining, as in the case of equal pay or prohibition against discrimination;

– the Government and a majority in the Parliament found that it was important to ensure that individual employees could conclude an agreement on part-time work, in a labour market characterized by an increased need for flexibility;

– it listened to concerns about possible abuses and brought amendments to the Bill in this respect; while there were sincere efforts to find a solution based on collective bargaining, there was no support for such a solution in LO and the Government had no other solution than adopting a legislation, in view of the importance it attached to this matter.

C. The Committee's conclusions

579. *The Committee notes that this complaint concerns the adoption of a legislative amendment that alters the regime concerning part-time work in Denmark which, previously, was mostly left to collective bargaining.*

580. *The complainants allege that the law as amended will invalidate large parts of previously concluded collective agreements containing conditions, restrictions or prohibitions in this respect, and will prevent the parties in future from freely negotiating clauses on part-time work.*

581. *The Government submits for its part that such prohibitions and restrictions are not in harmony with a modern and flexible labour market, that there has been a general trend towards more freedom in this respect at national level and that there still remained excessive restrictions on part-time work on the national labour market. The Government wanted to ensure that individual employees, in future, could conclude part-time work agreements with employers without being prevented from doing so by collective agreement provisions which it considers as overly rigid; as trade union organizations did not agree, the Government felt it necessary to act through legislation.*

582. *The Committee first notes that, contrary to what had been alleged initially, it appears from the evidence submitted that the Act does not operate retroactively, but only from the expiry date of collective agreements. The Committee is however bound to note that, as collective agreements containing such restrictions or prohibitions will come to their term with the expiry of time, these conditions regarding part-time work that were previously negotiated (which implies the usual give-and-take process) will gradually escape the scope of collective bargaining inasmuch as they would be in contradiction with the Act as amended. There is thus no doubt that the legislative amendment circumscribes the ambit of collective bargaining on a subject matter where the parties previously had wider room for negotiation, if not complete freedom. It is also quite clear that, as individual agreements on part-time work will now prevail over collective ones, the new system does not 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 [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, 4th edition, para. 781].*

583. *The Committee further notes that this restriction of the scope of bargaining was not only opposed by the major workers' central organizations, but also was not approved by leading employers' organizations which, in their open letter of 1 February 2002, urged the Parliament to respect the division between agreements and legislation and stressed that particular working conditions are best regulated by agreement between social partners than by legislation. They also urged the Parliament, if it nevertheless wanted to legislate on collective agreement matters, that this should take place only after thorough consultations and in close harmony with the parties.*

584. *In the Committee's opinion, if the Government deemed it necessary to change a system which apparently met with a wide consensus of both workers' and employers' organizations, it would have been much more preferable to obtain their agreement. A legislatively imposed measure such as the amendment challenged here, which amounts to reversing unilaterally a system accepted by social partners and which has led to negotiated agreements adapted to particular sectors (the specific conditions of which are best appreciated by the parties themselves) or to individual situations (e.g. in the case of workers nearing retirement) would have been justified only in a situation of acute crisis, for instance if the failure to adopt urgent legislative measures on part-time work had endangered the workability of the existing system. It has not been established, or even alleged, that such an emergency situation existed.*

585. *Given the particular circumstances of this case, and in order to ensure a sound and lasting labour relations atmosphere, the Committee requests the Government to resume thorough consultations on part-time work issues with all parties concerned, with a view to finding a negotiated solution which would be mutually acceptable to all parties concerned and in conformity with Conventions on freedom of association and collective bargaining ratified by Denmark. It requests the Government to keep it informed of developments in this respect.*

The Committee's recommendation

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

> ***In the particular circumstances of this case, the Committee requests the Government to resume thorough consultations on part-time work issues with all parties concerned, with a view to finding a negotiated solution which would be mutually acceptable to all parties concerned and in conformity with Conventions on freedom of association and collective bargaining ratified by Denmark. The Committee requests the Government to keep it informed of developments in this respect.***

CASE NO. 2208

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

Complaint against the Government of El Salvador presented by the Company Union of Lido, S.A. (SELSA) supported by the International Confederation of Free Trade Unions (ICFTU)

Allegations: The complainant alleges that, following a work stoppage in protest at non-compliance with the collective agreement in force, the company Lido, S.A., dismissed 11 union officers and 30 members in reprisal. The complainant further alleges that the administrative authority did not notify the company of the strike agreement adopted by the union.

587. The complaint is contained in a communication from the Company Union of Lido, S.A. (SELSA) dated 3 June 2002. SELSA sent additional information in a communication dated 1 July 2002. The International Confederation of Free Trade Unions (ICFTU) supported the complaint in a communication dated 1 July 2002. The Government sent its observations in communications dated 23 July and 26 September 2002.

588. El Salvador has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

589. In its communication dated 3 June 2002, the Company Union of Lido, S.A. states that in February 2002 it asked the company to revise the section of the collective agreement dealing with salaries (according to the complainant, clause 43 of the collective agreement requires the company to revise its salary table in the first fortnight of January each year in order for the increase to take effect in February of the same year), at this phase of direct

negotiation requesting an increase of US$60 for each worker. The complainant adds that, following the phase of direct negotiation, a phase of conciliation began, but that it was impossible to come to an agreement due to the unyielding position of the company, which proposed a 5 per cent decrease in workers' salaries.

590. The complainant states that, in this context, the workers held an eight-hour work stoppage on 6 May 2002, and that an inspection by the Ministry of Labour confirmed that the workers were at their workplaces but not working, by way of protest. The complainant adds that the company asked the Second Labour Court to classify the strike (as legal or illegal) but, after the inspection carried out at the workplace on 15 May 2002, the judicial authority confirmed that the workers had not held a strike and that production activities were being carried out normally.

591. The complainant alleges that, in reprisal, the company prevented 41 workers from entering the workplace on 7 and 9 May 2002. Of these, 11 were union officers, who to date have still been kept away from the company. The complainant states that, on 8 May 2002, it requested the Ministry of Labour to continue the conciliation process, but that at the conciliation hearing called on 3 May 2002 by the Labour Inspectorate, the representative of the company declared that, if the workers involved considered that their rights had been violated in any way, they could pursue the matter through whatever avenue they considered appropriate. The complainant reports that the dismissed workers have brought individual actions before the judicial authority for constructive dismissal, demanding payment of outstanding salaries owing to the actions of the employer, in accordance with section 29 of the Labour Code, and that the members of the union's general executive board who had been dismissed have also brought an action before the judicial authority demanding payment of outstanding salaries, as laid down in section 464 of the Code.

592. In its communication dated 1 July 2002, the complainant alleges that:

(i) the company has withheld union dues, which constitutes misappropriation, and reports that, in respect of this, an action has been lodged with the Office of the Attorney-General of the Republic;

(ii) the company has denied the union's executive board access to the company's buildings and has used coercion to pressure workers into resigning from the union, which has lead to the resignation of 25 workers (the complainant reports that a complaint was submitted to the Ministry of Labour in this respect on 14 June 2002);

(iii) the Ministry of Labour has refused to notify the company of the strike agreement adopted at a workers' meeting held on 1 June 2002 and communicated to the Ministry of Labour on 7 June 2002. The Directorate General of Labour argues that the strike had no legal basis and, according to the complainant, the Ministry of Labour is taking over functions that belong to labour judges. The complainant alleges that there is a legislative ambiguity, since section 528 of the Labour Code lays down that strikes will be recognized providing they have any of the following aims: "(1) the drawing up or revision of a collective labour contract; (2) the drawing up or revision of a collective labour agreement; and (3) the defence of workers' common professional interests"; section 530 of the Labour Code lays down that strikes will not be recognised if their objective is the revision of an existing collective agreement where the term of duration thereof has not yet expired.

B. The Government's reply

593. In its communication dated 26 July 2002, the Government states that the conflict at Lido, S.A. arose as a result of a request from the union to revise salaries under the collective

agreement in force, as laid down in clause 43. However, having moved through the stages of being an economic dispute and an interest dispute, during which the employer declared it was not economically able to increase salaries in line with the union's request, the union (in order to put pressure on the company to negotiate) and workers held an eight-hour work stoppage on 6 May 2002. An inspection by the Ministry of Labour confirmed that 330 workers were at their workplaces but not working, by way of protest. On 7 and 8 May 2002, 41 workers stated that the company Lido, S.A. prevented them from carrying out their duties. Among them were officers from the union's general executive board. Exercising their democratic rights, they claimed judicial protection in the offices of the Directorate General of Labour, which summoned the employer to a conciliation hearing. This was held on 3 July 2002, after the parties had agreed to the settlement of salaries owed to the officers for the period 7 May to 27 June 2002 (the remaining claims would be settled individually). The Government adds that, following the conciliation hearing called on 3 July 2002 by the Directorate General of Labour, on 5 July 2002 11 of the dismissed union officers received from the company the following amounts in outstanding salaries due to the actions of the employer: Roberto Antonio Escobar Ramos: $181.76; Daniel Ernesto Ayala Gutiérrez: $204.69; Marta Arely Majano Gómez: $206.85; Daniel Ernesto Hernández Castillo: $243.51; Guadalupe Atilio Jaimes Pérez: $268.55; Julio César García Bonilla: $314.67; Jorge Alberto Maroquín Muñoz: $314.43; María Elena del Rosario Pacas Torres: $335.07; José Alfredo Osorio Morataya: $217.22; Rosa Lila Umaña de Ríos: $348.37; and Brigido Antonio Hurtado Gómez: $382.08.

594. The Government adds that it has safeguarded the right to collective bargaining and that, in this case, the parties had exhausted the administrative avenues for the stages of collective economic disputes and interest disputes raised by the Company Union of Lido, S.A., i.e. the stages of direct negotiation and conciliation, the objective of which was the revision of clause 43 (Salaries) of the collective labour agreement, signed by both parties in mutual respect of the commitments undertaken in the related collective agreement. Furthermore, the Government states that, with regard to the legality or otherwise of the dismissals of the 30 workers who were not union officers, the Labour Tribunal would be the appropriate authority to resolve the matter. Lastly, the Government states that the collective economic labour dispute or collective labour interest dispute in question originated in the revision of the collective labour agreement, signed by both parties and currently in force, with the workers alleging a change in the company's economic conditions; these grounds do not give the workers the right to strike as described in section 530(ii) of the Labour Code which states literally: "Neither will [a strike] be recognised if its objective is the revision of an existing collective contract where the term of duration thereof has not yet expired." The collective labour contract in force between the parties expires on 18 June 2004.

595. In its communication of 10 September 2002, the Government states that at the conciliation hearing held on 3 July 2002, the following results were obtained: (a) with regard to the union dues withheld, the parties reached an agreement; (b) with regard to alleged coercion by the company of union members with the aim of influencing their decision on union membership, the company refuted the assertion and the union, for its part, insisted that such measures had taken place without describing what the measures were; (c) with regard to penalization in the application of section 251 of the Labour Code to the dismissals of 41 union members, including 11 union officers, the delegate of the Directorate General of Labour informed them that the judicial authorities would determine the legality of the dismissals.

596. With regard to the complainant's allegations that the Department of Labour and Social Security, through the Directorate General of Labour, refused to notify the company Lido, S.A. of the strike agreement adopted since it had no legal basis, the Government states the following concerning the position that served as a basis for refusing to notify the company: (a) section 530(ii) of the Labour Code lays down that neither will a strike be recognized if

its objective is the revision of an existing collective agreement where the term of duration thereof has not yet expired; and (b) to understand this provision it must be borne in mind that the collective labour agreement drawn up between Lido, S.A. and the Company Union of Lido, S.A. entered into force on 19 June 2001 and will expire on 18 June 2004, and that, as appears in file No. 19/01 sent to the Directorate General of Labour of the Department of Labour and Social Security, the union requested in writing on 20 November 2001 that direct negotiations begin in the collective economic dispute or interest dispute for the revision of the section of the collective labour agreement dealing with salaries, which, as has been shown, had not yet expired; on the basis of the above, it was resolved to declare the union's request groundless since it contravened section 530. According to the Government, there is no ambiguity between the provisions of sections 528 and 530 of the Labour Code.

597. Lastly, the Government states that, with regard to the actions brought by the complainant before the Office of the Attorney-General of the Republic and the labour courts, it is of the view that two basic principles form part of the right to judicial security: the principle of legality and the principle of exact compliance with law, and both have given rise to the so-called state of law, in which all judicial power, all authorities and all individual actions must have a foundation precisely in law, confirming that the principal characteristic of the state of law is that the law is above all the governors and the governed, and that therefore it is the responsibility of the aforementioned authorities to settle the conflicts raised by the union.

C. The Committee's conclusions

598. *The Committee observes that the complainant alleges that in reprisal for an eight-hour work stoppage, in protest of the company's non-compliance with a clause of the collective labour agreement in force, which provides for the revision of the salary table and the payment of an annual salary increase, Lido, S.A. proceeded to dismiss, on 7 and 9 May 2002, 11 union officers and 30 union members. Furthermore, the Committee observes that the complainant alleges that the company: (i) illegally withheld union dues; (ii) denied the executive committee access to the company's premises, and (iii) employed coercion to pressure union members into resigning from the union (according to the complainant, 25 workers have resigned in this context), and that the Ministry of Labour refused to notify the company of the strike agreement adopted by the union, arguing that the strike had no legal basis.*

599. *The Committee wishes to point out in the first place that the declaration of the illegality of a strike should not be the responsibility of the Minister of Labour. The Committee underlines 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****, 1996, 4th edition, para. 522].*

600. *With regard to the dismissals of 11 union officers and 30 union members in reprisal for an eight-hour work stoppage in protest of non-compliance with the collective agreement, the Committee takes note of the Government's statement that: (1) following the conciliation hearing requested by the complainant, which was held on 3 July 2002, the company paid the 11 union leaders the outstanding salaries due to the actions of the employer and(2) the question of the legality or otherwise of the dismissals will be resolved by the competent judicial authority. In this respect, the Committee observes that the complainant reports that the company requested classification of the strike from the judicial authority (section 547 of the Labour Code provides for this possibility) and that the said authority confirmed that there had been no strike and that production activities were being carried out normally. In this context, the Committee cannot rule out the possibility that the*

dismissals were carried out in reprisal for the protest measure undertaken by the workers, which would be a serious violation of freedom of association. In these circumstances, whilst it observes that all those dismissed have lodged judicial appeals in this respect, the Committee requests the Government to: (1) ask the judicial authority to give a ruling promptly so that, if measures need to be taken to correct the situation they can be genuinely effective; and (2) if the judicial authority considers that the dismissals were carried out for anti-union motives – specifically for participation in an eight-hour work stoppage – take urgent measures to reinstate the 41 workers dismissed, with the payment of salaries outstanding in cases where this has not already been done; or if reinstatement is not possible, adequate compensation should be guaranteed to those dismissed. The Committee requests the Government to keep it informed of developments in the situation with regard to both matters.

601. *Regarding the allegations of the Ministry of Labour's refusal to notify the company of the strike agreement adopted by the union, arguing that the said strike had no legal basis, the Committee takes note of the Government's statement that the collective labour agreement drawn up between the union and the company entered into force on 19 June 2001 and will expire on 18 June 2004 and that, bearing in mind the provisions of section 530 of the Labour Code (a strike will not be recognized if its objective is the revision of an existing collective agreement where the term of duration thereof has not yet expired), it was resolved to declare the union's request groundless. In this respect, the Committee considers that, if strikes are prohibited whilst a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined; this type of mechanism not only allows the inevitable difficulties which may occur regarding the interpretation or application of collective agreements to be resolved whilst the agreements are in force, but also has the advantage of preparing the ground for future rounds of negotiations, given that it allows problems which have arisen during the period of validity of the collective agreement in question to be identified. The Committee requests the Government to indicate whether such mechanisms exist in national legislation and to transmit a copy of the collective agreement in force at the company Lido, S.A.*

602. *With regard to the allegation that the company illegally withheld union dues, the Committee observes that the Government reports that, during the conciliation hearing held on 3 July 2002, the parties reached an agreement. The Committee requests the Government to keep it informed about the fulfilment of the agreement in question.*

603. *With regard to the allegation that the company used coercion to pressure union members into resigning from the union (according to the complainant, 25 workers have resigned in this context), the Government reports that, during the conciliation hearing held on 3 July 2002, the company refuted the assertion and the union insisted that such measures had taken place without describing what the measures were. In this respect, the Committee regrets that the Government has not begun an investigation into the accusation made by the union to the Ministry of Labour in June 2002. In this case, the Committee requests the Government to undertake an investigation and, should the allegations be substantiated, to take measures against those responsible for such actions so as to prevent them from reoccurring in the future.*

604. *With regard to the alleged denial of access to the company's premises of the union's executive board, the Committee regrets that the Government has not sent its observations on the matter. In this respect, the Committee recalls that governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, 4th edition, para. 954]. In this regard, the Committee*

requests the Government to take the necessary measures to guarantee to the members of the union's executive board respect of this principle at Lido, S.A.

605. *The Committee requests the Government to ensure that the company Lido, S.A., is consulted through the national employers' organizations in respect of the allegations made in this case.*

The Committee's recommendations

606. ***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: (1) ask the judicial authority to give a ruling promptly in respect of the dismissals of 11 union officers and 30 union members at the company Lido, S.A., so that, if measures need to be taken to correct the situation they can be genuinely effective; and (2) if the judicial authority considers that the dismissals were carried out for anti-union motives – specifically for participation in an eight-hour work stoppage – take urgent measures to reinstate the 41 workers dismissed, with the payment of outstanding salaries in cases where this has not already been done; or if reinstatement is not possible to guarantee adequate compensation is awarded to the dismissed workers. The Committee requests the Government to keep it informed of developments in the situation with regard to both matters.

(b) The Committee considers that, if strikes are prohibited whilst a collective agreement is in force, this restriction must be compensated for by the right to have recourse to impartial and rapid mechanisms, within which individual or collective complaints about the interpretation or application of collective agreements can be examined. The Committee requests the Government to indicate whether such mechanisms exist in the national legislation and to transmit a copy of the collective agreement in force at the company Lido, S.A.

(c) The Committee requests the Government to keep it informed about the fulfilment of the agreement relating to returning the relevant union dues to the Company Union of Lido, S.A.

(d) With regard to the allegation that Lido, S.A. used coercion to pressure union members into resigning from the union (according to the complainant, 25 workers have resigned in this context), the Committee requests the Government to undertake an investigation and, should the allegations be substantiated, to take measures against those responsible for such actions so as to prevent them from reoccurring in the future.

(e) With regard to the alleged denial of access to the company's premises of the union's executive board, the Committee recalls that governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management and requests the Government to take the necessary measures to guarantee that this principle is respected within the company in question.

(f) The Committee requests the Government to ensure that the company Lido, S.A., is consulted through the national employers' organizations in respect of the allegations made in this case.

CASE NO. 2210

DEFINITIVE REPORT

Complaint against the Government of Spain presented by the General Union of Workers (UGT)

Allegations: The complainant organization alleges that legal and case law requirements were not fulfilled by the redundancy procedure established on economic grounds by the enterprise MetalIbérica S.A.; this procedure involved the temporary suspension of 28 contracts of employment, which affected five former trade union representatives, and led to a new redundancy procedure initiated by the enterprise on 12 July 2002 aimed at obtaining new suspensions and affecting two of these five former trade union representatives once again.

607. The complaint is set out in a communication from the General Union of Workers (UGT) dated 6 July 2001. This organization sent additional information in the communication of 9 August 2002.

608. The Government sent its reply in the communication of 6 November 2002.

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

A. The complainant's allegations

610. In its communication of 6 June 2002, the General Union of Workers (UGT) alleges that the enterprise MetalIbérica S.A., which has its headquarters in Burgos and is engaged in the iron and steel industry, presented a redundancy procedure (reference No. 7/2002), in accordance with national legislation, to the competent labour authority, with the aim of obtaining the temporary suspension of 28 contracts of employment for a period of 12 months on economic and production grounds.

611. The UGT adds that the works council produced a report opposing the request made by MetalIbérica S.A., which stated that the economic grounds referred to did not exist in the slightest and that the economic situation was not due to the workers' activities but had been caused by the poor production management that had been maintained in previous years. The legal definition of an "economic crisis" has been specified on many occasions in current laws, through case law and administrative resolutions which have specified four requirements: it must be an objective, real, significant and current crisis. This implies that

the action of the enterprise itself has not caused and provoked the crisis, which must be "real" and "undoubtedly" proven and cannot be justified "by the simple fact that a negative result has occurred during a barely significant period" or by the existence of "a cyclical drop in orders". The crisis must be based on "verifiable events and not on the hypothesis of future events" and "stock forecasts in themselves and considered on their own cannot justify such measures". On the basis of this, the works council concluded that "after having assessed the redundancy procedure, we consider that it does not provide sufficient economic and production grounds to justify its approval".

612. The UGT adds that according to the works council, the criteria applied by the management of the enterprise to designate the affected workers did not correspond to the situation given that 99 per cent of the workers on the various production lines are versatile. Therefore, the application of such criteria was discriminatory and would unfoundedly be of detriment to only some of the workers. In view of the above, the works council decided, as stated in the aforementioned document, that "the management of the enterprise transferred some workers, who had been carrying out other duties on other production lines, to the enamelling line; the fact that these workers belonged to the works council in other legislatures shows that their designation also involved blatant anti-union discrimination".

613. The UGT states that on 15 April 2002, the Head of the Territorial Labour Office of Burgos issued a resolution authorizing MetalIbérica S.A. to suspend the contracts of employment of those workers specifically designated by the enterprise until 31 July 2002. In addition to stating that these workers were legally unemployed, point 4 of this resolution decided that: "Should the current economic situation continue once the holiday period has ended, the enterprise will be able to establish a new procedure to suspend the contracts of workers not affected by the present resolution."

614. In the best case scenario, if the current circumstances were not to continue, only the deliberately chosen workers would have been used by the enterprise to overcome difficulties it had created itself. This would amount to a clear comparative injustice and individual losses for which no form of compensation was envisaged. If the current situation were to persist, which appears to be likely as regards the substance of this issue, it would be obvious that the criteria used were not only discriminatory but ineffective, that other general and proportional measures should have been adopted throughout the enterprise, and that the application of such a method, which was discriminatory right from the start, would not eliminate the problems that the enterprise was trying to solve.

615. The UGT highlights the anti-union discrimination suffered by some of the employees, particularly those who had previously been workers' representatives. For this purpose, some of them were transferred within the enterprise to different posts so that they could thereby be included amongst those who had their contracts suspended. This is shown in the report written by the Provincial Labour and Social Security Inspectorate of Burgos, as it appears in the resolution by the labour authority.

616. This report by the Inspectorate considered that, in principle, the establishment of a redundancy procedure could be justified, but even if it were justified, the suspension of 28 operators for a period of 12 months would produce the opposite effect to that sought after by the enterprise. Furthermore, according to the Labour Inspector, in view of the existing workforce, it could not be considered fair that only some of the employees will have to bear the entire weight of the redundancy procedure.

617. The annex of this frequently cited resolution by the Burgos labour authority clearly shows trade union discrimination, given that the list of those affected by the procedure includes the following UGT trade unionists: Jaime Camarero Martínez (trade union representative for 16 years); Julián Saldaña Pampliega (trade union representative also for 16 years);

Nemesio Sierra Gutiérrez (trade union representative for 20 years); Tomás Temiño Alonso (trade union representative for eight years); and José Luis Fernández Arnáiz (trade union representative for eight years) – namely the most senior trade unionists in the enterprise. It does not go unnoticed that an enterprise with 111 workers and eight trade union representatives included five former officials, who were the very structure of trade unionism in the said enterprise, amongst those to have their contracts suspended. Furthermore, in proportional terms, the suspended workers do not adequately or truly reflect the organic and operational structure of the enterprise.

618. In its communication of 9 August 2002, the UGT states that on 25 April 2002 MetalIbérica S.A. filed an appeal against the resolution by the Head of the Territorial Labour Office of 16 April 2002, to which the present complaint refers. This resolution by the labour authority was also the subject of an appeal made by the works council which was based on the following: (a) there had been no real reduction in sales; (b) stock had been accumulated by the enterprise with the sole intention of presenting a redundancy procedure; and (c) from October 2001 until March 2002, employees had worked in two shifts. In its appeal, the works council alleged and gave proof that 4,025 hours of overtime were worked in 2001, 1,326 of which were carried out in the final quarter of the year. Furthermore, there were 849 hours of overtime in January and February 2002, and according to the management, some of these hours were the result of an inexistent force majeure.

619. The UGT indicates that the Territorial Delegation of the Junta of Castilla y León in Burgos resolved both appeals through the resolution of 3 July 2002, which rejected both appeals and maintained the appealed resolution.

620. Furthermore, the UGT alleges that on 12 July 2002 MetalIbérica S.A. initiated a new redundancy procedure for the temporary suspension of the contracts of 27 of its workers. This was considered as a continuation of procedure No. 07/2002, which had been approved by the Territorial Labour Office of Burgos on 16 April 2002, and was issued "owing to the continuation of the grounds that led to the first procedure". The enterprise requested the temporary suspension of 27 contracts of employment for a period of seven months. This was a continuation of the anti-union discrimination already described in the complaint given that those affected included Mr. Jaime Camarero Martínez, a UGT member and formerly a trade union official for 16 years, and Mr. Nemesio Sierra Gutiérrez, also a UGT member and a trade union official for 20 years; they had both been involved in the same trade union organization. When looking at the list of those affected by either procedure, it is clear that a certain number of people whose contracts were suspended by the first procedure would still be suspended by the second (11 in total). It is equally noticeable that the trade unionists and former trade union officials with the greatest seniority still have their contracts suspended, and will probably be included in subsequent redundancy procedures if the same criteria are applied, and even more so if the enterprise were to try to introduce another procedure aimed at terminating instead of suspending their contracts of employment. Although predictions relating to future action taken by the enterprise cannot be considered as current events, the mentioned circumstances clearly highlight the wilful intention of the enterprise to take action against UGT trade union officials now and, in this case, in the future.

621. As regards the concurrence of the economic and production grounds that led to the redundancy procedure initiated by MetalIbérica S.A., it is blatantly clear that the arguments referring to an economic slowdown and market contraction completely contradict the forecasts of the economic indicators produced by the Government itself and the issuing bank.

622. The UGT concludes that Conventions Nos. 87 and 98 have been violated.

B. The Government's reply

623. In its communication of 6 November 2002, the Government states that the redundancy procedure (employment adjustment plan No. 7/2002 of MetalIbérica S.A., with its headquarters in Burgos) was substantiated in accordance with current standards. The labour authority authorized, through the resolution issued on 16 April 2002, the temporary suspension of 28 contracts of employment until 31 July 2002; in view of the documents contained in the procedure, it was considered that such a temporary measure was necessary to overcome the current economic situation of the enterprise's activity.

624. The written complaint affirms that some employees were subjected to anti-union discrimination, particularly those who had previously been workers' representatives, and includes the following statement: "The fact that the list of workers affected by the suspension of contracts includes five former officials who were the very structure of trade unionism in the enterprise in question clearly shows anti-union discrimination." This allegation lacks foundation given that the procedure was substantiated in accordance with current law. Also, the works council did not give an opinion in this respect (the five former trade union officials were included when they were no longer fulfilling their roles as workers' representatives in the enterprise) and only stated in the document presented on 10 April 2002 (in which it opposed the authorization to suspend the contracts) that it did not agree with the criteria applied by the management of the enterprise when designating the workers affected by the procedure, given that it would be discriminatory and would clearly be of detriment to only some workers – inasmuch as 99 per cent of the workers are versatile – and suggests the possibility of alternating the procedure between the workers. Therefore, before the resolution was issued by the labour authority, no reference was made to anti-union discrimination; neither was this mentioned during the appeal. The connection between the affected workers, including former trade union officials, does not amount to conduct which violates the right to trade union membership but to the production needs of the enterprise owing to its activity.

625. The Government adds that the critical allegations made against the redundancy procedure, on the basis of the inexistence of economic, technical, organizational or production grounds, although completely irrelevant when assessing the alleged violation of freedom of association, do not appear to be in line with the criterion sustained by the Labour Inspectorate. In view of all the theories put forward by the trade union federation concerning the grounds that must concur to authorize a redundancy procedure, given that the criterion of the Spanish judicial bodies is considered to be correct, the following should be pointed out regarding a sentence handed down by the Chamber for Social and Labour Matters of the Supreme Court. Its sentence of 24 April 1996, which was handed out in Cassation No. 3543/95, and related to the objective dismissal (which is the case here, although with regard to suspension, not dismissal) of a single worker from an enterprise with a large number of employees, indicates that the grounds concur when "the adoption of the proposed measures [...] helps to overcome the crisis situation, [...] therefore, with this aim, it is a sufficient explanation that the termination of this contract (contributes) to the improvement of the enterprise, namely that it helps or favours the attainment of this improvement".

626. It is clear that stock accumulation causes economic losses and that the suspension of contracts through a redundancy procedure obviously helps to improve the situation, given that it helps to reduce stock, as observed by an independent body, namely the Labour Inspectorate. Therefore, the resolution which opposed the enterprise's proposal, in accordance with one of the solutions put forward by the works council, and in agreement with the opinion of the Provincial Labour and Social Security Inspectorate, agrees that the suspension, which affected 28 workers, be alternate.

627. This means that, in view of the situation, the labour authority adopted the solution that was most favourable to all of the workers and took into account the fact that the workers included in the procedure, according to the stipulations of section 51, point 7, of the Workers' Statute, are not legal representatives of the workers; nor does the procedure affect them during the guaranteed one-year period following the end of their mandate, as specified in paragraph (c), section 68, of the aforementioned Workers' Statute.

628. The conclusion that some members of a trade union federation have had their right to join a trade union violated, simply because they are included in a procedure to suspend contracts, would be absurd. No legislation states that simply being a trade union member brings with it certain rights that enhance the status of members within the enterprise compared to the other workers; this certainly does not relate to the right to organize, which was never obstructed by the enterprise.

629. The main premise affecting the case is the fact that the complainant federation is obviously confusing the aforementioned five workers' former, and therefore inexistent, status as workers' representatives with their actual position as workers affiliated to a federation. Since it is clear that the affected workers have already ceased being workers' representatives (four of whom in 1998 and Mr. José Luis Fernández Arnáiz in 1994), claiming that they are entitled to representatives' rights, implies to an even lesser extent that these rights have been infringed, since as guarantees stipulated in section 68 of the Workers' Statute, they are granted to those who represent the workers within the enterprise, as a result of trade union elections.

630. The simple fact that these workers had been representatives, and the unverifiable claim that "they were the very structure of trade unionism within the enterprise", does not grant them rights which obviously go hand in hand with legal representation, given that the aforementioned five workers are currently workers just like any others, with the only difference being that they, like many others, are members of a trade union. The statement that, in view of their former trade union representative status (one of them stopped being a trade union representative eight years ago and the others nearly four years ago), simply being included in a redundancy procedure to suspend contracts implies anti-union discrimination, which is based on the fact that they were transferred to make their inclusion possible – which is only true for some of the affected workers – can by no means be accepted as a valid statement; the procedure clearly shows that this was exclusively down to the organizational needs of the enterprise.

631. Furthermore, as regards the transfers, which were promoted by both the enterprise and the workers, it should be taken into account that the workers' versatility was acknowledged, and that when the transfers were conducted in 2001, they did not provoke any reaction by those affected or the complainant trade union. The fact that the resolution reduced the requested one-year suspension to the period from 16 April 2002 (the date of the resolution) until 31 July 2002 and made the procedure alternate between workers confirms, contrary to what is stated by the trade union federation, that the aforementioned workers (who are not trade union representatives) were treated like the rest of the workers, above all, when considering the agreement that the same workers could not be included if a new procedure was presented at the end of staff holidays. This reaffirms, contrary to the accusation – which has never been proven – made by the trade union confederation that the enterprise tried to persecute five UGT members, that the resolution put an end to this hypothesis of persecution by making the procedure alternate between workers.

632. The communication from the UGT of 9 August 2002 emphasizes and confirms the complaint fundamentally on the basis of the fact that on 12 July 2002 the enterprise established a new redundancy procedure which was based on the information given for the previous procedure and requested the suspension of the contracts of employment of 27

workers for a period of seven months. This new procedure included 11 workers who had been affected by the previous procedure, including the two former trade union representatives, Mr. Jaime Camarero Martínez and Mr. Nemesio Sierra Gutiérrez. The Government highlights, however, that this redundancy procedure was not permitted by the Junta of Castilla y Léon, owing to the principle of alternating the previous procedure.

633. Lastly, on 20 September 2002, a new redundancy procedure was presented by the enterprise based on the resolution of 16 April 2002, which was issued by the Territorial Labour Office of the Junta of Castilla y Léon. It was the intervention of this office that brought the parties to an agreement when determining the redundancy procedure. It should be noted that the official document signed by the trade unions and the enterprise agreed that members of the current works council, upon their request, be included in the list of affected workers. The fact that the UGT signed this agreement would imply that this branch of the trade union federation in Burgos is not in agreement with the complaint filed.

634. Also, it should be noted that during the processing of the redundancy procedure, at no time did a hypothetical infringement of freedom of association occur. This is corroborated by the relevant report written by the responsible Labour Inspector, who affirmed that he did not detect even the slightest occurrence of this alleged violation of freedom of association when processing the indicated procedures (the Government sent this report).

635. It is incomprehensible that questions are being raised about anti-unionism and discrimination with reference to procedures of an economic nature within an enterprise; procedures that had not led to any such allegations or any appeal in the form of corresponding judicial proceedings concerning this alleged infringement of trade union rights prior to this complaint.

636. The Labour and Social Security Inspectorate, which is the main body responsible for monitoring the legality of procedures and the only one to have intervened in this regard, stated in its report of 24 September 2002 that "... on the basis of all the evidence, the undersigned Inspector believes that the aforementioned redundancy procedures do not involve discrimination or infringe the freedom of association of UGT members working at MetalIbérica S.A., given that on no occasion did those allegedly affected, or their representatives, give any indication or statement to reiterate the occurrence of anti-union discrimination". The Government highlights that this report has not been distorted or contested.

C. The Committee's conclusions

637. *The Committee observes that in this case the complainant organization alleges that legal and case law requirements were not fulfilled by redundancy procedure established on economic grounds by the enterprise MetalIbérica S.A.; this procedure involved the temporary suspension of 28 contracts of employment, which affected five former trade union representatives, and led to a new procedure initiated by the enterprise on 12 July 2002 aimed at obtaining new suspensions and affecting two of these former trade union representatives once again.*

638. *The Committee notes that the allegations and the Government's reply differ as regards the fulfilment of legal and case law requirements relating to adjustment of employment procedures. In this regard, the Committee would like to highlight that it is not responsible for assessing whether or not the economic reasons referred to by the enterprise existed, or whether the procedure fulfilled legal requirements in Spain; nor is it in a position to do so. Therefore, the Committee will limit itself to assessing whether the temporary suspension of the contracts of employment of the former trade union representatives affected by the*

redundancy amounts to anti-union discrimination, or not. The complainant organization and the Government also disagree about this point.

639. *In this regard, the Committee notes that the complainant organization highlights that: (1) 99 per cent of the workers were versatile and the first redundancy procedure was discriminatory and was unfoundedly of detriment to only some of the workers; (2) the enterprise transferred some former trade union representatives who had previously belonged to the works council to the enamelling line (they had been carrying out other duties); this transfer was conducted so that they would be included in the 28 workers whose contracts were going to be suspended as part of a redundancy procedure for a period that the enterprise claimed to limit to 12 months; (3) the redundancy procedure initially suspended the contracts of employment of five former trade union representatives for three-and-a-half months; these workers had been representatives for between eight and 20 years, and were therefore the most senior trade unionists within the enterprise; (4) the enterprise has 111 workers and currently has eight trade union representatives; (5) on 12 July 2002, the enterprise initiated a new redundancy procedure to temporarily suspend 27 workers for six months; these workers included two former trade union officials who had been trade union representatives for between 16 and 20 years, and who had also been included in the first redundancy procedure; of these 27 workers, 11 had already been included in the first redundancy procedure; and (6) the enterprise wilfully intends to take action against the aforementioned former trade union officials.*

640. *The Committee observes that the Government highlights that: (1) the five former trade union representatives referred to by the complainant organization had ceased to be workers' representatives (four in 1998 and the fifth in 1994) and, therefore, did not enjoy the one-year period of protection granted by law to workers' representatives; (2) the status of former trade union representatives is the same as that of an ordinary trade union member and does not, therefore, involve rights that enhance their position in the enterprise compared to the rest of the workers; (3) the administrative resolution relating to the first redundancy procedure incorporated the criterion of the works council and agreed that the suspension which affected 28 workers alternate between workers, and also limited the period of suspension requested by the enterprise from 12 to three-and-a-half months (16 April 2002 to 31 July 2002) so that these former representatives cannot be included in any subsequent procedures; (4) prior to the redundancy procedure, only some former representatives were transferred and this, contrary to the statement by the complainant organization, was exclusively for organizational reasons within the enterprise, as shown in the procedure; (5) the administrative authority did not permit the second redundancy procedure requested by the enterprise on 12 July 2002, and referred to by the complainant organization in its second communication, precisely on the basis of alternating the previous redundancy procedure; (6) on 20 September 2002, the enterprise established a new redundancy procedure and the Labour Office of the Junta of Castilla y Léon, on the basis of the previous resolution by the administrative authority, established an agreement between trade unions and the enterprise that members of the current works council, upon their request, be included in the list of affected workers; and (7) the Labour Inspector, in his report of 24 September 2002, noted that he had not observed anti-union discrimination. The Government highlights that although the allegation of an attempt to persecute the five former representatives is yet to be proven, the administrative resolution put an end to this hypothesis of anti-union discrimination by making the redundancy procedure alternate between all workers in any subsequent plans to suspend contracts of employment.*

641. *Taking all of the above into account, particularly the total number of workers in the enterprise and the fact that the resolution by the administrative authority included the criterion that all workers be included alternately in any subsequent suspensions of contracts of employment occurring as a result of an administrative decision during an economic crisis, the Committee believes that there is insufficient proof to state that the*

suspension of the contracts of employment of five former members of the works council (along with 23 other workers) for three-and-a-half months as part of a redundancy procedure on economic grounds at the enterprise MetalIbérica S.A. was a reprisal in discrimination for anti-union reasons.

The Committee's recommendation

642. ***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. 1888

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

Complaint against the Government of Ethiopia presented by
— Education International (EI) and
— the Ethiopian Teachers' Association (ETA)

Allegations: Death, detention and discrimination of trade unionists, interference in the internal administration of a trade union.

643. The Committee previously examined the substance of this case at its November 1997, June 1998, June 1999, May-June 2000, November 2000, June 2001 and March 2002 meetings, presenting an interim report to the Governing Body in all these instances [see 308th Report, paras. 327-347; 310th Report, paras. 368-392; 316th Report, paras. 465-504; 321st Report, paras. 220-236; 323rd Report, paras. 176-200; 325th Report, paras. 368-401; and 327th Report, paras. 563-588].

644. The Government provided further information in communications dated 29 May and 3 October 2002. Education International provided additional information in a communication dated 22 October 2002.

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

A. Previous examination of the case

646. This case, which dates back to June 1996, concerns very serious allegations of violations of freedom of association: the Government's interference in the functioning and administration of the Ethiopian Teachers' Association (ETA), its refusal to continue to recognize it, the freezing of its assets and the killing (including that of Mr. Assefa Maru, one of the ETA leaders), arrest, detention (notably the trial, sentencing and detention of Dr. Taye Woldesmiate, Chairman of the ETA), harassment, dismissal and transfer of ETA members and officials. The Committee expressed on several occasions its grave concern with respect to the extreme seriousness of the case and urged the Government to cooperate by providing a detailed response to all the questions posed by the Committee.

647. At its March 2002 session, in the light of the Committee's interim conclusions, the Governing Body, whose attention had been drawn to the case at its June 2001 session in view of the seriousness of the pending issues [325th Report, para. 9], approved the following recommendations [327th Report, para. 588]:

(a) The Committee requests the Government to ensure that Dr. Taye Woldesmiate be afforded all guarantees of due process, and to transmit the decision of the Supreme Court as soon as it is issued; noting that the matter was due to be heard on 23 October 2001, the Committee further requests the Government to keep it informed of developments in this respect, in particular as regards any measure taken to release Dr. Taye Woldesmiate and his co-accused.

(b) Noting with regret that, despite repeated requests to that effect, the Government has not provided any information on the killing of Mr. Assefa Maru, the Committee requests it once again to hold an independent inquiry into this matter and to keep it informed of developments.

(c) The Committee requests the Government to amend its legislation so that teachers, like other workers, have the right to form organizations of their own choosing and to negotiate collectively, and to keep it informed of developments in this respect, including the various steps currently pending before the legislative and executive bodies as regards trade union pluralism and the labour rights of civil servants.

(d) The Committee, once again, requests both the Government and the complainants to provide updated information on ETA leaders and members still aggrieved by the Government's actions as regards detention, harassment, transfers and dismissals due to trade union membership or activities.

(e) The Committee, once again, suggests that the Government avail itself of the technical assistance of the Office on the matters raised in the present case.

B. The complainants' new information

648. In its communication of 22 October 2002, Education International indicates that it sent a mission to Ethiopia in June 2002 to meet with ETA executive committee. The mission also met teachers from Addis Ababa and representatives of ETA women's wing. According to EI, the June meeting was allowed to proceed but was observed by the authorities. The ETA also tried to organize two meetings of the Addis Ababa branch on 3 and 28 September 2002; both meetings were blocked by the police and teachers were denied access to the ETA compound.

649. In February 2002, an ETA conference was held in Awassa to discuss education and trade union issues, with 600 ETA members attending. The authorities tried to stop the conference, which could eventually be held. However, upon returning home, a number of ETA representatives were arrested and held for up to 15 days in prison.

650. While Dr. Woldesmiate has been released from prison, the incidents which occurred in 2002 show that the authorities still interfere in trade union activities. Also, the other issues have not been resolved: there has been no independent inquiry into the murder of Mr. Assefa Maru and the union dues deducted from the salaries are being paid to the ETA formed with the assistance of the authorities, in opposition to the original ETA led by Dr. Woldesmiate.

C. The Government's new observations

651. In its communication of 29 May 2002, the Government points out that the delay in the appeal process concerning the trial of Dr. Taye Woldesmiate was due to the appellant's failure to lodge his appeal within the period prescribed by law. The Federal Supreme

Court, the highest court in the land, has issued its decision on 10 May 2002; it ruled that the lower court had found Dr. Taye Woldesmiate and one of the co-defendants guilty on counts different from the initial charges, and reduced their sentence to five-years' imprisonment; since they have already served the time since their arrest, they have been released as from the date of the Supreme Court decision. The other co-defendants have been acquitted under article 195(2)(b)(1) of the Code of Criminal Procedure. According to the Government, that decision confirms its contention that the case had nothing to do with the defendant's trade union activities.

652. In its communication of 3 October 2002, the Government provides a copy of the Supreme Court's judgement. The Government also indicates that the amendment process of the labour law is a complex one which requires time. The law is currently under examination by the social partners. The Government is firmly convinced that the drafting process will be concluded soon; the outcome will be as comprehensive as possible, considering the interests of all concerned parties.

653. As regards the alleged detentions, harassment, transfers and dismissals of trade unionists, the Government reiterates that freedom of thought, opinion, expression and association is a constitutional right in the country. Further, the complainants have not provided information on the trade unionists in question, as requested by the Committee in previous reports.

654. The Government states it has clearly established the circumstances of the death of Mr. Assefa Maru. In the absence of new facts no further inquiry is warranted into his death, which has nothing to do with his earlier position in ETA leadership.

655. With regard to the technical assistance suggested by the Committee, the Government indicates that the Ministry of Labour is closely working with the ILO Office in Addis Ababa on various projects, including a workshop and meetings where the present case and the labour law amendment were discussed. The Ministry and the ILO Area Office are working to develop a programme of assistance.

