



SEVENTH ITEM ON THE AGENDA

**335th Report of the Committee on
Freedom of Association****Contents**

	<i>Paragraphs</i>
Introduction	1-186
<i>Case No. 2345 (Albania): Definitive report</i>	
Complaint against the Government of Albania presented by the Council of Employers’ Organizations – Albania (KOP).....	187-208
The Committee’s conclusions.....	202-207
The Committee’s recommendation.....	208
<i>Case No. 2283 (Argentina): Report in which the Committee requests to be kept informed of developments</i>	
Complaint against the Government of Argentina presented by the Confederation of Argentine Workers (CTA) and the Commercial Workers’ Trade Union of Jujuy Province (Si.Tra.M.).....	209-227
The Committee’s conclusions.....	223-226
The Committee’s recommendations.....	227
<i>Case No. 2302 (Argentina): Interim report</i>	
Complaint against the Government of Argentina presented by the Trade Union of “Puntanos” Judicial Employees (SIJUPU).....	228-247
The Committee’s conclusions.....	240-246
The Committee’s recommendations.....	247
<i>Case No. 2312 (Argentina): Definitive report</i>	
Complaint against the Government of Argentina presented by the Lockheed Aircraft Argentina S.A. Workers’ Union (SITLA), supported by the Congress of Argentine Workers (CTA).....	248-267
The Committee’s conclusions.....	261-266
The Committee’s recommendations.....	267

Case No. 2306 (Belgium): Definitive report

Complaint against the Government of Belgium presented by the Organization of Independent Civil Servants (OFA).....	268-365
The Committee's conclusions	349-364
The Committee's recommendation	365

Case No. 2294 (Brazil): Interim report

Complaint against the Government of Brazil presented by the Single Central Organization of Workers (CUT) and the Trade Union of Workers in the Metallurgical, Mechanical, Electrical, Electronic, Iron and Steel, Automobile and Spare Parts Industries and Offices in Taubaté, Tremembé and Districts (Taubaté Metalworkers' Union).....	366-388
The Committee's conclusions	381-387
The Committee's recommendations	388

Case No. 2276 (Burundi): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Burundi presented by the Trade Union Confederation of Burundi (COSYBU).....	389-411
The Committee's conclusions	402-410
The Committee's recommendations	411

Case No. 2257 (Canada/Quebec): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Canada concerning the Province of Quebec presented by the National Confederation of Managerial Staff of Quebec (CNCQ), the Association of Senior Managerial Staff of Health and Social Services (ACSSSS), the Association of Branch Managers of the <i>Société des alcools du Québec</i> (ADDS/SAQ) and the Association of Managerial Staff of the <i>Société des casinos du Québec</i> (ACSCQ).....	412-470
The Committee's conclusions	458-469
The Committee's recommendations	470

Case No. 2305 (Canada/Ontario): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Canada concerning the Province of Ontario presented by Education International (EI) on behalf of the Canadian Teachers' Federation (CTF), the Ontario Teachers' Federation (OTF) and the Ontario English Catholic Teachers' Association (OECTA).....	471-512
The Committee's conclusions	501-511
The Committee's recommendations	512

Case No. 2217 (Chile): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Chile presented by the Chilean General Confederation of Workers (CGT) and the National Union of Metal, Communication and Energy Workers and Related Activities (SNTMCEYAC)	513-528
The Committee's conclusions	521-527
The Committee's recommendations	528

Case No. 2290 (Chile): Definitive report

Complaint against the Government of Chile presented by the World Federation of Trade Unions (WFTU)	529-535
The Committee's conclusions.....	534
The Committee's recommendation.....	535

Case No. 2307 (Chile): Definitive report

Complaint against the Government of Chile presented by the Teachers' Association of Chile (CPCAG)	536-566
The Committee's conclusions.....	563-565
The Committee's recommendation.....	566

Case No. 2320 (Chile): Interim report

Complaints against the Government of Chile presented by the National Inter-enterprise Trade Union of Metallurgy, Communications, Energy and Allied Workers (SME) and the World Federation of Trade Unions, Regional Office, Americas (WFTU-ROA).....	567-665
The Committee's conclusions.....	655-664
The Committee's recommendations	665

Case No. 2335 (Chile): Definitive report

Complaint against the Government of Chile presented by the National Association of Ministry of Education Staff (ANDIME) supported by the International Confederation of Free Trade Unions (ICFTU)	666-679
The Committee's conclusions.....	676-678
The Committee's recommendation.....	679

Case No. 1787 (Colombia): Interim report

Complaint against the Government of Colombia presented by the International Confederation of Free Trade Unions (ICFTU), the Latin American Central of Workers (CLAT), the World Federation of Trade Unions (WFTU), the Single Confederation of Workers of Colombia (CUT), the General Confederation of Democratic Workers (CGTD), the Confederation of Workers of Colombia (CTC), the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA), the Petroleum Industry Workers' Trade Union (USO), the World Confederation of Labour (WCL) and others.....	680-731
The Committee's conclusions.....	712-730
The Committee's recommendations	731

Case No. 2068 (Colombia): Interim report

Complaints against the Government of Colombia presented by the General Confederation of Democratic Workers (CGTD), the General Confederation of Democratic Workers (CGTD), Antioquia branch, the Single Confederation of Workers of Colombia (CUT), Antioquia executive subcommittee and 25 other trade unions	732-750
The Committee's conclusions.....	741-749
The Committee's recommendations	750

Case No. 2226 (Colombia): Report in which the Committee requests to be kept informed of developments

Complaints against the Government of Colombia presented by the Union of State Workers of Colombia (UTRADEC), the Single Confederation of Workers of Colombia (CUT) and the Social Security Workers' Union (SINTRASEGURIDADSOCIAL).....	751-761
The Committee's conclusions	756-761
The Committee's recommendations	762

Case No. 1865 (Republic of Korea): Interim report

Complaints against the Government of the Republic of Korea presented by the Korean Confederation of Trade Unions (KCTU), the Korean Automobile Workers' Federation (KAWF), the International Confederation of Free Trade Unions (ICFTU) and the Korean Metalworkers' Federation (KMWF)	763-841
The Committee's conclusions	810-840
The Committee's recommendations	841

Case No. 2138 (Ecuador): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Ecuador presented by the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) and the International Confederation of Free Trade Unions (ICFTU).....	842-856
The Committee's conclusions	850-855
The Committee's recommendations	856

Case No. 2330 (Honduras): Report in which the Committee requests to be kept informed of developments

Complaints against the Government of Honduras presented by the Association of Secondary Teachers of Honduras (COPEMH) and the Professional Association of School Teachers of Honduras (COPRUMH), supported by Education International (EI).....	857-880
The Committee's conclusions	875-879
The Committee's recommendations	880

Case No. 2228 (India): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of India presented by the Centre of Indian Trade Unions (CITU)	881-908
The Committee's conclusions	894-907
The Committee's recommendations	908

Case No. 2236 (Indonesia): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Indonesia presented by the Chemical, Energy and Mines Workers' Union (Federasi Serikat Pekerja Kimia, Energi dan Pertambangan Serikat Pekerja Seluruh Indonesia – DPP SP KEP SPSI)	909-971
The Committee's conclusions	954-970
The Committee's recommendations	971

Case No. 2304 (Japan): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Japan presented by the Japan Confederation of Railway Workers' Unions (JRU).....	972-1019
The Committee's conclusions.....	1010-1018
The Committee's recommendations	1019

Case No. 2308 (Mexico): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Mexico presented by the National Trade Union of Electrical and Allied Workers of the Mexican Republic (SNIPES)	1020-1042
The Committee's conclusions.....	1039-1041
The Committee's recommendation.....	1042

Case No. 2317 (Republic of Moldova): Interim report

Complaints against the Government of the Republic of Moldova presented by the Federation of Trade Unions of Public Service Employees (SINDASP), the Confederation of Trade Unions of the Republic of Moldova (CSRM), the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND) supported by the International Confederation of Free Trade Unions (ICFTU), the General Confederation of Trade Unions (GCTU), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Public Services International (PSI)	1043-1096
The Committee's conclusions.....	1080-1095
The Committee's recommendations	1096

Case No. 2274 (Nicaragua): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Nicaragua presented by the National Federation of Heroes and Martyrs Trade Unions of the Textiles, Clothing, Leather and Shoe Industry on behalf of the Roo Sing Garment Co. Workers' Union (STERSG)	1097-1126
The Committee's conclusions.....	1116-1125
The Committee's recommendations	1126

Case No. 2311 (Nicaragua): Definitive report

Complaint against the Government of Nicaragua presented by the José Benito Escobar Workers' Trade Union Confederation (CST-JBE)	1127-1149
The Committee's conclusions.....	1144-1148
The Committee's recommendations	1149

Case No. 2273 (Pakistan): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Pakistan presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) on behalf of the Pakistan Sugar Mills Workers' Federation (PSMWF) ...	1150-1163
The Committee's conclusions.....	1161-1162
The Committee's recommendation.....	1163

Case No. 2111 (Peru): Report in which the Committee requests to be kept informed of developments

Complaints against the Government of Peru presented by the Peruvian General Confederation of Workers (CGTP), the Federation of Peruvian Light and Power Workers (FTLFP) and the National Federation of Miners, Metalworkers and Steelworkers of Peru (FNTMMSP)..... 1164-1172

The Committee's conclusions 1168-1171

The Committee's recommendations 1172

Case No. 2285 (Peru): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Peru presented by the Federation of Peruvian Light and Power Workers (FTLFP) 1173-1185

The Committee's conclusions 1181-1184

The Committee's recommendations 1185

Case No. 2289 (Peru): Report in which the Committee requests to be kept informed of developments

Complaints against the Government of Peru presented by the Federation of Peruvian Light and Power Workers (FTLFP) and the General Confederation of Workers of Peru (CGTP).... 1186-1215

The Committee's conclusions 1209-1214

The Committee's recommendations 1215

Case No. 2293 (Peru): Interim report

Complaint against the Government of Peru presented by the Peruvian Petroleum Workers' Federation (FETRAPEP), the Single Trade Union of Talar Petroleum Refinery of Peru S.A. (SUTREPPSA) and the National Trade Union of Health Social Security Workers (SINACUT ESSALUD) 1216-1239

The Committee's conclusions 1233-1238

The Committee's recommendations 1239

Case No. 2325 (Portugal): Definitive report

Complaint against the Government of Portugal presented by the Occupational Association of Professional Police Officers (ASPP-PSP) 1240-1259

The Committee's conclusions 1254-1258

The Committee's recommendation 1259

Case No. 2265 (Switzerland): Interim report

Complaint against the Government of Switzerland presented by the Swiss Federation of Trade Unions (USS) 1260-1356

The Committee's conclusions 1335-1355

The Committee's recommendation 1356

Case No. 2303 (Turkey): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Turkey presented by the Glass, Cement and Soil Industries Workers' Union (KRISTAL-IS) 1357-1378

The Committee's conclusions 1369-1377

The Committee's recommendations 1378

Case No. 2270 (Uruguay): Interim report

Complaint against the Government of Uruguay presented by the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT) and the National Ports Administration United Trade Union (SUANP)	1379-1396
The Committee's conclusions.....	1391-1395
The Committee's recommendation	1396

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva on 4, 5, 6 and 12 November 2004, under the chairmanship of Professor Paul van der Heijden.
2. The members of Burundian, Indian, Pakistani and Swiss nationality were not present during the examination of the cases relating to Burundi (Case No. 2276), India (Case No. 2228), Pakistan (Case No. 2273) and Switzerland (Case No. 2265) respectively.

-
3. Currently, there are 140 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 36 cases on the merits, reaching definitive conclusions in 26 cases and interim conclusions in 10 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

4. The Committee considers it necessary to draw the special attention of the Governing Body to Case No. 1787 (Colombia) because of the extreme seriousness and urgency of the matters dealt with therein.

New cases

5. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2346 (Mexico), 2348 (Iraq), 2349 (Canada), 2350 (Republic of Moldova), 2352 (Chile), 2353 (Venezuela), 2356 (Colombia), 2357 (Venezuela), 2358 (Romania), 2359 (Uruguay), 2360 (El Salvador), 2361 (Guatemala), 2362 (Colombia), 2363 (Colombia), 2364 (India), 2367 (Costa Rica), 2368 (El Salvador), 2371 (Bangladesh), 2372 (Panama), 2373 (Argentina), 2374 (Cambodia), 2375 (Peru), 2376 (Ivory Coast), 2377 (Argentina), 2378 (Uganda), 2379 (Netherlands), 2380 (Sri Lanka), 2382 (Cameroon), 2384 (Colombia), 2385 (Costa Rica), 2386 (Peru), 2387 (Georgia), 2388 (Ukraine), 2389 (Peru), 2390 (Guatemala) and 2391 (Madagascar) since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted to the last meeting of the Committee.

Observations requested from governments

6. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 2087 (Uruguay), 2174 (Uruguay), 2241 (Guatemala), 2254 (Venezuela), 2259 (Guatemala), 2264 (Nicaragua), 2269 (Uruguay), 2275 (Nicaragua), 2279 (Peru), 2286 (Peru), 2295 (Guatemala), 2313 (Zimbabwe), 2314 (Canada), 2326 (Australia), 2327 (Bangladesh), 2329 (Turkey), 2331 (Colombia), 2333 (Canada), 2334 (Portugal), 2337 (Chile), 2339 (Guatemala), 2341 (Guatemala), 2342 (Panama) and 2343 (Canada).

Partial information received from governments

7. In Cases Nos. 2177 (Japan), 2183 (Japan), 2189 (China), 2203 (Guatemala), 2248 (Peru), 2249 (Venezuela), 2258 (Cuba), 2262 (Cambodia), 2268 (Myanmar), 2277 (Canada), 2287 (Sri Lanka), 2298 (Guatemala), 2309 (United States), 2318 (Cambodia), 2328 (Zimbabwe), 2355 (Colombia) and 2366 (Turkey), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

8. As regards Cases Nos. 2046 (Colombia), 2153 (Algeria), 2214 (El Salvador), 2239 (Colombia), 2300 (Costa Rica), 2315 (Japan), 2319 (Japan), 2323 (Islamic Republic of Iran), 2324 (Canada), 2332 (Poland), 2336 (Indonesia), 2338 (Mexico), 2340 (Nepal), 2344 (Argentina), 2347 (Mexico), 2351 (Turkey), 2354 (Nicaragua), 2365 (Zimbabwe), 2369 (Argentina), 2370 (Argentina), 2381 (Lithuania) and 2383 (United Kingdom), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

9. As regards Cases Nos. 2244 (Russian Federation), 2292 (United States) and 2321 (Haiti), the Committee observes that despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

Suspension of complaint

10. The Committee suspended the examination of Case No. 2278 (Canada) at the request of the complainant organization. The Committee is awaiting the comments announced by that organization.

Receivability of a complaint

11. In Case No. 2322 (Venezuela), the Committee is awaiting the comments of the Latin-American Workers' Central Organization (CLAT), that filed the complaint whose receivability has been challenged by the Government.
12. The Committee considered a complaint against the Government of Mexico submitted by the representative of a list presented for trade union election at the Single Trade Union of Electricity Workers of Mexico (SUTERM) and supported by the International Energy and Mines' Organization (IEMO) not to be receivable.

Transmission of cases to the Committee of Experts

13. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Burundi (Case No. 2276) and Canada (Case No. 2257).

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

Case No. 2204 (Argentina)

14. The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 216 to 230]. On that occasion, the Committee requested the Government to transmit its observations on the allegation that Mr. Claudio Lepratti, trade union representative of the Association of State Workers, was murdered by police in Rosario City, whilst he was carrying out his professional duty in a school canteen, and to keep it informed of any judicial inquiry undertaken in this respect.
15. In its communication of 21 September 2004, the Government provided a copy of the judgement issued by Criminal Court No. 5 as regards the proceedings launched against Mr. Esteban Ernesto Velazquez for the murder of Mr. Claudio Lepratti. According to that judgement: (1) Mr. Velazquez (a policeman) was convicted of aggravated murder, with use of a firearm, and sentenced to 14 years of prison for homicide; (2) Mr. Velazquez and the Province of Santa Fe have been jointly sentenced to pay for that crime a compensation of 50,000 pesos for pecuniary damages and 120,000 pesos for moral damages.
16. *The Committee takes note of this information.*

Case No. 2224 (Argentina)

17. The Committee last examined this case at its June 2004 meeting and on that occasion requested the Government to take the necessary steps to ensure that the competent authorities of Misiones Province immediately transfer to the Association of State Workers (ATE), in money of legal tender, the amount of the trade union dues of its members that it wrongfully withheld between January 1994 and October 1996, with payment of the corresponding interest [see 334th Report, paras. 132-146].
18. In a communication of 9 September 2004, the Government indicates that a payment agreement was concluded between the Government of Misiones Province and the ATE on 9 March 2004. By virtue of the agreement, a consensus was reached to pay the amounts owed by the Province plus interests in money of legal tender and in four monthly instalments. The Government adds that three of the four instalments have already been paid and the agreement is being fully implemented.
19. *The Committee takes note of this information with satisfaction.*

Case No. 2256 (Argentina)

20. The Committee last examined this case at its June 2004 meeting [see 334th Report, paras. 147-165]. On that occasion, on examining allegations regarding the failure of the Directorate General of Schools (DGE) of the province of Mendoza to appoint its representatives to continue to negotiate a collective agreement for the sector with the United Union of Education Workers of Mendoza (SUTE), the Committee recalled that

Article 4 of Convention No. 98 provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Consequently, the Committee requested the Government to take measures to this effect and to keep it informed on the outcome of the negotiation of the collective agreement in question. Moreover, the Committee requested the Government to keep it informed of the final decision handed down by the judicial authority with respect to the participation by a new trade union organization, the Union of Argentine Teachers (UDA), in the renegotiation of joint accord No. 1 of 1999 concluded between the SUTE and the DGE.

21. In a communication dated 26 August 2004, the Government states that, in the case of the action for the protection of constitutional rights presented by the SUTE against the DGE, the Supreme Court of Justice of the province of Mendoza rejected the claim made by the SUTE through its decision of October 2003, thus confirming the decision of the Civil Court of Appeal, and alongside it the suspension of the call for the election of the Assessment and Disciplinary Boards (this would involve the participation of the UDA organization in negotiations). The Government adds that, regarding the procedure followed in order to agree on collective bargaining for the sector, the intention of the provincial government to convene negotiations on a collective labour agreement for the public sector was confirmed in Law No. 7183. This was implemented through Decree No. 955/04, article 2 of which states "The collective bargaining process for workers of the Public Administration shall be convened...". In article 1 of resolution No. 170-G/04, the Public Administration Ministry "invites the parties to begin the collective bargaining process related to Provincial Public Administration in the Education Sector". The Government adds that the DGE has already begun internal administrative procedures in order to proceed to the appointment of the public employees who will represent the DGE during the collective bargaining process convened in Decree No. 955/04.
22. *The Committee takes note of this information. The Committee expresses the hope that, following the start of the administrative procedures as reported by the Government, a collective agreement will be concluded for the sector. The Committee requests the Government to keep it informed in this respect.*

Case No. 2188 (Bangladesh)

23. The Committee last examined this case at its November 2003 session [see 332nd Report, paras. 13-15]. On that occasion, in relation to the case of Ms. Taposhi Bhattachajee, the Committee strongly hoped that the Appellate Division of the Supreme Court would issue a judgement confirming the High Court decision reinstating her in her job with full benefits and requested the Government to provide it with a copy of the judgement once issued. In relation to the warnings issued to ten members of the trade union executive committee for legitimate trade union activities, the Committee once again urged the Government to give appropriate directions to the management of the Shahid Sorwardi Hospital so that these warnings are withdrawn from their personal files, and requested to be kept informed in this respect.
24. In a communication dated 3 July 2004, the Government stated that, in accordance with the verdict passed by the High Court Division of the Supreme Court of Bangladesh, Ms. Bhattachajee was reinstated in her job with full benefits.
25. *In relation to the case of Ms. Bhattachajee, the Committee notes the information provided by the Government confirming that Ms. Bhattachajee was reinstated with full benefits following the decision of the High Court Division of the Supreme Court. The Committee*

regrets to note, however, that this appears to be the same court decision referred to in the Government's earlier communications, in respect of which the Government had advised the Committee on 6 September 2003 that it had instigated an appeal and so the case was still pending.

26. *For that reason, the Committee requests the Government to clarify whether the case of Ms. Bhattachajee has been finally determined by the Appellate Division of the Supreme Court of Bangladesh, or whether the Government's appeal against the High Court Division's decision of reinstatement is still pending. If the case is still pending, the Committee requests the Government to provide it with a copy of the decision once it is issued and to keep it informed in this regard.*
27. *In relation to the warnings issued to the ten union officials, the Committee notes that it has not been provided with any further details and once again urges the Government to give appropriate directions to the management of the Shahid Sorwardi Hospital so that these warnings are withdrawn, and to keep it informed in this respect.*

Case No. 2156 (Brazil)

28. At its June 2004 meeting, the Committee requested the Government to send it a copy of the decision handed down regarding the murder of trade union leader Carlos Alberto Oliveira Santos [see 334th Report, para. 17].
29. In a communication dated 24 August 2004, the Government states that, once the decision regarding the murder of trade union leader Carlos Alberto Oliveira Santos has been handed down, it will be sent to the Committee. The Government encloses extensive documentation on the development of the legal proceedings, from which it emerges that those having participated in the crime, including the perpetrator, have been identified and detention orders have been issued.
30. *The Committee takes note of this information and awaits the decision to be handed down regarding the murder of trade union leader Carlos Alberto Oliveira Santos.*

Case No. 2047 (Bulgaria)

31. The Committee last examined this case at its meeting in June 2004 when it requested the Government to keep it informed of developments concerning the procedure of determining representativeness of workers' and employers' organizations, provided for in Ordinance No. 64/18, adopted on 11 July 2003 and which entered into force on 21 October 2003 [see 334th Report, paras. 22-24].
32. In a communication dated 14 July 2004, the World Confederation of Labour (WCL) and its affiliate, the Association of Democratic Trade Unions (ADS), submitted additional information. Generally, the complainants indicate that during the first years of the political transition, proper conditions were set up for building a trade union environment respectful of trade union pluralism. Nevertheless, over the last years, there have been growing signs and acts against such pluralism. Official policies, practices and decisions, often implemented in total disrespect of sentences coming from the national courts, continue to pave the way for the total marginalization of most of the trade unions, including the ADS and the National Trade Union (NTU, previously known as PROMYANA). Single representativity of the workers' voice in the hands of few (two) trade unions continues to be promoted. The complainants then explain more specifically the manner in which other trade unions have effectively been barred from exercising basic trade union rights. They refer to: (1) the fact that representation of trade unions in the National Tripartite Council

(NTC) was based on the procedure set out in Decree No. 41 of 1998 relating to the procedure for determining the representative organizations of workers and of employers, despite matters raised by the Committee in this respect and a High Court judgement abrogating the decree; (2) the eternal nature of collective bargaining agreements that had been mostly signed by the former communist trade unions and were not renewed until 2001, at which time the new trade unions were still excluded from concluding new agreements; (3) the unfair distribution of trade union assets and property after the Communist era; (4) the exclusion of the new trade unions from social dialogue since 2000. According to ADS, the total membership of the five new trade unions reaches 2.8 million people, that is, 70 per cent of the working population; yet they are still not recognized.

- 33.** The complainants state that until 31 January 2003 only the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Confederation of Labour “Podkrepa” were recognized as representative on a national level; the decision of the Council of Ministers from 18 January 1999 having excluded the other trade unions from participation in the social dialogue. Thus, the Government had not heeded the judgement of the Supreme Administrative Court which had declared illegitimate the additional standards developed for counting trade union membership and upon which that Council of Ministers’ decision was based. The complainants add that the periodical verification of representativeness of trade unions (every three years) was not observed either.
- 34.** As regards the recently adopted Ordinance No. 64/18 which sets out representativeness criteria for workers’ and employers’ organizations, the complainants point out that its terms provide that only organizations acknowledged as representative should submit the documents necessary for the certification of their representativeness. The ADS and NTU thus wrote to the Ministry of Labour and Social Policy for clarification as to whether they might submit for certification. The complainants attached the reply from the Vice-Minister of Labour and Social Policy dated 17 September 2003 informing them that, while ADS had been recognized by decision of the Council of Ministers in 1997, that decision was subsequently revoked by the Council in 1999 in respect of ADS and of other workers’ organizations. Thus, ADS is not recognized as representative at the national level and the Ordinance does not apply to them or to other workers’ organizations whose representativeness had been repealed by the Council of Ministers. In this way, these workers’ organizations have been barred from submitting for determination of their representative status on the basis of an earlier decision that had illegally denied them that status. This also explains the reason why ADS and NTU did not submit their documents to the authorities as the Government indicated earlier in its communication of 11 July 2003.
- 35.** The complainants emphasize that, as a result of the approach taken by the Government, only the CITUB and “Podkrepa” are allowed to participate on the supervisory bodies of the National Insurance Institute and the National Health Insurance Fund. In addition, while there was larger trade union representation on the National Council for the European Social Charter, this Council was recently replaced by the Economic and Social Council, which considerably limits the representation of trade unions and upon which ADS is not included.
- 36.** Taking into account all of the above considerations, the complainants express their desire for: (1) the acceleration of the preparation of the law on trade unions, with equal participation for all trade union confederations, so that the issue of representativeness criteria may be settled in conformity with regional legislation and international principles; (2) the fair distribution of state assets to all existing trade unions; (3) the promotion of the right to sign collective agreement to all trade unions; and (4) the participation and effective consultation of all trade unions in social dialogue, in particular, in the Economic and Social Council.

37. In its communication dated 16 August 2004, the Government provides information on the results of the trade union poll carried out at the end of 2003 on the basis of the Ordinance adopted by the Council of Ministers Decree No. 152 of 2003 (promulgated as Ordinance No. 64 and subsequently amended by a Supreme Administrative Court Judgement No. 9121 of 2003). As a result of this poll, a new employers' organization, Employers Association of Bulgaria, was acknowledged as representative at national level.
38. In a communication dated 19 October 2004, the Government replies to the additional observations made by the complainants. Firstly, the Government recalls the provisions of Ordinance No. 64 relative to the situations in which criteria for representativeness shall be identified. The Government states that section 1 of the Transitional Provisions of the Council of Ministers Decree No. 152 promulgating the Ordinance provides that the workers' and employers' organizations which have been recognized as representative at national level by a Council of Ministers Decision shall submit to the Council of Ministers the necessary documents for identifying the presence of criteria for representation up to 15 October 2003. The Council of Ministers keeps the representatives of those organizations which, by that time, have been recognized as representative for a period of three months after the expiration of the term in which the necessary documents for identifying the presence of criteria for representation should be presented. The Government states that the NTU appealed this provision before the Supreme Administrative Court.
39. According to the Government, the Supreme Administrative Court agreed that section 1 of the Transitional Provisions initiated a procedure on section 36(a), paragraph 2, of the Labour Code for verification of the pre-existing nationally representative trade unions and employers' organizations. Thus, the complainant did not have the capacity of a representative trade union at national level and could not take part in the National Council for Tripartite Cooperation, nor could it be a party to collective bargaining at sectoral, branch or municipal level. On the other hand, the complainant can make a request before the Council of Ministers on the grounds of section 36, paragraph 2, of the Labour Code to be recognized as a representative organization at national level, after the submission of necessary documents for identifying the presence of the relevant criteria. The Court concludes that by the adoption of this Ordinance through Decree, the Council of Ministers exercised its competence on section 36, paragraph 1, of the Labour Code to determine the procedures for identifying the presence of criteria for representation and in this sense the aim of the law has been achieved.
40. The Supreme Administrative Court also ruled that, according to section 36(a), paragraph 1, the trade union and employers' organizations recognized as representative shall identify their representation within a three-year period after their recognition under section 36, paragraph 2. For those trade unions that were acknowledged as representative before the adoption of the new sections 36 and 36(a), the three-year period commences from the date of entry into force of these provisions, that is 31 March 2001.
41. In reply to the complainants' allegations that the Labour Code contains certain provisions favouring certain trade union organizations, the Government asserts that these allegations are unwarranted and recalls that social dialogue at the enterprise level may be implemented with all workers' organizations, regardless of whether they are recognized as representative at national level. In conclusion, the Government affirms that social dialogue is applied both in the development of labour standards and in the process of their implementation and is thus one of the essential principles of the operative labour law and labour relations in Bulgaria.
42. As regards the complainants' request that the preparation of the law on trade unions should be accelerated so as to address the issue of representativeness criteria, the Government

considers that the draft law should be elaborated by the trade unions themselves, without state intervention. In addition, the Labour Code determines the criteria for representation. The NTU and ADS have had the possibility to apply before the Council of Ministers for recognition of representativeness at national level under section 36, paragraph 2. In August 2004, two organizations – the Association of Industrial Capital in Bulgaria and the Association of Trade Unions in Promyana Alliance – applied to be recognized under the established procedure.

43. *The Committee takes due note of the information provided by the complainants and by the Government. The Committee recalls that, during its first examination of this case in March 2000, the Government, having acknowledged that the representativeness criteria in question at the time (set forth in Decree No. 41) had been repealed by the High Court, expressed its willingness to conduct a poll to determine whether ADS and PROMYANA satisfied the long-established criteria set forth in the Labour Code. The Committee thus requested the Government to undertake a poll of these two unions and to keep it informed of developments in this respect.[see 320th Report, paras. 359 and 360]. The Government indicated in reply that it had filed an official proposal for counting to PROMYANA and ADS, but ADS subsequently informed the Committee that a poll of trade union membership had never been conducted in Bulgaria, nor was there any law providing for trade union elections to determine representativeness. Noting the Government's continued willingness to conduct such a poll, the Committee urged it to take the necessary measures in this respect rapidly [see 326th Report, paras. 27-30]. Subsequently, the Government referred to amendments being prepared to the Labour Code that would regulate the establishment of criteria for representativeness of workers' and employers' organizations and stated that an invitation would be addressed to the parties in order to conduct a poll once these amendments had been adopted [see 329th Report, paras. 25-27 and 330th Report, paras. 21-23].*
44. *The Committee thus notes with concern that since the time of filing of this complaint in 1999, the Government has still not taken the necessary measures to conduct a poll to determine the representativeness of ADS and PROMYANA (now the NTU). While the Government asserts that these organizations have had the possibility to apply to be recognized as representative at national level under section 36, paragraph 2, the information provided by both the Government and the complainants, as well as the letter from the Deputy Minister of Labour to ADS stating that section 2, paragraph 1, of the Decree does not refer to ADS or to other workers' organizations whose representativeness at national level has been repealed by the Council of Ministers and the fact that this letter does not indicate the avenues which should be taken to ascertain such status, demonstrate that the access to established mechanisms for determining representativeness are far from evident.*
45. *In these circumstances, the Committee urges the Government to initiate the necessary measures immediately so that ADS and the NTU may establish whether they meet the requirements for obtaining representative status at national level. It further requests the Government to indicate whether the two organizations that applied for recognition at the national level in August 2004 have been granted this status and to keep it informed of developments in respect of any requests for recognition. In addition, the Committee wishes to recall that ILO technical assistance is available to the Government in respect of matters relating to the determination of representative workers' and employers' organizations and other matters raised in this case, should it so desire.*

Case No. 2097 (Colombia)

46. At its June 2004 meeting, the Committee made the following recommendations with regard to the issues that remained outstanding [see 334th Report, para. 380]:

- With respect to the allegations of violations of trade union rights at the enterprise AVINCO S.A., submitted by the National Trade Union of Workers of AVINCO S.A. (SINTRAVI), related to the pressure put on workers to conclude a collective agreement bypassing the trade union, the subsequent withdrawal of non-statutory benefits from unionized workers and the pressure put on workers to make them leave the trade union, the Committee highlights the seriousness of these allegations and once again urges the Government to conduct an inquiry into the alleged facts and, depending on the conclusions reached by the inquiry, to state which legal channels the trade union can use to protect its rights. The Committee requests the Government to keep it informed in this respect. The Committee requests the Government to take the necessary measures to adapt the legislation and the legal procedures in conformity with Conventions Nos. 87 and 98.
 - Concerning the dismissal of Mr. Héctor de Jesús Gómez, former trade union official and trade unionist of the Trade Union of Workers of “Cementos del Nare S.A.” (SINTRACENARE), on 25 May 1995, the Committee requests the Government to take the necessary measures to ensure that the enterprise fully complies with article 13 of the collective agreement and pays Mr. Héctor de Jesús Gómez the corresponding compensation plus an additional 12 per cent, and to keep it informed in this respect.
 - With regard to the allegations submitted by the Single Confederation of Workers of Colombia (CUT), Antioquia Executive Subcommittee, and the Union of “Official” Workers and Public Employees of the General Hospital of Medellín, the Committee requests the Government to promote collective bargaining at the General Hospital of Medellín without delay and to keep it informed in this respect.
47. In its communication dated 1 September 2004, the Government, referring to the allegations made regarding the enterprise AVINCO S.A., says that it will send appropriate instructions to the Territorial Directorate of Antioquia requesting an administrative inquiry, as and when necessary. Concerning the dismissal of Mr. Héctor de Jesús Gómez, former trade union official and trade unionist of the Trade Union of Workers of “Cementos del Nare S.A.” (SINTRACENARE), the Government states that, once the enterprise pays Mr. Héctor de Jesús Gómez’s aforementioned compensation, it will transmit copies of the relevant documents.
48. As to the allegations concerning the General Hospital of Medellín, the Government reiterates what was previously said regarding collective bargaining for public employees, citing decision C-201 of 19 March 2002, handed down by the Constitutional Court, which states that the restriction of the right of trade unions representing public employees to collective bargaining is legal and which refers to article 416 of the substantive Labour Code.
49. *The Committee awaits the outcome of the administrative inquiry into the allegations regarding the enterprise AVINCO S.A. and the documents proving that the former trade union official, Mr. Héctor de Jesús Gómez, has received the compensation envisaged in the collective agreement. As to the Committee’s previous recommendation requesting that the Government promote collective bargaining at the General Hospital of Medellín, the Committee regrets the fact that the Government has not reported any measure in this respect, limiting itself to citing the jurisprudence of the Constitutional Court to the effect that the restriction of the right of trade unions representing public employees to collective bargaining is legal. In this respect, the Committee underlines that Colombia has ratified Conventions Nos. 98 and 154 and therefore has an obligation to recognize public employees’ right to collective bargaining. The Committee requests the Government to take clear measures to promote collective bargaining at the General Hospital of Medellín and to modify the legislation into full conformity with Conventions Nos. 98 and 154. The Committee also reminds the Government of its previous recommendation, in which it requested it to take measures to adapt the legal procedures into conformity with Conventions Nos. 87 and 98.*

Case No. 2151 (Colombia)

- 50.** The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 37-40]. On that occasion the Committee made the following recommendations regarding the issues that remained outstanding:

The Committee requests the Government to provide information on whether, prior to carrying out the dismissal of the trade union officials at the Institute for Urban Development (SINDISTRITALES and SINTRASISE) and Bogotá Council (SINDICONSEJO), the enterprises or institutions in question requested judicial authorization, as required in the legislation.

With regard to the refusal to grant trade union leave and further dismissals of SINTRASISE officials in the Transport Department, the Committee requests the Government to send copies of the appeals for reversal and motions of appeal that were rejected.

Concerning the refusal of the mayor of Bogotá to bargain collectively, and the lack of regulations governing the right to collective bargaining in the public sector, despite the fact that Colombia has ratified Conventions Nos. 151 and 154, the Committee requests the Government to take measures to promote collective bargaining in the Bogotá mayor's office and to take the necessary measures to ensure that the right of public servants to collective bargaining is respected in accordance with the provisions of Convention No. 151.

With regard to the alleged non-compliance with trade union agreements establishing certain advantages in respect of wages and benefits that have been recognized since 1992, the Committee requests the Government to send its observations in this respect.

As regards the allegations relating to the dismissal of SINTRABENEFICIARIAS officials for setting up the trade union in the Cundinamarca district, and on which the Territorial Directorate of Cundinamarca was to issue the corresponding decision, the Committee requests the Government to provide it with a copy of this decision.

- 51.** In its communications of 9 and 13 June 2004, the National Trade Union of Public Servants of Provincial Governments (SINTRAGOBERNACIONES) refers to the recommendation made by the Committee in the present case, in which the Government was urged to take measures to ensure that the required consultation with the corresponding trade union organizations be carried out within the restructuring process and alleges that the Governor of the Department of Cundinamarca failed to comply with this recommendation, presenting a draft bylaw to the Departmental Assembly (a copy of which is sent in an annex) with the aim of modifying the Basic Statute of the Public Administration of Cundinamarca and reorganizing the structure of the Departmental Administration, without having attempted to come to an agreement with the workers or having consulted them.
- 52.** In its communications of 14 May and 1 September 2004, the Government sends further observations. With regard to the dismissal of trade union officials of the Institute for Urban Development (IDU), SINDISTRITALES and SINTRASISE, the Government states that the complainant organization must provide the names of the individuals affected, as well as their positions within the Executive Committee of the trade union, and the date of the facts, in order that they may be identified and their cases dealt with. As for the IDU, the Government states that on 27 March 2001, 188 out of 671 posts were eliminated as a result of reorganization of personnel. Ten cases of suspension of trade union immunity concerning public servants who had that immunity when the staffing changes were passed were backed by the IDU. In six of them the decision went against the IDU, one case was withdrawn and three cases remain outstanding.
- 53.** As regards the dismissal in 2001 of the Executive Committee of the Trade Union of Employees of the District of Bogotá (SINDISTRITALES) by the District Administration, the Government states that, based on Resolution No. 883 of 31 March 2004, which grants the members of the Executive Committee of SINDISTRITALES of the Ministry of

Education of Bogotá D.C. trade union leave, it has been verified that Luis Eduardo Cruz, Chairman of SINDISTRITALES, Orlando Castillo, Secretary-General of the same organization and Elizabeth Lozano, Secretary of Solidarity have not been dismissed and, on the contrary, as stated in the very same resolution, are on permanent and paid trade union leave, in the case of the Chairman and the Secretary-General, and temporary trade union leave in the case of the Secretary of Solidarity. As for Carmen E. Quitián, member of the Executive Committee of the Trade Union, the Government reports that she has not been dismissed either and currently benefits from trade union immunity and is attached to the Office of the Controller of the Capital District, according to a payslip dated 30 April 2004.

- 54.** As regards the trade union officials of SINTRASISE, the Government states that the Centre for Systematisation and Technical Services for the Capital District “SISE”, was put into liquidation for technical reasons and its workers laid off with the corresponding compensation payments which took place according to the law. The Government also states that the Centre for Systematisation and Technical Services for the Capital District “SISE” presented the Labour Circuit Court for Bogotá with a special request for dissolution, liquidation and cancellation, as established in Article 380 of the Substantive Labour Code (CST), against the Trade Union of Official Workers of the District Centre for Systematisation and Technical Services (SINTRASISE) with first grade legal status (title no. 7064 of 19 December) in the enterprise because the number of its affiliates had been reduced to less than 25. The Labour Division of the District Court of Bogotá, confirmed the ruling handed down by the Eighteenth Labour Circuit Court, which in its decision dated 19 September 2001, stated that “SINTRASISE falls under the grounds for dissolution set out in subsection (d) of article 401 of the Substantive Labour Code” and ordered the cancellation of the Trade Union’s inclusion in the register of trade unions. As a consequence, the Ministry of Labour decided to remove SINTRASISE from the register of trade unions. SINTRASISE presented an action for protection of constitutional rights that was rejected by the Eighteenth Civil Circuit Tribunal of Bogotá, with that decision being confirmed by the Civil Chamber of the Superior Court of Bogotá D.C., in a ruling dated 17 August 2001. The Government encloses the aforementioned resolution and decisions in an annex to its observations.
- 55.** As to the refusal of trade union leave and further dismissals of SINTRASISE trade union officials working in the Ministry of Transport, the Government states that SINTRASISE was the Trade Union of Workers of the District Centre for Systematisation and Technical Services “SISE”, the district body which was put into liquidation and no individuals working in the Ministry of Transport belonged to that trade union.
- 56.** As to the allegations regarding the mayor of Bogotá’s refusal to bargain collectively, and the lack of regulations governing the right to collective bargaining in the public service, the Government is pleased to announce the adoption of Decree No. 137 of 29 April 2004 (sent in an annex), through which the District Committee for Labour Dialogue and Coordination has been established as a coordinating body for labour issues related to public servants of the Capital District. The aforementioned committee is made up of workers and public servants of the Capital District, alongside representatives of organizations, federations and trade unions whose members may be public servants of the District. As a part of its work, the Committee has already carried out the negotiation and coordination of the increase in wages of the public employees of the Capital District, within the framework of the policy of dialogue of that administration and the participation of trade union organizations on issues which are of great importance to the interests of the workers. This agreement will be applied to around 17,000 workers linked to the Capital District within its different bodies. Within the framework of the policy of coordination and dialogue with trade union organizations, the Capital District also agreed to the creation of a forum for dialogue with the Union of Public Servants of the Districts and Municipalities of Colombia (UNES), with

the aim of jointly analysing the successive pronouncements of the Committee on Freedom of Association.

57. With regard to the alleged non-compliance with trade union agreements, the Government states that Decree No. 1919 of 2002 was issued by the President of the Republic and is binding on all territorial entities, including the Capital District. The aforementioned Decree led to the suspension of pay for the so-called five-year period that had been awarded to public servants of the Capital District in recognition of services rendered for periods of five years of service. Decree No. 1919 was called into question on several occasions before the Council of State and this high court is currently considering a ruling with regard to this issue.
58. *As to the dismissal of trade union officials belonging to the Institute for Urban Development (IDU), the Committee notes that the Government states that the IDU has brought ten cases of suspension of trade union immunity: in six cases the decision went against the IDU, one case was withdrawn and three cases remain outstanding. The Committee expects that those trade union officials who win their cases will be effectively reinstated.*
59. *The Committee notes, with regard to the dismissal in 2001 of the Executive Committee of SINDISTRITALES, that the four members of the committee have not been dismissed, and on the contrary, three of them benefit from permanent or temporary paid trade union leave and the fourth is covered by trade union immunity. The Committee takes note of this information.*
60. *As to the SINTRASISE trade union officials, the Government states that the Centre for Systematisation and Technical Services for the Capital District "SISE" was put into liquidation for technical reasons and, as a consequence, its employees were made redundant with compensation. The Government also states that the enterprise Centre for Systematisation and Technical Services for the Capital District "SISE" lodged a special complaint with the Labour Circuit Court for Bogotá, requesting the dissolution of SINTRASISE, because its affiliates had been reduced to less than 25. The Court upheld the complaint and its ruling was confirmed by the District Court which ordered the cancellation of the registration of the trade union. SINTRASISE presented an action for protection of constitutional rights that was rejected. The Committee takes note of this information.*
61. *As to the refusal of trade union leave and further cases of dismissal involving trade union officials belonging to SINTRASISE and working in the Ministry of Transport, the Committee notes that the Government has not yet transmitted the requested copies of the appeals for reversal and motions of appeal. The Committee does, however, note the fact that the Government states that SINTRASISE was the Trade Union of Workers of the District Centre for Systematisation and Technical Services "SISE", a body which was put into liquidation as mentioned above, and that no individuals working in the Ministry of Transport belonged to that trade union.*
62. *As to the allegations regarding the mayor of Bogotá's refusal to negotiate collectively and the lack of regulation concerning the right to collective bargaining within the public service, the Committee notes with interest the adoption of Decree No. 137 of 29 April 2004 on the creation of the District Committee for Labour Dialogue and Coordination, established as a coordinating body for labour issues related to public servants of the Capital District. The Committee also notes that, as a first result of the District Committee's functioning, the increase in wages of the public employees of the Capital District has been agreed upon. Moreover, the Committee notes the creation of a forum for dialogue with the Union of Public Servants of the Districts and Municipalities of Colombia*

(UNES), with the aim of jointly analysing the successive pronouncements of the Committee on Freedom of Association. The Committee requests the Government to continue to keep it informed of the progress made in the area of collective bargaining in the public sector within the Capital District, as well as of any new agreements which might be reached. Taking into account the fact that it has examined various cases involving difficulties linked to collective bargaining in other areas of the public sector, the Committee hopes that similar measures will be adopted in those areas.