D. The Committee's conclusions

656. *The Committee notes that Dr. Taye Woldesmiate and one of his co-defendants have been released from prison, and notes that the other defendants have been acquitted. Regretting that Dr. Taye Woldesmiate was sentenced for his legitimate trade union activities and had to serve five years in prison, the Committee hopes that the Government will refrain from such measures in the future.*

657. *The Committee notes with regret that the Government does not intend to hold an independent inquiry into the killing of Mr. Assefa Maru. It recalls that a climate of violence such as that surrounding the murder or disappearance of trade union leaders constitutes a serious obstacle to the exercise of trade union rights [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 49] and that the absence of judgements 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 [**Digest**, ibid., para. 55].*

658. *The Committee notes from the complainants' communication of 22 October 2002, that two ETA meetings were blocked in September 2002 as teachers were denied access to the ETA compound, and that a number of representatives, upon returning from an ETA conference in February 2002 were arrested and held for up to 15 days in prison. The Committee recalls that freedom of association implies not only the right of workers' and employers' organizations to form freely organizations of their own choosing but also the right of organizations to pursue lawful activities for the defence of their occupational interests*

*[**Digest**, op. cit., para. 447] and that the arrest, even if only briefly, of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association [**Digest**, op. cit., para. 70]. The Committee requests the Government to provide its observations on the events of September and February 2002.*

659. *In previous recommendations, the Committee had recalled that teachers, like other workers, should have the right to form organizations of their own choosing and to negotiate collectively, and requested the Government to amend its legislation accordingly and to keep it informed of developments. The Committee noted in this respect, in its last examination of the case [327th Report, para. 585], that the Government had undertaken a study on the need to amend the labour legislation, which had been discussed in the Tripartite Labour Advisory Board, that amendments relating to trade union pluralism and other subjects were before the Council of Ministers, and that the Law on Civil Service Reform, including the labour rights of civil servants, was before the House of People's Representatives. Noting the Government's conviction, in its communication of 3 October 2002, that the drafting process of the labour law amendment would be "finalized soon", the Committee recalls its suggestion that the Government avails itself of the technical assistance of the Office with a view to ensuring the compatibility of new provisions with freedom of association principles. Recalling further its general comments in this respect [327th Report, para. 587] the Committee requests the Government to keep it informed on developments on these issues, in particular as to the current status of the reform of the Law on Civil Service.*

660. *In previous recommendations, the Committee had requested the complainants to provide updated information on ETA leaders and members still aggrieved by the Government's actions as regards charges, detention or harassment due to trade union membership or activities, transfers and dismissals. The Committee has not been provided with this information in spite of several requests, which it reiterates here.*

661. *The Committee notes with regret that, despite repeated requests, the Government has not provided any new information on the killing of Mr. Assefa Maru. The Committee requests the Government once again to hold an independent inquiry into this matter and to keep it informed of developments.*

The Committee's recommendations

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

(a) Noting with regret that, despite repeated requests, the Government has not provided any new information on the killing of Mr. Assefa Maru, the Committee requests the Government once again to hold an independent inquiry into this matter and to keep it informed of developments.

(b) The Committee requests the Government to amend its legislation so that teachers, like other workers, have the right to form organizations of their own choosing and to negotiate collectively, and to keep it informed of developments in this respect, including the current status of legislative reform as regards trade union pluralism and the labour rights of civil servants.

(c) The Committee requests the Government to provide its observation concerning the incidents of February and September 2002 during which trade union meetings were delayed or interfered with, and ETA representatives were arrested and detained.

(d) The Committee requests once again the complainants to provide updated information on ETA leaders and members still aggrieved by the Government's actions as regards detention, harassment, transfers and dismissals due to trade union membership or activities.

(e) The Committee recalls that the Government may avail itself of the technical assistance of the Office on the matters raised in the present case.

CASE NO. 2193

DEFINITIVE REPORT

Complaint against the Government of France presented by the National Trade Union of Technical Teaching, Action, Autonomous (SNETAA)

Allegations: The complainant alleges failure to comply with Convention No. 87 in view of the provisions of French legislation determining the most representative trade union organizations for the purposes of participation in the joint civil service bodies.

663. The complaint is presented in a communication dated 9 April 2002 from the National Trade Union of Technical Teaching, Action, Autonomous (SNETAA).

664. The Government sent its observations in a communication dated 12 December 2002.

665. France 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

666. Before expounding the details of its allegations, SNETAA states that it is a trade union organization governed by the provisions of the Labour Code and has around 13,000 members. Formerly a member of the Unitary Trade Union Federation (FSU), from which it was excluded, it is currently a member of the federation called "Trade Unions Effectiveness Independence Secularism (EIL), Federalized and Unitary". SNETAA further clarifies that at the end of the 1999 social elections it obtained, particularly among teachers at vocational schools, 43 per cent of the votes, making it the most representative organization in this sector.

667. The complaint concerns section 94 of Law No. 96-1093 of 16 December 1996 (on employment in the civil service and various measures of a statutory nature). SNETAA states that section 94, amending the rules governing social elections, makes the representative nature of the organization presenting the list of candidates a prerequisite for the submission of candidatures to these elections, when it is precisely these elections which should determine that representativeness. Moreover, section 94 creates two new alternative tests of trade union representativeness for the purposes of participation in the first round of the ballot, in that in order to present lists for professional elections, trade unions or trade union associations must meet one of the two following requirements. Firstly, trade unions must belong to trade union associations, which are assumed to be indisputably representative if they meet one of the following two conditions: either (a) they have at least one seat in the upper councils of the state civil service, the regional civil service, and of the hospital civil service; or (b) they received both 10 per cent of the total ballot in the three civil services and more than 2 per cent in each of the civil services at the previous elections. Trade unions which do not meet either of these two conditions and cannot therefore enjoy a presumption of representativeness must – and this is the second requirement – demonstrate their representativeness according to the ordinary law criteria set out in section L.133-2 of the Labour Code, i.e. membership, independence, membership fees, the experience and age of the trade union and patriotic attitude during the occupation (this last criteria has become obsolete). SNETAA clarifies furthermore that a second round of the vote can be organized if none of the representative organizations have presented lists, or if the number of voters is below a quorum. During the second round, candidate lists may be presented by any civil servants' trade union organization. However, according to the complainant, it will never be possible to organize this second round.

668. SNETAA underlines the importance of what is at stake in social elections. These elections determine which trade unions will be authorized to participate in the various joint civil service bodies, in which civil servants' rights and working conditions are defended; SNETAA cites in particular: (a) the joint administrative commissions empowered to take decisions on many career-related matters (advancement, promotions and appointments); (b) the committees on health and safety and working conditions; (c) the joint technical committees which define the staff regulations and decide on the distribution of resources devoted to education by the State; (d) the education councils which decide on major policies in the area of education.

669. SNETAA argues that section 94 is incompatible with Convention No. 87 for the following reasons. Firstly, it violates Article 3, paragraph 1, of the Convention (the right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities). This is because the first requirement set by section 94 recognizes the representativeness of a trade union by its membership in a trade union association or federation enjoying the assumption of representativeness, which has the following dual consequence: on the one hand, this restricts trade unions to joining associations recognized as being representative and, on the other hand, it violates the right of newly formed organizations to participate in social elections – including organizations formed as a result of break-up of trade union associations – as only the overall results achieved previously are taken into account, without consideration of the reality of the trade union audience among the workers affected in the electoral field. Finally, this provision is discriminatory because it applies two different systems of law to those organizations recognized automatically as being representative and those that have to prove their representativeness.

670. Secondly, section 94 violates Article 5 of the Convention (right of organizations to establish federations and confederations). Section 94 prohibits the presentation of concurrent lists by organizations belonging to the same association. This means in fact that

the trade union organizations are totally dependent on the trade union associations, which claim the right to interfere in the prerogatives of affiliated unions whilst having no obligation to make provision for the practical details of selecting the trade unions allowed to participate in the elections or to select, at least, the most representative trade union. SNETAA asserts that, in these circumstances, trade unions forfeit their right to choose a trade union association, particularly as only four federations or confederations enjoy the presumption of representativeness set out in law.

671. Section 94 also contravenes Article 3, paragraph 2 (obligation of the public authorities to refrain from any interference), and Article 8, paragraph 2 (the law of the land shall not be applied so as to impair the guarantees provided for in the Convention), of the Convention. SNETAA maintains first of all that section 94 has added a condition to the criteria for representativeness set out in section L.133-2 of the Labour Code, since trade union organizations have to meet the criteria "within the framework of the election". SNETAA claims that by making it more difficult to show that the criteria are met, the law restricts the right of participation in social elections. Moreover, SNETAA asserts that the administration claims the right to assess in a discretionary manner, on a case-by-case basis, the representativeness of the trade unions standing for elections. Indeed it selects, without the need to justify its decisions, the trade unions allowed to present candidates and who are not automatically considered de facto to be "official trade unions"; furthermore, the criteria set out in section L.133-2 grant the administration considerable leeway in their assessment. Finally, the deadline for appeals against decisions by the administration rejecting lists of candidates from trade unions not considered to be representative is extremely short, namely three days with effect from the deadline for submitting the lists. The second requirement set by law for organizations having to prove their representativeness has several consequences, according to SNETAA. The refusal to allow a trade union, which is nonetheless representative, to participate in national and decentralized elections in state education (divided into 32 local authorities) could result in the trade union having to bring more than 30 appeals before the court, within a maximum period of three days and without the appeal having any suspensive effect. In addition, the state education administration, in a 1999 circular, set itself no deadline for judging the admissibility of the lists. According to SNETAA, the administration need only extend at its discretion the deadline for the admission of lists from trade unions required to demonstrate their representativeness beyond the three-day limit in which appeals are permitted in order to deny trade unions whose lists have been rejected any means of recourse before the courts, the three-day limit having already expired. SNETAA recalls that those trade union federations or associations enjoying the presumption of representativeness are protected from such practices. The trade union associations that thus enjoy, entirely legally, the presumption of representativeness are quasi-permanent holders of the seats in the joint bodies, irrespective of how representative they really are.

672. As well as its own by-laws and those of the federation to which it is affiliated, SNETAA has appended to its complaint the relevant legislative and regulatory texts.

B. The Government's reply

673. In its communication of 12 December 2002, the Government identifies the following five grievances in the complaint presented by SNETAA. As regards the violation of Article 3, paragraph 1, and Article 5 of the Convention, SNETAA considers that section 94: (1) establishes a system which discriminates between trade union organizations; and (2) prohibits the presentation of concurrent lists for a single federation or confederation at an election. As regards the violation of Article 3, paragraph 2, and Article 8, paragraph 2, of the Convention, SNETAA asserts that: (3) the assessment of the representativeness of trade union organizations within the framework of the election is contrary to the Convention; (4) the administration claims the right to assess, in a discretionary manner and

on a case-by-case basis, the representativeness of the trade unions in the elections; and (5) the administration did not set itself, in its memorandum of 21 July 1999, a maximum period of three days to assess the admissibility of the lists, which may prevent an appeal by a trade union organization whose list has been refused by the administration. The Government addresses these grievances one by one as follows.

674. As regards the first grievance, the Government indicates that section 14 of Law No. 84-16 of 11 January 1984 (on statutory provisions pertaining to the state civil service) as amended by section 94 of Law No. 96-1093 of 16 December 1996, organizes elections to the joint administrative commissions based on a two-ballot electoral mechanism. The first is reserved for representative civil servants' trade union organizations, their representativeness being determined in accordance with section 9bis of Law No. 83-634 of 13 July 1983 (on the rights and obligations of civil servants), inserted by section 94 of the 1996 law. That representativeness is assessed by way of an assumption in favour of civil servants' trade unions or trade union associations that hold at least one seat in each of the upper councils of the state civil service, the territorial civil service and the hospital civil service, or receive at least 10 per cent of total votes cast at the elections held to select the representatives to the joint administrative commissions and at least 2 per cent of votes cast at the same elections in each branch of the civil service. Failing that, trade union organizations establish their representativeness by satisfying, within the framework of the election, the provisions of section L.133-2 of the Labour Code. The justification for this electoral method lies in concern to avoid the fragmentation of trade union representation and guarantee the effectiveness of trade union consultation by limiting the number of the administration's interlocutors to the most representative civil servants' organizations.

675. As regards the second grievance, the Government explains that trade unions belonging to a representative trade union organization enjoy the presumption of representativeness, subject to the proviso (provided for in sections 16 and 17 of Decree No. 82-451 of 28 May 1982) that they may present concurrent candidatures at the same election and must indicate the membership of the association on the ballot paper. If trade unions persist in presenting concurrent lists, the administration is required to determine their representativeness according to the criteria set out in section L.133-2. The Government maintains that these provisions allow: (a) for trade union groups to arbitrate fairly between their trade union organizations without fostering a competitive system; (b) for the assumption of representativeness not to be favoured over and above its principle; (c) in all cases – whether concurrent lists are maintained or not – for organizations that can no longer avail themselves of the presumption of representativeness of their federation or association to be guaranteed the possibility of proving their representativeness under the conditions of ordinary law as set in section L.133-2 of the Labour Code.

676. As regards the third grievance, the Government explains that the fact that representativeness is assessed within the framework of the election allows a trade union organization to be represented at local level, if it wins enough votes at that level in one or more bodies of civil servants, even if it does not win enough votes at national level. Similarly, an organization represented at national level and in the majority of civil servants' bodies will not automatically be represented at local level if it only obtained a very small number of votes at that level for that body of civil servants.

677. As regards the fourth grievance, the Government maintains that the administration judges the admissibility of candidate lists, and therefore the representativeness of trade union organizations, not in a discretionary manner but according to the criteria set out in the amended section 14 of the Law of 11 January 1984. According to jurisprudence in the matter, the criteria are not cumulative but result in an investigation of a range of indices allowing representativeness to be assessed. Moreover, the Government emphasizes that decisions on the admissibility of a list must be justified in accordance with section 15 of

Decree No. 82-451 of 28 May 1982. This obligation of justification was recalled in the implementation circular of 23 April 1999 and in the memorandum of 21 July 1999 of the Department of Education.

678. As regards the fifth grievance, the Government emphasizes that the memorandum of 21 July 1999 recalls the requirement of fixed deadlines set by section 14 of the Law of 11 January 1984 (three days to contest a decision on the admissibility of the lists) and by section 15 of the Decree of 28 May 1982. Under the terms of this last provision, a decision stating that a list is unacceptable must be submitted the day after the deadline for the submission of lists at the latest. The aforementioned circular of 23 April 1999 emphasizes the care that the administration must take in examining the admissibility of the lists. If it were to extend the deadline for submitting the lists – presuming that such an extension were possible – the deadline for appeals would also be extended automatically.

679. The Government concludes that the sum of the legislative and regulatory provisions, as well as the way in which they are applied are consistent with the principles of freedom of association, and in particular with the principle of representativeness being determined according to objective, predetermined criteria.

680. In support of its reply, the Government has also appended extracts from the relevant legislative and regulatory provisions.

C. The Committee's conclusions

681. *The Committee notes that the complaint concerns the compatibility of the legislative and regulatory provisions applicable to the civil service, and pertaining to the representativeness of trade union organizations and the privileges which that brings, with the principles of freedom of association. The Committee notes that the complainant does not contest the principle of a distinction being made between trade union organizations according to the degree of their representativeness.*

682. *In the light of the information provided by the complainant and the Government, as well as the extracts from the legislative and regulatory texts appended to their respective communications, the Committee notes that the contested procedure can be described in the following manner. The key election is that of staff representatives within the joint administrative commissions. The results of this election effectively determine, to a large extent, the participation of trade union organizations in other joint bodies. For this election, section 94 of Law No. 96-1093 (see appended copy) provides for two ballots, the second ballot being optional because it is only organized if certain conditions for the organization of the first ballot or the validation of its results are not met. For the first ballot, only the representative civil servants' trade union organizations may present lists of candidates. With regard to the determination of the representativeness of trade union organizations, the law distinguishes between two scenarios. The first scenario is that of those trade union organizations (trade unions or associations) that are presumed to be representative either because they hold at least one seat in each of the upper councils of the state civil service, the territorial civil service and the hospital civil service, or because they won at least 10 per cent of total votes cast at the previous elections for determining staff representatives within the joint administrative commissions and at least 2 per cent of votes cast in each of the three civil service categories. If trade union organizations do not fulfil these conditions for enjoying the presumption of representativeness, the law provides for a second scenario, when the organizations in question meet the ordinary law criteria of representativeness set out in section L.133-2 of the Labour Code, i.e. membership, independence, membership fees, and the experience and age of the trade union.*

683. *In addition, the Committee notes that organizations belonging to the same federation or confederation may not present concurrent lists and that appeal routes exist for contesting the administration's decisions as regards the admissibility of lists, i.e. as regards the representative nature of the organization.*

684. *The Committee notes that the complainant claims that the entirety of this provision is contrary to Article 3, Article 5 and Article 8, paragraph 2, of Convention No. 87, whilst the Government considers it compatible with the principles of freedom of association, and in particular with the principle of representativeness being determined according to objective and predetermined criteria.*

685. *The Committee recalls that the determination of the most representative organization, with the ensuing range of rights and advantages, is not in itself contrary to the principles of freedom of association, provided that certain conditions are met. First, this determination must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse. In this respect, the Committee recalls, on the one hand, that such criteria should be set by law and that the representativeness of the occupational organization should not be left to the discretion of the Government; on the other hand, these criteria must not become excessive to the point of it being difficult for an organization to meet them. Moreover, the Committee emphasizes that the distinction made between trade union organizations according to their representativeness should generally be limited to the recognition of certain preferential rights, for example in the area of collective bargaining or of consultation by the authorities [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 310 and 315].*

686. *Regarding the specific case, the Committee notes by way of introduction that the criteria for determining representativeness are established by law and that they are established for the purposes of participation in the various joint bodies consulted by the administration on civil servants' careers and working conditions.*

687. *As regards the criteria themselves, the Committee notes that those on which the presumption of representativeness is based meet the requirements recalled above in that they are based on specific, instantly verifiable data. This also applies to the ordinary law criteria which, even if (as the complainant emphasizes) they are not quantifiable, are sufficiently detailed in the Labour Code and are based on objective elements of the composition and running of a trade union organization which are customarily taken into account in determining representativeness. While noting the Government's observations on jurisprudence in the matter to the effect that the determination of these criteria allows the administration a certain flexibility in assessment, the Committee emphasizes that this flexibility is largely to the benefit of trade union organizations to the extent that they do not have to meet all these criteria concurrently; moreover, this assessment is carried out under the supervision of an administrative judge, a point to which the Committee will return later on. Furthermore, the Committee takes full note of the Government's explanations as regards the fact that representativeness is assessed according to ordinary law criteria within the framework of the election and that this condition is by its very nature more favourable to trade union organizations with a local presence.*

688. *Regarding the distinction between those trade union organizations enjoying the presumption of representativeness and those having to prove their representativeness according to legal criteria, the Committee is of the opinion that this distinction raises the question of knowing whether the presumption favours the former in such a way as to constitute an infringement of the freedom of workers to choose freely the organization they wish to join. In the light of the indications of the legislative and regulatory texts provided by the complainant and the Government, the Committee observes that, whilst the*

assumption of representativeness tends to favour a certain stability in the representation of trade union organizations within the joint bodies, it does not constitute the exclusive means of designating trade union organizations, and that the law offers other organizations the opportunity to demonstrate their representativeness. In addition, the presumption of representativeness applies only to the candidature admissibility stage; in the election of staff representatives within the joint administrative commissions, candidates from all the representative trade union organizations are on an equal footing. Moreover, the Committee notes that, in particular, the trade union organizations able to enjoy the presumption of representativeness accorded to the federation or confederation to which they belong cannot present concurrent lists, thus avoiding a representative trade union group having a virtual monopoly over the nomination of candidates for elections and therefore preserving the freedom of organizations to join the federations and confederations of their choosing without their decision being influenced by the prospect of automatically enjoying the presumption of representativeness. Furthermore, the Committee notes the explanations provided by the Government to the effect that the preservation of concurrent lists within such trade union organizations does not preclude their participation in elections according to the ordinary law criteria for determining representativeness. Finally, regarding the selection by the federation or confederation of the trade union organization that will benefit from the presumption of representativeness, the Committee notes that this is an internal matter concerning relations between the federation or confederation and its members and that it falls to the interested parties to settle the matter themselves.

689. *The Committee notes that the assessment of the admissibility of lists of candidatures by the administration is carried out under the supervision of a judge, and that such supervision can be carried out with full knowledge of the facts because, under the terms of section 15 of Decree No. 82-451 of 28 May 1982, as amended by Decree No. 98-1092 of 4 December 1998, the administration must justify any decision of inadmissibility, which has to be given within a short period (at the latest the day after the deadline for submitting candidatures). The Committee notes, from the implementation documents attached to the complaint and to the reply, that the appeal to the judge is made and considered according to an emergency procedure and that the role and responsibilities of the administration as regards the admissibility of the lists of candidatures have been set out in detail in the implementing documents of the law and in particular in the memoranda of the Ministry of Education.*

690. *From the above considerations, the Committee concludes that the legislative provisions regarding the determination of the representative civil servants' trade union organizations for the purposes of the election of staff representatives to joint civil service bodies is not incompatible with the principles of freedom of association.*

The Committee's recommendation

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

Annex

Section 94 of Law No. 96-1093 of 16 December 1996 on public service employment and various measures of a statutory nature

Section 94. I. After article 9 of Law No. 83-634 of 13 July 1983 on rights and obligations of civil servants, a section 9bis shall be inserted as follows:

Section 9bis. Considered as representative of the entirety of the staff subject to the provisions of the present law shall be those civil servants' trade unions or trade union associations which:

1. hold at least one seat in each of the upper councils of the state civil service, the territorial civil service and the hospital civil service; or

2. obtain at least 10 per cent of the total votes cast in the elections organized in order to designate the staff representatives, subject to the provisions of the present law, to the joint administrative commissions and at least 2 per cent of the votes cast at these same elections in each branch of the civil service. This shall be assessed on the date of the most recent renewal of each of the aforementioned upper councils.

For the implementation of the provisions of the preceding paragraph, only those trade union associations whose by-laws provide for the existence of executive bodies appointed directly or indirectly by a deliberative body and with permanent resources made up in particular of the payment of membership fees by its members shall be taken into consideration as civil servants' trade union associations.

II. The second paragraph of section 14 of Law No. 84-16 of 11 January 1984 on statutory provisions relating to the state civil service, the third paragraph of section 29 and the first two sentences of the sixth paragraph of section 32 of Law No. 84-53 of 26 January 1984 on statutory provisions relating to the regional civil service, as well as the third paragraph of section 20 of Law No. 86-33 of 9 January 1986 containing statutory provisions relating to the hospital public service, shall be replaced by the following provisions:

The members representing the staff shall be elected by a two-ballot list system with proportional representation.

In the first ballot the lists shall be presented by the representative civil servants' trade union organizations. If no list is submitted by these organizations, or if the number of voters is below a quorum set by decree in the Council of State, a second ballot, for which lists may be presented by any civil servants' trade union organization, shall be conducted within a time limit set by the same decree.

For the implementation of the provisions of the preceding paragraph the following shall be regarded as being representative:

1. civil servants' trade union organizations that are properly affiliated to a trade union association fulfilling the conditions set out in section 9bis of Law No. 83-634 of 13 July 1983 on the rights and obligations of civil servants; and

2. civil servants' trade union organizations satisfying, within the framework of the election, the provisions of section L.133-2 of the Labour Code.

Organizations affiliated to the same union shall not present concurrent lists at the same election. The conditions for the implementation of the present paragraph shall be set where necessary by a decree in the Council of State.

Challenges to the admissibility of the lists submitted shall be brought before the competent administrative court within the three days following the deadline for submitting candidatures. The administrative court shall give its ruling in the 15 days following the submission of the appeal. The appeal shall not be suspensive.

III. Section 15 of the aforementioned Law No. 84-16 of 11 January 1984 shall be completed by a paragraph formulated as follows:

When, under the conditions set by a decree in the Council of State, a staff consultation is carried out to designate representatives of civil servants' trade union organizations, only those organizations referred to in the fourth paragraph of section 14 shall be empowered to stand. If none of these organizations stand, or if the number of voters is below a quorum set by decree in the Council of State, a second consultation shall be held, within a time limit set by the same decree, in which any trade union organization may participate. The rules set out in the fifth and sixth paragraphs of section 14 are applicable to the consultations provided for in the present article.

CASE NO. 2144

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

Complaint against the Government of Georgia presented by the Georgian Trade Unions Amalgamation

Allegations: The complainant alleges that, by seizing trade union property and interfering in trade union matters, the Government violates trade union rights.

692. The complaint is contained in communications dated 1 and 19 June, and 2 and 10 July 2001 from the Georgian Trade Unions Amalgamation.

693. The Government sent partial information on the allegations made in communications dated 29 November 2001 and 28 May 2002. The Committee has been obliged to postpone its examination of the case on two occasions [see 327th and 328th Reports, para. 6]. At its meeting in November 2002 [see 329th Report, para. 9], the Committee issued an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report approved by the Governing Body, 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 due time. To date the Government has sent no new observations.

694. Georgia 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

695. In its communications dated 1 and 19 June, and 2 and 10 July 2001 the Georgian Trade Unions Amalgamation alleges that, by seizing trade union property and interfering in trade union matters, the Government violates trade union rights.

696. In particular, the complainant states that, despite a 1998 ruling of the Constitutional Court providing for the restitution to the complainant of a previously seized building (Palace of Culture), which was built by the trade unions and had been used by the unions for congresses and other activities, the building has still not been handed over to them. The complainant also alleges that all assets owned by the Georgian Trade Unions Amalgamation were sequestrated by order of a district court in 1999, which remains in force due to the overly lengthy appeal proceedings.

697. The complainant further alleges interference by the authorities in the election procedure. Specifically, the complainant refers to the events that took place prior and during the Fifth Congress of the Georgian Trade Unions Amalgamation held on 24 November 2000. According to the complainant, the authorities in their attempt to establish their influence over the organization sought to influence delegates with bribes and intimidation by calling them to offices or by phone hoping that they would support an alternative candidate for the post of chairperson of the Trade Unions Amalgamation. Two weeks before the Congress, the head of the Amalgamation's organizing department, Ms. Eteri Matureli, suffered a violent attack during which her skull was injured and her arm was broken. According to the complainant, this attack was staged with the sole purpose of preventing adequate preparation of the general meeting. On the day of the Congress, members of the security services forced their way into the home of the deputy chairperson of the complainant organization and took her son for questioning. According to the complainant this action was taken in order to intimidate and demoralize the deputy chairperson of the organization and prevent her from taking an active part in the meeting. Furthermore, many uninvited people and non-delegates came to the meeting, including Members of Parliament and its Deputy Speaker, government representatives and members of the government party.

698. The complainant further states that, despite efforts to establish normal and constructive relations with Members of Parliament, the pressure on the trade union is growing and new tactics are used in order to discredit the complainant organization. In particular, the complainant states that, two days before the plenary of the Council of the Trade Unions Amalgamation, a suit was filed in a district court in order to exclude from the agenda of the meeting the following matters: management system of "*Kurortinvest*" (trade union's resort system of which the Amalgamation is the founder member and shareholder) and establishment of property protection service, which is envisaged by the union's by-laws. According to the complainant, the judges considered the case without hearing the views of the complainant organization and issued a ruling prohibiting the Council to consider those questions. Despite the decision of the court, those two topics were discussed and relevant resolutions were adopted. Following the meeting, representatives of the Ministry of Justice invited Mr. Irakli Tugushi, the chairperson of the Georgian Trade Unions Amalgamation, to the police station with the aim of indicting him for the criminal offence of failure to comply with a court ruling.

699. Moreover, the complainant states that the Parliamentary Economic Policy Committee held a meeting on "the situation that has arisen in the Georgian Trade Unions Amalgamation" to which only few members of the executive of the Trade Unions Amalgamation were invited. The Committee adopted a decision, which, according to the complainant, reflected the interests of certain groups of Members of Parliament. It was also said that trade unions enjoyed too many rights and that therefore the Act on trade unions adopted by the Parliament in 1997 should be reconsidered.

700. Finally, the complainant alleges that on several occasions the local authorities have held meetings in their offices with the aim to urge workers to switch their membership to an alternative trade union created by them.

B. The Government's reply

701. In its communications of 29 November 2001 and 28 May 2002, the Government states that the present case is in the process of investigation by the relevant governmental bodies and that at this stage it could reply only to some of the allegations.

702. As regards the allegation of interference in trade union activities, the Government states that, according to information received from Parliament, there where no precedents of

illegal intervention on the process of work of the Governing Board of the Georgian Trade Unions Amalgamation by the Government nor by the parliament.

703. As regards the attack on a member of the Georgian Trade Unions Amalgamation, Ms. Eteri Matureli, the Government indicates that, due to the fact of robbery, the relevant criminal case was launched in November 2002 and the case is still under investigation.

704. As regards the episode connected to the deputy chairperson of the Georgian Trade Unions Amalgamation, the Government states that voluntarily questioning of her son had no relation to the activities of Ms. Londa Sikharulidze as deputy chairperson.

705. Concerning the allegation of interference in the work of the Plenary Council of the Georgian Trade Unions Amalgamation, the Government states that, according to the district court ruling of 29 May 2001, Mr. Irakli Tugushi, the head of the Amalgamation and the Plenary Council of the trade union were forbidden to discuss the issues related to the management status of the health-resort system and property-protection service. Nevertheless, those issues were discussed and, as a result, the executive police established a criminal case, which was submitted to the Office of the General Prosecutor of Georgia.

C. The Committee's conclusions

706. *The Committee notes that this case relates to allegations of seizure of trade union property and interference by the authorities in trade union matters.*

707. *The Committee notes from the complainant's allegations that, despite a 1998 ruling of the Constitutional Court providing for the restitution to the complainant of a previously seized building (Palace of Culture), which was built by the trade unions and had been used by the unions for congresses and other activities, the building has still not been handed over to them. It also notes the complainant's allegation that all assets owned by the Georgian Trade Unions Amalgamation were sequestrated by order of a district court in 1999, which remains in force due to the overly lengthy appeal proceedings. The Committee notes that no observation has been received from the Government in this respect.*

708. *Considering that after four years since the decision of the Constitutional Court the Palace of Culture has still not been returned to the trade unions, the Committee expresses its concern over this situation. It recalls in this respect that the freedom to organize their activities implies that trade unions should be able to dispose of all their fixed and movable assets unhindered. The Committee draws the Government's attention to the importance of the principle that the property of trade unions should enjoy adequate protection [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 184]. The Committee therefore requests the Government to take the necessary measures so as to ensure that the building in question is returned to the trade unions. The Committee requests the Government to keep it informed in this respect.*

709. *The Committee also expresses its concerns over the situation wherein all assets owned by the Amalgamation have been sequestrated since 1999 and the appeal has not yet been heard by the courts due to the lengthy legal procedures. In this respect, the Committee recalls the importance it attaches to such proceedings being concluded expeditiously, as the seizure of trade union assets constitutes a serious interference in trade union activities. The Committee has always considered that justice delayed is justice denied [see* ***Digest****, op. cit., para. 105]. It therefore requests the Government to take the necessary measures so as to ensure that the appeal of the Amalgamation against the court ruling ordering the seizure of its assets is promptly heard and to keep it informed in this respect.*

710. *The Committee notes the complainant's allegation concerning the interference by the authorities in the election procedure by trying to influence trade union members with bribes and intimidation as well as by taking part in the meeting of the Congress where uninvited Members of Parliament, including its Deputy Speaker, government representatives and members of the government party were present. The Committee notes that the Government, referring to the information it has received from Parliament, denies the allegations of interference in the work of the Governing Board of the complainant organization.*

711. *Concerning this set of allegations, the Committee notes from the Government's statement that it has relied on the information it had received from Parliament. The Committee regrets that no proper investigation was conducted. It therefore recalls that any interference by the authorities and the ruling political party in the elections of the executive bodies of a trade union organization is incompatible with the principle that organizations shall have the right to elect their representatives in full freedom. Moreover, under these circumstances, the presence of government officials during trade union elections is liable to infringe freedom of association. The Committee therefore requests the Government to take all the necessary measures so as to ensure that the public authorities refrain from any interference, which would restrict this right or impede the lawful exercise thereof.*

712. *The Committee further notes the allegation of physical assault against Ms. Eteri Matureli, the head of the Georgian Trade Unions Amalgamation organizing department, as well as measures taken against a family member of the deputy chairperson of the Amalgamation with the aim to intimidate and demoralize those trade union leaders. The Committee notes from the Government's statement that the criminal case on the assault on Ms. E. Matureli was launched in November 2000 and is still under investigation. As regards the episode connected to the deputy chairperson of the Georgian Trade Unions Amalgamation, the Government states that voluntarily questioning of her son had no relation to her activities as deputy chairperson.*

713. *Recalling that the rights of workers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for the Government to ensure that this principle is respected, the Committee regrets that the case of Ms. Eteri Matureli is still under investigations two years after it was opened [see* ***Digest****, op. cit., para. 47]. The Committee considers that an independent judicial inquiry should be established in the case of Ms. Eteri Matureli in order to shed light, at the earliest date, on the facts and the circumstances in which a physical assault against her occurred and, in this way, to the extent possible, determine where responsibility lies, punish the guilty parties and prevent the repetition of similar events. The Committee requests the Government to keep it informed on any developments in the case of Ms. Eteri Matureli.*

714. *The Committee notes the complainant's allegations concerning the prohibition issued by the court to discuss certain matters concerning the trade union's resort system, of which the organization is a founding member and shareholder, and property protection services, at the Plenary of the Council of the Amalgamation. The Committee further notes that criminal charges were laid against Mr. Irakli Tugushi, the chairperson of the organization, for contravening the court order. The Committee notes that the Government does not deny this allegation.*

715. *The Committee considers that the right of workers' organizations to discuss at their meetings the questions they consider necessary to discuss, without prior authorization and interference by the authorities, is an essential element of freedom of association and the public authorities should refrain from any interference which would restrict this right or*

*impede its exercise [see **Digest**, op. cit., para. 130]. As for the criminal charges brought against the chairperson of the Amalgamation, the Committee considers that, while being engaged in trade union activities does not confer immunity from application of ordinary criminal law, the authorities should not use legitimate trade union activities as a pretext. As those charges were brought in contravention of freedom of association rights, the Committee requests the Government to take all the necessary measures in order to drop the criminal charges brought against Mr. Irakli Tugushi. It requests the Government to keep it informed in this respect.*

716. *The Committee notes the complainant's allegation concerning the meeting held by the Parliamentary Economic Policy Committee on "the situation that has arisen in the Georgian Trade Unions Amalgamation" where it was stated that trade unions enjoyed too many rights and that the Act on trade unions should therefore be reconsidered. The Committee notes with concern the comments made by the Parliamentary Economic Policy Committee and regrets that no observation has been received from the Government in this respect.*

717. *The Committee recalls that Article 3 of Convention No. 87 provides that workers' organizations have the right to organize their administration and activities and to formulate their programmes without any interference from the authorities. The Committee reminds the Government that if it intends to reconsider the legislation in force, it should hold full and frank consultation with all concerned parties [see **Digest**, para. 924]. The Committee requests the Government to ensure that this principle is respected.*

718. *Finally, the Committee notes the complainant's allegation that on several occasions the local authorities have held meetings in their offices with the aim to urge workers to switch their membership to an alternative trade union created by them. The Committee regrets that no observation has been received from the Government in this respect.*

719. *The Committee considers that situations where the local authorities are interfering in the activities of a freely constituted trade union by establishing alternative workers' organizations and inciting workers using unfair means to change their membership violate the right of workers to establish and join organizations of their own choosing. The Committee requests the Government to initiate the relevant inquiries and to keep it informed in this regard.*

The Committee's recommendations

720. ***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 the necessary measures so as to ensure that the previously seized building is returned to the trade unions.

(b) The Committee requests the Government to take the necessary measures so as to ensure that the appeal of the Amalgamation against the court ruling ordering the seizure of its assets is promptly heard.

(c) The Committee requests the Government to take all the necessary measures so as to ensure that the public authorities refrain from any interference that would restrict the right of workers' organizations to elect their representatives in full freedom or impede the lawful exercise thereof.

(d) The Committee requests the Government to establish an independent judicial inquiry in the case of Ms. Eteri Matureli in order to shed light, at the earliest date, on the facts and the circumstances in which the physical assault against her occurred and, in this way, to the extent possible, determine where responsibility lies, punish the guilty parties and prevent the repetition of similar events.

(e) The Committee requests the Government to take all the necessary measures in order to drop the criminal charges brought against Mr. Irakli Tugushi.

(f) As regards the complainant's allegation concerning the comments made by the Parliamentary Economic Policy Committee calling for a modification of the legislation in force, the Committee recalls that if the Government intends to reconsider its legislation, it should hold full and frank consultation with all concerned parties. The Committee requests the Government to ensure that this principle is respected.

(g) Regarding the allegation of establishing unions under control of the authorities and incitement of workers to switch their membership, the Committee requests the Government to initiate the relevant inquiries into these allegations.

(h) The Committee requests the Government to keep it informed of the measures taken or envisaged on the abovementioned matters.

CASE NO. 2212

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

Complaint against the Government of Greece presented by the Pan-Hellenic Seamen's Federation (PNO) supported by — the International Confederation of Free Trade Unions (ICFTU) and — the International Transport Workers' Federation (ITF)

Allegations: The complainant alleges that the Government violated its trade union rights by issuing a civil mobilization order to end a lawful strike.

721. In a communication dated 11 July 2002, the Pan-Hellenic Seamen's Federation (PNO) presented a complaint of violations of freedom of association against the Government of Greece. The International Confederation of Free Trade Unions (ICFTU) and the International Transport Workers' Federation (ITF) associated themselves with the complaint in their communications dated 16 and 30 July 2002 respectively.

722. The Government furnished its observations in communications dated 27 August and 12 November 2002.

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

A. The complainant's allegations

724. In its communication of 11 July 2002, the Pan-Hellenic Seamen's Federation (PNO) which is the highest level of trade union organization for seafarers with 14 affiliates, alleges that the Government violated its trade union rights by issuing a civil mobilization order to end a lawful strike.

725. The PNO states that on 11 December 2001, its General Council (which is the Federation's second constitutional body in order, the first being the Congress and the third the Executive Board) mandated its Executive Board that unless the fair and just demands of seafarers, acknowledged as such by the Government, were not resolved within a period of six months, the PNO should call a national strike. The PNO adds that its demands concerned the enhancement of pensions and provident fund benefits and more specifically included: (a) the formulation of a clear timetable for the readjustment of the main pensions of retired seafarers to 80 per cent of salaries paid to active seafarers (instead of 60 per cent) calculated on the basis of all allowances and benefits for which deductions were made in favour of the Seafarers' Retirement Fund; (b) an increase in the supplementary pension by 1.5 per cent per year in order to reach 30 per cent of the principal pension paid; (c) the doubling of the lump sum benefits of the provident funds for all officers and ratings; and (d) the creation of an independent unemployment fund.

726. The PNO states that since no resolution of the above-mentioned demands was achieved within the six-month period, its Executive Board called a 48-hour rolling national strike from 6.00 a.m. on 11 June 2002 to 6.00 a.m. on 13 June 2002. According to the PNO, following the announcement of the strike, a series of meetings between the Minister of Mercantile Marine and the PNO Executive Board took place, and on 6 June 2002, the Minister sent to the PNO the text of draft legislative provisions, accompanied by an explanatory memorandum, to be incorporated in the Social Security Bill (dealing with the reform of the pension system for shoreworkers) which was being debated at that time in Parliament. The draft provisions addressed the first two of the PNO's demands by providing in particular, that from 1 January 2003 the main pensions of seafarers would reach 70 per cent of active seafarers' salaries including the Sunday allowance, and that auxiliary pensions would increase by 1.5 per cent per year in order to reach 30 per cent of main pension levels. The explanatory memorandum provided that inter alia, the draft provisions would be inserted in an addendum to the Social Security Bill and that the increases to seafarers' pensions would be financed by the State budget in the context of recognizing the particularities of the seamen's profession and its great contribution to the development of the national economy. The PNO attaches the two documents which were signed by the Minister of Mercantile Marine and the Minister of Labour and Social Security, but not the Minister of Finance and National Economy.

727. The PNO states that considering that the signatures provided and the assurances given by the Ministers concerned were reliable, it decided on the same day (6 June 2002) to call off provisionally the strike scheduled to take place on 11 June 2002. However, the PNO alleges that while it was waiting for the Minister of Finance and National Economy to co-sign the abovementioned draft legislation, the Minister of Mercantile Marine made a statement to the press in which he deviated from the contents of the agreed upon legislation and postponed its implementation indefinitely. The PNO states that in light of these developments, it decided to call a 48-hour national rolling strike from 18 to 20 June 2002 for all types of vessels; the strike action was escalated on 20 June for a further 48 hours, but on 21 June the strike was ended by a civil mobilization order issued by the

Government, a move generally reserved for times of national emergency. The PNO adds that its members had no choice but to obey the order, which effectively meant that seafarers would face imprisonment and/or financial penalties if they did not return to work.

728. The PNO attaches the text of the civil mobilization order which relied on the imperative need to prevent the unfavourable consequences of the prolonged strike which had caused a serious disturbance to the social and economic life of the country and to ensure the health of the island residents who were isolated. The PNO holds that the Greek Government's civil mobilization order issued just three and a half days after a legally organized trade union strike which had the support of 100 per cent of Greek seafarers constitutes an excessively strict order in breach of freedom of association principles and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It also attaches a statement of support for the PNO's action by the Workpeople Center of Piraeus, which is a department of the General Confederation of Greek Workers. The statement condemns the civil mobilization order as an antidemocratic and restrictive measure which is not conducive to finding a real solution to the problem.

B. The Government's reply

729. In its response dated 27 August 2002, the Government states that it replied in a positive and timely manner to all the demands made by the PNO. The Government attaches a special leaflet of the Ministry of Mercantile Marine entitled "The Government's Decisions Regarding Greek Seamen", which was distributed after the issuance of the civil mobilization order in June 2002 to seafarers, and contains a detailed statement in this respect. With regard to the first claim of the PNO, that is, the clear determination of a time schedule for the readjustment of all pensions of the retired seamen to 80 per cent of the salaries paid to active seamen, the Government states in the leaflet that it addressed this issue by raising pensions from 60 per cent of the nominal salary to 70 per cent of the actual salary (basic salary plus Sunday allowance). With regard to the second claim, that is, the increase of the supplementary pension at an annual rate of 1.5 units, in order to reach 30 per cent of the principal pension paid, the Government states that it accepted this claim. With regard to the third claim, that is, the doubling of the amounts of the lump sum payment, the Government states that, given that the competent institutions were legal entities under private law, it was decided that the PNO and the Ministry of Mercantile Marine would cooperate for the radical reorganization, reformation and rationalization of the lump sum pay system. With regard to the fourth claim, that is, the establishment of an independent special unemployment fund, the Government states that this demand was accepted and a Committee was formed by members of the PNO, the Ministry of Mercantile Marine, the Ministry of Labour, the Manpower Employment Organization (OAED), the General Confederation of Greek Workers (GSEE), etc., with a view to establishing a special unemployment fund for seafarers. The Government states that an additional claim was accepted to the effect that the Seafarers' Retirement Fund should not become part of the general Social Securities Fund. As a result, a relevant provision was not included in the Social Security Bill which dealt with the reform of the pension system for shoreworkers.

730. The Government explains that the only issue remaining open and constituting a point of friction was the manner of payment of the 70 per cent increase in pensions, or as the PNO had put it, the "time scheduling" of such increase. The Government specifies in the leaflet that the State budget covers, by paying 161 billion Drachmas, the deficit of the Seafarers' Retirement Fund, which in 2002 amounted to 188 billion drachmas. In order to satisfy the demands of the PNO, the Government should make available another 40 billion drachmas a year, thus exhausting any further capability to support the Fund. The Government explains that the cost is high, because in the Seafarers' Retirement Fund (as opposed to other funds) raises are payable to all pensioners, not only those who will retire after the establishment of the new right. The Government states that initially it had been accepted

that there might be a possibility for the full percentage increase to begin being paid in 2003. At that time, the cost was estimated somewhere between 9 and 15 billion drachmas. However, the report of the General Accounting Office of the State showed that the cost would be higher and amount to an annual 40 billion Greek drachmas. Thus, the Government states that it decided and proposed a gradual payment within a five-year period. The Government states that although the PNO had said that they would make a counterproposal, they decided to prolong the strike without even replying. The Government announces unprecedented percentage raises in pensions in the period 2003-07.

731. The Government also states in the leaflet that although all three Ministers (of National Economy, Labour and Mercantile Marine) agreed to accept the PNO's demands, the Minister of Finance and National Economy did not sign the agreed upon draft legislation for the following reasons. Although for four months the Minister of Mercantile Marine had been asking the PNO to have a separate article on this subject in the Social Security Bill, the answer was negative until the day before the introduction of the Bill in Parliament. At that point in time, it was attempted to add an addendum, which, however, was not introduced due to the provisions of the new regulation of the Parliament and the absence of the required report of the General Accounting Office of the State. Therefore, the draft provisions only bear the signatures of the two reporters and not the Minister of Finance and National Economy. The latter, however, stated at that time in Parliament that pensions would increase from 60 per cent to 70 per cent by virtue of another bill.

732. The Government has attached to the leaflet distributed to seafarers an appendix entitled "Raises to [seafarers'] pensions on the basis of the Government's decisions" with tables on the raises accorded every year from 2003 to 2007. According to these tables, pensions will increase by 2 per cent each year, amounting to 62 per cent of actual salaries (the basic salary plus the Sunday allowance) in 2003, 64 per cent in 2004, 66 per cent in 2005, 68 per cent in 2006 and 70 per cent in 2007. The Government states furthermore in the leaflet that its decisions are valid, that it will support the measures it has announced, which constitute fundamental elements of the Government's shipping policy, and that it will proceed to the implementation of the decisions adopted through the negotiations, because it believes that these demands are just and support the seafarers and the Greek shipping industry. The Government also makes a statement to the effect that the shipping industry is not the private property of either the shipowners, the trade unionists or the state services, but belongs instead to all the people and the national economy, who support financially the industry.

733. The Government also states that even if the payment of pension raises were to be in the form of a lump sum in 2003 as claimed by the PNO, the differences compared to the total increases would be small and that such a small difference should not have resulted abusively in such great damages suffered by the citizens, the country's tourism, the producers, businesses and the islands: it cannot be politically and socially acceptable that small differences between unions and the Government, not even discernible to the society, can lead to such disaster and isolation.

734. The Government states in response to the complaint that, despite its positive and timely reply to the demands made by the PNO, the latter issued a notice in writing of its calling of a 48-hour rotating national strike of all crews of all categories of ships, with the prospect to escalate its activities, starting at 6.00 a.m. on 18 June 2002 and lasting until 6.00 a.m. on 20 June 2002. During this strike, the PNO issued another notice to the effect that the strike would continue from 6.00 a.m. on 20 June 2002, to 6.00 a.m. on 22 June 2002. While this strike was in process, the PNO announced that it would continue the strike from 6.00 a.m. on 22 June 2002 to 6.00 a.m. on 24 June 2002. At that point, by virtue of Decisions Nos. Y369 and Y370/20.6.2002, the Prime Minister placed the crews of the ships of the mercantile marine in a state of general civil mobilization and authorized the Minister of

Mercantile Marine to declare the mobilization and undertake all necessary measures in order to secure the unimpeded function of the social and political life of the State and to avert the risk to the health of the inhabitants of isolated islands. By virtue of Decision No. 199/21.06.2002, the Minister of Mercantile Marine declared a general civil mobilization of the crews of the ships of the mercantile marine, starting from 4.00 p.m. on 21 June 2002.

735. In its response the Government states that the decision to proceed to the civil mobilization of the seafarers had as its exclusive objective and result the protection of public health. According to the Government, it is a well-known fact that Greece has a large number of inhabited islands and that during the summer season, which definitely includes the last ten days of the month of June, the population of the islands is increased, given that a large number of tourists are added to their permanent inhabitants. Maritime transport is directly, even crucially in the case of certain islands, associated with the smooth and orderly life in the islands. The Government states that merchant ships are the dominant and in some cases the only means of transportation of food, water, pharmaceuticals and other supplies, such as fuel, to the islands, the absence of which places the public health at risk. Furthermore, merchant ships are a vehicle which contributes substantially to the transportation of patients as well as medical personnel to the primary and secondary units of the national health system. These transportations occur on an almost daily basis both among the islands as well as between the islands and the continent. The Government adds that prior to the adoption and implementation of the Decisions in question, almost four days had passed without any maritime transport in the country, with evident risks for the public health.

736. The Government adds that before adopting, implementing and applying these decisions, it had received information from the islands about a multitude of cases of absence of basic provisions and pharmaceuticals. The Government attaches eight letters from local government authorities of the islands, university foundations and private associations which refer to a number of shortages, including shortages of articles of first necessity and the inability to provide medical care.

737. The Government also attaches a document sent by the Ministry of Mercantile Marine and, more particularly, the Chief of the Port Authority, after the PNO had announced its decision to proceed to a strike on 16 June 2002, calling upon the PNO to consent to the performance of at least one coastal route from the ports of Piraeus and Rafina to each island destination (northern Aegean, the Cyclades, the Dodecanese, Crete, islands of the Argosaronikos Gulf), in order to ensure the absolutely necessary minimum level of maritime connection with the islands, with the objective of advancing and securing sustainable living conditions for the island population and considering the truly essential needs which are mainly covered by the maritime transport. It is also stated that irrespective of the fact that the legislation in effect sets forth procedures for the calling of strikes, the exercise of the constitutionally guaranteed right to strike should not be directed against the rights of citizens to order and free transportation, and that, in this framework, the practice implemented widely and with regard to all the means of transportation, is very familiar. The Government adds that the PNO did not respond positively to this effort.

738. The Government adds that the Decisions under consideration of the Prime Minister and the Minister of Mercantile Marine are entirely lawful and issued in accordance with the legal formalities and lie within the scope of the Constitution, while under no circumstances can they be characterized as contrary to the obligations undertaken by the country as a result of the ratification of international Conventions and in particular, Convention No. 87. It adds that the Decisions in question were only adopted when the Government found itself before an acute national crisis with a view to vindicating major social goods and securing the health of the inhabitants of isolated islands, having previously exhausted all other available means and taken into consideration the urgent need to prevent the adverse consequences of

the extended strike which had caused a serious disturbance to the social and economic life of the State. The implementation of the said Decisions resulted, according to the Government, in the restoration and maintenance of the conditions which are necessary particularly during the summer season for the prevention and deterrence of grave risks to the public health, and is thus directly and substantially connected with reasons of general interest, without impairing the seamen's insurance, labour or association rights.

739. In a communication dated 12 November 2002, the Government states that the civil mobilization of the crews of the ships of the mercantile marine was lifted on 25 September 2002, by Decision No. 491/2002 of the Prime Minister and Decision No. 283/2002 of the Minister of Mercantile Marine, pursuant to the fact that the reasons for imposing the civil mobilization were no longer present.

C. The Committee's conclusions

740. *The Committee observes that this case concerns allegations of violations of freedom of association arising from the issuance of a civil mobilization order to end a lawful strike.*

741. *The Committee notes that as early as December 2001, the PNO had announced its intention to go on strike if its demands were not met and in particular the determination of a specific time schedule for the readjustment of the main pensions of retired seafarers to 80 per cent of salaries paid to active seafarers (instead of 60 per cent). The Committee also notes that by early June no agreement had been reached on the PNO's demands and that consequently the PNO decided to call a 48-hour rolling national strike for 11 June 2002. The Committee observes that pursuant to this announcement, negotiations took place between the Minister of Mercantile Marine and the PNO Executive Board and an agreement was reached on 6 June 2002, when the Minister of Mercantile Marine sent two documents to the PNO addressing certain of its demands, and providing inter alia that as of 1 January 2003, the main pensions of seafarers would reach 70 per cent of active seafarers' salaries including the Sunday allowance. The documents in question were a proposed draft legislation to be incorporated in the Social Security Bill, which was to be debated at that time in Parliament, and an explanatory memorandum, signed by the Minister of Mercantile Marine and the Minister of Labour and Social Security, but not by the Minister of Finance and National Economy. The Committee notes that the PNO alleges that it decided the same day to call off provisionally the strike, having relied on the signatures provided and the assurances given.*

742. *The Committee observes that both the complainant and the Government indicate that the implementation of the agreement reached between the Government and the PNO did not take place as planned. On the one hand, the PNO alleges that while waiting for the signature of the Minister of Finance and National Economy, it heard from a statement of the Minister of Mercantile Marine to the press that the implementation of part of the agreement was postponed indefinitely. On the other hand, the Government states that after the conclusion of the agreement, it found out from the General Accounting Office of the State that the cost of the raises accorded in the agreement would be much higher than initially estimated and that under these circumstances, it decided and proposed to the PNO a modification of the agreement in the form of a gradual increase in pensions over a five-year period. The Government adds that it was impossible to follow up on the agreement by introducing the agreed upon draft legislation for discussion in Parliament, inter alia, because the required report of the General Accounting Office of the State was not available. The Committee notes that under these circumstances, the draft proposal was not signed by the Minister of Finance and National Economy and that the latter stated in Parliament that pensions would increase by virtue of another bill.*

743. *The Committee notes the Government's statement that the PNO decided to go on strike without making a counterproposal, calling a 48-hour national rolling strike from 18 to 20 June 2002 and escalating the strike on 20 June for a further 48 hours. As of 4.00 p.m. on 21 June 2002, that is, three and a half days after the beginning of the strike, the crews of the ships of the mercantile marine were placed in a state of general civil mobilization by the Decisions of the Prime Minister and the Minister of Mercantile Marine dated 20 and 21 June respectively. The Committee notes the PNO's statement that its members had to obey the order or face imprisonment and/or financial penalties.*

744. *The Committee also notes that after the issuance of the civil mobilization order, the Government published, in a leaflet distributed to seafarers, its decisions concerning the scheduling of the pension raises over a five year period emphasizing its commitment to move ahead with their implementation. The Committee observes that, whereas the initial agreement was to grant a 10 per cent increase in pensions as of 1 January 2003, the Government announced its decision to implement the increases gradually, by granting a 2 per cent increase each year, from 2003 to 2007.*

745. *The Committee has considered in the past that agreements should be binding on the parties [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 818] and that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with agreements entered into by, or on behalf of, that authority. The Committee considers also that for negotiations to be meaningful, the parties must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts. The Committee is of the view therefore that, in so far as the budget of the Seafarers' Retirement Fund depends on the State budget, it would not be a matter for criticism if, at some point during the six month negotiations, the Government had solicited the report of the General Accounting Office of the State, so that the parties could have the possibility to express their views on this report and take it into account.*

746. *The Committee further notes that it would not be objectionable if, once it became clear that the implementation of the agreement would be practically impossible, and after having exhausted all good faith efforts to achieve the implementation of the agreement, the Government undertook concrete efforts to renegotiate the agreement in order to find a solution that would be commonly acceptable to the parties. The Committee notes in this respect that the Government does not provide any details on the manner in which it made a new proposal to the PNO with a view to renegotiating the agreement and does not indicate whether the bill mentioned by the Minister of Finance and National Economy in Parliament, as an alternative way to implement the agreement, already exists or will be proposed in the future. The Committee is of the view that the fact that the PNO resorted to strike action did not prevent negotiations from taking place in this context and recalls that strike action is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [see **Digest**, op. cit., para. 475].*

747. *The Committee observes that the increases accorded to pensioners on the basis of the Government's decisions do not correspond to those initially agreed with the PNO and takes particular note of the Government's statement that it will support what it has announced. The Committee is of the view that the stated intention of the Government to move forward with the implementation of the announced measures without seeking the agreement of the PNO, constitutes a unilateral modification of the agreement in breach of Article 4 of Convention No. 98. While the Committee notes the Government's statement that the remaining differences with the PNO were small, it notes that the voluntary nature of collective bargaining requires that such differences should be settled through agreement rather than through unilateral decisions. The Committee requests the Government to*

undertake negotiations with the complainant as soon as possible in full knowledge of the relevant facts, in order to reach agreement between the parties on a specific time schedule for granting pension raises to seafarers, and to keep it informed of developments in this respect.

748. *The Committee notes the Government's statements that the civil mobilization order aimed exclusively at the protection of the public health, and that it was adopted only because of an acute national crisis, with a view to securing the health of the inhabitants of isolated islands, having previously exhausted all other available means to address the situation. The Committee notes that according to the Government, the population of the islands increases in the summer given that a large number of tourists are added to the permanent inhabitants, while merchant ships are the dominant and, in some cases, the only means of transportation of food, water and pharmaceuticals, and contribute substantially to the transportation of patients and medical personnel between the primary and secondary units of the national health system. The Committee also notes that according to the Government, the fact that almost four days had passed without any maritime transport in the country, created evident risks for the public health. The Committee takes note of eight letters attached to the Government's response from local authorities (the Prefects of the islands of Samos and Lesbos, the Community Chairpersons of the Cyclades Prefecture, the Mayors of the islands of Milos, Paros and Ios, the Municipal Council of the island of Paros), medical centres (the Chairman of the Medical Centre of Milos and the District University General Hospital of Heraclion, Crete) and a hoteliers' association (the Hoteliers' Association of Milos) making reference, inter alia, to the fact that the strike was causing shortages in items of first necessity and fresh products and that it prevented a team of volunteer doctors from carrying out a scheduled visit from a primary to a secondary medical centre in the islands. The Committee also notes from the PNO's statement, that the scope of the strike must have been rather wide as it concerned all types of vessels and generated a participation of 100 per cent of seafarers. The Committee also notes however, that the strike lasted for only three and a half days and that most of the abovementioned letters focus primarily on the economic effects of the strike in the light of the tourist season, referring to public health issues only as a secondary matter. The Committee is of the view therefore, that the evidence provided affirms the potential risks to the population of the islands, but does not indicate the existence of an acute national crisis.*

749. *The Committee recalls that the right to strike can be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population [see **Digest**, op. cit., para. 526]. With regard to the public service, the Committee considers that the fact that the Seafarers' Retirement Fund is supported by the state budget does not place seafarers under the regime of public servants. With regard to essential services in the strict sense of the term, the Committee has noted in the past that the ferry service and the transportation of passengers and commercial goods is not an essential service [see **Digest**, op. cit., paras. 563, 566]. However, the Committee has also noted that what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country and that the concept of essential services is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population [see **Digest**, op. cit., para. 541]. Thus, the Committee has found that in view of the difficulties and inconveniences that the population living on islands along the coast could be subjected to following a stoppage in ferry services, an agreement may be concluded on minimum services to be maintained in the event of a strike [see **Digest**, op. cit., para. 563] and has moreover noted that the transportation of passengers and commercial goods is a public service of primary importance where the requirement of a minimum service in the*

*event of a strike can be justified [see **Digest**, op. cit., para. 566]. Thus, the Committee is of the view that the establishment of a requirement to ensure a minimum service in the particular circumstances of this case would not be contrary to freedom of association principles.*

750. *The Committee notes from the facts of the case however, that the legal regime in the area of minimum service is not clear. The Committee observes in particular from a document attached to the Government's reply that the Chief of the Port Authority contacted the PNO immediately after the latter announced its decision to proceed to a strike for the second time, on 16 June 2002, and called on the PNO to consent to the performance of at least one route from the two main ports of Athens, namely, Piraeus and Rafina, to each island destination. The Committee notes that instead of making reference to specific legal provisions, the Chief of the Port Authority relies on a practice which is said to be very familiar and widely implemented with regard to all means of transport. Thus, the Committee notes that there seem to be no legally binding rules and procedures in the area of minimum service. The Committee notes moreover that the message in question did not constitute an invitation to negotiate, but rather an invitation to accept a specific definition of minimum service without having consulted the PNO and the relevant employers' organization, and that no negotiation on the definition of a minimum service had taken place during the six-month negotiations between the PNO and the Ministry of Mercantile Marine, although the PNO had announced its intention to go on strike if its demands were not met. The Committee notes finally, that for many years the Committee of Experts on the Application of Conventions and Recommendations has been expressing concern over the fact that seafarers are excluded from the generally applicable legislation concerning freedom of association.*

751. *The Committee recalls that it is important for provisions regarding the minimum service to be established clearly, to be applied strictly and to be made known to those concerned in due time [see **Digest**, op. cit., para. 559]. A minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population; in addition, workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities [see **Digest**, op. cit., para. 558]. In case of disagreement, the legislation should provide for any such disagreement to be settled by an independent body and not by the ministry concerned [see **Digest**, op. cit., para. 561].*

752. *The Committee notes with regard to the civil mobilization order which put an end to the PNO strike, that the severity of this measure, which imposed an outright prohibition of a strike accompanied by penal sanctions, surpasses its stated aim, namely the protection of public health in the islands. The Committee recalls in this respect the Government's statement that the carrying out of one route from the two main ports of Athens to each island destination would have sufficed to meet the essential needs covered by maritime transportation. The Committee therefore considers that the civil mobilization order constituted a disproportionate restriction of the right to strike in violation of Article 3 of Convention No. 87.*

753. *Furthermore, the Committee recalls that restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see **Digest**, op. cit., para. 547]. The Committee notes that the civil mobilization order did not provide for any compensatory guarantees in this respect. On the contrary, after its issuance, the Government announced its intention to go ahead with the implementation of its decisions without seeking the agreement of the PNO. In this context, the Committee observes that the civil mobilization order enabled one*

of the parties to impose a unilateral solution to a dispute in violation of Article 4 of Convention No. 98.

754. *The Committee emphasizes that unilateral measures are not conducive to harmonious industrial relations. The Committee takes note of the decisions of the Prime Minister and the Minister of Mercantile Marine dated 25 September 2002 to put an end to the civil mobilization order and requests the Government to refrain from such measures in the future.*

The Committee's recommendations

755. ***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 undertake negotiations with the complainant as soon as possible in full knowledge of all the relevant facts, in order to reach agreement between the parties on a time schedule for the readjustment of seafarers' pensions and to keep it informed of developments in this respect.

(b) Taking note of the fact that the civil mobilization order has now been lifted, the Committee emphasizes that unilateral measures are not conducive to harmonious industrial relations and are contrary to Conventions Nos. 87 and 98, and requests the Government to refrain from such measures in the future. Nevertheless, the Committee notes that the establishment of a requirement to ensure a minimum service in the particular circumstances of this case would not be contrary to freedom of association principles.

CASE NO. 2103

INTERIM REPORT

Complaint against the Government of Guatemala presented by
— the Workers' Union of the Office of the Auditor General (SITRACGC) and
— the Organization for Worker Unity (Unidad Laboral)

Allegations: the complainants allege various anti-union acts (compulsory resignations of union members, dismissals, suspensions and transfers of union officers and members) in the Office of the Auditor General.

756. The Committee last examined this case at its meeting in November 2001 [see the Committee's 326th Report, paras. 288 to 301, approved by the Governing Body at its meeting in November 2001].

757. The Government sent partial observations in communications dated 10 January, 27 September and 30 December 2002.

758. 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

759. At its meeting in November 2001, when it examined allegations of anti-union discrimination in the Office of the Auditor General, the Committee made the following recommendations [see the 326th Report, para. 301]:

> The Committee regrets that the Government, contrary to the desire to cooperate expressed during the direct contacts mission in April 2001, has not responded to any of the complainants' allegations in this case and urges the Government to cooperate fully with the Committee in the future.
>
> With respect to the compulsory resignations involving the termination of membership of 200 union members and the dismissal of five members, the Committee requests the Government to ensure that investigations are made to determine whether the resignations and dismissals were effected for anti-union reasons. Should the anti-union nature of these acts be confirmed, the Committee requests the Government to take the necessary steps to have those who were dismissed reinstated in their posts without loss of pay and so that the workers forced to resign be offered reinstatement in their posts without loss of pay, and ensure that such acts are not repeated in future. The Committee requests the Government to keep it informed in this respect.
>
> As regards the dismissal proceedings and the failure to assign duties to the members of the SITRACGC and Unidad Laboral executive committees, the Committee requests the Government to urge the Office of the Auditor General to desist from the actions described and to assign duties by common agreement in such a way that union activities are not affected. The Committee requests the Government to keep it informed in this respect.
>
> With regard to the transfer and subsequent suspension without pay of Mr. Sergio René Gutiérrez Parrilla, in reprisal for exercising the right of petition, the Committee requests the Government to take the necessary steps to ensure that investigations are made and, should the transfer and subsequent suspension prove to be the consequence of legitimate union activities, rescind the transfer and, should the suspension have been made effective, undertake compensation with the payment of outstanding wages. The Committee requests the Government to keep it informed in this respect.
>
> Concerning the dismissal of Ms. Ivana Eugenia Chávez Orozco and Mr. Otoniel Antonio Zet Chicol, the Committee requests the Government, in compliance with the legal ruling, to reinstate the workers concerned in their posts. The Committee requests the Government to keep it informed in this respect.

B. The Government's reply

760. In its communication dated 7 January 2001, the Government states that it has been established, from information provided by the General Directorate of Labour, that both complainants refuse to accept resignations from persons who no longer wish to belong to these unions, in order to maintain the highest possible membership and thus maximize union resources. The Government indicates that, because of this, the only course of action for members is to present their resignations to the General Directorate of Labour without a signature or date of receipt by the unions' executive committees. Nine people whose resignations were not accepted have even lodged an appeal for constitutional protection *(amparo)*.

761. In its communication dated 27 September 2002, the Government states that the Labour Inspectorate informed the Government on 22 September 2000 that it had visited the Office of the Auditor General, in order to begin investigating the case, and that, during this visit, a

second hearing had been fixed for 28 September 2000. No representative of the Office of the Auditor General attended that hearing and, on the same day, the Auditor General argued that there was a conflict of jurisdiction, on the grounds that the General Labour Inspectorate was not competent to hear the case submitted by the union officers, since there were already mechanisms in place under criminal and labour law for them to be decided in the country's courts. According to the Auditor General, the General Labour Inspectorate was interfering in matters which should be dealt with by the courts.

762. The Government adds that officers of the complainant unions had asked, in a memo dated 8 April 2002, that the necessary proceedings be started. A labour inspector was assigned to continue work on the case and, on 20 May 2002, the inspector visited the Office of the Auditor General; during this visit the appropriate legal measures were drawn up; these were to be implemented within 24 hours. On 21 May 2002, a hearing was held in the offices of the General Labour Inspectorate to establish whether or not the measures had been implemented. At this hearing, the Office of the Auditor General again, for the third time, claimed that there was a conflict of jurisdiction in the case, as a consequence of which, in accordance with the Law on conflicts of jurisdiction, the case was suspended and referred to the Tribunal for Conflicts of Jurisdiction of the Supreme Court of Justice. The Tribunal for Conflicts of Jurisdiction issued a resolution on 31 May 2002, in which it stated that: "with regard to the application made, the Tribunal has already given a ruling on the case, within the same proceedings." According to the Government, the purpose of raising these conflicts of jurisdiction was to delay the case. The case was referred back to the General Labour Inspectorate from the Supreme Court of Justice on 1 August 2002. It has yet to be confirmed whether or not the Office of the Auditor General has implemented the measures. Once this has been done, further measures will be taken.

763. In its communication of 30 December 2002, the Government stated that the new Auditor General approached the unions in order to initiate a process of implementation of the recommendations of the Committee on Freedom of Association in the short run.

C. The Committee's conclusions

764. *The Committee recalls that when, at its meeting in November 2001, it examined allegations of anti-union discrimination in the Office of the Auditor General, it requested the Government to keep it informed on the following matters: (i) the compulsory resignations involving the termination of membership of more than 200 members and the dismissal of five members (the Committee asked the Government to ensure that investigations carried out to determine whether the resignations and dismissals had been effected for anti-union reasons and, if the anti-union nature of these acts was confirmed, to take the necessary steps to have those who had been dismissed reinstated in their posts with payment of any wages owed, and to ensure that workers who had been forced to resign were offered reinstatement in their posts without loss of pay, and to ensure that such acts were not repeated in the future); (ii) the dismissal proceedings and the failure to assign duties to the members of the SITRACGC and Unidad Laboral executive committees (the Committee requested the Government to urge the Auditor General's Office to abandon the dismissal actions and proceed by common agreement with the assignment of duties in such a way that the performance of union activities would not be affected); (iii) the alleged transfer and subsequent suspension without pay of Mr. Sergio René Gutiérrez Parrilla, in reprisal for exercising the right of petition (the Committee requested the Government to take the necessary steps to have investigations carried out and, if the transfer and subsequent suspension proved to be the result of legitimate union activities, to ensure that the transfer was rescinded or, if the suspension had already taken effect, to provide compensation and pay any outstanding wages); and (iv) the dismissals of Ms. Ivana Eugenia Chávez Orozco and Mr. Otoniel Antonio Zet Chicol (the Committee requested the Government comply with the court ruling and reinstate the workers concerned in their posts).*

765. *In this respect, the Committee takes note of the Government's statement concerning the alleged compulsory resignations involving the termination of membership of more than 200 members, to the effect that it has been established that the unions are refusing to accept resignations from persons who no longer wish to belong to the unions and that, because of this, the workers in question were presenting their resignations to the General Directorate of Labour (as permitted by the legislation). The Committee requests the Government to provide greater detail on the reasons for the resignation of their trade union membership of these 200 workers.*

766. *The Committee notes that the Government does not refer to the alleged dismissals of five members (Ms. Silvia Elizabeth Lara Sierra, Ms. Ligia del Carmen Jiménez Baldizón, Mr. Francisco Ramiro Miranda Montenegro, Mr. Walter Daniel Godoy Vargas and Mr. César Soto García) in this context, and again strongly urges the Government to carry out urgent investigations and, should the anti-union nature of these actions be confirmed, to take measures to reinstate the workers concerned in their posts and pay any outstanding wages.*

767. *Furthermore, the Committee observes that, with regard to the allegations that had remained pending, the Government states, in general terms, that: (1) the General Labour Inspectorate carried out inspections in the Office of the Auditor General and that, on more than one occasion, the Office appealed to the judicial authorities, claiming that the Inspectorate was not competent to hear the case, the sole aim of this being to delay the proceedings; (2) the General Labour Inspectorate had drawn up a number of measures to be implemented by the Office of the Auditor General and that it remains to be confirmed whether or not the Office has actually done so. The Committee observes that the General Labour Inspectorate has drawn up measures to be implemented by the Office of the Auditor General in relation to the alleged acts (the Government does not specify to which acts it is referring, or what the result of the measures has been), and that a new Auditor General has been nominated who is willing to comply in the short run with the recommendations of the Committee on Freedom of Association. The Committee urges the Government to send complete observations on the pending allegations and to implement without delay the recommendations made in the previous examination of the case.*

The Committee's recommendation

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

The Committee urges the Government to implement without delay the recommendations made in the previous examination of the case and to send complete observations on the following pending allegations concerning the Office of the Auditor General:

(i) with regard to the allegations of forced resignations of more than 200 trade union members, the Committee requests the Government to provide greater details on the reasons for these resignations;

(ii) with regard to the dismissals of the five members named in the conclusions, the Committee again strongly urges the Government to carry out urgent investigations and, should the anti-union nature of these actions be confirmed, to take the necessary measures to reinstate the workers concerned in their posts with the payment of any outstanding wages;

(iii) with regard to the dismissal proceedings and the failure to assign duties to the members of the SITRACGC and Unidad Laboral executive committees, the Committee again requests the Government to urge the Auditor General's Office to abandon the dismissal actions and proceed by common agreement with the assignment of duties in such a way that the performance of union activities is not affected;

(iv) with regard to the alleged transfer and subsequent suspension without pay of Mr. Sergio René Gutiérrez Parrilla, in reprisal for exercising the right of petition, the Committee again requests the Government to take the necessary steps to ensure that investigations are carried out and, should the transfer and subsequent suspension prove to be the result of legitimate union activities, to ensure that the transfer is rescinded or, if it has already taken effect, to provide compensation and pay any outstanding wages; and

(v) with regard to the dismissals of Ms. Ivana Eugenia Chávez Orozco and Mr. Otoniel Antonio Zet Chicol, the Committee again requests the Government to comply with the court ruling and reinstate the workers concerned in their posts without loss of pay.

CASE NO. 2179

INTERIM REPORT

Complaint against the Government of Guatemala presented by the International Textile, Garment and Leather Workers' Federation (ITGLWF)

Allegations: The complainant alleges numerous anti-trade union acts (various forms of pressure, threats with firearms, physical assaults, forced resignations, non-payment of wages, closure of the undertaking, etc.) directed against officials and members of the trade unions established in two companies (Choi Shin and Cimatextiles) in an export processing zone.

769. The complaint is contained in a communication from the International Textile, Garment and Leather Workers' Federation (ITGLWF) dated 12 February 2002. The Government sent its observations in communications dated 5 June and 30 December 2002.

770. 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. The complainant's allegations

771. In its communication dated 12 February 2002, the International Textile, Garment and Leather Workers' Federation (ITGLWF) alleges that a number of different violations of

trade union rights were perpetrated at the Choi Shin and Cimatextiles undertakings operating in the Villanueva free zone and producing articles for export to the United States. The complainant states that on 9 July 2001, the workers of the two companies filed an application for official recognition of their unions under the names *SitraChoi* and *SitraCima*, and that both unions were affiliated to the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS) which has been assisting and advising them.

772. The complainant adds that the workers submitted the documents required to obtain legal recognition to the Ministry of Labour on 9 July 2001 and on the same day informed the company management of the establishment of the union, thereby obtaining a "job protection" court order, preventing the company from dismissing the workers. The complainant alleges that a violent anti-union campaign began almost immediately, and more specifically:

(1) Lawyers hired by the company offered workers the chance to join a *solidarista* association supported by management, which would offer a number of economic, social and cultural benefits.

(2) The company convened a meeting of supervisors who set out to disseminate propaganda against the trade union and the workers, who were told that the company would close, and that their leaders were on a blacklist and could not return to work; some of the supervisors accused the trade union leaders of being guerrilla fighters.

(3) Camilo Obed Ramírez Pojoy, General Secretary of the union at the Choi Shin company, was summoned to the office of the manager and offered money to leave the union. As he refused, he was assaulted and threatened by the Director of Human Resources. On 11 July 2001, he failed to come to work after finding a menacing letter on his door. On the same day, the shed where a workers' meeting was being held after the work shift was pelted with stones.

(4) On 11 July 2001, the company launched a series of private (and mandatory) meetings with workers at each production line and with the personnel directors at both plants. The workers were told that the trade union officials were out to ruin the company and force it to close, and that the union would cut 50 quetzales from their wages.

(5) In the late afternoon of 11 July 2001, Mrs. López, a trade unionist, was threatened with a pistol on her way home. As she left her bus and walked towards her house, she was followed by a man in a black car whom she recognized from the plant. The man got out of the vehicle and took aim at her with the pistol. Fortunately, Mrs. López was able to escape her attacker. Her mother called the police, who refused to come to the neighbourhood. On the following day, she reported the incident to the Ministry of Labour. She and her mother were accompanied to the plant by two labour inspectors and, once there, she was told that the management could initiate criminal proceedings against her for allegedly signing a contract of employment on the basis of false documents, and advised her to abandon her complaint, which she did.

(6) On 13 July 2001, the workers were taken off the production lines and forced to sign a paper saying "No to the union". In some cases, the document was communicated by a supervisor. In most cases, workers were summoned individually or in small groups to the supervisor's office to sign the document.

(7) The family of Mrs. Gloria Cordoba, General Secretary of the Cimatextiles union, also received threats. Two unidentified individuals came to the primary school where her daughter works, asked if she worked there, and left. The following day, she was robbed on her way from the bank where she had just drawn her wages. The men robbed her of US$150 and told her it would not be the last time. Two other men went

to her home and told her 12 year old son that they were looking for his uncle, a known union supporter.

(8) The union officials have been summoned individually by the managers or taken outside the plant to persuade them to leave the union. The company has made it clear that the movements of trade union members were followed very closely.

(9) On 18 July 2001, during the lunch break, a group of workers meeting in front of the main gate of the plant moved towards the area where the union officials were sitting. The man in charge of the group was one of the main supervisors at the Choi Shin company, and the group was composed mainly of workers employed at that plant. They threatened the union officials, telling them they were going to lynch and kill them, and then began pelting them with food, bottles and stones. Company managers and the personnel directors were present as this took place and did nothing but look on and laugh. The crowd broke up into small groups which surrounded and isolated individual union officials. At around 13.30 p.m., the trade unionists at the Cimatextiles company were taken off the production lines by a group of workers mainly from the Choi Shin company, who were armed with sticks and rocks and told them to sign a letter of resignation. The trade unionists sought refuge in the guards' hut by the entrance which was soon completely surrounded by workers. At 14.15 p.m. the plant manager, Mr. Choi arrived, calmed the situation and allowed agents of the anti-riot unit to escort the trade unionists off the plant premises. The trade unionists asked the police to enter the plant premises to escort the other trade union members still inside the plant, but the police refused and said that there were too many hostile groups inside the plant.

(10) On 19 July 2001, trade union officials who had not resigned the previous day reported for work as planned; 21 of them had made a statement to the public prosecutor the previous evening. At midday the workers started to assemble in groups of 10 to 15, and each group then joined a crowd of at least 100 workers. They began shouting and throwing stones, sticks and bottles at the trade union officials, shouting at them to resign from the company. One group of trade unionists was able once again to take refuge in the guards' hut at the entrance. This was then surrounded by the crowd, which shouted insults and threats and pounded on the doors. The rest of the crowd, which remained nearer the plant entrance, beat, kicked and dragged the trade unionists. At the gates, one of the company managers threatened to let the crowd in if the union officials did not sign the letter of resignation. When the police arrived, the crowds accused the union officials of being a "stubborn minority". Finally, the police agreed to enter the plant to release the trade unionists still trapped inside.

(11) Given this extremely tense situation, most of the trade unionists decided that it was not safe to return to the plant on 20 July 2001. Instead, they went to the Ministry of Labour and presented a complaint explaining why they could not go back to work. They were told to go to the plant on 21 July 2001 to draw their wages for the previous two weeks, but when they turned up on Saturday morning a crowd had already formed inside the gates. While personnel chiefs looked on, between 50 and 70 workers armed with stones and bottles started shouting, banging their weapons on the plant gates and shouting obscenities against the union officials. Both the managers and the police said they were unable to ensure the workers' safety, and they decided not to enter the plant. For several days, the workers continued to report for work punctually but could not enter the plant because their safety was at risk.

(12) On 25 July 2001, the Ministry of Labour convened a meeting between workers and management. The company was told to resolve the situation and warned that it might lose its export licence. A few days later, a new agreement was signed with the company and the Ministry of Labour granted legal recognition to both unions. The

agreement included four clauses: first, the company committed itself to respecting the right to freedom of association; second, the company agreed to reinstate all union members in their posts, preserving their seniority in the company, to allow them to carry out their union activities without interference, and to allow international observers to enter plant premises to ensure that the agreement was being observed; third, the company agreed to apply international standards and labour legislation against persons responsible for violations; lastly, it undertook to make a public statement to the effect that the plant would not close as a result of the establishment of the new union. These measures were well received by the union officials and members in both plants. However, it became clear within only a short time that there were problems with the implementation of the agreement. The trade union officials were assigned unpleasant jobs in reprisal and the management is threatening to bring criminal charges against them.

(13) On 9 August 2001, management and union representatives met for the second time through the intermediary of the Ministry of Labour. It was agreed that the company would inform the workers that the reduction in overtime in force was due to a temporary drop in the normal production cycle (not, as rumour had it, to the establishment of the union). Management stated that those responsible for "verbal and physical assaults" against union members had received written reprimands.

(14) The legal adviser of FESTRAS received telephone death threats and was forced to resign from his post on 31 August 2001.

(15) From 1 to 3 September 2001, the management of the company closed the plant for two days, allegedly in response to a drop in production. Before the closure no guarantee was given that the plant would re-open or that workers would be paid for the period of the closure. The company clearly decided on a temporary closure in order to spread fear among the workforce and in the hope that workers would resign. These events also aggravated fears that the company might relocate production and if possible close down the union's offices.

(16) On 10 September 2001, without any prior warning and without any charge being brought, two union officials were questioned by individuals who claimed to be investigators of the Attorney-General's Office. They were not informed of the offence for which they were under investigation, nor were they given access to a lawyer; these two derelictions both constitute violations of due legal process in Guatemala. Later on, it became known that the inquiry was connected with a reported theft of clothing on 13 July 2001, a matter of days after the union announced its establishment. On 26 October, Mr. Sergio Escobar, a union official was attacked and physically assaulted by an unidentified armed man who was apparently working with the company security department. Mr. Escobar called for help from other workers, who managed to detain the attacker and call the police. When the police finally arrived, they met management representatives and refused to hear the workers.

(17) In mid-November 2001, Camilo Obed Ramírez Pojoy, General Secretary of the Choi Shin union, resigned, having been worn down by constant assaults and intimidation, and the company has renewed its attacks against the union.

B. The Government's reply

773. In a communication dated 5 June 2002, the Government states that the cases involving the Choi Shin and Cimatextiles enterprises have been brought before the General Labour Inspectorate. These cases started in January 2002 with a complaint concerning changes in the employment situation of a worker at the Choi Shin plant and pressure on her to resign.

For the same reason, in April 2002 another complaint was made, this time against Cimatextiles S.A. Both cases were settled in favour of the workers by the timely action of the Labour Inspectorate.

774. The Government adds that in June, July, August and September 2001, complaints were made against these two undertakings by workers who were members of the new unions there. It was found necessary to encourage effective dialogue between the parties through meetings, one of which was attended by the First Deputy Minister of Labour and the Deputy Minister of Economics, who called the employers and workers to participate in effective negotiation with a view to improved observance of national law and international labour standards in force in the country.

775. Despite the timely and effective participation of the Ministry of Labour, union members at the two companies and the employers were unable to reach agreement on 31 October 2001 at a meeting held in the presence of the Minister of Labour and the labour inspectors, and they agreed instead to meet every 15 days on Wednesdays on Ministry premises with a view to applying tripartism as a means of negotiating and resolving disputes that may arise between workers and employers at these two undertakings.

776. The Government adds that on 22 March 2002 a tripartite meeting was held with a view to seeking a joint settlement. On that occasion, senior officials of the Ministry of Labour were present, headed by the First Deputy Minister, the General Secretary of the ITGLWF, representatives of the Inter-American Regional Organization, senior managers from Choi Shin headed by the company president, labour advisers from the Clothing and Textiles Commission of Guatemala and representatives of FESTRAS. This important meeting managed, through the good offices of these authorities, to start a process of dialogue with a view to bringing about better employer-worker relations, in accordance with the rights of textile workers. On 10 April 2002, a meeting took place at the office of the Minister of Labour in the presence of ministerial officials, company managers and workers' representatives from the companies. At the meeting, the President of the Choi Shin company offered to resolve the problems that had arisen previously and expressed willingness to comply with national and international legal standards in force. It was agreed that meetings should be held at the Choi Shin and Cimatextiles companies every 15 days. These meetings have been held regularly, with mediation by the labour inspectors. Lastly, the Government indicates that the Ministry of Labour, acting on the principle of developing and implementing a national policy for the defence and development of trade unionism, is acting in accordance with the most stringent technical requirements, the democratic principles embodied in the country's political constitutions and the labour law provisions in force in Guatemala.

777. In a communication of 30 December 2002, the Government expresses its determination to solve the problems, and states that the administrative proceedings will lead to sanctions if a violation of labour rights is established. The Government also gives a long list of the criminal proceedings that have been filed (however, this information does not clearly indicate the questions or issues to which it refers, even though it appears that it is related to points 9 and 10 in the alleged acts of violence mentioned by the complainant organization). The Government further mentions that Mrs. Gloria Cordoba gave up all civil or criminal lawsuits she had filed, in view of the agreement she concluded with the company that she could freely exercise her trade union activities.

C. The Committee's conclusions

778. *The Committee notes with considerable concern that in the present case the complainant alleges numerous acts of anti-union discrimination at the Choi Shin and Cimatextiles enterprises in the Villanueva free zone. The Committee notes that in general terms the*

allegations relate to the following issues: (i) proposals to workers that they should join a "solidarista" association; (ii) dissemination of propaganda against the union and slanders against its officials; (iii) threats to place trade union officials on blacklists; (iv) unsuccessful offers of financial inducements to the General Secretary of the union at the Choi Shin enterprise to leave the union, followed by assaults and threats by the company management, as well as pressure put on other union officials to make them leave the union; (v) a threat with a firearm and harassment of the trade unionist, Mrs. López, and members of the family of the General Secretary of the Cimatextiles union; (vi) pressure on workers to sign documents expressing opposition to the union; (vii) assaults and death threats against union officials at the Choi Shin enterprise made by non-unionized workers in the presence of company managers, which resulted in the resignation of some officials; (viii) death threats against the legal adviser of FESTRAS, which resulted in his resignation; (ix) closure of the enterprise for two days, during which wages were not paid; (x) questioning without prior notification of two trade union officials by officials of the Attorney-General's Office; (xi) physical assaults against the union official, Mr. Sergio Escobar, inside the company; and (xii) the resignation of the General Secretary of the union at Choi Shin following assaults and intimidation.

779. *The Committee notes that according to the Government: (1) complaints have been made against the companies concerned to the General Labour Inspectorate by workers belonging to the new unions at these companies; (2) a number of meetings have been held by the parties with the participation of the administrative authorities who called on workers and employers to participate in effective negotiations with a view to improved observance of national law and international standards in force in the country; (3) during a meeting of the parties held on 10 April 2002, the representative of the Choi Shin enterprise offered to resolve the problems that had arisen and agreed to hold meetings every 15 days with the mediation of the labour inspectorate; and (4) some issues in connection with acts of violence have been referred to the courts. The Committee notes that the complainant also refers to an agreement supposedly concluded by the parties on 25 July 2001 which contained, among other things, a commitment on the part of the companies to respect the right of association and to reinstate all union members, although the complainant states that this agreement has not been honoured.*

780. *In this regard, the Committee deeply regrets that, in the light of the many serious allegations that have been made (some of them relating to serious offences such as threats and physical assaults), the Government: (1) has confined itself to state that legal proceedings have been filed concerning certain acts of violence and lists the series of legal proceedings; and (2) has not communicated specific enough observations on all the allegations. Under these circumstances, the Committee strongly urges the Government to ensure that the investigation covers all the allegations made in this case, with a view to clarifying the facts, determining responsibility and punishing those responsible. The Committee requests the Government urgently to send complete observations in this respect and to consult without delay the enterprises and trade unions concerned through the national organizations.*

The Committee's recommendation

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

Noting with considerable concern the seriousness of the allegations, such as threats and physical assaults, and deeply regretting that the Government has not sent specific enough observations, the Committee strongly urges the Government to ensure that the investigation covers all the allegations made

in this case concerning serious acts of violence and other anti-union acts at the Choi Shin and Cimatextiles enterprises in the Villanueva free zone, with a view to clarifying the facts, determining responsibility and punishing those responsible. The Committee requests the Government urgently to send complete observations in this respect and to consult without delay the enterprises and trade unions concerned through the national organizations.

CASE NO. 2194

DEFINITIVE REPORT

Complaint against the Government of Guatemala presented by the Trade Union Federation of Public Employees (FENASTEG)

Allegations: The complainant objects to section 5 of Governmental Agreement 60-2002 which prevents collective bargaining with organizations of public employees with respect to salary increases, specific benefits or increases in existing benefits.

782. The complaint is contained in a communication from the Trade Union Federation of Public Employees (FENASTEG) dated 26 April 2002. The Government sent its observations in a communication dated 30 December 2002 and 27 January 2003.

783. 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. The complainant's allegations

784. In a communication dated 26 April 2002, the Trade Union Federation of Public Employees (FENASTEG) alleges that section 5 of Governmental Agreement 60-2002 dated 28 February 2002 violates the right to collective bargaining by including the following in the framework of "special budgetary measures for the 2002 financial exercise":

> General increases in salaries, expenses and representation costs: "the awarding of general increases in salaries, personal allowances, expenses and representation costs is suspended, as well as any other benefit which is wholly or partly funded by the State. Likewise, State bodies will refrain from agreeing to increase salaries, award specific bonuses or increase existing ones in negotiations under Collective Agreements for Working Conditions".

B. The Government's reply

785. In its communications dated 30 December 2002 and 27 January 2003, the Government states that Government Decree 60-2002 is in line with the fact that the Government, in its policies for adjustment laid out in the economic programme submitted for 2002, as well as in negotiations with the International Monetary Fund, aims to achieve a proper administration of public spending, in order to comply with the responsibilities of the State as given in article 2 of the Political Constitution of the Republic, creating favourable

conditions for a stable economy which will lead to a balanced financial situation, find a mechanism for increasing tax revenue, rationalize public spending, comply with the Peace Agreements and observe norms which encourage financial discipline in the budgets of state bodies. These are considered to be legitimate objectives and policies responding to the needs felt by all Guatemalans. Government Decree 60-2002 was the subject of an appeal to the Constitutional Court, which dismissed the allegation of unconstitutionality.

786. Notwithstanding the aforementioned Government Decree, at the beginning of 2002 the Government approved a general 10 per cent pay raise for all private sector employees; furthermore, individual pay rises have been negotiated with some ministries, as was the case with the Ministry of Health, which negotiated a collective agreement on working conditions with salary increases acting retroactively from January 2002 and becoming effective in 2003; a similar negotiation took place with the unions in the Ministry of Labour and the Public Ministry, and with the Union of Employees of the Guatemalan Telecommunications Company and other decentralized institutions such as the National Electrification Institute, the Institute of Municipal Development and the Guatemalan Institute of Social Security, who all negotiated agreements in accordance with the funds available to them. Six collective agreements on working conditions were thus directly negotiated in 2002.