63. *With regard to the alleged non-compliance with trade union agreements establishing certain advantages in respect of wages and benefits that have been recognized since 1992, the Committee notes that the Government states that Decree No. 1919 was called into question on several occasions before the Council of State and this high court is currently considering a ruling with regard to this issue. The Committee requests the Government to keep it informed as to the results of these proceedings once the rulings have been handed down.*
64. *As to the allegations regarding the dismissal of trade union officials belonging to SINTRABENEFICENCIAS for having formed a trade union organization in the Cundinamarca district, on which the Territorial Directorate of Cundinamarca was to issue the corresponding decision against the background of the administrative inquiry that has been initiated, the Committee requests the Government to provide it with a copy of this decision.*
65. *The Committee notes that the Government has not transmitted information on the suspension of the trade union immunity of the trade union officials dismissed from the Bogotá Council (SINDICONCEJO), and the allegations of SINTRAGOBERNACIONES regarding the failure to consult with the trade union during the preparation of a draft bylaw aimed at modifying the Basic Statute of the Public Administration of Cundinamarca and reorganizing the structure of the Departmental Administration and requests the Government to transmit its observations in this respect. The Committee notes that a new communication of the Government was received on the eve of its meeting. It will examine the information contained in this communication when it next examines this case.*

Case No. 2237 (Colombia)

66. The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 41-43]. On that occasion, The Committee noted that the text of Decision No. 000759 issued by the territorial directorate of Atlántico, implied that there was a disparity in the wages paid to the different workers working in the same departments at the Hilazas Vanylon Enterprise S.A. Although the Committee had no other facts at its disposal, it requested the Government to ensure that workers at the enterprise were not discriminated against with regard to wages because of their trade union membership, and to keep it informed of any steps taken in this respect.
67. In its communications of 17 July and 19 August 2003, the complainant sent new allegations. Basically, it alleges that the employers have made use of new methods of recruitment; firstly, through temporary employment agencies and now through workers' cooperatives, in order to obstruct freedom of association, the right to present petitions and the right to strike. In particular, in the case of the enterprise Fabricato Tejicondor, it is alleged that, following the merger of these two enterprises, there was a violation of the law regarding the establishment of a single collective agreement for all the workers. The employers refuse to discuss the petition legally presented by SINALTHAHIDITEXCO in May 2003. They are using contracts drawn up with workers' cooperatives (1,500 workers out of a total of 5,402 belong to cooperatives). The complaint also alleges that temporary employment agencies and workers' cooperatives have been employed in connection with

new labour contracts in the enterprises Coltejer and Textiles Rionegro. The complainant also alleges that in the case of the enterprise Riotex, part of the Fabricato group, unionized workers have not benefited from the 7.49 per cent rise since 16 July 2003 and that, of a total of 540 workers, over 300 belong to cooperatives. The complainant organization alleges that there is victimization and anti-trade union discrimination within the enterprise Leonisa, as well as violation of collective bargaining and the use of contracts drawn up with cooperatives. Finally, the complainant organization alleges that, within the enterprise Everfit-Indulana, contracts are drawn up with cooperatives and unionized staff members are subject to victimization.

- 68.** In its communication dated 12 May 2004, in relation to the enterprise Fabricato Tejicondor and the establishment of a collective labour agreement in order to facilitate the merger of the two enterprises, Fabricato and Tejicondor, the Government states that, in accordance with article 38 of Decree No. 2351 of 1995, any collective labour agreement entered into with a trade union which counts more than one-third of the workforce of an enterprise amongst its membership is extended to cover all staff members, including, of course, both the members of the main trade union signatory to the agreement and the members of the less representative trade unions, as well as those non-unionized staff members. In accordance with the information provided by the enterprise, the main trade union is SINDELHATO, to which over 50 per cent of the workforce belongs, whilst SINALTHAHIDITEXCO and the Clothing Workers' Trade Union of Colombia (SINTRATEXTIL) have many fewer members, not even representing one-third of the workforce. The Government argues that, as a consequence, the collective agreement in force within the enterprise is that which was signed with SINDELHATO, and which expires in April 2005. This is why the allegation regarding the refusal to accept the SINTRATEXTIL petition is inconsistent. The Government also states that the Committee of Experts has not made any observations whatsoever with regard to the aforementioned Decree.
- 69.** As to the signing of service contracts with workers' cooperatives in the various enterprises cited by the complainant, the Government states that, through Ruling C-211 of March 2001, the Constitutional Court stated that:

... workers' cooperatives belong to the specialized category and have been defined by the legislator in the following terms: workers' cooperatives are those which organize the labour capacity of their members for the production of goods, carrying out of work or the provision of services. Members mainly contribute to this kind of organization in terms of their labour, given that contributions in the form of capital are minimal. (...) There is no subordination relationship between associates. In a social democracy such as ours, in which labour and solidarity play a vital role in achieving a just social and economic order, organizations based on association and solidarity enjoy full constitutional backing. (...) It is not only contractual labour activity that is covered by the basic right to work. Free, non-contractual labour, carried out independently by individuals, falls within the core of the basic right to work.

The Government states that, as a consequence of the Constitutional Court's statement, it is clear that workers' cooperatives should be accorded the same legal and constitutional protection as contractual labour, perhaps more given that the principle of solidarity between their members is put into practice (a principle far removed from labour law). The cooperative members are their own bosses and their system of payment is as legitimate as that envisaged by the Labour Code with regard to contractual labour. In its communication of 1 September 2004 sent as part of Case No. 2239, which also deals with cooperative workers, the Government adds that cooperatives in Colombia have their own organization for the defence of their rights and interests, i.e. the National Confederation of Cooperatives (CONDEFECOOP). The Government emphasizes that only employers and persons who are party to an oral or written work contract may organize in trade unions. Other persons

who exercise activities that are not undertaken under a work contract may organize in other type of associations, as guaranteed by article 38 of the Political Constitution.

70. As to the wage increase within the enterprise RIOTEX which, according to the corresponding allegation, was not extended to unionized workers, the Government states that the enterprise has confirmed that the wage increase, of 8 per cent, was applied to all workers, both unionized and non-unionized. As to the allegation that 300 of the 450 workers are members of cooperatives, the Government states that this situation is in accordance with the provisions of the Political Constitution and the aforementioned declarations of the Constitutional Court.
71. With regard to the allegations of anti-trade union victimization and violation of the collective agreement within the enterprise Leonisa, the Government argues that those allegations are too general in nature and that the complainant organization should be more specific in order that the Government can answer its claims. As to the allegations regarding the enterprise Everfit-Indulana, the Government reiterates that the allegations are not specific and that the complainants should take their case to the national authorities before turning to the ILO.
72. *As to the allegation regarding the signing of service contracts with workers' cooperatives in the various enterprises mentioned by the complainants (Fabricato Tejicondor, Coltejer and Textiles Rionegro, Riotex, Leonisa, Everfit-Indulana), and therefore obstructing freedom of association, the right to present petitions and the right to strike, the Committee notes that the Government states that the Constitutional Court announced that both contractual labour and labour carried out on an independent basis by individuals are protected by the basic right to work. According to the Government, as a consequence it is clear that workers' cooperatives should be accorded the same legal and constitutional protection as contractual labour, their members being their own bosses and their system of payment being as legitimate as that envisaged by the Labour Code with regard to contractual labour. The Committee notes, however, that the Government states that only employers and persons bound by a written or verbal labour contract may organize in trade unions and that other persons may organize in other types of associations. Taking into account the information provided by the Government, and mindful of the particular characteristics of cooperatives, the Committee considers that associated labour cooperatives (whose members are their own bosses) cannot be considered, in law or in fact, as "workers' organizations" within the meaning of Article 10 of Convention No. 87, that is organizations that have as their objective to promote and defend workers' interests. That being so, referring to Article 2 of Convention No. 87 under which workers and employers have the right to establish organizations of their own choosing, the Committee recalls that the concept of worker means not only salaried worker but also independent or autonomous worker. The Committee considers that workers associated in cooperatives should have the right to establish and join organizations of their own choosing. The Committee therefore requests the Government to take the necessary measures to amend the legislation accordingly, and to keep it informed of developments in this respect.*
73. *Concerning the allegations regarding the establishment of a single collective agreement within the enterprise Fabricato Tejicondor, the Committee notes that the Government states that article 38 of Decree No. 2351 of 1995, providing that any collective labour agreement entered into with a trade union which counts more than one-third of the workforce of an enterprise amongst its membership is extended to all staff members. According to the Government, the main trade union is SINDELHATO, to which over 50 per cent of the workforce belongs, whilst SINALTHAHIDITEXCO and the Clothing Workers' Trade Union of Colombia (SINTRATEXTIL) together have many fewer members; as a consequence, the collective agreement in force within the enterprise is that which was signed with SINDELHATO, and which expires in April 2005.*

74. *As to the allegation that within the enterprise Riotex, a part of the Fabricato group, unionized workers have not benefited from the 7.49 per cent rise since 16 July 2003, the Committee notes that, according to the Government, the enterprise has announced that the wage increase was of 8 per cent and was applied indiscriminately to all workers. The Committee request the Government to carry out an inquiry into the matter and, should the allegation be substantiated, to ensure that unionized workers be paid the appropriate sum owed and to keep the Committee informed in this respect.*
75. *Regarding the allegations of anti-trade union victimization and violation of the collective agreement within the enterprises Leonisa and Everfit-Indulana, the Committee notes the Government's statements on the overly general nature of the allegations and invites the complainant to send more detailed information in this respect.*
76. *Finally, the Committee requests the Government to keep it informed as to the measures adopted to prevent any discrimination regarding staff working at the Hilazas Vanylon Enterprise S.A.*

Case No. 2297 (Colombia)

77. At its May-June 2004 meeting, the Committee made the following recommendation [see 334th Report, para. 407]: with regard to the restructuring carried out at the General Directorate of Taxation Support of the Ministry of Finance and Public Credit, with the dismissal of 350 employees shortly after the Directorate was established and workers were transferred to it from other departments of the Ministry of Finance, 80 per cent of those workers being members of the Trade Union of the Ministry of Finance and Public Credit, including the executive committee, the Committee requests the Government to take steps to ensure that an investigation is carried out to determine the alleged anti-union nature of this restructuring, and to keep it informed in this respect.
78. In a communication dated 16 June 2004, the Trade Union of Communication Workers (USTC) sent new information.
79. In its communication dated 1 September 2004, the Government states that the Ministry of Finance and Public Credit indicates that the restructuring was carried out in accordance with legal and regulatory standards and explains that:
- Decree No. 1660 of 1991 established the special systems for retirement from service, through financial compensation, applicable to, amongst others, the employees or public employees of the Executive Branch of the Administration.
 - In accordance with article 7 of the aforementioned decree, when developing personnel programmes, bodies may adopt collective retirement plans with compensation, aimed at career staff or staff subject to free appointment and dismissal.
 - The provisions on the organizational structure of the General Directorate of Taxation Support, established in Decree No. 1642 of 1991, require the hiring of new staff to carry out the functions referred to in the aforementioned decree.
 - In accordance with the terms of article 7 of Decree No. 2100 of 1991, the Higher Council on Fiscal Policy (CONFIS) agreed that the Collective Plan for Retirement with Compensation designed for the General Directorate of Taxation Support was adequate from a financial and fiscal point of view.

- In Resolution No. 00101 of 1992, a collective retirement plan with compensation was adopted for the General Directorate of Taxation Support of the Ministry of Finance and Public Credit.
 - Through Resolutions Nos. 486, 487, 835, 836, 868, 885, 887, 888 and 890 of 1992, applications for voluntary retirement on the part of some public employees of the General Directorate of Taxation Support were accepted.
- 80.** As to the fact that, at that time, a certain number of public employees belonged to a trade union-type organization, the Government states that the Ministry of Finance holds that its acceptance of each of the applications for voluntary retirement was in line with the legal and regulatory labour standards covering such cases. At no time was there any violation of the rights those individuals held as public employees.
- 81.** *The Committee takes note of this information and requests the Government to inform it if, following the alleged dismissals and transfers, any legal action is taken as a consequence of anti-trade union discrimination within the framework of the restructuring process being carried out within the General Directorate of Taxation Support of the Ministry of Finance and Public Credit. Should any such legal action be taken, the Committee requests the Government to transmit the results of that action. The Committee also requests the Government to transmit its observations regarding the communication of the USTC, dated 16 June 2004.*

Case No. 2227 (United States)

- 82.** The Committee last examined this case at its meeting in November 2003 when it invited the Government to explore all possible solutions, in full consultation with the social partners concerned, with the aim of ensuring effective protection for all workers against acts of anti-union discrimination in the wake of the *Hoffman* decision and to keep the Committee informed of the measures taken in this regard [see 332nd Report, paras. 551-613].
- 83.** In a communication dated 27 May 2004, the Government provided information concerning further endorsements and clarifications by the National Labour Relations Board (NLRB) in respect of the impact of the *Hoffman* decision on unfair labour practices complaints. In particular, the NLRB has endorsed its general counsel's view that, although *Hoffman* precludes an award of back pay to undocumented workers for work that was not performed, it does not preclude a remedial award of back pay for work that was performed but at improper wages. The NLRB also reaffirmed its prior practice of generally confining issues regarding an individual's immigration status to the compliance phase of its proceedings, indicating that the status of a complainant, in most cases, is irrelevant to a respondent's unfair labour practice liability under the NLRB. Finally, the NLRB addressed its "conditional reinstatement" remedy, a pre-*Hoffman* remedy, directing the reinstatement of an undocumented worker on condition that he or she produce proof of eligibility to work within a "reasonable time", if the employer knew when it hired the "discriminatee" that he or she was undocumented. Although the NLRB acknowledged that determining the propriety of such a remedy should be left for the compliance phase, it suggested that the remedy remains appropriate.
- 84.** The Government further reiterates that the *Hoffman* decision has not affected the enforcement of other laws governing the employment relationship (except where there are issues of back pay for work not performed) and that federal and state case law continue to interpret the *Hoffman* decision narrowly. In addition, the Government indicates that, pursuant to the United States-Mexico Joint Ministerial Statement on this matter in April 2002, consultations have identified issues for collaboration based on the resolve of both

Governments to enforce applicable labour laws for all workers, including immigrant workers, and have resulted in United States Department of Labor initiatives to inform migrant workers about applicable labour protections under United States laws.

85. In conclusion, the Government states that the case law since the *Hoffman* decision has confirmed that the decision is not wide ranging in that it only affects the remedy of back pay for work not performed. The Government reiterates that discrimination against undocumented workers for union activity remains illegal and emphasizes that it continues to take steps to alleviate concerns that the decision will be applied beyond its intended scope.
86. In a communication dated 8 October 2004, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) provided follow-up information in respect of this case. In particular, the AFL-CIO alleges that employment law in the wake of *Hoffmann* remains in flux and immigrant workers' rights remain highly at risk. The AFL-CIO gives a number of examples, including various state judicial rulings, to support its statement. Finally, the AFL-CIO states that the Government has not amended the relevant statute, the Immigration Reform and Control Act, nor has it consulted with the social partners on ways to bring the legislation into conformity with freedom of association principles, as had been recommended by the Committee.
87. *The Committee takes due note of the information provided by the Government. It further notes the comments made by the complainant organization and requests the Government to transmit its observations thereon. Recalling its conclusion that the remedial measures left to the NLRB in cases of illegal dismissals of undocumented workers are inadequate to ensure effective protection against acts of anti-union discrimination, the Committee regrets that the Government has not provided any information on measures taken to explore possible solutions, in full consultation with the social partners concerned, aimed at redressing this inadequacy. It therefore requests the Government to keep it informed of any measures taken or envisaged in this respect.*

Case No. 2133 (The former Yugoslav Republic of Macedonia)

88. The Committee last examined this case which concerns serious obstacles to the registration of employers' organizations, including the complainant Union of Employers of Macedonia (UEM), in March 2004 [see 333rd Report, approved by the Governing Body at its 289th Session, paras. 56-60]. The Committee requested the Government: (1) to provide information on the current status of the UEM and to finalize the registration of the UEM urgently under a status that corresponds to its objectives as an employers' organization; (2) to take all necessary steps urgently so as to bring its law and practice into conformity with freedom of association principles, either by establishing a procedure for the registration of employers' organizations or by repealing the requirement of registration altogether; (3) to take all necessary measures so as to ensure that free and voluntary negotiations between employers' and workers' organizations take place regardless of registration of such organizations, and to abstain from any interference which would have the effect of preventing employers' organizations from engaging in negotiations with a view to the regulation of terms and conditions of employment by means of collective agreements.
89. In a communication dated 1 September 2004, the Government indicates that the Ministry of Labour and Social Policy is approaching the final stages of the preparation of a new law on labour relations which will contain provisions related to the procedure for establishing associations of employers. According to the Government, the choice of a partner in the Economic-Social Council will depend on whether these associations fulfil the criteria or

not. In any case, the Government supports the process of pluralization in this domain. The Government also states that by decision of the Assembly of the Economic Chamber the previous board of employers within the Chamber held a founding assembly and submitted a request for registration in the register of associations of citizens and foundations. The Court of Original Jurisdiction I-Skopje issued a decision for the registration of the Organization of Employers and gave the organization legal status.

90. *The Committee notes with interest that the Government is approaching the final stages of the preparation of a new law on labour relations which will contain provisions on the procedure for establishing associations of employers. The Committee hopes that the provisions of the new law under preparation will fully rectify the current situation, whereby employers' organizations cannot obtain legal personality as there is no procedure for their registration, and requests to be kept informed of steps taken in this respect.*
91. *The Committee also notes that according to the Government, the previous board of employers within the Economic Chamber held a founding assembly and submitted a request for registration in the register of associations of citizens and foundations. The organization in question was registered and vested with legal personality by a decision of the Court of Original Jurisdiction I-Skopje. The Committee does not have information at its disposal as to whether there is a relationship between the organization which has been registered and the complainant organization, UEM, the registration of which has been pending since 1998. The Committee once again requests the Government to provide information on the current status of the UEM and reiterates its previous request to finalize the registration of the UEM urgently under a status that corresponds to its objectives as an employers' organization.*
92. *The Committee notes that the Government does not provide any information on the exercise by employers' organizations of the right to engage in collective bargaining. It notes that during the first examination of this case, the complainant had alleged that the Government invited to negotiations only the Economic Chamber which was based on compulsory membership of all enterprises and was not registered as an employers' organization. The Committee notes that the Government now indicates that the choice of a partner in the Economic-Social Council will depend on which association of employers fulfils the necessary criteria. The Committee recalls that employers' organizations have the right to engage in free and voluntary negotiations with workers' organizations and requests the Government to promote such negotiations and to refrain from any interference which might alter their free and voluntary character.*

Cases Nos. 2017 and 2050 (Guatemala)

93. The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 61-70]. On that occasion, the Committee made the following recommendations.
- With regard to the La Exacta and/or San Juan El Horizonte farm, the Committee requests the Government to specify whether the amicable agreement signed on 24 October 2003 includes the reinstatement of the dismissed workers with regard to whom legal orders for reinstatement were issued, and to keep it informed of the outcome of the hearing of 16 January at the Ministry of Labour with the new owners and the workers' representatives.
 - With regard to the dispute at the La Aurora National Zoological Park, which was lodged with the Arbitration Court, the Committee requests the Government to keep it informed of the legal ruling with regard to the arbitrator's decision issued in December 2003, which was appealed by the company.
 - With regard to the allegations of the dissent from SITRACOBSA over the decision by the Ministry of Labour to cancel the suspension of the contracts of workers belonging to the legitimate trade union (SITECOBSA) of the *Corporación Bananera S.A.* company,

the Committee requests the Government to send its observations with regard to the alleged suspension of employment contracts for workers belonging to the other trade union (SITECOBSA) without delay.

- The Committee regrets that the Government has sent no information on the other issues that remain pending since its last examination of the case and on the issues for which UNSITRAGUA has sent new information, and it urges the Government to send the information and observations requested on the following without delay:
- with regard to the closure of the CARDIZ S.A. company following the establishment of a trade union in the company and the unlawful detention of the workers who remained on company premises to prevent the removal of company equipment, the Committee requests the Government to send information on the outcome of the legal proceedings under way;
- with regard to the allegations concerning the kidnapping, assaults and threats against the trade unionists of the Santa María de Lourdes farm, Mr. Walter Oswaldo Apen Ruiz and his family, the Committee requests the Government to send its observations and to ensure that the safety of the trade union member, which has been threatened, is guaranteed;
- with regard to the allegations relating to the murder of trade union members, Messrs. Efraín Recinos, Basilio Guzmán, Diego Orozco and José García Gonzáles, the injuries to 11 workers and the detention of 45 workers of the La Exacta and/or San Juan El Horizonte farm, the Committee urges the Government to send information in this respect without delay;
- with regard to the murder of trade union member, Mr. Baudillo Amado Cermeño Ramírez, the Committee requests the Government to send it a copy of the ruling handed down in this respect;
- with regard to the dispute involving the Banco de Crédito Hipotecario Nacional, the Committee requests the Government to keep it informed of progress in the negotiating committee on all the ongoing issues and on the new allegations presented by UNSITRAGUA;
- with regard to the allegations of dismissal of the founders of the trade union formed in 1997 in the Hidrotecnia S.A. company, the Committee requests the Government to keep it informed of the investigation being carried out;
- with regard to the Tampion S.A. company, the Committee requests the Government to inform it of the legal proceedings under way to protect the money owed to UNSITRAGUA members who were dismissed because of the company's closure;
- with regard to the Ace International S.A. assembly plant, the Committee requests the Government to send the judicial rulings handed down by the Appeals Court, the Supreme Court of Justice and the Constitutional Court rejecting the proceedings begun with regard to the serious allegations of discrimination and intimidation.

94. In its letters of 29 April 2004, with respect to the allegations concerning the CARDIZ S.A. company, the Government states that as the company is closed, the conduct and conclusion of the proceedings are suspended.

95. As regards the La Exacta farm, the Government states that the employers' side did not attend the conciliation meeting set for 16 January 2004. Further meetings were arranged on 30 January and 6 and 21 April to initiate dialogue with the company and to try and find a viable solution to the industrial dispute. However, their representatives did not attend those meetings. The summons to the last meeting was subject to a warning that in the event of failure an administrative penalty would be applied to the company.

96. As regards the Ace International case, the Government states that as appropriate evidence was not submitted to the court of first instance, there was no possibility of doing so on appeal. An action for protection (amparo) was entered with respect to the proceedings in

the Supreme Court of Justice, but this was ruled inadmissible as it was contrary to due process.

- 97.** As to the Tamport case, the Government states that this is a collective action of a social and economic character conducted by the 5th Secretariat in the Labour and Social Security Court No. 7 in the first economic area, where the plaintiff is the Tamport S.A. Workers' Union and the defendant is the Tamport S.A. company assembly plant. The dispute has three parts: the first concerns the collective dispute and on 15 March 2003, the parties were requested to nominate their representatives. The second concerns an incident of dismissal, the current state being that one of the parties has not complied with the preliminary decision of 7 November 2002. The third part consists of the illegal strike action and, in fact, the proceedings are still in progress.
- 98.** As regards the Hidrotécnia S.A. case, the Government reports that the dispute began in 1997 when the workers formed a trade union, and as soon as the company was informed, it chose to dismiss the workers. In this respect, there is a matter of reinstatement. On 13 January 2004, a memorial was submitted ordering the extension of the embargo based on the certification by the General Property Registrar of the central zone to guarantee the sum owed by the employer in respect of wages. On 24 February 2004, a report was sent to the General Property Register asking whether the precautionary embargo order, which was necessary for reinstatement, had been implemented.
- 99.** Concerning the murder of Mr. Baudillo Amado Cermeño Ramírez in December 2001, the Government reports that on 2 February 2004, the Attorney-General's Office requested Lower Court No. 6 for criminal, drug trafficking and environmental crimes to reopen the case in order to continue the investigation. By a decision of 12 February 2004, the examining magistrate reopened the proceedings. The Government states that ballistic tests and information on certain telephone calls have been requested.
- 100.** *The Committee observes that the Government states with respect to the CARDIZ S.A. company, that as the company is closed, the conduct and conclusion of the proceedings are suspended. The Committee recalls, however, that the Government had previously reported that the Ministry of Labour had appointed lawyers from the Workers' Defence Service to defend the employees' interests in the collective proceedings in the competent courts. The Committee regrets the time that has elapsed since the start of proceedings in 2000, deplores that the proceedings have been halted and requests the Government to adopt the necessary measures to reopen and expedite these proceedings.*
- 101.** *As regards the La Exacta and/or San Juan El Horizonte farm, the Committee notes that the Government reports that the new owners did not attend the conciliation meeting set for 16 January 2004 or those arranged subsequently and that the summons to the last meeting was subject to an administrative sanction. The Committee regrets the lack of cooperation by the company's new owners in initiating a dialogue with the workers' representatives and requests the Government to adopt the necessary measures to ensure that the parties engage in a dialogue to resolve the industrial dispute. The Committee observes that the Government has not specified whether the new amicable settlement concluded on 24 October 2003 includes the reinstatement of the dismissed workers in respect of whom the courts had ordered reinstatement and requests the Government it keep it informed in this respect.*
- 102.** *With regard to the Ace International S.A. assembly plant, the Committee notes the Government's explanations that as appropriate evidence was not submitted to the court of first instance, there was no possibility of doing so on appeal. The Committee observes that although an action for protection (amparo) was entered with respect to the proceedings in*

the Supreme Court of Justice, it was ruled inadmissible as the application for protection was contrary to due process. The Committee takes note of this information.

- 103.** *With regard to the Tampoort S.A. company, the Committee had requested the Government to inform it of the legal proceedings under way to protect the money owed to UNSITRAGUA members who were dismissed because of the company's closure. The Committee notes the concise information sent by the Government according to which in the proceedings concerning the industrial dispute on 15 March 2003, the parties had been requested to appoint their representatives and requests the Government to inform it of the results of those proceedings.*
- 104.** *As regards the allegations concerning the dismissal of the founders of the trade union formed in 1997 in the Hidrotécnia S.A. company, the Committee noted the information sent by the Government concerning the judicial process of reinstatement in the course of which, on 13 January 2004 a memorial was submitted ordering the extension of the embargo based on the certification by the General Property Registrar of the central zone to guarantee the sum owed by the employer in respect of wages. On 24 February 2004, a report was sent to the General Property Register asking whether the precautionary embargo order, which was necessary for reinstatement, had been implemented. The Committee regrets the time elapsed since the dismissals and requests the Government to adopt the necessary measures to expedite the proceedings so that the workers can achieve reinstatement in their jobs in the near future without loss of wages or, if reinstatement is not possible, they can receive full compensation.*
- 105.** *Concerning the murder of Mr. Baudillo Amado Cermeño Ramírez in December 2001, the Committee notes that the Government reports that, in a decision of 12 February 2004, the examining magistrate reopened the proceedings. The Government states that ballistic tests and information on certain telephone calls were requested. The Committee requests the Government to send the decision made in that respect.*
- 106.** *The Committee regrets that the Government has not sent information on the other questions pending from the last examination of the case and on which UNSITRAGUA has sent new information, and urges the Government to send the requested information and observations without delay:*
- with regard to the dispute at the La Aurora National Zoological Park, which was lodged with the Arbitration Court, the Committee requests the Government to keep it informed of the legal ruling with regard to the arbitrator's decision issued in December 2003, which was appealed by the company;*
 - with regard to the allegations of the dissent from SITRACOBSA over the decision by the Ministry of Labour to cancel the suspension of the contracts of workers belonging to the legitimate trade union (SITECOBSA) of the Corporación Bananera S.A. company, the Committee requests the Government to send its observations with regard to the alleged suspension of employment contracts for workers belonging to the other trade union (SITECOBSA) without delay;*
 - with regard to the allegations concerning the kidnapping, assaults and threats against the trade unionists of the Santa María de Lourdes farm, Mr. Walter Oswaldo Apen Ruiz and his family, the Committee requests the Government to send its observations and to ensure that the safety of the trade union member, which has been threatened, is guaranteed;*
 - with regard to the allegations relating to the murder of trade union members, Messrs. Efraín Recinos, Basilio Guzmán, Diego Orozco and José García Gonzáles, the injuries to 11 workers and the detention of 45 workers of the La Exacta and/or*

San Juan El Horizonte farm, the Committee urges the Government to send information in this respect without delay;

- *with regard to the dispute involving the Banco de Crédito Hipotecario Nacional, the Committee requests the Government to keep it informed of progress in the negotiating committee on all the ongoing issues and on the new allegations presented by UNSITRAGUA.*

Case No. 2103 (Guatemala)

- 107.** At its November 2003 meeting, when it examined allegations of acts of anti-union discrimination in the Office of the Auditor-General, the Committee made the following recommendations [see 332nd Report, para. 680]:

While noting with satisfaction the reinstatement of the trade unionists who had been dismissed, the Committee observes that the Government has not referred specifically to the alleged transfer and subsequent suspension without pay of Mr. Sergio René Gutiérrez Parrilla for exercising the right of petition, or to the alleged compulsory resignations involving the termination of membership of more than 200 union members during the mandate of the previous Auditor-General. However, the Committee notes that the new administration of the Office of the Auditor-General has made a formal commitment to comply with the Committee's recommendations in the present case. The Committee requests the Government to confirm that these problems outlined by the complainants have been resolved.

- 108.** In its communication of 29 April 2004, the Government states that the remaining problems have been satisfactorily resolved and that this was confirmed by Mr. Sergio René Gutiérrez Parrilla, the minutes, agreements and correspondence secretary of the Workers' Union of the Office of the Auditor-General (SITRACGC), and Mr. Nery Gregorio López Alba, General Secretary of the Organization for Worker Unity ("Unidad Laboral"). Both problems were resolved with the new Auditor-General, and thus the reasons for the complaint no longer exist.

- 109.** *The Committee notes this information with satisfaction.*

Case No. 2187 (Guyana)

- 110.** The Committee last examined this case which concerns various alleged attempts by the Government to weaken the Guyana Public Service Union (GPSU), in November 2003 [see 332nd Report, approved by the Governing Body at its 288th Session, paras. 691-729] and reached the following recommendations on which it requested to be informed of developments:

- (a) The Committee notes that the issue of the enforceability of the 1999 Memorandum of Agreement is currently pending before the courts and trusts that in rendering a decision, full account will be taken of the principles according to which agreements should be binding on the parties and the harmonious development of labour relations would be facilitated if the public authorities, when dealing with the problems concerning the workers' loss of purchasing power, adopted solutions which did not involve modifications of agreements without the consent of both parties. The Committee requests the Government to keep it informed of the progress of judicial proceedings and to transmit a copy of the court ruling on this case as soon as it becomes available.
- (b) [...]
- (c) The Committee calls upon the Government to ensure the exercise of great restraint in relation to any form of interference which might occur in the context of the collection of trade union dues, and to undertake consultations with representative trade unions as soon as possible in order to consider improvements to the current check-off system through

the adoption of adequate safeguards against interference. The Committee requests to be kept informed of developments in this respect.

- (d) With regard to the deduction of trade union dues, the Committee calls on both parties to implement the High Court ruling of July 2000 on the one hand, by providing written authorizations for the deduction of trade union dues and, on the other hand, by ensuring that such deductions and their payment to the GPSU are carried out promptly and in full. The Committee also invites the Government to undertake consultations with the GPSU without delay in order to forward to the GPSU any contributions made in June and July 2000 which have been retained. The Committee requests to be kept informed of developments in this respect.
- (e) The Committee notes that the cases concerning the dismissal of 12 trade union officers and members allegedly on anti-union grounds (Leyland Paul, Bridgette Crawford, Karen Vansluytman, Yvette Collins, Cheryl Scotland, William Blackman, Marcia Oxford, William Pyle, Yutze Thomas, Anthony Joseph, Niobe Lucius and Odetta Cadogan) are pending before the courts and expresses the hope that the judicial proceedings will be concluded soon and will shed light onto the reasons for the dismissals. If it is found that the dismissals were on anti-union grounds, the Committee requests the Government to take all necessary measures to have the trade union officers and members reinstated in their posts without loss of pay. The Committee requests the Government to keep it informed in this respect and to communicate the text of the decisions rendered.
- (f) The Committee requests the Government to institute an independent inquiry into the reasons for the dismissal of Barbara Moore and, if it is found that the dismissal was on anti-union grounds, to take all necessary measures to ensure her reinstatement in her post without loss of pay or, if reinstatement is not possible, to ensure that she is paid adequate compensation. The Committee requests to be kept informed in this respect.
- (g) The Committee requests the Government to keep it informed of the progress of judicial proceedings concerning the certification of the majority trade union in the Guyana Forestry Commission and to provide it with a copy of the court ruling when it becomes available.
- (h) The Committee requests the Government to take all necessary measures to ensure that the case concerning the Guyana Fire Service is heard in court as soon as possible, and trusts that in rendering a decision on this issue, full account will be taken of Article 2 of Convention No. 87, ratified by Guyana, pursuant to which firemen, like all other workers, have the right to establish and join organizations of their own choosing. The Committee requests the Government to keep it informed of developments in this respect and to transmit the court ruling when it becomes available.

111. In a communication dated 17 March 2004, the complainant indicates that trade union dues continue not to be deducted in favour of the Guyana Public Service Union by heads of departments, contrary to Public Service Rule Q4 and the High Court ruling of 21 July 2000. The complainant recalls that in its submissions dated 9 July and 13 August 2003 to the Committee, as stated in paragraph 706 of Case No. 2187, the Government informed the Committee that it complied with the High Court ruling by making deductions based on the check-off system. The complainant, however, informs the Committee that there are numerous instances, in which the ministries/departments/regions have not complied with the court order. The complainant adds that the issue has been ongoing for quite some time in several ministries and departments, although action taken by the complainant has managed to some extent to get some heads of departments to comply with the check-off arrangement. The complainant attaches copies of letters sent to the heads of departments of ministries and regions for which the complainant is not in receipt of any deduction of union dues. In total, the complainant attaches 16 letters sent to the administrations of ministries, regional authorities and hospitals, and concern 33 trade union members whose trade union dues have not been deducted.

112. In a communication dated 6 July 2004, the Government indicates that the complainant wrote to the Permanent Secretary, Public Service Ministry, on 17 March 2004 with respect

to the non-deduction of union dues. The Permanent Secretary responded on 8 April 2004 by advising the complainant that the agencies identified by the union as non-compliant have been requested in writing to comply. According to the Government, the GPSU was requested to communicate any further default and there has been no further communication.

- 113.** The Government adds that in its previous communications to the Committee it had posited that its responses were adequate to allow the Committee to conclude its examination of the case. The Government is still of such a view and considers that the complainant's action in submitting copies of routine correspondences between itself and the Public Service Ministry to the Committee is both mischievous and vexatious. The Government adds that it is complying with the request to provide observations purely out of respect for the ILO but may not feel obliged to respond to every frivolous claim by the union in the future. In any event, the grievance procedures should be fully utilized before any complaint is sent to the Committee. For the Committee to intervene when any dispute is at the initial stages, then a serious precedent of handling complaints may be created.
- 114.** *The Committee recalls that during the previous examination of this case it had requested both parties to implement the High Court ruling of July 2000 by, on the one hand, providing written authorizations for the deduction of trade union dues, and on the other hand, ensuring that such deductions and their payment to the GPSU are carried out promptly and in full. The Committee notes that according to the GPSU, the Government does not comply with the High Court ruling since many of its ministries, local administrations and hospitals do not proceed to the deduction of trade union dues in favour of the GPSU. The Committee notes that according to the Government, the agencies identified by the union as non-compliant have been requested in writing to comply with the High Court ruling and the GPSU has been requested to indicate any further cases of non-deduction. The Committee concludes, that apparently the trade union dues in question have been paid to the GPSU, and requests the Government to ensure that the deductions take place regularly in the future.*
- 115.** *With regard to the Government's comment that it deemed its responses adequate so as to allow the Committee to conclude its examination of the case, the Committee specifies that although it reached definitive conclusions on this case, it requested the Government to keep it informed of developments on the outcome of a number of judicial proceedings concerning the enforceability of the 1999 Memorandum of Agreement on arbitration, the dismissal of 12 trade union officers and members on anti-union grounds, the certification of the majority union in the Guyana Forestry Commission and the deduction of trade union dues in the Guyana Fire Service. The Committee further recalls that it requested the Government to keep it informed of developments concerning improvements to the current check-off system through the adoption of adequate safeguards against interference, the forwarding to the GPSU of any contributions made in June and July 2000 which have been retained, and the institution of an independent inquiry into the reasons for the dismissal of Barbara Moore. The Committee therefore requests the Government to provide detailed and full information on all the above issues.*
- 116.** *As to the Government's comment that it responds to the complainant's allegations purely out of respect for the ILO, the Committee notes that, when a state decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 10]. The mandate of the Committee, moreover, consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions [see **Digest**, *op. cit.*, para. 6]. With regard to the Government's comment that*

*it may not feel obliged to respond to every frivolous claim by the union in the future, the Committee emphasizes that Governments should recognize the importance for their own reputation of formulating detailed replies to the allegations brought by complainant organizations, so as to allow the Committee to undertake an objective examination [see **Digest**, op. cit., para. 20]. The Committee notes with regard to the Government's comment concerning the use of grievance procedures before any complaint is sent to the Committee that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [para. 33 of the Rules of Procedure of the Committee]. As to the Government's comment that the Committee should not intervene when a dispute is at the initial stages, the Committee recalls that the facts of this case date back to 1999. The Committee therefore requests the Government to continue to cooperate with the Committee.*

Case No. 2118 (Hungary)

- 117.** The Committee last examined this case at its March 2004 session [see 333rd Report, paras. 74-76]. On that occasion, the Committee urged the Government to take all necessary measures to amend without delay section 33 of the Labour Code so as to bring it in line with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and to keep it informed of the measures taken.
- 118.** In a communication dated 21 May 2004, the Government points to paragraph (6) of section 33, which states that if, in relation to the first two paragraphs of the section, the trade union or trade unions did not receive more than half the votes in the workers' council election, a collective bargaining agreement may be concluded, subject to endorsement by employees in a ballot in which more than half the eligible employees participate. The Government further informs the Committee that in 2003 a decision was taken to reform the Hungarian labour legislation and a committee was established to this end in 2004. The Government explains that it intends to assemble "the National ILO Council, so that the Social Partners could have discussion over the question". Before doing so, however, the Government wishes "to have a preliminary consultation among the Honourable Committee and the experts of the Government, in order to statement the position of each party".
- 119.** *The Committee notes the Government's observations. In relation to section 33(6), the Committee notes that this paragraph requires a ballot to endorse a collective agreement, in which at least 50 per cent of employees eligible to vote in workers' council elections participate. The Committee recalls that the Committee of Experts had considered that problems may arise when the law stipulates that trade unions must attain 65 per cent individually or 50 per cent jointly in order to be recognized as bargaining agents, since unions which fail to secure this excessively high threshold are denied the possibility of bargaining [see General Survey of the Committee of Experts on the Application of Conventions and Recommendations, 81st Session, 1994, para. 241]. The Committee repeats its earlier request that the Government take all necessary steps to amend section 33 so as to lower the minimum threshold requirements for recognition as a bargaining agent and ensure that where no trade union reaches these thresholds, collective bargaining rights are granted to all unions, at least on behalf of their own members.*
- 120.** *The Committee notes the Government's information that reform of the labour legislation is currently under consideration, and that the Government intends to convene a national council to address these issues, but observes that the Government does not specifically state that such reforms will include modification of section 33 of the Labour Code. The Committee confirms that the technical assistance of the Office will be available in this*

process should the Government wish to avail itself of it. The Committee hopes that section 33 of the Labour Code will be considered as a matter of some priority. It draws the attention of the Committee of Experts on Application of Conventions and Recommendations to this case.

Case No. 2220 (Kenya)

- 121.** The Committee examined this case, which concerned the arrest and detention of the chairperson of the Federation of Kenya Employers, at its June 2003 session [see 331st Report, paras. 559-578]. On that occasion, it requested the Government to keep the Committee informed of the outcome of the court proceedings in respect of the identification and the sanction of the persons responsible for Mr. Mukuria's arrest.
- 122.** In a communication dated 26 August 2004, the Government reiterated that it had given an undertaking that it would respect the employers' right to association and had provided a written apology to both Mr. Mukuria and the Federation. The Government attached a letter from the Federation to the IOE in which it stated that in light of the Government's actions "you may consider it appropriate to advise the Committee on Freedom of Association appropriately as we do not intend to pursue the case any further". The Government states that as far as the parties involved are concerned, the matter is closed and emphasizes that no trade union leaders have since been harassed or arrested for exercising their legitimate trade union activities.
- 123.** *The Committee notes the national Federation's intention not to pursue the matter following the Government's full written apology and undertaking to ensure respect for freedom of association. It further notes the information submitted by the Government that no similar incidents have since occurred.*

Case No. 2266 (Lithuania)

- 124.** The Committee examined this case on the merits at its June 2004 meeting. It concerns allegations of Government interference in the organizational activities of trade unions, and more specifically the distribution of trade union assets in the context of a transition from a trade union monopoly regime to a situation of trade union pluralism. The Committee requested the Government to hold further discussions with all interested parties with a view to finding a satisfactory solution for all concerned, and to keep it informed of developments [see 334th Report, para. 622].
- 125.** In a communication dated 4 August 2004, the Government resubmits the information from the Office of the Prosecutor General (concerning court rulings at national level) and states that the situation has not changed since the decisions of the Constitutional Court are final, as provided by article 107 of the Constitution.
- 126.** *Noting with regret that the Government merely resubmitted some information already provided [see para. 613 of the 334th Report] the Committee recalls that it made the above recommendation after a substantive examination, on a tripartite basis, of the issues involved in this complaint, while taking into account the particular circumstances of the case and the importance of sound and harmonious schemes in such transition periods. The Committee therefore urges the Government, once again, to rapidly hold further discussions with all interested parties with a view to finding a satisfactory solution for all concerned and to keep it informed of developments.*

Case No. 2132 (Madagascar)

- 127.** The Committee last examined this case at its November 2003 meeting [see 332nd Report, paras. 98-104]. On that occasion, the Committee requested the Government: (1) to state if section 1(3) of Decree No. 2000-291 of 31 May 2000, requiring trade unions to provide the Government with a list of their members, a copy of their by-laws and the names of their serving officers, had effectively been abrogated; (2) should it still be in force, to provide the Committee with a copy of Decree No. 97-1355, under the terms of which the social partners may not engage in collective bargaining without the authorization of the Ministry for the Development of the Private Sector and Privatization; and (3) to keep the Committee informed of any measures taken “to ensure that the representativity of trade unions is based on precise and objective legal criteria” [see 332nd Report, paras. 103-104].
- 128.** In a communication dated 25 May 2004, the Government responds to the Committee’s requests, reiterating the terms of a letter dated 5 September 2003, which was transmitted to the Committee as a part of its communication dated 3 October 2003, in which the Government announced in general terms that social dialogue had been resumed. In its communication dated 25 May 2004, the Government states that: “following the effective resumption of the social dialogue, all relations with social partners, within a tripartite framework, have been re-established against a background of mutual understanding (finalization of the draft Labour Code, text to the Senate, implementation of the new National Employment Council ...)”.
- 129.** *The Committee takes note of this information. Noting that, in September 2004, the Government and the social partners received technical assistance from the ILO in the fields of representativity and freedom of association, the Committee requests the Government to keep it informed of any measures taken “to ensure that the representativity of trade unions is based on precise and objective legal criteria” [see 332nd Report, para. 103]. Furthermore, the Committee reiterates two requests it formulated during its November 2003 meeting to which the Government has not yet responded. The Committee therefore requests the Government: (1) to state if section 1(3) of Decree No. 2000-291 of 31 May 2000 has effectively been abrogated; and (2) to provide the Committee with a copy of Decree No. 97-1355, should that decree still be in force.*

Case No. 2301 (Malaysia)

- 130.** This case concerns the Malaysian labour legislation and its application which, for many years, have resulted for workers in serious violations of the right to organize and bargain collectively: discretionary and excessive powers granted to authorities as regards trade unions registration and scope of membership; denial of workers’ right to establish and join organizations of their own choosing, including federations and confederations; refusal to recognize independent trade unions; interference of authorities in internal unions’ activities, including free elections of trade unions’ representatives; establishment of employer-dominated unions; arbitrary denial of collective bargaining. The Committee formulated extensive recommendations at its March 2004 meeting [see 333rd Report, para. 599] and followed up on these at its June 2004 meeting in these terms [see 334th Report, paras. 39-40]:

The Committee notes with deep regret that the Government merely reiterates the arguments submitted in its initial reply. The Committee emphasizes that all the points raised by the Government in its communication have already been dealt with at length and rebutted in its previous decision on the merits, including through examination of the relevant provisions of the Trade Unions Act, 1959 [see paras. 586-598, and Annex 1].

The Committee deplores the lack of cooperation of the Government on these matters which have been examined by the Committee for 15 years and therefore reiterates its previous

recommendations in their entirety and, noting the complainant organization's request, recalls, once again, that the Government may avail itself of the ILO's technical assistance.

- 131.** In a communication dated 19 August 2004, the Government states that there are different socio-economic realities among member States. To further maintain a healthy growth of trade unions and industrial harmony in the country, it proposes to amend certain provisions in the relevant labour laws in order to facilitate the formation of unions, expedite claims for recognition and facilitate the process of collective bargaining. According to the Government, all workers in Malaysia, without distinction whatsoever, are accorded the right to establish and join trade unions, as provided for in the Constitution and the labour laws. Workers have not been denied their right to representation and collective bargaining, which is evidenced by the growth in union membership (725,322 in 1999; 788,620 in 2003), the number of registered trade unions (537 in 1999; 595 in 2003) and the increased number of collective agreements (268 in 1999; 369 in 2003). The Government reiterates that there is no necessity for an ILO mission in this matter.
- 132.** *The Committee notes the Government's reply, its stated intention (without any specifics, however) to amend "certain provisions" in the labour laws, and the data provided. The Committee recalls that the matters complained of in the present case are extremely serious ones, and that it has been called to comment upon them in no less than seven cases over a period of more than 15 years, without any progress whatsoever. The Committee strongly deplores, once again, the continued total lack of cooperation of the Government, which merely repeats previous statements and arguments, does not provide a substantive reply or fails to respond altogether. In these circumstances, the Committee must reiterate its initial recommendations in their entirety. It urges the Government to address rapidly the issues raised therein and to keep it informed of developments thereon.*

Case No. 2048 (Morocco)

- 133.** The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 85-88]. On that occasion, the Committee asked the Government to submit a copy of three decisions: first, the decision of the Rabat Court of Appeal concerning the sentences handed down against 21 striking farm workers at the Avitema farm; and, second, the two decisions of the Rabat Court of the First Instance and of the Rabat Court of Appeal concerning the criminal proceedings that resulted from certain events during the collective labour dispute at the Avitema farm in 1999 and the charges of abuse of power brought against Mr. Abderrazzak Challaoui, Mr. Bouazza Maâch and Mr. Abdeslam Talha.
- 134.** On 13 May 2004, the Government replied to that request with a communication transmitting a letter from an official of the Ministry of Employment dated 11 May 2004. In that letter, the official indicates that "the current social atmosphere within the company [Avitema farm] is healthy and work is going on as normal". The official also adds that, since the collective dispute broke out in 1999, no complaint had been filed by a worker at the Avitema farm.
- 135.** *The Committee takes note of this information. Nonetheless, the Committee notes with regret that the Government has still not submitted the three decisions requested. The Committee underlines that it has been asking for the first decision since its March 2000 session [see 320th Report, para. 718], the second decision since its November 2000 session [see 323rd Report, para. 393] and the third decision since its March 2004 session [see 333rd Report, para. 87]. The Committee recalls that it cannot reach conclusions that are fully justified without the full text of those decisions [see 333rd Report, para. 88]. The Committee urges the Government to provide copies of these decisions.*

Case No. 2109 (Morocco)

- 136.** The Committee last examined this case, which concerns dismissals of eight trade unionists at the Fruit of the Loom company as well as acts of anti-union repression following the creation of a trade union office, at its June 2002 session [see 328th Report, paras. 53-55]. On that occasion, the Committee noted that the eight trade union officers concerned in this complaint had filed proceedings to obtain compensation for unlawful dismissal, that decisions had been handed down in the case of two of the eight trade union officers, and that the Government was awaiting the rulings concerning the remaining six cases. The Committee requested the Government to continue to keep it informed of developments on the issues pending before the national courts, namely: “the court ruling concerning the records entered by the Labour Inspectorate, and [...] the court decisions handed down in the proceedings filed by the workers to obtain compensation for unlawful dismissal” [see 327th Report, para. 80].
- 137.** In a communication of 25 May 2004, the Government transmitted a letter, dated 24 May 2004, from the prefectorial representative of the Ministry of Employment in the town of Salé. That letter indicates that the records entered by the Labour Inspectorate with regard to the collective dismissal of unionized workers had been registered at the Court of the First Instance in Rabat under reference No. 3965/2001/symbole 23 and that “they were used in several hearings, the most recent being 13 February 2003, in which consideration of the records entered was postponed to the hearing of 8 May 2003”. The letter also indicates that, with regard to the proceedings brought before the Court of the First Instance in Salé by the “four remaining workers”, the Court has handed down its ruling in respect to two of them (the first ruling rejected the claim of the worker Mr. Bakkacha Mohammed, and the second ruling was in favour of Ms. Salima Laoui, who received a total of 44,951.13 dirhams in redundancy pay), while consideration of the claims concerning Mr. Abdellah Sainane and Mr. Lahcen Toufik was postponed to hearings on 7 and 21 May 2003.
- 138.** *While noting the information submitted by the Government with respect to the situation of four dismissed workers, the Committee recalls that it had requested information concerning the six workers. The Committee therefore requests the Government to provide information about the status of the proceedings regarding the records entered by the Labour Inspectorate, and of the two workers unaccounted for.*
- 139.** *Moreover, the Committee expresses the hope that the decisions regarding the records entered by the Labour Inspectorate and the proceedings brought by Mr. Abdellah Sainane and Mr. Lahcen Toufik have already been handed down and that the Government will be able to provide them in the near future.*

Case No. 2164 (Morocco)

- 140.** This case was last examined by the Committee at its March 2004 session [see 333rd Report, paras. 600-612] and concerns measures taken by the *Caisse Nationale du Crédit Agricole* (CNCA) against several workers represented by the National Union of Bank Employees (SNB/CDT) for having exercised trade union activities or taken part in a strike. At that time, the Committee requested the Government to ensure that inquiries were instituted as soon as possible to determine whether: “(1) the 34 temporary workers, including two members of the trade union executive committee, Mr. Karim Rachid and Mr. Aziz Youssef, were treated prejudicially because of their participation in the strike of 12 April 2001; (2) Mr. Chatri Abdelkader was subjected to disciplinary suspension because of his trade union activities; and (3) the striking workers, including the union officers named by the complainant organization, were penalized for their participation in the strike of 13 and 14 June 2001”. The Committee also requested the Government, if it was

demonstrated that the measures taken by the CNCA were anti-union in nature, to take the necessary steps for the rights of the aggrieved workers to be restored.

- 141.** In a communication dated 31 May 2004, the Government transmitted a letter from the general manager of CNCA, dated 24 May 2004. That letter makes four main points: (1) the Court of the First Instance handed down a ruling in favour of CNCA in proceedings brought by the 34 temporary workers who had been subjected to prejudicial measures; (2) in the light of the conclusion of the 34 temporary workers' case, the CNCA "proceeded, at their request, to compensate 21 of the 34 casual staff by paying them a sum of 680,000 dirham". The letter also indicates that the non-compensation of the remaining 13 temporary workers was justified by the fact that they had not asked for compensation; (3) changes "always [occur] in the context of ordinary administrative staff management. The changes are motivated by the needs of the service and are often accompanied by promotions". It also emphasized the fact that "a total of 534 transfers had been recorded across all the branches of CNCA in 2001"; (4) Mr. Chatri Abdelkader had been the subject of a dismissal after being brought before the disciplinary council. Mr. Abdelkader had subsequently "been non-suited in the two complaints that he filed against CNCA. Afterwards, he formulated a request to leave his job and received severance pay of 226,000 dirham, with effect from 1 October 2002".
- 142.** *The Committee takes note of the information transmitted by the Government and observes that its communication refers to several judicial or administrative decisions. Since it is essential to have the full text of these decisions in order to reach entirely objective conclusions, the Committee requests the Government to submit to it: (1) the decision of the Court of the First Instance concerning the case filed against CNCA by the 34 temporary workers; (2) the decision of the disciplinary council concerning the dismissal of Mr. Chatri Abdelkader; and (3) the two judicial decisions concerning the complaints filed against CNCA by the same Mr. Abdelkader.*
- 143.** *Moreover, the Committee regrets that the communication from the Government did not make any reference to the measures reportedly taken against the workers who participated in the strike of 13 and 14 June 2001. The Committee recalls that its questions specifically concerned the underlying motives for the sanctions imposed on those striking workers, including the members of the trade union executive committee appointed by the complainant organization, namely: Mr. Jamal Boudina, Mr. Ahmed Arrout, Mr. Abdessamad Mammad, Mr. Mustapha Hafidi, Mr. Mustapha Kounech, Mr. Mahjoub Ennaj, Mr. Said Benjamae, Mr. Lahcem Chkha, Ms. Naja Mimouni and Ms. Ouafae Chmaou [see 333rd Report, para. 603]. The Committee again requests the Government to ensure that inquiries are opened promptly to determine whether the striking workers, including the members of the trade union executive committee appointed by the complainant organization, were sanctioned for their participation in the strike of 13 and 14 June 2001 and, if the anti-trade union nature of those measures – or of some of them – is demonstrated, to take steps to ensure that the workers concerned are immediately reinstated to their positions of employment with payment of the salaries owing. If reinstatement is not possible, adequate compensation should be paid to the workers concerned. The Committee requests the Government to keep it informed on this matter and to transmit to it the documents requested.*

Case No. 2175 (Morocco)

- 144.** The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 89-91]. The Committee recalls that the case involves the refusal of the Professional Association of Moroccan Banks (GPBM), an organization that comprises all the commercial banks operating in Morocco, to open dialogue and negotiate with the Banks' National Trade Union (SNB), affiliated to the Democratic Labour Confederation (CDT).

When it last examined the case, the Committee expressed the hope that the GPBM would respond favourably to the invitation it received from the Government to open dialogue with the SNB/CDT.

145. In its communication dated 6 September 2004, the Government encloses an undated letter from the GPBM. The letter states that the GPBM has never been opposed either to have dialogue or negotiate with the most representative trade union. The letter also states that: “On the one hand, the CDT is not a signatory to the collective labour agreement governing staff working in the Moroccan banking sector, this having been signed with the Moroccan Labour Union (UMT), the only other legal party to the agreement. On the other hand, section 25 of the Labour Code sets out the definition of the most representative trade union as being ‘the trade union which has polled at least 35 per cent of the total number of staff delegates elected at the level of the enterprise or the establishment’. The CDT does not fulfil that condition.”
146. *The Committee takes note of this information. Firstly, the Committee notes that the statement contained in the letter from the GPBM to the effect that the SNB/CDT had not obtained at least 35 per cent of the total number of staff delegates elected at the level of the enterprise or the establishment had not been corroborated because in its complaint the CDT states that it had obtained 51 per cent of the total number of staff delegates. The Committee therefore requests the Government to explain on what basis those figures were put forward by the GPBM.*
147. *Moreover, the Committee notes that, in accordance with the new Labour Code, the minimum percentage of delegates required in order to be considered as a representative organization is 35 per cent and, as a consequence, according to the GPBM, the SNB/CDT had not fulfilled the criteria for representativity. The Committee notes that the Committee of Experts on the Application of Conventions and Recommendations will examine the new legislation as a part of the regular supervision of the application of Convention No. 98. The Committee intends to re-examine this case at a later meeting in the light of new information that it will then have in its possession.*

Case No. 2243 (Morocco)

148. The Committee last examined this case at its March 2004 session [see 333rd Report, paras.92-95]. It recalls that this case concerns a complaint by the Democratic Confederation of Labour (CDT) regarding the refusal by the Société central des boissons gazeuses (SCBG) to recognize its workers’ trade union executive, which is affiliated to it, as well as acts of anti-union discrimination committed by the SCBG comprising “pressure on the trade unionists for them to resign from the union, through the application of unlawful sanctions against trade unionists, and, finally, the dismissal of two trade unionists, Mr. Najahi Mohamed and Mr. Chahrabane Azzedine” [see 331st Report, para. 596]. When it last examined the case, the Committee had asked the Government to continue with its initiatives – and to keep it informed of developments – with a view to allowing the trade union executive affiliated to the CDT to carry out freely its activities within the SCGB; to ensure that inquiries were promptly opened to determine whether the individual measures – including the dismissals of Mr. Mohamed and Mr. Azzedine – taken against the 20 workers, members or leaders of the trade union executive, were due to their trade union activities and, if so, to take the necessary steps to ensure that those measures were lifted.
149. In a communication dated 17 May 2004, the Government transmitted two letters: the first, dated 4 December 2003, is from the general manager of the SCBG and the second, undated, from an official of the Ministry of Employment. Both these letters refer, with respect to follow-up to the initiatives taken by the Government concerning the freedom of

action of the trade union executive of the CDT within the SCBG, to a vote held on 17 September 2003 to elect the staff representatives of the SCBG. On that occasion, the candidates affiliated to the central CDT trade union won 22.72 per cent of the votes cast and won five out of a possible 22 representative positions. The Committee notes that the letter from the Ministry of Employment representative indicates that: “the staff representatives elected under the CDT banner, some of whom are concurrently members of the trade union executive, exercise freely their duties as representatives and enjoy the prerogatives and the means accorded to them by the legislation”. Moreover, the letter of the general manager of the SCBG indicates that “as the central CDT trade union did not obtain the 35 per cent necessary in order to be able to claim the status of most-representative trade union, we continue to negotiate collectively with all the CDT and SAS representatives elected by the staff, in the framework of a common collegiate that represents the workers of the SCBG”.

150. The letter from the official of the Ministry of Employment indicates that the labour inspectorate reported SCBG for failure to respect the dismissal procedure with regard to the dismissal of Mr. Mohamed and Mr. Azzedine. This letter also indicates that “the two persons concerned who had been given, at their request, a certificate by the labour inspectorate attesting to their position as staff representatives, had been invited to take the ‘unlawful’ dismissal to court, but had declined”. Regarding the other measures taken against 20 workers – dismissals, transfers from one workplace to another, and demotions [see 331st Report, para. 600] – the letter from the official of the Ministry of Employment indicates that “the labour inspectorate took action against the management that eventually produced favourable responses to the requests of those of the employees concerned who wished to be reinstated to sales positions”. The Committee notes that the letter from the general manager of the SCBG supports this information.

151. *The Committee takes note of the information submitted by the Government. The Committee notes in particular that initiatives taken by the Government had contributed to the individual measures that had been imposed on the 20 workers who were members or leaders of the trade union executive being lifted. The Committee emphasizes, in this respect, the report made by the labour inspectorate concerning the dismissals of Mr. Mohammed and Mr. Azzedine and the acceptance, by the SCBG, of the requests for reinstatement of the 20 workers concerned. However, the Committee notes with regret that the communication from the Government does not contain any information that made it possible to determine whether the conclusions of the report or the lifting of the sanctions implied confirmation that those measures had been taken due to the trade union activities of the workers concerned. The Committee recalls that no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 690]. Consequently, the Committee requests the Government to draw the attention of the SCBG to this principle. The Committee hopes that in future the employees of the SCBG will be able to exercise freely, within the company, their trade union rights and freedoms.*

Case No. 2281 (Mauritius)

152. During the previous examination of this case, which concerned the need to revise the Industrial Relations Act (IRA) in conformity with freedom of association principles, the Committee took note of the Government’s statement that it is committed to amending the IRA and has set up a tripartite committee as well as a technical one at the Ministry of Labour and Industrial Relations to this end. The Committee requested the Government to take all necessary measures as soon as possible to conclude the revision of the IRA in consultation with the social partners and strongly encouraged the Government to make use

of ILO technical assistance with a view to facilitating this process [see 333rd Report approved by the Governing Body at its 289th Session, paras. 613-641].

- 153.** In a communication dated 27 July 2004, the Government reiterates its commitment to replace the IRA by new legislation. A technical committee has been examining all previous reports on the subject, including the recommendations of the Committee. Consultations have been held with the 13 federations of trade unions and the employers' organizations which have submitted written memoranda to the technical committee. The Government adds that, in the framework of technical assistance, a high-level ILO delegation provided a tripartite seminar on freedom of association and collective bargaining from 6 to 8 July 2004. Forty-two participants attended the seminar, including representatives from the 13 trade union federations of the country and one trade union from Rodrigues (autonomous region), employers' organizations, relevant ministries, the University of Mauritius and the National Economic and Social Council. The seminar focused on ILO Conventions Nos. 87 and 98. The Government indicates that the seminar helped to develop a shared and common understanding of the concepts underlying the two Conventions among the participants. After the explanations provided by the ILO experts, there was general consensus among the participants that: (i) collective bargaining should be promoted; (ii) trade union organizations should be allowed greater autonomy to manage their affairs; (iii) the structures and mechanisms for dispute resolution and conciliation should be reinforced; (iv) explicit provisions should be made for anti-union discrimination; (v) peaceful resolution of disputes should be encouraged; and (vi) strikes should be envisaged as a last resort after all avenues for conciliation and mediation have been exhausted. The participants also identified strategies to promote collective bargaining, namely: (i) trade union recognition; (ii) carrying out negotiations in good faith; (iii) the signing of procedural agreements to make provision for access to information, access to the workplace, time-off facilities and recognition of the status of the negotiator; (iv) addressing the issue of low rate of unionization; (v) capacity building for trade unions and employers through training in negotiating skills and in new industrial relations issues. The Government finally indicates that a white paper is being prepared for the revision of the IRA and will be submitted to the Council of Ministers shortly.
- 154.** *The Committee takes note with interest of the tripartite seminar on freedom of association and collective bargaining which was provided by a high-level ILO delegation from 6 to 8 July 2004 and helped to develop a shared and common understanding among the participants on the concepts underlying the two Conventions, including with respect to the issues of trade union autonomy, anti-union discrimination, dispute resolution, the right to strike and strategies to promote collective bargaining. The Committee also notes with interest the Government's statement that a white paper is being prepared for the revision of the IRA and will be submitted to the Council of Ministers shortly. The Committee hopes that the process for the revision of the IRA will be concluded soon so as to bring it in full conformity with Conventions Nos. 87 and 98 and requests the Government to keep it informed of the steps taken in this respect.*
- 155.** *The Committee also notes the Government's statement that consultations have been held with the 13 trade union federations and the employers' organizations which submitted written memoranda to the technical committee concerning the revision of the IRA. The Committee requests the Government to maintain the consultations with the social partners during the process of the revision of the IRA and to keep it informed in this respect.*

Case No. 2234 (Mexico)

- 156.** The Committee last examined this case at its November 2003 meeting [see 332nd Report, paras. 752-783]. On that occasion the Committee made the following observation: "Observing that the judicial authority has yet to decide on the charges against

Mr. Fernando Espino Arévalo, General-Secretary of the Metropolitan Rail Transport Workers' Union (SMTSTC) and the other participants in the industrial action carried out on 8 August 2002 in the metropolitan passenger train, the Committee expresses the hope that in handing down its decision, the judicial authority will take fully into account the principle according to which no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. The Committee requests the Government to keep it informed in this respect."

157. In its communications dated 11 May and 25 October 2004, the Government announces that the Federal District Public Prosecutor's Office stated that it would take into account the recommendation made by the Committee on Freedom of Association and would act in accordance with the law, at all times complying with the guiding principles of the Political Constitution of the United States of Mexico whilst respecting the right to strike. The Government adds that, however, it should be reiterated that, in the case in question, the strike was not legal, as the way in which it was called for did not comply with the terms of articles 92-109 of the Federal Public Employees Act which set out the relevant procedures to be followed by federal public employees wishing to exercise the right to strike. The Government likewise states that it is appropriate to point out that the corresponding decision has not yet been announced, as the Chamber of Deputies is still looking into the request to withdraw the parliamentary privileges of Mr. Fernando Espino Arévalo.

158. *The Committee takes note of the information provided. The Committee hopes that the judicial authority will announce a decision as soon as possible and that it will fully take into account the principles of freedom of association and asks the Government to keep it informed in this respect.*

Case No. 1965 (Panama)

159. At its March 2004 meeting, the Committee requested the Government to send it a copy of the decisions handed down on the dismissal of Messrs Darío Ulate and Julio Trejos [see 333rd Report, para. 112].

160. In its communication dated 24 May 2004, the Government states that a copy of the decisions will be sent to the Committee once they have been handed down.

161. *The Committee notes this information and awaits the decision on the dismissal of Messrs Darío Ulate and Julio Trejos.*

Case No. 2252 (Philippines)

162. The Committee examined this case at its November 2003 session [see 332nd Report, paras. 848-890]. On that occasion, it requested the Government to amend the national legislation so as to allow for a fair, independent and speedy certification process and to provide protection against acts of interference by employers, and to pursue measures to amend the Labor Code, in particular article 263(g) concerning the exercise of the right to strike. The Committee trusted that the Government would ensure that the Toyota Motor Philippines Corporation Workers' Association (TMPCWA) and the Toyota Philippines Corporation negotiate in good faith to reach a collective agreement. Further, the Committee requested the Government to initiate discussions to consider the reinstatement of the 227 workers dismissed by the corporation and the union officers who were deemed to have lost their employment status or, if reinstatement was not possible, the payment of adequate compensation. The Committee requested the Government to keep it informed in all these respects as well as of any measures taken to withdraw the criminal charges laid

against union officers. Finally, the Committee requested the Government to consider accepting a consultative mission in relation to this case.

- 163.** In a communication dated 13 February 2004, the complainant organization alleges that the corporation continued to refuse to negotiate with the union, despite a decision of the Supreme Court dated 24 September 2003 setting aside the Court of Appeal's preliminary injunction preventing the union from demanding collective bargaining. In fact, the corporation had filed a request to the Supreme Court to have the injunction reinstated, interfered in the establishment of another union at the company, and continued pressure through the ongoing criminal cases. The complainant stated that the Government took no actions in relation to the Supreme Court's decision. In a communication dated 10 June 2004, the complainant organization reiterated that the Government had taken no concrete actions in relation to the Committee's recommendations and enclosed copies of the decisions of the Supreme Court dated 24 September 2003 and 28 January 2004, as well as certain correspondence from the National Conciliation and Mediation Board and from the corporation, in which it maintained its position that no legal decision as to the substance of the matter had been reached.
- 164.** In its communication dated 18 May 2004, the Government stated that by nullifying the preliminary injunction previously issued by the Court of Appeal, the Supreme Court had simply dissolved the temporary relief granted to the corporation and the main issue concerning the legitimacy of the union's certification by the Secretary of Labor and Employment as exclusive bargaining agent remained unresolved. Only duly certified unions may bring complaints before the National Labor Relations Commission, or file notices of intention to strike. Thus, unless and until a final judgement is issued by the appropriate court on the merits of the case, the Department of Labor and Employment cannot be accused of inaction. In its communication dated 8 July 2004, the Government provided further information by way of the Supreme Court's decisions of 24 September 2003 and 28 January 2004.
- 165.** *The Committee regrets that the Government has chosen not to provide any follow-up information in relation to its earlier recommendations and has limited its reply to responding to the complainant organization's later allegations concerning the decisions of the Supreme Court. The Committee notes that its recommendations were independent of those decisions and urgently requests the Government to take the necessary steps to: (1) amend the national legislation so as to allow a fair, independent and speedy certification process and to provide protection against acts of employer interference; (2) amend article 263(g) of the Labor Code; (3) take measures so that TMPCWA and the Toyota Philippines Corporation negotiate in good faith; and (4) initiate discussions to consider the reinstatement of the 227 workers dismissed or, if reinstatement is not possible, the payment of adequate compensation. The Committee requests to be kept informed in this regard.*
- 166.** *In relation to the decisions of the Supreme Court, the Committee notes that the 24 September 2003 decision nullifies the preliminary injunction that the corporation had obtained to prevent the union from demanding collective bargaining. The Supreme Court's decision of 28 January denies the corporation's motion for reconsideration "with finality", thus confirming its earlier decision. The Committee further notes the Government's statements that these decisions do not affect the substance of the case and until such time as the court determines that the certification process was correct and the TMPCWA can be considered to be the exclusive bargaining agent at the company, the Department of Labor and Employment cannot be accused of inaction.*
- 167.** *The Committee requests the Government to provide clarification as to whether, in the absence of an injunction preventing the TMPCWA from relying upon its earlier certification by the Secretary of Labor and Education as exclusive bargaining agent, the*

certification is valid despite the pending legal challenge, until any appropriate court order to the contrary.

Case No. 2146 (Serbia and Montenegro)

- 168.** The Committee last examined this case at its meeting in March 2004 [see 333rd Report, paras. 119-125] when it observed that the law abrogating the law on the Yugoslav Chamber of Commerce may be inconsistent with the Labour Law, in so far as it enables the new Serbian Chamber of Commerce and Industry to have compulsory membership and to exercise powers in relation to collective bargaining. The Committee trusted that it would receive the necessary information concerning the right of employers to organize in Montenegro and, in particular, concerning that country's Chamber of Commerce and Industry. The Committee requested the Government to take the necessary steps to ensure that the law of the Republic of Serbia abrogating the law on the Yugoslav Chamber of Commerce and Industry be amended in order to ensure that employers may freely choose the organization they wish to represent their interests in the collective bargaining process without any interference by the legislatively constituted Chamber of Commerce. The Committee underlined that this request applied equally to any similar legislative provisions in the Republic of Montenegro. Finally, the Committee requested the Government to indicate how many collective agreements had been concluded and signed only by employers' organizations during the last two years in Serbia and Montenegro.
- 169.** In a communication submitted to the Committee on 2 June 2004, the Government provided further information in reply. The Government pointed out, in relation to the situation in Serbia, that the right of Chambers of Commerce to participate in collective agreements has not been inherited from the Yugoslav Chamber; that the Labour Law excludes Chambers of Commerce as obligatory participants of employers' associations in collective bargaining; and that this is evidenced by the fact that no collective agreement has been concluded by the Serbian Chamber since the entry into force of the Labour Law on 21 December 2001. A separate collective agreement for the hotel and tourism industry in Serbia was signed on 11 June 2003 by two voluntary employers' associations. The Government considered that the reason that no other collective agreements had been signed was a lack of initiative on the part of the authorized representatives and the fact that most collective agreements occur at the employer level.
- 170.** In relation to the Republic of Montenegro, the Government explained that the drafting of the law amending the current Labour Law is under way. The Government stated that the amendment aims to regulate the matter of employers' organizations in accordance with ILO standards, based on the principles of voluntariness and independence. Currently, the Chamber of Commerce, as an employers' representative, is not a voluntary organization. The Government stated that the Republic of Montenegro has availed itself of ILO technical assistance in the drafting of the amendment.
- 171.** *The Committee notes the information provided by the Government in relation to the powers and activities of the Serbian Chamber of Commerce and, in particular, that the Labour Law excludes it as obligatory participant in collective agreements and that it has not concluded any collective agreements since the adoption of the Labour Law.*
- 172.** *The Committee notes that the Republic of Montenegro is currently amending its labour legislation, with the intention of ensuring that employers' associations are truly independent collective bargaining agents. The Committee welcomes such an initiative, and requests the Government to provide it with a copy of the relevant law once it is drafted.*

Case No. 2255 (Sri Lanka)

- 173.** During the previous examination of this case [see 333rd Report paras. 126-131], which concerns certain provisions of the Guidelines for the Formation and Operation of Employees' Councils issued by the Board of Investment (BOI), i.e. the overseeing public authority in free trade zones (FTZs), the Committee: (1) had noted that certain amendments had already been drafted (concerning section 5 on the organization of elections to employees' councils, section 12.3 on the procedure for the conduct of meetings between the employer and elected representatives, and section 13(ii) on the conduct of negotiations between the employees' council and the employer) and expressed the hope that they would soon be adopted by the National Labour Advisory Council (NLAC); (2) had recalled that only two collective agreements had been concluded in FTZs and had requested the Government to take measures with a view to promoting collective bargaining in FTZ enterprises and to amend the 40 per cent requirement for the recognition of trade union representativeness for collective bargaining purposes, which had been considered as too restrictive by the Committee; (3) had requested the Government to ensure that representative trade unions enjoy the same facilities in the undertaking as employees' councils without discrimination and therefore, to ensure that section 9A of the Labour Standards and Employment Relations Manual enables trade union representatives to have access to the workplace even when their organization does not have representative status in a particular FTZ enterprise, and that permission for such access may not be unreasonably withheld, with due respect to the need to maintain the smooth functioning of the enterprise concerned.
- 174.** In its communication dated 14 May 2004, the Government indicates with regard to the first issue noted above, that the BOI has already effected the modifications suggested by the Committee concerning section 5 on the organization of elections to employees' councils, section 12.3 concerning the procedure for the conduct of meetings between the employer and elected representatives and section 13(ii) on the conduct of negotiations between the employer and elected representatives. The Government attaches the final printed version of the BOI Guidelines for the Formation and Operation of Employees' Councils which contain the modifications in question. It further adds that these modifications have not been presented to the NLAC for adoption yet because this body became defunct prior to the national elections of 2 April 2004 and had to be reconstituted after the elections. The Government assures the Committee that once the NLAC resumes its meetings, the Guidelines will be presented to it for discussion and adoption.
- 175.** With regard to the 40 per cent threshold for recognition of trade union representativeness, the Government notes that this threshold applies only for collective bargaining purposes and for no other representation function and that the trade unions have not complained of this rule which came into force in 1999. The Government finally indicates that this matter would be taken up by the NLAC once reconstituted.
- 176.** With regard to the issue of access to the FTZs by trade union representatives, the Government indicates that section 9A of the BOI Manual on Labour Standards and Employment Relations was modified so that trade union representatives are guaranteed access to workplaces with due respect for the rights of property and management. The Government attaches the text of the Manual, section 9A which provides the following:
- A duly nominated representative of a trade union who is not employed in a BOI enterprise but whose trade union has members employed therein, whether within or outside the export processing zone, shall be granted access to the enterprise/export processing zone, with due respect for the rights of property and management, provided the union:
- (a) seeks access to the enterprise for the purpose of performing representation functions;

- (b) has obtained the consent of the employer for such access which may not be unreasonably withheld, with due respect to the need to maintain the smooth functioning of the enterprise concerned; and
- (c) having satisfied the above requirements, obtained an entry permit from BOI authorities for the entry sought, in the case of an enterprise located within an export processing zone.

177. *The Committee recalls that during the previous examination of this case it had already taken note of the modifications to sections 5, 12.3 and 13(ii) of the BOI Guidelines for the Formation and Operation of Employees' Councils and had expressed the hope that they would be adopted by the NLAC soon. The Committee notes that according to the Government, although these amendments are now final and figure in the printed version of the Guidelines, they have not been presented yet to the NLAC for adoption because this body became defunct prior to the national elections held on 2 April 2004 and had to be reconstituted thereafter. The Committee notes that according to the Government, the Guidelines will be presented to the NLAC once this body resumes its meetings. The Committee requests the Government to keep it informed in this respect.*

178. *With regard to the revision of the 40 per cent threshold for recognition of trade union representativeness, the Committee notes that, according to the Government, the issue of the 40 per cent requirement will be taken up by the NLAC once reconstituted. The Committee requests to be kept informed in this respect.*

179. *The Committee also notes that the Government does not indicate any further measures taken to promote collective bargaining in FTZs, as requested by the Committee. The Committee recalls that the actual or potential position of trade unions as collective bargaining agents should not be undermined by the presence of works councils and that the right of trade unions to participate in collective bargaining should be safeguarded. The Committee therefore once again requests the Government to indicate the concrete measures taken to promote collective bargaining in FTZs and to provide statistical data regarding the number of collective agreements concluded in FTZs during the last year.*

180. *Concerning the issue of the access of trade union representatives to FTZs, the Committee notes that section 9A of the BOI Manual on Labour Standards and Employment Relations has been revised so as to provide trade unions with this facility under certain conditions. The Committee observes that, according to section 9A, access of trade union representatives to FTZs is envisaged only "for the purpose of performing representation functions". The Committee requests the Government to specify the exact scope and meaning of this phrase.*

Case No. 2171 (Sweden)

181. At its June 2004 session, the Committee examined this case, which concerns a statutory amendment enabling workers to remain employed until the age of 67 and prohibiting negotiated clauses on compulsory early retirement. The Committee recalled its previous request that the Government should take remedial measures so that agreements already negotiated in such matters continue to produce all their effects until their expiry dates. It also requested the Government to keep it informed of the results obtained at a meeting with bargaining partners in June 2003, and on any further consultation held. Finally, the Committee requested the Government to implement its recommendations in conformity with freedom of association principles and to keep it informed of developments [see 334th Report, para. 66].

182. In a communication dated 17 September 2004, the Government explains that the Committee's request for "remedial measures so that agreements already negotiated on

compulsory retirement age shall continue to produce all their effects until their expiry dates, including after 31 December 2002” is complicated, for both political and legal reasons. For the Government, the political complication arises because the provision has been prompted by the new pension system, which is based on an agreement between five of the parliamentary parties; the issue is now beyond the Government since the Parliament has enacted the new provisions. As regards the legal aspects, several problems must be taken into account when considering putting back in force a collective agreement that has been made invalid for some time, or even renegotiated. The Government also states that the Minister for Employment intends to resume contacts with social partners in the near future.

- 183.** *The Committee notes this information. While noting the Government’s explanations on the political and legal difficulties that may arise in implementing said recommendations, the Committee refers to its extensive analysis of the fundamental issues at stake in its initial examination on the merits of this case [330th Report, paras. 1010-1053] including the misgivings that existed at national level on the proposed legislation within the workers’ and employers’ communities, the Swedish tripartite ILO Committee (ibid. para. 1017) and the Swedish Council on Legislation [ibid., para. 1026] and finds no reason to vary its recommendations. The Committee also notes that the Government did not provide the information requested concerning the results of the meeting held with bargaining partners in June 2003 and of any further consultations. The Committee therefore reiterates its previous requests: that the Government should take remedial measures so that agreements already negotiated on compulsory retirement age shall continue to produce all their effects until their expiry dates, including after 31 December 2002; and that it should resume thorough consultations on these issues, with a view to finding a negotiated solution which would be mutually acceptable to all parties concerned, in conformity with freedom of association principles. The Committee requests the Government to keep it informed of developments in this matter, and of the results of meetings with bargaining partners, including those which the Government states it intends to initiate in the near future.*

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

Case	Last examination on the merits	Last follow-up examination
1826 (Philippines)	March 1996	November 2003
1854 (India)	March 1997	November 2003
1890 (India)	June 1997	March 2004
1937 (Zimbabwe)	March 1998	March 2004
1951 (Canada)	June 2001	March 2004
1952 (Venezuela)	March 1999	March 2004
1970 (Guatemala)	November 2000	November 2002
1975 (Canada)	June 2000	March 2004
1991 (Japan)	November 2000	June 2004
1996 (Uganda)	June 1999	March 2004
2027 (Zimbabwe)	March 2000	March 2004
2086 (Paraguay)	June 2002	November 2003
2088 (Venezuela)	March 2004	–
2096 (Pakistan)	March 2004	–

Case	Last examination on the merits	Last follow-up examination
2114 (Japan)	June 2002	November 2002
2125 (Thailand)	March 2002	March 2004
2126 (Turkey)	March 2002	June 2004
2134 (Panama)	March 2003	March 2004
2141 (Chile)	March 2002	March 2004
2148 (Togo)	March 2002	November 2003
2150 (Chile)	November 2002	March 2004
2158 (India)	March 2003	March 2004
2161 (Venezuela)	March 2003	March 2004
2166 (Canada)	March 2003	March 2004
2172 (Chile)	March 2004	–
2173 (Canada)	March 2003	March 2004
2178 (Denmark)	March 2003	November 2003
2180 (Canada)	March 2003	March 2004
2182 (Canada)	March 2003	March 2004
2186 (China, Special Administrative Region of Hong Kong)	March 2004	–
2192 (Togo)	March 2003	–
2195 (Philippines)	November 2002	November 2003
2196 (Canada)	March 2003	March 2004
2198 (Kazakhstan)	November 2002	November 2003
2200 (Turkey)	June 2004	–
2211 (Peru)	June 2004	–
2215 (Chile)	June 2004	–
2216 (Russian Federation)	November 2003	June 2004
2225 (Bosnia and Herzegovina)	November 2003	–
2229 (Pakistan)	March 2003	March 2004
2230 (Guatemala)	March 2003	March 2004
2242 (Pakistan)	November 2003	–
2250 (Argentina)	November 2003	–
2251 (Russian Federation)	March 2004	–
2253 (China, Special Administrative Region of Hong Kong)	June 2004	–
2267 (Nigeria)	June 2004	–
2271 (Uruguay)	June 2004	–
2280 (Uruguay)	June 2004	–
2284 (Peru)	March 2004	–
2288 (Niger)	March 2004	–
2296 (Chile)	June 2004	–

- 185.** The Committee hopes that these governments will quickly provide the information requested.
- 186.** In addition, the Committee has just received information concerning the follow-up of Cases Nos. 1785 (Poland), 2038 (Ukraine), 2079 (Ukraine), 2084 (Costa Rica), 2104 (Costa Rica), 2197 (South Africa), 2208 (El Salvador), 2221 (Argentina), 2233 (France), 2272 (Costa Rica), 2291 (Poland), 2299 (El Salvador) and 2316 (Fiji), which it will examine at its next meeting.

CASE NO. 2345

DEFINITIVE REPORT

**Complaint against the Government of Albania
presented by
the Council of Employers' Organizations – Albania (KOP)**

Allegations: The complainant alleges that the Government interfered in its activities by trying to set up and actively supporting a competing organization which uses the same name, thus leading to the refusal of its registration as a confederation by the Tirana Court of Justice and the granting of registration to the new organization

- 187.** The complaint is contained in a communication from the Council of Employers' Organizations (KOP) dated 11 May 2004.
- 188.** The Government replied in a communication dated 29 June 2004.
- 189.** Albania 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 complainant's allegations

- 190.** In its communication dated 11 May 2004, the Council of Employers' Organizations (KOP) alleges that the Ministry of Labour and Social Affairs of Albania interfered in its activities by trying to set up and actively supporting a competing organization which uses the same name, thus creating confusion among the members in violation of Articles 2, 3, 4 and 8 of Convention No. 87.
- 191.** The complainant adds that it was founded on 17 November 2000 and that at present, it has 11 organizations as members. At the general assembly of January 2004, a new council and steering committee were elected and new statutes were approved. The new appointments and changes in the statutes were notified to the Ministry of Labour and Social Affairs by letter of January 2004, in accordance with the Labour Code. The new president and council met with the Minister of Labour and Social Affairs. The complainant adds that KOP has been, since 2000, represented in the Tripartite National Council of Labour by four delegates as the main employers' organization.

- 192.** The complainant alleges that after the general assembly of January 2004, the new council decided to officially register KOP as a confederation at the Court of Justice although its 11 constituent members had already been registered and were considered as representative by the Ministry of Labour. In order to register as a confederation, it had to present a reference letter of the Ministry of Labour and Social Affairs. However, the Ministry of Labour and Social Affairs initially refused to provide such letter and after two months of insisting, provided a letter which indicated that KOP was registered at the Ministry of Labour and Social Affairs as a grouping of six organizations and that afterwards, the regional councils of KOP-Tirana, KOP-Fier and KOP-Gjirokaster were created. Finally, the letter indicated that the right to establish KOP pertained only to Mr. Vladimir Koka, i.e. the president of KOP-Tirana who had been involved in efforts to set up a new KOP. The complainant attaches the letter dated 8 March 2004 to the complaint.
- 193.** The complainant indicates that it rejected such letter as untrue and proposed instead another reference letter which read as follows: “The founding documents of KOP, as an umbrella organization of six employers’ organizations, have been deposited at the Ministry of Labour and Social Affairs since 2000. Now KOP is enlarged with five more organizations and has deposited new documents. We support KOP’s request to obtain legal recognition as a legal person, as a confederation.” According to the complainant, this letter was not accepted by the Ministry; one ministry official even refused to meet a delegation of the complainant.
- 194.** In the meantime, according to the complainant, the Tirana Court of Justice gave legal recognition to a new KOP as a confederation of regional councils of employers of Albania. Immediately, a high official of the Ministry deleted the KOP which existed on the records since 2000 and replaced it with the new KOP. In the meantime, the Court of Justice of Tirana had informed the complainant organization that the process of its registration had been cancelled. The complainant’s president, Ms. Shefikat Ngjela, met with an official of the Ministry of Labour and Social Affairs who declared that the Ministry had received the registration of the new KOP and would respect it. The complainant notes that as a result, the first KOP does not exist any more for the Ministry of Labour and Social Affairs.
- 195.** As for the new KOP, the complainant alleges that it has been founded by two regional organizations, namely, KOP-Tirana and KOP-Gjirokaster. The registration of the new KOP at the Court of Justice has been requested by KOP-Tirana, chaired by Mr. Vladimir Koka.
- 196.** The complainant expresses the view that the behaviour of the Ministry of Labour and Social Affairs, especially the issuance of a reference letter declaring that the right to establish KOP organizations pertains only to Mr. Vladimir Koka, is an interference and impairment of the guarantees provided in Articles 3 and 8 of Convention No. 87. The complainant therefore asks the Committee to take the appropriate initiatives so that the Ministry of Labour and Social Affairs will stop interfering in the activities of the KOP and employers’ organizations in general. The complainant also requests that the Government issue a reference letter which corresponds to the reality so that the old KOP can be registered in conformity with the law of Albania. Finally, it requests the Government to continue the good relations it had with KOP in the past.

B. The Government’s reply

- 197.** In a communication dated 29 June 2004, the Government indicates that it is keenly interested in developing a fruitful relationship with the social partners and has taken all the appropriate legislative, institutional and administrative measures to guarantee freedom of association as well as the independence of professional organizations in the absence of interference. The Government indicates that in 2000, six employers’ organizations which

had already obtained legal recognition decided to cooperate and be represented together under the name of Council of Employers' Organizations. The grouping of these organizations had not obtained specific legal recognition.

- 198.** In 2003, KOP-Tirana was established with a specific legal recognition as a member of the Council of Employers' Organizations. However, by the end of 2003, there were disagreements between two groups within KOP due to delays in convening the national conference. The group represented by Ms. Shefikat Ngjela aimed to create a KOP confederation grouping together several professional organizations. It therefore addressed to the Court a request to this effect which was rejected on the basis of article 176 of the Labour Code according to which, two or more organizations have the right to establish federations and two or more federations have the right to establish a confederation.
- 199.** The other group represented by Mr. Anesti Decka and Mr. Vladimir Koka, undertook the initiative to establish the regional employers' organizations and opened KO-Gjirokaster, KOP-Fier, KOP-Elbasan, based on relevant court decisions. These organizations together with KOP-Tirana, established two KOP federations based on a court's decision. The two federations led to the establishment of the KOP confederation based on a court's decision.
- 200.** The Government notes that the Ministry of Labour and Social Affairs considered the allegations as an internal conflict of KOP and chose to maintain its impartiality and at the same time encourage the parties to find an agreement. The Government further explains that the Court addressed to the Ministry of Labour and Social Affairs a mere request to confirm whether an organization which had brought an application before it appeared on the Ministry's records under that name. The Ministry responded to the Court's request in a proper and neutral way. The Ministry never gave any recommendation letter to any of the parties so as not to influence the Court's decision.
- 201.** The Government finally emphasizes its commitment to find the best solution to the dispute and to strengthen its relationship and collaboration with the social partners.

C. The Committee's conclusions

- 202.** *The Committee observes that the complainant alleges that the Government interfered in its activities by trying to set up and actively supporting a competing organization which uses the same name, thus leading to the refusal of its registration as a confederation by the Tirana Court of Justice and the granting of registration to the new organization. In the Committee's view, however, this case is one of conflict between two rival executive committees of the same organization. It relates to allegations of government interference in the conflict by favouring one executive committee to another; as a result, the executive committee allegedly favoured by the Government obtained registration of the KOP as a confederation, to the detriment of the other committee (the complainant).*
- 203.** *The Committee notes that the KOP was founded on 17 November 2000 as a council of six employers' organizations, without requesting legal recognition. According to the complainant, the KOP has functioned regularly since then and its membership has been enlarged with five more organizations. The complainant further alleges that during the general assembly of January 2004, the KOP elected a new council and steering committee, and approved new statutes; these appointments and changes were notified to the Ministry of Labour and Social Affairs and the new president and council met with the Minister. The complainant states that it decided to request its registration as a confederation at the Court of Justice after the general assembly of January 2004. To this end, it asked a reference letter from the Ministry of Labour and Social Affairs as requested by the Court. However, the Ministry provided a letter that seemed to favour another executive committee which had also sought registration of KOP as a confederation before the Court of Justice.*

As a result, the complainant's request for registration was turned down and the rival executive committee obtained registration of KOP as a confederation.

- 204.** *The Committee takes note of the registration of KOP as an employers' confederation. It also notes that as indicated by the Government, this registration took place in the context of disagreements between two groups within KOP. In particular, one group was represented by Ms. Shefikat Ngjela. This group, which is the complainant in this case and apparently constitutes the executive committee elected during the general assembly of January 2004, aimed to create a KOP confederation grouping together several professional organizations. It therefore addressed to the Court a request to this effect. However, its request was rejected by the Court on the basis of article 176 of the Labour Code, apparently because the group was composed only of primary organizations and not by federations, so as to form a confederation. The Committee also notes that another group led by Mr. Vladimir Koka who is the president of a regional KOP organization, took the initiative to establish other regional KOP organizations thus setting up KOP-Gjirokaster, KOP-Fier, KOP-Elbasan, based on relevant court decisions. These organizations along with KOP-Tirana established two KOP federations which led to the establishment of the KOP confederation in accordance with the Court's decision.*
- 205.** *The Committee takes note furthermore of the Government's statement that this is an internal matter on which it maintained an impartial position, encouraging the two parties to find an agreement, and that it did not provide any reference letter to the parties but simply answered a request by the Court of Justice for information on whether the organization in question appeared on the Ministry's records under that name. The Committee observes in this respect, that in the letter dated 8 March 2004, which has been attached to the complaint, the Ministry of Labour and Social Affairs indicates the following to the Court of Justice:*

In reply to your letter No. 1772 of 17.02.04, concerning the request for confirmation on our behalf of the other acts carried out by the parties which have requested registration before you, we inform you of the following:

- 1. Some employers' organizations decided, by signing an agreement among them, to be represented collectively as the Council of Employers' Organizations (KOP) headed by Ms. Shefikat Ngjela, without legal recognition.*
- 2. Besides KOP-Tirana which has been registered as a legal person, KOP-Fier, KOP-Elbasan and KOP-Gjirokaster have deposited documents such as the statute, the legal recognition, the constitutive act, and have been registered with the Ministry. We have been informed that procedures are under way for the creation of other organizations with a view to creating a confederation in conformity with the law. Among the initiators for the creation of KOP in accordance with the law is Mr. Vladimir Koka.*

Thank you for your collaboration.

- 206.** *The Committee is of the view that the two executive committees are not treated on an entirely equal basis in the abovementioned letter. The facts indicated in paragraph 1 of the letter with regard to the complainant executive committee are rather vague. The organization is presented as a group of "some" employers' organizations without any reference to its member organizations or to the five new members which had allegedly joined it in the meantime. In addition to this, the reference to the complainant ends with the phrase "without legal recognition". On the contrary, paragraph 2 concerning the other executive committee makes reference to specific names and documents alluding not only to actual facts but also to information concerning the upcoming registration of additional regional organizations. The reference to this executive committee ends with the phrase "with a view to creating a confederation in conformity with the law". Finally, the phrase concerning Mr. Koka at the end of paragraph 2 could reasonably create the*

impression that he is one of the persons who have the legal right to create further KOP organizations, to the exclusion of other parties.