C. The Committee's conclusions

787. *The Committee observes that, in the present case, the complainant objects to article 5 of Government Decree 60-2002 which prevents collective bargaining with organizations of public employees on matters relating to increasing salaries, awarding specific bonuses or increasing existing ones.*

788. *The Committee takes note of the Government's statements citing policies of adjustment in its economic programme for 2002 and negotiations with the International Monetary Fund in an attempt to establish a stable economy which will lead to a balanced financial situation and to achieve increased tax revenue, rationalize public spending and comply with the Peace Agreements. The Government also states that, notwithstanding this, six collective agreements were negotiated in the public sector in 2002.*

789. *In this respect, the Committee wishes to recall that, on previous occasions, it has indicated that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, para. 882].*

790. *The Committee observes that, in this regard, the Government states that the restrictions in question were limited to 2002, and that, in spite of Government Decree 60-2002, six collective agreements were negotiated in 2002.*

791. *The Committee recalls that any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement [see* ***Digest****, op. cit., para. 884] and expects that in future the public authorities will fully safeguard the right to collective bargaining in the public sector. Lastly, with regard to the negotiations with the International Monetary Fund which the Government cites in support of the limitations imposed on collective bargaining in 2002, the Committee recalls that "a State cannot use the argument that other commitments or agreements can justify the non-application of ratified ILO Conventions" [see* ***Digest****, op. cit., para. 13], particularly when Conventions*

concerning fundamental rights, such as the right to collective bargaining, are involved. The Committee requests the Government to take this principle into account when negotiating with international organizations.

The Committee's recommendations

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

(a) The Committee recalls that any limitation on collective bargaining on the part of the authorities should be preceded by consultations with workers' and employers' organizations in an effort to obtain agreement from both and expects that in future the public authorities will fully safeguard the right to collective bargaining in the public sector.

(b) The Committee recalls that a State cannot use the argument that other commitments or agreements can justify the non-application of ratified ILO Conventions, particularly when Conventions concerning fundamental rights, such as the right to collective bargaining, are involved. It requests the Government to take this principle into account when negotiating with international organizations.

CASE NO. 2203

INTERIM REPORT

Complaint against the Government of Guatemala presented by the Trade Union of Workers of Guatemala (UNSITRAGUA)

Allegations: Assaults, death threats and intimidation of union members in various companies and public institutions; destruction of the headquarters of the union operating in the General Property Registry; raiding, sacking and burning of documents at the headquarters of the union operating at ACRILASA; surveillance of UNSITRAGUA headquarters; anti-union dismissals, violation of the collective agreement on working conditions, refusal to bargain collectively, pressure on workers to resign from their unions; employers' refusal to comply with judicial orders to reinstate union members; the companies and institutions concerned are: Industrial Santa Cecilia, ACRILASA, El Tumbador Municipality, Finca La Torre, Ministry of Public Health, Chevron-Texaco and the Supreme Electoral Tribunal.

793. The complaint is contained in a communication from the Trade Union of Workers of Guatemala (UNSITRAGUA) dated 31 May 2002. This organization sent new allegations

in a communication dated 26 October 2002. The Government sent its observations in communications dated 27 September and 30 December 2002.

794. 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. The complainant's allegations

795. In its communications dated 31 May and 26 October 2002, UNSITRAGUA alleges that Mr. Gustavo Santisteban, member of the Union of Workers of the General Property Registry, was dismissed. The judicial authority ordered his reinstatement and the Registry reinstated him, but it began a disciplinary action on the same day for an alleged offence which he never committed. Two weeks later this member, who in the meantime had become an officer, was again dismissed illegally on 2 July 2002. The Registry has also committed acts of interference (distributing ballot papers for the election of union executives and employing measures to prevent the new executive board from taking up its duties); furthermore, the Registry destroyed the headquarters of the union in the workplace.

796. UNSITRAGUA adds that the company Agrícola Industrial Finca Santa Cecilia S.A. stopped assigning work to 43 union members when the union, during a dispute, asked for payment of the minimum salaries in force. These members were notified of their dismissal and judicial actions for their reinstatement have not yielded results. Union officer Mr. Baudilio Reyes received a death threat because of these events.

797. In the context of collective bargaining, the company Industrias Acrílicas de Centro América S.A. (ACRILASA) illegally dismissed a union member; the company has broken the collective agreement by suspending workers illegally for eight working days without payment of salary, refusing union licences, and refusing to pay "bonus fourteen" and full holiday pay; on 18 June 2001 a further eight union members were dismissed. The union has received death threats against its head of finance from two individuals and has been the subject of intimidation (police indignation directed towards the general secretary for alleged telephone death threats to a representative of the administration and for the kidnapping of the son of a female worker; assaults on two members of the union's executive board; surveillance, threats and assaults on union members and officers – Ms. Castillo, Ms. Alcántara, etc. – by company officials or a security company). At the end of 2001 members of the union's executive board were dismissed (including Ms. Alcántara, who was pregnant) together with all ordinary members who would not sign a resignation from the union; the judicial processes have been seriously delayed and the company has not complied with the judicial reinstatement order. The company had previously paid money to two officers (Ms. Tzubán and Ms. Barrios) to leave their posts on the union's executive board. The company has managed to eliminate the union in spite of the (unpaid) fines imposed by an inspection and the (not definitive) rulings of the judicial authority. The union has also begun a criminal action against a representative of the company who forced the doors of the union's headquarters, raided union property and burnt all the union's official books and documents.

798. In the Municipality of El Tumbador (San Marcos region) pressure has been placed on union members to resign from their union and on union officers not to continue with the reinstatement processes ordered by the judicial authority. Intimidation has been particularly employed in the case of union member Ms. Nora Luz Echeverría Nowel who was blackmailed with a criminal trial if she did not convince union leaders to abandon the matter of reinstatements. The union's general secretary received a death threat to make him abandon the reinstatements; the criminal action he brought has yielded no result.

799. At Finca La Torre, the workers who were dismissed en masse during a collective dispute have not been reinstated, despite reinstatement orders given by the judicial authority. The manager has made death threats against union officers.

800. In addition, the Ministry of Public Health dismissed union officer Mr. Fletcher Alburea on 25 April 2001, despite the fact that he enjoyed union privileges. The authorities drew out the proceedings with delaying tactics.

801. UNSITRAGUA also alleges that it is systematically harassed by plain-clothes individuals who control the area around the union's headquarters and that it receives telephone death threats against its leaders from the same organization. Union officer Mr. Carlos Enrique Cos was pursued by three individuals as he left UNSITRAGUA headquarters.

802. The company Chevron-Texaco imposed a code of ethics applicable within the company, adding new causes for dismissal without discussing the matter with the union. The company has not responded to the draft collective agreement submitted by the union. Imminent closure of the company is feared.

803. On 1 January 2002 the magistrates of Supreme Electoral Tribunal, in violation of the collective agreement and without consulting the union, imposed on the institution an "organization manual" (agreement No. 455-2001) dealing with functions, posts and salary grades. The application of this manual has led to acts of anti-union discrimination with regard to promotions and to access to certain posts being denied to union members. The institution refused to negotiate a draft collective agreement or to meet union officers.

B. The Government's reply

804. In its communications dated 27 September and 30 December 2002, the Government makes the following observations:

– General Property Registry: 16 complaints have been received by the General Labour Inspectorate; after analysing them, it has been determined that there was a breach of labour rights, so labour inspectors have accompanied workers and given evidence of the said breaches, giving rise to a collective dispute which has been brought before a judicial body; in addition, there has been some conciliation with officials to find the best solution to the problem;

– the case of Agrícola Industrial Finca Santa Cecilia: two complaints have been received regarding this matter; the first asks the General Labour Inspectorate to give notification of the collective agreement on working conditions, and the second to establish the workers' situation regarding their jobs. In both cases inspectors from the headquarters at Suchitepéquez consistently fulfilled their function of protecting the rights of workers in the company during the administrative process, including accompanying officers to the offices of the government department to find a mutual solution to their complaints, until the workers decided that that avenue had been exhausted and took their complaints into the judicial arena (the results are pending);

– Industrias Agrícolas de Centro América S.A. (ACRICASA): a total of 131 complaints were identified, of which 72 were brought before the courts for violation of labour and social provision regulations; 59 were referred to the penalization section of the General Inspectorate, as new reforms to the Labour Code had come into force. All the steps taken in these cases ended in this way since none of the inspectors concerned were allowed to enter the company's premises at any time. Furthermore, the General Labour Inspector, in his eagerness for mediation to take place, summoned officials of the company but they did not respond to his summons. The most recent information

received indicates that the union leaders from the company have brought their case for reinstatement before a judicial body, since they were eventually dismissed by their employer without the necessary judicial authorization;

– El Tumbador Municipality, San Marcos: suffice it to say that the country's municipalities enjoy autonomy and that the Labour Inspectorate acts as a mediator if complaints arise; however, consultations with the Labour Inspectorate with offices in El Tumbador revealed they had received no union complaints; the union had submitted the case directly to the judicial authority, where it is currently being dealt with;

– Finca La Torre: in this case a complaint was received about the suspension of individual contracts; the General Inspectorate supported the workers. The workers then went to another authority to have their requests fulfilled. In the last few days, representatives of the employer have been invited to help achieve a favourable outcome to the complaints;

– accusations of threats and harassment against UNSITRAGUA officials: the accusations do not fall within the authority of the Ministry of Labour; Guatemalan workers now have the protection of the Special Attorney for Offences against Journalists and Trade Union Members in cases such as this. The Government's report on Case No. 1970 provides updates on cases relating to union matters;

– Chevron-Texaco: there have been no complaints to date. However, when rumours of the company's closure spread through the trade union movement, a representative of the company visited the Ministry of Labour and Social Security to establish whether any complaints had been received by the General Labour Inspectorate, and used the opportunity to indicate that they were quite willing to comply with the workers' wishes if a complaint had been made.

C. The Committee's conclusions

805. *The Committee observes with great concern that, in the present case, the complainant has made allegations of death threats, assaults and physical intimidation of union members in various companies, as well as new acts of anti-union discrimination and employer interference and violations of the right to collective bargaining.*

I. General conclusions

806. *From the complaint it can be deduced that: (1) there have been a large number of anti-union dismissals which have been referred to the judicial authority and that, in many cases, the judicial authority has issued reinstatement orders which have not been fulfilled; (2) processes are being delayed by rulings being referred to a succession of different judicial authorities; and (3) there have been situations where the employer has refused entry to labour inspectors or refused to submit to administrative sanctions. The Committee's attention is particularly drawn to the fact that the allegations refer to a very high number of death threats or assaults on union members, as well as pressure and intimidation. The Committee points out that the Government has not contradicted these serious allegations.*

807. *The Committee must therefore draw the Government's attention first and foremost to certain fundamental principles. With regard to the allegations of assaults, death threats, pressure and intimidation against union members, the Committee underlines that, in general, 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; furthermore, the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 46 and 47].*

808. *With regard to the alleged acts of anti-union discrimination, the Committee draws the Government's attention to the fact that no person should be dismissed or prejudiced in his or her 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; furthermore, the existence of legislative provisions prohibiting acts of anti-union discrimination is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice; legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of anti-union discrimination to ensure the practical application of Articles 1 and 2 of Convention No. 98 [see* ***Digest****, op. cit., paras. 696, 742 and 743.]*

809. *Lastly, given that, as far as can be gathered from this and other complaints, not only are judicial orders for the reinstatement of dismissed union members frequently not complied with, but also the number of judicial bodies that can successively deal with an anti-union dismissal (three or four) means that procedures frequently take years, the Committee requests the Government to revise the process of protecting union rights provided for in legislation in order to bring it into line with the principles given in the general conclusions to the present case.*

810. *With regard to allegations of acts of interference, the Committee underlines that:*

> *... as regards allegations of anti-union tactics carried out by an enterprise, 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, the Committee 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" [see* ***Digest****, op. cit., para. 760].*

Also with regard to acts of interference, the Committee has indicated that legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations to ensure the practical application of Article 2 of Convention No. 98 [see ***Digest****, op. cit., para. 764].*

811. *The Committee requests the Government to make every effort to guarantee that these principles are respected.*

II. Specific allegations of acts of violence

812. *With regard to the allegations of acts of violence and intimidation against union members, the Committee observes that the complainant has submitted the following allegations:*

– *destruction of the headquarters of the union operating in the General Property Registry;*

– *death threats against Mr. Baudilio Reyes, officer of the union operating at Agrícola Industrial Santa Cecilia S.A.;*

– *death threats against the general secretary of the union operating in the El Tumbador Municipality;*

– *death threats against the general secretary and the head of finance of the union operating at ACRILASA, as well as against union officers Ms. Castillo and Ms. Alcántara and against union members; acts of intimidation against the general secretary; assaults on two members of the executive board and on union members; raiding with force of the union's headquarters and sacking or burning of property and/or documents (the union has brought a criminal action in this matter);*

– *death threats against officers of the union operating at Finca La Torre;*

– *intimidation of union member Ms. Nora Luz Echeverría Nowel at the El Tumbador Municipality, in the form of blackmail with a criminal trial if she did not convince the union leaders to abandon the matter of reinstatement of persons dismissed;*

– *intimidatory surveillance of UNSITRAGUA headquarters and pursuit of union leader Mr. Carlos Enrique Cos by three individuals and death threats against officers of the organization (according to the Government, this point has been referred to the Attorney).*

813. *The Committee observes that the Government refers to the observations it sent under Case No. 1970 (which is not dealt with in the present report) regarding cases like those under examination (although in those observations it only mentioned the case of death threats against officers of UNSITRAGUA and not the rest of the allegations made in the present case) and recalls that a Special Attorney has recently been created for offences against journalists and union members. The Committee urges the Government to take measures to order urgent investigations into these allegations and to refer these cases to the Special Attorney for Offences against Union Members, and to keep it informed in this respect.*

III. Specific allegations of anti-union discrimination or interference and of violations of the right to collective bargaining

814. *With regard to allegations relating to the General Property Registry, the Committee notes that, according to the Government, the Labour Inspectorate has confirmed non-compliance with labour rights after examining 16 complaints; there is also a collective dispute before the judicial authority. The Committee requests the Government to take the necessary measures to remedy the alleged situation (dismissal of union officer Mr. Gustavo Santisteban, acts of employer interference in union elections) and to keep it informed in this respect, as well as in respect of the result of any procedure before the judicial authority.*

815. *With regard to the allegations relating to Agrícola Industrial Finca Santa Cecilia S.A. (dismissal of 43 union members), the Committee notes that, independently of the Ministry of Labour's mediation, those dismissed were referred to the judicial authority and requests the Government to inform it of the final ruling in the judicial process.*

816. *With regard to the allegations concerning ACRILASA (non-compliance with the collective agreement, dismissal of nine union members and the majority of members of the executive board, non-compliance with judicial orders to reinstate those dismissed and pressure for union officers and members to resign from their posts or from the union), the Committee notes with concern the Government's statements that 131 complaints were made to the Labour Inspectorate, and that the company refused entry to the labour inspectors and did not appear at the mediation talks; of those complaints, 72 were referred to the judicial*

authority for breach of labour legislation and 52 gave rise to sanctions; the union officers appealed to the judicial authority for reinstatement, since their dismissal, contrary to legislation, had no judicial authorization. The Committee deplores ACRILASA's anti-union behaviour and its total obstruction of the Labour Inspectorate's investigations. The Committee urges the Government to take the necessary measures to ensure that legislation is respected in the company in question, including sanctions appropriate to the seriousness of the offence committed, and to make amends for the anti-union acts confirmed. The Committee requests the Government to keep it informed in this respect, as well as in respect of the judicial processes under way.

817. *With regard to the allegations relating to the El Tumbador Municipality (refusal to comply with the judicial order to reinstate workers who had been dismissed, pressure on union members to resign from the union and on union officers to cease promoting the reinstatement of dismissed workers), the Committee notes that, according to the Government, no union complaints have been submitted to the Ministry of Labour and certain matters have been referred to the judicial authority. The Committee requests the Government to carry out an investigation into the allegations and keep it informed in this respect, as well as in respect of the results of the judicial processes under way.*

818. *With regard to the allegations relating to Finca La Torre (employer's refusal to comply with judicial orders to reinstate dismissed workers), the Committee observes that the Government refers to a different problem (suspension of individual contracts). The Committee requests the Government to take measures to ensure effective compliance with the judicial reinstatement orders.*

819. *With regard to the allegation relating to the dismissal of union officer Mr. Fletcher Alburea from the Ministry of Public Health in April 2001 and the slowness of the proceedings due to delaying tactics, the Committee observes that the Government has not sent its observations in this respect, deplores the authorities' delay and requests the Government to take measures to ensure that a ruling is given urgently on the dismissal in question.*

820. *With regard to the allegations relating to Chevron-Texaco (unilateral imposition of a code of ethics without consultation adding new causes for dismissal, refusal to negotiate on the part of the company), the Committee notes that, according to the Government, the company stated that it was willing, if a complaint had been submitted, to comply with the workers' requests. The Committee requests the Government to meet with the parties to find a solution to the problems mentioned and keep it informed in this respect.*

821. *In addition, the Committee regrets that the Government has not responded to the allegations relating to the Supreme Electoral Tribunal (unilateral imposition of an organization manual dealing with matters related to employees' functions, posts and salary grades and acts of discrimination in the application of the said manual, as well as the Tribunal's refusal to meet with officers and negotiate a draft collective agreement). The Committee requests the Government to send its observations in this respect, and to meet with the parties to find a solution to the problems.*

822. *The Committee invites the Government to consider requesting the technical assistance of the Office in order to improve the implementation of Conventions Nos. 87 and 98.*

The Committee's recommendations

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

(a) Expressing its serious concern over the acts of violence against union members, the Committee urges the Government to take measures to order an urgent investigation into the allegations relating to assaults, death threats and intimidation against union members, as well as the attacks on union headquarters. It also requests the Government to refer these cases to the Special Attorney for Offences against Union Members and to keep it informed in this respect.

(b) The Committee requests the Government to take the necessary measures to remedy the breaches confirmed by the Labour Inspectorate in the General Property Registry (dismissal of union officer Mr. Gustavo Santisteban and acts of employer interference in union elections) and to keep it informed in this respect.

(c) The Committee requests the Government to inform it of the final ruling in the judicial process relating to the dismissals of 43 members of the union operating at Agrícola Industrial Santa Cecilia S.A.

(d) With regard to the allegations relating to ACRILASA (non-compliance with the collective agreement, dismissal of nine union members and the majority of members of the union's executive board, non-compliance with judicial reinstatement orders and pressure on union leaders and members to resign from their posts or from the union) the Committee urges the Government to take the necessary measures to ensure that the legislation is respected in the company in question, including through sanctions appropriate to the seriousness of the offence committed, and to make amends for the anti-union acts confirmed. The Committee requests the Government to keep it informed in this respect, as well as in respect of the result of the judicial processes under way.

(e) With regard to the allegations relating to the El Tumbador Municipality (refusal to comply with the judicial order to reinstate workers who had been dismissed, pressure on union members to resign from their union and on union leaders to cease promoting the reinstatement of those dismissed), the Committee requests the Government to carry out an investigation into the allegations and to inform it of the results of the judicial processes under way.

(f) With regard to the allegations relating to Finca La Torre (employer's refusal to comply with judicial orders to reinstate dismissed workers), observing that the Government refers to a different problem (suspension of individual contracts), the Committee requests the Government to take measures to ensure effective compliance with the judicial reinstatement orders.

(g) With regard to the allegation relating to the dismissal of union officer Mr. Fletcher Alburea from the Ministry of Public Health in April 2001 and the slowness of the proceedings due to delaying tactics, the Committee observes that the Government has not sent its observations in this respect, deplores the authorities' delay and requests the Government to take measures to ensure that a ruling is given urgently on the dismissal in question.

(h) With regard to the allegations relating to Chevron-Texaco (unilateral imposition of a code of ethics without consultation adding new causes for dismissal, refusal to negotiate on the part of the company), the Committee notes that, according to the Government, the company stated that it was willing, if a complaint had been submitted, to comply with the workers' requests. The Committee requests the Government to meet with the parties to find a solution to the problems mentioned and keep it informed in this respect.

(i) The Committee regrets that the Government has not responded to the allegations relating to the Supreme Electoral Tribunal (unilateral imposition of an organization manual dealing with matters related to employees' functions, posts and salary grades and acts of discrimination in the application of the said manual, as well as the Tribunal's refusal to meet with officers and negotiate a draft collective agreement). The Committee requests the Government to send its observations in this respect, and to meet with the parties to find a solution to the problems.

(j) The Committee observes in a general manner that, as far as can be gathered from this and other complaints, not only are judicial orders for the reinstatement of dismissed union members frequently not complied with, but also the number of judicial bodies that can successively deal with an anti-union dismissal (three or four) means that procedures frequently take years. The Committee requests the Government to revise the process of protecting union rights provided for in legislation in order to bring it into line with the principles given in the general conclusions to the present case.

(k) The Committee invites the Government to consider requesting the technical assistance of the Office in order to improve the implementation of Conventions Nos. 87 and 98.

CASE NO. 2230

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

Complaint against the Government of Guatemala presented by — the Latin American Central of Workers (CLAT) and — the General Confederation of Workers of Guatemala (CGTG) supported by the World Confederation of Labour (WCL)

Allegations: Dismissal of 42 workers from the municipality of Esquipulas, including members of the executive committee and the consultative council, and also members of the Workers' Union of the municipality of Esquipulas.

824. The complaints were contained in communications from the General Confederation of Workers of Guatemala (CGTG) dated 7 October 2002, and the Latin American Central of

Workers (CLAT) dated 5 November 2002. The World Confederation of Labour (WCL) supported the complaints in a communication dated 17 December 2002. The Government sent its observations in a communication dated 19 December 2002.

825. 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. The complainants' allegations

826. In their communications of 7 October and 5 November 2002, the General Confederation of Workers of Guatemala (CGTG) and the Latin American Central of Workers (CLAT) explained that in the context of a collective dispute, the municipality of Esquipulas, Department of Chiquimula, has been duly summoned before the Labour, Social Welfare and Family Court of First Instance of the Department of Izabal. Consequently, and according to legislation, any termination of an employment contract must be authorized by the court that is hearing the dispute, which means that if workers are dismissed without the prior authorization of the competent judge (which is obligatory in accordance with sections 379 and 380 of the Labour Code), the affected workers must be reinstated within 24 hours of the complaint being submitted to the court or becoming known to it.

827. The complainant organizations allege that in violation of Conventions Nos. 87 and 98 and of national legislation, on 17 September 2002, Mr. Ramón Peralta Villeda, the municipal mayor, dismissed 42 workers who were members of the executive committee or consultative council or affiliated to the Workers' Union of the municipality of Esquipulas. These dismissals were in keeping with the anti-union objective of fragmenting the trade union, against a backdrop of failure to provide appropriate working conditions, harassment, aggression and a variety of violations of labour and trade union rights.

B. The Government's reply

828. In its communication of 19 December 2002, the Government states that on 17 September 2002, 42 workers were dismissed for participating in a work stoppage on 13, 14 and 15 September. On 19 September 2002, according to adjudication, the labour inspectors, Mario Rolando Morales and Miguel Tereso Rodas went to the municipality of Esquipulas to inform the mayor of the rights of the dismissed workers and to say that they should be reinstated; this did not occur. On 9 October 2002, the labour inspectors once again met with the mayor of Esquipulas, to tell him that within a period of five days he should indicate in writing to the Labour Inspectorate of Chiquimula the reasons for his refusal to reinstate the dismissed workers, as that matter would be referred to the General Labour Inspectorate of the Ministry of Labour and Social Welfare. On 14 October 2002, the mayor of Esquipulas responded in writing that in accordance with Decree No. 35-96 of the Congress of the Republic of Guatemala, he was entitled to dismiss, without legal authorization, any workers who took industrial action. He concluded by saying that he would only reinstate the 42 dismissed workers if a judge with jurisdiction ordered him to do so.

829. The Government adds that on 21 October 2002 the file was referred to the General Labour Inspectorate of the Ministry of Labour and Social Welfare, which was informed that the mayor of Esquipulas had refused to reinstate the dismissed workers. On 29 October 2002, Administrative Decision No. R-III-2-023-2002-3632 was issued by the General Labour Inspectorate on the basis of sections 12, 101, 102, 103 and 106 of the Constitution of the Republic of Guatemala and sections 271, 280, 281, 289 and 415 of the Labour Code. This Administrative Decision imposed a penalty on the municipality of Esquipulas of ten

monthly minimum wages in force at the time. The labour infraction was established (maximum penalty), for the labour infraction committed in contravention of sections 379 and 380 of the Labour Code.

830. The Government concludes by stating that the case is currently before the corresponding labour courts and it is awaiting the final judicial ruling.

C. The Committee's conclusions

831. *The Committee observes that in this case the complainant organizations allege the dismissal of 42 workers in the municipality of Esquipulas on 17 September 2002, including members of the executive committee and consultative council, as well as members of the Workers' Union of the municipality of Esquipulas. The complainant organizations emphasize that these dismissals are contrary to Conventions Nos. 87 and 98 and to sections 379 and 380 of the Labour Code, which require prior judicial approval for the dismissal of workers involved in collective disputes.*

832. *The Committee notes the Government's information that following the corresponding investigation the Ministry of Labour, through the General Labour Inspectorate of the Ministry of Labour and Social Welfare, confirmed the infraction of the Constitution and Labour Code and on 29 October 2002 imposed the highest penalty (ten monthly minimum wages) on the municipality of Esquipulas. The Committee notes that the case is currently before the judicial authority.*

833. *In these circumstances, the Committee deplores the attitude of the municipality of Esquipulas for dismissing 42 trade unionists without the judicial authorization provided for in the Labour Code, as well as for refusing to reinstate the workers in their jobs despite warnings from the administrative authority. The Committee observes that this case has been submitted to the judicial authority and expresses the hope that the 42 trade unionists will be reinstated in their jobs very soon. The Committee requests the Government to inform it of the ruling that is handed down, as well as the text of Decree No. 35-96 of the Congress on the basis of which the dismissals were pronounced.*

The Committee's recommendation

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

> ***Deploring the attitude of the municipality of Esquipulas for dismissing 42 trade unionists without the judicial authorization provided for in the Labour Code, as well as for refusing to reinstate the workers in their jobs despite warnings from the administrative authority, the Committee observes that this case has been submitted to the judicial authority and expresses the hope that the 42 trade unionists will be reinstated in their jobs very soon. The Committee requests the Government to inform it of the ruling that is handed down, as well as the text of Decree No. 35-96 of the Congress on the basis of which the dismissals were pronounced.***

CASE NO. 2158

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

Complaint against the Government of India presented by Pataka Biri Karmachary Union

Allegations: The complainant alleges that the Pataka Biri Co. Ltd., in collusion with local police in the state of West Bengal, committed various acts of anti-union discrimination including dismissals on the grounds of trade union activities, arrest and imprisonment of a trade union leader, pressure on union members to quit the union and threats of damaging the union office.

835. The Committee examined this case at its June 2002 meeting [see 328th Report, paras. 305-324, approved by the Governing Body at its 284th Session (June 2002)].

836. The Government sent new observations in communications dated 23 December 2002 and 10 January 2003.

837. India has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

838. In its previous examination of the case in June 2002, the Committee made the following recommendations [see 328th Report para. 324]:

(a) The Committee, trusting that the pending cases of the six dismissed workers of the Pataka Biri Co. Ltd. will be resolved without any further delays, requests the Government, in case the anti-union nature of the dismissals were confirmed, to rapidly take the necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and to guarantee the application against the enterprise of corresponding legal sanctions. The Committee asks the Government to be kept informed in this regard.

(b) Recalling that in no case should it be possible to dismiss a trade union officer merely for having presented a list of dispute grievances, the Committee requests the Government to keep it informed of the outcome of the case of the nine dismissed workers pending before the Calcutta High Court. As stated above, if the anti-union nature of the dismissals were established, the Committee requests the Government to rapidly take the necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and that the enterprise faces the corresponding legal sanctions. The Committee asks to be kept informed in this regard.

(c) Recalling that the arrest of trade union leaders against whom no charge is brought involved restrictions on freedom of association, the Committee asks the Government to take steps to ensure that the authorities concerned have appropriate instructions to eliminate the danger which such arrest implies. It asks to be kept informed in this regard.

(d) The Committee requests the Government to keep it informed of the outcome of the conciliation regarding the eight allegedly retrenched workers. It also asks the Government to forward its observations on all the other allegations of anti-union discrimination, namely, the pressure on union members to quit the union, threat of damaging the union office, as well as on the most recent arrest of the leader of the complainant organization.

B. The Government's new observations

839. In a communication dated 23 December 2002, the Government transmits information provided by the provincial government of West Bengal. With regard to the case of the six workers of the Pataka Biri Co. Ltd. who were dismissed allegedly for joining the ranks of the complainant organization and presenting a list of demands, the Government reports that five of them filed appeals before the Deputy Labour Commissioner, Berhampur, under section 31(2) of the Bidi & Cigar Workers (Conditions of Employment) Act, 1966 and that a decision was reached in October 2002. One appeal was upheld and management was ordered to reinstate the worker (Mr. Lakhu Sk) immediately. Two appeals were rejected on the grounds that the workers in question (Mr. Sekender Ali and Mr. Anarual Haque) were only trainees. Two other appeals were rejected on the grounds that the workers (Mr. Abdul Gofur and Mr. Niaul Haque) had abandoned the assigned workplaces without permission from management. One worker (Mr. Najmul Honda) did not file any appeal. The Government adds that under the Indian Constitution, workers aggrieved by the order of the Appellate Authority can move to the High Court/Supreme Court for redressal of their grievances.

840. With regard to the case of the nine workers who were dismissed only 45 days after presenting a ten-point list of demands, the Government reports that the case is still pending before the Calcutta High Court.

841. With regard to allegations of the arrest of the trade union leader Shri Ashique Hossain and his imprisonment for 70 days, the Government states that three charges have been brought against him and the case is pending before the Jangipur Court. With regard to his arrest for a second time in December 2001 and his release pursuant to the intervention of the Jangipur Bar Association, the Government reports that details are being sought from the District Administration of the Murshidabad District and a report will be furnished as soon as possible.

842. With regard to the eight workers who were allegedly retrenched for keeping close contact with the union, the Government reports that the conciliation proceedings conducted by the Deputy Labour Commissioner, Berhampore, were concluded on 21 October 2002 by deciding that this case should not be recommended for adjudication on the grounds that the trade unionists had no interest in pursuing their grievances. In particular, of the eight workers who were invited on more than one occasion to ascertain their views before the Conciliation Officer, only one appeared, Mr. Morsalin Sk, on 5 September 2001 and stated that he had never worked in the Pataka Biri Co. Ltd. and that he could not recognize the complainant organization.

843. With regard to various other acts of anti-union discrimination and intimidation allegedly committed by the company in collusion with the local police, and in particular, harassment by the police, pressure on union members to quit the union and threats of damaging the union office, the Government attaches the report of the Circle Inspector of Police, Jangipur, Murshidabad District, according to which the allegations were investigated and found to be baseless and unfounded. The inspector reports that he found nothing in the records of the local police station to indicate the alleged incidents and that he interrogated the trade union leader who failed to show him any document in support of his allegations.

Furthermore, he notes that according to the police record, 97 employees of the Pataka Biri Co. Ltd. appeared at the police station in August 2001 in order to declare that they were not members of the union and that the trade union leader came to the police station of his own accord in order to sign a declaration to this effect. This proves according to the inspector's report, that allegations concerning pressure to quit the union are unfounded and that Shri Ashique Hossain had falsely claimed that his organization had 147 members.

C. The Committee's conclusions

844. *The Committee recalls that this case concerns allegations that the Pataka Biri Co. Ltd., in collusion with local police in the state of West Bengal, committed various acts of anti-union discrimination and intimidation including dismissals on the grounds of trade union activities, arrest and imprisonment of a trade union leader on two occasions, pressure on union members to quit the union, harassment and threats of damaging the union office.*

845. *The Committee notes that of the six workers who were dismissed in 1998, five lodged an appeal with the Deputy Labour Commissioner under section 31(2) of the Bidi & Cigar Workers (Conditions of Employment) Act, 1966. One appeal was upheld and the enterprise was ordered to reinstate the worker in question; two appeals were rejected because the workers in question were apprentices; and two were rejected because the dismissals were found to be justified by disciplinary offences. The Committee takes note of the reinstatement of one worker in his previous post pursuant to a finding that his dismissal was due to trade union activities.*

846. *With regard to the rejection of the appeal lodged by two apprentices, the Committee recalls that workers undergoing a period of work probation should be able to establish and join organizations of their choosing, if they so wish and that all workers without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 236, 237]. The Committee notes that 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. The Committee requests the Government to take all necessary measures as soon as possible with a view to having the case of the two dismissed apprentices examined as to its substance, and if dismissals are found to be on anti-union grounds, to ensure that these workers are reinstated in their jobs without loss of pay and to guarantee the application against the enterprise of corresponding legal sanctions. The Committee requests to be kept informed in this respect.*

847. *With regard to the rejection of the appeal lodged by two other workers for reason of disciplinary offences the Committee requests the Government to communicate the text of the judgment delivered, together with the grounds adduced therefore.*

848. *The Committee notes with concern that the case of the dismissal of nine members of the complainant organization which took place only 45 days after having requested the enforcement of a ten-point list of demands, has been pending before the Calcutta High Court for more than three years now and recalls that justice delayed is justice denied [see* ***Digest****, op. cit., para. 105]. The Committee observes 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 [see **Digest**, op. cit., para. 749]. The Committee also recalls that in no case should it be possible to dismiss a trade union officer merely for having presented a list of dispute grievances; this constitutes an extremely serious act of discrimination [see **Digest**, op. cit., para. 720]. The Committee requests the Government to take all necessary measures as soon as possible with a view to the rapid conclusion of the proceedings before the Calcutta High Court concerning the dismissal of nine workers only 45 days after requesting the enforcement of a ten point list of demands. The Committee also requests the Government if the anti-union nature of the dismissals is confirmed, to rapidly take the necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and that the enterprise faces the corresponding legal sanctions. The Committee requests to be kept informed in this respect.*

849. *With regard to allegations concerning the arrest of the leader of the complainant organization, Shri Ashique Hossain, the Committee notes that according to the Government, three charges have been brought against him and the case is pending before the Jangipur Court. The Committee requests the Government to provide information as to the nature of the charges brought against the trade union leader and the outcome of the proceedings before the Jangipur Court.*

850. *With regard to allegations concerning the arrest of Shri Ashique Hossain for a second time in December 2001 and his release the next day pursuant to the intervention of the Jangipur Bar Association, the Committee notes that the Government states that the details are being ascertained from the District Administration of the Murshidabad District.*

851. *With regard to allegations that eight workers were retrenched in March 2001 for keeping close contact with the union, the Committee notes that the conciliation officer decided not to institute proceedings in this case as only one of the workers appeared before the officer and, moreover, denied all allegations. The Committee also notes however, that the complainant organization had previously noted in its allegations that proceedings on this case before the District Labour Commissioner were dropped because the eight workmen were intimidated by management and could not participate in the procedure.*

852. *In addition to this, the Committee notes that an investigation into several alleged incidents of threats, harassment and pressure to quit the union was entrusted with the Circle Inspector Police, Jangipur, Murshidabad District. The inspector reported that the allegations were unfounded because the trade union leader, Shri Ashique Hossain, could not provide any proof when questioned by the inspector, and there was no trace of the alleged incidents in the records of the local police station. He also reported that in August 2001, 97 employees of the Pataka Biri Co. Ltd. appeared at the police station in order to declare that they were not members of the complainant organization, and that the trade union leader signed a declaration to this effect after coming to the police station of his own accord. According to the inspector's report, this proves that allegations concerning pressure to quit the union are unfounded and that Shri Ashique Hossain had made false claims concerning the union membership. The Committee regrets that such serious allegations against the police have been investigated by police authorities themselves.*

853. *In light of the seriousness of the allegations which include police involvement in anti-union acts, the Committee recalls that complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being speedy, should not only be impartial but also be seen to be such by the parties concerned, who should participate in the procedure in an appropriate and constructive manner [see **Digest**, op. cit., para. 750]. The Committee requests the Government to take all necessary measures as soon as possible to ensure that all allegations concerning acts of anti-union discrimination and intimidation, including the imprisonment of the trade union leader for a second time, the retrenchment of eight workers, threats, harassment and pressure to quit*

the union, are investigated by an independent body which in addition to being speedy and impartial is also seen to be such by the parties concerned, and under guarantees which enable the parties to participate in the procedure in an appropriate and constructive manner. The Committee requests to be kept informed of measures taken in this respect.

The Committee's recommendations

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

(a) The Committee requests the Government to provide information as to the nature of the three charges brought against the leader of the complainant organization and the outcome of the proceedings pending before the Jangipur Court.

(b) With regard to the six workers of the Pataka Biri Co. Ltd. who were dismissed in 1998:

- ***the Committee takes note of the reinstatement of one worker pursuant to a finding that his dismissal was on anti-union grounds;***

- ***the Committee requests the Government to take all necessary measures as soon as possible to have the case of two dismissed apprentices examined as to its substance, and if dismissals are found to be on anti-union grounds, to ensure that these workers are reinstated in their jobs without loss of pay and to guarantee the application against the enterprise of corresponding legal sanctions. The Committee requests to be kept informed in this respect;***

- ***the Committee notes that two appeals were rejected by reason of disciplinary offences and requests the Government to transmit the text of the judgment delivered, together with the grounds adduced therefore.***

(c) With regard to the dismissal of nine workers only 45 days after requesting the enforcement of a ten-point list of demands, the Committee requests the Government to take all necessary measures as soon as possible with a view to the rapid conclusion of the proceedings pending before the Calcutta High Court and if the anti-union nature of the dismissals is confirmed, to rapidly take the necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and that the enterprise faces the corresponding legal sanctions. The Committee requests to be kept informed in this respect.

(d) The Committee requests the Government to take all necessary measures as soon as possible to ensure that all other allegations concerning acts of anti-union discrimination and intimidation, including the imprisonment of the trade union leader for a second time, the retrenchment of eight workers, threats, harassment and pressure to quit the union, are investigated by a high-ranking independent body which, in addition to being speedy and impartial, is also seen to be such by the parties concerned, and under guarantees which enable the parties to participate in the procedure in an

appropriate and constructive manner. The Committee requests to be kept informed in this respect.

CASE NO. 2170

DEFINITIVE REPORT

Complaint against the Government of Iceland presented by — the Icelandic Federation of Labour (ASÍ) and — the Merchant Navy and Fishing Vessel Officers Guild (FFSI) supported by — the International Transport Workers' Federation (ITF) and — the International Confederation of Free Trade Unions (ICFTU)

Allegations: The complainants allege that the Government unduly interfered in trade union activities by enacting a law whereby a legal strike was prohibited and compulsory arbitration imposed on the parties to an interest dispute.

855. The complaints are set out in a communication from the Icelandic Federation of Labour (its Icelandic acronym being ASÍ) dated 22 January 2002 as well as in a communication from the Merchant Navy and Fishing Vessel Officers Guild (its Icelandic acronym being FFSI) dated 24 January 2002. In communications dated respectively 30 January and 1 February 2002, the International Transport Workers' Federation (ITF) and the International Confederation of Free Trade Unions (ICFTU) expressed the wish to be associated with the complaint presented by the FFSI.

856. The Government replied in communications dated 3 September 2002 and 3 March 2003.

857. Iceland 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

858. In its complaint dated 22 January 2002, the ASÍ alleges that the passing by the Althing (Iceland's Parliament) of the Act on fishermen's wages and terms (etc.) No. 34/2001 dated 16 May 2001, banning a strike and a lockout declared by some occupational organizations of the fishing industry and establishing an arbitration panel to determine the wages and terms of the members of the organizations concerned, violates paragraphs 1 and 2 of Article 3 of Convention No. 87 as well as Convention No. 98. In its complaint dated 24 January 2002, the FFSI alleges that Act No. 34/2001 constitutes a gross and fundamental breach of Convention No. 87.

859. In support of their allegations, the complainants make the following points on the process which led to the adoption of Act No. 34/2001 as well as on the application of the Act.

860. The wages of fishermen belonging to unions affiliated to the ASÍ had been previously determined by collective agreements declared applicable by Act No. 10/1998. These

collective agreements expired on 15 February 2001 according to the ASÍ. The FFSI, the Icelandic Seamen's Federation (the Icelandic acronym being SSI), affiliated to the ASÍ, the Engineer Officers' Association (the Icelandic acronym being VSFI) participated in negotiations with the federation grouping the vessel owners' organizations, the Federation of Icelandic Fishing Vessel Owners (the Icelandic acronym being LIU). These negotiations lasted for 15 months, according to the indications given by the FFSI. At the beginning of 2001, the negotiations had proven to be unsuccessful. Some unions affiliated to the ASÍ, which had authorized the West Fjords Federation of Labour to negotiate on their behalf, had nonetheless reached separate wages and terms agreements with the West Fjords Vessel Operators' Association.

861. The stumbling block of the negotiations related to the determination of the price of fish. Fishermen's wages are based on a "share" of the catch, the value of which is based on the price of fish; hence the importance of this latter element in the collective bargaining process concerning fishermen's wages and terms. The negotiations related also to other conditions of employment such as higher death and injury compensation, higher minimum wages and increased payment by the vessel owners into pension funds. According to the FFSI, some unions met the Prime Minister on 26 January 2001. The Government promised that it would not intervene in the dispute contrary to what it did twice in respect of past disputes when it stepped in to prohibit strikes in the fishing industry.

862. On 15 March 2001, a national strike began. The strike had been decided by the constituent unions of the FFSI, SSI and VSFI. A lockout was decided by the members of the LIU. On 19 March 2001, the Althing adopted Act No. 8/2001 whereby both the strike and the lockout were postponed until 1 April 2001. A translation of this Act is attached to the FFSI's complaint. Since at the end of the suspension of the strike, the collective bargaining remained fruitless, the strike resumed on 2 April.

863. As to the parties concerned by the strike and the lockout, the ASÍ gives the following information. The unions which had authorized the West Fjords Federation of Labour to negotiate on their behalf, did not participate in the strike. As far as the SSI is concerned, five constituent unions did not call a strike. On the other hand, a general lockout was imposed by the LIU with the exception of the Snaefellsnes area – one of the unions based in this area was amongst the members of the SSI which were not participating in the strike.

864. On 9 May, the VSFI and the LIU signed a collective agreement. According to the FFSI, this agreement was endorsed by a small majority of the VSFI members with a participation rate of only 27 per cent. On 15 May, the SSI (with the exception of one union) called off the strike. The SSI had received some assurances by the Minister of Fisheries to the effect that, if it called off the strike, the new law about to be adopted by the Althing would not apply to the organization and its members.

865. On 16 May, Act No. 34/2001 was adopted by the Althing with immediate effect. Under article 1 of this Act – a translation of which is appended to the FFSI's complaint, the strike declared by the FFSI as well as by another union, was declared illegal. The lockout decided by member organizations of the LIU in respect of the members of the West Fjords Federation of Labour and the SSI was also declared illegal. The prohibition was to take effect as of the entry into force of the Act and during the period of validity of any decision taken by the arbitration panel that would be established under the Act. Further, if the parties to the dispute failed to reach an agreement before 1 June 2001, an arbitration panel would be established and its three members designated by the Supreme Court of Iceland. In its complaint the ASÍ points out that article 1 of the law had the effect in practice of involving in the arbitration panel process fishermen organizations which were not on strike, either because they had never participated in the strike, or because they had called it off; the VSFI was the only organization which was not affected by the process because it

had concluded an agreement with the LIU. The FFSI confirms in its complaint that the SSI was also concerned by the arbitration process set up under the Act.

866. On 30 June 2001, the panel handed down its decision. More specifically, it decided to extend the application of the collective agreement reached by the VSFI to the members of the organizations referred to in article 1 of Act No. 34/2001. The agreement would apply until 2003 (until 31 March according to ASÍ, until the end of 2003 according to the FFSI).

867. The ASÍ brought a case before the national courts. The Reykjavik District Court decided on 18 July 2001 that Act No. 34/2001 did not infringe the provisions of the Constitution which guarantee freedom of association and the right to collective bargaining. On 25 October 2001, the Supreme Court of Iceland dismissed the case. The ASÍ lodged a second action with the Reykjavik District Court.

868. In support of its complaint, the ASÍ contends that Act No. 34/2001 infringes paragraphs 1 and 2 of Article 3 of Convention No. 87. Should the intervention of the Government be considered justified, the ASÍ contends that the Act contains measures which were not adapted to what the circumstances required. Thus, the ASÍ indicates that the body established under the law was not a court of arbitration but an administrative committee. Further, the ASÍ states that the Act was far too comprehensive. The ASÍ refers in particular to the authority of the arbitration panel to decide the duration of validity of its decision which means that it was at liberty to decide in a arbitrary manner on the duration of the restrictions imposed by the law on free negotiations.

869. The FFSI points out that the passing of Act No. 34/2001 is the fourth intervention of the Government, in the last seven years, in a legitimate strike decided by the fishermen. Such intervention constitutes a gross and fundamental violation of Convention No. 87. Further, the FFSI contends that the constant interventions of the Government has led the LIU to be less willing to negotiate in good faith so as to provoke a long strike and thus the Government's intervention.