207. *Thus, the Committee is of the view that the letter sent by the Ministry of Labour and Social Affairs to the Court of Justice could potentially influence the decision of the Court as to which party may have a stronger claim to establish a confederation. Without questioning the actual registration of KOP as a confederation, the Committee notes that the abovementioned letter might have implicitly influenced the related but distinct issue of KOP's leadership, which should be normally resolved by recourse to a judicial authority without any government interference, taking into account the will of the members. The Committee also notes that the will of the members seems to have been recently expressed in the elections which took place during KOP's general assembly of January 2004. The Committee recalls that when two executive committees each proclaim themselves to be the legitimate one, the dispute should be settled by the judicial authority or an independent arbitrator and not by the administrative authority. In the case of internal dissent within one and the same [employers'] federation, by virtue of Article 3 of Convention No. 87, the only obligation of the Government is to refrain from any interference which would restrict the right of the workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes, and to refrain from any interference which would impede the lawful exercise of that right [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 966 and 970]. The Committee therefore considers that it should be up to the Court to decide the question of the leadership and representation of KOP, taking into account the result of the elections which took place during the general assembly of KOP in January 2004, and requests the Government to refrain from any action which could give rise to interference in this framework.*

The Committee's recommendation

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

The Committee considers that it should be up to the Court to decide the question of the leadership and representation of KOP, taking into account the result of the elections which took place during the general assembly of KOP in January 2004, and requests the Government to refrain from any action which could give rise to interference in this framework.

CASE NO. 2283

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

Complaint against the Government of Argentina presented by

- **the Confederation of Argentine Workers (CTA) and**
- **the Commercial Workers' Trade Union of Jujuy Province (Si.Tra.M.)**

Allegations: Dismissal of trade union officers and suspension of a worker after notifying the enterprise of the establishment of a trade union and the holding of a strike demanding

*reinstatement of the deputy secretary-general
and payment of a wage increase ordered by the
Executive Branch*

- 209.** The complaint is contained in a communication from the Confederation of Argentine Workers (CTA) and the Commercial Workers' Trade Union of Jujuy Province (Si.Tra.M.) of June 2003.
- 210.** The Government sent its observations in a communication dated 9 March 2004.
- 211.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 212.** In their communication of June 2003, the Confederation of Argentine Workers (CTA) and the Commercial Workers' Trade Union of Jujuy Province (Si.Tra.M.) state that the reason for the complaint was sanctions and dismissals ordered by the Alberdi S.A. (COMODIN Supermarkets) enterprise against its employees and members of Si.Tra.M. after the employer was notified of the establishment of a trade union and of the list of members of the executive committee, and after the workers who were members of the trade union participated in a strike called by the union.
- 213.** The complainant organizations point out that Si.Tra.M. is a first-level trade union currently undergoing registration with the Ministry of Labour, Employment and Social Security in a procedure initiated on 23 April 2003, covering the entire territory of Jujuy Province, and affiliated to the Confederation of Argentine Workers (CTA). They state further that on 3 May 2003 the secretary-general of Si.Tra.M. notified the Alberdi S.A. (COMODIN Supermarkets) enterprise by post of the establishment of the trade union affiliated to the CTA and of the complete list of members of its executive committee. The complainant organizations allege that on the next day following the communication, the enterprise dismissed Mr. Ricardo Rolando Gramajo, deputy secretary-general of Si.Tra.M., in violation of his trade union immunity and in an obvious anti-union move.
- 214.** The complainants add that from that point on the Alberdi S.A. enterprise engaged in an open collective dispute with the trade union, and hence Si.Tra.M. voted unanimously in an assembly in favour of launching an action plan to fight for reinstatement of their dismissed founding member and compliance by the enterprise with the wage increase ordered for all private sector workers by the national Executive Branch through Decrees Nos. 1273/02, 2641/02 and 905/03. The workers had been owed this wage increase since July 2002, i.e. for nearly 12 months. On 4 June 2003, in accordance with Act No. 14,786 on compulsory conciliation and arbitration, Si.Tra.M. sent an official communication both to the Provincial Labour Directorate of Jujuy Province and to the local administration of the Ministry of Labour informing them of the union's decision to take industrial action on 9 June 2003 and requesting that the State intervene in the conflict in accordance with the abovementioned Act by officially summoning the parties to a conciliation hearing. Neither the Jujuy Provincial Labour Directorate nor the Ministry of Labour, Employment and Social Security took any action whatsoever, displaying indifference to the trade union's demands (on 30 April 2003, Si.Tra.M. had informed the Provincial Labour Directorate of Jujuy Province, in a note presented by its secretary-general, of the establishment of the trade union and the list of the members of its executive committee, enclosing a copy of the document indicating that the registration procedure had been initiated with the Ministry of Labour, Employment and Social Security, and hence the provincial administrative

authority was not unaware of the existence of the trade union when it requested intervention in the dispute).

- 215.** The complainants point out that on 9 June 2003 the members of Si.Tra.M. held the strike as had been decided and notified. On the following day the employer sent a letter dismissing Mr. Andrés Ricardo Guanuco, organizing secretary of Si.Tra.M., alleging that he had distributed Si.Tra.M. leaflets and participated in the strike, such acts being considered as “activities unrelated to the enterprise and not authorized by it”. On the same day Mr. Ezequiel Eduardo López, second substitute committee member of Si.Tra.M., was suspended, citing identical grounds as those invoked in the case of Mr. Guanuco. Mr. Diego Ramiro Yonar, a Si.Tra.M. member, was also dismissed for distributing trade union leaflets and participating in the strike.
- 216.** The complainant organizations emphasize that, in their view, this constitutes a real violation of freedom of association by the Alberdi S.A. enterprise and by the State, which failed to guarantee the provisions of Conventions Nos. 87 and 98 through its national legislation, given that workers are being penalized for participating in direct action. The dismissal of these trade unionists vitiates the right to organize laid down in Article 2 of Convention No. 87.
- 217.** The complainants point out that Argentinean legislation – in principle – only protects representatives of trade union associations which have the status of a legally recognized trade union (trade union status). In principle, a broad interpretation of section 47 of Act No. 23,551 on trade union associations could include protection of founding members of trade unions in the process of registration (as in the case of Si.Tra.M.) or representatives of trade unions that are “merely registered”; however, the prevailing doctrine and national case law construe this provision as not including these cases, alleging that the Act provides expressly for protection of trade union representatives (of organizations with trade union status) and thus it should be understood that the legislation was intended to exclude organizations that were merely registered or in the process of registration.

B. The Government’s reply

- 218.** In its communication dated 9 March 2004, the Government states that the Commercial Workers’ Trade Union of Jujuy Province (Si.Tra.M.) did not, at the time at which the events occurred, have the status of a legally recognized trade union association. The organization in question applied for registration as a trade union on 23 April 2003 and the labour administration authority had requested it to carry out certain formalities laid down in national regulations which had not been completed. To date, they had not yet complied with the request and hence the application for registration was still pending.
- 219.** The Government points out that Mr. Gramajo’s dismissal by the Alberdi S.A. enterprise on 4 May 2003 and the dismissals of Mr. Guanuco and Mr. Yonar, allegedly for having taken part in a strike, according to the complainant organization, occurred before Si.Tra.M. had obtained registration as a trade union. Notwithstanding the above, even in these cases national legislation provides for adequate remedies against anti-union practices and acts of discrimination motivated by the exercise of the right to freedom of association and/or the worker’s trade union stance. Regarding the case at issue, it should be mentioned that section 47 of Act No. 23,551 on trade union associations allows any worker or trade union association to initiate expeditious proceedings with the competent courts to put a stop to any anti-union practice. The scope of this section and the protection it affords are not restricted to members, delegates or officers of workers’ organizations with trade union status; such action may be taken by any worker or by a trade union association which is merely registered or which has legal status.

- 220.** The Government adds that it should be noted in particular that the active subject of such action is “any worker or trade union association”. This section and the protection it affords are not restricted to members, delegates or officers, etc.; any worker or group of workers may take such action to seek effective remedy. Moreover, since no distinction is made between trade union associations, such action may be taken either by an association with trade union status or by one without such status; by a first-, second- or third-level trade union or even by a group of trade union associations. The object of the action is to protect the regular exercise of the right to freedom of association. Accordingly, case law has indicated that a broad interpretation should be given to the right to freedom of association, given that the provisions contained in Act No. 23,551 are not stand-alone provisions, but are derived from article 14bis of the national Constitution. Taken together with the provisions of Chapter XIII of the Act on trade union associations, sections 53 ff on unfair labour practices, this section affords the possibility of putting a stop to any act by the employer which impairs, obstructs or disrupts any of the rights laid down in the Act, through special expeditious court proceedings. It should be noted that the unfair labour practices specified in section 53 include reprisals against workers for taking part in legitimate trade union action or other trade union activities; dismissal, suspension or changing the terms and conditions of employment with the aim of preventing or hindering the exercise of the rights referred to in the Act, and discrimination of any kind motivated by the exercise of the trade union rights protected by its provisions. Moreover, it is pointed out that a complaint against unfair labour practices may be filed not only by the trade union association but also by the victim, and provision is made for fines to be imposed on employers guilty of such conduct.
- 221.** The Government adds that these legal provisions are supplemented by those contained in Act No. 23,592 on acts of discrimination, which provides for measures against persons who arbitrarily prevent the full exercise of the fundamental rights and guarantees recognized in the Constitution and in article 42 thereof, as amended in 1994. Read in combination, the abovementioned constitutional provisions, sections 47 and 53 of Act No. 23,551, and Act No. 23,592 afford adequate protection for all workers in the exercise of their trade union activity and, among others, prevent their dismissal, suspension or arbitrary change in their terms and conditions of employment motivated by such activity. According to the Government, in the light of the above, there can be no doubt that Argentinian law affords protection to all workers, whether or not they are members of a trade union, with or without trade union status.
- 222.** Lastly, the Government states that, in this case, the workers allegedly affected are legally empowered to seek legal protection from the judiciary branch through expeditious proceedings, as mentioned above, to ensure that the employer, in the event of having committed anti-union and discriminatory acts, ceases such practices and reinstates the workers dismissed on such grounds. In the Government’s view, it is clear that, contrary to the complainants’ allegations, Argentinian legislation affords all the mechanisms and legal guarantees necessary to protect freedom of association.

C. The Committee’s conclusions

- 223.** *The Committee observes that the complainant organizations allege that, after having notified the Alberdi S.A. (COMODIN Supermarkets) enterprise on 3 May 2003 of the establishment of the Commercial Workers’ Trade Union of Jujuy Province (Si.Tra.M.), Mr. Ricardo Rolando Gramajo, deputy secretary-general, was dismissed on 4 May 2004. They allege further that, after the holding of a strike demanding reinstatement of the dismissed trade union officer and payment of a wage increase ordered by the Executive Branch in July 2002, the enterprise in question dismissed Mr. Andrés Ricardo Guanuco, organizing secretary, and Mr. Diego Ramiro Yonar, a trade union member, and suspended Mr. Ezequiel Eduardo López, second substitute committee member.*

224. *In this respect, the Committee observes that the Government states that: (1) Si.Tra.M. did not, at the time at which the events occurred, have the status of a legally recognized trade union association; (2) the acts which are the subject of the complaint occurred before Si.Tra.M. had obtained registration as a trade union; notwithstanding the above, even in these cases national legislation provides for adequate remedies against anti-union practices and acts of discrimination motivated by the exercise of the right to freedom of association and/or the worker's trade union stance; (3) in particular, section 47 of Act No. 23,551 on trade union associations allows any worker or trade union association to initiate expeditious proceedings with the competent courts to put a stop to any anti-union practice; (4) the scope of this section and the protection it affords are not restricted to members, delegates or officers of trade unions with trade union status; action may be taken by any worker or by a trade union association which is merely registered or has legal status; (5) taken together with the provisions of Chapter XIII of the Act on trade union associations, sections 53 ff on unfair labour practices, this section affords the possibility of putting a stop to any act by the employer which impairs, obstructs or disrupts the exercise of any of the rights provided for in the Act, through special expeditious proceedings. It should be noted that the unfair labour practices specified in section 53 include reprisals against workers for taking part in legitimate trade union action or other trade union activities; dismissal, suspension or changing terms and conditions of employment of employees with the aim of preventing or hindering the exercise of the rights referred to in the Act, and discrimination of any kind motivated by the exercise of the trade union rights protected by the Act; (6) these legal provisions are supplemented by those of Act No. 23,592 on acts of discrimination, which provides for measures against persons who arbitrarily prevent the full exercise of the fundamental rights and guarantees recognized in the national Constitution and in section 42 thereof, as amended in 1994; and (7) there can be no doubt that Argentinian law affords protection to all workers, whether or not they are members of a trade union, with or without trade union status.*
225. *Firstly, the Committee observes that the Government: (1) does not deny the allegations concerning the dismissal of officers and one member (Mr. Ricardo Rolando Gramajo, deputy secretary-general, Mr. Andrés Ricardo Guanuco, organizing secretary, and Mr. Diego Ramiro Yonar) and the suspension of one officer (Mr. Ezequiel Eduardo López, second substitute committee member) of a trade union being established in the Alberdi S.A. (COMODIN Supermarkets) enterprise, neither does it deny the circumstances in which they are alleged to have occurred (after notifying the establishment of the Si.Tra.M. trade union and after the holding of a legitimate strike, of which the employer was notified); and (2) points out that the legislation contains provisions and remedies – including expeditious proceedings – which provide protection against acts of anti-union discrimination. The Committee requests the Government to keep it informed of the outcome of any judicial action initiated by the trade unionists in question and expects that, if the dismissals and suspension of these trade unionists are found to be anti-union in nature, they will be reinstated in their posts without loss of wages and without delay and, if reinstatement is not possible, that they will be adequately compensated. The Committee recalls in general that “no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present”, that “the necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish”, and that “the dismissal of workers because of a legitimate strike constitutes discrimination in employment” [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, 4th edition, paras. 690, 703 and 704].*
226. *Furthermore, the Committee notes from the statement of the complainant organizations that the dismissals result in a denial of their right to organize. The Committee notes that the Government points out that, at the time at which the facts alleged in the complaint occurred, Si.Tra.M. did not have legal recognition as a trade union association and that*

the labour administration authority had requested it to carry out certain formalities laid down in national regulations and that, since this had not yet been done, the application for registration as a trade union was still pending. In this respect, the Committee firmly expects that, as soon as the Si.Tra.M. trade union has complied with the necessary legal requirements, the administrative authority will grant it trade union registration as it requested. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendations

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

- (a) The Committee requests the Government to keep it informed of the outcome of any judicial action initiated by the dismissed or suspended trade unionists mentioned in the complaint in the Alberdi S.A. (COMODIN Supermarkets) enterprise and expects that, if the dismissals and suspension of these trade unionists are found to be anti-union in nature, they will be reinstated without loss of pay and without delay and, if reinstatement is not possible, that they will be adequately compensated.**
- (b) The Committee firmly expects that, as soon as the Si.Tra.M. trade union organization has complied with the necessary legal requirements, the administrative authority will grant it trade union registration as it requested. The Committee requests the Government to keep it informed in this respect.**

CASE NO. 2302

INTERIM REPORT

Complaint against the Government of Argentina presented by the Trade Union of "Puntanos" Judicial Employees (SIJUPU)

Allegations: The complainant alleges obstruction and delays in the procedure for registering a trade union and obtaining trade union status, as well as dismissals and suspensions of trade union officials and members

- 228.** The complaint is contained in a communication dated 29 September 2003 from the Trade Union of "Puntanos" Judicial Employees (SIJUPU). The latter sent in new allegations in communications dated 4 December 2003, 28 February, 11 March and 6 August 2004.
- 229.** The Government sent its observations in a communication dated 23 June 2004.
- 230.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 231.** In its communication of 29 September 2003, the Trade Union of "Puntanos" Judicial Employees (SIJUPU) states that it lodged an application (file No. 1-227-79288/01, 2001) with the national administrative authority for registration and official trade union status. The National Department for Trade Union Associations (DNAS) requested certain changes and made certain observations with regard to the SIJUPU application; the requisite changes were duly made within the time allowed, but the DNAS nevertheless used delaying tactics in order to avoid registering the union. In its communication of 4 December 2003, the SIJUPU states that on 9 October 2003, the authorities finally registered the union (Ministry of Labour, Employment and Social Security Decision No. 241). The complainant adds that following trade union petitions, the Higher Court of San Luis Province (STJSL) questioned the legitimacy of the SIJUPU and indicated that it was obliged to approve official trade union status, which has enabled it to make changes to the Statutes concerning Judicial Employees without any trade union consultation.
- 232.** In its communications of 4 December 2003, 28 February and 11 March 2004, the complainant also alleges that during a campaign of discrimination against its officials and members, the STJSL initially applied the following sanctions: preventive suspension for a period of 15 days in the case of Juan Manuel González, deputy general secretary, and of union members Vilma Fuentes de Ochoa and Susana Muñoz; preventive sanctions in the case of Fredy López Camacho, general secretary, Rubén Magallanes, social action secretary, and Gladis Abdón, records secretary; and a summons to give evidence in the case of Mario Becerra, trade union secretary, and Silvia Zavala, a member. In a subsequent communication the complainant stated that the STJSL decided to extend the suspension of Juan Manuel González, Vilma Fuentes de Ochoa and Susana Muñoz.
- 233.** Lastly, the complainant alleges that after a period of suspension of 55 working days, the STJSL (Ruling No. 46-04 of 10 March 2004) applied the sanction of dismissal (*cesantía*) against Vilma Fuentes de Ochoa and Susana Muñoz, and the sanction of permanent expulsion (*exoneración*) against Juan Manuel González.
- 234.** In its communication of 6 August 2004, the complainant organization alleges that the STJSL discusses trade union issues with various groups and individuals, disregarding the fact that the SIJUPU is the most representative organization, all of which violates trade union rights and the national legislation. The complainant organization alleges in particular that, on 4 August 2004, the STJSL invited to a bargaining table the Union Association of Court Employees (an unregistered association that has no trade union status), another group that falsely assumes trade union responsibilities, as well as the SIJUPU, to discuss pending issues which were already under discussion with the latter. The complainant organization indicates that it has challenged the lack of representativity, on both legal and trade union grounds, of that Association and that group, and that it has requested their exclusion.

B. The Government's reply

- 235.** In a communication of 23 June 2004, the Government states that, through Ministry of Labour Decision No. 241 of 9 October 2003 and Decision No. 22 of 14 January 2004, the labour authorities agreed to register the union as it had requested. At no time did the SIJUPU take any steps to seek official trade union status within the meaning of section 25 of Act No. 23551 respecting trade union associations.
- 236.** As regards the allegations concerning sanctions against the SIJUPU officials and members, the Government states that, contrary to the claims made by the complainant, there is no

record in the relevant files of any sanctions against Mario Becerra, Silvia Zavala, Rubén Magallanes, Gladis Abdón or Fredy López Camacho.

- 237.** With regard to Juan Manuel González, Vilma Fuentes de Ochoa and Susana Muñoz, the Government states that on 31 October 2003, the investigating judge of the Criminal and Correctional Division No. 2 in San Luis Province where González, Ochoa and Muñoz worked referred a report to the higher court concerning a police matter in which these employees are thought to have been involved and following which it ordered a preliminary inquiry on the grounds that the conduct of those involved merited administrative sanction. The San Luis Higher Court, in Ruling No. 262-STJSL-SA-03 of 19 November 2003, ordered an administrative inquiry into the actions of the employees concerned with a view to ascertaining whether or not offences had been committed. This resulted in Decision No. 46-STJSL-04 of 10 March 2004, which ordered the dismissal (*cesantía*) of Fuentes de Ochoa and Muñoz and the permanent expulsion (*exoneración*) of González, for their involvement in the following contraventions: (a) failure to observe the duty of confidentiality in cases in which they were involved or of which they had knowledge; (b) becoming involved in cases relating to third parties in which they were not officially involved; (c) commission of acts such as to undermine authority, decorum and respect for their superiors. The Government claims that the inquiry procedure provided for a right of defence for the individuals involved, and the Decision referred to has been contested by the employees concerned through review procedures which have not yet been completed.
- 238.** The Government states that, following an application for protection of constitutional rights (*amparo*), made in accordance with section 47 of Act No. 23551 respecting trade union associations by Juan Manuel González of the SIJUPU, who was dismissed following the inquiry, a ruling was handed down on 5 May 2004 ordering his reinstatement and payment of the arrears of wages owed to him for the period of his exclusion.
- 239.** The Government indicates, lastly, that in the light of the above, there has been no infringement of freedom of association, as the complainant has been registered as a trade union and the employees who were dismissed owed their dismissal to their conduct as noted in the administrative procedures, not to their membership of the SIJUPU; in the case of González, deputy secretary of the SIJUPU, the question has become pointless, as a judicial ruling has already been given ordering his reinstatement and payment of his wage arrears.

C. The Committee's conclusions

- 240.** *The Committee notes that in the present case, the complainant SIJUPU alleges obstacles and delays (of more than two years) in the procedure for registering a trade union which, among other things, it is claimed, has allowed the Higher Court of San Luis to amend the Statutes concerning Judicial Employees without consulting the trade union, and to apply sanctions (in some cases dismissals) against the union's officials and members. According to the SIJUPU, the administrative authorities have still not accorded it official trade union status.*
- 241.** *As regards the alleged obstacles and delays in registering the SIJUPU, the Committee notes the Government's statement to the effect that the Ministry of Labour, Employment and Social Security in its Decision No. 241 of 9 October 2003 and the Decision of 14 January 2004 registered the union as requested. The Committee notes that registration took place after the complaint had been presented to the ILO, and that the Government does not refer to the obstacles and delays in the proceedings which had lasted for two years and, according to the complainant, harmed labour relations with the employer body (the Higher Court of San Luis Province). Under these circumstances, the Committee requests the Government to take the measures needed to ensure that in future, the trade*

union registration procedure complies with the time allowed under the Act respecting trade union associations (not more than 90 days). At the same time the Committee expects that the court will consult the SIJUPU if it proposes to adopt measures that affect the interests of its members.

- 242.** *As regards the alleged application by the SIJUPU for official trade union status (which confers on the most representative organization the right, inter alia, to bargain collectively; the complainant claims that this was requested at the same time as the application for registration), the Committee notes the Government's information according to which the SIJUPU at no time made any formal application for official trade union status. In this regard, the Committee requests the Government, in the event that the SIJUPU applies for official trade union status and is shown to be the most representative organization, to grant it official status without delay. The Committee recalls in this respect that the most representative organization should be determined on the basis of objective and pre-established criteria.*
- 243.** *As regards the dismissal (exoneración) of Juan Manuel González, deputy general secretary of the SIJUPU, and the dismissal (cesantía) of Vilma Fuentes de Ochoa and Susana Muñoz, after a period of suspension of 55 days, the Committee notes the Government's information according to which: (1) one judge informed the court of a police matter in which the employees in question were said to be involved; (2) the court decided to open an administrative inquiry with a view to determining whether or not administrative offences had been committed; (3) as a result of this, it was decided to impose the sanctions in question because the individuals concerned had failed to observe the duty of confidentiality, had failed to apologize and interfered in matters that had come to their knowledge; and had interfered in the affairs of third parties and committed acts that undermined authority, decorum and respect for their superiors; (4) during the proceedings, the workers' right to a defence was respected. The union members Vilma Fuentes de Ochoa and Susana Muñoz applied for a review of the decision to apply sanctions, and this is still pending; and (5) as a result of an amparo application in accordance with section 47 of the Act respecting trade union associations, on 5 May 2004 an order was given for the reinstatement of Juan Manuel González and payment of arrears of wages owed to him for the period of his exclusion.*
- 244.** *Under these circumstances, the Committee requests the Government to: (1) ensure that Juan Manuel González has been reinstated and received payment of his wage arrears, as ordered by the court, and keep it informed in this regard; and (2) report on the results of the appeal for review lodged by Vilma Fuentes de Ochoa and Susana Muñoz, members of SIJUPU, regarding their dismissals.*
- 245.** *As regards the alleged preventive sanctions against Fredy López Camacho, general secretary, Rubén Magallanes, social action secretary, Gladis Abdón, records secretary, and the summons to give evidence sent to Mario Becerra, secretary, and Silvia Zavala, a union member, the Committee notes the Government's denial that any sanctions were applied against the persons in question and its information according to which there is no record of this in any of the relevant personal files, and notes that the complainant has not communicated the dates on which sanctions are supposed to have been applied or any documented evidence to corroborate the allegations. In this respect, the Committee requests the complainant to send additional information concerning these allegations (nature of the sanctions and dates on which the sanctions were imposed, supporting documentation, etc.).*
- 246.** *Finally, as regards the allegations concerning the violation of trade union rights and of the national legislation by the STJSL, which purported to discuss trade union issues with various groups and individuals, disregarding the fact that the SIJUPU, according to the*

complainant, is the most representative organization, the Committee requests the Government to provide it rapidly with its observations.

The Committee's recommendations

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

- (a) The Committee requests the Government to take the necessary measures to ensure that in future the trade union registration procedure complies with the time limits provided for under legislation (not more than 90 days).*
- (b) The Committee expects that the Higher Court of San Luis Province will consult the Trade Union of "Puntanos" Judicial Employees (SIJUPU) when it considers measures that affect the interests of its members.*
- (c) The Committee requests the Government, in the event that the SIJUPU seeks official trade union status and is shown to be the most representative organization, to grant official status without delay.*
- (d) The Committee requests the Government to: (1) ensure that Juan Manuel González has been reinstated at his post and received payment of his wage arrears as ordered by the court, and keep it informed in this regard; and (2) report on the results of the appeal for review lodged by Vilma Fuentes de Ochoa and Susana Muñoz, members of SIJUPU, regarding their dismissals.*
- (e) As regards the alleged preventive sanctions against Fredy López Camacho, general secretary, Rubén Magallanes, social action secretary, Gladis Abdón, records secretary, and the summons to give evidence sent to Mario Becerra, secretary, and Silvia Zavala, a union member, the Committee requests the complainant to send additional information in this respect (nature of the sanctions and date on which they were imposed, supporting documentation, etc.).*
- (f) As regards the allegations concerning the violation of trade union rights and of the national legislation by the STJSL, which purported to discuss trade union issues with various groups and individuals, disregarding the fact that the SIJUPU, according to the complainant, is the most representative organization, the Committee requests the Government to provide it rapidly with its observations.*

CASE NO. 2312

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by

- the Lockheed Aircraft Argentina S.A. Workers' Union (SITLA),
supported by**
- the Congress of Argentine Workers (CTA)**

Allegations: The complainant challenges the decision of the administrative authority to refuse to grant it official trade union status despite the fact that it is the most representative trade union in the enterprise

248. The complaint is contained in a communication from the Lockheed Aircraft Argentina S.A. Workers' Union (SITLA) dated 11 November 2003. The Congress of Argentine Workers (CTA) supported the complaint in a communication dated 12 November 2003.
249. The Government sent its observations in a communication dated 28 April 2004.
250. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

251. In its communication of 11 November 2003, the Lockheed Aircraft Argentina S.A. Workers' Union (SITLA) contests Decision No. 70 of 7 July 2003 of the Ministry of Labour, Employment and Social Security, in which it rejected the complainant's application for trade union status under the terms of Act No. 23551. The complainant states that it is an organization that is "merely registered", and operates in that capacity within the company Lockheed Aircraft Argentina S.A. It also maintains that it is by a considerable margin the majority entity at the company. Members pay membership dues directly, without any system of wage deductions by the company.
252. The complainant states that it applied for official status as the trade union representing the largest number of workers at the company, and that in a decision of 7 July 2003 this was refused on the grounds that there were other trade union organizations that have official trade union status (section 29 of the Act respecting trade unions (LAS)). The complainant recalls that trade union status gives the organization concerned the following exclusive rights: (a) the right to sign collective labour agreements (section 31(a) of LAS); (b) the right to initiate and run social initiatives (section 1(a), Act No. 23660); (c) employment stability for trade union representatives (sections 48 and 52 of LAS); (d) payment of trade union membership dues through direct deductions (section 38 of LAS); (e) exemption from payment of taxes and other levies (section 49); and (f) the right to elect staff delegates, as bodies that are "merely registered" can do this only on a substitute basis (section 41). This means that trade union organizations that are "merely registered" are restricted to a subordinate role and a somewhat nebulous existence compared to those with official status. All these rights are denied SITLA by current law and by the refusal of the Ministry of Labour which is the subject of the complaint.
253. Lastly, the complainant states that section 29 of the Act respecting trade unions violates the ILO's freedom of association Conventions, constitutes a blatant attempt to impede the establishment of a trade union body, and prevents workers from exercising the right to freedom of association.

B. The Government's reply

254. In its communication of 8 April 2004, the Government indicates that SITLA is "merely registered" and operates in that capacity at the Lockheed Aircraft Argentina S.A. It was registered in accordance with Ministry of Labour Decision No. 282/97. The Government

also states that SITLA applied for official trade union status on the grounds that it had the largest number of members among workers employed at the undertaking. In a decision dated 7 July 2003, trade union status was denied in accordance with section 29 of Act No. 23551 respecting trade unions, according to which such status may be granted to an enterprise trade union only if there is no first-level trade union association in the field, activity or category in question. The events leading up to the case have shown that the petitioning association is an enterprise union, and that its field of activity and its membership are already covered by trade union associations that have official trade union status (the Government cites the following: Association of Private Air Transport Staff; Association of Airline Pilots; Association of Airline Flight Engineers; Association of Civilian Staff in the Argentinian Navy, Buenos Aires Province; Association of National Armed Forces Civilian Staff; San Lorenzo Trade Union of National Armed Forces Civilian Staff; Association of Professional and Technical Civilian Staff at Area Material Córdoba; Association of Higher and Professional Staff of Commercial Air Companies; Association of Protection and Safety Technicians and Employees in Air Transport; Argentinian Association of Airlines; Association of Aviation Staff; and the Trade Union of Employees of the Altos Hornos Zapla Military Manufacturing Enterprise).

- 255.** As regards the complainant's allegation concerning section 29 of Act No. 23551, the Government states that with regard to freedom of association as a human right, what matters is not the particular conditions for granting official trade union status, but whether or not the fundamental freedoms are safeguarded in the country in question. These fundamental freedoms are indisputably safeguarded in Argentina. According to the Government, the trade union system in Argentina is governed by the following institutional principles: (1) there are no restrictions on the right to set up workers' associations or on the ability of the latter to obtain official status. Proof of this is the existence of 2,776 trade unions, among many "registered" and "most representative" unions; (2) there is no restriction on the establishment of trade unions or federations, no obstacles to international affiliation, no obligation to be affiliated to a confederation, in a prevailing climate of total political pluralism; (3) there are no obstacles to free and democratic internal organization, with autonomy from the Government and from employers; (4) suspension and closure of trade unions by administrative decision is prohibited; (5) there is no absence of legal protection from anti-union harassment of delegates and activists – section 47 of Act No. 23551 expressly states that any worker who is obstructed in the normal exercise of freedom of association may apply to the courts to order an immediate cessation of such anti-union behaviour; (6) in Argentina, all possible types of trade unions coexist: activity-related, trade and enterprise – this is evident from the 573 works unions protected by law, some of them involved in relevant public activity; and (7) contrary to what has been alleged regarding heavy-handed state interference, the current "map" of coverage by different trade unions with official status was determined by the workers. If that were not the case, the current overlaps in representation in the private sector, which results in extensive trade union coverage, would be inexplicable.
- 256.** According to the Government, the Argentinian trade union system, which was developed through the struggle of the workers' movement, was chosen by the workers and enshrined in the law currently in force, which is consistent with the spirit and the letter of Convention No. 87. Accordingly, the principle of the "most representative trade union" is defined in accordance with international practice. The ILO – which has also recognized this principle – was a pioneer in this area when it had to decide the form of representation in its own bodies. In Argentinian law, registered trade union organizations – like the complainant – have the legal capacity to pursue their specific objective, which is to defend the interests of workers. In this regard, Act No. 23551 provides that workers can: petition the Government and employers; represent their members' interests; draw up in full freedom their own statutes and elect their representatives; draw up their programme of action and organize their administration; adopt direct action measures; promote

improvements to legislation; bargain collectively, where there is no more representative organization; and enjoy employment stability for candidates in union elections and take action to combat unfair practices by employers.

- 257.** The Government indicates that the concept of “most representative trade union” arises from an overriding practical requirement: that of reconciling the principle of freedom of association with the need to consolidate workers’ representation in order to make it more effective and for other reasons to do with the difficulties posed by overlapping or divided representation of workers. This system in Argentina is therefore based on a trade-off between the principle of freedom of association, which requires a respect for trade union pluralism, and better protection for workers’ collective interests, which by its very nature demands unity of action. Proliferation of enterprise trade unions is not encouraged, but nor is any attempt made to restrict the existence or recognition of such organizations.
- 258.** In the light of this, the Government states that the issue of trade unions at the level of enterprise, occupation, trade or category must, under Argentinian law, be addressed in the light of section 10 of Act No. 23551, according to which: “Workers’ trade union associations shall be defined as those constituted by: (a) workers engaged in the same activity or in related activities; (b) workers engaged in the same trade, occupation or category, even if they carry out different activities; (c) workers employed at a single enterprise.” This provision gives effect to Article 2 of Convention No. 87, in that it enables workers to establish organizations of their choosing based on the following types: (a) vertical unions, covering workers from a single branch, industry or economic activity; (b) horizontal trade unions, covering workers in a single trade or occupation, even if they work in different branches or sectors; and (c) enterprise trade unions. It is thus clear, in the Government’s view, that Argentinian law provides for the existence of both enterprise trade unions and trade or occupational unions.
- 259.** The Government states that sections 29 and 30 of the Act respecting trade unions do not restrict the right of workers to form and join organizations of their own choosing, as required by Convention No. 87. Enterprise trade unions can exist and freely exercise the rights accorded under the law to all “merely registered” organizations, and can obtain official union status if, in the area, activity or category in question, there is not already a first-level trade union organization. Trade unions representing particular trades, occupations or categories have identical rights, as they can have official status where an existing union or association with such status represents different interests and the workers are not covered by the existing union.
- 260.** The Government adds that under section 30 of the Act respecting trade unions, “where the workers’ trade union association with official union status takes the form of an activity-related union or association, and the petitioning association has adopted the form of a trade, occupational or category trade union, official trade union status can be granted if there are different trade union interests such as to justify separate representation”. It is thus important to keep in mind the fact that different groups within a given workforce may have different interests, which may give rise to different trade union associations. The Government considers that in the light of the above, it can be concluded that Argentinian law allows enterprise trade unions like the complainant organization to exist and to enjoy the same official trade union status.

C. The Committee’s conclusions

- 261.** *The Committee notes the allegation made by the Lockheed Aircraft Argentina S.A. Workers’ Union (SITLA) that, although it covers most of the workers employed at Lockheed Argentina, the administrative authority rejected its application for official trade union status (which confers certain exclusive rights such as signing collective agreements,*

protection of union officials, payment of trade union dues via deductions from wages by the employer, the right to undertake and manage social initiatives, etc.), in accordance with section 39 of the Act respecting trade unions. According to the complainant, this provision is not consistent with the freedom of association Conventions.

- 262.** *The Committee notes the Government's statements to the effect that: (1) the application by SITLA for official trade union status was rejected on the grounds that, under the terms of section 29 of the Act respecting trade unions, such status may be granted to an enterprise union only if there is no first-level trade union already operating for the area, activity or category in question; (2) the field of activity and workers in question are already covered by existing trade union associations with official status; (3) the Argentinian trade union system is consistent with both the letter and the spirit of Convention No. 87, and the principle of "most representative trade union" that has been adopted is in line with the international practices recognized by the ILO; (4) in Argentina, this system of "most representative trade union" is based on a trade-off between the principle of freedom of association, which demands respect for trade union pluralism, and better protection of collective workers' interests, which by its very nature demands unity of action; (5) those trade union organizations that are "merely registered" and do not have official union status are able to pursue their particular objective (petition the Government and employers, represent the interests of their members, draw up their own statutes in full freedom and elect their representatives, draw up a programme of action and organize their administration, adopt direct action measures, promote improvements to legislation, bargain collectively where there is no more representative organization, enjoy employment stability for candidates in elections and take action to combat unfair practices by employers); and (6) Argentinian law provides for the existence of enterprise trade unions and trade or occupational unions, and sections 29 and 30 of the Act respecting trade unions do not restrict the right of workers to establish organizations of their own choosing. Lastly, the Committee notes the Government's statement to the effect that there are no restrictions on the right to establish workers' associations or on the right of such organizations to acquire official status; there are no restrictions on the right to found trade unions or federations, no obstacles in the way of international affiliation, and no obligation to be affiliated to a confederation; there are no obstacles to free and democratic internal organization; suspension and closure of trade unions by administrative decision are prohibited; and there is no absence of legal protection against anti-union harassment of trade union delegates and members (section 47 of the Act respecting trade unions).*
- 263.** *The Committee notes, first, that the Government does not deny the claim made by the complainant SITLA to be the most representative organization at the Lockheed undertaking. The Committee notes that, even if it is the most representative trade union organization, under the terms of section 29 of the Act respecting trade unions, SITLA does not enjoy the rights associated with official trade union status (in particular, the right to collective bargaining, special protection for its officials, deductions of trade union membership dues, and the right to run social initiatives), because, as the Government indicates, there are already other trade union organizations with official status in the area and activity in question.*
- 264.** *In this regard, the Committee notes that, when the Committee of Experts on the Application of Conventions and Recommendations examined in 2003 the application of Convention No. 87 by Argentina, it considered that this provision impeded the possibility of an enterprise union acquiring trade union status, even if it has demonstrated that it is the most representative, if there is already a trade union with trade union status representing the activity in the field concerned.*
- 265.** *In this context, the Committee recalls that when it examined another similar case relating to Argentina, in which a trade union organization sought trade union status on the grounds*

that it was the most representative organization, it stated that: “observing that up to now recognition has been refused by virtue of section 29 of Act No. 23551 on trade unions, the Committee must draw the Government’s attention to the fact that, to the extent that this provision prevents the most representative trade union organizations in an enterprise from bargaining at the enterprise level, it is incompatible with the principles of freedom of association and collective bargaining. Consequently, the Committee further requests the Government to take the necessary measures to ensure that this provision of Act No. 23551 is amended” [see 307th Report, Case No. 1872, para. 52].

266. *Under these circumstances, the Committee requests the Government to take the necessary measures to amend section 29 of the Act respecting trade unions and ensure that SITLA can freely exercise the rights enshrined in the freedom of association and collective bargaining Conventions (Nos. 87 and 98), ratified by Argentina.*

The Committee’s recommendations

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

- (a) Given that, under the terms of section 29 of the Act respecting trade unions, the most representative trade union organization at the enterprise level – the Lockheed Aircraft Argentina S.A. Workers’ Union (SITLA) – does not enjoy, inter alia, the right to collective bargaining because there is already a branch union at the workplace with official status, the Committee considers that this provision is not consistent with Article 2 of Convention No. 87, and requests the Government to take the necessary steps to amend the provision in question.*
- (b) The Committee requests the Government to ensure that SITLA can freely exercise the rights enshrined in the freedom of association and collective bargaining Conventions (Nos. 87 and 98), ratified by Argentina.*
- (c) The Committee notes that the legislative provision in this case has already been commented upon by the Committee of Experts on the Application of Conventions and Recommendations.*

CASE NO. 2306

DEFINITIVE REPORT

Complaint against the Government of Belgium presented by the Organization of Independent Civil Servants (OFA)

Allegations: The Belgian federal authorities, more specifically the Customs and Excise Administration and the General Finance Administration Service, apply national legislation on trade union leave and dispensations from service, to the detriment of the complainant organization and its officials, and, on that basis, refuse to allow any request

for leave and dispensations from service and threaten to put them in a “position of non-activity”; by acting thus, the Belgian federal authorities are interfering in the exercise of the right of the complainant organization to freely organize its management and activities, suspending its activities by administrative means and discriminating against recognized and non-representative public employees’ unions, in violation of Convention No. 87

- 268.** The complaint was presented by the Organization of Independent Civil Servants (OFA) in two letters dated 1 and 10 November 2003, with annexes. The OFA sent additional information in two letters dated 24 November and 2 December 2003.
- 269.** The Government sent its observations in a letter of 3 May 2004, together with a number of enclosed documents.
- 270.** Belgium has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant’s allegations

- 271.** The OFA is an organization of public employees recognized on 1 April 2000 as a trade union from all levels of the civil service. Two of its responsible executives are employees of the Customs and Excise Administration.
- 272.** The OFA’s arguments can be grouped under the following topics: (1) the OFA’s legal arguments based on national law and practice; (2) the OFA’s allegations concerning the application of the law by the public authorities to its detriment; and (3) violations of Convention No. 87.

I. Legal arguments based on national law and practice

- 273.** The OFA states that the Government has not taken any measures to implement the law on trade union leave and dispensation from service for trade union activities (see annex describing the legal and regulatory provisions concerned). In the absence of a circular covering trade union leave and an interpretation with binding force, the complainant organization maintains that a custom has developed over the last 20 years.
- 274.** According to the OFA, the custom referred to by both representative and recognized trade unions, consists of the following elements:
- (a) as Belgium has ratified the Conventions of the International Labour Organization, these prevail over national laws;
 - (b) under article 71 of the Royal Decree of 28 September 1984 (concerning the implementation of the Act of 19 December 1974 on the organization of relations between the public authorities and trade unions of employees of those authorities),

responsible representatives rank highest among all the categories of trade union delegates ranked in descending order of importance;

- (c) under article 72 of the Royal Decree, responsible representatives have the right to exercise all the prerogatives of their trade unions;
- (d) responsible representatives are entitled at all times to the right to trade union leave, provided that the convocation complies with the required prior notice, is signed by a responsible executive, states the day and length of the mission, and refers to article 82 of the Royal Decree;
- (e) responsible representatives are entitled at all times to the right to dispensations from service provided that the convocation satisfies the abovementioned requirements and refers to article 83 of the Royal Decree;
- (f) with regard to items (d) and (e) above, no other reference is required by law;
- (g) ordinary delegates are entitled to trade union dispensations from service for trade union purposes, provided that their convocations satisfy the four conditions mentioned in (d) and (e) above;
- (h) permanent delegates are designated by their trade unions;
- (i) representative trade unions designate permanent delegates whose salaries are reimbursed by the State;
- (j) recognized trade unions and representative trade unions have responsible representatives on permanent trade union leave or dispensations from service;
- (k) representative trade unions have ordinary delegates on permanent trade union dispensation;
- (l) convocations issued by consultative or bargaining committees state the time, place and duration of the dispensation from service for trade union purposes and only apply to representative trade unions;
- (m) representative trade unions and recognized trade unions have the right to form their own general commissions and committees; the Royal Decree does not contain any provisions as to the number of committees and the frequency with which they meet.

275. The OFA states that, in the absence of any detailed provisions on the relations between organizations of public employees and administrations, the General Secretary of the General Administration Service took a position on the provisions of the Act of 19 December 1974 and the Royal Decree of 28 September 1984. This position was set out specifically in a letter to the OFA, dated 25 August 2000, the terms of which are set out in detail below. According to the OFA, the opinion of the General Administration Service is not a binding interpretation and is invariably the subject of comment during the question-and-answer sessions in Parliament.

276. It emerges from the Government's replies during these debates that, under article 82 of the Royal Decree of 28 September 1984, trade union leave may only be obtained for the necessary length of time and only on presentation of a personal convocation by a responsible executive. Subject to these conditions, the said leave is obtained as of right. This article must be interpreted narrowly and does not allow any extension or exception. More specifically, the Government indicates that "general commissions and committees" must be understood to mean "in principle, committees and commissions formed at

national, community and regional level”. Thus, participation in any kind of technical committees or trade union meetings, meetings held at local union branches to prepare for local bargaining and consultative committees, national or international congresses, even those held in Belgium, are excluded from the scope of that article.

277. Furthermore, the authority may require reasonable notice for the presentation of the convocations, mission orders, mandates or requests set out in articles 81 to 84 of the Royal Decree. This prior notice requirement is necessary to ensure the continuity and efficient operation of the service and it is up to the authority to decide on the necessary notice for the presentation of the request. As articles 81 to 84 provide that all trade union leave and dispensation from service must be obtained for the time necessary to fulfil the trade union mission, the authority concerned is entitled: (1) to require that the various documents mentioned in those articles state, in particular, the times when the trade union missions start and, approximately, end; (2) to check the veracity of the information; and (3) to punish any abuses that it finds. Finally, according to the Government’s interpretation, it follows from the inclusion of the term “necessary length of time” that “it is not acceptable for a member of staff to be absent on the pretext of trade union leave or dispensation from service continually or practically continually. If such is the case, that staff member should, at the request of his trade union, be recognized as a permanent delegate ...”.

278. In the opinion of the OFA, the Government’s only response which applies to all the legal principles in force in Belgium is that it refers to the following two elements in particular: (1) the provisions of the trade union statute relating to the exercise of trade union prerogatives “draw their inspiration from the wish, first, to prevent any interference with the essence of these prerogatives and, secondly, to ensure that the exercise thereof does not endanger the efficient operation of the service”; and (2) “the prerogatives of trade union delegates depend on the category in which they are classified under article 71 of the Royal Decree [of 28 September 1984], it being understood that the same person may be placed in two or more categories at the same time ...”. The complainant organization considers that the second clarification is of crucial importance because small public employees’ organizations operate with persons who fulfil several functions. It considers that this clarification is quickly forgotten by the Government when it suits it.

II. *Allegations concerning the application of national law to the detriment of the OFA’s trade union delegates*

(a) The position of the General Administration Service – Letter of 25 August 2000

279. On 18 July 2000, the Federal President of the OFA, Mrs. Decèvre, complained to the General Secretary of the General Administration Service about the failure to respect the organization’s trade union rights. In its complaint, the OFA states that, at the time, its responsible representative, an official in the Customs and Excise Administration, was subjected to moral harassment at his place of work.

280. The General Secretary’s reply, in a letter of 25 August 2000, explains the conditions under which trade union leave and dispensation from service may be obtained. The General Secretary emphasizes that the OFA’s trade union delegates may obtain trade union leave under article 82 of the Royal Decree of 28 September 1984 (participation in the work of general commissions and committees formed within the trade union) and dispensation from service under article 83 (to exercise one of the prerogatives listed in article 16(1), (2) and (3) of the Act of 19 December 1974).

- 281.** While articles 82 and 83 do not set out a quota of trade union leave and dispensations from service and provide that they are granted as of right, the General Secretary nevertheless emphasizes that the granting thereof is subject to certain conditions. It states that in order for the authority to be able to verify compliance:

It is compulsory for convocations, requests or mission orders to mention the following: date on which the document is created (prior notice); name of the trade union delegate concerned (personal character); place of the meeting or exercise of the prerogative (verification of membership of the committee concerned); date and time of the meeting or exercise of the prerogative (necessary character of the length of time); reference to article 82 or 83 [...] and indication of the circumstance (meeting of a clearly defined general commission or committee, prerogative concerned); personal signature of a responsible executive, taking responsibility for the information mentioned above.

- 282.** The General Secretary also recalls that the two articles must be interpreted narrowly. In particular, the term “general commission and general committee” in article 82 means meetings which are not frequent in nature and cannot in any sense be likened to routine internal and technical meetings. Moreover, in the case of article 83, the General Secretary indicates that trade union delegates can only obtain dispensation from service if the exercise of the prerogative concerned in the request takes place in the context of the committee related to the public service which employs them. More precisely, staff of the Customs and Excise Administration come under the Committee for Sector II (Finance) and thus can only exercise the prerogatives of their trade unions in the context of that committee.

- 283.** The OFA considers that the Secretary General’s letter shows a wish to limit the prerogatives of recognized unions. In addition, the OFA alleges that this is an example of interference in the internal affairs of trade unions, since the letter seeks total control over trade union actions by the federal administrations.

- 284.** The OFA indicates that, despite the letter from the General Administration Service, the Customs and Excise Administration did not respond and, for three years, did not require from the OFA any explanation or justification of the type of mission or schedule of trade union delegates. Indeed, it was only from August 2003 that the Customs and Excise Administration challenged the trade union convocations issued by the OFA.

(b) Letters from the Customs and Excise Administration
in 2003 concerning trade union convocations
issued by the OFA

- 285.** In two letters dated 7 August 2003, the Customs and Excise Administration informed the OFA that four trade union convocations which it had sent to Mr. Marc Paul did not satisfy the necessary conditions for obtaining trade union leave and dispensations from service.

- 286.** The administration gives the following reasons: (1) the convocations refer to participation in the work of consultative and bargaining committees (article 81 of the Royal Decree) although the OFA is not a representative organization; (2) the trade union activities as mentioned in the convocations and taking place in the trade union’s headquarters could not be considered as participation in the work of the general commissions and committees envisaged in article 82; (3) the administrative authority in respect of which the prerogatives laid down in article 16 of the Act of 19 December 1974 was not stated, whereas such prerogatives could only be exercised, by the official concerned, in premises occupied by public services coming under the umbrella of the Committee for Sector II (Finance); and (4) in the same document, the convocations mention several types of trade union activities and several dates “such that it is impossible for the authority to know which activity corresponds to which precise date and time”.

- 287.** The Customs and Excise Administration thus asks the OFA, for each activity mentioned in the convocations, to provide it with an explanation certifying that the person concerned has actually engaged in the trade union activities for which the Royal Decree of 28 September 1984 provides for trade union leave and dispensations from service. In addition, the Customs and Excise Administration observes that, in general, convocations issued by the OFA are not dated and are almost routinely submitted to it during the period for which trade union leave or dispensations from service are requested. It asks that in future any new convocation should reach it sufficiently early and in any case not later than the day preceding the envisaged absence.
- 288.** In its complaint, the OFA recognizes that an error was made in the title of the mission. However, it indicates that the requests were justified. The official had to finish certain dossiers and undertake a number of trade union activities. The OFA also explains that at the time the official concerned was being subjected to harassment by his superiors.
- 289.** A letter of 11 August 2003 from the Customs and Excise Administration relates to various convocations issued to the Federal President of the OFA. In this letter, the Administration considers that the convocations do not meet the conditions set out in the Royal Decree of 28 September 1984 for reasons similar to those set out in its first letter of 7 August 2003. A further letter dated 14 October 2003, in the same vein as the previous ones, was addressed to the OFA with regard to two trade union convocations concerning the Federal Secretary, Mr. Noel Raepsaet.
- (c) Meeting of 18 September 2003 with the Customs and Excise Administration
- 290.** Taking the view that the Royal Decree was being interpreted wrongly, the OFA and another recognized trade union, the Independent Public Service Federation (CASP) sent a letter dated 17 September 2003 to the Director-General of the Customs and Excise Administration.
- 291.** A meeting was arranged on 18 September 2003 between representatives of the Customs and Excise Administration, the OFA, the CASP and another recognized trade union. Following the meeting, observing that the arguments put forward by the OFA in particular were not such as to change the position explained in its letters, mentioned above, the Customs and Excise Administration announced that the whole question would be referred to higher authority, with a view to resolving the matter once and for all.
- 292.** In a letter of 20 October 2003 sending the minutes of the meeting to the OFA, the deputy Director-General of the Customs and Excise Administration emphasized that, pending an official decision, the organization must comply with the terms of the letter of 25 August 2000. He also makes reference to the new convocation form used by the OFA explaining that it still did not comply with certain conditions.
- 293.** According to the OFA, the meeting of 18 September 2003 demonstrates the wish of the Customs and Excise Administration to finally restrict all trade union leave and dispensations from service and to interfere in the internal affairs of the OFA by allowing it only the right to hold one or two general committees per year. In this regard, it should be noted that, in its comments on the minutes of the meeting, the OFA emphasizes certain remarks that were apparently made by one of the representatives of the Administration: "Our intention is to restrict the dispensations issued by non-representative recognized unions".

(d) Consequences of the letters from the Customs and Excise Administration: The position of “non-activity”

- 294.** The OFA maintains that up to now every request for dispensation from service or trade union leave has been refused a posteriori. The responsible representatives are threatened with being placed in a position of “non-activity” under articles 3 and 4 of the Royal Decree of 19 November 1998 relating to leave and absences permitted to members of staff of state administrations.
- 295.** In support of its allegation, the OFA submits a copy of a letter addressed to the Federal Secretary of the OFA, Mr. Raepsaet, dated 29 October 2003, by his service chief. The latter recalls that the OFA convocation which Mr. Raepsaet presented for the period 27-31 October 2003 did not meet the conditions set out in the Royal Decree of 28 September 1984. He therefore expressed surprised that Mr. Raepsaet had not resumed his duties on 27 October. He went on to say that if a convocation meeting the regulation conditions were not submitted to him, he would be forced to propose to the central administration that it should invoke articles 3 and 4 of the Decree of 19 November 1998.
- 296.** In its letter of 10 November 2003 to the Committee, the OFA alleges that Mr. Raepsaet was the subject of sanctions on the grounds of his trade union activity. It also sends a copy of its letter, dated the same day, to the Minister of Finance, in which it points out, in particular: (1) that the trade union convocation was submitted in advance on 24 September 2003 and that it had in fact been approved by the service chief; (2) that a reformulated convocation had been submitted and rejected by the service chief who said that he was going to propose application of the Royal Decree of 19 November 1998.
- 297.** The OFA’s letter of 24 November 2003 addressed to the Committee encloses a second letter, dated the same day, to the Minister of Finance, in which the OFA states that “... Customs continue to take it upon themselves to judge whether trade union activities of recognized organizations are plausible or considered satisfactory” and that they grant dispensations from service for trade union purposes “if the face fits”. Finally, the OFA’s last letter of 2 December 2003 to the Committee includes a copy of its letter of 1 December 2003, also to the Minister of Finance, complaining of the fact that Mr. Raepsaet had been transferred to an “insalubrious” and “dangerous” service.
- 298.** According to the OFA, local heads of department had received instructions from the Director-General of the Customs and Excise Administration. Apparently, he had recommended that letters stating that the OFA’s convocations were not in compliance with the legislation amounted to formal instructions requiring the responsible representatives to resume their duties. In this regard, the trade union produced an email of 27 October 2003 from the central Customs and Excise Administration to all service chiefs. The email explained how refusals of trade union convocations must be notified to those concerned “in cases where, from now on, trade union convocations had to be refused”. Basically, service chiefs were asked to justify a refusal “giving as grounds the provisions of the Act of 19 December 1974 [...] and the provisions of the Royal Decree of 28 September 1984...”. Such refusals must also state that if the person concerned did not resume his duties on the days for which a convocation that does not comply with the legislation has been issued and refused, he must be informed that the application of the Decree of 19 November 1998 will be proposed to the central administration. In the view of the OFA, this email shows that threats and sanctions are on the “control” programme of the Customs and Excise Administration. This email also appears to be evidence that the latter only takes issue with recognized unions while, in this specific field, the law makes no distinction between such organizations and representative organizations.

299. In general, the OFA maintains that a “veritable campaign of counter propaganda has been set in motion, leading [its] members [...], warned in advance that the trade union’s recognition would be withdrawn, to resign their membership [...]”. As a result of these resignations, which can be numbered in dozens according to the OFA, the proposal to request the recognition of a permanent delegate, which had been envisaged at the beginning of 2003, was set at naught. The complainant organization emphasizes that its responsible representatives are no longer in a position to fulfil their mandates as responsible executives or their missions as trade union delegates.
300. Finally, the OFA refers “by way of documentation” to certain letters sent by the Customs and Excise Administration to leaders of other recognized trade unions (the CASP, SPIP, the Committee for the Defence of Walloon Civil Servants (CDFW)) also subjected, according to the complainant organization, to certain forms of interference by the Government. In its communications, the Administration refuses trade union convocations on the grounds that they do not meet the requirements of the Royal Decree of 28 September 1984. One of these communications indicates that in the event of absence, articles 3 and 4 of the Royal Decree of 19 November 1998 will be applied.

III. *Violations of Convention No. 87*

301. In conclusion, the OFA asserts that the interpretation of article 82 of the Royal Decree of 28 September 1984 is contrary to the obligations under Convention No. 87, since it allows the Administration to interfere in the internal functioning of public employees’ trade unions, in violation of Article 3, paragraph 1, of the Convention. Finally, the OFA alleges that the Government suspends activities by administrative means, by refusing to grant requests for dispensations from service for trade union purposes which should be granted as of right under article 83 of the Royal Decree of 28 September 1984.

B. *The Government’s reply*

302. The questions dealt with by the Government will be grouped so as to follow more closely the order in which the OFA’s allegations were presented: (1) a presentation of the applicable law and regulations; (2) the OFA’s arguments concerning the trade union statute; (3) the application of national law in the OFA case; and (4) the alleged violations of Convention No. 87.
303. In its introductory remarks, the Government states that there has been no violation of trade union rights. The Government intends to show that “over a period of more than three years, the OFA has abused the facilities provided by the regulations, namely trade union leave and dispensations from service, without observing the conditions for granting them”. According to the Government, the abuse by the OFA threatened the efficient operation of public services. That is the reason why the authorities concerned informed the OFA that absences of its executives that did not meet the regulatory conditions would be considered as unauthorized absences.

I. *Presentation of the applicable law and regulations*

304. The Government emphasizes that it is extremely easy for a trade union to obtain recognition because no conditions are imposed. It adds that there is “no assessment, or even knowledge, on the part of the authority as to what the trade union which requests recognition actually represents”. On 1 January 2004, 31 trade unions, among them the OFA, were recognized as shown in the notices of recognition produced by the Government.

- 305.** The Government observes that the provisions on trade union leave and dispensations from service, articles 81 to 84, are grouped together in Chapter V of the Royal Decree of 28 September 1984. This chapter is also applicable to responsible executives since it is headed “Provisions common to all trade union delegates, with the exception of permanent delegates”. The Government emphasizes that trade union leave and dispensations from service are granted to trade unions without anything in return. Indeed, for periods of absence for trade union purposes during which the trade union delegates are not available to their administrations, their remuneration is not reimbursed to the administrations and such absences do not affect the length of service of those concerned.
- 306.** The Government quotes a passage from the Report to the King (on the draft decree which was to become the Royal Decree of 28 September 1984) on the length of trade union leave and dispensations from service: “the abovementioned trade union leave and dispensations from service shall be granted only for the period strictly necessary for the exercise of the prerogative. However, it is not intended that leave and dispensations from service should be compensated by services in return”. Finally, the Government observes that the Report to the King indicates that the public authorities have the right to check the use of trade union leave and dispensations from service: “by requiring, inter alia, that the list of recognized trade unions, showing their address, telephone number and field of activity, should be published in the *Belgian Monitor*, the various authorities are enabled to obtain from trade union leaders precise information concerning the actual length of requested trade union leave and dispensations from service”.
- 307.** The Government explains that, since the entry into force of the trade union statute, civil service ministers have had occasion to clarify that no member of staff could be absent continuously or almost continuously on the basis in particular of articles 82 and 83 of the Royal Decree of 28 September 1984. The Government also encloses a Decree of the Council of State of 7 April 1992 which states that “obtaining trade union leave does not seem to exclude the possibility that the authority may exercise a degree of control over the use made of it by the officials concerned”.
- 308.** As regards article 82 applicable to the complainant organization, the Government observes that the narrow interpretation of the terms has been recalled on numerous occasions since 1985, in reply to parliamentary questions, together with the right of the authority to check that the meeting for which trade union leave is granted is indeed a general commission or committee.
- 309.** As regards article 83, the Government indicates the geographical limitation on the exercise of the prerogative for which a dispensation from service is requested. The authority is thus entitled to require a precise indication of the place where the prerogative is to be exercised in order to check that it does in fact fall within the ambit of the committee concerned.
- 310.** The Government emphasizes that it is essential that the authorities concerned require a certain amount of information in the convocations, requests and mission orders, in order to check compliance with the prescribed conditions. The information concerned is that set out in the letter from the General Secretary of the General Administration Service of 25 August 2000, detailed above.

II. *The OFA’s arguments concerning the trade union statute*

- 311.** The Government disputes the OFA’s allegation that no measures have been taken to implement the law in relation to trade union leave and dispensations from service. The presentation of the applicable law and regulations by the Government in its reply shows

that the legal framework is complete and detailed and, therefore, there is no custom or usage in this matter.

- 312.** The Government does not agree at all with the OFA's presentation of Belgian law and the basis on which it claims to determine the elements that constitute custom. The Government emphasizes that the OFA's presentation is "superficial, incomplete and incorrect" and replies to each element identified by the OFA as constituting a custom.
- 313.** The Government observes in general that the term "responsible representative" used by the OFA does not appear in any legislative or regulatory provisions, and assumes that it refers both to responsible executives and permanent representatives.
- 314.** On point (a) of the complaint, the Government observes that it does not seem to flow from international labour Conventions that a trade union can enjoy unlimited trade union leave and dispensations from service and that the public authorities may not check the reality of the grounds invoked by a trade union to obtain such facilities.
- 315.** On point (b), the Government recognizes that responsible executives and permanent representatives have an important role but underlines that their regulation and the order in which they are listed in article 71 of the trade union statute have no relation to the system for granting them trade union leave or dispensation from service. Such persons, staff members of a public service, can only obtain trade union leave and dispensations from service within the limits set out in articles 81 and 84 of the Royal Decree of 28 September 1984. They can only be permanently on trade union leave if their organization requests them to be recognized as permanent delegates and the request is accordingly approved.
- 316.** On point (c), the Government observes that the fact that "responsible executives and their permanent representatives can exercise all the prerogatives accorded to their trade union" (article 72, paragraph 3) in no way alters the fact that they are entitled to trade union leave and dispensation from service within the same limits as would be applicable to any other staff member who did not have the status of responsible executive or permanent representatives. On points (d) and (e), the Government reiterates that only permanent delegates enjoy trade union leave on a continuous basis.
- 317.** On point (f), the Government recalls that the conditions for granting leave under articles 82 and 83 mean that the convocations must also mention the precise place of the work of the commission or committee or the exercise of the prerogative. This information is very important since it allows the authority to check that the trade union delegate has actually exercised the trade union activity during the time required.
- 318.** On point (g), the Government indicates that obtaining trade union leave and dispensation from service "as of right" means that the staff member obtains them provided that the conditions have been fulfilled, and without the authority having to give authorization. Once again, obtaining it "as of right" does not prevent the authority checking compliance with the conditions for granting it. On point (h), the Government reiterates that recognition of a member as permanent delegate at the request of his trade union is the only legal possibility for it to have the services of the person concerned permanently available.
- 319.** On point (i), the Government emphasizes that, as members of bargaining and consultative committees, representative organizations participate in the legislative process in collaboration with the authorities. That is why they are exempt from reimbursing the remuneration of a limited number of permanent delegates. As regards point (j), the Government refers to its comments on points (d) and (e).

- 320.** On point (k), the Government underlines that trade union delegates from representative organizations who are not permanent delegates do not enjoy trade union leave and dispensations from service which would allow them to be continually absent. On the other hand, circumstances justifying the granting of trade union leave and dispensations from service are more numerous for representatives of a representative organization (see for example articles 81 and 84).
- 321.** On point (l), the Government replies that convocations for the purposes of obtaining trade union leave to participate in the work of a consultative or bargaining committee (article 81) are not the only ones that must state the place, date and time. The same applies to leave and dispensations under articles 82 and 83 which are only granted for the necessary period of time. The authority must be able to check that the prescribed conditions are fulfilled and the circumstances claimed correspond to reality.
- 322.** Finally, on point (m), the Government stresses that, according to the principles of freedom of association, the trade union statute allows trade unions to create all the internal bodies that they wish, with the names of their choice. In addition, in conformity with paragraph 3, of Article 6, of Convention No. 151, the trade union statute determines the nature and extent of the facilities granted to trade union representatives, in particular in cases where staff members may obtain trade union leave to participate in the work of commissions and committees created by the trade union. Article 82 is the one which provides for these cases and limits them to commissions and committees which meet exceptionally at high level. In this sense, the mere fact that an organization designates such and such body as a commission or committee is not enough to allow its trade union delegates to obtain trade union leave to participate in meetings of the body in question.
- 323.** According to the Government, the OFA suggests that, as the frequency of meetings of its internal bodies or the number of such bodies is not limited, the amount of trade union leave to participate in meetings of internal bodies is unlimited. In the opinion of the Government, following this line of reasoning would lead to the absurd situation where trade unions would merely have to create dozens of internal bodies meeting every day in order to demand that hundreds of staff members could enjoy trade union leave throughout the year. The Government emphasizes, moreover, that the OFA “has clearly abused” the type of leave prescribed in article 82 by invoking in its convocations the work of various internal bodies on almost all working days throughout the year, and routinely between 9 a.m. and 5.30 p.m.
- 324.** On the subject of the OFA’s allegations relating to the letter from the General Secretary of the General Administration Service dated 25 August 2000, the Government emphasizes that this letter contains only purely legal explanations repeated over 15 years on the subject of the provisions of the trade union statute. The Government also observes that these explanations are in the same vein as the answers to parliamentary questions, including the reply that the OFA considers in compliance with the principles of Belgian law.

III. *The application of national law in the OFA case*

- (a) General explanations of the treatment of trade union convocations issued by the OFA

325. The Government begins by providing details of the constitution of the OFA and its recognition. The OFA’s headquarters is in Namur at the home address of Mr. and Mrs. Raepsaet-Decève. In a letter of 31 October 1999, the OFA applied for recognition in all public services, submitting its constitution and the list of responsible executives: Mrs. Decève, Federal President, and Mr. Raepsaet, Federal Secretary. In a letter of 20 December 1999, the General Administration Service in the Ministry for the Civil

Service informed Mrs. Decève that her organization had been granted recognition and enclosed two legitimation cards for its responsible executives. In a letter of 6 January 2000, the OFA notified the names of two other responsible executives, Mrs. Van Brennt and Mr. François, hitherto responsible executives of the CASP, and received their legitimation cards in a letter of 4 February 2000 from the General Administration Service. In a letter of 19 February 2000, the OFA notified the name of a fifth responsible executive, Mr. Paul and received his legitimation card in a letter of 31 March 2000 from the General Administration Service. In a letter of 27 June 2001, the OFA returned the legitimation cards of Mr. François and Mr. Paul.

- 326.** As regards trade union leave and dispensations from service, the Government first recalls that the OFA was informed of the conditions for obtaining such leave, in particular as concerns the information to be included in trade union convocations, in the letter of 25 August 2000 from the General Administration Service.
- 327.** The Government goes on to state that, since its recognition in November 1999, the OFA has addressed numerous convocations to its trade union delegates. The Government encloses with its reply many, if not all, convocations issued from December 1999 to August 2003. The Government underlines that the OFA delegates, staff members in the Customs and Excise Administration, enjoyed a considerable number of days of trade union leave and dispensations from service during that period. The Government prepared a summary of these days for the four trade union delegates, as follows:

Year 2000 (total 556.5 days of absence)

Mrs. Decève	202.5	out of 247 working days
Mr. Raepsaet	164	out of 247 working days
Mr. François	11	out of 247 working days
Mr. Paul	73	out of 247 working days

Year 2001 (total 422.5 days of absence)

Mrs. Decève	165	out of 247 working days
Mr. Raepsaet	210	out of 247 working days
Mr. François	26	out of 247 working days (before pre-retirement leave from 1 June 2001)
Mr. Paul	21.5	out of 247 working days

Year 2002 (total 457 days of absence)

Mrs. Decève	220	out of 248 working days
Mr. Raepsaet	201	out of 248 working days
Mr. Paul	36	out of 248 working days

January to August 2003 (total 321 days of absence)

Mrs. Decève	129	out of 164 working days
Mr. Raepsaet	119	out of 164 working days
Mr. Paul	73	out of 164 working days

- 328.** The Government observes, therefore, that for several years, Mrs. Decève and Mr. Raepsaet have been on trade union leave almost without a break. Combining these absences with annual holidays and certain possibilities for recovery, these two persons

were never at work in their department from 2000 to 2003 and never performed any work. Their convocations were sent to their superior by post or fax.

- 329.** In the course of 2003, urgently alerted by the local management about the validity of the convocations issued by certain trade unions, the central Customs and Excise Administration undertook a detailed analysis for each trade union concerned of copies of trade union convocations in its possession for the years 2001 and 2002 and the period January to June 2003. The sole purpose of this analysis was to check, over a significant period, whether there were really any irregularities and, if so, to determine their magnitude and exact nature. The Government adds that, given their magnitude, the absences of members, in particular those of the OFA, had an impact on the smooth operation of the services.
- 330.** The Government released the results of the analysis of all the convocations issued by the OFA. Firstly, about 40 convocations concerned participation in a bargaining committee or a consultative committee. The heading on the convocation form established by the OFA consists of a reference to article 81 of the Royal Decree of 28 September 1984, whereas only representative organizations sit on such committees, something of which the OFA is not unaware. Secondly, almost all the convocations refer to participation by trade union delegates in day-to-day work within their trade union, namely: meetings of the “federal bureau”, the “reprographic unit”, the “legal unit” and “the special finance unit”. In the opinion of the Government, this is clearly not the kind of work envisaged by article 82 of the Royal Decree.
- 331.** Thirdly, the convocations include several types of trade union activity in the same document (participation in the abovementioned meetings or exercise of trade union prerogatives) and several dates, so that it is impossible for the authority to know exactly which activity corresponds to which date and time. Furthermore, most of the convocations refer to a set of trade union activities spread over a week, from Monday to Friday, from 9 a.m. to 5.30 p.m., which makes it impossible for the administrative authority to verify that the trade union activities mentioned in the convocation actually take place and their duration.
- 332.** Fourthly, with regard to the exercise of trade union prerogatives under article 16 of the Act of 19 December 1974 and article 83 of the Royal Decree of 28 September 1984, the convocations never mention the precise place where trade union delegates convene nor the relevant administrative authorities. Moreover, the Government observes that most of the convocations refer to the OFA headquarters as the place of exercise of the trade union’s prerogatives whereas, by definition, such prerogatives must be exercised in premises occupied by the public services.
- 333.** Fifthly, almost all of the convocations are not dated. Some of them contain anomalies concerning the signature of the responsible executive. Finally, almost all the convocations were issued to obtain a dispensation from service although they refer to work which is not envisaged in article 83 of the Royal Decree of 28 September 1984.
- 334.** The Government underlines that the analysis of the convocations issued by certain trade unions showed that four of them did not comply with the provisions under the trade union statute. The organizations in question, apart from the OFA, are those mentioned in the complaint: the Independent Public Service Federation (CASP), the Committee for the Defence of Walloon Civil Servants (CDFW) and the Public Institutions Staff Union (SPIP). The Government states that these three organizations issue convocations for countless leave and dispensations from service to their responsible executives who are thus continually absent. The convocations contain the same irregularities as those of the OFA.

335. Finally, the Government observes that, at the end of March 2003, and since November 2003, Mrs. Decève has been on sick leave while Mr. Raepsaet has returned to work.

(b) Reply to the OFA's allegations concerning the Customs and Excise Administration

336. As regards the moral harassment of the "responsible representative" of the OFA behind, *inter alia*, its letter of 18 July 2000, the Government considers that it refers to the case of Mr. François, responsible executive from January 2000 to June 2001. Mr. François was the subject of a complaint which, following an administrative inquiry, did not give rise to any sanction.

337. As regards the OFA's allegation concerning the attitude of the Customs and Excise Administration, which for three years did not react to the convocations issued by it, the Government emphasizes that "the OFA could not have been unaware, firstly, that it was clearly abusing leave and dispensations from service and that, secondly, it was preventing the authority from checking compliance with the conditions for obtaining leave by omitting to mention certain information in the convocations".

338. In the opinion of the Government, by subsequently issuing trade union convocations which did not comply with the explicit conditions set out in the letter of 25 August 2000, "the OFA knowingly acted illegally". The Government adds that "the OFA was not unaware that the immediate superiors to whom the responsible executives communicated their convocations were local superiors [...] who did not have a detailed knowledge of the conditions for obtaining trade union leave and dispensations from service". The Government also states that, in 2000 and 2001, the administration was concerned not to worsen its relations with the OFA, since it was already dealing with two cases of litigation concerning two of its responsible executives. The Government recalls that finally, given the number of absences, the superiors reacted and alerted the central administration which invited the OFA to comply in future with the provisions of the trade union statute concerning trade union leave and dispensations from service.

339. As regards the allegations of harassment of Mr. Paul, the Government makes the following two points. Firstly, his Administration had to end the conflict of interests between the function of the person concerned (official assigned to the service responsible for the control of products subject to excise duty, essentially alcohol, tobacco and mineral oils) and the occupation of his wife (running an inn). This case was settled by assigning the official to another service, taking into account some of his wishes. Secondly, through the press, the Customs and Excise Administration learned in July 2001 that the official had been arrested and charged with complicity in trafficking cars. His personal file was seized by the examining judge and the case is currently the subject of continuing legal proceedings. The official was transferred. The Government encloses a copy of the transfer decision which, taking into account the presumption of innocence, allows him to continue to work in the central administration and thus avoid the serious consequences of suspension.

340. Concerning the allegation that the Customs and Excise Administration interprets national legislation in a partial manner, the Government points out that the administration has never sought to overlook convocations issued by representative trade unions. However, it has never received any reports from the local management concerning representative trade unions and thus has no knowledge of any abuses committed by them. In addition, the Government provides clarification with respect to the OFA's comments concerning the minutes of the meeting of 18 September 2003, in particular the remarks allegedly made by one of the administration representatives. According to these clarifications, the remarks were as follows: "The intention of the Administration is not to restrict the dispensations

issued by recognized unions in comparison with dispensations issued by representative unions, simply the scope of this meeting is confined to non-representative organizations.”

- 341.** On the allegation that every request for dispensation from service or trade union leave is refused a posteriori, the Government emphasizes that trade union convocations are not refused if they comply with the regulatory requirements and provided that the period covered by the request has not started. Moreover, the Government expresses surprise at this allegation in that the OFA has not submitted any convocation in the name of Mr. Raepsaet and Mrs. Decève since November 2003. It also indicates that, in January 2004, several convocations issued by the CASP in proper form were accepted by the Administration. The Government underlines that there is no question of refusing trade union leave, simply that it does not consider that trade union convocations which do not comply with the legal requirements entitle as of right, leave and dispensations.
- 342.** As regards the allegation that the email of 27 October 2003 shows that threats and sanctions are on the Administration’s programme and that it only takes issue with recognized trade unions, the Government reiterates that no irregularities or manifest abuses have been found in the case of the representative organizations. Furthermore, the position of “non-activity”, which stems from articles 3 and 4 of the Royal Decree of 19 November 1998, is applicable to all staff members of the state administrations, irrespective of the nature of the reasons wrongly invoked to justify absence. The position of “non-activity” is thus simply the result of a staff member’s unjustified absence.
- 343.** Concerning the campaign of which the OFA is the alleged victim, the Government states that it has not provided any evidence whatsoever. At no time have the authorities announced the withdrawal of recognition. Moreover, under the provisions of the Royal Decree of 28 September 1984, such withdrawal can only occur for very precise reasons. The Government states that it cannot comment on the alleged number of resignations by OFA members given that Belgian law does not allow the authorities to monitor patterns of membership of a trade union.
- 344.** Finally, the Government emphasizes that the Customs and Excise Administration has correctly applied the trade union statute and that so doing cannot be described as “interference by the Belgian Government”. In the opinion of the Government, the OFA is confusing, on the one hand, the activities of a trade union and, on the other, trade union leave and dispensations from service allowing certain of those activities to be exercised by a staff member during hours of work. By refusing to allow absences which do not meet the conditions of the trade union statute to be covered by leave and dispensations, the Administration does not prevent the exercise of those activities, for example, outside hours of work. The Government emphasizes that the Administration has never asked to know the purpose of trade union activities but only the identity of the authority to which they relate.
- 345.** Concerning the case of Mr. Raepsaet, the Government denies that Mr. Raepsaet was the subject of sanctions because of his trade union activities and underlines that, in its letter to the Minister of Finance, the OFA alleges no such thing. The Government recalls that it simply referred to articles 3 and 4 of the Royal Decree. It also emphasizes that the trade union statute (article 87) protects trade union delegates by providing expressly that they may not be the subject of sanctions for trade union reasons.

IV. *Violations of Convention No. 87*

- 346.** As to the general reference to alleged violations of Convention No. 87, the Government replies that the OFA has confused, on the one hand, the right of a trade union to organize itself as it sees fit and, on the other, the right of trade union delegates to obtain trade union leave in certain cases.

347. Concerning the allegation of suspension of activities, there is again a confusion between the activities of a trade union and the facilities granted under Belgian law to allow certain of these activities to be exercised by a staff member during hours of work.
348. The Belgian Government emphasizes that the OFA's argument that Belgian law, to comply with international labour Conventions, should allow responsible executives to be absent at their discretion without any check by the Administration on the reason for such absences does not take account of Article 6 of Convention No. 151. This Article provides that the nature and scope of the facilities to be afforded to the representatives of public employees' organizations both during and outside their hours of work shall be determined "in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means" (paragraph 3 of the Article). Paragraph 2 of Article 6 provides that "the granting of such facilities shall not impair the efficient operation of the administration or service concerned".

C. The Committee's conclusions

349. *The Committee notes that this case concerns the granting of time off to representatives of an organization of public employees, which is not a representative organization, to carry out their trade union functions during hours of work.*
350. *The Committee observes that the complainant organization does not dispute the applicable law but rather the interpretation of that law by the public authorities and its application to that organization. Consequently, the only question that must be examined by the Committee is the conformity of the interpretation of the regulatory provisions on trade union leave and dispensations from service, and their application to the representatives of the complainant organization, with Conventions Nos. 87 and 151 ratified by Belgium and the principles of freedom of association. The Committee adds that this general question includes establishing whether, in the application of the said provisions, the complainant organization has been the subject of discriminatory treatment.*
351. *The Committee notes that the provisions in question are those of the Royal Decree of 28 September 1984 "in application of the Act of 19 December 1974 organizing the relations between the public authorities and trade unions of employees of those authorities". More precisely, they are the provisions which determine different categories of trade union delegates (articles 71 to 79 of the Decree) and those concerning the granting of trade union leave and dispensations from service (articles 81 to 84), in respect of the following matters: (1) determination of trade union delegates who may enjoy permanent trade union leave or dispensation from service; (2) the obtaining "as of right" of trade union leave and dispensations from service which in practice raises the question of the justification of a check on requests for leave or dispensations by the authorities to which they are submitted; (3) the conditions for obtaining such leave or dispensations, i.e. the terms "general commissions and committees" (article 82 of the Royal Decree) and the information to be included in requests for leave or dispensations.*
352. *The Committee recalls that paragraph 1 of Article 6, of Convention No. 151 provides that "facilities shall be afforded to the representatives of recognized public employees' organizations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work". Paragraph 2 of that Article states that "The granting of such facilities shall not impair the efficient operation of the administration or service concerned". Finally, paragraph 3 indicates that "The nature and scope of these facilities shall be determined in accordance with the methods referred to in Article 7 of this Convention, or by other appropriate means". In the case of the latter provisions, Paragraph 4 of the Labour Relations (Public Service) Recommendation, 1978 (No. 159) states that "in determining the nature and scope of the*

facilities regard should be had to the Workers' Representatives Recommendation, 1971 (No. 143)". In this respect, and concerning time off, the Committee recalls subparagraph 3 of Paragraph 10, of the Workers' Representatives Recommendation, 1971 (No. 143), indicating that "Reasonable limits may be set on the amount of time off which is granted to workers' representatives ...".

- 353.** *In the light of the above provisions, the Committee emphasizes that the affording of facilities to representatives of public employees, including the granting of time off, has as its corollary ensuring the "efficient operation of the administration or service concerned". This corollary means that there can be checks on requests for time off for absences during hours of work by the competent authorities solely responsible for the "efficient operation" of their services. In addition, the nature and scope of facilities are determined at national level. As to the length of time off specifically, express reference is made to "reasonable limits".*
- 354.** *The Committee notes that the Royal Decree of 28 September 1984 provides for the granting of trade union leave and dispensations from service and determines the scope by defining the category of trade union delegate eligible for permanent trade union leave. Thus, articles 81 to 84 of the Royal Decree, applicable to trade union delegates other than permanent delegates, provide for the granting of time off, during hours of work, both for representatives of representative trade unions and those of other organizations. The Committee notes that trade union leave and dispensations from service are granted only for the length of time strictly necessary for the exercise of quite specific trade union activities. The Committee notes that it is explicit from articles 73 to 79 of the Royal Decree that only staff members recognized as permanent delegates are permanently on leave so as to be at the disposal of their trade union. The terms of the Royal Decree are thus clear and the Committee finds that it is simply a matter of the application of paragraphs 1 and 3 of Article 6 of Convention No. 151. In addition, the Committee notes that national practice envisages checking requests for trade union leave and dispensations from service by the authorities concerned, which is compatible with paragraph 2, of Article 6, of Convention No. 151. Consequently, the only real question that arises is whether, in practice, the authorities have fixed reasonable limits to the granting of time off during hours of work.*
- 355.** *The Committee notes that, with respect to non-representative organizations, articles 82 and 83 fix a certain number of limits on the granting of trade union leave and dispensations from service. In this regard, there are common limits: prior submission of the request for leave or dispensation, the personal nature of the request, the limitation of the leave or the dispensation to the time necessary, and signature by a responsible executive. There are also limits specific to each article: participation in general commissions and committees in article 82 and the exercise of the prerogatives listed in article 16 of the Act of 19 December 1974 in relation to a clearly defined committee under article 83.*
- 356.** *In the light of the information provided to it, in particular the letter from the General Administration Service of 25 August 2000, the Committee notes that the public authorities have specified, in practice, the meaning of these limits. The common limits resulted in the determination of information to be included in requests for leave or dispensations, as follows: date on which the document is created (prior notice); name of the trade union delegate concerned (personal character); place of the meeting or exercise of the prerogative (verification of membership of the committee concerned); date and time of the meeting or exercise of the prerogative (necessary character of the length of time); reference to article 82 or 83 [...] and indication of the circumstance (meeting of a clearly defined general commission or committee, prerogative concerned); personal signature of a responsible executive. The Committee observes that this information is purely formal and*

that each item can be directly and clearly justified under the provisions of articles 82 and 83.

- 357.** Furthermore, the Committee notes that the scope of article 82 was substantively defined. In this regard, the Committee notes that the terms “general commissions and committees” in article 82 have been constantly interpreted as excluding trade union leave for meetings of a frequent or technical character, thus limiting obtaining of such leave to meetings of an exceptional nature, held at the highest levels of the trade union’s structure. The Committee observes that this interpretation is based on the rationale of the distinction between permanent delegates and other delegates who can only obtain leave for clearly defined activities and the time necessary to carry them out. The Committee also finds that the terms “general commissions and committees” are used only for the purposes of granting time off to representatives of organizations of public employees during hours of work. They are thus not a prescription of the number of internal bodies of trade unions or the frequency of their meetings, which it is up to each organization to determine freely.
- 358.** Among the foregoing considerations, the Committee considers that the interpretation of article 82 and the information to be included in requests for leave or dispensations, as determined by the authorities, constitute reasonable limits on the granting of time off during hours of work to representatives of a public employees’ organization which is not representative. Consequently, in itself, the verification of compliance with these limits by the administrative authority could not be construed as interference in the internal functioning of trade unions.
- 359.** In the particular case of the complainant organization, the Committee notes that the letters from the Customs and Excise Administration in August 2003 show that it was not a matter, for that Administration, of generally refusing any request for leave or dispensation submitted by the complainant organization, but that it considered that requests that did not comply with the relevant articles of the Royal Decree and the related practice, could not result in the granting of trade union leave or dispensation from service. The Committee notes, moreover, that the Customs and Excise Administration had asked the complainant organization to justify that each activity mentioned in the convocations represented an activity for which the Royal Decree envisaged trade union leave or dispensation from service. The Committee therefore finds that to obtain the necessary leave and dispensations, and to prevent certain delegates being considered in a position of “non-activity” for unjustified absence, the complainant organization only had to provide such justification or submit new convocations in compliance with the conditions established in the Decree and containing the information set out in the letter of 25 August 2000. Finally, the Committee finds that, according to the Government, the complainant organization has not submitted any convocation since November 2003.
- 360.** In the light of the foregoing, the Committee concludes that the application of the relevant provisions to the leaders of the complainant organization is consistent with Article 6 of Convention No. 151. In addition, the Committee considers that there has been no violation of the complainant organization’s rights under Convention No. 87, since the intervention by the Customs and Excise Administration solely concerned compliance with the conditions for the granting of time off during hours of work and not the operation, management or activities, as such, of the complainant organization.
- 361.** The Committee further finds that the summary of days of trade union leave and dispensations from service of four trade union delegates shows that from 2000 to 2003, the Federal President and the Federal Secretary of the complainant organization, responsible executives but not permanent delegates, were absent for the majority of working days for trade union reasons. The Committee notes in this regard the Government’s observation that, by combining these absences with annual holiday and certain possibilities of

recuperation, these two persons did not perform any work at all during the period in question and that that affected the efficient operation of their respective services. Furthermore, the letters from the Customs and Excise Administration in August 2003, the copy of the convocations issued by the complainant organization and the Government's reply, show that the said convocations were clearly not in conformity with the provisions of the Decree as interpreted by the public authorities.

- 362.** *On the question of discriminatory treatment, the Committee notes that the Customs and Excise Administration repeatedly sought to limit the granting of trade union leave and dispensations from service to non-representative organizations and that it had taken no action concerning representative organizations.*
- 363.** *The Committee first wishes to recall the following two points. Firstly, bearing in mind the remarks on the tenor of the convocations of the complainant organization and the absences of two of its executives between 2000 and 2003, the intervention by the Customs and Excise Administration was justified in this particular case. Secondly, the Committee notes that the central Customs and Excise Administration also intervened in the case of other recognized organizations for similar reasons.*
- 364.** *As for the allegation as such, the Committee notes that the Government indicates that the Customs and Excise Administration had not received any report from the local management concerning the validity of convocations issued by representative organizations. The Committee also notes that the complainant organization has not provided any evidence whatsoever to show that the public authorities wished to target only requests for leave or dispensations submitted by non-representative organizations.*

The Committee's recommendation

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

Annex

The following description of the relevant legislative and regulatory provisions is based on texts sent by both the complainant organization and the Government. Where necessary, reference will also be made to the pertinent explanations in the Report to the King concerning the draft decree implementing the Act of 19 December 1974 (which was to become the Royal Decree of 28 September 1984).

The Act of 19 December 1974 on the organization of relations between the public authorities and their employees' trade unions and the Royal Decree of 28 September 1984 implementing the Act govern the exercise of trade union rights by public employees with the exception of categories of employees and services specified in the Act. These two texts form the basis of what has come to be known by common consent as the trade union statute.

The trade union statute envisages, broadly speaking, two kinds of trade union organization: recognized organizations and representative organizations. Recognized trade unions are those which have obtained recognition in accordance with article 15 of the Act. The Report to the King explains that the sole purpose of the recognition procedure is so that public authorities are aware of trade unions which are active in the public sector. This recognition is granted "automatically" as soon as the trade union has submitted its constitution and the list of its responsible executives. Articles 7 and 8 of the Royal Decree centralize the recognition procedure. Paragraph 2 of article 7 states that the list of recognized trade unions must be published in the Belgian official journal (*Moniteur Belge*) indicating their name, address, telephone number and scope of activity. A leaflet with the title "The new public service trade union statute", apparently published at the time when the Act and the Decree came into force (the Act could not come into force without the publication of a royal decree to implement it), states that recognition can occur at several levels: a trade union defending the

interests of all categories of public employees applies for recognition to the president of the Combined Public Services Joint Committee; a trade union defending the interests of certain categories of public employees applies for recognition to the president either of the Federal, Community and Regional Public Services Committee or the Provincial and Local Public Services Committee.

Article 16 of the Act sets out the prerogatives enjoyed by recognized trade unions: “to intervene with the authorities in the collective interest of the personnel that they represent or the individual interest of an employee” (16.1); “to assist at his request an employee called to justify his actions to the administrative authority” (16.2); “to affix notices in the premises of public services” (16.3); “to receive documentation of a general character concerning the management of the personnel that they represent” (16.4).

Representative trade unions are those which satisfy a certain number of criteria established by law, in particular concerning the minimum membership. Some of these organizations are required to apply for recognition. Only representative organizations participate in bargaining and consultative bodies. Bargaining bodies are, firstly, general committees (under article 3 of the Act, there are three: the Federal, Community and Regional Public Services Committee, the Provincial and Local Public Services Committee, and the Combined Public Services Joint Committee) and, secondly, sectoral and individual service committees (article 4 of the Act).

Article 17 of the Act states that the prerogatives of representative trade unions are: “to exercise the prerogatives of recognized unions” (17.1); “to collect trade union dues in places of work during hours of work” (17.2); “to attend competitions and examinations organized for employees...” (17.3); “to hold meetings in administrative premises [during hours of work]” (17.4).

Article 18 indicates that it is up to the King to establish: (1) “the rules applicable to trade union delegates by virtue of their activity within the public services ...”; (2) “the rules concerning reimbursement to the authority by trade unions of amounts paid to certain of their delegates as staff members”. Representative trade unions may be exempted “fully or in part” from such reimbursement. Title VI (articles 71 to 90 of the Royal Decree of 28 September 1984) establish a number of rules concerning “persons participating in trade union life”.

Article 71, Chapter I “Listing of trade union delegates” describes what is covered by the general concept of “trade union delegate”:

- responsible executives of a trade union (71.1);
- permanent representatives of the responsible executives (71.2);
- permanent delegates are “staff members who regularly and continuously defend the professional interests of the staff and who, in that capacity, are recognized and placed on leave” (71.3);
- members of the delegation of an organization represented in a bargaining or consultative committee (71.4);
- persons designated by a trade union to exercise certain of the prerogatives set out in articles 16 and 17 of the Act (71.5);
- “staff members who participate in the work of general commissions and committees formed within a trade union” (71.6);
- delegates of a trade union to the Committee on Verification of a Trade Union’s Representativeness (71.7).

The Report to the King explains that “in practice, the same person can fall into different categories of trade union delegate listed”.

Under article 72, Chapter II “Responsible executives and their permanent representatives”, these two categories of trade union delegates are issued with a legitimization card to facilitate their interventions with the public services. The Report to the King explains that “each organization freely designates its responsible executives” and that the legitimization card “serves only to allow responsible executives (and likewise other delegates who have received such a card) to prove, if necessary, their trade union office to the authorities with which they intervene on an exceptional basis”. Paragraph 3 of article 72 states that “equipped with their card, responsible executives and their permanent representatives can exercise all the prerogatives accorded to their trade union”.