B. The Government's reply

870. In its communication of 3 September 2002, the Government divides its reply into four parts. Firstly, the Government explains the major role played by fishing and the exports of fish products in the national economy. Secondly, the Government gives explanations on the negotiation process on wages and terms between seamen's organizations and vessel owners' organizations and on its outstanding issue: the determination of the price of the fish. The Government then proceeds to describe the adoption and the contents of Acts Nos. 8/2001 and 34/2001 and sums up the ruling of the District Court of Reykjavik in the second case brought before it by the ASÍ. The ASÍ lodged an appeal against the ruling of the District Court of Reykjavik before the Supreme Court. The court upheld the decision of the District Court in a judgement dated 14 November 2002, a copy of which is appended to the Government's communication of 3 March 2003. Finally, the Government submits its arguments in favour of the compatibility of Act No. 34/2001 with Conventions Nos. 87 and 98.

The Icelandic economy

871. On the economic aspects of the matter, the Government underlines that foreign trade is at the basis of the high living standards of the population. About 40 per cent of domestic production is exported and fisheries products stand for 60 per cent of the exported goods and account for about 40 per cent of the total foreign currency settings. Approximately 8 per cent of the workforce is employed in fisheries. The Government points out that

economic growth in the nineties is due to economic and political stability and, in particular, to the process known as the "national reconciliation" (already described in the Government's reply in Case No. 1768 examined by the Committee) and whereby the Government with the social partners managed to tackle inflation which had been a major economic problem.

872. The Government underlines that the fisheries are a sector subject to fluctuations both in terms of catch levels and of prices of the products which means – given the important economic weight of the sector – that Iceland's trade, and thereby its economy, is subject to greater fluctuations than in any other industrial country. Icelandic fish exporters have succeeded in developing their markets but these markets can be easily lost if the supply fails over a period of time. The Government explains that a prolonged stoppage in the fisheries can have both short-term effects – in terms of loss of export revenues – and long-term effects which include the forfeiture of markets for fish products. Thus, stability in the fishing industry is crucial for the Icelandic economy.

873. The Government points out that the strike, which resumed on 1 April, ended on 16 May and lasted six weeks, was the longest fishermen's strike. The Government indicated that, in the second quarter of 2001, the value of Icelandic currency had dropped by 8.2 per cent; even if such a decrease is the consequence of many factors the long-term stoppage in the country's main industry was without a doubt a dramatic contributory factor. Inflation rose again and the economy deteriorated. The Government concludes that, in light of the effect of the strike on the national economy, it had no other choice but to intervene and to put an end to the strike. It is against this background, that the adoption of Acts Nos. 8/2001 and 34/2001 should be examined.

Wages and terms negotiations between seamen and vessel operators

874. Turning to the negotiations of fishermen's wages and terms, the Government makes the following points. Firstly, the Government indicates that freedom of association and collective bargaining are covered by the Trade Unions and Industrial Disputes Act No. 80/1938. Most trade unions in Iceland have a very small membership because the national economic environment, including the fishing and fish-processing industries, is based on small to medium-sized enterprises. This is why unions have grouped together to from larger organizations either on a national or a regional basis. The ASÍ is the largest national federation. The unions have discretionary authority in respect of the negotiation of collective agreements and of their approval. Unions can either negotiate directly or authorize the regional or national associations to bargain on their behalf. In any case, members of each individual union retain the authority to approve or reject each collective agreement negotiated.

875. The Government considers that the determination of wages and terms should primarily be made through collective bargaining. To enhance the process, a special Mediation and Conciliation Officer has been established by Act No. 80/1938. In the first instance, the Officer plays a role of intermediary if the parties have decided to refer the dispute to the Officer. The Office may also make a compromise proposal in order to resolve a dispute when the mediation has proven fruitless. Such a proposal can only be made once all efforts of mediation have been exhausted and it is for the Officer to decide when it would be appropriate to make it.

876. As far as fishermen's wages are concerned, the Government indicates that the main bone of contention in the collective bargaining process has been the question of the framework within which the price of fish would be determined since this price is at the basis of the sharing system on which fishermen's wages are determined. The Government also

indicates that there is a certain minimum wage which is guaranteed to fishermen. As of the 1990s the price of fish became largely unregulated. Following a two-week seamen's strike in 1994, a provisional act was passed under which a committee was established by the Government to examine methods of preventing the trading of catch quotas to have a distorted effect on fishermen's wages. Another strike occurred in 1995 and lasted three weeks; a collective agreement was eventually signed. This agreement included provisions whereby vessel operators and the crew were to negotiate the price of fish. Other provisions provided for the establishment of a special complaints committee. The existence of the committee was enshrined in Act No. 84/1995. Its role was to process information on fish pricing and to determine the price of fish in direct dealing when the parties failed to agree on the price. This Act was repealed by Act No. 13/1998 which created the Catch Share Pricing Office, the role of which was to monitor the price of the fish and promote a just and natural appraisal of the seamen's shares in the catch. A third strike began in 1998; it was postponed when the Government was about to intervene. The strike resumed after various unsuccessful attempts to reach agreements; a compromise proposal from the Mediation and Conciliation Officer was rejected at that time. Act No. 10/1998 concerning fishermen's wages and terms subsequently reintroduced the proposal.

877. Act No. 10/1998 was due to apply until 15 February 2000 and negotiations began in December 1999. The difficulties around the price of fish re-ignited. At the beginning of 2001, the negotiations had produced little result and the FFSI, SSI and the VSFI called a strike which began on 15 March. The unions which had authorized the West Fjords Federation of Labour to negotiate on their behalf did not participate in the strike. The vessel operators imposed a lockout all over the country with the exception of the Snaefellsnes area where there was therefore neither a strike nor a lockout in force.

878. The strike was postponed by Act No. 8/2001 until 1 April 2001, because of the capelin fishing season. It resumed on 2 April. At that time, the Mediation and Conciliation Officer had held more than 70 meetings with the parties which had referred the matter to him. On 9 May 2001 the VSFI reached an agreement with the LIU. This agreement contained provisions for determining the price of fish. The Government hoped that this collective agreement would pave the way for other agreements. The Government states that, from the declarations of the remaining parties to the dispute as well of the Mediation and Conciliation Officer, there was no chance that the issue would be settled through mediation. Further, the Officer's view was that there was no basis on which he could make a compromise proposal. The Government explains therefore that it considered that all the possibilities of negotiation had been exhausted without any result; the strike was continuing and there was no indication of how long it could drag on. The Government states that it saw no other course of action but to take emergency measures to end the strike by enacting legislation.

Act No. 34/2001 and the ruling of the District Court of Reykjavik

879. The Government stresses that after a six-week strike, it had to limit the enormous damage that a longer strike would cause to the Icelandic economy. In this respect, the Government indicates that the life of people in small settlements, who base their subsistence on the fishing industry, was greatly affected by the strike and lockout, that the workers in fish factories started to be unemployed, that there were signs of the negative influence of the strike on the marketing of Icelandic fish products abroad; finally Icelandic export earnings were affected by the strike and this in turn contributed to the slide of the value of the Icelandic currency. In the Government's view therefore there was an urgent necessity to bring the strike and the lockout to an end and to provide a reasonable and fair solution. The Government states that the fact that the SSI unions (with the exception of one) had called off their strike on 15 May does not change the fact that the lockout was maintained. The

Act met with some resistance in the Althing, the general criticism being that the legislator had no right to intervene in an industrial dispute by introducing legislation thus infringing on the constitutional rights; criticisms were also addressed to the arbitration process provided for in the Act.

880. In respect of the measures contained in the Act, the Government considers that the appointment of the members of the court of arbitration by the Supreme Court ensured the independence of the court. More specifically, the Government points out that the parties were given until 1 June 2001 to reach an agreement. The Supreme Court would appoint three persons to sit in a court of arbitration only if no agreement had been reached. The court's mandate was to determine the wages and terms of the fishermen in the trade unions mentioned in article 1 of the Act, i.e. those trade unions of fishermen which were on strike and the vessel owners' unions which maintained a lockout. Under article 3, the court of arbitration was to take into account certain elements in making its decision, i.e. the collective agreements that had been reached in recent months, to the extent they were pertinent to the issue under examination, the general trend of wages, and the special status of the parties referred to in article 1. The Government states that, in order to guarantee the independence of the court, it was left to the court to determine the other aspects of its decision and the duration of its validity.

881. In practice, the Government explains that, since no agreement was reached by 1 June, the court of arbitration was established. The court at first made an ultimate attempt to mediate but to no avail. It then proceeded to render its decision and invited the parties to present their views in writing. Its decision was handed down on 30 July 2001.

882. Concerning the ruling of the District Court of Reykjavik of 21 March 2002, the Government emphasizes the following points. The ASÍ submitted that Act No. 34/2001 was in contravention with articles 74 and 75 of the Constitution and in breach of various international treaties ratified by Iceland and in particular Conventions Nos. 87 and 98. The court recognized that there were cogent economic arguments supporting the Government's assessments that the public interest was at stake when it decided to intervene to stop the strike. The court agreed that the trade unions which were not on strike and those which had not imposed a lockout were not bound by Act No. 34/2001. The Government states that it did not oppose the claim of the plaintiff in this respect as it had never been its intention to apply the Act to these unions. Further the court agreed with the ASÍ that the body established under the Act was not a proper court of arbitration in the legal sense but an administrative commission which had been given the authority to decide the outcome of the issue of fishermen's wages. The court ruled that Act No. 34/2001 did not violate provisions of the Icelandic Constitution as interpreted in light, in particular, of the ILO Conventions.

Act No. 34/2001 and Conventions Nos. 87 and 98

883. Turning to the compatibility of Act No. 34/2001 with Conventions Nos. 87 and 98, the Government firmly rejects the argument that the Act infringes the provisions of both Conventions. In this respect the Government refers to its arguments relating to the impact of the protracted strike on the economy. The Government stress that it has always placed great importance on collective bargaining for the determination of wages and terms. Further, in order to enhance the chances of successful negotiations, the Government has established an arrangement whereby the parties, if they so wish, can refer the matter to the Mediation and Conciliation Officer. These considerations explain why the Government waited for a long period of time before intervening in the strike. Referring to the conclusions of the Committee in Case No. 1768 as well as to paragraph 258 of the General Survey on freedom of association and collective bargaining, 1994, on which the conclusions were based, the Government stresses that, in the light of these documents, the

authorities may be justified in intervening in disputes by establishing a court of arbitration when the negotiations have reached a deadlock. In this regard, the Government reiterates that this was the case in the matter brought before the Committee. Further, the lengthy strike had serious economic effects and everything had been attempted to help the parties reach an agreement. The Government utterly rejects the ASÍ's contention that Act No. 34/2001 infringes paragraphs 1 and 2 of Article 3 of the Convention: freedom of association is guaranteed under the Icelandic Constitution and in no way can Act No. 34/2001 be construed as restricting the right of fishermen's organizations to draw up their own rules or to organize their control and functioning.

884. In its communication of 3 March 2003, the Government emphasizes once again the impact of the strike and the lock-out on the national economy. It recalls that the Icelandic system of collective bargaining has been developed in close cooperation with the social partners, in particular following comments made by the ILO on the functioning of the system. Finally, the Government points out that the trade unions which were not on strike and the unions of vessel owners that had not imposed a lock-out reached a collective agreement on 26 November 2002 which reflected the terms set out in the decision of the Court of Arbitration. The Government confirms that the court's decision is valid until the end of 2003.

C. The Committee's conclusions

885. *The Committee observes that the complainants and the Government's versions are on the whole not contradictory concerning the events leading up to the adoption of Act No. 34/2001. The Committee notes that Act No. 8/2001 whereby the strike was postponed for two weeks is not challenged by the complainants. The Committee notes also the ruling of the District Court of Reykjavik of 21 March 2002 as reflected in the Government's reply, as well as the judgement of the Supreme Court of 14 November 2002.*

886. *The Committee observes that Act No. 34/2001 had the effect, on the one hand, to ban a strike caused by a difficult collective bargaining process and, on the other hand, to fix fishermen's wages and terms through the imposition of an arbitration process. The Committee must therefore review whether Act No. 34/2001 is consistent with the provisions of Conventions Nos. 87 and 98.*

887. *The complainants take the view that the adoption of Act No. 34/2001, banning the strike for a certain period, is in breach of Convention No. 87 and in particular of its Article 3; further the adoption of Act No. 34/2001 adds up to a series of interventions by the Government in legitimate strike actions. The Government for its part, insists that: (1) it had waited for a long period of time before it decided to intervene; indeed when Act No. 34/2001 was adopted the strike had lasted for six weeks; (2) the protracted strike had serious effects on the national economy; (3) all endeavours had been exhausted to have fishermen's wages and terms determined through collective bargaining and the positions of the parties were irreconcilable. Further, the ASÍ contends that the measures provided under the Act are not proportionate to what the circumstances required. The Government contends that: (1) the appointment of a court of arbitration was a measure proportionate to what the circumstances required; (2) the aim of the law was to provide the parties to the dispute with a reasonable and fair solution.*

888. *With respect to the Government's reference to the Committee's conclusions in Case No. 1768 (paragraph 29), the Committee has recognized, like the Committee of Experts on the Application of Conventions and Recommendations, that there comes a time in bargaining where, after protracted and fruitless negotiations, the authorities might be justified in stepping in when it is obvious that the deadlock in bargaining will not be broken without some initiative on their part [see General Survey on freedom of association*

*and collective bargaining, 1994, para. 258]. That being said, the Committee is of the view that the mere existence of a deadlock in a collective bargaining process is not in itself a sufficient ground to justify an intervention from the public authorities to impose arbitration on the parties to the labour dispute. Public authorities' intervention in collective disputes must be consistent with the principle of free and voluntary negotiations; this implies that the bodies appointed for the settlement of disputes between the parties to collective bargaining should be independent and recourse to these bodies should be on a voluntary basis [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 858] except where there is an acute national crisis which, in the present case, the Committee was not in a position to determine.*

889. *In the present instance, the Committee would like to make the following points. First, the Committee notes the declaration of the Government to the effect that it had never intended to apply Act No. 34/2001 to unions which were not on strike. The Committee notes however, from the complainants' indications and the ruling of the District Court of Reykjavik, that the provisions of the Act did not clearly exclude unions which were not on strike from the application of the Act. The Committee notes that, in Case No. 1768, this issue had already arisen and that the Government had been requested "to refrain in future from having recourse to such measures of legislative intervention" [see para. 111 of its 299th Report]. The Committee also notes that the trade unions which were not on strike and the vessel owners that had not imposed a lock-out reached a collective agreement once the issue had been clarified by the District Court of Reykjavik and by the Supreme Court.*

890. *Further, the Committee considers that the system established by law could not gain and retain the parties' confidence as the nature of the arbitration body was unclear and the outcome of the process predetermined by legislative criteria. In this last respect, the Committee notes from article 3 of the Act that the arbitration body thus established was to take into consideration a number of elements and in particular the agreements on wages which were concluded recently as well as the general trend of wage matters. The Committee must note once again that it had already raised this issue on a similar legislative provision in Case No. 1768 and draws the Government's attention to its conclusion set out in paragraph 110 of its 299th Report.*

891. *Even if it considers that a work stoppage in the fishing industry can have important consequences on the economy, the Committee considers that such a stoppage does not endanger the life, personal safety or health of the whole or part of the population. For all these reasons, and while noting that the Act gave another two weeks to the parties to reach an agreement before the arbitration process would be set in motion, the Committee considers that the process set up by the law is not consistent with the principle of free and voluntary bargaining. The Committee makes this conclusion with concern since the arbitration body was to decide on the duration of the applicability of the collective agreement reached by the VSFI and the LIU to members in particular of FFSI and SSI.*

892. *More generally, the Committee regrets to note that the adoption of Act No. 34/2001 is the third intervention of the public authorities in the collective bargaining process concerning fishermen's wages and terms over a period of seven years. The Committee notes that there are recurrent difficult negotiations in this sector of activity and that these difficulties seem to be structural as they are linked to the determination of the price of the fish. The Committee also notes that the mediation and conciliation facilities did not enable the parties to reach an agreement and that this was not the first time that theses facilities had not been successful. The Committee notes that the public authorities have also made a number of legislative interventions in a series of other collective bargaining processes over the last 20 years, some of which had been brought to the attention of both the Committee and the Committee of Experts. The Committee refers in this respect to its*

conclusions in Cases Nos. 1458, 1563 and 1768. In Case No. 1563, and in particular in paragraph 376 of its 279th Report, the Committee had already noted that "over the past years, the Government has on several occasions had recourse to measures of intervention in collective bargaining. Indeed, in a previous case concerning Iceland [see 262nd Report, Case No. 1458, paras. 124 to 153, and in particular para. 148], the Committee had observed that there had been general legislative intervention in the bargaining process of no less than nine occasions in the last ten years. These interventions manifestly show the existence of difficulties in the industrial relations system".

893. *In the Committee's view these considerations point out that the Government should take concrete steps to avoid legislative interventions and to facilitate fully voluntary collective bargaining. The Committee is of the view that such steps are all the more necessary now that the current collective agreements on fishermen's wages and terms declared applicable under Act No. 34/2001 are due to expire soon and that the same difficulties are very likely going to re-ignite. Therefore, it asks the government to review the national machinery and procedures concerning the collective bargaining process. The Committee draws the Government's attention to the availability of the Office's technical assistance.*

The Committee's recommendations

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

(a) The Committee recalls that, as recognized in the Icelandic Trade Unions and Industrial Disputes Act, workers and employers have the right to industrial action for the defence of their occupational interests.

(b) The Committee considers that the arbitration process provided for under Act No. 34/2001 infringed the principle of free and voluntary collective bargaining. The Committee recalls in this respect that the bodies appointed for the settlement of disputes between the parties to collective bargaining should be independent and recourse to these bodies should be on a voluntary basis, except where there is an acute national crisis which, in the present case, the Committee was not in a position to determine.

(c) Deploring that numerous similar cases infringing the provisions of Conventions Nos. 87 and 98 occurred in the past, the Committee requests the Government to change the national machinery and procedures concerning collective bargaining to avoid repetitive legislative interventions in the collective bargaining process in the future; the Committee draws the attention of the Government to the availability of the Office's technical assistance.

CASE NO. 2207

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

Complaint against the Government of Mexico presented by the Progressive Trade Union of Workers in the Metals, Plastics, Glass and Allied Industries of the Republic of Mexico

Allegations: The complainant organization alleges that the authorities refuse to register changes to the constitution of a trade union in the metals, plastics and glass industry that intends to broaden its field of activities to include the rubber and latex industry.

895. The complaint is contained in a communication from the Progressive Trade Union of Workers in the Metals, Plastics, Glass and Allied Industries of the Republic of Mexico dated May 2002.

896. The Government sent its observations in communications dated 19 September and 4 November 2002.

897. Mexico 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

898. In its communication dated May 2002, the Progressive Trade Union of Workers in the Metals, Plastics, Glass and Allied Industries of the Republic of Mexico states that on 24 June 2000 an extraordinary general assembly was held and a comprehensive reform of the organization's constitution was agreed upon by majority vote of the members. The complainant organization states that the General Directorate for the Registration of Associations of the Secretariat of Labour and Social Security issued a resolution on March 2001 refusing registration of the changes and the Sub-Secretary for Labour of the Secretariat of Labour and Social Security refused an appeal for review lodged against the resolution. The text relating to these administrative decisions shows that the refusal is based on the fact that the change to the constitution aims to broaden the field of activity to take in a branch of the industry outside that contemplated in the constitution – which includes also the rubber and latex industry – and, according to the provisions of article 360 of the Federal Labour Law, industrial or national industry trade unions must comprise workers that work in enterprises in the same industrial branch. The complainant organization states that, faced with this situation, on 20 July 2001 it lodged an appeal for protection of constitutional rights (*amparo*) with the judicial authorities and that the Second District Court for Labour Affairs of the Federal District ruled that "The resolution of the Sub-Secretary for Labour and Social Security is incorrect in confirming the refusal to register changes to the constitution issued by the General Directorate for the Registration of Associations" and that "in these circumstances the complainant is granted

amparo". Finally, the complainant organization indicates that the Government lodged an appeal for review against the ruling handed down by the Second District Court.

B. The Government's reply

899. In communications dated 19 September and 4 November 2002, the Government states that the Progressive Trade Union of Workers in the Metals Industry requested acknowledgement of changes to articles 1, 8 and 27 in part II of its constitution from the General Directorate for the Registration of Associations of the Secretariat of Labour and Social Security. These reforms were agreed upon at an extraordinary general assembly on 24 June 2000. Specifically, the change to article 1 consists of changing the name of the trade union organization to the Progressive Trade Union of Workers in the Metals, Plastics, Glass, Rubber and Latex and Allied Industries of the Republic of Mexico and the change to article 8 broadens the field of activity of the trade union to plant workers, temporary, provisional, applicant or retired workers that provide, wish to provide, or have provided services in any enterprise, company, factory, work centre forming part of the metals, minerals, plastics, glass, rubber and latex industry.

900. The Government states that the General Directorate for the Registration of Associations issued a resolution refusing acknowledgement of the changes to articles 1 and 8 of the trade union's constitution. With regard to this, the Progressive Trade Union of Workers in the Metals Industry lodged an appeal for review against the resolution with the Sub-Secretariat of Labour of the Secretariat of Labour and Social Security. The Sub-Secretariat of Labour decided the appeal by confirming each and every one of the parts of the resolution issued by the General Directorate for the Registration of Associations. Subsequently, the Progressive Trade Union of Workers in the Metals Industry lodged a request for *amparo* in which it appealed the refusal to acknowledge changes to its constitution on the part of the General Directorate for the Registration of Associations and the confirmation of this administrative act by the Sub-Secretariat of Labour.

901. This matter was heard in the Second District Court for Labour Affairs in the Federal District. On 4 October 2001, the Court issued a resolution in which the trade union was granted *amparo* and legal protection from the acts that were the subject of the appeal lodged against the General Directorate for the Registration of Associations and the Sub-Secretariat of Labour.

902. The General Directorate for the Registration of Associations and the Sub-Secretariat of Labour lodged an appeal for review of the ruling of the Second District Court in Labour Affairs in the Federal District. The Government states that, on 4 October 2001, after examining the ruling mentioned above, it did not consider it either motivated or based correctly on the constitutionality of the provisions of article 360 of the Federal Labour Law, in which the different trade unions that are governed by this law are listed and their characteristics confirmed. The appeal for review was decided by the First Circuit Second Collegiate Court for Labour Affairs, which revoked the ruling handed down by the Federal District Second District Court for Labour Affairs, dismissing and denying the complainant *amparo* and protection of federal law.

903. The Government states that, although the complainant organization indicates that the resolution of the General Directorate for the Registration of Associations refusing acknowledgement of certain articles of the constitution contravenes the provisions laid down in articles 357 and 359 of Mexican labour law and the provisions of Convention No. 87 of the ILO, it should be pointed out, with regard to the details, that article 357 of the Federal Labour Law states that workers and employers have the right to form trade unions without need for authorization. The Progressive Trade Union of Workers in the Metals Industry exercised this right as was established as a trade union and registered with the

General Directorate for the Registration of Associations, under file No. 5105. Moreover, the Government points out that article 359 of Federal Labour Law and Article 3 of ILO Convention No. 87 state that workers' and employers' organizations have the right to draw up their constitutions and rules. The Progressive Trade Union of Workers in the Metals Industry has a legally registered constitution, which was amended during an extraordinary general assembly on 24 June 2000. The Government states that, given the above information, the Progressive Trade Union of Workers in the Metals Industry fully exercised its right as laid down in the previously mentioned articles.

904. In this case, both the Progressive Trade Union of Workers in the Metals Industry and the administrative authorities lodged an appeal with a legal, impartial and independent body – the Judiciary of the Federation. By denying *amparo* and the protection of the federal justice to the Progressive Trade Union of Workers in the Metals Industry, the competent legal authorities gave validity to the resolutions of the General Directorate for the Registration of Associations and the Sub-Secretariat of Labour. In conclusion, the Government indicates that the labour authorities have complied with Mexican labour legislation and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and that the parties have been able to exercise their rights in accordance with the law and have been able to lodge appeals against the resolutions that they considered affected them.

C. The Committee's conclusions

905. *The Committee notes that in the present case the Progressive Trade Union of Workers in the Metals, Plastics, Glass and Allied Industries of the Republic of Mexico states that the General Directorate for the Registration of Associations of the Secretariat of Labour and Social Security issued a resolution in March 2001 refusing registration of the changes to the trade union constitution (broadening its field of activities to include the rubber and latex industry). The Committee notes that it emerges from the administrative resolutions refusing registration and the court decision confirming these, that the refusal to register the changes to the constitution was founded on the classification of trade unions laid down in article 360 of the Federal Labour Law, which states that national industrial trade unions are those formed by workers who provide their services to one or a number of enterprises in the same industrial branch.*

906. *The Committee further notes that the Government: (1) refers to the various stages of the administrative and legal proceedings that took place with regard to this case; (2) emphasizes that the labour authorities have complied with national legislation and ILO Conventions and that the parties have been able to exercise their rights in accordance with the law; (3) states that, in accordance with the provisions of articles 357 and 359 of the Federal Labour Law, workers have the right to establish trade unions without authorization and to draw up their constitutions and rules. The Committee notes that the final court decision refused the trade union* amparo *and legal protection.*

907. *The Committee recalls that the free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of unions, the 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 [**Digest of decisions and principles of the Freedom of Association Committee**, 1996, paras. 275 and 333]. Consequently, the Committee requests the Government to take steps to ensure that the changes to the constitution requested by the complainant organization are registered and to keep it informed in this regard. Nevertheless, the Committee must underline that the fact that the constitution results in an extension in the field of activity of the union does not prejudge in any way its representativeness in the*

sectors covered and thus its right to bargain collectively with the employers or employers' organizations concerned.

The Committee's recommendations

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

(a) With regard to the refusal of the General Directorate for the Registration of Associations and the Sub-Secretariat of Labour to register the changes to the constitution of the Progressive Trade Union of Workers in the Metals, Plastics, Glass and Allied Industries of the Republic of Mexico, the Committee recalls the principle according to which the free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of unions, and the national legislation should only lay down formal requirements as regards trade union constitutions, which, along with the rules, should not be subject to prior approval by the public authorities in order to enter into force.

(b) The Committee requests the Government to take steps to register the changes to the constitution requested by the Progressive Trade Union of Workers in the Metals, Plastics, Glass and Allied Industries. The Committee requests the Government to keep it informed in this respect.

(c) Nevertheless, the Committee must emphasize that the fact that the constitution results in an extension of the field of activity of the union does not prejudge in any way its representativeness in the sectors covered and thus its right to bargain collectively with the employers or employers' organizations concerned.

CASE NO. 2206

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

Complaint against the Government of Nicaragua presented by the National Union of Employees (UNE) General Confederation supported by Public Services International (PSI)

Allegations: The complainant organization alleges that the check-off of its members' trade union contributions has been suspended in violation of national legislation, and that trade union officials have been dismissed from the Supreme Electoral Council.

909. The complaint is set out in a communication from the National Union of Employees (UNE) General Confederation dated 30 May 2002. This organization sent further information in the communication of 27 June 2002. The Public Services International (PSI)

supported the complaint made by the UNE in the communications dated 13 June and 8 July 2002. The Government sent its observations in communications of 20 September 2002 and 14 January 2003.

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

A. The complainant's allegations

911. In its communication of 30 May 2002, the National Union of Employees (UNE) General Confederation alleges that following a decision made public by the former President of the Republic on 26 February 2001, the Government suspended the check-off of the trade union contributions of UNE members as provided for in current collective agreements and section 224 of the Labour Code, according to which "employers must deduct the ordinary and extraordinary contributions established by the trade union according to its statutes from the salaries of workers who are affiliated to the trade union and give their voluntary authorization". On the basis of this, the UNE filed a petition before the Appeals Court of the Circumscription of Managua on 21 March 2001. In the text of the petition and that of the Court's decision to grant the admissibility of the petition, it is specified that the question relates to statements made by the President and "the threat to prohibit and eliminate the deductions made by trade unions from their members as trade union contributions from the state payroll through a presidential agreement". This situation is financially "asphyxiating" trade unions.

912. In its communication of 27 June 2002, the UNE makes allegations concerning the dismissal in April 2001 of Mr. Edgard Marenco Torres and Mr. Eduardo José Lacayo Castillo, officials from the Trade Union of Workers of the Supreme Electoral Council (SITRACSE). Neither official has been reinstated in his job by the Supreme Electoral Council authorities despite administrative resolutions requesting their reinstatement which date back to May 2002.

B. The Government's reply

913. In its communications of 20 September 2002 and 14 January 2003, the Government states that the complainant organization indeed filed a petition of *amparo* (enforcement of constitutional rights) relating to the deduction of trade union contributions from workers, and that the only action to be taken is to wait for the verdict of the judicial authority.

914. As regards the dismissal of Mr. Edgard Marenco Torres and Mr. Eduardo José Lacayo Castillo, the Government states that two petitions have been made relating to this case, the first being through administrative action before the Ministry of Labour, and the second through legal action before the labour courts. The two people concerned submitted a document to the Departmental Labour Inspectorate for the Services Sector of Managua denouncing their dismissal by the employer, the Supreme Electoral Council (CSE), through the CSE General Division of Human Resources and Training – with allegations, inter alia, that the procedures established in section 231 of the Labour Code had been violated. Subsequently, the abovementioned Inspectorate confirmed that the cancellation of the employment contracts of Mr. Marenco Torres and Mr. Lacayo Castillo violated the procedures established in sections 48 and 231 of the Labour Code. The Directorate of Trade Union Associations of the Ministry of Labour issued a statement that both persons in question enjoyed the trade union immunity established in the Labour Code. The Inspectorate subsequently decided to cancel the dismissals and issued a warning that one working day after receiving notification, the employer had to reinstate the workers in

question in their previous jobs and with the original salaries. Furthermore, the employer – the CSE – had to respect the resolution of the Departmental Labour Inspectorate in time and form; this was not the case. Since the resolution was not appealed, it remained in force. Following these events, the persons in question presented their case through legal action before the First Labour Court, requesting their effective reinstatement and the payment of lost earnings, thereby opening the respective judicial proceedings. The Labour Court judge issued a resolution ordering their reinstatement and requesting a writ of execution of the sentence given in their favour. It is now up to the parties to institute all necessary proceedings to have the sentence applied.

C. The Committee's conclusions

915. *As regards the allegation concerning the suspension of the check-off of the trade union contributions of UNE members in violation of national legislation, the Committee notes that the Government states that this issue has been referred to the judicial authority, and that the only action to be taken is to wait for the judicial verdict. The Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 435]. The Committee observes that at its November 2002 meeting it examined another complaint against the Government of Nicaragua for the suspension of the check-off facility [see 329th Report, Case No. 2163, paras. 698 and 706]. The Committee concludes with concern that this problem affects several trade union organizations and expresses the hope that the judicial authority will take the aforementioned principle fully into account when formulating its ruling. The Committee requests the Government to send the text of the ruling handed down in this regard.*

916. *As regards the dismissal of the trade union officials, Mr. Edgard Marenco Torres and Mr. Eduardo José Lacayo Castillo from the Supreme Electoral Council, the Committee notes with interest that, according to the Government, both the administrative authority and the judicial authority confirmed that their dismissal violated national legislation and ordered their reinstatement in their jobs. The Committee urges the Government to ensure that both officials are effectively reinstated without loss of pay in their jobs without delay and to keep it informed in this regard.*

The Committee's recommendations

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

(a) As regards the allegation concerning the suspension of the check-off of the trade union contributions of UNE members in violation of national legislation, the Committee expresses the hope that the judicial authority will take the principle according to which "the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided" fully into account when formulating its ruling. The Committee requests the Government to send the text of the ruling handed down in this regard.

(b) As regards the dismissal of the trade union officials Mr. Edgard Marenco Torres and Mr. Eduardo José Lacayo Castillo from the Supreme Electoral

Council, the Committee urges the Government to ensure that both officials are effectively reinstated without loss of pay in their jobs without delay and to keep it informed in this regard.

CASE NO. 2229

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

Complaint against the Government of Pakistan
presented by
— the Pakistan National Federation of Trade Unions (PNFTU)
— the All Pakistan Federation of Trade Unions (APFTU) and
— the EOBI Employees' Federation of Pakistan
supported by
— the International Confederation of Free Trade Unions (ICFTU) and
— the International Transport Workers' Federation (ITF)

Allegations: The complainants allege the adoption of legislation contrary to freedom of association.

918. The complaints are contained in communications by the Pakistan National Federation of Trade Unions (PNFTU) dated 4 and 30 November 2002, by the EOBI Employees' Federation of Pakistan dated 18 October 2002, and the All Pakistan Federation of Trade Unions (APFTU) received 4 December 2002. The International Confederation of Free Trade Unions (ICFTU) and the International Transport Workers' Federation (ITF) associated themselves with the complaint in communications dated 13 and 19 February 2003.

919. The Government forwarded its observations in a communication dated 28 November 2002.

920. Pakistan 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

921. In their communications dated 18 October, 4 and 30 November, and 4 December 2002, the Pakistan National Federation of Trade Unions (PNFTU), the EOBI Employees' Federation of Pakistan and the All Pakistan Federation of Trade Unions (APFTU) allege that the Industrial Relations Ordinance of Pakistan (IRO) of 2002, which came to replace the Industrial Relations Ordinance of Pakistan of 1969, was imposed by the Government without taking into account proposals and suggestions made by the trade unions, as well as those made jointly by workers and employers at the level of the Workers' and Employers' Bilateral Council of Pakistan, and is highly restrictive contrary to Conventions Nos. 87 and 98.

922. The complainants refer to the following discrepancies between the IRO of 2002 and the Conventions: restrictions on the right of workers, without distinction whatsoever, to establish and join organizations; restriction on the right of workers' organizations to establish and join federations and confederations; interference in the internal affairs of

trade unions and federations of trade unions; restrictions on the right to strike; heavy penalties imposed on trade union officers for committing unfair labour practices; insufficient protection afforded to workers against acts of anti-union discrimination; inefficient labour judiciary system and insufficient mechanisms for collective bargaining.

923. In their communications, the complainants point out that the following establishments are expressly excluded from the scope of the Industrial Relations Ordinance of 2002:

- Bata Shoes company, when supplying shoes to the armed forces;
- Pakistan Security Printing Corporation;
- Pakistan Security Papers Ltd.;
- Pakistan Mint;
- establishment or institutions maintained for the treatment, care of sick, infirm, destitute and mentally unfit persons;
- institutions established for payment of employees' old-age pensions or workers' welfare;
- members of Watch and Ward, Security and Fire Services Staff of an oil refinery, or establishments engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products, or of a seaport and airport;
- railways, when used for defence purposes; and
- administration of the State.

924. The APFTU further states that the new IRO does not cover workers engaged in agriculture and does not mention the lifting of a ban on suspension of trade union rights in Karachi Electric Supply Corporation, Pakistan International Air Lines, banks under section 27-B of the Banking Companies Ordinance of 1999 (Amended), and export processing zones. Those restrictions on the application of the IRO violate, according to the complainant, the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing.

925. The PNFTU further indicates that according to section 3(1)(d) of the IRO, every collective bargaining agent is required to affiliate with a federation at the national level registered with the National Industrial Relations Commission within two months after it is certified as collective bargaining agent or after the promulgation of the IRO. The complainant states that this section violates the right of trade unions to join federations of their own choosing as it is possible that the collective bargaining agent may have no confidence in any registered national federation. Moreover, as confidence and close relationship take time to develop, the imposed time limit for affiliation is too short.

926. The PNFTU also alleges the Government's interference in the internal affairs of trade unions and federations of trade unions, as under section 19(1) of the IRO, accounts of a collective bargaining agent having membership of 5,000 or more are subject to an external audit by a firm of accountants appointed by the Registrar.

927. The PNFTU adds that section 18 of the IRO requires registration of every federation with the National Industrial Relations Commission. Such requirement did not exist under the previous IRO and, according to the complainant, amounts to direct interference in the internal affairs of federations.

928. The APFTU alleges that the right to strike has been restricted under the new law as it imposes longer time limits before the strike can be called: 15 days for a bilateral negotiation with an employer and, where the settlement is not reached, 15 days for a conciliation procedure. The complainant points out that those time limits were limited to 10-14 days under the IRO of 1969.

929. The APFTU points out that section 65 of the IRO imposes on a trade union representative serious penalties for committing an unfair labour practice, defined under section 64(1)(d) as the act of compelling or attempt to compel the employer to accept any demands by using intimidation, coercion, pressure, threat, confinement or ouster from a place, dispossession, assault, physical injury, disconnection of telephone, water or power facilities or by such other methods. The sanctions that may be imposed may include disqualification of a trade union office-bearer from holding any trade union office for an unlimited term.

930. The complainants further state that the new IRO runs counter to the obligation of the Government to provide to workers an adequate protection against acts of trade union discrimination. In particular, the APFTU and PNFTU allege that although section 46(5) of the new law empowers the Labour Court to award compensation to workers who were wrongfully dismissed, it does not provide for the power of the Court to order a reinstatement of the worker. The APFTU further alleges that the new law restricts the right of workers to seek interim remedies from the National Industrial Relations Commission against any "dismissal, discharge or removal from employment or transfer" based on their engagement in trade union activities, as section 49(4)(e) provides that those measures can be granted only during an industrial dispute.

931. Furthermore, according to the PNFTU, the old labour judiciary system with its lengthy litigation has been maintained as the National Industrial Relations Commission is still functioning under the Ministry of Labour and the labour courts are functioning under the Provincial Labour Departments. The PNFTU also alleges that the National Industrial Relations Commission, ever since it was created under the old Industrial Relations Ordinance, has acted against the interests of workers and that despite the opposition of the majority of trade union organizations, this institution was maintained under the new Ordinance.

932. The PNFTU indicates that under section 20(11) of the IRO, where a registered trade union has been certified to be collective bargaining agent, no application for a re-determination of the collective bargaining agent at the same establishment may be made for a period of three years. According to the complainant, this provision compels the collective bargaining agent to sign a collective agreement for three years. Furthermore, section 60 provides that a settlement shall be binding for two years (as opposed to one year previously) if no other period is agreed upon.

B. The Government's reply

933. In its communication of 28 November 2002, the Government states that the Industrial Relations Ordinance, which was promulgated on 26 October 2002 and which repealed the IRO of 1969, was adopted after carrying out broad consultations with all the stakeholders and keeping in view the ILO Conventions ratified by Pakistan.

934. The Government states that the IRO of 2002 is applicable to all establishments excluding those that are sensitive in nature and where the Government cannot afford go-slow or strike to ensure defence of the country and supply of commodities essential for the life of the community. According to the Government, the new law enlarges the scope of coverage as certain categories of workers previously excluded from the application of the IRO, such

as persons employed at the PIA (Pakistan International Airlines Corporation), and PTV and PBC (Pakistan Television and Broadcasting Corporations), are now covered by the Ordinance. Moreover, the Government states that persons employed in hospitals run on a commercial basis are also covered by the IRO of 2002.

935. As concerns the role of the National Industrial Relations Commission, the Government asserts that its role has been revised to make it an effective organization with particular aim to promote a healthy trade unionism in the country.

936. Furthermore, the Government states that in order to provide speedy justice, the Labour Appellate Tribunals have been abolished as recommended by the Pakistan Tripartite Labour Conference and that the high courts became appellate courts for the adjudication made in labour courts.

C. The Committee's conclusions

937. *The Committee notes that the complainants in this case allege that the Industrial Relations Ordinance of Pakistan (IRO) of 2002 was imposed by the Government without taking into account proposals and suggestions made by the trade unions. The complainants further allege that the mentioned legislation violates the principles of freedom of association, particularly as concerns the right of workers, without distinction whatsoever, to establish and join organizations; right of workers' organizations to establish and join federations and confederations; non-interference in the internal affairs of trade unions and federations of trade unions; the right to strike, protection afforded to workers against acts of anti-union discrimination; the labour judiciary system, and right to collective bargaining.*

938. *As concerns the first allegation, the Committee notes that the complainants allege that their proposals and suggestions regarding the new legislation were not taken into account and the Government indicates that the IRO was adopted after carrying out broad consultations with all the parties concerned. In this respect, the Committee recalls the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 927]. The Committee trusts that any future consultations with social partners regarding legislation affecting trade union rights will be carried out to the satisfaction of all the parties concerned.*

939. *As concerns the right of workers, without distinction whatsoever, to establish and join organizations, the Committee notes from the complainants' allegations that the following establishments are expressly excluded from the scope of the Industrial Relations Ordinance of 2002: Bata Shoes company, when supplying shoes to the armed forces; Pakistan Security Printing Corporation; Pakistan Security Papers Ltd.; Pakistan Mint; establishment or institutions maintained for the treatment, care of sick, infirm, destitute and mentally unfit persons; institutions established for payment of employees' old-age pensions or workers' welfare; members of Watch and Ward, Security and Fire Services Staff of an oil refinery, or establishments engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products, or of a seaport and airport; railways, when used for defence purposes; and administration of the State. It further notes from the APFTU's statement that the new IRO does not cover workers engaged in agriculture and does not mention the lifting of a ban on suspension of trade union rights in Karachi Electric Supply Corporation, Pakistan International Air Lines, banks under section 27-B of the Banking Companies Ordinance of 1999 (Amended), and export processing zones.*

940. *The Committee notes from the Government's statement that the IRO of 2002 is applicable to all establishments excluding those which are sensitive in nature and where the Government cannot afford go-slow or strike to ensure defence of the country and supply of commodities essential for the life of the community. According to the Government, the new law enlarges the scope of coverage as certain categories of workers previously excluded from the application of the IRO, such as persons employed at the PIA (Pakistan International Airlines Corporation), and PTV and PBC (Pakistan Television and Broadcasting Corporations), are now covered by the Ordinance. Moreover, the Government states that persons employed in hospitals run on a commercial basis are also covered by the IRO of 2002.*

941. *The Committee understands from the Government's statement that the exclusion from the scope of the application of the IRO is closely linked with the prohibition for workers of certain services to have recourse to strike action. In this respect, the Committee recalls that whereas the right to strike may be restricted or prohibited for certain categories of workers (in the public service only for public servants exercising authority in the name of the State, or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population), the guarantee of the right of association should apply to all workers, with the exception of the members of police and armed forces. Moreover, the members of the armed forces who can be excluded from the application of Convention No. 87 should be defined in a restrictive manner; civilian workers in the manufacturing establishments or other installations or services of the armed forces should have the right to establish and join organizations of their own choosing [see **Digest**, op. cit., paras. 219 and 223]. The Committee requests the Government to amend its legislation so as to ensure that workers of Bata Shoes company; Pakistan Security Printing Corporation; Pakistan Security Papers Ltd.; Pakistan Mint; establishments or institutions maintained for the treatment and care of sick, infirm, destitute and mentally unfit persons; institutions established for payment of employees' old-age pensions or workers' welfare; members of Watch and Ward; security and fire services staff of an oil refinery; or establishments engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products, or of a seaport and airport; railways; and administration of the State, enjoy the right to establish and join organizations of their own choosing and to keep it informed in this respect. The Committee further recalls that services provided by the abovementioned establishments, with the only exception of institutions maintained for the treatment and care of sick, infirm, destitute and mentally unfit persons, cannot be considered essential.*

942. *As regards the alleged violation of the right of workers' organizations to establish and join federations and confederations and, more particularly, the requirement to affiliate with a federation at the national level registered with the National Industrial Relations Commission within two months after it is certified as a collective bargaining agent or after the promulgation of the IRO, the Committee recalls that the question as to whether or not to form or join a federation is a matter to be determined solely by the workers and their organizations themselves. Moreover, the fact that Article 2 of Convention No. 87 provides that workers shall have the right to establish and join organizations of their own choosing implies for the organizations themselves the right to establish and join federations of their own choosing [see **Digest**, op. cit., paras. 606 and 610]. The Committee therefore requests the Government to amend its legislation in order to ensure that workers' organizations are allowed to determine themselves whether they wish to join a federation and, if that is the case, to enjoy the right to establish and join the federation of their own choosing.*

943. *As concerns the allegation of the Government's interference in the internal affairs of trade unions and federations of trade unions, the Committee notes two sections referred to by the complainants: section 19(1) of the IRO, according to which accounts of a collective bargaining agent having membership of 5,000 or more are subject to external audit by a*

firm of accountants appointed by the Registrar, and section 18, which requires registration of every federation with the National Industrial Relations Commission. The Committee notes that no observation has been received from the Government in this respect.

944. *Concerning the requirement of section 19, the Committee recalls that measures of administrative control over trade union assets, such as financial audits, should be applied only in exceptional cases, when justified by grave circumstances (for instance, presumed irregularities in the annual statement or irregularities reported by members of the organization), in order to avoid any discrimination between one trade union and another and to preclude danger of excessive intervention by the authorities which might hamper a union's exercise of the right to organize its administration freely, and also to avoid harmful and perhaps unjustified publicity or the disclosure of information which might be confidential. The control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports [see* ***Digest****, op. cit., paras. 443 and 444]. The Committee therefore requests the Government to take the necessary measures in order to repeal this section of the IRO and keep it informed in this respect.*

945. *Concerning the requirement of registration of every federation with the National Industrial Relations Commission, the Committee considers that when the registration of federations consists solely of a formality where the conditions are not such as to impair the guarantees laid down by Convention No. 87, such requirement would not constitute an infringement of the Convention. In the present case, the Committee notes that the IRO provides that the Registrar shall register an organization if such organization has complied with the formal requirements provided for in the IRO. In the case where the application for the registration is deficient, the IRO provides for the procedure to rectify any material flaws. An appeal to the Labour Court is also provided for in the case of refusal of registration. In this respect, the compulsory registration provided for by the IRO is in itself compatible with the Convention. However, the Committee notes that section 18 requires ten or more trade unions, with at least one from each province, to constitute a federation or confederation at the national level. The Committee recalls that the requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with Article 5 of Convention No. 87 and with the principles of freedom of association [see* ***Digest****, op. cit., para. 611]. The Committee considers the minimum requirement of ten trade unions, with at least one from each province, for establishment of a national federation as excessively high and therefore requests the Government to take the necessary measures so as to lower it.*

946. *As regards the allegations of restriction of the right to strike, the Committee notes that the complainants point out that the new law imposes longer time limits before the strike can be called: 15 days for a bilateral negotiation with an employer and, where the settlement is not reached, 15 days for a conciliation procedure. The Committee requests the Government to provide information on whether there is an additional waiting period relative to strike notice before initiating a strike action and, if so, to indicate the duration.*

947. *Regarding section 65(5) of the IRO, which provides for the possible disqualification of a trade union office-bearer from holding any trade union office throughout the following term (and not for an unlimited term as alleged by the complainants) for committing an unfair labour practice broadly defined under the IRO, the Committee considers that such a penalty runs counter to the right of workers to elect their representatives freely since the unfair labour practice referred to in section 65 of the IRO covers a wide range of conduct not necessarily making it inappropriate for persons found guilty under this section to hold a position of trust, such as trade union office. The Committee therefore requests the Government to take the necessary measures in order to repeal this section and to keep it informed in this respect.*

948. *On the issue of protection against acts of anti-union discrimination, the Committee notes the complainants' allegation that although section 46(5) of the IRO empowers the Labour Court to award compensation to workers who were wrongfully dismissed, it does not provide for the power of the Court to order reinstatement and that the new law restricts the right of workers to seek interim remedies from the National Industrial Relations Commission against any "dismissal, discharge or removal from employment or transfer" based on their engagement in trade union activities, as section 49(4)(e) provides that those measures can be granted only during an industrial dispute. The Committee regrets that the Government has not provided information in this respect.*

949. *The Committee observes that section 46(5) states that in the case where the termination of employment has been held to be wrongful, the Labour Court "may award compensation […] in lieu of reinstatement of the worker" and section 48(7) provides for an appeal to the High Court of a decision of the Labour Court "directing the reinstatement of a worker or a compensation". The Committee therefore concludes that the legislation provides for the possibility of reinstatement of workers in their jobs.*

950. *As for the inability of the Commission to grant interim measures in case of dismissal of workers engaged in trade union activities, the Committee considers that as long as protection against anti-union discrimination is in fact ensured, the methods adopted to safeguard workers against such practices may vary from one State to another. 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 unionists 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. 737 and 749]. In the absence of any indication by the complainants and by the Government as to the usual length of the procedure before the Commission, the Committee points out that cases concerning anti-union discrimination should be examined rapidly, so that necessary remedies can be really effective.*

951. *As concerns the allegation that measures of reinstatement and compensation can only be granted during an industrial dispute, the Committee requests the Government to amend its legislation so as to allow workers to seek legal remedies against the acts of anti-union discrimination at any time and not only during an industrial dispute.*

952. *The Committee notes the complainants' statement that despite the opposition of the majority of trade union organizations, the old labour judiciary system with its lengthy litigation was maintained and that the National Industrial Relations Commission has always acted against the interests of workers. The Committee notes that the versions provided by the two parties on this matter are mutually contradictory, as the Government indicates that the role of the National Industrial Relations Commission has been revised so as to make it an effective organization with particular aim to promote a healthy trade unionism in the country and that in order to provide speedy justice, the Labour Appellate Tribunals have been abolished as recommended by the Pakistan Tripartite Labour Conference and that the high courts became appellate courts for the adjudication made in labour courts.*

953. *Regarding the allegations that the legal proceedings concerning labour issues are overly lengthy, the Committee recalls the importance it attaches to such proceedings being concluded expeditiously, as justice delayed is justice denied. Furthermore, the Committee emphasizes the value of consulting organizations of workers during the preparation and application of legislation which affects their interests as well as the importance it attaches to the promotion of dialogue and consultation on matters of mutual interest between the public authorities and the workers' organizations [see **Digest**, op. cit., paras. 924-929]. The Committee requests the Government to engage in full consultations with the social*

partners on the possible amendment of the IRO in order to resolve this issue to the satisfaction of all the parties concerned. It requests the Government to keep it informed in this respect.

954. *As regards the alleged violation of the right to collective bargaining, the Committee notes that there are two sets of allegations: (1) no application for determination of the collective bargaining agent at the same establishment may be made for a period of three years once a registered trade union has been certified as collective bargaining agent (section 20(11) of the IRO), this situation compelling the collective bargaining agent to sign a collective agreement for three years; and (2) the period for which collective agreements are in force, in the case where this period has not been agreed upon by the parties, has been extended by the new legislation to a period of two years (section 60). The Committee further notes that no observation on this matter has been received from the Government.*

955. *With regard to the first set of allegations, the Committee considers that if there is a change in the relative strength of unions competing for the power to represent workers exclusively for collective bargaining purposes, then it is desirable that it should be possible to review the factual bases on which that power was granted. In the absence of such a possibility, a majority of the workers concerned might be represented by a union which, for an unduly long period, could be prevented from organizing its administration and activities with a view to fully furthering and defending the interests of its members. Moreover, where the most representative union which, enjoying exclusive bargaining rights, concluded an agreement has lost its majority and another union has in the meantime become the majority union and requests the cancellation of this agreement, it should be possible to make appropriate representations to the employer regarding the recognition of this union, notwithstanding the agreement [see **Digest**, op. cit., paras. 836 and 825]. The Committee therefore requests the Government to take the necessary measures so as to amend the IRO accordingly and keep it informed in this respect.*

956. *As concerns the period for which collective agreements are in force, the Committee considers that a statutory provision providing that a collective agreement should be in force for two years when no other period has been agreed by the parties does not constitute a violation of the right to collective bargaining.*

957. *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.*

The Committee's recommendations

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

(a) Recalling the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights, the Committee trusts that any future consultations with social partners regarding legislation affecting trade union rights will be carried out to the satisfaction of all the parties concerned.

(b) The Committee requests the Government to amend its legislation so as to ensure that workers of Bata Shoes company; Pakistan Security Printing Corporation; Pakistan Security Papers Ltd.; Pakistan Mint; establishments or institutions maintained for the treatment and care of sick, infirm, destitute and mentally unfit persons; institutions established for payment of employees' old-age pensions or workers' welfare; members of Watch and

Ward; security and fire services staff of an oil refinery; or establishments engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products, or of a seaport and airport; railways; and administration of the State, enjoy the right to establish and join organizations of their own choosing.

(c) The Committee requests the Government to amend its legislation in order to ensure that workers' organizations are allowed to determine themselves whether they wish to join a federation and if that is the case to enjoy the right to establish and join the federation of their own choosing.

(d) Recalling that measures of administrative control over trade union assets, such as financial audits, should be applied only in exceptional cases, the Committee requests the Government to take the necessary measures in order to repeal section 19(1) of the IRO.

(e) The Committee requests the Government to take the necessary measures in order to lower the minimum requirement of ten trade unions, with at least one from each province, for establishment of a national federation, which it considers as excessively high.

(f) The Committee requests the Government to provide information on whether there is an additional waiting period relative to strike notice before initiating a strike action and, if so, to indicate the duration.

(g) Considering that disqualification of a trade union officer from holding any trade union office for the following term for committing an unfair labour practice, which covers a wide range of conduct not necessarily making it inappropriate for persons found guilty to hold a position of trust, such as trade union office, runs counter to the right of workers to elect their representatives freely, the Committee requests the Government to repeal section 65(5) of the IRO.

(h) The Committee requests the Government to engage in full consultations with the social partners on the possible amendment of the IRO in order to resolve the issue concerning the labour judiciary system to the satisfaction of all the parties concerned.

(i) Considering that if there is a change in the relative strength of unions competing for the power to represent workers exclusively for collective bargaining purposes, then it is desirable that it should be possible to review the factual bases on which that power was granted, the Committee requests the Government to take the necessary measures so as to amend the IRO accordingly.

(j) The Committee requests the Government to amend its legislation so as to allow workers to seek legal remedies against the acts of anti-union discrimination at any time and not only during an industrial dispute.

(k) The Committee requests the Government to keep it informed of the measures taken or envisaged on the abovementioned matters.

(l) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.

CASE NO. 2134

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

Complaint against the Government of Panama presented by the National Federation of Associations and Organizations of Public Servants (FENASEP)

Allegations: Mass dismissal of public servants and public service trade union officers for partisan political reasons; criminal trial of a union officer for "offences against honour".

959. The Committee examined this case at its meeting in March 2002 and presented a provisional report [see 327th Report, paras. 705-737, approved by the Governing Body at its 283rd Session (March 2002)].

960. The National Federation of Associations and Organizations of Public Servants (FENASEP) sent additional information in a communication dated 31 May 2002. The Government replied in a communication dated 24 September 2002.

961. Panama 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

962. At its meeting in March 2002, the Committee drew up the following conclusions and recommendations on the questions that remained pending [see 337th Report, paras. 732-736]:

– The Committee notes that in this case the complainant organization alleges that 44 trade union leaders have been dismissed in the context of the mass dismissal of thousands of public servants for partisan political reasons following the change of government in September 1999.

– The Committee takes note of the Government's statements to the effect that: (1) the outgoing Government had improperly granted permanent appointments to 5,634 public servants during the transition period; (2) it had therefore issued resolution No. 122 dated 27 October 1999, temporarily suspending access to permanent appointments, and ordered an overhaul of the system; once that had been attained, it then issued resolution No. 50 dated 6 July 2001, which rendered null and void the decision adopted in resolution No. 122 to the effect that public servants who met the minimum requirements could be accredited as permanently appointed public servants; (3) those subjected to dismissal or "removal of accreditation" (i.e. whose permanent appointment was cancelled even though they remained in their posts) had remedies at their disposal and many had obtained rulings in their favour; and (4) the Government had needed to take corrective action in order to ensure that those who were accredited met the minimum

legal requirements (length of service, educational qualifications, etc.) and in fact it had transpired that a large number of accreditations had been made improperly.

– Although it has taken note of the Government's statements, the Committee must draw attention to the danger of unfairness inherent in mass dismissals of public servants and regrets that 44 trade union leaders have been dismissed without any preliminary procedures being followed, which is contrary to the provisions of section 118 of Decree No. 222 which requires that a dismissal be done on fair motives, that a preliminary procedure is respected and that a rapid investigation be undertaken with the possibility for the dismissed worker to defend himself. Given the serious impact of these decisions on the exercise of trade union rights, the Committee requests the Government to promote the reinstatement of the trade union leaders in their posts inasmuch as they meet the legal requirements for permanent appointment and inform it of procedures undertaken since the dismissals.

– Lastly, the Committee requests the Government to send its observations on the allegations relating to the criminal charges against the trade union officer, Mr. Alberto Ibarra.

B. Additional information from the complainant

963. In its communication dated 31 May 2002, the complainant states that, up to May 1999, approximately 6,000 public servants had been accredited. In total, some 2,500 public servants were excluded from permanent appointments, and about 1,000 of these were dismissed. Between September 1999 and May 2002 more than 19,000 public servants were dismissed without just cause.

964. The complainant reports that the judicial authorities are severely delaying decisions on reinstatement and have issued five reinstatement orders in only about 500 cases; in some 250 cases they found against the public servants and in favour of the state institutions concerned.

965. The complainant adds that the list of union officers dismissed has grown since the complaint was presented to the Committee (a list of 16 names is attached).

966. In addition, resolution No. 122 was the subject of legal and constitutional appeals. The former action resulted in an inhibitory ruling, on the grounds that the resolution had been rendered null and void by resolution No. 50 dated 6 July 2001. The constitutional appeal is still pending.

967. None of the 44 union officers referred to in the Committee's recommendations has been reinstated.

968. Lastly, the complainant points out that the Government has so far given no reply regarding the criminal case brought against the union officer Mr. Alberto Ibarra, who has been charged with "offences against honour", under a ruling given on 30 October 2001 by the 11th Criminal Circuit Court of the 1st Judicial Circuit of Panama; the lack of independence of the judicial authority in this case is worrying, given that its subordination to the executive body is a matter of public knowledge.

C. The Government's reply

969. In its communication dated 24 September 2002, the Government recalls that, in its previous reply, it had given clear details of everything connected with permanent appointments under the terms of Act No. 9 of 20 June 1994 and Decree No. 222 of 12 September 1997 approving the Regulations for permanent appointments in the Republic of Panama. In this reply, the Government explained to the Committee the legal concepts of

public servants in office and public servants appointed by free nomination and transfer, as laid down in Act No. 9 of 20 June 1994, which "establishes and regulates permanent appointments". They are: (1) public servants in office: "those who, at the date of entry into force of this Act and its Regulations, occupied a public post classified as permanent, until such time as they obtain, through the established procedures, the status of permanently appointed public servants, or are discharged from public service"; (2) public servants appointed by free nomination and transfer: "those who provide secretarial, consultative, auxiliary or other services assigned directly to public servants, who are not part of any permanent appointments system and, by the nature of their functions, are appointed on the basis of the confidence of their superiors, the loss of that confidence entailing the loss of the post occupied by them". In the reply quoted, it was stated that all personnel actions had been carried out in accordance with due process, ensuring the constitutional and legal guarantees for the public servants who were the subject of these actions.

970. With regard to the 44 people mentioned by FENASEP as union officers, the Government states that, of the documents submitted, it has not found any which accredit their status as union officers. By contrast, in the Republic of Panama, no trade union has that number of members on its executive, and the information submitted in the complaint is therefore at odds with reality. The Ministry of Labour and Development (MITRADEL) proceeded to make inquiries in order to determine whether the people included in FENASEP's complaint were protected under the permanent appointments system and, if they were so protected, whether they had fulfilled the legal requirements for a public servant to be included in the said system, and whether the dismissals had been carried out in accordance with due process. Their inquiries concluded that none of the 44 people mentioned as "supposed union officers" had legally entered the permanent appointments system. On the other hand, it has been reliably established that all personnel actions concerning the 44 people were carried out legally and in accordance with due process. In the majority of cases the interested parties, exercising the right to defence, went through review and appeals procedures, which were decided in strict accordance with the law. The Government details all 44 cases in an extensive communication, giving the various decisions made and administrative processes involved for each case.

971. In view of this, the Government stresses that the Republic of Panama has complied with legislation and, as such, cannot legally reinstate any of the 44 people named in FENASEP's complaint.

972. With regard to the allegations made concerning the criminal charges brought against the union officer Mr. Alberto Ibarra, the Government states that, having been dismissed for prolonged unjustified absence from his post, and his dismissal having been confirmed by a body which guaranteed due administrative process, he dedicated himself to making public declarations against the National Institute of Culture (INAC), specifically against the honour, dignity, decorum and good name of certain public servants. Those insulted namely Hugo Eliécer Bonilla (Directorate of Legal Assessment), José Angel Samaniego Amaya (Treasury Department) and Edwin Cedeño (National Arts Directorate), consequently brought criminal charges against Alberto Ibarra for "offences against honour". In accordance with a decision by the 7th Circuit Public Prosecutor of the Office of the National Attorney-General, Mr. Alberto Ibarra Mina was taken to court for alleged infractions of rules laid down in Book Two, Title III, Chapter I, of the Penal Code, i.e. Offences Against Honour in accordance with section 2222 of the Judicial Code. The 11th Criminal Circuit Judge of the 1st Judicial Circuit of Panama, who attended the case, opened proceedings against Alberto Ibarra Mina for alleged infractions of criminal laws laid down in Chapter I, Title III, of Book Two of the Penal Code. Following the preliminary hearing, she considered there to be sufficient evidence to proceed with the charges against the accused, and set the date for the next hearing for April 2003.

D. The Committee's conclusions

973. *With regard to the alleged dismissal of 44 union officers, the Committee takes note that, according to new allegations from the complainant, 16 further dismissals of union officers have taken place. The Committee takes note of the Government's statements concerning the dismissal of 44 union officers, in particular that: (1) the figure of 44 union officers is at odds with reality and the complainant has not accredited their status as union officers; (2) the people in question had not legally entered the permanent appointments system; (3) the dismissals were carried out legally and in accordance with due process and the majority of the interested parties went through review and appeals procedures on which rulings have been given; (4) having complied with legislation, the authorities cannot legally reinstate any of the 44 people in their posts. The Committee also notes that, according to the complainant, the judicial authorities have ruled on only 250 cases (a total of 500 cases in which reinstatement was requested).*

974. *The Committee refers to its previous conclusions in the present case regarding the allegations of dismissal of union officers in the context of mass dismissals of public servants for partisan political reasons, which have affected thousands of public servants since the new Government took over (September 1999). The Committee drew attention to the danger of unfairness inherent in mass dismissals of public servants [see 327th Report, para. 734] and concentrated its recommendations on the 44 union officers. The Committee notes that the Government in its reply claims that the 44 officers had benefited from due administrative process, that the complainant has reported that the judicial processes relating to 250 public servants have not been concluded, and that 16 further union officers have been dismissed. The Government objects to the classification of so many of the 44 people in question as "union officers", but has not indicated whether legal proceedings are under way in this respect. For its part, the Committee cannot exclude the possibility of some or all of the dismissals being related to the exercise of union rights, even in the context of mass dismissals of public servants.*

975. *Under these circumstances, the Committee requests the Government to examine the possibility of offering new posts to the union officers dismissed. Given that the Government and the complainant disagree about the union officer status applied to the 60 people dismissed (44 in the first instance and a further 16 subsequently), the Committee emphasizes that it is to the complainant to demonstrate their status as union officers during such negotiations. The Committee requests the Government to keep it informed in this respect.*

976. *Lastly, with regard to the criminal trial of the union officer Mr. Alberto Ibarra for offences against honour (section 2222 of the Judicial Code) against three public servants at INAC, the Committee notes that Mr. Ibarra has been summoned to appear in court and a judicial hearing is due to take place in April 2003. The Committee requests the Government to send it a copy of the ruling.*

The Committee's recommendations

977. ***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 examine the possibility of offering new posts to the union officers dismissed, on the understanding that it is for the complainant to demonstrate the status of the 60 persons concerned as union officers. The Committee requests the Government to keep it informed in this respect.

(b) The Committee requests the Government to send it a copy of the ruling given in the criminal trial of the union officer, Mr. Alberto Ibarra, for offences against honour.

CASE NO. 2105

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

Complaint against the Government of Paraguay presented by — the International Confederation of Free Trade Unions (ICFTU) and — the Trade Union of Workers of the National Electricity Authority (SITRANDE)

Allegations: The complainant organizations allege sanctions involving dismissals, suspensions, transfers, and warnings imposed on workers of the National Electricity Authority (ANDE) and other acts of anti-union discrimination following two strikes.

978. The Committee last examined this case at its November 2001 meeting [see 326th Report, paras. 432-450, approved by the Governing Body at its 282nd Session (November 2001)].

979. The Government sent its observations in communications dated 10 September and 10 October 2002.

980. Paraguay 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

981. At its November 2001 meeting, when it examined allegations relating to dismissals, suspensions, transfers and warnings against workers of the National Electricity Authority for participating in the strikes of 27 January and 22 February 2000, the refusal to recognize one of the members of the union's negotiating committee and intimidation against workers to make them leave their trade unions, the Committee made the following recommendations [see 326th Report, para. 450]:

- as regards the allegations of dismissals, suspensions, transfers and warnings against workers for participating in the strikes, the Committee requests the Government to mediate between the parties with a view to enabling them to achieve a joint negotiated settlement of this dispute;
- as regards the allegations that special bonuses were paid to workers who had not taken part in the strike, the Committee requests the Government to take the necessary steps to carry out investigations into these allegations and, if it is established that these allegations are true, to ensure that there is no recurrence of such acts in the future within the administration;
- as regards the restrictions with regard to the use of trade union leave, the Committee requests the Government to ensure that no unnecessary restrictions are placed on normal trade union activities; and

– with regard to the alleged anti-union practices against workers in the form of intimidation, threats of dismissals and suspensions, and pressure put on workers to make them leave their trade unions, the Committee requests the Government to take the necessary measures to carry out an investigation to establish the facts, and to provide its observations in this respect.

B. The Government's reply

982. In communications dated 10 September and 10 October 2002, the Government refers in detail to the strikes carried out by the trade union organization SITRANDE in January and February 2000, following which 70 workers were dismissed, 80 suspended and 30 transferred (the strikes were declared illegal by the courts of first instance, but the Supreme Court of Justice issued precautionary measures ordering the suspension of the dismissals, suspensions, transfers and warnings). First, the Government emphasizes that the National Electricity Authority (ANDE) has not undertaken a campaign of anti-union discrimination and that the Ministry of Labour and Justice has always ensured that labour rights are fulfilled and respected, in particular the right to strike. Thus, faced with a call to strike, the administrative labour authority proceeded to call for tripartite meetings.

983. The Government states that in the present case, on 18 June 2000, ANDE and the trade union organization SITRANDE came to an agreement with regard to the granting and use of trade union leave. On 26 March 2001, the Government and rural workers' and social organizations agreed the following: (a) there would be no dismissal, severance, labour separation, transfer or change in employment conditions of workers in the National Electricity Authority for reasons relating to trade union privileges or the strikes carried out by these workers in past years and/or for budgetary reasons, and (b) to give effect to the collective agreements on labour conditions in the public sector within the legal framework.

984. Finally, the Government states that currently trade union officials of SITRANDE and representatives of ANDE have set up a round table for social dialogue and bargaining through which various agreements have been achieved.

C. The Committee's conclusions

985. *The Committee notes that the allegations examined at its November 2001 meeting referred to dismissals, suspensions, transfers and warnings against workers of the National Electricity Authority (ANDE) and other acts of anti-union discrimination (suspension of payment of bonuses, intimidation and threats of dismissal and suspension and restrictions on the use of trade union leave) following two strikes in January and February 2000.*

986. *In this respect, the Committee notes the Government's statement that the strikes in question were declared illegal by the courts of first instance, but that the Supreme Court of Justice issued precautionary measures ordering the suspension of the dismissals, suspensions, transfers and warnings. The Committee also notes that the Government states that in the framework of this conflict various agreements were made: (1) on 18 June 2000, SITRANDE and ANDE came to an agreement with regard to the granting and use of trade union leave; (2) on 26 March 2001, the Government and workers' organizations agreed that there would be no dismissal, severance, labour separation, transfer or change in employment conditions of workers of ANDE for having participated in the strikes in 2000, and collective agreements on labour conditions in the public sector would be given effect; and (3) recently, SITRANDE and ANDE had set up a round table for social dialogue and bargaining through which a number of agreements had been concluded.*

987. *In these circumstances, the Committee requests the Government to take steps to ensure that the agreements made between SITRANDE and ANDE not to sanction workers for their*

participation in the strikes of January and February 2000 are given full effect. The Committee also requests the Government to keep it informed of all steps taken to implement these agreements and, in particular, to keep it informed of developments with regard to the reinstatement of the 70 dismissed workers, the suspension of 80 and the transfer of 30 workers.

The Committee's recommendations

988. ***In the light of the 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 the agreements made between the trade union SITRANDE and the National Electricity Authority (ANDE) not to sanction workers for their participation in the strikes in January and February 2000 are given full effect.

(b) The Committee also requests the Government to keep it informed of all steps taken to implement these agreements and, in particular, to keep it informed of developments with regard to the reinstatement of the 70 dismissed workers, the suspension of 80 and the transfer of 30 workers.

CASE NO. 2111

INTERIM REPORT

Complaints against the Government of Peru presented by
— the General Confederation of Workers of Peru (CGTP)
— the Federation of Peruvian Light and Power Workers (FTLFP) and
— the National Federation of Miners, Metalworkers and Steelworkers of Peru (FNTMMS)

Allegations: Dismissals of trade union officers and members from Telefónica del Perú S.A.A. as a result of a strike in protest at mass dismissals in the context of restructuring, pressure on rehired workers to resign from trade unions; dismissal of union officers from the mining company Iscaycruz, pressure on union members to resign and requests from the company to dissolve the union; refusal by the authorities to register the FTLFP; dismissal of a union officer from the Compañía de Minas Buenaventura S.A., and criminal proceedings against officers of the Toquepala Workers' Union for defamation.

989. The Committee examined this case at its meeting in November 2001 and presented an interim report to the Governing Body [326th Report, paras. 451-477, approved by the Governing Body at its 282nd Session (November 2001)]. New allegations have recently

been presented by the Federation of Peruvian Light and Power Workers (FTLFP) (29 January 2002), the General Confederation of Workers of Peru (CGTP) (2 July 2002) and the National Federation of Miners, Metalworkers and Steelworkers of Peru (FNTMMS) (5 September and 1 October 2002). The Government sent new observations in communications dated 11 January, 7 March, 6 and 16 September and 14 November 2002.

990. 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

991. When the case was last examined, in November 2001, certain matters were left pending. They relate to: (1) dismissals of union members at Telefónica del Perú S.A.A. as a result of a strike against mass dismissals in the context of restructuring of the company; (2) alleged pressure on the company's workers to resign from their unions; and (3) the dismissal of union officer Mr. José Castañeda Espejo from the regional electricity utility enterprise Electronorte Medio S.A. The Committee drew up the following recommendations on these matters [see the 326th Report, para. 477]:

– The Committee requests the Government to inform it whether the collective dispute in the Telefónica del Perú S.A.A. enterprise referred to in this case has been completely settled or whether aspects still remain to be settled, in particular with regard to dismissals connected with the strike [the Government had reported the signing of a collective agreement and the reinstatement of 75 workers].

[...]

– Concerning the dismissal of the trade union officer Mr. José Castañeda Espejo (from the regional electricity utility enterprise Electronorte Medio S.A.), the Committee requests the Government to send it a copy of the final ruling of the judicial authority.

– The Committee requests the Government to send its observations on the alleged pressure brought to bear on the workers of Telefónica del Perú S.A.A. who were rehired to prevent them from joining trade unions.

B. New allegations

992. In its communication of 29 January 2002, the Federation of Peruvian Light and Power Workers (FTLFP) alleges that, despite having been constituted in 1963, it has been unable to obtain legal recognition and registration from the various administrative authorities, in particular the Lima Public Registrations Office, thus preventing the FTLFP from registering ownership of its building, which is also claimed by the transnational EDELNOR. The FTLFP points out that, for some years, staff in the Lima Public Registrations Office have been systematically inventing new requirements and objections to prevent legal registration of the complainant.

993. In its communication of 2 July 2002, the General Confederation of Workers of Peru (CGTP), alleges that for the third time since 1987, the Compañía de Minas Buenaventura S.A. has dismissed the union officer, Victor Taype Zúñiga, for his union activities. On previous occasions, the judicial authority had ordered the officer's reinstatement in his post. In the case of the third dismissal, the judicial authority originally ruled in favour of reinstating him, but the company continues to adopt delaying tactics, alleging errors of procedure (the judicial appeals authority has twice revoked the initial ruling on these grounds).

994. Furthermore, in a communication dated 1 August 2002, the CGTP alleges irregularities in the processing of a complaint by the Southern Peru Copper Corporation against the Toquepala Workers' Union and others (without specifically naming the alleged authors), alleging aggravated defamation merely on the basis of an unsigned pamphlet accusing the company of irregularities (12-hour working days and up to 60-hour weeks from 10 April 2002 onwards). The company has acted in this manner in order to be able to dismiss the union officers later. The CGTP claims that the unsigned pamphlet could even have been fabricated by the company.

995. The National Federation of Miners, Metalworkers and Steelworkers of Peru (FNTMMSP) alleges, in communications dated 5 September and 1 October 2002, that Mr. Tomás Castro and Mr. Edwin Espinoza Martínez, officers of the Single Trade Union of Mineworkers and Metalworkers of Iscaycruz, were dismissed on 11 June 2001 (the union having been founded on 24 April 2001), and that the company is conducting a campaign to make workers resign from their unions, threatening dismissal and giving them union resignation letters to sign. Of 126 original members the union had only 36 at the date of complaint (September 2001). On 13 August 2001 the company requested the Ministry of Labour to dissolve the union for not having the legal minimum number of members. On 31 August 2001 the company dismissed union officer Mr. Jesús Vázquez Ampuero, Mr. Rafael Prado Velarde (who had led a union gathering that month), union member Nicolás Cano Richard Arturo and three other union members. The complainant fears for the jobs of the remaining union members.

C. Further replies of the Government

996. In its communication dated 11 January 2002, the Government reports that it has asked the judicial authority for a ruling in the case of the dismissal of union officer Mr. José Castañeda Espejo (which, as the Government had already told the Committee, had originally been unfavourable towards the said officer).

997. With regard to the allegations of pressure on workers rehired by Telefónica del Perú S.A.A. not to join a union, the Government states that this fact has not been substantiated in any way and so, without the information necessary to make a judgement, it is unable to comment; however, national legislation provides for mechanisms to ensure unconditional respect for workers' rights.

998. In its communication dated 7 March 2002, the Government refers to information from Telefónica del Perú S.A.A. on the results of the activities of the tripartite committee established by a collective agreement dated 7 December 2000 to examine the cases of the workers affected. The company reports that, apart from the 75 workers whose reinstatement had already been communicated to the Committee following a statement of intent dated 6 March 2000, the remaining 50 workers who had been dismissed for serious offences were reinstated with full social benefits. Together with the previous 75 workers, this covers all the individual cases examined by the tripartite committee.

999. In its communication dated 6 September 2002, the Government states, in relation to the dismissal of union officer Mr. Victor Taype Zúñiga for a breach of the conditions of union immunity, that when Mr. Taype's case came before the judicial authority it was found to fall beyond the jurisdiction of the public administration owing to the principle of separation of powers. Under legislation, dismissals for union membership or participation in union activities are null and void.

1000. In its communication dated 16 September 2002, the Government states that on 31 May 2002 the Federation of Peruvian Light and Power Workers was entered in the Register of Associations, once it had complied with all legal requirements.

1001. With regard to the allegations of harassment by the Southern Peru Copper Corporation against the officers of the Toquepala Mineworkers' Union by bringing criminal charges against them for alleged defamation, in its communication dated 14 November 2002, the Government states that, in the case of harassment of workers, a legal action can be brought to end the harassment and impose sanctions within 30 days of the end of the time given to the employee to prepare his defence. The Government also states that legislation prohibits any action which might in any way curtail the right to organize. The company has emphasized the following points: the defamation for which it has brought charges prejudices the image of the company and the people who represent it; despite the union's denial of having produced the defamatory pamphlets, the investigation carried out by the judicial police has found evidence that the pamphlets were produced both in the mining town of Toquepala and the city of Tacna, and they have statements from people asked to distribute them by various union officers; the criminal charges brought by the company are not against the trade union but against people who represent it; the company has not infringed any international labour standard and has acted in accordance with Peruvian law, as a legal entity with rights as well as obligations.

D. The Committee's conclusions

1002. *With regard to the dismissals announced at Telefónica del Perú S.A.A. as a result of a strike against mass dismissals in the context of restructuring, the Committee notes with interest the reinstatement, as reported by the Government, of the remaining 50 workers who had been dismissed and whose cases had been examined by the tripartite commission established by a collective agreement dated 7 December 2002.*

1003. *With regard to the allegations of pressure on workers rehired by Telefónica del Perú S.A.A. not to join a union, the Committee takes note of the Government's statements that legislation provides for mechanisms protecting against such practices, and that the complainant has not substantiated its allegations in any way. Bearing in mind the general nature of the allegations, the Committee will not pursue its examination of this point, unless the complainants provide new information on their allegations.*

1004. *With regard to the refusal to register the Federation of Peruvian Light and Power Workers, the Committee notes with interest that the organization was entered in the Register of Associations on 31 May 2002.*

1005. *As regards the dismissal of union officer Mr. Victor Taype Zúñiga for his union activities, the CGTP has stated that the original ruling was in favour of his reinstatement but that, as a delaying tactic, the company has alleged procedural errors, and the judicial authority has twice so far set aside the original ruling. The Committee takes note of the Government's statement to the effect that, when Mr. Taype's case came before the judicial authority, it was found to fall beyond the jurisdiction of public administration owing to the principle of separation of powers. The Committee requests the Government to send it a copy of the final ruling in the case of the dismissal of Mr. Victor Taype Zúñiga, and hopes that the judicial authority will give a ruling on the matter without delay.*

1006. *Regarding the allegations relating to the criminal case brought by the Southern Peru Copper Corporation against the Toquepala Mineworkers' Union and others for alleged aggravated defamation, the Committee notes that according to the complainant, the charges have been brought on the basis of unsigned pamphlets in the hope of finding reasons to dismiss the union's officers. The Committee takes note of the company's statements to the effect that: (1) acts of defamation prejudice the image of the company and its representatives; (2) the pamphlets were produced in the mining town of Toquepala; and (3) statements have been taken from people asked to distribute them by various union*

officers. The Committee requests the Government to inform it of the judicial authority's ruling.

1007. *With regard to the FNTMMSP's allegations dated 5 September and 1 October 2002 (the dismissal in Iscaycruz of union officers Mr. Tomás Castro, Mr. Edwin Espinoza Martínez and Mr. Jesús Vázquez Ampuero, union members Mr. Rafael Pardo Velarde, Mr. Nicolás Cano Richard Arturo and three others; the reduction in the number of union members from 126 to 36 as a consequence of the company's threats to make workers resign from the union; and the company's request to the Ministry of Labour for the union to be dissolved for not having the legal minimum number of members), the Committee regrets that the Government has not sent its observations and requests it to carry out an investigation into these serious allegations and, should the alleged anti-union actions be proven, to take the necessary measures to rectify the situation. The Committee requests the Government to keep it informed in this respect.*

1008. *Lastly, the Committee again requests the Government to send it a copy of the ruling on the dismissal of trade union officer Mr. José Castañeda Espejo.*

The Committee's recommendations

1009. ***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 send it a copy of the final ruling in the case of the dismissal of union officer Mr. Victor Taype Zúñiga, and hopes that the judicial authority will give a ruling on the matter without delay.

(b) Regarding the allegations relating to the criminal case brought by the Southern Peru Copper Corporation against the Toquepala Mineworkers' Union and others for alleged aggravated defamation, the Committee requests the Government to inform it of the judicial authority's ruling.

(c) With regard to the FNTMMSP's allegations dated 5 September and 1 October 2002 (the dismissal in Iscaycruz of union officers Mr. Tomás Castro, Mr. Edwin Espinoza Martínez and Mr. Jesús Vázquez Ampuero, union members Mr. Rafael Pardo Velarde, Mr. Nicolás Cano Richard Arturo and three others; the reduction in the number of union members from 126 to 36 as a consequence of the company's threats to make workers resign from the union; and the company's request to the Ministry of Labour for the union to be dissolved for not having the legal minimum number of members), the Committee regrets that the Government has not sent its observations and requests it to carry out an investigation into these serious allegations and, should the alleged anti-union actions be proven, to take the necessary measures to rectify the situation. The Committee requests the Government to keep it informed in this respect.

(d) Lastly, the Committee again requests the Government to send it a copy of the ruling on the dismissal of trade union officer Mr. José Castañeda Espejo.

CASE NO. 2171

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

Complaint against the Government of Sweden presented by — the Swedish Confederation of Professional Employees (TCO) and — the Swedish Trade Union Confederation (LO)

Allegations: The complainants allege that the adoption of a statutory amendment enabling workers to remain employed until age 67 and prohibiting negotiated clauses on compulsory early retirement, will nullify collective agreements previously concluded and will prevent social partners from acting independently and autonomously in regulating their dealings through collective agreements.

1010. In a joint communication dated 20 November 2001, the Swedish Confederation of Professional Employees (TCO) and the Swedish Trade Union Confederation (LO) filed a complaint of violations of freedom of association against the Government of Sweden.

1011. The Government provided its observations in a communication dated 9 September 2002.

1012. Sweden 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 Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

1013. The complainants LO and TCO which, through their member federations, together represent 3.3 million manual workers and professional employees in the private and public sectors, allege in their complaint of 20 November 2001 that an amendment to the Security of Employment Act (LAS), passed by Parliament on 16 May 2001, violates Conventions Nos. 98 and 154, both ratified by Sweden.

1014. This amendment entitles workers to remain employed until age 67 and prohibits, with effect from 1 September 2001, collective and individual agreements obliging employees to terminate employment before age 67. In addition, provisions on compulsory retirement before age 67 contained in collective agreements concluded before 1 September 2001 will apply only for the duration of the collective agreement in force, but at most until the end of 2002.

1015. The complainants allege that the amendment: (i) violates fundamental ILO principles on the right of social partners to act as independent, autonomous organizations with the power of regulating their dealings through collective agreements; (ii) limits the social partners' freedom of negotiation and forbids them to conclude agreements on compulsory retirement before age 67; (iii) invalidates existing rules on obligatory retirement contained in collective agreements expiring after the end of 2002.

1016. Prior to the amendment, the point in time at which an employee was obliged to retire on old-age pension was in the great majority of cases regulated by collective or individual agreements, not by law. The great majority of employees were obliged by agreement to retire before they were 67; in the absence of such agreement, section 33 of the LAS provided that an employer could notify employees that their employment would terminate at age 67, in which case they were obliged to leave. The legislation being then non-mandatory, this left the parties free to agree among themselves, through collective or other agreements on compulsory retirement, which made it possible to take into account the characteristics of different occupations in collective agreements. For instance, the compulsory age of retirement has been set at 60 for heavy work below ground, and also for safety reasons as in the case of air traffic controllers. The new statutory rule has been prompted by a new pension system, agreed upon by five political parties. Basically, the reform has the effect of basing the pension payable on earnings during the whole working career and on the abolition of an upper age limit for earning pension credits.

1017. A 1999 departmental report had suggested a number of alternatives whereby both collective and individual agreements making retirement compulsory between the ages of 65 and 67 would be declared void and retirement would be made compulsory at age 67. This proposal was widely criticized by all labour market parties, and the Swedish tripartite ILO Committee commented that all these alternatives "… involve interference of one kind or another with the freedom of labour market parties to engage in collective bargaining and... Accordingly, all the alternatives entail problems in relation to Conventions Nos. 98 and 154". Another departmental memorandum presented new proposals in November 2000, i.e. a mandatory provision (and alternative transitional rules) in the LAS whereby employees would be entitled to continue working until age 67; this meant that it would not be possible to conclude agreements making retirement compulsory before age 67. This proposal was again criticized by LO, TCO and the Confederation of Swedish Enterprise, and the Swedish tripartite ILO Committee reiterated its views.

1018. In spite of this criticism, Parliament adopted on 16 May 2001 a Bill incorporating the following mandatory section into the LAS:

> Section 32 a)
>
> An employee is entitled to remain in employment until the end of the month in which he or she is 67 years old, unless indicated otherwise by this Act.
>
> 1. This Act enters into force on 1 September 2001.
>
> 2. Collective agreements concluded prior to the entry into force of this Act will apply in derogation of Section 32 a) until the agreement has expired, but on no account after the end of 2002.

1019. The complainant organizations object to the new mandatory rule, for the following reasons. Existing collective agreements embodying compulsory retirement provisions normally entail financial advantages in the form of a supplementary collective pension, which is generally regarded as a benefit by individual employees. The new legislation is based on the contrary assumption that agreements making retirement compulsory before age 67 are disadvantageous to employees. There has been large unanimity for a long time in Sweden that these matters should be regulated through collective agreements. The amendment reduces incentives to conclude collective agreements on pensions and, in practice, threatens to result at a later stage in rising the retirement age for whole categories of employees. Because of the uncertainty it entails, the amendment could also result in a growing number of disputes arising out of collective agreements, notably as regards the rates of pay and benefits to apply after the agreed compulsory retirement age, i.e. up to and including age 67: for instance, the employer's obligation to pay a supplementary pension ends when employees reach 65, even if they choose to continue working until 67.

1020. The question of compulsory retirement on pension has traditionally been settled in Sweden according to the requirements and conditions of specific occupations. Many collective agreements currently contain provisions on early compulsory retirement age because of the demands of the activity in question in terms of safety and health, or working conditions (e.g. traffic controllers, firefighters, dancers, railway motormen, etc.). Should these workers decide to continue working after the pensionable age laid down in their collective agreement, they would now risk being given notice by their employer for personal reasons, in which case they will probably lose the pension benefit associated with their collective pension agreement. In any event, they will probably face a heavy burden of litigation, or else will be subjected to other kinds of "ejection mechanism", which is unlikely to bring them a greater security of employment.

1021. In Sweden, as in most other Western European countries, the basic problem is that many employees lack the strength or ability to go on working beyond the regular retiring age. The actual average retirement age in Sweden today is 62; less than half the population between 60 and 64 years old is gainfully employed, and this figure drops to only a third of 64 year olds. Therefore, the statutory amendment does not solve this problem.

1022. Collective agreements concluded before 1 September 2001 containing rules on compulsory retirement before age 67 will become invalid as from 1 January 2003; on the other hand, the Bill explicitly provides that individual compulsory agreements made before 1 September 2001 will remain in force even after the new Act takes effect. This amounts to discrimination between collective and individual agreements concluded before the entry into force of the amendment, which violates the principle of promoting collective bargaining, contrary to Article 4 of Convention No. 98 and Convention No. 154.

1023. In addition, the restrictions on the parties' freedom to conclude collective agreements is unaccompanied by any agreement with the labour market parties, although it had always been a matter they would settle through collective bargaining. The complainants contend that Government and Parliament should make great efforts to reach an agreement but, if they fail, they should respect collective agreements already concluded.

1024. The restriction on the parties' freedom to conclude collective agreements is all the more remarkable in view of the fact that Sweden has already been the subject of an ILO complaint in 1994 for infringements of the right of free collective bargaining (Case No. 1760) which resulted in the Governing Body recommending Sweden to refrain in future from adopting provisions setting aside collective agreements concluded previously.

1025. The complainant organizations are in favour of a flexible retirement age, enabling workers who are willing and able to do so to choose between retiring or continuing to work between the ages of 61 and 67. This freedom of choice, however, is circumscribed by the amendment and by the fact that the new pension system affords certain employees a far smaller pension than under the old system. As a result, individual workers may feel compelled to continue working so as to accumulate a reasonable pension, which further reduces freedom of choice.

1026. The Swedish Council on Legislation, which consists of judges from the Supreme Court and the Supreme Administrative Court, and whose tasks include examining the compatibility of legislative proposals with Sweden's international commitments has expressed its doubts concerning the compatibility of the statutory proposals with ILO Conventions Nos. 98 and 154.

1027. The complainants conclude that the new statutory rule infringes fundamental principles regarding the right of social partners to act independently and autonomously and to regulate their dealings through collective agreements because: of the restrictions imposed

on free collective bargaining from 1 September 2001; and of the setting aside of some of the collective agreements as of 1 January 2003. The principle of the labour market parties' independence is so fundamental as to allow Government and Parliament very little scope for this kind of interference. There were no exceptional considerations involved (e.g. manifest danger to the national economy, national security or democracy) which could permit the Government to impose such restrictions, thereby breaching ratified Conventions and its commitment to promote the regulation of terms and conditions of employment by means of collective agreements.

B. The Government's reply

1028. In its communication of 9 September 2002, the Government states by way of background that the legislative amendment has been prompted by the new system of old-age pensions, fundamental to which is the "life income principle" whereby pension is influenced by a full lifetime's income. One of the underlying purposes of this principle is to encourage work and to enable people to influence their pension benefits by working longer than had been the case previously. The Government considers that it must still be possible to improve one's pension by working, even after starting to receive a pension. This depends to a large extent on a reduction of impediments to employment, in order to enable a larger group of people to improve their pension status. It was therefore essential to raise the compulsory retirement age. The situation is further aggravated by demographic trends, with large numbers of people retiring within the next few years; this is likely to lead to a period of general manpower shortage which will inhibit growth and impact on welfare in the long term. Measures were therefore urgently needed to counteract the shortage of manpower, one such measure being to reduce impediments for those who are willing and able to work beyond the age of 65, by raising the obligatory retirement age.