Articles 73 to 79, Chapter III “Permanent delegates” sets out the provisions applicable to this category of trade union delegates. The Report to the King emphasizes that permanent delegates “leave their administration and are placed at the disposal of their trade union ... they are deemed to be on active service”. The latter means, inter alia, that permanent delegates retain their rights in terms of remuneration, cost-of-living and in-grade increments. They must first apply for recognition as permanent delegates by the authority in which they are employed. They also receive a legitimation card. Article 77, paragraph 1, indicates that permanent delegates are “on trade union leave as of right”. Paragraph 4 of the article states that “the trade union leave of the permanent delegate terminates at his request, or when his trade union so decides, or when his recognition is withdrawn”. Finally, under paragraph 1 of article 78, remuneration, allowances, indemnities received by permanent delegates must be reimbursed by their trade unions.

Articles 81 to 84, Chapter V “Provisions common to all trade union delegates, with the exception of permanent delegates” set out the rules for trade union leave and dispensation from service. They read as follows:

Chapter V. Provisions common to all trade union delegates, with the exception of permanent delegates.

Article 81, section 1. On prior presentation to his superior of a personal occasional convocation or a permanent mission order, issued by a responsible executive, a staff member-trade union delegate as defined in article 71, paragraph 1 or 2, shall obtain, as of right and for the length of time necessary for that purpose, trade union leave to participate in the work of bargaining and consultative committees. For responsible executives, the abovementioned convocation or mission order must be issued by another responsible executive.

On prior presentation to his superior of a personal occasional convocation or a permanent mission order, issued by a responsible executive, a staff member-trade union delegate as defined in article 71, paragraph 4, shall obtain, as of right and for the length of time necessary for that purpose, trade union leave to participate in the work of bargaining and consultative committees in his service.

Section 2. On prior presentation to his superior of a personal occasional convocation or a permanent mission order, issued by the president of a bargaining or consultative committee, a staff member shall obtain, as of right and for the length of time necessary for that purpose, a dispensation from service to participate in the work of that committee.

Section 3. The convocations and mission orders envisaged in sections 1 and 2 shall mention the bargaining or consultative committee in whose work the staff member is invited to participate. In addition, occasional convocations shall indicate the place, date and time of meetings.

The president of the bargaining or consultative committee concerned shall receive, from the staff members’ superior, a copy of the convocations and mission orders envisaged in section 1.

He shall notify the names of staff members absent from meetings to their superior.

Article 82. On prior presentation to their superior of a personal convocation issued by a responsible executive, staff members shall obtain, as of right and for the length of time necessary for that purpose, trade union leave to participate in the work of general commissions and committees formed internally within the trade union.

Article 83, section 1. On prior presentation to his superior of a personal mission order or delegation, issued by a responsible executive, a staff member shall obtain, as of right and for the length of time necessary for that purpose, a dispensation from service to exercise one of the prerogatives listed in articles 16(1), (2) and (3); and 17(1), (2) and (3) of the Act.

The said prerogatives may only be exercised by the staff member in connection with the committee for the sector or particular committee for the service in which he is employed.

Section 2. On prior presentation to their superior of a personal mission order or delegation, issued by a responsible executive, all persons other than those envisaged in section 1 may exercise the prerogatives set out in that paragraph.

Article 84. On prior request by a responsible executive addressed to the competent authority, except where absolutely incompatible with the exigencies of the service, staff members shall obtain, for the length of time necessary for that purpose, a dispensation from service to participate in meetings organized on the premises by representative trade unions.

CASE NO. 2294

INTERIM REPORT

Complaint against the Government of Brazil

presented by

- **the Single Central Organization of Workers (CUT) and**
- **the Trade Union of Workers in the Metallurgical, Mechanical, Electrical, Electronic, Iron and Steel, Automobile and Spare Parts Industries and Offices in Taubaté, Tremembé and Districts (Taubaté Metalworkers' Union)**

Allegations: The complainant organization alleges undue judicial interference in the election held to appoint new trade union leaders and non-observance of the existing provisions of its Social Statute, and requests that the aforementioned election be declared null and void

- 366.** The complaint is contained in a communication from the Taubaté Metalworkers' Union dated 25 August 2003. In a communication dated 28 August 2003 the Single Central Organization of Workers (CUT) expressed its wish to support the complaint.
- 367.** The Government sent its observations in a communication dated 23 June 2004.
- 368.** Brazil has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainants' allegations

- 369.** The Taubaté Metalworkers' Union, a member of the CUT, currently represents 18,000 workers in the cities of Taubaté and Tremembé, 11,089 of whom are union members.
- 370.** The Union recalls that trade union autonomy was enshrined in the current Federal Constitution, enacted in 1988, which removed several obstacles that had hindered trade union activity, prohibiting any form of intervention by the authorities in internal trade union organization. However, despite the constitutional provision, some public authorities do not respect the principle of freedom of association and their actions constitute a violation of the Constitution and of the fundamental principles of the ILO.
- 371.** The trade union alleges that it was the victim of an intervention on the part of the authorities, through the judiciary, constituting serious interference in the life of the organization. The union Statute provides that the term of office for union leaders is four years. Given that the current leaders began their term of office on 20 November 1999, elections were called in 2003 to replace them. The union points out that elections are an act of internal autonomy and are conducted in a similar way to an assembly, divided into several sessions, under the supervision of trade union representatives. Three candidatures registered for the elections, with 36 candidates each. Votes were due to be cast on 29, 30 and 31 July 2003. The trade union alleges that the elections were taking place in a democratic and peaceful fashion when, on the morning of the 29 July 2003, a judge from the city of Taubaté, Dr. Jorge Alberto Passos Rodríguez, made a serious administrative

intervention in the elections which significantly affected the election results. Indeed, on the pretext of carrying out an order from the São Paulo State Court of Justice that equal treatment should be guaranteed for one of the electoral lists, the judge gave the instruction to intervene in the union election assembly, and personally assumed responsibility for administering the elections and establishing new rules of electoral administration, in absolute violation of the trade union Statutes. The judge gave orders for the following measures to be taken: (a) evacuation of the court building, which was immediately surrounded by military police; (b) summons of the police to force entry into the union offices in order to implement the subsequent measures; (c) suspension of the elections; (d) seizure of all ballot boxes and voting papers (thereafter, taken to the court headquarters) and cancellation of votes already cast; (e) order to forcibly take those in charge of the voting committees to the court buildings; (f) establishing the court as the voting headquarters, and restricting access to only one lawyer per candidature registered; (g) forcible removal of the election coordinator to his office in order for him to hand over all information relating to the administration of the elections; and (h) order to display notices in the workplaces explaining what was happening. It should be pointed out that during implementation of point (g), the union president arrived at the court in a police vehicle and was greeted by a crowd shouting “thief”, “criminal” and “cheat”. The crowd, seeing the president in that situation, had wrongly assumed that he had been detained for having committed a crime. The union stresses the negative repercussions of that incident, in a city of only 300,000 inhabitants, on the very day of the elections, particularly given that one of the lists of candidates took advantage of the situation and spread the false rumour through a statement that was sent out to all factories and workers.

372. The trade union submits that the order for equal treatment was addressed to the union president, and that failure to comply with it would have nullified the election. The judge should certainly not have removed the union leaders from the administration of the election and taken their place. By his actions, the judge committed an abuse of power. Once voting was over, the representative of the Ministry of Labour declared one of the candidatures to have been elected, despite the fact that it had not won the number of votes necessary to be declared elected (half plus one of the valid votes, according to the Statute). The judge’s actions were outside the judicial sphere and took on a purely administrative nature, constituting intervention and interference in the union. Two judicial appeals were lodged against the judge’s acts, but they had no immediate effect. The São Paulo State Court of Justice refused all preliminary requests to suspend the judicial orders, and the appeals are due to be heard within six months. However, there is no possibility according to domestic legislation of rapid intervention by the Federal Supreme Court to change the situation created by the aforementioned abuses. The union states that on 20 November 2003 the violation was factually and legally confirmed, since the candidates elected in the manipulated elections took office on that date.

373. Lastly, the union points out that the judicial intervention violated several articles of the Statute, article 8 of the Constitution and Article 3 of Convention No. 87.

B. The Government’s reply

374. In a communication dated 23 June 2004, the Government forwards the information supplied by the judge, Dr. Mohamed Amaro, third Vice-President of the São Paulo State Court of Justice, and by the judge of the First Civil Instance of the region of Taubaté, Mr. Jorge Alberto Passos Rodriguez. Dr. Amaro’s information concerns the two appeals (security orders) lodged by the complainant organization in an attempt to declare null and void the elections carried out with the intervention of the judiciary. He explains that one of the lists of candidates (No. 2) in the union election had presented a request for enforcement of constitutional rights in favour of Messrs. Jeremias Pereira de Castro, José Donizete Lopes, Cícero Batista and Benedito Raimundo de Carvalho. That request was met

essentially to guarantee their participation in the trade union elections planned for 29, 30 and 31 July 2003. Dr. Amaro points out that the first appeal was presented by the complainant on 31 July and that, given that some facts were contested, he decided to deny the request for preliminary action, in order to allow more time to gather information. He ordered an investigation into the relevant information and sent summons to the passive parties, i.e. those in whose favour the questioned decision had been made (electoral list 2). The orders were sent to the Office of the Prosecutor-General for his approval, after which they would be distributed for court proceedings.

- 375.** Regarding the complainant's second appeal, he states that it was presented against the actions taken by the judge of the First Civil Instance of the region of Taubaté, Mr. Jorge Alberto Passos Rodríguez. The allegation, in summary, is that the judicial authority intervened in an abusive manner in the union election process, organizing the elections without having been asked to do so, on the pretext of carrying out a decision by the São Paulo State Court of Justice, taken by Judge Maia da Cunha. The complainant states that those actions are invalid and requests that the elections should be declared null and void and that new elections be held in accordance with the Statutes of the union, without interference from the judiciary. The request for preliminary action was also turned down in this case, given the complexity of the facts that, moreover, are disputed. These orders are also before the Office of the Attorney-General for his approval and subsequent distribution for court proceedings. The Government includes, as an appendix, several documents that are part of the respective judicial proceedings.
- 376.** In the explanations given by the judge of the First Civil Instance instance, Mr. Jorge Alberto Passos Rodríguez, who intervened directly in the electoral process, he denies having acted illegally, abused his power or acted in an arbitrary nature. He explained that he received the documents on 28 July 2003, after the São Paulo State Court of Justice had granted the request for enforcement of constitutional rights presented by electoral list No. 2, and ordered the then union president, Antonio Eduardo Oliveira, to guarantee equal treatment for that list. Paragraph (e) of the decision states that "the president/candidate and the coordinator of the election, by means of specific protection, must ensure that equal treatment is given to the competing electoral lists in the current election process, with attention to the requests already made to the election coordinators by list No. 3, regarding voting materials, distribution of ballot boxes, counting of votes, parity on the returning officers' committees (...) and maintaining equality in all other matters relating to the election".
- 377.** Mr. Antonio Eduardo Oliveira, who was presiding over the election in his capacity as union president, and was also running as a candidate, informed the court that he would not comply with the order since that in itself would infringe on the provisions of the Social Statute of the union regarding voting materials, distribution of ballot boxes, composition of the collection committees (article 82 of the Statute) and parity on the returning officers' committees. He stated that to comply with such a decision would invalidate the electoral process. Therefore, since the decision of the Court of Justice was not to be implemented, and considering that applying financial sanctions would be pointless, given that what was required was compliance with the order of equal treatment and that the election was already under way, the judge issued the decision that the order should be implemented at 12 p.m. that day; he immediately suspended the casting of votes and ordered voting to begin again.
- 378.** The ballot boxes ready for voting were confiscated, and the representatives of the different lists, including those on list No. 1 which had not been mentioned in any documents, were compelled to present themselves in a specific room in the civil court building, as a means of maintaining order at that time. Furthermore, the judge ordered that all electoral committee members be taken to the court, with a police escort, and that the election

coordinator should also be present to provide the necessary information in accordance with the Court of Justice decision. He instructed, moreover, that notices should be displayed in the polling stations indicating that the elections would begin again later that day, which is indeed what happened. The votes that had already been cast were discarded and placed in appropriate bundles. Joint commissions were established, made up of representatives from the different lists and lots were drawn for the presidency from among the commissions, with names provided by the different lists, including the list of the complainants. The ballot boxes were initialled by all those present in the meeting room. In order to ensure that the correct procedure was followed, it was begun in the presence of justice officials and with the support of the police. The judge states that, in agreement with the president appointed for the vote, which ended in the early morning of 8 August 2003, list No. 2 gained the largest number of votes, with 3,252 votes; list No. 1 received 2,743 and list No. 3 (which included, amongst others, the president of the complainant organization) obtained 824 votes; there were 112 blank and 208 invalid ballot papers, out of a total of 7,139 votes. Consequently, list No. 2 was declared elected, as stated in the record of the general ballot of the election and closure of the election process.

- 379.** The judge confirms that there was no intervention in the complainant union. Rather, some judicial action was taken, aimed at guaranteeing effective compliance with the decision of the São Paulo State Court of Justice. He states that union activities, which are so important for workers, are necessarily subject to judicial orders. Regarding the claim that list No. 2 did not obtain the majority established in article 100 of the Social Statute, which led the complainant to request the invalidation of the election, the judge points out that the Statute only provides for re-election in the case of a draw, which did not happen in this instance. There is no possibility of invalidating the casting of votes, the ballot, or the declaration of the result, since none of the circumstances established in the Statute (articles 103/105) has occurred, and the election took place in accordance with the decision of the Court of Justice, that urgent and specific enforcement of constitutional rights be granted. The result is therefore worthy of respect.
- 380.** Lastly, the Government emphasized that direct judicial participation took place only because the complainant itself expressly notified the authorities that it would not comply with the decision of the Court of Justice, without providing detailed reasons, but only brief and general statements. Thus, article No. 106 of the Statute is applicable according to which, an event cannot be invalidated by the entity that caused the invalidation.

C. The Committee's conclusions

- 381.** *The Committee notes that the current case concerns allegations of undue judicial interference in the election held to appoint new trade union leaders to the Taubaté Metalworkers' Union, and non-observance of the existing provisions of its Social Statute. The complainant requests that the aforementioned vote be declared null and void and new elections be held.*

Intervention in the election

- 382.** *The Committee notes that the election to appoint new union leaders to the complainant organization were set to take place on 29, 30 and 31 July 2003. According to the union, the elections constitute an act of internal autonomy and are conducted in a similar way to an assembly, divided into several sessions, under the supervision of trade union representatives. Three candidatures registered for the elections, with 36 candidates each. According to the complainant, the elections were taking place in a democratic and peaceful fashion when, on the morning of 29 July 2003, a judge of the First Civil Instance from the city of Taubaté made a serious administrative intervention in the elections, which*

significantly affected the election results. According to the information provided by the Government, on the day before the elections, one of the lists registered for the voting process (No. 2) had presented a request for enforcement of constitutional rights to the São Paulo State Court of Justice, in favour of Messrs. Jeremias Pereira de Castro, José Donizete Lopes, Cícero Batista and Benedito Raimundo de Carvalho, requesting recognition and equal treatment during the elections. That request was intended essentially to guarantee their participation in the trade union elections. Paragraph (e) of the judicial decision stated that “the president/candidate and the coordinator of the election, by means of specific protection, must ensure that equal treatment is given to the competing electoral lists in the current election process, with attention to the requests already made to the election coordinators by list No. 3, regarding voting materials, distribution of ballot boxes, counting of votes, parity on the returning officers’ committees (...) and maintaining equality in all other matters relating to the election”.

- 383.** *The Committee notes that the complainant alleges that the judge of the First Civil Instance, on the pretext of carrying out the aforementioned order, gave the instruction to intervene in the union election assembly, and personally assumed responsibility for administering the elections and establishing new rules of electoral administration, in absolute violation of the union Statutes. The complainant adds that the order for equal treatment was addressed to the union president, and that failure to comply with it would have nullified the election. It holds that the judge should certainly not have removed the union leaders from the administration of the election and taken their place and that by his actions, he committed an abuse of power. The Committee notes, however, that the Government maintains in this respect that Mr. Antonio Eduardo Oliveira, who was presiding over the election in his capacity as union president, and was also running as a candidate, informed the court that he would not comply with the order since that itself would infringe on the provisions of the Social Statute of the union regarding voting materials, distribution of ballot boxes, composition of the collecting committees and parity on the returning officers’ committees, stating that to comply with such a decision would invalidate the electoral process. According to information provided by the judge of the First Civil Instance who intervened, he issued the decision to implement the court order at 12 p.m. that day, taking into account that the decision would not be put into practice considering that subsequent application of financial sanctions would be pointless, and given that the election was already under way. Under those circumstances, he decided to suspend immediately the casting of votes and to order voting to begin again. The Committee notes that the Government emphasizes that direct judicial participation took place only because the complainant itself expressly notified the authorities that it would not comply with the decision of the Court of Justice without providing detailed reasons, thus leading to application of article No. 106 of the Statute, according to which an event cannot be invalidated by the entity that caused the invalidation. Likewise, the judge of the First Civil Instance maintains that there is no possibility of invalidating the collection of votes, the ballot, or the declaration of the result, since none of the circumstances laid down in the Statute (articles 103/105) has occurred, and the election took place in accordance with the decision of the Court of Justice, that urgent enforcement of constitutional rights be granted. The Committee emphasizes that in cases where the results of trade union elections are challenged, such questions should be referred to the judicial authorities in order to guarantee an impartial and objective procedure which should also be expeditious [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, 4th edition, para. 405]. In that respect, noting that the judicial decisions adopted by the judge of the First Civil Instance have been questioned before the law, through the lodging of two appeals (security orders), the Committee requests the Government to send it a copy of the rulings as soon as the appeals have been settled and expects that they will be handed down without delay.*

Measures taken

384. *The Committee takes note of the measures taken by the judge of the First Civil Instance while the electoral process was under way, particularly: suspension of the elections; seizure of all ballot boxes and voting papers (thereafter, taken to the court headquarters) and cancellation of votes already cast; and establishment of the court as the voting headquarters, restricting access to only one lawyer per candidature registered. Furthermore, the order was issued that all electoral committee members be taken to the court with a police escort, and that the election coordinator should also be present to provide the necessary information in accordance with the decision of the Court of Justice. The Judge instructed, moreover, that notices should be displayed in the polling stations indicating that the elections would begin again later that day, which is indeed what happened. Joint commissions were established, made up of representatives from the different lists, and lots were drawn for the presidency from among the commissions, with names provided by the different lists, including the list of the complainants. The ballot boxes were initialled by all those present in the meeting room. Lastly, according to the Government, in order to ensure that the correct procedure was carried out, it was begun in the presence of justice officials and with the support of the police. The Committee notes that the Government and the complainant organization provide similar descriptions of the measures taken. In this respect, noting that those measures were questioned before the São Paulo State Court of Justice, the Committee requests the Government to send it a copy of the rulings as soon as the appeals have been settled and expects that they will be handed down without delay.*

Incident concerning the union president during the undertaking of those measures

385. *The Committee notes that the complainant alleges that when the union president was taken to the court in a police vehicle, in compliance with the orders of the intervening judge, he was greeted by a crowd shouting “thief”, “criminal” and “cheat”. The crowd, seeing the president in that situation, had wrongly presumed that he had been detained for having committed a crime. According to the complainant, that incident had negative repercussions on the election results because it happened in a city of only 300,000 inhabitants, on the very day of the elections, particularly given that one of the lists of candidates took advantage of the situation and spread the false rumour through a statement that was sent out to all the factories and workers. The Committee notes that the Government has not included any information on that aspect of the complaint. The Committee considers that the fact that the union president was forcibly transferred in a police vehicle, without previously being given the opportunity to appear voluntarily, could constitute a harmful incident for the union president, and expects that in future there will be no further recourse to such measures unless they are unavoidable in order to comply with judicial decisions.*

Election results

386. *The Committee notes that, with regard to the election results, the complainant alleges that once voting was over, the representative of the Ministry of Labour declared one of the candidatures to have been elected, despite the fact that it had not won the necessary number of votes (the complainant confirms that according to the Statute, half plus one of the valid votes must be gained to win the election). According to the information provided by the Government, list No. 2 gained the largest number of votes, with 3,252 votes; list No. 1 received 2,743 and list No. 3 (which included, amongst others, the president of the complainant organization) obtained 824 votes; there were 112 blank and 208 invalid ballot papers, out of a total of 7,139 votes. Consequently, list No. 2 was declared elected, as stated in the record of the general ballot of the election and closure of the election*

process. The Committee notes that, regarding the claim that list No. 2 did not obtain the majority established in article 100 of the Statute, and thus the vote should be declared invalid, the Government points out that the Statute only provides for re-election in the case of a draw, which did not happen in this instance. The Committee notes that article 100 of the Statute provides that “once voting has concluded, the president of the voting committee will declare elected the list that obtained the simple majority of valid votes (...)”. The Statute does not include a specific definition of the term “simple majority”; however, according to the meaning it is normally given, “simple majority” refers to the modality in the decision-making process that requires the highest number of votes cast, not half plus one, which would be an absolute majority. Nevertheless, noting that this aspect of the case is also questioned by means of the appeals lodged before the São Paulo State Court of Justice, the Committee requests the Government to send it a copy of the rulings as soon as the appeals have been settled and expects that they will be handed down without delay.

Appeals lodged

387. *The Committee notes that the complainant has presented two judicial appeals (security orders) against the actions of the judge of the First Civil Instance, to secure the invalidation of the elections that took place with the intervention of the judiciary. In both cases, according to the information provided by the third Vice-President of the São Paulo State Court of Justice, the preliminary requests were denied, given that some facts were contested and the facts were complex, in order to allow more time to gather the necessary information; the documents were sent to the Office of the Attorney-General for his approval, after which they will be distributed for court proceedings. The Committee recalls once again that in cases where the results of trade union elections are challenged, such questions should be referred to the judicial authorities in order to guarantee an impartial and objective procedure which should also be expeditious [see **Digest**, op. cit., para. 405]. The Committee, noting that the decisions taken by the judge of the First Civil Instance during the election process in this case have been questioned before the judicial authorities, and that the outcomes are pending, requests the Government to send it a copy of the rulings and expects that they will be handed down without delay.*

The Committee’s recommendations

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

- (a) Noting that the decisions and measures taken by the judge of the First Instance during the election process in this case have been questioned before the judicial authorities and that the outcomes are pending, the Committee requests the Government to send it a copy of the rulings and expects that they will be handed down without delay.*
- (b) Regarding the incident during which the union president was taken to the court in a police vehicle, the Committee considers that the fact that he was forcibly transferred in a police vehicle could constitute a harmful incident, and expects that in future there will be no further recourse to such measures unless they are unavoidable in order to comply with the judicial decisions.*

CASE NO. 2276

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

**Complaint against the Government of Burundi
presented by
the Trade Union Confederation of Burundi (COSYBU)**

Allegations: Refusal to recognize the elected chairman of COSYBU; unjustified and anti-union dismissal; interference in the internal affairs of the organization; excessive legislative restrictions regarding the registration and workings of trade unions, trade union activities and the right to strike

- 389.** The complaint appears in a communication from the Trade Union Confederation of Burundi (COSYBU) dated 30 May 2003.
- 390.** The Government sent its observations in a communication dated 5 May 2004.
- 391.** Burundi has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135), but not the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 392.** In a communication dated 30 May 2003, COSYBU alleges that the Government of Burundi refuses to recognize Dr. Pierre Claver Hajayandi, the democratically elected chairman of the organization, and has dismissed him from his post for anti-union motives; moreover, the Government nominates workers' representatives to sit on the governing bodies of tripartite institutions, as well as the International Labour Conference, without taking into account the candidates chosen by COSYBU, the most representative workers' organization. COSYBU also claims that, without any prior tripartite consultation taking place, the Government adopted Law No. 1/015 of 29 November 2002, regulating the exercise of the right to organize and the right to strike in the public service, which entails several violations of the freedom of association.
- 393.** Concerning the case of Dr. Hajayandi, COSYBU states that he was properly elected along with a new executive on 29 April 2000, during an extraordinary congress convened against a background of wide social unrest brought about by a general rise in the prices of basic goods and services, during which the former chairman of COSYBU (Mr. Niyongabo) had retired from the organization "for personal reasons" three days before a general strike began. The Government has been openly hostile towards Dr. Hajayandi since 1 May 2000, continuing to maintain Mr. Niyongabo as the head of COSYBU and nominating him to represent the country's workers at the 89th and 90th Sessions of the International Labour Conference. In 2003, the Government yet again ignored the candidate chosen by COSYBU's executive for the Conference (Dr. Hajayandi), sending the vice-chairman in his place. It was only after the departure of President Buyoya in April 2003 that Dr. Hajayandi was able officially to represent the workers at the May Day celebrations and at the International Labour Conference.

- 394.** Dr. Hajayandi was dismissed from his post on 29 May 2000, 30 days after being elected onto the executive of COSYBU. The relevant dossier shows that there existed no valid reason for such a serious course of action: only the administration's determination to exclude him from the trade union movement could explain this decision. COSYBU requests that Dr. Hajayandi be reinstated.
- 395.** COSYBU also alleges that the activities of the National Labour Council were halted from 27 March 2000 to 19 May 2003, as the Minister refused to nominate the representatives chosen by the workers to participate in the work of the Council. The situation was resolved with the coming to power of the present Government; the Council met twice since the complaint was lodged. However, the situation remains unchanged with regard to the nomination of workers' representatives to tripartite institutions, in accordance with the choice made by the most representative organization. COSYBU requests that this situation be put in order.
- 396.** As to Law No. 1/015 of 29 November 2002, regulating the right to organize and the right to strike in the public service, COSYBU considers that it constitutes an obstacle to the creation of workers' organizations; it restricts the freedom of action of public employees' representatives; allows for interference in the running and workings of trade unions in general and in that of the public service; gives licence to discrimination against trade union members for having participated in trade union activities; restricts the right to organize and the right to hold trade union meetings, as well as the right to strike. COSYBU stresses that no process of consultation was ever entered into with the social partners.
- 397.** Along with the complaint, COSYBU encloses a substantial number of documents and pieces of evidence supporting its allegations.

B. The Government's reply

- 398.** In a communication dated 5 May 2004, the Government states that Dr. Hajayandi is currently the recognized chairman of COSYBU. He attended the 2003 and 2004 May Day celebrations in this capacity and was a member of the tripartite delegation of Burundi at the 2003 International Labour Conference. The issue of the organization's leadership has now been resolved and the Government is surprised at the allegations since relations with COSYBU have been normalized.
- 399.** Dr. Hajayandi has lodged a complaint with the courts against what his employer consider to be his legal dismissal. The case is under review and the Government will ensure that the eventual ruling is carried out.
- 400.** The Government respects the choice of the workers in tripartite institutions, as made by the most representative organization; it undertakes to rectify any mistakes that might have been made.
- 401.** Regarding Law No. 1/015 of 29 November 2002, the Government states that the trade unions were involved in its elaboration, as can be seen from the minutes of the meetings (which are not, however, enclosed with the communication). The law forbids sympathy strikes as they can seriously compromise the life, health and safety of the public. The amendment of article 14 of the Labour Code, allowing for the registration and supervision of public sector trade unions, is to be discussed by the parties concerned; in any event, those trade unions belonging to that sector which have already been registered by the Ministry of Labour were so registered in violation of article 14 of the Code; moreover, article 14 of Law No. 1/015 gives trade unions a right of recourse to the Administrative Chamber of the Supreme Court in case of refusal of registration by the Minister of Public

Services. Finally, despite the repeal of article 29 of the Statutes of Public Employees, the right to strike remains enshrined in Law No. 1/015 of 29 November 2002.

C. The Committee's conclusions

402. *The Committee notes that the allegations in the present complaint concern: (a) government interference in the internal activities of COSYBU and the refusal to recognize Dr. Hajayandi as chairman of that organization; (b) the Government's refusal to respect the choices made by the most representative organization regarding the nomination of workers to tripartite institutions; (c) the dismissal of Dr. Hajayandi, considered by the complainant organization to be an unjust and anti-union act; and (d) excessive restrictions on freedom of association brought about by Law No. 1/015 of 29 November 2002, regulating the exercise of the right to organize and the right to strike in the public service.*
403. *As to the first set of allegations, the Committee notes that they now seem to be a thing of the past. The documents provided in support of the complaint show that during 1999-2000 there was a great deal of inter-trade union rivalry within COSYBU and a sense of uncertainty surrounding the Chair, which the extraordinary congress of 29 April 2000 was supposed to resolve. The Ministry of Labour tried to ascertain that the former chairman of COSYBU, Mr. Niyongabo, had been discharged according to normal procedure (letter dated 10 February 2000) and continued to recognize him as chairman for a certain period (Ruling No. 570/400/CAB/2000 dated 10 May 2000). Dr. Hajayandi was prevented from actively participating in the May Day celebrations in his capacity as chairman of COSYBU. Subsequently there have been some developments. After a meeting held on 8 January 2002 under the aegis of the Minister of Labour, when those trade union representatives present (with the exception of Mr. Niyongabo) confirmed Dr. Hajayandi in his post, the Minister wrote to Dr. Hajayandi in his capacity as chairman of COSYBU, on 24 January 2002, informing him that he would assess "... over the next six months, the outcome of [your] efforts to deal with the after-effects of the leadership crisis within the executive of COSYBU and affiliated trade union organizations". Despite some initial difficulties, notably giving rise to an appeal to the Credentials Committee of the International Labour Conference, Dr. Hajayandi attended the 2003 and 2004 Conferences as a worker delegate. In both these years he also attended the May Day celebrations in Burundi in his capacity as chairman of COSYBU.*
404. *Taking into account the initial difficulties experienced by Dr. Hajayandi and the new executive of COSYBU after their election in April 2000, the Committee recalls that it is up to workers' organizations themselves to determine the conditions under which their trade union officials are elected, and that the authorities should refrain from any undue interference in the exercise of the right of workers' and employers' organizations to freely elect their representatives, which is guaranteed by Convention No. 87 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 351], the fundamental idea of Article 3 of Convention No. 87 being that, workers and employers should decide for themselves the rules which govern the administration of their organizations and the elections which are held therein [see **Digest**, op. cit., para. 354]. Given the circumstances, the Committee feels that this matter has now been resolved and considers that this aspect of the case does not call for further examination.*
405. *Regarding the alleged refusal by the Government to respect the choices made by the most representative organization when nominating workers in tripartite institutions, the Committee notes that, according to the complainant organization itself, the situation regarding the National Labour Council has been resolved; however, the complainant organization continues to insist that the situation within the other tripartite institutions be put in order. For its part, the Government states that it respects the choice of the workers within the tripartite institutions as made by the most representative organization, and*

undertakes to rectify any mistakes that might have been made. Taking note of this formal undertaking on the part of the Government and noting that Burundi has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Committee recalls the importance that it attaches to the participation of workers' and employers' organizations on various joint and tripartite consultative bodies [see *Digest*, *op. cit.*, para. 942-949]. The Committee expects the Government to take these principles fully into account with regard to the choice of workers' representatives within these bodies.

406. Regarding the dismissal of Dr. Hajayandi, the Committee notes that this action can be traced back to a letter sent on 24 March 2000 by Dr. Hajayandi to the Minister of Labour, in which, in his capacity as First Secretary of the Free Trade Union of Workers of the National Social Security Institute (SLT-INSS), he expressed the concerns of the workers and the trade union concerning anomalies in the composition and representativity of the governing body of the INNS, the latter being his employer at the time. He ended his letter saying: "... our main concern is that the INNS should have a reinvigorated governing body, no longer afflicted by the monopoly and the defects by which it has been characterized over the past few years". The Director-General of the INSS, supported by the organization's governing body, requested Dr. Hajayandi to provide further explanation (letter dated 12 May 2000) reminding him that he had previously been dismissed in October 1998 for "bad language", although this decision had been commuted to a 15-day suspension. As his response was considered unsatisfactory, the Director-General of INSS decided to dismiss Dr. Hajayandi for gross misconduct, without compensation in lieu of notice or for dismissal, on 29 May 2000 (Ruling No. DG/2973/2000). This dismissal ruling also mentions the worsening working relations between the hierarchy and Dr. Hajayandi, as well as an unauthorized change in itinerary when Dr. Hajayandi was on mission in May 2000, but which he argues was necessary owing to the danger represented by rebel forces along the main road in question.
407. Dr. Hajayandi has lodged an appeal against his dismissal. Amongst the numerous supporting documents submitted, the Committee notes in particular the "opinions and observations" of the Director of the Labour Inspectorate who, after having heard from the two parties, concluded that: "... the executive of the INSS does not make any distinction between Dr. Pierre Claver Hajayandi's trade union and professional activities. Thus the executive refers to article 58 of the Labour Code to penalize Dr. Hajayandi, as though he was simply a worker employed by the INSS. The executive does not seem to recognize him as a trade union official even though he wrote to them [on 24 March] in his capacity as First Secretary of the INSS trade union "... I believe that the complainant should be treated as a trade union official protected by article 282 of the Labour Code in the case of the first accusation levelled against him. In effect, this article states that trade union officials at all levels cannot have legal, administrative or other proceedings brought against them simply for correctly exercising the union rights accorded to them by law. I think that when considering the seriousness of the nature of his failure to fulfil his professional obligations, the strained relations between the First Secretary of the INSS workers' trade union, Dr. Pierre Claver Hajayandi and the INSS authorities need to be taken into account" (minutes of non-conciliation meeting No. 29/2001, 14 June 2001).
408. The Committee notes the opinion of the Director of the Labour Inspectorate, the competent body in this instance, who decided in favour of the complainant, taking into account the distinctions necessary due to his dual status, and having familiarized himself with all the facts and evidence, as well as having heard from the two parties. In this respect, the Committee recalls that although holders of trade union office do not, by virtue of their position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered

as legitimate trade union activities [see **Digest**, *op. cit.*, para. 726]. The documents submitted indicate that the communication for which the complainant was sanctioned fell within the category of normal trade union activities.

- 409.** Moreover, the Committee draws attention to Convention No. 135, ratified by Burundi, and Recommendation No. 143 concerning workers' representatives, in which it is expressly established that workers' representatives should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as workers' representatives or on participation in union activities in so far as they act in conformity with existing laws, Conventions, collective agreements or other jointly agreed arrangements [see **Digest**, *op. cit.*, para. 732]. Noting that the appeal lodged by Dr. Hajayandi is pending, the Committee trusts that, given the abovementioned principles and the circumstances of this case, including the advice given by the Director of the Labour Inspectorate, Dr. Hajayandi will be reinstated in his functions without loss of pay. If, however, the competent court were to decide that a reinstatement is not possible in view of the specific circumstances, in particular due to the lengthy period elapsed since Dr. Hajayandi's dismissal, the Committee expects that the court will order an appropriate redress, taking into account both the damage incurred by this trade union representative and the need to prevent the repetition of such situations in future, through the imposition of adequate compensation. The Committee requests the Government to keep it informed of developments in this respect and to provide it with a copy of the judgement.
- 410.** As to Law No. 1/015 of 29 November 2002, regulating the exercise of the right to organize and the right to strike in the public service ("the law"), the Committee notes that COSYBU, in a communication dated 3 November 2003, made certain observations on this legislation which it transmitted to the Committee of Experts on the Application of Conventions and Recommendations [Commission of Experts, Report III(1A), 2004, pp. 55-56], which will be able to deal with the issue as a whole once it has received the Government's response concerning the problems raised by the law in question. As to the aspects directly concerning the complaint, the Committee notes a contradiction with regard to consultation on the subject of the law. COSYBU alleges that there has been no consultation whatsoever; for its part, the Government states that the trade unions were involved in the law's elaboration, as can be seen from the minutes of the meetings, but these minutes are not enclosed with the communication. In this regard, the Committee draws the attention of the Government to the importance it attaches to prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law [see **Digest**, *op. cit.*, para. 930]. The Committee invites the Government to hold, at a future date, appropriate consultation with employers' and workers' organizations during the elaboration and adoption of such legislation.

The Committee's recommendations

- 411.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee trusts that, Dr. Hajayandi will be reinstated in his functions without loss of pay. If the court were to decide that a reinstatement is not possible in view of the specific circumstances, in particular due to the lengthy period elapsed since Dr. Hajayandi's dismissal, the Committee expects that the court will order an appropriate redress, taking into account both the damage incurred by this trade union representative and the need to prevent the repetition of such situations in future, through the imposition of adequate compensation. The Committee requests the Government to keep it*

informed of developments in this respect and to provide it with a copy of the judgement.

- (b) *The Committee requests the Government to fully take account of the choice of workers' organizations in nominating their representatives for joint or tripartite bodies.*
- (c) *The Committee requests the Government to undertake appropriate consultation of workers' and employers' organizations in the future with regard to the elaboration and adoption of legislation in the field of labour law.*
- (d) *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*

CASE NO. 2257

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

Complaint against the Government of Canada concerning the Province of Quebec presented by

- **the National Confederation of Managerial Staff of Quebec (CNCQ)**
- **the Association of Senior Managerial Staff of Health and Social Services (ACSSSS)**
- **the Association of Branch Managers of the *Société des alcools du Québec* (ADDS/SAQ) and**
- **the Association of Managerial Staff of the *Société des casinos du Québec* (ACSCQ)**

Allegations: The complainant organizations allege that there is no legislative protection of their right of association against employer interference, that they have been prevented from conducting collective bargaining, that the right of managerial staff in Quebec to bargain collectively regarding their working conditions is not respected and that there is a lack of mechanisms for settling disputes in the absence of the right to strike

- 412.** The complaint is contained in a communication of 18 March 2003 sent by the National Confederation of Managerial Staff of Quebec (CNCQ), the Association of Managerial Staff of the *Société des casinos du Québec* (ACSCQ), the Association of Senior Managerial Staff of Health and Social Services (ACSSSS) and the Association of Branch Managers of the *Société des alcools du Québec* (ADDS/SAQ).
- 413.** The Government of Canada forwarded the reply of the Government of Quebec in a communication dated 23 April 2004.

414. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

415. In their communication of 18 March 2003, the complainant organizations allege that their right of association is not adequately protected against employer interference, that they cannot conduct collective bargaining concerning the working conditions of managerial staff in Quebec, that, in the absence of the right to strike, they do not possess a mechanism for settling labour disputes, and that the exclusion of managerial staff from the general provisions of collective labour law in Quebec is fundamentally discriminatory. They describe the background of their fruitless attempts to have their rights recognized, which have been continuing since 1977 (c.f. Annex 1).

The status of the complainant organizations

416. The **National Confederation of Managerial Staff of Quebec (CNCQ)** is a grouping of 18 associations of managerial personnel representing almost 6,500 employees in the municipal, public and parapublic sectors in Quebec. The Confederation, founded in 1992, has always had the following aims: to replace the consultative system set up by the Government of Quebec with a real collective bargaining system; to represent all managerial personnel in Quebec, including executives working in private enterprises, no longer parapublic sector management only; to induce the Government of Quebec to adopt specific legislation or, at least, to amend the Labour Code so that it no longer excludes managerial staff.

417. The **Association of Branch Managers of the Société des alcools du Québec (ADDS/SAQ)**, founded in 1977, is an association which today represents more than 350 branch managers of the Société des alcools (ADDS/SAQ) throughout Quebec. Its members are primary executives in that the personnel under their management are all unionized workers. The aim of the ADDS/SAQ is, among other things, to protect and improve the labour conditions of its members. The *Société des alcools du Québec* (SAQ) recognizes the ADDS/SAQ as representative of all SAQ branch managers in the area of labour relations, but does so on a purely voluntary basis. According to the terms of a Memorandum of Understanding signed in August 2000, the SAQ must consult the ADDS/SAQ before deciding on or altering the working conditions of that association's members. By virtue of this Memorandum of Understanding, the SAQ agrees to deduct the fees demanded by the ADDS/SAQ from the salaries of all the branch managers. Thus, the ADDS/SAQ enjoys a voluntary form of recognition by the employer, the SAQ, that grants it the privilege of being consulted but not that of being able to bargain collectively for its members as a whole.

418. The **Association of Managerial Staff of the Société des casinos du Québec (ACSCQ)**, founded in 1997, is an association that, today, has nearly 220 members from the casinos of Hull and Montreal. The members of these associations work as "inspectors" and are therefore primary executives, as the workers under their management are unionized. The role of the ACSCQ is to represent its members and to advocate their economic, social and occupational interests to their employer, the *Société des casinos du Québec* (SCQ). To this end, the ACSCQ and the SCQ signed a first Memorandum of Understanding in May 1998, recognizing the ACSCQ as representative of its members for the purposes of labour relations. Thus, the ACSCQ has the right to be consulted by the employer's representatives before labour conditions are established or modified. For its part, the SCQ agrees to deduct

members' union fees from their salaries and allow ACSCQ representatives leave of absence with pay so that they can participate in meetings with the employer's representatives.

- 419.** The **Association of Senior Managerial Staff of Health and Social Services (ACSSSS)**, founded in 1973, is an association that represents around 1,600 directors of public services in charge of services provided in health and social security establishments in Quebec. The members (around 1,000) of this voluntary association organize and coordinate human, financial and information resources in these establishments. ACSSSS members are members of staff at the establishments where they work. Hence, the ACSSSS operates in the parapublic sector. It is recognized by the Government of Quebec as the representative of its members, who, for administrative purposes, are described as senior management. However, considering their duties and the way in which the hierarchy of these establishments functions, these personnel should, in fact, be considered as middle management. The recognition they have is the result of a decree adopted by the Government of Quebec and cannot be compared to the benefits that would be derived from the implementation of a law or general regulation recognizing workers' associations and furthering the exercise of their freedom of association. In effect, the Government of Quebec passed this decree in its role as employer. It was a civil act, rather than a use of public power. Since the Government can only express itself by decree, it had to pass a decree to give formal recognition to the ACSSSS as an interlocutor. However, the Government is not compelled by any law or regulation to recognize this association and could unilaterally withdraw its recognition of the ACSSSS at any moment. In this regard, therefore, this association is in no better position than the two other complainant associations described above.

The status of the members of the complainant organizations

- 420.** The members of the associations that are party to this complaint are all members of primary-level or middle management. As such, they exercise some management authority over individuals who, generally, are not part of management. However, although they can be consulted or may even take part in certain discussions on the broader policy or administrative orientation of their organization or company, these personnel do not have a decision-making role in such areas.
- 421.** The complainant organizations all enjoy a certain level of recognition by their respective employers or by the ministry overseeing them. In theory, therefore, they are consulted when the employers are drawing up or altering the working conditions of their members. Nevertheless, even where the employers are obliged to consult with the unions, this level of consultation relies on the good faith of the employer, since no sanctions are applied where this obligation is not met. At best, the role played by the associations is purely consultative and demonstrates the limits of their power. In no sense are the associations recognized in order that they may take part in real collective bargaining on the working conditions of their members; they have merely the right to be consulted. The employer therefore remains the sole decision-maker in establishing working conditions for management.
- 422.** While this complaint contests the legislative and statutory situation in the Province of Quebec with regard to recognition and guaranteeing of the right to collective bargaining, it must be pointed out that the employers involved in the complaint are either part of the parapublic sector (as in the case of the ACSSSS) or are state organizations independent of direct government control but nevertheless connected to the operators of the State. In neither case, however, are the members of the complainant associations officials of the Government of the Province of Quebec in the eyes of the law.

The general legal framework

423. Collective labour relations in Quebec are regulated by the Labour Code (L.R.Q., C.C-27). Even though this Code has undergone several revisions, including in 2000, the law has maintained the exclusion of management from the jurisdiction of the Labour Code. All managerial personnel in Quebec are affected by this exclusion, not only those represented by the complainant organizations. The Code establishes and explains all the procedures for setting up a trade union at a place of employment by means of obtaining a certificate of accreditation, and provides accredited unions with the necessary tools for collective bargaining and for concluding collective agreements. The Code prohibits interference into workers' right of association and collective bargaining, and lays down the relevant sanctions.
424. However, the sphere of application of the Labour Code is unduly restricted owing to its restrictive definition of the term "employee". Section 3 of the Labour Code states that "Every employee has the right to belong to the association of employees of his choice, and to participate in the formation, activities and management of such an association." The term "employee" is defined as follows in section 1(*l*) of the Labour Code: "Employee: a person who works for an employer and for remuneration; *however, the word does not include:* (1) a person who, in the opinion of the Commission, is employed as manager, superintendent, foreman or representative of the employer in its relations with its employees". The concepts of manager, superintendent, foreman or representative of the employer in its relations with employees have been interpreted liberally by the courts with the consequence that a significant number of workers who otherwise possess all the required qualities and interests to bargain collectively on their working conditions have been placed in the category of managerial personnel who may not become unionized. As a result, management are excluded from the sphere of application of the Code wherever the Commissioner of Labour considers them to be managers, superintendents, foremen or representatives of the employer in its relations with employees.
425. The inclusion of management in the current Labour Code would doubtless constitute an improvement to the situation as it now stands, but it is important to note that that would not fulfil the requirements of international labour Conventions, which do not count it sufficient for a right to be given in theory but also require that specific measures be taken to facilitate the exercise of that right. Through accreditation, the Labour Code has, in effect, limited the recognition of trade union representation to enterprise level rather than sector level. Consequently, even though they are not insignificant in number overall, managerial personnel, who are few in number by comparison with other employees in an enterprise, are not generally able to organize in trade unions or enterprise associations. When they do succeed in organizing, it is generally in branches of economic activity, for the purpose of sectoral negotiations.