1029. The Government has made clear on several occasions that the question of allowing individuals to remain in employment until age 67 is best resolved by means of collective agreements; however, since no attempt was made by social partners to regulate this issue in spite of many discussions since the early 1990s, the change had to be effected through legislation. The Government contends that a mandatory rule with no exceptions makes it clear that this is a matter of employee's rights. All workers are treated equally and are thus able to decide for themselves whether or not to utilize their job security and earn pension credits for a longer period. It will now be possible for those workers who were previously obliged to retire at a relatively early age by collective agreement or statutory instrument, to remain in employment according to their own preference, albeit employers will be able to give employees a notice of dismissal if objective grounds can be proved for doing so. Previously, these employees were only able to retain their job by agreement with the employer.

1030. As regards the chronology of events, the Government states that a Pensions Working Party, including representatives of all political parties, was set up at the end of 1991. The Working Party concluded that, in a pension system with a flexible retirement age, there were strong reasons for enabling insured persons to continue working to an advanced age. In this connection, the question arose as to whether the social partners should continue to control the timing of obligatory retirement and whether the more or less universal age limit for obligatory retirement, which was 65, could be raised. The Working Party, noting that no adjustment had been made into collective agreements and not being prepared to limit itself to making an appeal to the social partners, recommended mandatory legislation to raise the obligatory retirement age to 67. The Bill then submitted to Parliament (Prop. 1993/94:250) provided that the age limit should primarily be raised by agreement between social partners, and if they failed to agree by the beginning of 1996, mandatory legislation should be considered.

1031. An Implementation Group was also set up, comprising representatives of the five political parties endorsing the agreement on a new pension system. On 14 November 1994, the Implementation Group invited representatives of the social partners to a consultation, where one of the subjects discussed was the age limit for obligatory retirement. The social partners were several times reminded of the importance of negotiating a settlement enabling employees to continue working until 67 years old. Following the conclusions of the Implementation Group, the Government proposed in the 1997 Budget Bill to defer any mandatory legislation until the end of November 1997, one of the reasons advanced being that those questions could be dealt with more smoothly by means of collective agreement than through mandatory legislation. The question was discussed at a further meeting of the Implementation Group and labour market representatives at the beginning of 1998.

1032. Based on an agreement between five of the political parties, the Swedish Parliament decided in June 1998 to reform the old-age pension system in order to create a more flexible system reflecting economic and demographic developments. Individual pension coverage continues to be based on a compulsory public system comprising both standard protection under the loss-of-earnings principle ("income-related old-age pension") financed by contributions, and a basic coverage ("guaranteed pension") financed by ordinary taxation revenue, for those who have had little earned income or none at all. The computation of income-related old-age pension is based on the lifetime income principle, which means that all pension-carrying income in a person's lifetime has an effect on the level of pension awarded. There is no limit to the earning of pension rights, and it can be drawn from age 61 at the earliest. As for the "guaranteed pension", it is a supplement to income-based pension and it can be drawn, at the earliest, from the month in which the beneficiary attains the age of 65.

1033. The Ministry for Industry, Employment and Communications drew up a memorandum setting out five alternative proposals on raising the obligatory retirement age to 67, noting once again that this question would be best resolved by means of collective agreements but remarking that legislation appeared the only possible recourse, as no amendment had been made to collective agreements. The memorandum was circulated for comments between July and September 1999 to the social partners, who were thus given another opportunity to comment. A further memorandum (Entitlement to work until age 67, Prop. 2001/01:78) was drafted in November 2000 by the Ministry, in response to criticism levelled at the earlier proposal, and containing the draft version of a mandatory provision on the right to retain employment until age 67; it was circulated for comment and discussion at a consultation meeting in December 2000, at which the social partners were again given the opportunity to make a statement. The Government Bill, proposing the inclusion in the LAS of a mandatory rule concerning the right of remaining employed until age 67, was passed by Parliament on 16 May 2001, with effect from 1 September 2001.

1034. The new mandatory rule entitles workers to remain employed until the end of the month where they reach 67, but does not oblige them to do so. After 1 September 2001, it is still possible to conclude agreements specifying an age at which the employee is entitled to retire on a pension, but such agreements cannot make retirement obligatory before age 67. A transitional clause provides that collective agreements' provisions on compulsory retirement before 67 years of age remain in force until the expiry of the agreement, but at most up to the end of 2002.

1035. As regards the specific allegation that the amendment reduces incentives for concluding collective agreements on pensions, the Government states that it regards freedom of collective bargaining as a highly important principle and is conscious that intervention can inhibit the status of collective agreements, but affirms that it has done its utmost to convince social partners to introduce themselves, by means of collective agreements, opportunities for the great majority of employees to go on working until age 67. Regretting

that they did not attempt to settle the issue among themselves, even though it had been under discussion for more than ten years, the Government had to introduce the changes through mandatory legislation. In the Government's opinion, it should be a matter of course for employees' organizations to promote greater opportunities of choice for workers.

1036. Regarding the alleged risk of the amendment leading to a higher retirement age for whole groups of employees, the Government explains that the purpose of the amendment is not to oblige individual workers to go on working until age 67, but to be able to retire voluntarily with a pension before that age. The point at issue is not a general rise in retirement age, but rather the introduction of a more flexible retirement age. Accordingly, no changes have been made concerning pension entitlement or computation. Entitlement to guaranteed pensions from age 65 will continue to exist, and the new income-based pension can already be drawn from age 61. As a result, the age qualification for old-age pension has been made more flexible, and employees now have an opportunity of increasing their pensions.

1037. As regards the complainants' apprehensions on a possible growth in the number of disputes, the Government points out that Swedish law, in accordance with Article 5 of Convention No. 154, provides a statutory procedure for the resolution of such disputes.

1038. Concerning the allegation that the new system may result in an "ejection mechanism" for workers whose jobs involve safety requirements or special safety and health conditions, the Government considers that the new system will impede such mechanisms, since employers will not be entitled to give workers a notice of dismissal unless they have objective grounds for doing so. If a worker is no longer able to practice his occupation, the employer can give him notice of dismissal, but since it is legally bound to endeavour to transfer the employee to other duties instead of being dismissed, the employee could be transferred to other suitable duties. The Government therefore considers that under the new system, workers' experience and skills will be utilized for longer periods, although possibly not in the same way.

1039. The Government shares the complainants' opinion that many people do not have the strength or the ability to continue working up to, or beyond, the age of 65, but considers that this is a separate problem which demands other kinds of measures. Vigorous action is needed in this respect and for this reason, measures aimed at the improvement of working conditions and health in the workplace have been presented in the 2002 Budget Bill. For the Government, although many people today lack the strength and ability to go on working beyond 65, it is important that those who are willing and able to do so should be entitled to continue working for a few years longer.

1040. As regards the alleged discriminatory treatment of collective and individual agreements (whereby the effects of the latter would still continue after the entry into force of the amendment), the Government states that no such provision has been enacted concerning individual contracts of service.

1041. Regarding the retroactive effect of the legislation, the Government states that in Sweden, rules are normally applicable only to legal relations arising after the law has entered into force. While considering that interference with existing collective agreements and individual contracts should be avoided, the Government admits that mandatory rules have sometimes been allowed to impact on pre-existing legal relations, but only with the utmost restrictiveness. The Government points out that collective agreements can be worded in many different ways and with various renewal clauses which make it hard to tell when agreements expire; several collective agreements are automatically renewed unless specifically cancelled; in addition, from the beginning of 2003, the question of being able to go on working until the age of 67 would be of direct consequence to persons included in

the new pension system. It was important that the new provisions achieve a rapid impact. Since collective agreements in Sweden cover a dominant portion of the labour market and the unionization rate is high, it was necessary to eliminate uncertainties regarding the duration of agreements: hence the necessity for the mandatory provisions to override collective agreements from 1 January 2003. The Government considers that this timing is reasonable, given that the social partners have known the issue for a long time. Individual contract services do not have the same coverage and interference with them is therefore less urgent in a social perspective.

1042. As to the allegation relating to a previous complaint against Sweden, the Government points out that the legislative issue which had prompted ILO criticism in 1994 differed from the matter now under consideration, as it concerned a provision which remained optional to the parties. The provisions on that occasion were concerned with altering collective agreements in force, whereas the present issue concerns the introduction of a mandatory provision on stronger job security.

1043. The Government concludes that, while authorities should refrain from interfering with previously concluded collective agreements, in judging whether a statutory provision can be deemed to be a violation of Article 4 of Convention No. 98, account must be taken of the reasons for the provision. The statutory provision in this case has been prompted by the new pension system introduced in Sweden, and the important principle of this new system is that it must be possible to influence the size of one's pension by working for a longer period than previously. This is a question of urgency and of great public interest, and a very important part of the entire pension reform. To make this a reality for a larger group of persons, certain obstacles had to be removed, one of them being the existing compulsory age limits in collective agreements. The purpose of the legislation is to enable workers to augment their pensions in keeping with the new pension system. The fact that the social partners have not attempted to resolve the matter by means of collective agreements, in spite of the long time elapsed and the numerous opportunities for dialogue, should also be taken into account.

1044. The Government further states, from a more general point of view, that the intention of international conventions cannot be for a member State, by ratifying them, to renounce for all times the possibility of legislating in a field which has previously been left to regulation by social partners themselves. If so, this would mean that States are deprived of the possibility of introducing legislation on matters of very great interest. The Government considers that a mandatory provision on wider employment security cannot be deemed at variance with Sweden's international commitments and, having regard to the circumstances, does not consider itself to be in breach of ILO Conventions.

C. The Committee's conclusions

1045. *The Committee notes that this complaint concerns the adoption of a legislative amendment which, as part of a reform of the pension system:*

– *entitles workers to remain employed until age 67;*

– *provides that clauses on compulsory retirement before age 67 contained in collective agreements concluded before 1 September 2001 will apply only for the duration of agreements in force, but at most until the end of 2002; and*

– *prohibits, from 1 September 2001, collective agreements obliging employees to leave employment before age 67.*

1046. *The Committee first notes that, while it is not competent to comment upon the Government's decision to raise the compulsory retirement age as part of the pension reform, it may examine whether, in so doing, the Government respected freedom of association principles. The Committee points out that the issue here is twofold, as the legislative amendment produces both past and future effects.*

1047. *As regards collective agreements concluded before 1 September 2001, the Committee observes that the amendment nullifies, as of 31 December 2002, the legal validity and application of clauses stipulating a compulsory age of retirement before the age of 67. The Committee notes that the Government does not deny the retroactive effect of the challenged provision but justifies it on several grounds, including: the exceptional and restricted nature of the amendment; the uncertainties about the expiry dates of the numerous existing collective agreements, which cover a large part of the workforce; the importance of ensuring a rapid impact for the new legal regime, including the consequences for employees concerned by the new pension system. While taking note of these reasons, the Committee recalls that a legal provision which empowers the employer to modify unilaterally the content of signed collective agreements, or to require that they be renegotiated, is contrary to principles of collective bargaining [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 848]. The same principle applies,* ***mutatis mutandis****, to a government acting as employer or as the authority establishing the rules applicable in such matters.*

1048. *The primary reason for such a conclusion is that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of freedom of association principles [see* ***Digest****, op. cit., para. 844]. Secondly, one has to take into account the reality of collective bargaining, which implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured, at the very least for the duration of the agreement, such agreement being the result of compromises made by both parties on certain issues, and of certain bargaining demands dropped in order to secure other rights which were given more priority by trade unions and their members. If these rights, for which concessions on other points have been made, can be cancelled unilaterally, there could be neither reasonable expectation of industrial relations stability, nor sufficient reliance on negotiated agreements. Thirdly, the bargaining partners are best equipped to weigh the justification and determine the modalities (and, as far as employers are concerned, the financial practicability) of such negotiated compulsory retirement clauses before the legal retirement age, be it by reason of the difficult nature of the job, or for health and safety reasons.*

1049. *The Committee therefore concludes that agreements previously negotiated should continue to produce all their effects, including those concerning compulsory retirement before the age set in general legislation, until their expiry date, including after 31 December 2002. It requests the Government to take appropriate remedial measures, and to keep it informed of developments in this respect.*

1050. *As regards the effects on future collective bargaining, the Committee notes that, under the amended legislation, bargaining partners are still able to conclude agreements specifying an age, lower than the age prescribed in general legislation, at which an employee may retire on a pension; but, from 1 September 2001, such agreements cannot make retirement compulsory, given the wording of section 32 a): "An employee is* ***entitled*** *to remain in employment until the end of the month in which he or she is 67 years old" (emphasis added). While this provision has an enabling character for individual workers, it clearly amounts to circumscribing the scope of collective bargaining on a subject matter where the parties previously had wider room for negotiation.*

1051. *The Committee further notes that this substantial restriction of the scope of bargaining has apparently been imposed against the will of all social partners since, according to the complainants, in addition to major workers' confederations, the leading representative employers' organization also opposed the amendment on two occasions, as did the Swedish tripartite ILO Committee; the Government did not challenge these allegations. In the Committee's opinion, if the Government deemed it necessary to change the existing system which apparently met with a wide consensus, it would have been much preferable to obtain the parties' agreement concerned. A legislatively imposed measure such as the amendment challenged in the present case, which amounts to reversing unilaterally a system accepted by social partners and which has led to negotiated agreements adapted to particular job circumstances, would have been justified only in a situation of acute crisis, for instance if the non-adoption of urgent measures had endangered the very existence of the pension system. The Government did not provide evidence that there indeed existed such an emergency situation.*

1052. *Given the particular circumstances of this case, in order to ensure a sound labour relations atmosphere in the country, the Committee requests the Government to resume thorough consultations on these retirement and pension issues with all parties concerned, with a view to finding a negotiated solution which would be mutually acceptable to all parties concerned and in conformity with the Conventions on freedom of association and collective bargaining ratified by Sweden.*

The Committee's recommendations

1053. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to take appropriate remedial measures, so that agreements already negotiated on compulsory retirement age continue to produce all their effects until their expiry date, including after 31 December 2002.

(b) In the particular circumstances of this case, the Committee requests the Government to resume thorough consultations on retirement and pension issues with all parties concerned, with a view to finding a negotiated solution which would be mutually acceptable to all parties concerned and in conformity with the Conventions on freedom of association and collective bargaining ratified by Sweden.

(c) The Committee requests the Government to keep it informed of developments on these issues.

CASE NO. 2192

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

Complaint against the Government of Togo presented by the Workers' Trade Union Confederation of Togo (CSTT)

Allegations: The complainant alleges acts of anti-union discrimination by the company New Seed Processing Industry Oil of Togo (NIOTO), including the dismissal of a trade union official, as well as interference by the company in the carrying out of trade union activities by refusing to organize elections of staff representatives and refusing to allow union members among its employees to take part in training organized by their trade union.

1054. The complaint is contained in a communication dated 15 April 2002 from the Workers' Trade Union Confederation of Togo (CSTT). The CSTT presented additional information in support of its complaint in a communication dated 14 May 2002.

1055. The Government sent its observations in communications dated 6 June and 31 December 2002.

1056. Togo 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

1057. The CSTT states that it was provided with the information, on which the complaint was based, by the National Trade Union of Food and Agriculture Industries (SYNIAT) via its General Secretary, Mr. Roger Boko Awity, himself a former employee of the company New Seed Processing Industry Oil of Togo (NIOTO); his letter asking the CSTT to file a complaint before the Committee is attached to the complaint.

1058. The complaint sets out two allegations: on the one hand, the dismissal by the NIOTO of Mr. Awity, preceded by acts of intimidation within the context of his trade union activities; and, on the other hand, NIOTO' s refusal to organize elections of staff representatives and to authorize the trade union members among its employees to take part in training organized for their benefit by the trade union.

1059. As regards the first allegation, the CSTT states that during a period of technical unemployment, the NIOTO dismissed Mr. Awity with effect from 1 November 2001 (with payment of a compensatory allowance and the settlement of all dues) along with 11 other employees; a copy of Mr. Awity's letter of dismissal was annexed to the complaint. The CSTT maintains that, contrary to article 21 of the interoccupational collective agreement of Togo, this dismissal did not take into account the qualification, length of service, or family

commitments of the workers concerned. Furthermore, the dismissal followed the intimidations and threats to which Mr. Awity had been subjected in the context of his trade union activities. The CSTT reports "a certain aversion to trade unions" on the part of the NIOTO company, and indicates that the dismissal case is currently before the Lomé Industrial Court. Finally, the CSTT states that since a dismissal on 8 October 2002, the NIOTO company has recruited several workers in defiance of the right of dismissed employees to be hired, under paragraph 6 of article 21 of the interoccupational collective agreement of Togo.

1060. As regards the second allegation, the CSTT maintains that the NIOTO company, many of whose employees are members of SYNIAT, refuses to organize the elections of staff representatives. The CSTT states in this respect that in a memorandum dated 7 February 2002, a copy of which was annexed to the complaint, the company informed its employees that it had not received any candidatures for the elections and that it was therefore bringing this fact to the attention of the Labour and Social Laws Inspectorate "to be placed on record so that it could authorize non-union staff to stand for election". The CSTT emphasizes that in its reply dated 11 February 2002 (a copy of which was annexed to the complaint), the competent labour inspectorate considered that only the employees, and not the trade unions themselves, had been informed that elections were being organized. Consequently, it instructed the company to begin organizing new elections by sending letters to the interested trade unions inviting them to submit lists of candidates; to date, according to the CSTT, the NIOTO company has refused to organize new elections. In his letter to the CSTT asking it to bring a complaint before the Committee, Mr. Awity alleges that the company director had told the outgoing staff representatives that "it was not his duty to deal with the unions. He only had to deal with his employees."

1061. Finally, the CSTT claims that the NIOTO company refuses to allow employees carrying out trade union functions to participate in training organized by the trade union. The CSTT attaches to the complaint a copy of the letter refusing leave of absence to one of the company's employees – Mr. Abotsi-Adjossou; the letter is addressed to the Deputy General Secretary the CSTT.

1062. In support of these allegations, the CSTT asserts that the NIOTO company's attitude goes against: (a) the protection against the dismissal of staff representatives and trade union officials provided under article 8 of the collective agreement of Togo industries; and (b) the right to reinstatement of employees dismissed on economic grounds or as a result of restructuring. This attitude therefore prejudices the rights of unionized workers in the company.

1063. In its communication of the 14 May 2002, the CSTT attaches by way of additional information a new letter from the labour inspectorate dated 27 February 2002 addressed to the company's managing director. In this letter, the managing director contests the procedure, set out by the labour inspectorate in its communication of 11 February, for informing the trade unions of the organization of elections. The managing director considered that a procedure of this kind was not expressly provided for in Order No. 321-54/ITLS of 2 April 1954. In reply, the labour inspectorate reiterates the terms of its previous letter and warns the managing director against holding elections without notifying the trade unions in advance. The CSTT also submits a copy of article 21 of the interoccupational collective agreement of Togo regarding collective redundancies (referred to in its complaint).

B. The Government's reply

1064. In its initial communication of 6 June 2002, the Government addresses the first allegation set out in the complaint by stating that, in turning to the industrial tribunal, Mr. Awity chose a means of recourse that was appropriate for the settlement of his particular case.

1065. Regarding the second allegation, in the communication dated 31 December 2002, the Government puts forward the following arguments. It stresses that the inquiry carried out into this aspect of the complaint shows that the legislation does not oblige the employer to inform the trade unions specifically for the purpose of asking them to nominate candidates for the posts of staff representatives. The Government bases its opinion in this respect on the text of section 4 of Order No. 321-54/ITLS of 2 April 1954 which it cites in its reply as follows: "The representatives are elected from the lists drawn up by the most representative organizations, where such organizations exist within each establishment for each category of staff." The Government adds that, in the absence of any specific provisions, a practice has developed by which the head of the establishment provides information to the workers and their representatives by way of notices in places set aside for this purpose.

1066. The Government thus concludes that it can only invite the parties to refer to the competent judicial authority, as provided in section 176 of the Labour Code, namely the industrial tribunal.

C. The Committee's conclusions

1067. *The Committee notes that the complaint raises, on the one hand, the question whether Mr. Awity's dismissal by the NIOTO company was motivated entirely or in part by his trade union activities, particularly as it had been allegedly preceded by other acts of anti-union discrimination in the course of his employment. On the other hand, the complaint raises the question whether, as regards the election of staff representatives and the refusal to grant leave of absence in order to participate in training organized by the trade union, there had been a failure on the part of the NIOTO company to respect the principles of freedom of association.*

1068. *As regards the first question, the Committee notes that the CSTT alleges that Mr. Awity's dismissal was decided in an arbitrary fashion and followed numerous acts of intimidation and threats to which he had been subjected in the context of his trade union activities. The Committee further notes that legal proceedings are under way and that the CSTT maintains that the NIOTO company has recently hired several workers in defiance of the priority which should be accorded to workers dismissed in the context of collective redundancies, under the terms of the interoccupational collective agreement of Togo. The Committee notes that the Government confines itself to referring to the legal proceedings initiated by Mr. Awity, which it considers to be the appropriate means of recourse to resolve an individual case of this kind.*

1069. *As regards the second question, the Committee notes that according to the CSTT, the NIOTO company is refusing to organize elections of staff representatives. The Committee notes in this respect that the two letters from the labour inspectorate submitted by the CSTT reveal a divergence of opinions between the inspectorate and the NIOTO company as to the procedure to be followed for informing the workers' organizations about these elections in order for them to be able to put forward candidates. In this respect the Committee notes that, according to the Government, the employer is under no obligation to inform the trade unions specifically to ask them to nominate candidates for the purposes of consequently electing staff representatives, and the Government calls on the parties to refer the matter to the judicial authorities.*

1070. *Finally, the Committee takes note of the letter from the director of the NIOTO company to the Deputy General Secretary of the CSTT refusing leave of absence for Mr. Abotsi-Adjossou, an employee of the NIOTO company, "owing to service requirements". The Committee notes that the Government's reply does not address this question.*

1071. *As regards the first question, the Committee wishes to recall the following principles. In general, no person should be dismissed or prejudiced in his or her 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 [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 696]. The Committee emphasizes in this respect that all workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment and that this protection is particularly desirable in the case of trade union officials. Moreover, the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of procedures which should be prompt, impartial and considered as such by all the parties concerned [see* ***Digest****, op. cit., para. 738]. Finally, the Committee recalls that in cases of the dismissal of trade unionists on the grounds of their trade union membership or activities, the Committee has requested the Government to take the necessary measures to enable trade union leaders and members who had been dismissed due to their legitimate trade union activities to secure reinstatement in their jobs and to ensure the application against the enterprises concerned of the corresponding legal sanctions [see* ***Digest****, op. cit., para. 756].*

1072. *As regards the case in question, the Committee notes that, according to the information provided by the CSTT, Mr. Awity was dismissed with effect from 1 November 2001, when the NIOTO company was experiencing a period of technical unemployment, and that 11 other employees were dismissed at the same time; the Committee notes in this respect that the CSTT does not specify whether these other employees were union members or engaged in union activities. Furthermore, the wording of the complaint does not make it clear whether the arbitrary nature of the dismissal applied only to Mr. Awity or whether it also concerned the 11 other employees. Finally, the Committee notes that the CSTT refers to another dismissal by the NIOTO company on 8 October 2002; the Committee notes that it is not specified whether that dismissal also affected trade union members or officials. While noting the allegation that Mr. Awity's dismissal followed a series of acts of intimidations and pressure in the context of his trade union activities – no further details of which are given – the Committee can only observe that, at this stage, it has not been clearly established that Mr. Awity's dismissal was due, even in part, to anti-union discrimination. Under these circumstances, the Committee requests the Government to keep it informed as to the outcome of the legal proceedings relating to Mr. Awity's dismissal. If it emerges that the dismissal was indeed motivated by anti-union discrimination, the Committee requests the Government to take immediate measures so that Mr. Awity is reinstated and to keep it informed in this respect.*

1073. *As regards the second question, the Committee wishes to emphasize the fact that for freedom of association to be genuine, workers' organizations must be able to defend and promote the interests of their members and must enjoy all the facilities necessary to carry out their functions appropriately. Otherwise, the right of workers freely to join organizations of their own choosing and the right of workers' organizations freely to carry out their activities would be undermined.*

1074. *Regarding the election of staff representatives at issue in this case, the Committee notes that it concerns the election of staff representatives within the enterprise, not internal elections within the workers' organizations. Furthermore, according to the Government, it is the representative organizations that must establish lists of candidates on the basis of*

which staff representatives are elected. Finally, the Committee notes that there is a disagreement between the labour inspectorate and the NIOTO company as regards the employer's obligation to inform the unions themselves that elections are to be held. The Committee also notes that, while recognizing that the procedure which it recommends is not based on any specific legislative or regulatory provision, the labour inspector is convinced that the trade unions had not been duly informed that elections were being held and that the procedure used by the NIOTO company (in the past and for the election at issue) is fraught with weaknesses. The Committee has also taken note of the warning issued by the labour inspectorate to the NIOTO company and notes that the CSTT' s allegation that the NIOTO company has not, to date, organized elections is not refuted by the Government. While noting the Government's position regarding the absence of any obligation on the part of the employer to inform the trade unions specifically with a view to the nomination of their candidates, the Committee notes that the nomination of candidates for staff elections is one of the normal functions of a representative workers' organization. Furthermore, and without expressing any opinion on the interpretation or the application of Order No. 321-54/ITLS of 2 April 1954, the Committee requests the Government to examine the question, and to ensure that elections are organized and the interested workers' organizations are in a position to carry out their proper functions and in particular to nominate their candidates for staff elections. The Committee requests the Government to keep it informed in this respect.

1075. *Finally, as regards the leave of absence for Mr. Abotsi-Adjossou, the Committee recalls that, although trade union officials can be expected to obtain permission from their employer before taking leave to carry out their trade union activities, this permission should not be denied unreasonably. Under these circumstances, the Committee requests the Government to examine this aspect of the complaint and to keep it informed of the reasons linked to the "service requirements" invoked by the NIOTO company to justify its refusal.*

The Committee's recommendations

1076. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) As regards the dismissal of Mr. Awity by the NIOTO company:

(i) noting that it has not been clearly established that this dismissal implies anti-union discrimination, the Committee requests the Government to keep it informed of the outcome of the legal proceedings concerning Mr. Awity's dismissal;

(ii) should it emerge that the dismissal was indeed motivated by anti-union discrimination, the Committee requests the Government to take immediate measures so that Mr. Awity is reinstated and to keep it informed of any measures taken.

(b) As regards the elections of staff representatives: noting that the nomination of candidates for elections of staff representatives is one of the normal functions of a representative workers' organization, the Committee requests the Government to ensure that the elections are organized and that the interested workers' organizations are in a position to nominate their candidates for the elections in question.

(c) As regards the refusal of leave of absence to participate in trade union training, the Committee requests the Government to keep it informed of the reasons given by the NIOTO company for refusing leave of absence to Mr. Abotsi-Adjossou for the purpose of carrying out his trade union activities.

CASE NO. 2200

INTERIM REPORT

Complaints against the Government of Turkey presented by
— the Confederation of Public Employees Trade Union (KESK)
— the Independent Public Works and Construction Employees' Union (BAGIMSIZ YAPI-IMAR SEN) and
— the Independent Transport Union (Railways, Airports, Sea and Land Transport Services Public Employees) (BAGIMSIZ ULASIM-SEN)

Allegations: The complainants allege the incompatibility of Act No. 4688 on public employees' trade unions with Conventions Nos. 87, 98 and 151, violations in practice consisting of favouritism displayed towards certain unions as well as acts of anti-union discrimination.

1077. The complaints are set out in a communication dated 28 May 2002, from the Confederation of Public Employees Trade Unions (KESK), in two communications dated 17 May 2002, from the Independent Public Works and Construction Employees' Union (BAGIMSIZ YAPI-IMAR SEN) and the Independent Transport Union (Railways, Airports, Sea and Land Transport Services Public Employees) (BAGIMSIZ ULASIM-SEN). The latter union submitted additional allegations in September 2002.

1078. The Government submitted partial observations in a communication dated 14 November 2002 and replied to the additional allegations sent by BAGIMSIZ ULASIM-SEN in a communication of 13 January 2003.

1079. Turkey has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

Act No. 4688 on the public employees trade unions

1080. In its complaint of 28 May 2002, the Confederation of Public Employees Trade Unions (KESK) submits that provisions of Conventions Nos. 87, 98 and 151 are infringed by Act No. 4688 dated 26 June 2001 on the public employees' trade unions, in the following respects:

(a) the definition of public employees provided in the Act which places a restriction (two year of probationary period) on public workers to establish or join a union and which is therefore incompatible with Article 2 of Convention No. 87;

(b) section 15 of the Act which bars a large number of public employees from the right to organize and which violates Articles 2, 3 (paragraph 2) and 9 of Convention No. 87;

(c) section 28 entitled "Content of the collective consultative talks" which is incompatible with Articles 4 and 6 of Convention No. 98 as well as Convention No. 151;

(d) section 30 granting to unions having the largest number of members the right to participate in consultative talks and which is incompatible with the principle of free and voluntary collective bargaining as enshrined in Article 4 of Convention No. 98;

(e) Act No. 4688 does not recognize the right to strike to public employees and therefore continues to ban the exercise of this right in the public sector, in contradiction with the international labour Conventions and the comments of the ILO supervisory bodies.

Violation in practice: Membership forms distributed by the Office of Agricultural Products in favour of Türk Tarim-Orman Sen Union and illegal establishment of the Institution Administrative Committee in Türk TELEKOM to the detriment of KESK

1081. In its complaint, KESK contends that the Office of Agricultural Products – linked to the Ministry of Agriculture and Village Affaires – distributed to employees forms to join the Türk Tarim-Orman Sen Union, affiliated to Türkiye-Kamu-Sen that has political connections with the Government. The forms were accompanied by a covering letter from the administration – a translation of which is attached to the complaint. According to the letter, the forms were sent to the employees for their information; both the employees joining the union and those not joining were asked to return the forms in question. KESK submits that this practice infringes Article 1 of Convention No. 98.

1082. Further, KESK refers to section 22 of Act No. 4688 providing for the establishment of institution administrative committees. The unions with the largest number of members are allowed to participate in these committees which make proposals on the conditions of work of public employees. KESK refers in addition to the date of 31 May provided for in section 30 of the Act. Under this section, the Ministry of Labour is due to determine, each year by 31 May, unions and confederations having the largest membership and that are entitled to participate in the "collective consultative talks". KESK alleges that these provisions of Act No. 4688 were infringed and that these violations were targeted at the unions affiliated to the Confederation. Thus, Türk TELEKOM and Türk Haber-Sen established the Institution Administrative Committee for Türk TELEKOM on 29 April 2002 without awaiting the deadline date of 31 May 2002. KESK attaches to its complaint documentary evidence of the first meeting of the Committee in Türk TELEKOM.

Violations in practice: Acts of intimidation directed at members and officers of the complainants

1083. In its complaint, KESK alleges that since the entry into force of Act No. 4688, officers and members of unions affiliated to the Confederation have been subject to increasingly frequent pressure and penalties. KESK submits that these measures often apply by reason of the trade union activities and they mainly consist in displacing, against their will, union officers or members from one duty station to another or from one workplace to another. In support of its allegations KESK gives a list of officers and members of the Health

Workers' Union (SES), affiliated to the Confederation, who were subject to such displacements in the last six months; the list also includes names of health workers who participated in the union's activities. The list covers 107 cases and specifies the names, the occupation, the union activities, the original city and the workplace of each of these workers and the city or workplace to which they were transferred. KESK provides another list – with the same specifications as in the first list – of 30 members and officers of Egitim-Sen, the education union affiliated to KESK, who were also displaced; the majority of the workers concerned were subject in addition to court actions by the administration. Finally, KESK supplies a list of 13 names of officers and members of affiliated unions who were subject to a number of penalties such as imprisonment (in one case), administrative sanctions or refusal of promotion.

1084. In its complaint of 17 May 2002, the Independent Public Works and Construction Employees' Union (BAGIMSIZ YAPI-IMAR SEN) indicates that since the entry into force of Act No. 4688, various unions are competing with each other to represent public employees. The BAGIMSIZ YAPI-IMAR SEN submits that officials of the Ministry of Construction and Housing and the Surveying Office put the union's members under pressure with a view to forcing them to resign from the union. They also threatened workers who were considering joining the union. Theses acts of intimidations consisted of threats of changing the assignments or of lay-off; these workers also received threats concerning their chances of promotion. The complainant also alleges that the workers concerned were told that these acts resulted from "orders from the top". In support of its allegations, BAGIMSIZ YAPI-IMAR SEN underlines that public sector officials are required by Act No. 4688 to remain impartial; they should not engage in any activity that would favour or discriminate a particular union. The Act provides for protection of public employees against any act of interference in the exercise of their right to organize, in line with ILO Conventions Nos. 87 and 151.

1085. For its part, the Independent Transport Union (Railways, Airports, Sea and Land Transport Services Public Employees) (BAGIMSIZ ULASIM-SEN) also makes the point that there is a competition amongst unions to represent public employees since the entry into force of the Act. It further contends that officials of the Turkish State Railways subjected officers and members of the union to acts of intimidations and various pressures. It alleges that the following employees of the office of the Mersin Port Operations were threatened by the operations and port managers with transfer to other duty stations: Mr. Nazmi Vural (chief of terminal services and founding member of the union), Mr. Mehmet Yildiz (head tally clerk), Mr. Okan Nar (specialist and the current independent transport union president). Moreover, Mr. Nar's office was ransacked and was allegedly told that "order came from the top". Similar incidents have occurred in respect of workers of the Turkish State Railways nationwide. Death threats were even reported in this case to the authorities. In support of its allegations, BAGIMSIZ ULASIM-SEN also refers to the duty of impartiality of public employees under Act No. 4688 and to Conventions Nos. 87 and 151.

Violations in practice: Additional allegations concerning acts of intimidation

1086. In its communication of September 2002, BAGIMSIZ ULASIM-SEN contends that its members are still subject to pressure by the management of the Mersin Harbour Operations, despite the current investigation carried out by the Ministry of Transportation. In particular, the union submits further allegations of intimidations exerted on Mr. Nazmi Vural (founding member of the union) at the beginning of September 2002. Thus, during the leave of the Operations Manager and, contrary to the past practice, Mr. Vural was not designated officer in charge; rather, one of his subordinates was appointed to this position. BAGIMSIZ ULASIM-SEN points out that this is contrary to the right to organize of public employees as recognized under Convention No. 87 (and in particular to paragraph 2 of

Article 3 whereby public authorities should refrain from any interference in the exercise of the right). It also infringes Article 4 of Convention No. 151 providing for adequate protection of public employees against acts of anti-union discrimination and the corresponding provision of Act No. 4688, i.e. section 18.

B. The Government's reply

1087. The Government indicates that its communication of 14 November 2002 is a response to the allegations made by the three complainants.

1088. As a general comment, the Government underlines that in the preparation of Act No. 4688, the principles set forth in Conventions Nos. 87, 98 and 151 have been given due consideration and fully reflected in the provisions of the Act.

1089. On the particular issues raised, the Government makes the following points:

(a) the definition of public employees provided in section 3 of the Act and the conditions required to become a founding member of a union are consistent with the Civil Servants Act No. 657 which provides for a maximum two-year probation for the definite acquisition of the status of public employee;

(b) section 15 of the Act, excluding some public employees from the scope of the Act, results from the fact that the recognition of the right to organize in the public sector is a recent experience in Turkey; further, the exclusion of some specific categories of public employees is consistent with paragraph 2 of Article 1 of Convention No. 151 which specifies that "the extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations";

(c) section 29 of the Act refers to the "parties" to collective consultative talks and affords for the necessary mechanisms whereby collective negotiations are carried out between the public employers and public employees' unions;

(d) section 18 of the Act prevents any act of anti-union discrimination against unions' members and officers who are therefore unable to perform their duties in full freedom and without any influence or pressure;

(e) section 23, concerning the election and the activities of workplace union representatives, fully reflects the principles embodied in Article 3 of Convention No. 87 (right to elect unions' representatives in full freedom) and Article 6 of Convention No. 151 (facilities afforded to unions' representatives).

1090. On the particular issue of discrimination, the Government points out that Circular No. 2002/5 dated 14 May 2002 was issued by the Ministry of Labour and Social Security. In particular, the circular places emphasis on the need to avoid discrimination between unions and to facilitate their activities. The Office of the Prime Minister issued another circular on the same subject – Circular No. 2002/17 dated 6 June 2002. Further, to avert the initiatives denounced by the complainants, the General Directorate of Labour sent letters dated 27 May 2002 and 1 July 2002, respectively, to the General Directorate of Land Office and to the General Directorate of State Railways in which it emphasized that public employees should not be forced to membership of a particular union or to resignation from particular unions. Finally, a communication from the General Directorate of Labour dated 9 July 2002 specified the rules concerning the establishment of institution

administrative committees and was sent to the relevant public employers. Copies of the circulars, letters and communications are attached to the response.

Additional observations

1091. In its communication of 13 January 2003, the Government reiterates that article 18 of Act No. 4688 prevents any act of discrimination against unions' members or officers by reason of their trade union activities. The Government refers again to the circulars attached to its original reply and contends that Act No. 4688 clearly protects trade union rights of public employees. The Government underlines that the Office of the Prime Minister and the Ministry of Labour and Social Security follow closely its application. The Government also confirms that the Ministry of Transport has initiated an investigation on the allegations of discrimination concerning trade union members and officers working in the Mersin Harbour Operations and that the situation will be evaluated accordingly. Finally, the Government refers to the "Committee of Academics" composed of nine university professors and in which the Government, the employers and workers' organizations are equally represented. The Committee is in charge of bringing the national legislation into harmony with European Union rules and ILO international labour standards. Upon the completion of this work, various problems encountered in the implementation of the legislation will be satisfactorily solved.

C. The Committee's conclusions

1092. *The Committee notes that the complaints relate to the recognition and the application in practice of the principles of freedom of association in the public service, in light of the entry into force of Act No. 4688 on public servants trade unions on 13 August 2001. The factual allegations raise in essence a general issue of discrimination against the complainants, on the one hand, and their members and officers on the other hand.*

1093. *The Committee notes that the Confederation of Public Employees Trade Union (KESK) questions the conformity of some of the provisions of Act No. 4688 (see attached copy of the specific provisions) with the provisions of Conventions Nos. 87, 98 and 151. Further, KESK alleges a series of violations in practice of the provisions of these Conventions. These violations consist mainly of acts of anti-union discrimination discharged against the members and the officers of its constituent unions. The Committee notes that the Independent Public Works and Construction Employees' Union (BAGIMSIZ YAPI-IMAR SEN) and the Independent Transport Union (Railways, Airports, Sea and Land Transport Services Public Employees) (BAGIMSIZ ULASIM-SEN) lodge allegations of a similar nature. KESK also alleges that the Office of Agricultural Products and Türk TELEKOM displayed favouritism towards certain unions to the detriment of its constituent unions.*

1094. *Regarding the Government's response and its additional observations, the Committee notes that it mainly tackles the legislative aspects of the complaints and that in particular it focuses on the compatibility of specific provisions of Act No. 4688 with Conventions Nos. 87, 98 and 151. The Committee notes that the Government does not address the allegations of a factual nature, although it refers to the investigation initiated by the Ministry of Transport on the allegations relating to the anti-union discrimination displayed by the management of the Mersin Port Operations. The Committee has taken note in this regard of the Government's indications on the circulars issued to prevent acts of anti-union discrimination and on the letters sent to two administrations to avoid favouritism towards particular unions. The Committee also notes the communication concerning the rules governing the establishment of institution administrative committees and that a committee is in charge of harmonizing the national legislation in particular with ILO international labour standards.*

1095. *In respect of the application in law of the principles of freedom of association, the Committee would like to make the following considerations. The Committee notes that the Committee of Experts on the Application of Conventions and Recommendations has reviewed most of the provisions of Act No. 4688 in its comments on Conventions Nos. 87 and 98. The Committee notes in this respect that the comments made by the Committee of Experts related in particular to sections 3(a) and 15 excluding certain categories of public servants from the scope of the Act, to section 10 dealing with the implications of the trade union officer's candidacy to local or general elections in its trade union functions, to section 28 concerning the scope of collective consultative talks. The Committee also notes that the Committee of Experts requested the Government to take the necessary measures to ensure that those public servants who are not exercising authority in the name of the State and who may not be considered to be carrying out essential services in the strict sense of the term have the right to engage in industrial action. In referring the Government to these comments, the Committee believes that it is useful to underline the following principles of freedom of association.*

1096. *First, all public service employees (with the sole possible exception of the armed forces and the police, as indicated in Article 9 of Convention No. 87), should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th (revised) edition, 1996, para. 206]. Second, concerning the particular case of managerial and supervisory staff, the Committee underlines that, they can be barred from the right to belong to the same trade unions as other workers, provided two conditions are met: first, that such workers have the right to form their own associations to defend their interests; and second, that the categories of such staff are not defined too broadly [see* ***Digest****, op. cit., para. 231]. To address the particular points made in this respect by the Government in relation to paragraph 2 of Article 1 of Convention No. 151, the Committee recalls that this Convention was intended to complement the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and that it does not in any way contradict or dilute the basic right of association guaranteed to all workers by virtue of Convention No. 87. In respect of the exercise of the right to strike in the public service, the Committee would like to underline that it may be restricted in the public service but only for public servants exercising authority in the name of the State and for those working in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population [see* ***Digest****, op. cit., para. 536].*

1097. *As far as public servants' collective bargaining rights are concerned, the Committee would like to draw the attention of the Government to the following principles: all public servants other than those engaged in the administration of the State should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service [see* ***Digest****, op. cit., para. 793]. This means that any aspect of the conditions of employment of public servants, other than those engaged in the administration of the State, can fall within the scope of collective bargaining.*

1098. *In respect of the granting of certain privileges to the most representative unions, the Committee considers that this measure is not in itself contrary to the principles of freedom of association, provided in particular that the determination of the most representative organizations is based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse [see* ***Digest****, op. cit., para. 310]. The Committee notes that, under section 30 of Act No. 4688, "… the Ministry of Labor and Social Security, taking into account the declaration of membership submitted to the ministry by the established public employees' unions, shall determine the number of members by 31 May each year ..."; on the basis of this determination, the Ministry designates the unions and*

confederations with the largest membership in a given service sector. The Committee notes the request for clarification made by the Committee of Experts on the Application of Conventions and Recommendations to the Government on the role of the Ministry of Labour and Social Security in the determination of the number of members of a trade union, under section 14 of the Act. The Committee notes in this respect that section 30 does not contain any specification on the manner in which the membership of each union is determined by the Ministry either. The Committee is of the view, therefore, that the law does not contain sufficient guarantees to ensure a fully objective determination of the most representative unions.

1099. *In these circumstances, the Committee trusts that the Government will take the necessary measures so as to amend Act No. 4688 to fully reflect the principles of freedom of association mentioned above and it requests the Government to keep it informed in this respect.*

1100. *Turning to the application in practice of the principles of freedom of association and firstly to the allegations of favouritism, the Committee wishes to recall that, by according favourable or unfavourable treatment to a given organization as compared with others, public authorities may be able to influence the choice of workers as to the organization they intend to join; in addition, public authorities which deliberately act in this manner violate the principle laid down in Convention No. 87 that they should refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise [see, for example,* ***Digest****, op. cit., paras. 304 and 306]. Concerning the particular allegations on the establishment of an Institution Administrative Committee in Türk TELEKOM with the participation of Türk Haber-Sen and the distribution by the Office of Agricultural Products of membership forms in favour of Türk Tarim-Orman Sen union, the Committee requests the Government to examine the matter and to take the necessary steps in order to ensure that all the unions are treated on an equal footing and that the workers concerned may freely chose the union they wish to join. The Committee notes that the allegation relating to the distribution of membership forms by the Office of Agricultural Products also raises the question of the discrimination of workers who have decided not to join Türk Tarim-Orman Sen union or to resign from it. The Committee trusts therefore that the Government will also examine this aspect of the issue and that it will take the necessary steps in the light of the principles recalled hereafter by the Committee. The Committee requests the Government to answer to the allegations, in particular by describing any measures taken in this respect.*

1101. *Regarding acts of anti-union discrimination alleged by the complainants, the Committee considers that the following principles should be emphasized: firstly, in general, no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities [see* ***Digest****, op. cit., para. 690]; secondly, protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular, transfers, downgrading and other acts that are prejudicial to the workers [see* ***Digest****, op. cit., para. 695]; thirdly, the Committee recalls that protection against acts of anti-union discrimination are particularly desirable in the case of trade union officials to enable them to perform their trade union duties in full independence; fourthly, legislation should lay down explicitly remedies and penalties against acts of anti-union discrimination; in this respect, the Committee refers the Government to the comments made by the Committee of Experts on the Application of Conventions and Recommendations on section 18 of Act No. 4688; and finally, the Committee would like to point out the Government's responsibility for preventing all acts of anti-union discrimination and ensuring that workers subject to such treatment have access to means of redress which are expeditious, inexpensive and fully impartial [see* ***Digest****, op. cit., for example, paras. 738 and 741].*

1102. *While taking due note of the circulars attached to the Government's response, the Committee is of the view that the effective protection against acts of anti-union discrimination should first and foremost be guaranteed in the law. The Committee trusts therefore that the Government will take the necessary legislative measures to ensure effective protection of public servants fully taking into account the abovementioned principles. Concerning the particular allegations made by the complainants, as a general comment, the Committee notes that the alleged cases of discrimination are not isolated cases.*

1103. *In these circumstances, the Committee requests the Government to promptly institute independent inquiries in the following individual cases, in order to establish whether the workers concerned have been adversely affected in their employment by reason of their legitimate trade union activities and, if so, to take suitable measures to remedy without delay any effects of anti-union discrimination:*

(a) the 107 cases concerning members, officers of the Health Workers' Union (SES) and workers participating in its activities;

(b) the 30 cases concerning members and officers of EGITIM-SEN;

(c) the 13 cases of workers mentioned in the third list submitted by KESK in its complaint.

The Committee requests the Government to answer the allegations made in all these individual cases, in particular by indicating any developments relating to the corresponding investigations.

1104. *Regarding the allegations concerning the three employees of the Mersin Port Operations – i.e. Mr. Nazmi Vura (chief of terminal services), Mr. Mehmet Yildiz (head tally-clerk) and Mr. Okan Nar (specialist) – the Committee notes that the Ministry of Transport has initiated an investigation. The Committee trusts that this investigation will address also the additional allegations submitted by the Independent Transport Union (Railways, Airports, Sea and Land Transport Services Public Employees) (BAGIMSIZ ULASIM-SEN), that it will be promptly carried out, and that, in case of anti-union discrimination, the proper remedies will be decided. The Committee requests the Government to answer the allegations relating to these three cases, in particular by indicating the results of the investigation as well as any subsequent measures taken.*

The Committee's recommendations

1105. ***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 the necessary measures so as to amend Act No. 4688 to fulfil its obligations deriving from the provisions of Conventions Nos. 87, 98 and 151, including measures to ensure an effective protection of public servants against acts of anti-union discrimination.

(***b) Concerning the particular allegations of favouritism relating to the establishment of an Institution Administrative Committee in Türk TELEKOM and the distribution by the Office of Agricultural Products of membership forms in favour of Türk Tarim-Orman Sen union, the Committee requests the Government to take any appropriate steps to ensure***

that all the unions are treated on an equal footing and that the workers concerned may freely choose the union they wish to join. The Committee requests the Government to answer to the allegations, in particular by describing any measures taken in this respect.

(c) The Committee requests the Government to promptly institute independent inquiries in the following individual cases, in order to establish whether the workers concerned have been adversely affected in their employment by reason of their legitimate trade union activities and, if so, to take suitable measures to remedy without delay any effects of anti-union discrimination:

(i) the 107 cases concerning members, officers of the Health Workers' Union (SES) and workers participating in its activities;

(ii) the 30 cases concerning members or officers of EGITIM-SEN;

(iii) the 13 cases of workers mentioned in the third list submitted by KESK in its complaint.

The Committee requests the Government to answer the allegations made in all these individual cases, in particular by indicating any developments relating to the corresponding investigations.

(d) Regarding the allegations concerning the three employees of the Mersin Port Operations – i.e. Mr. Nazmi Vura (chief of terminal services), Mr. Mehmet Yildiz (head tally clerk) and Mr. Okan Nar (specialist) – the Committee requests the Government to answer the allegations relating to these three cases, in particular by indicating the results of the investigation of the Ministry of Transport as well as any subsequent measures taken. Moreover, concerning the allegations of anti-union discrimination on the part of officials of the Ministry of Construction and Housing and of the Surveying Office and officials of the Turkish State Railways, the Committee requests the Independent Public Works and Construction Employees' Union (BAGIMSIZ YAPI-IMAR SEN) and the Independent Transport Union (Railways, Airports, Sea and Land Transport Services Public Employees) (BAGIMSIZ ULASIM-SEN) to submit any additional information they consider useful.

Appendix 1

Provisions of Act No. 4688 mentioned in the complaint

Definitions

Article 3 – In the application of this Law;

(a) Public employee: The public employees who are permanently employed and who have finished candidacy or trial periods in a status other than the worker in public institutions and organizations.

(b) Public employer: Public institutions and organizations that have or do not have a legal entity where public employees work.

(c) Public employer representative: Those who are authorized to represent and to run and administer the whole of public institutions and organizations and their assistants.

(d) Workplace: The places where the public services are run.

(e) Institution: Institutions which constitute an administrative whole considering the service type and its administration, and whose authorities and responsibilities are determined according to the establishing laws or the directives about their foundation.

(f) Union: The organization that has a legal entity that the public employees have established to protect and develop the common economic, social and occupational rights and interests of public employees.

(g) Confederation: The upper organizations that at least five unions in different sectors established according to this Law came together to found, and which has a legal entity.

(h) Collective talk: The talks between the Public Employers' Committee and the authorized public employees unions and their supreme institutions on the issues of coefficients and indicators and the salaries and fees, all types of increases and indemnities, overtime pay, journey provisions, bonus, residence allowances, death, birth and family allowances, treatment assistance and funeral expenses and food and clothes assistance and other such support.

(i) Arbitration committee: The committee to be established in order to resolve the disagreements arising during the collective talks.

(j) Agreement text: The text showing the agreement reached after the collective talk.

(k) Supreme arbitration committee president: The president of the Committee established according to the 53rd article of No. 2822 Collective Agreement, Strike and Lock-out Law.

The public employer representatives, according to this Law, are considered public employers and the connected units according to the service type and administration are considered the workplace. Where the public employer has more than one workplace all the workplaces are for this law considered as included in the workplace.

Those who cannot be union members

Article 15 – The below cannot be members to the unions established under this law:

(a) The public employees employed in the General Secretariat of Turkish Grand National Assembly, General Secretariat of the President and the General Secretariat of the National Security Council,

(b) The presidents and members of the supreme courts, judges, attorneys and the others considered in this profession,

(c) The undersecretaries of the institutions covered under this law, the presidents, general directors, heads of the departments and their assistants, the executive board members, the directors and presidents of the boards of control units of the central organizations, legal advisers, the highest rank officials of the regional, provincial or district organizations or the public employees of the same or higher rank, highest authority in the workplaces where more than 100 public employees are employed and their assistants, majors and their assistants,

(d) Presidents and members of Higher Education Committee and presidents and members of the Higher Education Control Committee, the presidents of universities and technology institutions, the deans of the university faculties and directors of higher schools and institutes and their assistants,

(e) Highest rank civil administrative officials,

(f) Members of the army forces,

(g) Public employees and civilian civil servants working at the Ministry of National Defence and the Turkish Armed Forces (including the Gendarme Commandership and Coasts Security Commandership),

(h) Members of the National Intelligence Service.

(i) Central control personal or the institutions covered in this law,

(j) Members of the security services and other personal in the security organization and special security personnel in the public institutions,

(k) Public employees in the penalty institutions,

cannot be members of unions and cannot found unions.

Collective consultative talk

Part One: General provisions

The scope of collective consultative talk

Article 28 – The collective consultative talk covers the coefficients and indicators, salaries and payments, all types of pay rises and compensation payments, overtime, travel, accommodation payments, birth, death and family payments, treatment assistance, funeral expenses, food and clothing allowances and the similar and other aids for increasing the productivity for public employees.

Part Two: Collective consultative talks, authority and agreed text

Authority

Article 30 – The union having the greatest number of public employees in a given service sector and the confederation they are affiliated to are authorized for collective consultative talks. The president of the confederation that has the most affiliation is the head of the collective consultative talk board.

The Ministry of Labour and Social Security, taking into account of the declarations of membership submitted to the ministry by the established public employees unions, shall determine the number of members by 31 May of each year upon which it shall determine the authorized public employees' union in each serve sector and the confederation that has the most affiliation. The results of this procedure shall be published in the Official Newspaper within the first week of July. Number of members, the authorized unions and the confederation that has the most affiliation shall be definite unless the results are challenged within a period of five working days.

CASE NO. 1986

DEFINITIVE REPORT

Complaint against the Government of Venezuela presented by the Single Union of Workers of FUNDARTE (SINTRAFUNDARTE)

Allegations: Dismissals of trade unionists of the Federal District Foundation for Culture and the Arts (FUNDARTE); obstacles to communication between the trade union and workers and threats to those workers who communicate with members of the trade union executive committee.

1106. The Committee examined this case at its November 1999 and March 2001 meetings, at which time it presented interim reports to the Governing Body [see 318th and 324th Reports, paras. 534-567 and 927-939, respectively, approved by the Governing Body at its

276th and 280th Sessions (November 1999 and March 2001)]. Subsequently, the Government sent further observations in a communication dated 19 August 2002.

1107. 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

1108. When it last examined this case in March 2001, the Committee formulated the following recommendations relating to the outstanding allegations [see 324th Report, para. 939]:

- the Committee invites the complainant to comment on the statement by FUNDARTE in which it denies the dismissal of 11 trade unionists in February 1998;
- the Committee regrets that the Government has not answered the allegations concerning: (1) attempts by FUNDARTE to obstruct written communications from the executive committee of SINTRAFUNDARTE to workers; and (2) the threats made by FUNDARTE against workers who communicate with members of the SINTRAFUNDARTE executive committee.

B. New reply from the Government

1109. In a communication dated 19 August 2002, the Government states that after a number of trade union and administrative steps were taken, the workers of SINTRAFUNDARTE who had been dismissed, were reinstated in their jobs and paid the wages owing to them. Currently, FUNDARTE is respecting freedom of association. The Government sent a copy of a communication from SINTRAFUNDARTE in which the reinstatement of the dismissed workers is confirmed and which states, with respect to the other allegations, that FUNDARTE has restored full enjoyment of freedom of association and that, in the near future, the first collective labour agreement will be recorded.

C. The Committee's conclusions

1110. *The Committee notes with interest the statements of the Government and in particular that the complainant organization confirms the reinstatement of the dismissed trade unionists and states that FUNDARTE has restored full enjoyment of trade union rights. The Committee concludes, therefore, that the issues that gave rise to the present case have been resolved.*

The Committee's recommendation

1111. ***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. 2088

INTERIM REPORT

Complaint against the Government of Venezuela presented by the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAJ)

Allegations: Dismissals, suspensions and disciplinary proceedings against trade union officers of the Judiciary, obstruction of collective bargaining, limitations on the use of the trade union headquarters of the complainant, detention of a trade union officer, surveillance of a trade union officer, interference by the authorities in internal matters pertaining to the complainant.

1112. The Committee examined this case at its June 2001 meeting and submitted an interim report to the Governing Body [see 325th Report, paras. 590-605].

1113. In communications dated 21 August and 6 November 2002, SUONTRAJ sent new allegations. The Government sent new observations in communications dated 15 October 2001, 11 November 2002 and 14 January 2003.

1114. 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

1115. At its June 2001 meeting, the Committee made the following recommendations on the allegations that remained pending [see 325th Report, para. 605]:

- the Committee requests the Government to take measures to immediately lift the suspension of trade union officers Ms. Elena Coromoto Marval and Mr. Derio José Martínez Moreno [9 December 1999], and to keep it informed in this regard;
- the Committee requests the Government to take measures to carry out an inquiry into the dismissal of Mr. Isidro Rios (a SUONTRAJ officer, according to the complainant) and to reinstate him if he is found to have been dismissed on anti-union grounds (for carrying out trade union activities, being a member of the trade union SUONTRAJ, etc.). The Committee requests the Government to keep it informed in this respect;
- with regard to the allegations concerning (1) the suspension of Ms. Consuelo Ramirez, president of the Barinas branch of SUONTRAJ, on 8 January 2000; (2) the opening of disciplinary proceedings for the dismissal of Ms. María de la Esperanza Hermida Moreno, president of SUONTRAJ, Mr. Luis Martín Gálviz, finance secretary of SUONTRAJ and Mr. Rodolfo Rafael Ascanio Fierro, information and propaganda secretary of SUONTRAJ (with regard to the latter, the complainant also invokes the suspension of his salary since February 2000); and (3) the dismissal of Mr. Oscar Rafael Romero Machado, safety and health secretary of SUONTRAJ on 10 January 2000, the

Committee requests the Government to take measures to initiate detailed inquiries into these allegations and to communicate its observations on this matter without delay;

– the Committee requests the Government to send its observations concerning the following allegations without delay: (i) the restriction of the use of the national trade union headquarters of SUONTRAJ, based on the argument that the building where the union premises are located cannot be accessed outside designated hours of work; (ii) the detention by the National Guard of SUONTRAJ trade union officer Mr. Oscar Romero on 17 February 2000; (iii) the summons of Mr. Argenis Acuña Padrón, disputes and complaints secretary of SUONTRAJ, to appear before the Court of the Penal Circuit of the State of Carabobo; and (iv) the surveillance of Mr. Ascanio Fierro, a SUONTRAJ officer, by members of the National Guard when he went to claim his salary for February 2000.

B. New allegations

1116. In its communication dated 21 August 2002, with annexes, SUONTRAJ referred to the dismissal of trade union officer, Mr. Oscar Rafael Romero Machado on 10 January 2000, in spite of his enjoying trade union security of tenure as laid down in article 451 of the organic Labour Law and stated that the Labour Inspectorate ordered that he be reinstated and paid back wages in February 2002; however, the Executive Directorate of the Magistracy lodged legal appeals to avoid this reinstatement. With regard to the dismissal of Mr. Isidro Rios, SUONTRAJ states that his employer contravened the legal procedure applicable to officials with trade union protection (the law requires authorization from the Labour Inspectorate to dismiss a trade union official), but the Labour Inspectorate stated that it did not have competency in this matter, thereby not fulfilling its obligations. The employer refused to reinstate both officials as it considered that the provisions of the organic Labour Law did not apply to them in the subject of trade union protection (the need for authorization from the Labour Inspectorate for dismissal).

1117. SUONTRAJ states that the Executive Directorate of the Magistracy refused to negotiate the draft of the second collective agreement (recognized by the Labour Inspectorate on 14 August 2001), in spite of the fact that the trade union SUNET had also joined the negotiations of this draft.

1118. In its communication dated 6 November 2002, SUONTRAJ attached a decision dated 20 September 2002 of the Ministry of Labour relating to an internal conflict in SUONTRAJ in which it states that the Ministry cannot recognize any of the proceedings of the trade union's national executive committee on the basis that there are two parallel executive committees, until a trade union general council is held. SUONTRAJ condemns this administrative interference, but in the annexes that it sent there is notification from the trade union to the president of the Supreme Court of Justice communicating the composition of the executive committee of SUONTRAJ following the national general council of that organization (26 September 2002).

C. The Government's new replies

1119. In a communication dated 11 November 2002, the Government, after recalling the principle of division among state powers, indicates that on a number of occasions it warned the representatives of the Judiciary of the obligation to respect and ensure human rights in labour and trade union matters and that this occurred, in particular, when the jurisdictional bodies were required to try and to decide cases brought to the attention of the Committee on Freedom of Association. The Government sends the observations of these cases presented by the Executive Directorate of the Magistracy and adds that it finds it extremely difficult to decide on the replies submitted by the judicial bodies. The Government states that no discriminatory acts or anti-trade union interference has been committed by any

state body and asks that this case be closed, taking into account the arguments of the Executive Directorate with regard to the allegations of the complainant. The observations and information provided by the Executive Directorate of the Magistracy have been summarized below:

– all trade union organizations, including SUONTRAJ, took part in the negotiations of the first collective agreement (end 1999-February 2000);

– trade union officers Ms. Elena Coromoto Marval and Mr. Derio José Martínez Moreno were suspended not because they were trade union officers but as a result of their undisciplined behaviour and lack of respect for the courts and the correct administration of justice; this was a temporary preventive, disciplinary measure, for which reason it was handed down without the respective proceedings having been undertaken, as it was urgent; on 28 September 2000, the Supreme Court of Justice ordered their reinstatement following proceedings for the protection of constitutional rights *(amparo)* and they were reinstated on 6 and 7 November 2000, without prejudice to the possibility of disciplinary proceedings. The suspension followed the refusal by those involved to work and was therefore urgent. The same situation occurred with regard to Ms. Consuelo Ramírez whose suspension was revoked on 23 May 2000;

– there is a struggle within SUONTRAJ between two sectors as a result of the election process of October 2001 (according to the Ministry of Labour, there are two executive committees) and trade union leave was suspended until there was a pronouncement from the national electoral council. Disciplinary proceedings for the dismissal of Ms. María de la Esperanza Hermida Moreno, Mr. Luis Martín Galviz and Mr. Rodolfo Rafael Ascanio Fierro (trade union officials of SUONTRAJ) were started as a result of their unwarranted absence from work during those days for which trade union leave was suspended;

– administrative procedures are under way to regularize payment of wages to Mr. Rodolfo Rafael Ascanio Fierro (who was suspended as has been previously stated) in view of the inappropriateness of this measure;

– trade union member Mr. Isidro Ríos was dismissed on 17 November 1999 for three or more unwarranted absences from work in one month (which is a legal cause for dismissal). The same situation occurred with trade union member Mr. Oscar Romero Machado. These measures have not been implemented for carrying out trade union activities and they are guaranteed fully the right to a defence in the proceedings;

– the restriction of the access to the trade union headquarters of SUONTRAJ trade union officials (a building that houses legal offices and the headquarters of the National Assembly) occurred as a result of incidents that took place with trade union members who remained in the building until 7 and 8 o'clock at night. In order to avoid this type of occurrence and to protect security, access to the building was prohibited to all people (judges, lawyers, etc.) outside designated hours of work, not just trade union members;

– the Court of the Penal Circuit of the State of Casabobo has no summons registered for trade union official Mr. Argenis Acuña Padrón in any of its departments; the complaint with regard to this matter is too vague and unclear;

– there is no information regarding the alleged surveillance of trade union official Mr. Rodolfo Rafael Ascanio Fierro and this allegation is categorically denied.

1120. In its communication of 14 January 2003, the Government sent documentation summarizing the different procedures initiated by Mr. Oscar Romero Machado, the last of which was an action requesting injunction *(amparo)* which the Sixth Superior Administrative Court declared inadmissible, in particular because "not only does it contest the decision sought to be executed through the avenue of constitutional *amparo*, but also because this decision has been expressly suspended by a judge called upon to review the substance of the issue in debate" (3 December 2002). The Government also sent the decision of the Ministry of Labour dated 20 September 2002 relating to the internal conflict in SUONTAJ.

D. The Committee's conclusions

Suspension of trade union officials

1121. *The Committee notes that the Supreme Court of Justice ordered, on 28 September 2000, that trade union officials Ms. Elena Coromoto Marval and Mr. Derio José Martínez Moreno, who had been suspended on 9 December 1999 for their refusal to work, be reinstated in their jobs. The Committee notes that, according to the Government, the same occurred for trade union official Ms. Consuelo Ramírez. The Committee notes that, according to information in the Government's statement, at least in the first two cases this was an extraordinarily lengthy precautionary measure and had not come about as a result of any proceedings, and, in this respect, given that these are trade union officials, the Committee can only deplore these types of measures that seriously threaten the exercise of trade union rights.*

Dismissal of trade union officials or dismissal proceedings begun against trade union officials

1122. *With regard to the opening of proceedings for the dismissal of Ms. María de la Esperanza Hermida Moreno, Mr. Luis Martín Galviz and Mr. Rodolfo Rafael Ascanio Fierro, the Committee notes that, according to what can be inferred from the observations of the Government, it was their absences from work during a specific period in which trade union leave had been suspended as a result of an internal conflict in SUONTRAJ that gave rise to these dismissals. The Committee emphasizes that a trade union organization cannot have its right to trade union leave withdrawn every time a conflict arises within the organization and requests the Government to take measures to ensure that the competent authorities declare the disciplinary proceedings in progress null and void. The Committee also notes that, according to the Government's reply, proceedings are under way for the payment of the wages of trade union official Mr. Rodolfo Rafael Ascanio Fierro for the period during which he was suspended.*

1123. *With regard to the dismissal for anti-union reasons of trade union officers Mr. Isidro Ríos (22 September 1999) and Mr. Oscar Rafael Romero Machado (10 January 2001), the Committee notes that the Government's reply refers to unwarranted absences for three days duly established in an administrative proceeding in which they are guaranteed the right of defence; the documentation sent by the Government, however, shows that these trade union officials cited in their defence trade union leave and/or the carrying out of trade union activities. The Committee notes that, in the case of Mr. Oscar Rafael Romero Machado, the Labour Inspectorate had ordered his reinstatement on 5 February 2002 and that according to the annexes of the complainant in this case, and that of Mr. Isidro Ríos, the authorization of the Labour Inspectorate was not received to be able to dismiss these workers and this authorization is compulsory in the case of trade union officials in view of their trade union security of tenure (which the employer denies); according to the complainant, the Ministry of Labour stated that it did not have competence in the case of*

Mr. Isidro Ríos. The Committee takes note of the summary provided by the Government on the status of the proceedings in respect of Mr. Oscar Rafael Romero Machado.

1124. *In these circumstances, having taken into account that the dismissals of these trade union officers dates back to September 1999 and 10 January 2001, that the procedures have been overly drawn out, the Committee requests the Government to intercede with the parties with a view to obtaining the reinstatement of both trade union officers. The Committee underlines that justice delayed is justice denied [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 105].*

Restriction on access to the trade union headquarters of SUONTRAJ

1125. *The Committee noted the statements of the Executive Directorate of the Magistracy according to which it decided to restrict access of trade union members to the trade union headquarters of SUONTRAJ outside designated hours of work as a result of incidents with trade union members who remained in the building until 7 and 8 o'clock at night. The Committee also notes that this measure was based on security reasons and affected not only trade union members but all people working in the building (which is the headquarters of the National Assembly and also houses legal offices). In this respect, the Committee emphasizes that normally the complainant should be in a position to organize meetings and activities at its headquarters outside working hours and requests the authorities involved to take steps to ensure these rights and to find solutions to the security problems that have arisen.*

Obstruction of collective bargaining

1126. *The Committee notes that the Government's reply does not answer the allegation relating to delays on the part of the Executive Directorate of the Magistracy to negotiate the draft collective agreement of SUONTRAJ and the trade union SUNET (approved by the Ministry of Labour in August 2001), as in this reply there are references only to the previous collective agreement signed in December 1999-February 2002. The Committee requests the Government to take steps to encourage negotiation of the draft collective agreement.*

Other allegations

1127. *With regard to the alleged summons of Mr. Argenis Acuña Padrón to appear before the Court of the Penal Circuit of the State of Casabobo, issued by persons identifying themselves as officers of the Military Intelligence Directorate [see 325th Report, para. 592, to the end], the Committee notes that the Government's reply states that there is no record of this summons and that this allegation is vague and unclear. With regard to the alleged surveillance of trade union official Mr. Rodolfo Rafael Ascanio Fierro by members of the National Guard [see 325th Report, para. 592, to the end], the Committee notes that the Government's reply categorically denies this allegation and states that it has no information with regard to this. In these circumstances, the Committee invites the complainant to provide its observations on the Government's reply.*

1128. *The Committee requests the Government to send its observations without delay on the alleged detention of trade union official Mr. Oscar Romero by the National Guard on 17 February 2000.*

1129. *Finally, the Committee notes the allegation of interference by the Ministry of Labour in the internal affairs of SUONTRAJ (20 September 2002), in the framework of an internal conflict within the trade union, and understands, according to information in the*

complaint, that the national council of SUONTRAJ met (as indicated by the Ministry of Labour) on 26 September 2002 and notified the president of the Supreme Court of Justice of the composition of the executive council of SUONTRAJ. The Committee will not proceed with an examination of these allegations unless the complainant alleges new interference by the administration and it recalls, in a general way, that internal conflicts in trade union organizations should be resolved through legal proceedings, when those involved cannot resolve these issues directly.

The Committee's recommendations

1130. ***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 steps to ensure that the competent authorities declare the disciplinary proceedings of dismissal relating to trade union officers Ms. María de la Esperanza Hermida, Mr. Luis Martín Galviz and Mr. Rodolfo Rafael Ascanio Fierro null and void.

(b) The Committee requests the Government to intercede with the parties with a view to obtaining the reinstatement of trade union officers Mr. Oscar Rafael Romero Machado and Mr. Isidro Ríos.

(c) The Committee requests the competent authorities to guarantee that the complainant may organize meetings and activities at its headquarters outside designated working hours and that they resolve the issues of security that have arisen as a result of the building in question housing legal offices and the headquarters of the National Assembly.

(d) The Committee requests the Government to take steps to encourage negotiation of the draft (second) collective agreement between SUONTRAJ and SUNET on the one hand and the employer on the other.

(e) The Committee requests the Government to send without delay its observations on the alleged detention of trade union officer Mr. Oscar Romero by the National Guard on 17 February 2000.

(f) With regard to the alleged surveillance of trade union official Mr. Rodolfo Rafael Ascanio Fierro, the Committee invites the complainant to provide its observations on the Government's reply.

CASE NO. 2161

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

Complaint against the Government of Venezuela presented by the Single Trade Union of Workers of the "Sofia Imbert" Museum of Contemporary Art in Caracas (SUTRAMACCSI)

Allegations: The complainant organization alleges anti-union dismissals at the "Sofia Imbert" Museum of Contemporary Art in Caracas; connivance on the part of the administration of the museum to create a parallel union.

1131. The Committee examined this case at its June 2002 meeting and submitted an interim report to the Governing Body [328th Report, paras. 661-676, approved by the Governing Body at its 284th Session (June 2002)].

1132. The complainant organization, the Single Trade Union of Workers of the "Sofia Imbert" Museum of Contemporary Art in Caracas (SUTRAMACCSI), sent new allegations in a communication dated 25 September 2002.

1133. The Government sent further observations in a communication dated 22 November 2002.

1134. Venezuela has ratified the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

1135. At its June 2002 meeting, the Committee made the following recommendations on the outstanding allegations [see 328th Report, para. 676]:

- As regards the dismissal of the trade union leaders Teresa Zottola and Sonia Chacón, the Committee urges the Government to investigate promptly and impartially these dismissals and, if their anti-union nature is established, to take the necessary measures without delay to reinstate the trade union officials in question in their posts. The Committee requests the Government to keep it informed in this regard.
- As regards the allegation concerning connivance between the Labour Inspectorate and the (public) Foundation of the Museum of Contemporary Art to establish a parallel trade union promoted by the Director of Human Resources, the Committee regrets that the Government has not replied to the allegation and urges it to send its observations as a matter of urgency. The Committee requests the Government to ensure the effective implementation of Article 2 of Convention No. 98, concerning protection against actions of anti-union interference.

B. The complainant's new allegations

1136. In its communication dated 25 September 2002, the complainant organization states that the Foundation of the Museum of Contemporary Art in Caracas dismissed, without prior authorization from the Labour Inspectorate (which is a legal obligation), the trade union officials Jorge Moreno (Secretary-General), José Gregorio González (Secretary), Delvis Beomont (Treasurer), Alfonso Perdomo (Public Relations Officer) and Omar Burgos (Secretary for Labour and Complaints). The complainant organization adds that, on 2 September 2002, the Ministry of Labour issued an administrative ruling which stated the following:

> For reasons previously explained, the Labour Inspectorate of the Capital District, in compliance with the recommendations of the Committee on Freedom of Association of the International Labour Organization, in paragraph 676 of its 328th Report (June 2002), and in accordance with its legal powers, authorizes the request for reinstatement and payment of outstanding wages initiated by Omar Burgos, identity card No. 8.177.614, Sandra Velásquez, identity card No. 9.098.148, Jorge Moreno, identity card No. 6.048.198, Delvis Beomont, identity card No. 12.117.673 and Alfonso Perdomo, identity card No. 11.320.570 against the Foundation of the Museum of Contemporary Art in Caracas. Therefore, the latter is ordered to immediately reinstate the abovementioned workers in their usual jobs and under the same conditions as they enjoyed when they were dismissed, with the subsequent payment of outstanding wages backdated to the dates on which they were dismissed up until and including the time of their respective reinstatements. This order includes granting them the benefits and advantages that they enjoyed as a result of their jobs at the time of their dismissals and that are enjoyed by the other workers at the Foundation, without provoking further discrimination.

1137. However, regardless of the abovementioned administrative ruling, the Foundation still refuses to comply.

C. The Government's further reply

1138. In its communication of 22 November 2002, the Government stated that the Libertador Municipality Labour Inspectorate of the Capital District began an independent and impartial investigation into the proceedings relating to the reinstatement and payment of back wages. However, this investigation did not have the collaboration of the employer's representatives, the Foundation of the Museum of Contemporary Art in Caracas, in spite of the fact that this is a public foundation attached to the Ministry of Education, Culture and Sports. In fact, the employer's representatives wanted to enter into further administrative irregularities, which were repudiated and condemned by the Ministry of Labour employees.

1139. In this context, the Libertador Municipality Labour Inspectorate of the Capital District endorsed Ruling No. 1010-01 relating to the requests for reinstatement of the trade union officers and members Jorge Moreno, Delvis Beomont, José Gregorio González, Omar Burgos, Alfonso Perdomo, Miriam Mayorga and Sandra Velásquez. The Directorate of Foreign Affairs and Relations with the ILO of the Ministry of Labour informed the municipal Labour Inspectorate of the existence of international proceedings and provided the interim conclusions and recommendations of the Committee on Freedom of Association. On 2 September 2002, after overcoming the procedural measures introduced by the employer, they proceeded, under administrative Ruling No. 198-02 to order the reinstatement and payment of outstanding wages of the workers concerned.

1140. Based on the aforementioned administrative ruling, issued in compliance with the recommendations of the Committee on Freedom of Association, the Ministry of Education, Culture and Sports, on 7 October 2002, in a communication sent to its Deputy Minister for Culture, conveyed to the employer, the Foundation of the Museum of Contemporary Art in

Caracas, the ruling issued by the International Labour Organization. However, the employer continues to show reluctance to comply with the orders of the Labour Inspectorate and the Ministry of Education, Culture and Sports, and the employees remain dismissed from their jobs, and some have ceased their trade union action, defeated by the situation of hardship in which they find themselves as a result of the lost wages of the recent months. Because of this, the Labour Inspectorate advanced the sanctions' procedure for non-compliance with the orders to reinstate the workers and pay outstanding wages. On 13 November 2002, the Labour Inspectorate issued administrative Ruling No. 097, imposing a fine equivalent to US$800 on the employer.

1141. Similarly, given the insistence of the employer to create a parallel union, under its control, in outright violation of Article 2 of Convention No. 98, the Government states that the Labour Inspectorate proceeded to order, in November 2002, that the files of the collective bargaining procedure that was undertaken to sign a collective agreement without the workers' knowledge be closed. The labour administration has brought the seriousness of these activities for human rights and international obligations by the Republic to the attention of the Ministry of Education, Culture and Sports.

1142. The Government also states that the Ministry of Labour ordered the removal of the labour inspectors who, in the beginning, acting as individuals, did not act correctly with regard to this case. With this reprimand impending, the inspectors concerned resigned from their jobs.

1143. In spite of all these proceedings and undertakings, the labour administration notes with concern and regret that three of the five persons dismissed, José Gregorio González, Delvis Beomont and Miriam Mayorga, have abandoned their claims, which is irrevocable from the legal point of view. This situation alerted the labour administration to the need to implement steps to expedite the administrative procedure, a problem and a pattern for long-standing violations of human rights in our country, in order to make it faster and more timely.

1144. The Government concludes by stating that the Ministry of Labour through the Directorate of Foreign Affairs and Relations with the ILO, will keep the Labour Inspectorate informed of the conclusions and recommendations of the Committee on Freedom of Association and will propose strong measures against the representatives of the Foundation of the Museum of Contemporary Art in Caracas.

D. The Committee's conclusions

1145. *With regard to the dismissal of five trade union officials by the Foundation of the Museum of Contemporary Art in Caracas ("Sofia Imbert" (SUTRAMACCSI)), the Committee notes with concern that, according to the complainant organization and the Government, this Foundation continues in its refusal to comply with the administrative ruling of the Labour Inspectorate, dated 2 September 2002, ordering the reinstatement of those trade union officials dismissed with payment of back wages. The Committee welcomes the issuing of the aforementioned administrative ruling and welcomes the fact that the Labour Inspectorate imposed a fine equivalent to US$800 on the Foundation on 13 November 2002. However, the Committee regrets that the administrative decisions were only made in September and November 2002, while the dismissals date from 3 December 2001, with the result that, as noted by the Government, three of the five trade union officials dismissed have decided to renounce their claims. The Committee notes that the Government shares the need for more rapid procedures and requests it to take the appropriate legislative or other steps in order to speed up proceedings relating to anti-union discrimination. In this respect, the Committee reminds the Government that the technical assistance of the ILO is at its disposal. The Committee requests the Government to continue to take the necessary*

measures (including sanctions) to ensure the reinstatement of the trade union officials who remain dismissed and the payment of their outstanding wages, and to keep it informed in this respect.

1146. *With regard to the allegation concerning connivance between the Labour Inspectorate and the Foundation to create a parallel trade union, the Committee notes with interest the Government's statements according to which: (1) the Minister ordered the removal of the labour inspectors who had committed irregularities; and (2) the new inspectors ordered that the files of the collective bargaining procedure with the parallel trade union in order to sign a collective agreement without the workers' knowledge be closed.*

The Committee's recommendations

1147. ***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 the necessary measures (including sanctions) to ensure the reinstatement of the trade union officials who remain dismissed by the Foundation of the Museum of Contemporary Art of Caracas and the payment of the wages owing to them. The Committee requests the Government to keep it informed in this regard.

(b) The Committee requests the Government to take the necessary legislative or other steps to speed up the procedures relating to anti-union discrimination.

(c) The Committee reminds the Government that the technical assistance of the ILO is at its disposal in relation to the issue of slowness of the pending proceedings concerning anti-union dismissals and other acts of anti-union discrimination.

CASE NO. 2191

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

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

Allegations: The complainant organization alleges that the Ministry of Education authorities suspended the check-off facility for trade union dues of workers in trade unions affiliated to the Venezuelan Federation of Teachers.

1148. The complaint is contained in a communication from the Latin American Federation of Education and Culture Workers (FLATEC) dated April 2002.

1149. The Government sent its reply in a communication dated 19 September 2002.

1150. Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

1151. In a communication dated April 2002, the Latin American Federation of Education and Culture Workers (FLATEC) states that since October 2000 the Ministry of Education, in violation of legislation and customary practice, refused to continue with the check-off facility for the trade union dues of teachers affiliated to trade unions grouped under the Venezuelan Federation of Teachers (FVM) who had authorized, in writing, the use of the check-off facility. FLATEC states that the authorities have not replied appropriately to the various notes and communications sent by the FVM with regard to this and emphasizes that the FVM is undergoing great economic difficulties as a result of this behaviour, which is obstructing and changing its programme of action.

B. The Government's reply

1152. In its communication dated 19 September 2002, the Government states that the Bolivarian Republic of Venezuela is committed to achieving full effect for all human rights, especially those relating to labour and trade unions. It also states that the Constitution of the Bolivarian Republic of Venezuela expressly recognizes those fundamental rights and grants supraconstitutional ranking to international human rights treaties, among them the International Labour Organization Conventions. It also indicates that currently the State is going through an adaptation process for all its legislation and institutions in order to adapt them to the contents of the new Political Constitution and the international commitments of the Republic, in order to ensure the full enjoyment and exercise of human rights for all.

1153. Specifically, with regard to the allegations in this complaint, the Government states that the Ministry of Education, Culture and Sport suspended the check-off facility for ordinary trade union dues of the teachers in its service in 2000. This decision was based on the fact that, at that time, there were serious complaints and many simultaneous indications of irregularities in the use of the check-off facility for ordinary and extraordinary trade union dues, which seriously violated the human rights of a large number of teachers in its service. These irregularities included, among others, use of the check-off facility for trade union dues of teachers who were not affiliated to any trade union organization, trade union dues deducted from teachers who had given up their membership to trade union organizations, trade union dues deducted from teachers who had not complied with the requirements laid down in law and in the statutes of the trade union organizations, and double or triple trade union dues deducted from teachers for first-level trade union organizations of the same employer.

1154. The Government adds that the irregularities in the use of the check-off facility for trade union dues had been in existence for more than 20 years in the country and had been the subject of various and continuing complaints by workers and various trade union organizations, who had repeatedly asked the Government to resolve the situation in order to protect the right to a wage, protection of that wage and freedom of association, in accordance with the provisions of the Protection of Wages Convention, 1949 (No. 95), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Constitution and national legislation. This was also why article 95 of the Constitution of the Bolivarian Republic of Venezuela stated expressly that workers had the right "not to join" trade union organizations.

1155. The Government states that the Ministry of Education, Culture and Sport, in order to ensure the human rights of the teachers in its service, in strict accordance with the mandate of the new Constitution and the international treaties on human rights, proceeded to adopt a series of measures aimed at correcting the irregularities in the use of the check-off facility for trade union dues. It was necessary to adopt immediate measures to safeguard the enjoyment and exercise of the various human rights that in practice were being infringed, i.e. the right of teachers to a wage, the protection of wages and freedom of association, which were affected by the wrongful use of the check-off facility for trade union dues. These measures necessarily involved the temporary suspension, for the time that was strictly necessary and as short as possible, of the use of the check-off facility for trade union dues, while the appropriate adjustments were being made. In order to manage this successfully and rapidly, the cooperation and support of the first, second and third-level trade union organizations of teachers in the service of the Ministry of Education, Culture and Sport was essential, as it was impossible to resolve the issue without reliable, first-hand and trustworthy information on trade union members and on the fulfilment of the prerequisites laid down in legislation and in the statutes to carry out deduction of trade union dues.

1156. The Government states that, unfortunately, conditions were not favourable to direct, transparent and rapidly held dialogue between the Ministry of Education, Culture and Sport and the trade union organizations, aimed at resolving the irregularities in the use of the check-off facility for trade union dues. This period was marked by the holding of a trade union referendum and a series of democratic elections to elect the holders of positions for popular representation, the elections for re-recognition of trade union organizations, conspiracies against the national Government and the reprehensible coup on 11 April 2002, for which reports have been made with regard to the participation of high-level trade union officials of the executive committee of the Venezuelan Confederation of Workers, including an official of the Trade Union Leadership Committee (temporary), who was appointed Minister for Planning during the coup.

1157. The Government adds that during this time the regularization of the use of the check-off facility for trade union dues was the subject of voluntary collective bargaining in the framework of a list of demands of a conciliatory nature, presented before the Inspectorate of National and Collective Labour Affairs for the Public Sector of the Ministry of Labour on 25 October 2000, by the teachers' trade union organizations against the Ministry of Education, Culture and Sport. During the procedure of voluntary negotiations, the rhythm and speed of which was marked by the socio-political circumstances of the country and of the trade union organizations, conditions were gradually created to correct the irregularities in the use of the check-off facility for trade union dues, in order to ensure the right to a wage, the protection of wages and freedom of association for teachers. On 12 August 2002, an Agreement was signed between the Ministry of Education, Culture and Sport and the teachers' trade unions, including the FVM, in which the conditions to re-establish the use of the check-off facility were agreed upon, and this stated: "Clause No. 67, use of the check-off facility for trade union dues. The deduction of trade union dues will be re-established once discussion and conclusion of the current list of demands has taken place, the re-establishment of the deduction of trade union dues will be made with the lists presented to the National Electoral Council, as registry of the electoral roll for the elections that were held on 13 November 2001, and recorded in the Directorate for Labour and Trade Union Relations and copied to the pay system of the payroll unit."

1158. According to the Government there has never existed, nor does there currently exist, the alleged contravention by the Ministry of Education, Culture and Sport of Article 3 of Convention No. 87 or Article 1 of Convention No. 98, made by FLATEC in its complaint.

C. The Committee's conclusions

1159. *The Committee notes that the complainant organization states that the Ministry of Education decided to suspend, from October 2000, the deduction of the trade union dues of workers affiliated to the trade unions grouped under the Venezuelan Federation of Teachers (FVM), causing the latter serious economic hardship.*

1160. *The Committee notes the Government's statement with regard to the allegations that: (i) this decision was based on the fact that at the time there were serious complaints and many simultaneous indications of irregularities in the deduction of ordinary and extraordinary trade union dues which, according to the Government, seriously violated the human rights of a large number of teachers in its service. According to the Government, the irregularities included, among others, use of the check-off facility for trade union dues of teachers who were not affiliated to any trade union, trade union dues deducted from teachers who had given up their membership, trade union dues deducted from teachers who had not fulfilled the legal requirements of the trade union organizations, and double or triple trade union dues deducted from teachers for first-level trade union organizations of the same employer; (ii) the Ministry of Education, Culture and Sport proceeded to adopt a series of measures aimed at correcting the irregularities in the deduction of trade union dues that necessarily involved the temporary suspension, for the time that was strictly necessary and as short as possible, of the use of the check-off facility for trade union dues while the appropriate corrective measures were implemented; (iii) unfortunately, during the previous year there were no favourable conditions to allow direct, transparent and rapidly held dialogue between the Ministry of Education, Culture and Sport and the trade union organizations, aimed at resolving the irregularities in the deduction of trade union dues; (iv) the regularization process for the deduction of trade union dues was the subject of voluntary collective bargaining in the framework of a list of demands of a conciliatory nature, presented to the Inspectorate of National and Collective Labour Affairs for the Public Sector of the Ministry of Labour, on 25 October 2000, by the teachers' trade union organizations against the Ministry of Education, Culture and Sport; and, on 12 August 2002, an Agreement was signed between the Ministry of Education, Culture and Sport and the teachers' trade unions, including the FVM, in which the conditions to re-establish the deduction of trade union dues was agreed upon, and was expressly stated as follows: "Clause No. 67, deduction of trade union dues. The deduction of trade union dues will be re-established once discussion and conclusion of the current list of demands has been carried out, the re-establishment of the deduction of trade union dues will be made with the lists presented to the National Electoral Council, as registry of the electoral roll for the elections that were held on 13 November 2001, and recorded in the Directorate for Labour and Trade Union Relations and copied to the pay system of the payroll unit."*

1161. *In this respect, the Committee notes with concern that, although the Government states that there were "serious complaints" and indications of irregularities with regard to the deduction of trade union dues that involved the temporary suspension of their deduction, it provides no information on any independent investigation, for example, by the legal authorities. Nevertheless, the Committee emphasizes that the Government did not provide any evidence of complaints emanating from the FVM. Moreover, the Committee notes that the suspension of deductions has now been in place for more than two years. The Committee requests the Government that, in future, when allegations of irregularities in the deduction of trade union dues arise, the case is submitted to an impartial independent body for investigation of the matter and that deduction of trade union dues is only suspended for those workers who have lodged complaints.*

1162. *The Committee recalls that on numerous occasions it has emphasized that "the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and*

should therefore be avoided" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 435]. Therefore, the Committee considers that the decision of the Ministry of Education to suspend the deduction of trade union dues for members of trade unions belonging to the FVM is a violation of the rights of the FVM that has seriously affected its financing. In these circumstances, the Committee notes that in August 2002, the parties to the conflict signed an Agreement before the administrative authorities in which it was stated that the deduction of trade union dues would be re-established once discussion of the list of demands had been completed. The Committee trusts that the deduction of the trade union dues in question will be re-established without delay. The Committee requests the Government to keep it informed of developments in the situation in this regard.*

The Committee's recommendations

1163. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) While considering that the Ministry of Education's decision to suspend the deduction of the trade union dues of members of trade unions making up the Venezuelan Federation of Teachers (FVM), more than two years ago, constitutes a violation of the rights of that organization, and that this has seriously affected the financing of the organization, the Committee requests the Government that, in future, when allegations of irregularities in the deduction of trade union dues arise, the case is submitted to an impartial independent body for investigation of the matter and that deduction of trade union dues is only suspended for those workers who have lodged a complaint.

(b) The Committee trusts that the deduction of trade union dues of the workers belonging to trade unions that make up the FVM will be re-established without delay. The Committee requests the Government to keep it informed of developments in the situation in this regard.

Geneva, 21 March 2003. *(Signed)* Paul van der Heijden, Chairperson.

Points for decision:

Paragraph 192;	Paragraph 642;	Paragraph 917;
Paragraph 206;	Paragraph 662;	Paragraph 958;
Paragraph 238;	Paragraph 691;	Paragraph 977;
Paragraph 305;	Paragraph 720;	Paragraph 988;
Paragraph 334;	Paragraph 755;	Paragraph 1009;
Paragraph 384;	Paragraph 768;	Paragraph 1053;
Paragraph 467;	Paragraph 781;	Paragraph 1076;
Paragraph 506;	Paragraph 792;	Paragraph 1105;
Paragraph 527;	Paragraph 823;	Paragraph 1111;
Paragraph 543;	Paragraph 834;	Paragraph 1130;
Paragraph 552;	Paragraph 854;	Paragraph 1147;
Paragraph 586;	Paragraph 894;	Paragraph 1163.
Paragraph 606;	Paragraph 908;	