The points of contention

426. With regards to mechanisms for settling disputes, the CNCQ and its member associations of managerial staff demand that the Government of Quebec allow trade unions to be created for this category of workers that are separate from those of the employees under their management, in order to limit conflicts of interest arising from their belonging to the same union organizations. It also demands that an enforceable mediation and conciliation mechanism be established by common consent and with the trust of the interested parties, in the place of the right to strike. The CNCQ also contests the lack of any legislative protection for management associations and their members against interference or intimidation on the part of employers – a form of protection granted to other employees' associations in Quebec.

427. In respect of the forms of recognition accorded to management staff, the complainant organizations stress that these are very precarious, as they can be withdrawn unilaterally at any moment and the members of the aforementioned associations enjoy no protection against any form of pressure or attempted interference on the part of the employer. It is therefore vital for the members of the complainant associations of managerial personnel that, as well as being granted the right to recognition for the purposes of collective bargaining and the right to make use of conflict resolution mechanisms, they be protected from attempts at interference and intimidation made by employers. Various examples demonstrate how vulnerable they are to employer intrusion into their activities.

(a) The ADDS/SAQ

On several occasions in the last four years, the employer, the SAQ, has altered the labour conditions of its branch managers without even carrying out prior consultation of the ADDS/SAQ as stipulated in the Memorandum of Understanding (working hours altered unilaterally; elimination of overtime; restrictive leave regulations; remuneration; etc.). Furthermore, several attempts have been made to decrease the time off granted to ADDS/SAQ members to attend to the activities of their association. A recent arbitral decision showed the weakness of the Memorandum of Understanding that had been concluded with the employer when the arbitrator noted that a director does not have the right to appeal against a clause in his/her conditions of labour unless the matter in question is a disciplinary measure taken by the employer.

(b) The ACSCQ

The ACSCQ, like the ADDS/SAQ, has only a right of consultation and not a right to be a party in bargaining as a representative of its members. Similarly, the ACSCQ is recognized on a strictly voluntary basis by the employer, who can therefore unilaterally decide to ignore it at any moment. Furthermore, the members of the association are not protected in any way against interference or reprisals that could be taken against them by their employer because of their trade union activities: refusal of leave of absence; refusal to include the ACSCQ in discussions regarding the renewal of collective insurance, as the employer preferred to nominate a director of the enterprise as the representative of management; a note by a senior executive to the effect that “an officer of the association cannot be temporarily assigned to carry out the work of his/her immediate superior”; direct consultation by employers of management with regard to their working conditions, thus disregarding the recognition of the association.

(c) The ACSSSS

The ACSSSS has the right to be consulted before management policies establishing the working conditions of its members are defined or altered. Thus, this consultative role does not allow the ACSSSS to bargain collectively in respect of the working conditions of its members. As with the other associations, ACSSSS members are not protected in any way against acts of interference or intimidation that could be perpetrated against them. Senior management in health and social services therefore find themselves in just as precarious a situation as the members of the other associations with regard to the exercise of their freedom of association. On occasion, moreover, this has led to conflict, of which some examples follow:

- working conditions modified without prior consultation;
- where there is consultation, it is carried out very speedily, by telephone, etc., ensuring that any exchange of views bears not the remotest resemblance to bargaining;

- dissuasion by local employers of management from belonging to a representative organization;
- refusal by local employers to deduct union fees;
- direct consultation by employers and employers’ associations of management with regard to their labour conditions, thereby failing to recognize their association;
- financing by the Government of Quebec of the body charged with representing managers with regard to insurance and retirement; suspension of this financing (in March and April 1994) in order to induce the association to abandon proceedings against the Government;
- discriminatory double exaction (Bill 102) for managerial staff whose associations had not abandoned proceedings against the Government (letter of 18 May of the Associate Secretary, Labour Relations and Human Resources Management);
- only those associations that signed the “accord” of 1994 have the right to manage insurance plans and thereby fulfil their responsibilities in representing their members before the Government;
- it is rendered less desirable to be a member of the association and to pay the fees (“Why pay for what is merely consultation?” “Why pay fees if there is no collective bargaining?”);
- many other actions which, if they were taken against non-management “employees”, would be punishable under the Labour Code.

428. The complainant organizations also stress that working conditions have been altered on numerous occasions without any consultation of the associations or using evasive methods of direct consultation with their members by telephone or email. This goes to show that the form of recognition currently afforded to these associations is clearly insufficient and does not facilitate real discussion or collective bargaining.

429. As regards trade union law, the Supreme Court of Canada pronounced its judgment in the case *Dunmore v. Ontario* in December 2001. In this case, the Court had been called upon to pronounce a judgment on the legality of a clause in the legislation of the Province of Ontario excluding agricultural workers from the legal provisions regarding labour relations. The Supreme Court stated that to deny agricultural workers the benefit of a law instituting provisions for collective labour relations amounted to an attack on freedom of association and violated paragraph 2(d) of the Canadian Charter of Rights and Freedoms. Furthermore, the Court concluded that there was no justification for this violation in a free and democratic society, and that the clause in the legislation restricting the right of agricultural workers to freedom of association was, consequently, unconstitutional. The ILO Committee on Freedom of Association made a similar statement on the matter [Case No. 1900, 308th Report, paras. 139-194] and recalled the same principles with relation to school principals in the Province of Ontario [Case No. 1951, 311th Report, paras. 170-234].

430. In view of the evidence provided, the complainant organizations request the Committee to come to the conclusion that the legislation of Quebec does not comply with the standards and principles of freedom of association in this regard, since it does not permit managerial personnel to form real trade unions, does not give them a genuine right to bargain collectively, fails to provide a mechanism for settling disputes to compensate for the prohibition on strike action and does not offer adequate protection against interference or domination by employers. The complainant organizations add that they would not oppose

legislation prohibiting managerial personnel from joining trade unions which represented non-management workers, as long as they enjoyed the same rights as these other unions, i.e. as long as they were able to organize in their own unions and conclude collective agreements. Lastly, they stress their willingness for the Committee to intervene in such a way as would allow the parties involved to meet in the context of negotiations to bring about a settlement of this dispute.

B. The Government's reply

431. In its communication of 23 April 2004, the Government of Quebec submits essentially: that the legal provisions and the procedures applicable to the complainant associations are in conformity with Conventions Nos. 87 and 98 and that, although managers are excluded from the general system in place established by the Labour Code, they are nevertheless covered by a structured system allowing them to exercise their freedom of association, i.e. the recognition of their right to associate and to establish their employment conditions; that they do enjoy adequate protection against acts of domination and interference by employers; and that it is not necessary to establish a special disputes settlement procedure for the managers concerned.

The legal framework

432. The rules on collective labour relations are contained in the Labour Code (hereafter “the Code”), article 3 of which provides that “Every employee has the right to belong to the association of employees of his choice, and to participate in the formation, activities and management of such association.” The scope of the Code is circumscribed by the definition of the term “employee” which does not include “a person who ... is employed as manager, superintendent, foreman or representative of the employer in his relations with his employees”. Therefore, employees who exercise managerial functions or represent employers in their relations with employees will not be considered as employees within the meaning of the Code. The constitutive elements of the managing power are, inter alia, the power to assign work, to control its execution and elaboration, and to evaluate its results. This distinction has existed for 60 years in the labour legislations of Quebec, Canadian and other provincial jurisdictions and elsewhere in North America.

433. As regards internal law, Quebec adopted in 1975 the Charter of Rights and Freedoms which provides in article 3 that “every person enjoys fundamental freedoms such as ... freedom of association”. It is therefore considered as a fundamental freedom and is also protected by article 2(d) of the Canadian Charter of Rights and Freedoms.

Judicial interpretation

434. The right to organize has been given a liberal interpretation by courts. The Supreme Court of Canada has applied these principles in labour relations matters. In 1999, it ruled in the *Delisle* case that the fact that a group of workers is excluded from a law governing collective labour relations does not necessarily constitute a violation of the freedom to associate provided for in the Canadian Charter, as the protection thus given existed irrespective of any legislative framework; in that case, the Court considered that a group of workers had not been prevented from establishing an association of workers in spite of its exclusion from the legislative framework, since they had been able to establish an organization. The situation of managers concerned here is similar, since the associations and the National Confederation of Managerial Staff of Quebec (CNCQ) exist and, in fact, do represent managers in their labour relations with the employers concerned.

435. As regards the complainants' argument based on the *Dunmore* case, the Government emphasizes that this judgement concerned agricultural workers excluded from the Ontario law governing collective labour relations. These workers brought evidence that they were unable to establish an association as they were scattered on a wide geographical area and had little financial means to organize themselves without state protection. It is in that specific context that the Supreme Court concluded that there had been a violation of the right to associate guaranteed by the Canadian Charter since the workers in question could not establish an organization without a basic legal protection. Therefore, the *Dunmore* case cannot apply to managers in this case since they are not isolated and powerless workers unable to regroup themselves in order to defend their interests, and are represented by duly constituted associations that are regrouped in a confederation. They therefore fully enjoy the freedom of association guaranteed by the Charter. In addition, there is no law or regulation that prohibits the creation of managers' associations; quite the contrary, the Professional Syndicates Act provides a legal basis for the constitution of associations.

The employers and associations involved

436. The Quebec health and social services sector comprises 228,000 unionized workers; it is a decentralized parapublic sector composed of 468 establishments and 18 bodies which are all separate employers. The Association of Senior Managerial Staff of Health and Social Services (ACSSSS) regroups the "senior managers" as defined in the regulation concerning some employment conditions of managers of national boards and health and social services establishments (hereafter "the Consolidated Regulation"). There are 1,574 senior managers, 895 of whom are members of the ACSSSS. Under article 3 of the Consolidated Regulation, a senior manager is "a manager appointed by the governing body of an employer, whose position is at a senior level of management, according to the duties set for that post in the organization chart of the employer, and whose evaluation class is in conformity with the classification standards established by the minister". In fact, senior managers of the health and social services sector exercise functions of directors in all the activity branches of the health sector; they are responsible for the planning, assignment, control and evaluation of work, and make decisions concerning the management of all their human, financial and material resources involving their employers' responsibility. The objects of the ACSSSS are the development and promotion of the employment conditions of senior managers of the health and social services sector; it represents senior managers in the elaboration and implementation of their employment conditions, provides its members with individual assistance and representation, and helps them in the exercise of rights and recourses flowing from their status and employment conditions, including before competent jurisdictional and arbitration bodies.

437. The *Société des alcools du Québec* (SAQ) is a state society with commercial objects, which counts more than 6,000 employees and 398 branches throughout the Province of Quebec; 355 managers are members of the Association of Branch Managers of the *Société des alcools du Québec* (ADDS/SAQ). According to the manual of employment conditions: "under the responsibility of the regional director, branch managers ... plan, organize and control the operation of a SAQ branch, in order to provide clients with a high-level service by applying commercial programmes and making optimal use of resources, to maximize sales and profitability of the branch, while taking into account the standards and policies of the enterprise and its specific environment". Directors have a role of entrepreneur and manager and represent the employer at several levels: they are in charge of recruitment of staff and may impose disciplinary sanctions; they represent the employer for the interpretation of the collective agreement, for administration acts and with the local business community; they are responsible for stock supply and monies coming from sales; they must prepare the budget of their outlet and ensure its implementation. The ADDS/SAQ regroups 355 members and is recognized under the Professional Syndicates Act. Under its Constitution, it must "promote the general well-being of SAQ branch

managers, and their financial, social, moral and intellectual interests. While taking into account the importance of the duties of these persons in the community, the association strives to obtain, by legitimate means, the best possible employment conditions for its members”. The constitution of the ADDS/SAQ has been incorporated into the manual of employment conditions of branch managers. The ADDS/SAQ commits itself “to ensure that all decisions and policies in favour of their well-being and competence, will be fully and uniformly applied; to ensure that the enterprise develop their competence; to take an active part in the orientations and decisions of the enterprise, while maintaining its autonomy; and to be the direct link between its members and the management of the SAQ”. The ADDS/SAQ defends the interests of its members as regards the elaboration of employment conditions and management policies of the enterprise, and provides them with individual representation services in case of dispute.

- 438.** The *Société des casinos du Québec* (SCQ) is a subsidiary of the *Société des loteries du Québec*. It operates three casinos, located in Montreal, Hull and Pointe-au-Pic and has more than 3,500 employees. The members of the Association of Managerial Staff of the *Société des casinos du Québec* (ACSCQ) are exclusively “inspectors”; they control, supervise and evaluate unionized employees. The ACSCQ Montreal and Hull sections have 135 and 38 members, respectively. The objects of the ACSCQ are: to represent its members; to defend their social, economic and professional interests; in particular to ensure the application of their employment conditions; to promote their individual and collective training programmes; to examine improvements to be brought to employment conditions; and ensure that the employer complies with provisions relating to the employment conditions of staff.
- 439.** The managers represented by the complainant associations thus constitute a relatively small number of employees who have, in their respective spheres, management powers to assign, control, supervise and evaluate the work of unionized employees. They represent the employer in various respects; some of them even have the power to hire and dismiss staff. This is why they are not covered by the Labour Code.

Legal and institutional recognition of associations

- 440.** The complainant associations were established under the Professional Syndicates Act (hereafter “the Act”), article 6 of which provides that such syndicates “shall have exclusively for object the study, defence and promotion of the economic, social and moral interests of their members”. One of the basic objectives of this Act, adopted in 1924, was to give clear legal status to unions. Being thus granted legal personality, the complainant associations have rights and privileges for the realization of their object. Article 9 of the Act provides that “professional syndicates may appear before the courts” and “enter into contracts or agreements with all other syndicates, societies, undertakings or persons, respecting the attainment of their objects and particularly such as relate to the collective conditions of labour”. Article 20 provides in addition that “syndicates, constituted or not under this Act, unions and federations of syndicates may constitute themselves into a confederation” and article 21 that these unions and federations “shall enjoy all the rights and powers conferred upon professional syndicates”. The three associations in this case have used this provision by adhering to the Quebec National Confederation of Managers, itself established under this Act.
- 441.** In addition to their legal recognition, the associations in question enjoy an institutional recognition from respective employers, under protocols of agreement or government decrees:
- the ACSSSS is recognized since 1980 by decree “as representative for industrial relations purposes” of the employees it represents and article 3 of the Consolidated

Regulation mentions the ACSSSS by name in the definition of “managers’ association”;

- the ADDS/SAQ is recognized by the SAQ with which it has signed a memorandum of agreement concerning its recognition as representative, for industrial relations purposes, of all SAQ branch managers, and which is incorporated in their manual of employment conditions;
- the ACSCQ is recognized since 1997 by the SCQ, with which it has signed two memoranda of agreement (for the Montreal and Hull casinos) concerning its “recognition, for industrial relations purposes, as representative of the inspectors who are members of the Association”.

442. That institutional recognition carries with it concrete effects for each association. The first, and most important, one is to formalize their status as sole representative of managers in their relations with employers, both for the determination of employment conditions and the defence of their interests when an individual grievance is submitted to arbitration. In addition, the instruments of recognition provide for check-off facilities for association fees. The Government gives the following details as regards each association.

443. The recognition instruments of the ACSSSS provide that it must be consulted before the determination or modification of employment conditions of the senior managers it represents. The instruments also deal with local management policies: article 6 of the Consolidated Regulation states that each employer of the health sector is obliged to consult managers and their representatives before said local policies are decided. When a disagreement between a manager and the employer concerning the interpretation or application of the Consolidated Regulation is submitted to an arbitrator, the manager may be accompanied by a representative of his association; the arbitrator’s decision is final and binding for both the manager and the employer. The Consolidated Regulation also contains specific provisions for check-off facilities by the employer.

444. The memorandum of agreement concerning the ADDS/SAQ provides that it will be consulted by the employer “before the determination or modification of employment conditions of the branch managers” it represents. That provision is incorporated in the manual of employment conditions, which also establishes the right of managers to be accompanied by a representative of their association when they are summoned to a disciplinary interview. The memorandum provides that the SAQ must deduct the regular ADDS/SAQ contribution from the pay of all managers. The SAQ goes further than the provisions of the protocol by providing the ADDS/SAQ with the list of all outlet directors, every 28 days. The manual also provides that the ADDS/SAQ must be consulted in case of technological changes in the enterprise.

445. The memoranda of agreement concerning the ACSCQ provides that the employer must consult it “before the determination or modification of employment conditions of the inspectors of casinos” and that the *Société des casinos* must deduct and transfer the contribution at the rate established and communicated by the ACSCQ.

446. The Government concludes from the above that, even though managers are not covered by the Code, they may join associations legally constituted under the Act, some of which have existed for several decades, to defend and promote their interests. They are regrouped within the National Confederation of Managerial Staff of Quebec (CNCQ). They are recognized by their respective employers under a common system, through memoranda of agreement or decrees. That recognition, which has never been denied since the initial act of recognition, gives them a unique status as representative of their members, notably as regards the determination of employment conditions. The associations’ capacity to

represent the individual interests of managers is even prescribed by regulation as regards the ACSSSS and the ADDS/SAQ. In addition, the recognition instruments provide for check-off facilities, which ensures a secure and regular financing to associations.

447. As regards compliance with Convention No. 87, the Government submits that the distinction made in this case is in line with the position of the Committee on Freedom of Association when it states that “It is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers” [*Digest of decisions and principles of the Freedom of Association Committee*, 1996, 4th edition, para. 231] since it respects their right to establish their own associations of managers. The Committee of Experts on the Application of Conventions and Recommendations also stated that provisions which prohibit managerial staff “from joining trade unions in which other workers are represented are not necessarily incompatible with the Convention, provided they had the right to establish their own organizations and that the right to belong to those organizations was restricted to persons performing senior managerial or decision-making functions”. The Government therefore submits that it complies with the provisions of Convention No. 87 in this respect. Managers associations exist and effectively exercise freedom of association since they also represent their members in their collective relationship with employers as regards the determination of employment conditions. The Government then provides, for each sector, detailed information on the procedures for the determination of employment conditions and the results obtained.

Employment conditions of managers of the health and social sector

448. The Ministry holds exchanges on employment conditions with the representatives of the establishments and those of the ACSSSS since the late 1970s; at that time, no employment condition was in writing and consultations concerned all matters [workers of the Health sector in Quebec are not public servants (*“fonctionnaires”*) as defined by the Public Service Act, but they are part of the parapublic sector]. Since 1983, the Minister of Health and Social Services is empowered by the Act to regulate the employment conditions of managers of the sector; all the relevant regulations affirm the binding nature of employment conditions and define the parties’ rights and obligations. In order to structure the process, two consultative committees on industrial relations (CCRP) have been established; their mandate and composition are mentioned in the Consolidated Regulation: “Two consultative committees on industrial relations are established, to discuss problems of interpretation and application of employment conditions, modification projects of such conditions, and any other related issue. ... These two committees are composed of representatives of the associations, the employers and the Ministry: the first committee includes ACSSSS representatives, and the second one includes representatives of the employer and of the ACSSSS. Either party may call a meeting.” When the modifications considered are important, or when it is envisaged to introduce a new work regime, the CCRP meetings are more frequent and more regular, until the consultations are finalized; discussions may sometimes last for several months. Before calling a CCRP meeting, the directorate of the ministry in charge of relations with managerial staff ensures that representatives of the associations are available. All participants have their say in deciding the items to be placed on the agenda. The draft modifications and all documents are transmitted before the meeting to representatives of the employers and associations, so that they may examine them and prepare their comments. All participants may present draft modifications. The first regulations on employment conditions, dating back to 1983, dealt with employment conditions considered as essential such as protection measures in case of redundancy, and redress avenues in case of termination. The gradual implementation of the regulatory process contributed to an increasing and formalizing of exchanges between the Government and the associations representing the managers and the establishments. This

global process has allowed the putting into place of a complete framework of employment conditions for managers of the health sector, in constant consultation with their associations, including the ACSSES.

- 449.** The overall result of these talks, over more than 20 years, is a bulky set of rules which covers the following topics (that are also offered to managers and unionized workers of other public and parapublic sectors): industrial relations; check-off facilities; local management policies; pay; collective insurance package; parental rights; differed pay leave; gradual pre-retirement; training and development; protection measures in case of redundancy; provisions concerning end of employment; redress concerning pay insurance provisions; interpretation and application of employment conditions; redress in case of termination. The various rules are then adopted and incorporated in the Consolidated Regulation, which also provides that each employer (468 establishments and 18 bodies) must adopt local management policies, after consultation of managers' representatives. These local policies cover the following topics: staffing of managers' positions; performance appraisal; training and development; personal file; holiday; social and paid leave; leave without pay; leave for professional matters and public appointments; overtime in exceptional circumstances; redress procedures on the application of these management policies. This part of the Consolidated Regulation also establishes guidelines guiding the employer in the elaboration of some management policies, and provisions concerning violence at work, sexual harassment and discrimination. The Consolidated Regulation, which evolves constantly, constitutes the compendium of the procedures established between employers and managers, describes all the binding employment conditions agreed upon between them, and provides the framework for the elaboration of management policies.

Employment conditions of managers of the Société des alcools du Québec

- 450.** The process of determination of employment conditions at the SAQ is less complex than that in the health sector as it concerns a far lesser number of employees, but it is nonetheless well structured. In accordance with the Memorandum of Understanding and the manual of employment conditions, high-level representatives of the SAQ meet the representatives of the ADDS/SAQ on a quarterly basis, to discuss the corporate policies and the modifications of the conditions of employment of branch managers. Every three months, the ADDS/SAQ submits to the vice-president of sales the subjects it wishes to address during the meeting. On the basis of the subjects proposed by the SAQ and the ADDS/SAQ, the SAQ directorate prepares the agenda and transmits it to the participants a few days before the meeting. In addition, the ADDS/SAQ may communicate at any time with the director of sales, which it does in particular for regular management issues concerning some managers, or for modifications to management procedures. For instance, during the past year, the ADDS/SAQ was able to place the following items on the agenda: pay and retirement package of managers; psychological health at work; reconciliation of work and family obligations; and many other subjects that have been addressed during the meetings, at the request of the ADDS/SAQ or the SAQ.
- 451.** As for results, the corporate policy at SAQ is that managers enjoy at least the same employment conditions as unionized employees. The manual of employment conditions covers a wide spectrum of matters: definition of the status of branch managers (both regular managers, and those on trial); professional ethics standards; principles of pay and annual revision; salary rules, participation and bonus packages; classification of posts and branches; premiums and social benefits; hours of work; various allocations; annual leave, days off; income protection; retirement plan; staffing and internal mobility rules; work appraisal; disciplinary and administrative measures; and recognition of the ADDS/SAQ. Some employment conditions of the managers differ from those established in collective

agreements covering unionized employees, for example: workers have accepted the principle of pay increments identical to those applicable in the public service, whereas managers have preferred a lower indexation rate but with a possibility of bonus; managers have accepted a trade-off between 13 paid sick leave days and an additional contribution of the SAQ to their collective insurance plan, whereas workers preferred to keep the possibility to accumulate sick leave credits.

452. Concerning the specific allegations in the complaint of ADDS/SAQ, the Government states that the SAQ has respected the consultation process and that the discussions made it possible to adjust the proposals made earlier. For example, taking into account the demands made by the ADDS/SAQ, the employer incorporated the value of overtime in the salary of branch managers; as the ADDS/SAQ had submitted that a group of managers assigned to a special project had not benefited from that measure, it was agreed to raise the adjustment from 3.37 per cent to 3.87 per cent. The ADDS/SAQ also alleges that the SAQ has modified the pay structure of branch managers without consultation; however, a document of ADDS/SAQ, entitled “New pay policy”, introduced in 2002 during the quarterly meetings, demonstrates that the revision of pay structure has been addressed. The consultation process continued during the elaboration and implementation of the salary policy and the representatives of the ADDS/SAQ and the SAQ discussed the case of all branch managers who requested a pay increment. The ADDS/SAQ document on the new pay policy indicates that the “main objectives of the ADDS/SAQ have been attained” and also mentions major gains. Finally, the SAQ has not modified any work schedule of branch managers. As regards annual leave, the manual of employment conditions has not been modified, except that leave is restricted to three consecutive weeks, in conformity with the manual of employment conditions. In summary, the whole process agreed between the SAQ and the ADDS/SAQ constitutes a real and formal mechanism of exchanges, through which the conditions of employment and management practices of branch managers are discussed, modified and improved.

Employment conditions of managers of the Quebec casinos society

453. The *Société des casinos du Québec* (SCQ) and the ACSCQ have agreed under article 1(b) of the applicable Memoranda of Understanding “to meet at the request of either party, to discuss their concerns”. In practice, formal meetings take place approximately every two months with one of the sections (Montreal or Hull). The agenda concerns employment conditions and other subjects, such as the problems in regular relations with other levels of the organization. The employer’s representatives may meet on demand with the representatives of the ACSCQ, at varying intervals. As regards the results of this process, the employee manual contains the general employment conditions of inspectors and the policies in force at the Montreal casino: hours of work; pay; leave; sick leave; work appraisal; staffing; training and development; health and safety at work; collective insurance and retirement plans (a similar document is being prepared for the Hull casino). One of the most contentious issues concerns work schedules: about ten meetings were necessary to come to an agreement; the process was positive since a major reorganization of work schedules will be implemented, and could be applied in other locations if successful. The global compensation package and employment conditions of managers of the SCQ are better than those of unionized employees. Although the process established between the SCQ and the ACSCQ is a recent one; it provides a formal basis, which is respected by the parties and ensures permanent discussions and the improvement of employment conditions.
454. The Government concludes from the above that the procedures for the determination of employment conditions of managers are adequate and have produced satisfactory results. The fact that the associations adhere to the results obtained confirms the credibility of

these mechanisms; the associations may now prevail themselves with their members of a body of employment conditions that compare favourably with collective agreements in the public sector. The improvement of employment conditions of managers in this sector results in particular from the fact that they enjoy the advantages already granted to unionized employees and hold privileged positions in their respective organizations. The existing mechanisms allow them to obtain good working conditions; they constitute a structured, binding and permanent process, elaborated in collaboration with the executive of associations and adapted to the particular work organization of each sector. This set of professional relations processes has demonstrated its flexibility through its evolution, in terms of innovation and search for solutions, which guarantees its future success.

Protection against acts of interference and domination by employers

455. The Government submits that the mechanisms available to managers in this respect give them adequate protection, as section 425 of the Criminal Code provides that: “Everyone who ... being an employer or the agent of an employer, wrongfully and without lawful authority ... (a) refuses to employ, or dismisses from his employment any person for the reason only that the person is a member of a lawful trade union or of a lawful association ...; (b) seeks, by intimidation, threat of loss of position or employment, or by causing actual loss of position or employment, or by threatening or imposing any pecuniary penalty, to compel workmen or employees to abstain from belonging to a trade union, association or combination to which they have a lawful right to belong ... is guilty of an offence punishable on summary conviction.” The Criminal Code provides for such offences “a fine up to 2,000 dollars, a penalty of imprisonment of up to six months, or both”. The Government thus submits that it respects the provisions of Convention No. 98 on protection against interference and intimidation by employers, since the associations enjoy adequate protection in this respect.

Disputes settlement procedure

456. Finally, the associations challenge the Government’s position to deny managers the right to appropriate disputes settlement procedures in case of deadlock in negotiations; they argue in particular that the Government should establish a specific disputes settlement procedure for managers, including recourse to binding arbitration as a final step. The Government already underlined in this respect that the employment conditions of managers are determined under a procedure formally recognized by the parties, which obliges employers to consult the representatives of duly established organizations and to put committees into place. The results that have been obtained demonstrate the efficiency of this process, since the employment conditions of managers, as reflected in the various regulations or Memoranda of Understanding are, by nature, comparable to collective agreements. The process works well and does not appear to raise significant problems, mainly because the parties constantly seek to find solutions for the determination or improvement of employment conditions. Managers who want to improve their situation may use their strategic position in their respective organizations. As representatives of the employer with the workers, they have a direct line of communication with the highest hierarchical levels of their organization and can therefore easily use their power and influence to settle disputes. In addition, their associations may find solutions to possible disputes during consultations. This dual avenue provides managers with an adequate mechanism for the defence of their economic and social interests.

457. The Government concludes that this dual system of labour relations, similar in nature with the ones existing in Canada and North America, ensures that the complainant associations may exercise their freedom of association. They enjoy legal guarantees as regards their

recognition and protection against acts of interference and domination by employers, backed by formal procedures for the determination of their members' employment conditions. The Government therefore concludes that it respects its international obligations arising from Conventions Nos. 87 and 98. It attaches to its arguments a bulky set of documents, as well as the relevant legislative, regulatory and contractual texts.

C. The Committee's conclusions

458. *The Committee notes that this case concerns the provisions of labour law for managerial personnel laid down in Quebec labour legislation. The complainant organizations allege: that the Labour Code excludes managerial staff from its sphere of application and thus prohibits them from becoming organized trade unions; that they cannot take part in genuine collective bargaining on the working conditions of their members and have no mechanism for settling labour disputes in the absence of the right to strike; and that the right of association of managerial personnel is not afforded adequate legislative protection against employer interference. For its part, the Government states: that the legal provisions and the procedures applicable to the complainant associations are in conformity with Conventions Nos. 87 and 98; that, although managers are excluded from the general system in place established by the Labour Code, they are nevertheless covered by a structured system allowing them to exercise their freedom of association, i.e. the recognition of the right to associate and to establish their employment conditions; that they enjoy adequate protection against acts of domination and interference by employers; and that it is not necessary to establish a special disputes settlement procedure for the managers concerned.*
459. *With regard to the exclusion of managerial personnel from the scope of the Labour Code, the Committee notes that the restrictive definition of the term "employee" effectively prevents managerial staff from forming trade unions in the sense of the Code, with all the strict rights that flow from it, in particular the right to negotiate collective agreements within the framework of the Labour Code. While noting that managerial personnel can form associations, which enjoy significant prerogatives (see below), the Committee recalls that the only exceptions permitted by Convention No. 87 concern the armed forces and the police, and emphasizes that this exclusion must be defined restrictively [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 219-222].*
460. *Furthermore, noting that the national case law has provided an extensive interpretation of the concept of managerial personnel, the Committee recalls that it is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirements are met: first, that such workers have the right to form their own associations to defend their interests and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership [see **Digest**, op. cit., para. 231].*
461. *The Committee also notes the judgement of the highest court of the land in relation to the exclusion of agricultural workers in the Province of Ontario, to the effect that this exclusion constituted a violation of freedom of association which could not be justified in a free and democratic society under the Canadian Charter of Rights and Freedoms (Dunmore v. Ontario, 2001, S.C.C. 94). The Committee also notes that, in its ruling, the Supreme Court mentioned Articles 2 and 10 of Convention No. 87 with particular reference to the expressions "without distinction whatsoever" and "any organization of workers" [J. Bastarrache, para. 27] and also referred to the decision of the Committee in Case No. 1900 [308th Report, paras. 139-194] with regard to this principle. As regards*

the Delisle case, the Committee notes that this judgement of the Supreme Court concerned policemen (Royal Canadian Mounted Police) a category of worker whose exclusion is permitted under Convention No. 87.

- 462.** *The Committee also notes that the managerial staff associations of Quebec have spent more than 25 years attempting to achieve recognition of their trade union rights under the Labour Code, without tangible results, and that what dialogue there was has now ground to a halt.*
- 463.** *In view of all of the above, the Committee requests the Government to amend the relevant sections in the Labour Code of Quebec so that managerial personnel enjoy the right to benefit from the general provisions of collective labour law and form associations that enjoy the same rights, prerogatives and means of redress as other workers' associations.*
- 464.** *The Committee's conclusions on the other aspects of the complaint follow, with appropriate adaptations, from the conclusion above.*
- 465.** *As regards the recognition of the associations and of their right to bargain collectively, the Committee notes that, under the current system, the complainant associations do enjoy a real form of recognition by their respective employers and participate in the elaboration of their members' employment conditions. These contractual arrangements, therefore, constitute an embryonic form of legal recognition, but one which is not enshrined in a legislative text. The examples given by the complainant associations demonstrate that this recognition is precarious, that it varies among different employers and workplaces, and that working conditions are not codified in **real** collective agreements accompanied by the relevant rights and guarantees. The precariousness of this situation and the uncertainty which it creates in labour relations result from the absence of real legal recognition, within the meaning of the Labour Code, of managerial personnel as "employees" and of their associations with all the rights that would accompany such recognition.*
- 466.** *As regards the issue of the settlement of collective disputes, the exclusion of managerial personnel from the Labour Code means that they do not have access to the usual mechanisms and forms of redress laid down in the Code (conciliation, arbitration, strike). In this regard, the Committee recalls that the right to strike 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]. This right may 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]. The evidence adduced shows that the members of the complainant associations are not public servants, and that the duties of the members of at least two of the complainant associations cannot be included in a strict definition of essential services: namely, the inspectors in casinos, who are members of the ACSCQ; and SAQ branch managers, who are members of the ADDS/SAQ. The members of the ACSSSS are in a different position in this respect, as some of them carry out their duties in hospitals, and the Committee has recognized that such services may be considered essential. As a result, the Committee requests the Government to take the desired steps to ensure that the managerial personnel concerned have the same access to mechanisms for collective bargaining and dispute settlement as other workers, in accordance with the principles of freedom of association.*
- 467.** *With regard to measures of protection against acts of employer interference and domination, the allegations show that this protection leaves much to be desired. Attempts have been made to reduce the amount of leave granted to attend to association activities; requests for such leave have been refused; employers have directly consulted managerial*

staff, bypassing their associations; local employers have discouraged management from belonging to these associations; employers have refused to deduct membership fees; there has been discriminatory treatment in the choice of associations allowed to participate jointly in the administration of insured pension plans. In the final analysis, it is the opinion of the Committee that all of these actions cannot but have the effect of leading current and potential members of the associations to wonder why they should belong to them, since collective bargaining and related rights are not covered by the Code, and since there is no real legal protection against acts which would be punishable by the Code if perpetrated against employees who are covered by the general collective system of labour relations. The provisions of the Criminal Code mentioned by the Government in this respect are not applied by a specialized jurisdiction (such as a labour commission or a labour court) and, in addition do not offer the same level of protection given the necessary onus and degree of proof. The Committee therefore requests the Government to amend the legislation and take the required measures to ensure that the managerial personnel concerned have the same access to means of redress and mechanisms of protection as other workers covered by the Labour Code against acts of employer interference and domination, in accordance with the principles of freedom of association.

- 468.** *The Committee requests the Government to keep it informed of the development of all the aspects of the situation mentioned above, and, in particular, of the measures taken to ensure that legislation is brought into line with the principles of freedom of association.*
- 469.** *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*

The Committee's recommendations

- 470.** *In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee requests the Government to amend the Labour Code of Quebec in order that managerial personnel enjoy the rights flowing from the general provisions of collective labour law and may establish associations that enjoy the same rights, prerogatives and means of redress as other workers' organizations, with particular regard to mechanisms for collective bargaining and dispute settlement and protection against acts of employer domination or interference, all in accordance with the principles of freedom of association.*
 - (b) The Committee requests the Government to keep it informed of the development of all aspects of the situation mentioned above and, in particular, of the measures taken to ensure that legislation is brought into line with the principles of freedom of association.*
 - (c) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*

Annex

Background of the approaches made by managerial staff to the Government of Quebec

August 1977: Creation of the Conference of Associations of Managerial Staff in the Public and Parapublic Sectors. Specific legislation is requested that would recognize the freedom of association of managerial staff and protect those who exercise that right.

Beginning of the 1980s: Instead of recognizing the right of management to collective bargaining, as it does for its other employees, the Government passes various decrees recognizing the representative associations of management personnel in the public sector, educational establishments and health and social services establishments. In these decrees, the Government commits to consult the managerial associations it has recognized before any alteration is made to working conditions. Consequently, state enterprises (SAQ, Hydro-Quebec, etc.) follow suit with regard to their own management.

1992: Certain management associations in the parapublic sector (i.e. not including management personnel in the public services) carry out an assessment of the alternative system to collective bargaining and conclude that the following changes need to be made:

- the consultation system must be replaced by a system of genuine collective bargaining;
- all managerial staff in Quebec must be covered, including management in private enterprises and no longer only those personnel working in the parapublic sector;
- the Government of Quebec must adopt specific legislation or, at least, amend the Labour Code so that it no longer excludes management personnel.

The associations then found the National Confederation of Managerial Staff of Quebec and, in December of the same year, send a request to the Prime Minister, demanding once again that freedom of association be afforded to management.

1993: The Government sets out its policy, namely, that there is absolutely no possibility of granting managerial staff the right to bargain collectively or even of studying the possibility of such a course of action.

21 March 1994: On the eve of the legislative elections in Quebec, the Confederation asks the three political parties to express their opinion on its request to ensure freedom of association for all managerial personnel in Quebec. The party in power repeats the position of the Government; the *Parti québécois* replies saying, “the CNCQ’s request seems more than reasonable to us and any future government formed by this party will commit to tackling the issue of freedom of association for management personnel as a priority”; the third party on the lists does not reply.

June 1994: The International Confederation of Executive Staff (of which the CNCQ is a member) formally brings the issue of the non-compliance of Quebec labour legislation with Conventions Nos. 87 and 98 in respect of managerial staff to the attention of the 81st International Labour Conference.

November 1994: The CNCQ reminds the new Minister of Labour of the commitments made by his party. The Minister of Labour is also informed that the CNCQ and some of its affiliate organizations are planning to submit two complaints to the ILO: the first concerning the refusal of the Government to allow managerial personnel access to collective bargaining; and the second concerning attempts to dominate and interfere on the part of the Treasury Board in 1993-94.

1995: The CNCQ meets with the Minister of Labour and submits a draft bill to amend the Labour Code, ending the exclusion of managerial personnel. The Minister requests the Consulting Council for Labour and the Workforce (CCTMO) to give an opinion on the CNCQ’s proposal.

February 1996: The CNCQ meets with the CCTMO.

Summer 1996: The new Minister of Labour is informed that the trade union representatives of the CCTMO are unanimously in favour of the proposal submitted by the CNCQ.

1998: The Minister proposes setting up a research committee on the freedom of association of managerial personnel. The CNCQ reacts positively, but suggests that the Committee should request resources from the ILO. In the event, the Committee is never established.

June 1999: At the general discussion of the ILO Committee on the Application of Standards, in Geneva, the Government representative of Canada admits that the national legislation of Canada – and that of Quebec – do not comply with international labour standards. With regard to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the representative of the Government of Canada first notes that the only exceptions permitted by this Convention are the armed forces, the police and high-level state officials. Consequently, he recognizes that all other employees “must have access to statutory machinery providing for collective bargaining”. He also admits that there exist several jurisdictions in Canada which deny the right to collective bargaining to other groups of workers than those whose exclusion is permitted by Convention No. 98. Even if these excluded workers are not formally denied access to voluntary collective bargaining, “the fact that they were not covered by a statutory regime had been interpreted by the ILO as being non-compliance with Convention No. 98”. The affiliated organizations renew their approaches to the new Prime Minister.

21 June 1999: The CNCQ issues a formal demand to the Minister of Justice before submitting its complaint to the ILO (a renewed demand that international labour Conventions and other international instruments on freedom of association be respected).

2000: The Minister of Labour eventually meets with CNCQ representatives after several requests by that organization for a meeting.

2001-02: The Minister of Labour refuses to invite CNCQ representatives to appear before the Parliamentary Committees responsible for studying the draft bills to amend the Labour Code. There is no possibility for freedom of association for managerial staff to be included in these draft bills.

Since that time, the dialogue, which was already weak, has dried up completely.

CASE NO. 2305

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

Complaint against the Government of Canada concerning the Province of Ontario presented by

- **Education International (EI) on behalf of**
- **the Canadian Teachers’ Federation (CTF)**
- **the Ontario Teachers’ Federation (OTF) and**
- **the Ontario English Catholic Teachers’ Association (OECTA)**

Allegations: The complainants allege that the Government of Ontario has adopted back-to-work legislation (Bill 28), the fifth of its kind in five years, which ended a legal work-to-rule campaign, unilaterally imposed a mediation-arbitration scheme that does not meet requirements of independence and impartiality, and brought additional restrictions on the collective bargaining rights of teachers

471. The complaint is contained in a communication dated 9 October 2003 from Education International (EI), on behalf of the Canadian Teachers’ Federation (CTF), the Ontario Teachers’ Federation (OTF) and the Ontario English Catholic Teachers’ Association (OECTA).

472. In the absence of a reply from the Government, the Committee postponed the examination of this case on two occasions [see 332nd and 333rd Reports, para. 5]. At its meeting in June 2004 [see 334th Report, para. 9] the Committee addressed an urgent appeal to the Government, drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of this case at its next meeting if the Government's information and observations were not received in due time. The Government of Ontario sent some information in two communications dated 19 April and 13 August 2004.
473. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

474. In its communication of 9 October 2004, EI states that OECTA represents the employment and professional interests of approximately 36,000 members in the English school system, in their relations with their employing School Boards, the provincial government and various regulatory bodies.
475. The complaint is brought in connection with the Back to School (Toronto Catholic Elementary) and Education and Provincial Schools Negotiations Amendment Act, 2003, (Bill 28) passed by the Legislature of Ontario (hereafter "the Act"). The Act came into force in June 2003, for the purpose of terminating a two-day lockout imposed by the Toronto District School Board on the elementary teachers bargaining unit; that action had been taken by the Board following a legal work-to-rule campaign of the teachers. The Act imposes a mediation-arbitration process to resolve the outstanding collective bargaining disputes between the OECTA and the School Board. The Act also amends provisions in the Education Act that affect all teachers in Ontario; these amendments impose new restrictions on teachers' collective bargaining rights by expanding the statutorily prescribed teachers' duties and the definition of strikes, as this term applies to teachers in Ontario.

Background

476. The complainant organization points out that this legislation is yet one more in a long series of enactments passed by the Government of Ontario since 1995 that have significantly interfered with the freedom of association rights of workers in this province. Many of these other impugned statutes, including back-to-work legislation affecting teachers, have been the subject of complaints to the Freedom of Association Committee, which has expressed serious concerns about the legislative record of the Government of Ontario as it affects the collective bargaining rights of workers, and requested that it refrained from such interferences in the future.
477. School boards are the legal employers of teachers. However, legislative changes made since 1995 have stripped them of many of the powers they previously exercised in their capacity as employers. From 1975 and until the passage of the Education Quality Improvement Act in December 1997, teachers in Ontario exercised collective bargaining rights under the School Boards and Teachers Collective Negotiations Act. Under this statute, all matters relating to teachers' terms and conditions of employment, including class size and preparation time, were subject to negotiations between local school boards and teachers' associations. Teachers had the right to strike under the School Boards and Teachers Collective Negotiations Act, with two qualifications. First, principals and vice-

principals, who were covered by the statute and included in teacher bargaining units, were required to remain on duty during strikes and lockouts. Second, the body charged with administering the legislation, the Education Relations Commission, had the authority to advise the Government when in its opinion the continuance of a strike or lockout would place in jeopardy the successful completion of courses of study by the affected students. Under the School Boards and Teachers Collective Negotiations Act, a jeopardy finding was never made prior to a strike or lockout continuing for at least 27 school days.

- 478.** The Education Quality Improvement Act, passed in December 1997, made a number of fundamental changes to the education system in Ontario, in particular to education funding and governance, and to teachers' collective bargaining. Prior to the passage of that Act, the education system was funded by a combination of provincial government grants and revenues raised by local school boards through municipal property taxes. Within this system, local school boards maintained control over the financing of the schools; they had the authority to make budgeting and spending decisions, as well as the power to set local tax rates for education funding. The Education Quality Improvement Act effectively gave control over education funding to the provincial government, since the power to determine taxation rates for the education system now rests with the Minister of Finance. The Education Quality Improvement Act also introduced provisions giving the provincial government very broad powers to determine the manner in which money for education will be expended. The Act also established a new collective bargaining regime for teachers: principals and vice-principals were removed from teacher bargaining units and were also excluded from access to the new bargaining regime. A combination of statutory provisions makes the Labour Relations Act, 1995 (Ontario's comprehensive labour relations statute) largely applicable to teachers, except as specifically modified by the Education Act. Under the new scheme, the Education Relations Commission was continued as the body with authority to advise the Government as to when the continuation of a strike or a lockout would place "in jeopardy" the successful completion of courses by affected pupils.
- 479.** The Education Quality Improvement Act also significantly affected the substance and scope of teachers' collective negotiations by giving the provincial government control over a number of fundamental issues, such as class size and preparation time, which were previously the subject of unfettered collective bargaining. The Government's control over education funding also has considerable influence on teachers' collective bargaining. The changes ultimately made under that Act were highly controversial within the education community. Ontario teachers engaged in a two-week political protest over the Act in October and November 1997, as they strongly believed that all of the changes proposed by the Act would have a negative impact upon their terms and conditions of employment and also upon the quality of Ontario's publicly funded education system.
- 480.** The Government's legislative agenda did not end with the passage of the Education Quality Improvement Act. Over the past several years, the Government has continued to enact statutes that impose new requirements relating to teacher certification, re-certification and performance assessment. The first one was passed in 1998, when teachers' unions and school boards were engaged in the first round of collective bargaining for renewal collective agreements under the new collective bargaining legal regime. Negotiations over issues relating to preparation time and class size were particularly difficult in the secondary panels, leading to strikes and lockouts in a number of school boards. The Government did not follow the established process to determine whether the students were in jeopardy of losing their school years, nor did it engage in any consultation with teachers' unions, prior to passing the Back to School Act, 1998, on 28 September 1998. Three more teacher back-to-work statutes were subsequently passed by the Ontario Government prior to Bill 28: Back to School Act (Hamilton-Wentworth district School Board), 2000, SO 2000, c. 23; Back to School Act (Toronto and Windsor), 2001, SO 2001, c. 1; and Back to School Act (Simcoe Muskoka Catholic District School Board), 2002, SO 2002, c. 20. The Back to

School Act, 2003 (Bill 28) which is the subject matter of this complaint is the *fifth* teacher back-to-work statute passed by the Government of Ontario over the past five years.

Events leading up to the passage of the Back to School Act, 2003 (the “Act”)

481. OECTA and the Toronto Catholic District School Board are parties to a collective agreement that came into force on 1 September 2001 and expired on 31 August 2002. On 23 January 2002 OECTA gave notice to bargain a renewal collective agreement for the 2002-03 and 2003-04 school years. The parties first met and exchanged proposals on 5 June 2002. They subsequently held collective bargaining meetings in June, October and November 2002, as well as in January and February 2003. OECTA applied to the Ministry of Labour for the appointment of a conciliation officer on 28 February 2003. An officer was appointed on 14 March 2003 and a conciliation meeting was held on 4 April 2003. Following the conciliation meeting, the OECTA requested a “no-board” report (under the Labour Relations Act, 1995, the issuance of either a conciliation report or a decision not to issue a conciliation report, i.e. a “no-board” report, is a precondition to the parties reaching the legal strike or lockout position). OECTA and the School Board continued to exchange proposals during April and the beginning of May.

482. OECTA obtained a strike mandate from its members, with 92 per cent authorization vote held on 22 April 2003. The teachers subsequently commenced a work-to-rule campaign on 5 May 2003, which was lawful because the teachers were in a legal strike position. On 8 May 2003, the School Board informed OECTA representatives that it was considering a lockout. On 12 May 2003, after making another proposal for wage increases, the School Board issued a lockout notice and subsequently locked out the teachers on 15 May 2003. On 21 May 2003, after two days of lockout and without prior consultation, the Government of Ontario introduced Bill 28. This is an unprecedented short time for government back-to-work action. Moreover, the Government had failed to call upon the Education Relations Commission to exercise its jurisdiction to determine whether the education of students was in jeopardy prior to introducing the legislation. On 28 May 2003, OECTA asked the School Board to agree to voluntary arbitration under section 40 of the Labour Relations Act, 1995, to end the lockout and work-to-rule-campaign. The School Board rejected this offer.

The Back to School Act, 2003

483. The Act first deals specifically with the labour dispute between OECTA and the School Board by terminating the lockout and establishing a mandatory arbitration process for concluding the renewal collective agreement. OECTA and the School Board could have avoided the legislative resolution of their labour dispute only if they voluntarily concluded a collective agreement before the statute came into effect. Second, the Act and accompanying Regulation redefine the meaning of “strike” and “lockout” as these terms apply to teachers so as to place new restrictions on the right to strike for all Ontario teachers. The Government did not consult with OECTA about any aspect of the legislation prior to its introduction.

484. As regards the dispute in the School Board, the Act provides that the School Board must terminate the lockout, and the union must terminate any strike (in this case the work-to-rule campaign) as soon as the Act comes into force. Teachers must return to work and fully perform their duties. The Act prohibits further strikes and lockouts relating to collective negotiations for the renewal collective agreement. It also requires the renewal collective agreement to continue in effect until 31 August 2004. The terms and conditions of employment that applied prior to the first day on which lawful strike action could be taken

continue to apply until a new collective agreement is executed. The Act establishes financial penalties for failing to comply with these back-to-work provisions: \$2,000 for an individual and \$25,000 for a corporation or trade union. Each day of non-compliance constitutes a separate offence for purposes of the financial penalties.

- 485.** If the parties have not executed a collective agreement within seven days after the act comes into force, all outstanding issues are referred to a mediator-arbitrator. Once the legislation comes into effect, the parties cannot appoint an arbitrator, mediator or mediator-arbitrator except in accordance with the statute. The parties have seven days within which to jointly select a mediator-arbitrator and to notify the Ministry of Labour for appointment. If the parties fail to make a joint appointment, the Ministry must appoint the mediator-arbitrator, unless the parties execute a new collective agreement before the appointment is made. Although the mediator-arbitrator purportedly has jurisdiction to settle all matters, if he or she considers necessary to conclude a new collective agreement, the statute imposes limitations on his authority to draft a collective agreement, similar to the limitations found in the other back-to-work statutes enacted by the Ontario Government in recent years. First, the award must be consistent with, and must permit the School Board to comply with, the Education Act and regulations. Second, the award must be one that can be implemented in a reasonable manner, without causing the School Board to incur a deficit. Third, if implementation of the award would result in an increase in the School Board's total, or average-per-teacher, compensation costs for members of the bargaining unit, the mediator-arbitrator must include in the award a written statement explaining how the School Board can meet the costs resulting from the award without incurring a deficit and while complying with the Education Act and regulations.
- 486.** The Act also contains two amendments to the Education Act which affect *all* teachers in Ontario's education system, the first of which expands the statutorily prescribed duties of teachers. In the Education Act and related regulations, statutorily prescribed duties were defined with reference to broad principles, for example: the duty "to teach diligently and faithfully the classes of subjects assigned ..."; the duty "to encourage the pupils in the pursuit of learning"; and the duty "to maintain, under the direction of the principal, proper order and discipline in the classroom ...". The Act adds to this list a new general clause, under which teachers are required "to perform all duties *assigned in accordance with this Act and the regulations*". Pursuant to this new legislative authority, the Government amended the related regulation to prescribe the following specific activities as duties of teachers: to ensure that report cards are fully and properly completed and processed in accordance with the provincially prescribed requirements; to cooperate and assist in the administration of provincially prescribed student testing; to participate in regular meetings with pupils' parents or guardians; to perform duties assigned by the principal in relation to cooperative placements of pupils; and to perform duties normally associated with the graduation of pupils. In the past these activities were voluntary and, in recent months, had been the subject of job actions in a number of school boards engaged in collective agreement negotiations with teachers' unions. (Several years ago, the Government backed away from an attempt to introduce similar amendments to the Education Act which would have made mandatory certain co-instructional activities that had previously been voluntarily undertaken by teachers; the Government ultimately withdrew these amendments in the face of political resistance and a government-appointed advisory group report that recommended against taking this course of action.) Now, with the passage of the Back to School Act, 2003, some of the teacher activities that were included in the Government's abandoned effort to make co-instructional activities mandatory have been legislatively prescribed as duties of teachers.
- 487.** The Act introduces a new definition of "strike", which further expands the scope of activities included within the meaning of this term as it applies to teachers in Ontario. The new definition reads as follows:

“Strike” includes any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed or may reasonably be expected to have the effect of curtailing, restricting, limiting or interfering with:

- (i) the normal activities of a board or its employees;
- (ii) the operation or functioning of one or more of a board’s schools or of one or more of the programmes in one or more schools of a board, including but not limited to programmes involving co-instructional activities; or
- (iii) the performance of the duties of teachers set out in the Act or the regulations under it, including any withdrawal of services or work to rule by teachers acting in combination or in concert or in accordance with a common understanding.

488. The Act changes the definition of strike in three ways. First, while the previous definition had focused on the question of whether action was *designed* to curtail, restrict, limit or interfere with school programmes, the new definition includes action which is designed to have this effect or which “*may reasonably be expected to have this effect*”. Second, while the previous definition focused on the disruption to one or more *school programmes*, the new definition includes actions which curtail, restrict, limit or interfere with the *normal activities of a board or its employees*. Third, the new definition sweeps in all the duties which may be prescribed by the Government in accordance with its new authority to add new duties to the Education Act and related regulations.

489. It is important to note that although these two amendments were passed in the context of back-to-work legislation relating to a specific dispute between the Toronto District Catholic School Board and its elementary teachers, these new provisions apply to *all* 135,000 teachers in Ontario.

490. The complainants submit that the Act is incompatible with the lawful exercise of freedom of association and collective bargaining rights, and violates ILO Conventions Nos. 87, 98, 151 (in particular Articles 7 and 8) and 154. The right to bargain freely with employers with respect to conditions of work constitutes an essential element of freedom of association. The Committee has specifically emphasized the importance of promoting collective bargaining in the education sector. While acknowledging that the “determination of broad lines of educational policy” may be excluded from collective bargaining, it has clearly stated that “the consequences of educational policy decisions on conditions of employment” must remain the subject of free collective bargaining. The right to strike is recognized as an integral element of the right to collective bargaining. It is one of the “essential means” by which trade unions and workers can assert and protect their economic and social interests. The Committee has repeatedly stated that a restriction or prohibition on the right to strike contravenes freedom of association unless the service affected is an “essential service”. This term has been narrowly defined by the Committee to include only those services the interruption of which “... would endanger the life, personal safety or health of the whole or part of the population. More specifically, the Committee has expressly ruled that the education sector does not fall within this strict definition of essential service. Therefore, legislative prohibitions of teachers’ rights to strike violate freedom of association principles and cannot be justified unless the continuation of a strike would meet the strict essential service standard.

491. The Committee has also emphasized the importance of full and frank consultations on any questions or proposed legislation affecting trade union rights. The Committee has further emphasized the particular importance of an adequate consultation process where a government seeks to alter a bargaining structure in which it acts actually or indirectly as employer. An adequate consultation process requires an opportunity for all objectives to be discussed by the parties concerned. The consultation must be undertaken in good faith, with all parties having the information necessary to make an informed decision. These principles require that any government limitation on collective bargaining be preceded by

consultations with the affected workers' organizations and employers. In the education context, these principles also require prior consultation on matters relating to collective bargaining structure but also on matters of broad educational policy which may fall outside the collective bargaining process but affect working conditions for teachers.

- 492.** Freedom of association principles require that dispute resolution through arbitration or conciliation be made available where there is a prohibition on the right to strike or a restriction on the exercise of a right to strike. The substitute arbitration or conciliation process should attempt as closely as possible to replicate the results of free collective bargaining. The Committee has adopted the principle that independence and impartiality of the arbitration system which is put in place to compensate for the loss of the right to strike are paramount. The Committee has further recognized that the independence of the system is compromised where arbitrators are directly appointed by the Government which also prescribes the legislative criteria arbitrators must follow in their awards. Loss of confidence in the system will inevitably result from threats to its impartiality and independence. While the Committee has recognized that it may be appropriate for an interest arbitrator to take financial considerations into account in cases involving public monies, legislation which is so restrictive as to impose a "financial straightjacket" compromises arbitral independence and impartiality, thus going beyond what is acceptable under the principles of freedom of association.
- 493.** Article 5 of Convention No. 151 prohibits the government, as employer, from interfering with the rights of workers' organizations to freedom in the organization of their activities and formulation of their programmes. Any such interference by the government would be contrary to the right to freedom of association as provided for in Convention No. 87 and principles derived therefrom. Similarly, the Committee has stated that where the government interferes with collective bargaining for the purpose of ensuring that the negotiating parties subordinate their interests to government economic policy, such intervention is not compatible with the generally accepted principles that workers' and employers' organizations should enjoy the right freely to organize their activities and formulate their programmes.

Recent Ontario context

- 494.** The Back to School Act, 2003 is the most recent in a series of enactments passed by the Government since it was elected in June 1995, that have interfered in significant ways with the freedom of association rights of Ontario workers. Many of these other impugned enactments, including the removal of principals and vice-principals from collective bargaining by the Education Quality Improvement Act, have been the subject of complaints to the Committee. Since 1995, legislative changes regarding collective bargaining in the education sector and back-to-work legislation in the education sector have resulted in four separate complaints to the Committee, which has found the Ontario Government in breach of ILO Conventions on freedom of association (Cases Nos. 1951, 2025, 2119 and 2145).
- 495.** Since 1995, legislative reforms of the Ontario Government have also been the subject of three additional complaints arising outside the education sector in which the Committee has expressed concern with the Government's observation of ILO Conventions on freedom of association (Cases Nos. 1943, 1975 and 2182). In considering the record of the current provincial government in relation to legislation affecting workers' freedom of association rights, the Committee has expressed concern that labour relations in Ontario may be placed at risks by these interferences with freedom of association and collective bargaining.
- 496.** In addressing OECTA's complaint about the 1998 teacher back-to-work legislation, the Committee found that the Government had again improperly interfered with freedom of

association principles by restricting the teachers' right to strike without justification and by imposing a mandatory arbitration process that failed to meet the requirements of independence and impartiality. The Committee requested that the Government of Ontario refrain from passing similar legislation in the future. The Committee also voiced deepened concern about the Ontario Government's harsh disregard for the collective bargaining rights of teachers. When the Committee was subsequently presented with a complaint about yet another teacher back-to-work statute, passed only two years after the 1998 legislation, the Committee was struck by the similarity between the two statutes and reached similar conclusions about the contraventions of freedom of association principles [Case No. 2145, 327th Report, para. 300], and again expressed its increasing concern over the Ontario Government's flagrant and repeated violations of the freedom of association rights of Ontario workers [ibid., para. 310]. With the Back to School Act, 2003, the Government of Ontario has once again demonstrated its complete disregard for international freedom of association standards and principles, and its concomitant willingness to continue to flout the Committee's advice and requests.

497. The complainants ask the Committee: (a) to declare that the Back to School Act, 2003 is inconsistent with ILO Conventions and principles; (b) to request the Ontario Government to: (i) repeal the Back to School Act, 2003; (ii) to restore free collective bargaining with respect to teachers in the province; (iii) to refrain from any further interference in the collective bargaining process in Ontario.

498. In order to address more adequately the exceptional and worsening problem in Ontario, the complainants ask the Committee: (a) to request that the ILO Governing Body, on its own motion, refer this matter to a commission of inquiry; (b) to request the consent of the Canadian Government to refer this matter to the Fact-finding and Conciliation Commission on Freedom of Association; (c) to refer the legislative aspects of this matter to the Committee of Experts for further examination.

B. The Government's communications

499. In its communication of 19 April 2004, the Government of Ontario points out that Bill 28 was passed by the previous Government to deal with a specific work stoppage in elementary schools in the fall of 2003. The new Government has a different approach to labour relations in the education sector and is committed to creating a balanced and fair labour relations law. Discussions have started with teachers, their federations, school boards and other education partners, to seek input on the changes that might need to be made to restore peace and stability and the effective delivery of education in Ontario public schools. The issues raised by the Ontario Teachers' Federation and the Ontario English Catholic Teachers' Association will receive due consideration.

500. In its communication of 13 August 2004, the Government reiterates its different approach to labour relations and points out that now is an especially delicate time in labour relations in the education sector since all teacher collective agreements in the province are due to expire on 31 August 2004. In the circumstances, it would be inappropriate for the Government to make unilateral commitments while discussions with boards and unions are under way on a variety of issues. The Government confirms that there is a changed atmosphere evidenced by the attitude of teachers' unions towards the new Government and the more engaged and frank dialogue occurring between the unions and the new Minister of Education. As part of the new Government's commitment to creating balanced and fair labour relations and restoring stability in Ontario schools, the Ministry of Education recently initiated an "Education Partnership Table" project where policy issues, including labour relations, will be presented by the Ministry to teachers' unions, school boards and other stakeholders for consideration and policy feedback. To date, the Education Partnership Table has considered teachers' professional development requirements and the

governorship of the College of Teachers. Policy initiatives, including legislative change, can be expected to ensue from this initiative.

C. The Committee's conclusions

501. *While noting the information given by the Government and its statements of intentions in its communications of 19 April and 13 August 2004, the Committee recalls that a successive government in the same State cannot, for the mere reason that a change has occurred, escape the responsibility deriving from events that occurred under a former government. In any event, the new government is responsible for any continuing consequences which these events may have. Where a change of regime has taken place in a country, the new government should take all necessary steps to remedy any continuing effects which the events on which a complaint is based may have had since its accession to power, even though those events took place under its predecessor [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 18].*
502. *Turning to the merits of the complaint, the Committee notes that the allegations in this case arise from the adoption of the Back to School Act, 2003 (Bill 28) which came into force at the beginning of June 2003 and terminated a legal work-to-rule campaign of the elementary teachers bargaining unit of the Toronto District Roman Catholic School Board (the "School Board") and a two-day lockout imposed by the School Board. The Act prohibited any further strike or lockout in connection with the renewal of that collective agreement, failing which substantial penalties apply; the Act also imposed a mediation-arbitration process to resolve the outstanding collective bargaining issues in dispute between OECTA and the School Board. In addition to dealing with the specific issues raised by that labour dispute, the Act extends the definition of strikes and lockouts, thereby placing new restrictions on the right to strike for **all** Ontario teachers. Finally, the Act provides a mediation-arbitration process, with limitations imposed upon the mediator-arbitrator. OECTA was not consulted on any aspect of the Act prior to its introduction.*
503. *Once again, the Committee cannot but note the striking parallel between the present complaint and Cases Nos. 2025 [320th Report, paras. 374-414] and 2145 [327th Report, paras. 260-311]. These cases involve essentially the same parties; the complainants' allegations are almost identical and the cases raise similar issues: violations of the right to strike; imposition of an arbitration process which fails to meet the requirements of independence and impartiality, and improperly restricts the scope of the arbitrator's jurisdiction; and lack of consultation prior to the adoption of the Act. In the present case, in addition, the challenged Act further restricts the right to strike of all teachers in the province.*
504. *As it did in Case No. 2145 [para. 300] and particularly taking into account this new breach of freedom of association, while emphasizing the seriousness of these repeated violations, the Committee considers that little purpose would be served by reiterating at length its comments and recommendations, most of which can be applied here mutatis mutandis, and will limit itself to recalling well-established freedom of association principles.*

Right to strike

505. *Noting that the complainants had fulfilled all the legal requirements to exercise their right to take industrial action, the Committee recalls that the right to strike is one of the legitimate and essential means through which workers and their organizations may defend their economic and social interests [**Digest**, op. cit., paras. 474-475] subject to certain limited exceptions, which do not include the education sector [**Digest**, op. cit., para. 545].*

While the Committee recognizes that unfortunate consequences may flow from a strike in a non-essential service, these do not justify a serious limitation of the right to strike unless they become so serious as to endanger the life, personal safety or health of the whole or part of the population [**Digest**, *op. cit.*, para. 541]. The Committee further recalls that, in examining a previous complaint involving the education sector, it stated that the possible long-term consequences in the teaching sector did not justify their prohibition [Case No. 1448, 262nd Report, para. 117]. The Committee is not convinced that there existed, in the circumstances and at this early stage of the dispute, a situation which warranted the legislative action taken by the Government. The Committee deeply deplors that the Government should have decided, for the third time in a few years (September 1998, November 2000, June 2003) to adopt such an *ad hoc* legislation which creates a situation where educational institutions and education workers theoretically have a legal right which, in practice however, is taken away from them when they exercise it. The Committee considers that repeated recourse to such legislative restrictions can only in the long term destabilize the labour relations climate, if the legislator frequently intervenes to suspend or terminate the exercise of rights granted to workers and their union by the general legislation. In this context, the Committee considers that it would be more conducive to a harmonious industrial relations climate if the Government would establish a voluntary and effective mechanism which could avoid and resolve labour disputes to the satisfaction of the parties concerned. In the event that, despite such mechanism, the workers would have recourse to industrial action, a minimum service could be maintained with the agreement of the parties concerned. The Committee therefore urges the Government to consider establishing a voluntary and effective dispute prevention and resolution mechanism rather than having recourse to back-to-work legislation. The Committee requests the Government to keep it informed of developments in this respect.

Mediation-arbitration

- 506.** As regards the compulsory nature of the mediation-arbitration process, the Committee recalls once again that bodies appointed for the settlement of such disputes should be independent, that recourse to these bodies should be on a voluntary basis [**Digest**, *op. cit.*, para. 858] and that recourse to compulsory arbitration in cases where the parties do not reach agreement through collective bargaining is permissible only in essential services in the strict sense of the term [**Digest**, *op. cit.*, para. 860].
- 507.** Regarding the *ad hoc* legislative limitations imposed upon the mediator-arbitrator, the Committee considers that, while financial considerations may be taken into account in cases such as the present one, thus recognizing that the special characteristics of the public service justify some flexibility in applying the principle of autonomy of the parties to collective bargaining, the Act imposes in practice on the arbitrator restrictions that go beyond what is acceptable under the principles of freedom of association. The Committee recalls that in mediation and arbitration proceedings, it is essential that all members of bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides is to be gained and maintained, should also appear to be impartial to both employers and workers concerned [**Digest**, *op. cit.*, para. 549]. The Committee therefore urges once again the Government to ensure in future that recourse to arbitration for the settlement of disputes be voluntary and that arbitration, once freely chosen by the parties to settle their disputes, be truly independent, all in line with freedom of association principles. The Committee requests to be kept informed of developments in this respect.

Consultation

508. *As regards the issue of consultation, the Committee recalls the importance that it attaches to the holding of full and frank consultations on any question affecting trade union rights [Digest, op. cit., para. 927], and that such consultation is essential and particularly valuable during the preparation and formulation of legislation [Digest, op. cit., para. 929]. Noting the information given by the Government in its communication of 13 August 2004, the Committee requests the Government to keep it informed of developments, including the results of the Education Partnership Table initiated by the Ministry of Education.*

Final considerations

509. *The Committee notes once again that the violations of freedom of association in the present case constituted an almost exact repetition of those at issue in recent years. Furthermore, these involved a long series of legislative reforms in Ontario, where the Committee has concluded in each case to incompatibilities with freedom of association principles [Case No. 1900, 308th Report; Case No. 1943, 310th Report; Case No. 1951, 311th and 316th Reports; Case No. 1975, 316th Report; Case No. 2025, 320th Report]. The Committee stresses once again the seriousness of the situation and points out that repeated recourse to statutory restrictions on freedom of association and collective bargaining can only, in the long term, have a detrimental and destabilizing effect on labour relations, as it deprives workers of a fundamental right and means of defending and promoting their economic and social interests.*

510. *The Committee is mindful that the present complaint arose as a result of a piece of legislation passed under the previous Government. The Committee also noted the current government assurances: that it has a different approach to labour relations in the education sector; that it is committed to creating a balanced and fair labour relations law; that it has started discussions with all education partners, including teachers and their organizations; and that the issues raised by the OTF and the OECTA will be duly considered. While taking due note of these intentions, the Committee recommends that the Government refer to the freedom of association principles mentioned above in its discussions with interested social partners, and to achieve concrete results rapidly, in view of the time span involved in the repeated violations mentioned above, in the present and previous cases. The Committee requests the Government to keep it informed of developments in this respect, including policy and legislative initiatives which, according to the Government, can be expected to ensue from the Education Partnership Table initiated by the Ministry of Education.*

511. *The Committee recalls that the technical assistance of the Office as regards the matters raised in this case is available to the Government, should it so desire.*

The Committee's recommendations

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

- (a) The Committee once again urges the Government to take measures to consider establishing a voluntary and effective dispute prevention and resolution mechanism rather than having recourse to back-to-work legislation. It requests the Government to keep it informed of developments in this respect.*

- (b) *The Committee once again urges the Government to ensure that recourse to arbitration for the settlement of disputes concerning teachers in Ontario be voluntary and that such arbitration, once freely chosen by the parties be truly independent and in line with freedom of association principles.*
- (c) *The Committee requests the Government to ensure in future that full and good faith consultations are undertaken on any question affecting trade union rights.*
- (d) *The Committee requests the Government to keep it informed of developments on all the above issues, in particular as regards the results of the Education Partnership Table.*
- (e) *The Committee recalls that the technical assistance of the Office as regards the matters raised in this case is available to the Government, should it so desire.*

CASE No. 2217

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

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

- the Chilean General Confederation of Workers (CGT) and
- the National Union of Metal, Communication and Energy Workers and Related Activities (SNTMCEYAC)

Allegations: The complainant organizations allege that various anti-union acts have been committed at Sopraval S.A. (acts of intimidation and violence against workers on strike, dismissal of union officers and members, and interference in union activities), Cecinas San Jorge S.A. (creation of a trade union biased towards the company and dismissal of union officers), Electroerosión Japax Chile S.A. (anti-union dismissals during the negotiation of a collective contract) and at two bakery companies (dismissal of trade union officers)

- 513.** The Committee last examined this case at its May-June 2003 meeting and submitted an interim report to the Governing Body [see 331st Report, paras. 181-211, approved by the Governing Body at its 287th Session (June 2003)].
- 514.** The Government sent new observations in communications dated 12 January and 9 February 2004.
- 515.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

516. At its May-June 2003 meeting, the Committee made the following recommendations on the outstanding issues [see 331st Report, para. 211]:

Sopraval S.A.

- (a) With regard to the allegations of acts of intimidation and violence by the police during a gathering of striking workers outside the company's buildings on 1 and 2 May 2000 (resulting in workers being injured and detained), the Committee requests the Government to send it the report which the Governor of the Province promised to request and to ensure that investigations begin into the allegations and, if appropriate, that the sanctions provided for in legislation are applied.
- (b) With regard to allegations relating to company interference in holding a meeting to vote for censure of the union leadership, the Committee requests the Government and the complainant organization to keep it informed of the final decision of the judicial authority in this respect.
- (c) With regard to the rest of the allegations of acts which might have been committed on the part of Sopraval S.A. (allegations which are mentioned in the conclusions, final paragraph of the section on the company in question), the Committee requests the Government to send its observations in this respect and inform it as to whether the judicial proceedings for anti-union practices mentioned generally in its reply refer to any of the pending allegations [the text of the paragraph reads as follows (see 331st Report, para. 203):

Finally, the Committee regrets that the Government has not sent its observations on the rest of the allegations of acts which might have been committed on the part of Sopraval S.A. and which follow: (1) in May 1999 it offered maintenance workers a pay rise if they resigned from the union, which led to the resignation of all members in that sector; (2) in July 1999 it dismissed Mr. José Figueroa for standing as a union officer; (3) in August 1999 six workers were dismissed from the rendering section for joining the union; (4) in August 1999 the company obstructed the awarding of union permits, it has not deducted 0.75 per cent from the salary of workers benefiting from the collective contract, and it has announced that it will not make deductions from union loans to workers, thus causing financial damage to the union; (5) on 14 September 1999 the company dismissed 23 workers who were union members on the grounds of the needs of the company; (6) in October 1999 it put pressure on workers – some union members, some not – to accept a collective agreement with a 50 per cent pay cut and also offered loans to workers who would resign from the union; (7) in November 1999 it dismissed 60 union members who had participated in a protest in the Senate against the law on severance pay related to years of service; (8) in January 2000, 11 union members were shut in and forced to sign union resignations; (9) the president of the union, Mr. Orellana Ramírez, was threatened with death during the strike which began on 1 May; (10) after the strike the company began a judicial process against Mr. Orellana Ramírez in order to lift his trade union immunity and dismiss him and as of May 2000 ceased to pay his salary, also withholding the documents necessary for payment of sick leave. In these circumstances, the Committee requests the Government to send its observations in this respect and inform it as to whether the judicial proceedings for anti-union practices mentioned generally in its reply refer to any of the pending allegations.]

Cecinas San Jorge S.A.

- (d) With regard to the company's alleged promotion of a union, the Committee requests the Government to take measures to ensure that such acts are not repeated in the future, as well as to inform it of the outcome of any legal action which the administrative labour authority brings before the judicial authority.
- (e) The Committee requests the Government to take measures ensuring that collective negotiation at Cecinas San Jorge S.A. takes place with the workers' organizations which have been freely formed by the workers, as well as examining the legality of the collective contract with the union which the Government describes as "biased" towards the company.

- (f) With regard to the allegation relating to the dismissal of Alvaro Zamorano Miranda, president of the Cecinas San Jorge Inter-company Union and the Cecinas San Jorge Company Union, the Committee requests the Government to make renewed efforts with the company to secure the reinstatement of the dismissed union leader and to take measures to avoid the repetition of such acts of anti-union discrimination. The Committee requests the Government to keep it informed in this respect.
- (g) The Committee requests the Government to send its observations on the allegations according to which the company dismissed nine union members during negotiations of a collective contract on 25 October 2001 and on 30 October 2001 began slander proceedings against union officer Alvaro Zamorano Miranda for having stated that the company had offered money to workers to resign from the union.

Bakery companies

- (h) With regard to the dismissal, without having previously obtained judicial authorization, of Juan Aros Donoso, officer of the Federation of Breadworkers of the 5th Region and president of the Viña del Mar Inter-company Union of the Bread Industry from the company of Manuel Regueiro, the Committee requests the Government to take measures to investigate whether the dismissal in question took place and, if so, to inform it of the specific facts behind it. The Committee requests the Government to keep it informed in this respect.

Electroerosión Japax Chile S.A.

- (i) With regard to the alleged dismissal of nine workers enjoying union protection between 3 and 8 July 2002, during the start of the process of negotiating a folder of petitions, the Committee requests the Government to send it a copy of the final judicial ruling on these dismissals.

B. New reply from the Government

517. In its communications of 12 January and 9 February 2004, the Government states, with regard to the allegations relating to the Sopraval S.A. company, that it had already sent a reply in the framework of a request for intervention to the ILO by an international trade union organization that is not a complainant in the present case. The Government sent this reply in an annex which can be summarized as follows:

- With regard to the hostile behaviour and threats to freedom of association, the labour inspector who contributed to the examination of the complaint interviewed the new officials of the trade union of the Sopraval S.A. company, Cristián Feliú Briones, secretary of the company's trade union, and Leonardo Saldaño Orrego, president of the company's trade union since 5 January 2001. The latter indicated that they had no proof of the events having taken place. In accordance with article 292 of the Labour Code, the labour courts of the first instance are responsible for hearing and deciding violations through anti-union acts. The labour services have been informed that the La Calera Court of Letters is hearing a complaint of anti-union practices in Case No. 10.972-2000, which covers non-payment of trade union dues deducted by the company, the alleged harassment and dismissal of Nelson Orellana Ramírez, the payment of his wages since May 2002 and not providing work clothing as laid down in the collective contract, etc. There are currently two legal proceedings for anti-union practices awaiting decision.
- With regard to the allegations relating to the interference by the Sopraval S.A. company in holding a meeting to vote for censure of the union leadership, the Government states that on 11 December 2000 the vote of censure of the union leadership of the "Sergio Pincheira" trade union of the Sopraval S.A. company took place before the Public Notary Moisés Corvalán Vera, with the participation of 57 members, 53 of whom approved the censure and four of whom rejected it. The union leadership thus censured comprised Nelson Alejandro Orellana Ramírez

(president), Cristián Rodrigo Feliú Briones (secretary) and Germán Fernando Toro Muñoz (treasurer). On 5 January 2001, the new executive committee of the Sopraval S.A. company trade union “Sergio Pincheira” was elected, before the deputy secretary who is a lawyer of the Municipality of La Calera, Mr. Jorge Héctor Torres Jaña, acting as a public notary. The new executive committee comprised Heiter Leonardo Saldaño Orrego (president), Juan Olmos Fuenzalida (secretary) and Pedro Tapia Céspedes (treasurer).

- With regard to the allegations of acts of intimidation and violence by the police during a gathering of striking workers outside the Sopraval S.A. company’s buildings (resulting in workers being injured and detained) on 1 and 2 May 2002, the Government indicates that the regional labour directorates must respect Service Order No. 7 of 1996, which aims to prevent the occurrence of events such as those figuring in the complaint in labour conflicts and strikes and to reconcile the right of workers to express themselves with maintaining public order and social harmony so that the workers may freely exercise their rights without being harassed or prevented from expressing their opinions by any state institution. Given that article 292 of the Labour Code lays down that the labour courts are competent to hear and decide violations through anti-union practices, if the Labour Services were to define certain acts as being anti-union in nature they would be superseding their powers. The Labour Services must act within the legal powers that the legislation in force grants them and it would be unconstitutional to go beyond these, in accordance with article 7 of the Political Constitution of the Republic, which lays down that: “the state bodies shall act through regular investiture of its members, within their competency and in the manner laid down in law”. The role of the Labour Services is to inform the courts when it is required to do so with regard to the stated facts.

518. With regard to the dismissal of trade union official Alvaro Zamorano Miranda on 22 October 2001, the Government states that this is related to the establishment of a parallel trade union with the backing of the Cecinas San Jorge company (an issue already examined by the Committee in its previous examination of the case); the Labour Inspectorate fined the company 10 months’ minimum salary and requested the company to reinstate the union officer in question on 5 December 2001, without success. The Government states that the reports issued on these matters by the Communal Labour Inspectorate of Santiago Poniente are currently being revised for their possible lodging in a complaint before the ordinary courts.

519. With regard to the alleged dismissal of Juan Aros Donoso, president of the Viña del Mar Inter-company Union of the Bread Industry, the Government repeats its statement that there has been no complaint in this respect.

520. With regard to the dismissal of nine workers enjoying trade union immunity from the Electroerosión Japax Chile S.A. company, the Government, after recalling that the Ministry of Labour had fined the company, states that the two proceedings (one of which was begun by the Ministry of Labour) took place in two courts: in one case (that begun by the Ministry) the court ordered the reinstatement of the workers dismissed (which the enterprise refused to do), and in the other (initiated by the executive committee of the trade union) the court must decide on the issue of *litispence* arising from the fact that the case was being heard by another court at the same time; in any case, and if the decision of this court rejects the complaint for anti-union practices, there is always the possibility of appeal.

C. The Committee's conclusions

Sopraval S.A.

521. *The Committee notes the Government's statement and, in particular, the fact that two legal proceedings for anti-union practices are pending. The Committee requests the Government to keep it informed of the decisions handed down with regard to the allegations relating to 2000 (threats to freedom of association of the members of the trade union, harassment and dismissal of the former trade union official, Nelson Orellana, interference by the company in a vote of censure of the previous executive committee of the trade union – even though, as the Government reiterates, the former executive committee presided over by Mr. Nelson Orellana was dismissed following the vote of censure by 53 members in favour to four against).*
522. *With regard to the allegations relating to 1999, the Committee notes the Government's statement that it falls within the powers of the labour tribunals (and not the Ministry of Labour) to hear and decide issues relating to violations through anti-union practices. The Committee points out to the complainant organization that it is incumbent upon it, if it so wishes, to file complaints before the labour court concerning the anti-union practices committed in 1999, if it has not already done so.*
523. *With regard to the allegations of acts of violence that remain outstanding, although the Committee notes the Government's statements on Service Order No. 7 of 1996, issued by the Labour Directorate on the actions of the police in labour conflicts and strikes in order to allow workers freedom of expression and the right to protest, it must point out that the Government's reply does not specifically answer the previous recommendation of the Committee. Consequently, the Committee must repeat its previous recommendation in which, with regard to the allegations of acts of intimidation and violence by the police during a gathering of striking workers outside the company's buildings (resulting in workers being injured and detained) on 1 and 2 May 2000, it requests the Government to send the report which it promised to request from the Governor of the Province without delay and to ensure that investigations begin into the allegations and, if appropriate, that the sanctions provided for in legislation are applied.*

Cecinas San Jorge S.A.

524. *The Committee notes that the Labour Inspectorate fined the company (10 months' minimum salary) as a result of the dismissal of trade union official Alvaro Zamorano Miranda, and that the company refused to reinstate this trade union official when the Labour Inspectorate requested this. The Committee notes that the Ministry of Labour is revising the reports of the Labour Inspectorate so that they might be submitted in a complaint before the judicial authorities and it requests the Government to keep it informed of any new administrative or judicial decision taken in this case and it expects that the trade union official will be reinstated in his post very soon.*
525. *The Committee regrets to note that the Government has not sent its observations on the other allegations that the company began slander proceedings against union officer Alvaro Zamorano Miranda for having stated that the company had offered money to workers to resign from the union. In this respect, the Committee requests the Government to keep it informed of any judicial decision in this respect, and of any administrative or judicial decision on the alleged promotion by the company of a trade union.*

Electroerosión Japax Chile S.A.

526. *The Committee notes, with regard to the dismissal of nine workers enjoying trade union protection (for which the Ministry of Labour fined the company and laid a complaint before the judicial authorities), that according to what can be taken from the Government's statements there has still been no final decision on this matter and it requests the Government to keep it informed in this respect.*

Bakery companies

527. *The Committee notes the Government's statement that there has been no complaint laid with regard to the alleged dismissal of trade union official Juan Aros Donoso and, given that the Government states that it is the responsibility of the judicial authorities to decide issues relating to violations through anti-union practices, it points out to the trade union concerned that it is incumbent upon it, if it so wishes, to file a complaint with the labour court, if it has not already done so.*

The Committee's recommendations

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

Sopraval S.A.

- (a)** *Noting that the two legal proceedings for anti-union practices are awaiting decisions, the Committee requests the Government to keep it informed of the decisions handed down with regard to the allegations relating to 2000 (threats to freedom of association of the members of the trade union, harassment and dismissal of the former trade union official Nelson Orellana Ramírez, interference by the company in a vote of censure of the former executive committee of the trade union).*
- (b)** *With regard to the allegations relating to 1999, the Committee notes the Government's statement that the labour courts (and not the Ministry of Labour) have the authority to hear and decide issues relating to violations through anti-union practices.*
- (c)** *With regard to the allegations of acts of intimidation and violence by the police during a gathering of striking workers outside the company's buildings on 1 and 2 May 2000 (resulting in workers being injured and detained), the Committee once again requests the Government to send the report which it promised to request from the Governor of the Province without delay and to ensure that investigations begin into the allegations and, if appropriate, that the sanctions provided for in legislation are applied.*

Cecinas San Jorge S.A.

- (d)** *With regard to the dismissal of trade union official Alvaro Zamorano Miranda, the Committee requests the Government to keep it informed of any new administrative or judicial decisions taken and expects that the trade union official will be reinstated in his post shortly. The Committee regrets to note that the Government has not sent its observations on the other*

allegations according to which the company began slander proceedings against union officer Alvaro Zamorano Miranda. In this respect, the Committee requests the Government to keep it informed of any judicial decision in this respect, and of any administrative or judicial decision on the alleged promotion by the company of a trade union.

Electroerosión Japax Chile S.A.

(e) With regard to the dismissal of nine workers enjoying trade union protection, the Committee notes that according to the Government's statements no final decision has been issued on this matter and it requests the Government to keep it informed in this respect.

Bakery companies

(f) The Committee notes that no complaint has been laid with regard to the alleged dismissal of trade union official Juan Aros Donoso and that it is for the judicial authorities to decide issues relating to violations through anti-union practices.

CASE NO. 2290

DEFINITIVE REPORT

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

***Allegations: Dismissal of trade unionists,
pressure and threats intended to force workers
to leave the trade union of the Enterprise "Viña
Tarapacá"; benefits to non-unionized workers***

529. The complaint is set out in a communication dated 16 May 2003 from the World Federation of Trade Unions (WFTU).

530. The Government sent its observations in a communication dated 9 February 2004.

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

A. The complainant's allegations

532. In its communication of 16 May 2003, the World Federation of Trade Unions alleges anti-union practices by the Enterprise "Viña Tarapacá". It states that in 2002, the workers formed a trade union in response to various violations of workers' rights and labour law. In subsequent months and in 2003, the company dismissed many of the union's members and applied pressure or threats against others to force them to withdraw from the union, while conceding superior benefits to non-unionized workers in the process of collective bargaining. The WFTU recalls that in 1998, the workers had tried to set up a trade union at

the enterprise, but after it had been established the company dismissed 35 workers involved in organizing it.

B. The Government's reply

533. In its communication of 9 February 2004, the Government states that on 2 June 2003, the Trade Union of Workers at the Enterprise "Viña Tarapacá" lodged a complaint in connection with anti-union dismissals and other anti-union practices mentioned by the complainant. The Government states, however, that from the establishment of the trade union in July 2002 (with 26 members) until the date on which the complaint was lodged, the number of members increased to 28. The Government adds that the labour administrative authority visited the company and was told by union leaders and the company's legal representative that an agreement was about to be signed. The union leaders said that, this being the case, they would not press the complaint. The trade union sent a letter to the Ministry of Labour on 7 January 2004, stating that the problems which had given rise to the complaint to the administrative authority had been resolved and that relations between the parties were now normal. The Government attaches a copy of that letter to its reply and states in conclusion that the present case has been resolved.

C. The Committee's conclusions

534. *The Committee notes that according to the Government and a letter dated 7 January 2004 signed by the Trade Union of Workers at the Enterprise "Viña Tarapacá", the problems which had given rise to a complaint regarding dismissals and anti-union practices have been resolved and normal relations have been established between the parties. The Committee also notes that the trade union did not press its complaint regarding these matters before the labour administrative authority.*

The Committee's recommendation

535. *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. 2307

DEFINITIVE REPORT

**Complaint against the Government of Chile
presented by
the Teachers' Association of Chile (CPCAG)**

Allegations: Unwillingness of the authorities to bargain with the complainant; threats of dismissal, disciplinary proceedings, deduction of remuneration and other punitive measures against participants in two strikes

536. The complaint is contained in a communication from the Teachers' Association of Chile dated 27 October 2003. The Government sent its observations in a communication dated 30 April 2004.

537. Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

538. In its communication of 27 October 2003, the Teachers' Association of Chile (CPCAG), an affiliate of the Single Central Organization of Chilean Workers (CUT), explains that since 1990, with the advent of democratic government in Chile, a process has begun of restoring the rights lost by Chilean workers, and teachers in particular, during the military dictatorship. Over the years, the complainant organization, like other public sector organizations, has participated in negotiations on wages, among other issues. These negotiations took place with the public authority, represented in this case by the Ministry of Education, according to de facto procedures which created a situation of uncertainty for the teachers since the procedures, time limits and other aspects of negotiation had been fixed unilaterally and arbitrarily by the authority.

539. The complainant organization alleges that on 9 April 2003 it submitted to the Minister of Education a list of teachers' demands relating to professional, pedagogical and wage issues, which launched the 2003 bargaining round and was signed by the National Executive Committee and all the regional presidents. While it is true that the authority agreed to bargain with the organization and a number of bipartite working committees were set up to deal with the items on the list of demands, there had been no formal reply to date on the points on the list of demands, and in particular on the wage increase requested by the teachers' association.

540. The complainant organization states that it is clear from this attitude that the authority was not genuinely willing to negotiate and conclude an agreement on wages, among other issues; the authority confined itself to publicly discrediting the list of demands without taking the trouble to present a formal and serious counter-proposal indicating specific amounts and distribution formulas of the promised wage increase.

541. The complainant organization states further that this refusal to negotiate, which constitutes an abuse of power by the authority, led to two strikes being held, in accordance with mandates given by the National Assembly. The first took place on 30 September 2003 and, since there was no response by the authority despite the strike, a second strike was held on 23 and 24 October of the same year. These strikes were solely and exclusively motivated by economic and occupational interests, outside of any political or other considerations, and was therefore protected under the institutional framework provided by the International Labour Organization.

542. The complainant organization states that public education is currently administered by the municipalities, which may manage it either directly or through municipal corporations; however, it is still 100 per cent publicly financed, either through central state subsidies or through contributions by the municipalities. The latter share does not, as a rule, cover more than 10 per cent of the system.

543. The complainant organization alleges further that an attempt is being made to infringe the right to strike: both the central authority and the decentralized administrative bodies have threatened the teachers who responded to the call for a strike by their national organization with dismissals, disciplinary proceedings, deductions from remuneration for hours not worked and other punitive measures inappropriate for a democratic State to apply to people whose only offence was to fight for their fair and legitimate demands. The application of any punitive measure such as those described above against the teachers who adhered to

the strikes called by their organization constitutes an anti-union practice which should be void by operation of law, in particular given that after Chile's ratification of ILO Conventions Nos. 87, 98 and 151, these Conventions were promulgated as legislation of the Republic and hence wage and other negotiations between the CPCAG and the authority now take place within an institutional framework derived from the fact that these Conventions are now embodied in the legislation of the Republic and even have constitutional rank according to article 5, paragraph 2, of the Political Constitution.

- 544.** While it is true that the abovementioned Conventions do not contain explicit provisions concerning the exercise of the right to strike, the latter has been recognized repeatedly through the case law of the Committee on Freedom of Association.
- 545.** Accordingly, faced with the Government's refusal to apply Conventions Nos. 87, 98 and 151, the complainant organization legitimately exercised the right to hold a legal strike, on the grounds of which it has been threatened with severe sanctions which are entirely inappropriate, given that the exercise of a right can in no case be a punishable act, either directly or indirectly, either through disciplinary proceedings or dismissals or through deductions from pay for hours not worked. It is paradoxical, to say the least, that the threats of sanctions, i.e. acts which are contrary to law, emanate from the State itself, whose bodies hold a constitutional mandate to respect and promote compliance with the law, especially those provisions embodying international treaties ratified by Chile and which are in force pursuant to article 5(2) of the Political Constitution mentioned above.
- 546.** Furthermore, it is not a valid excuse to refuse to apply the laws arising out of ILO Conventions on the grounds that no regulations have been enacted governing their application, since this condition is not stipulated in any legal text, and the public authorities cannot, by virtue of the principle of legality benefiting a State based on the rule of law, arrogate to itself powers in addition to those granted to it by the Constitution and the law. In line with this argument, any international treaty ratified by Chile could remain a dead letter forever until a law regulating it is enacted – an assertion which is repugnant and contrary to the moral and juridical conscience of all those who uphold the need for the full application of an international and globalized public order in labour law which essentially promotes respect for and the furtherance of economic, social and cultural rights of persons and their associations.

B. The Government's reply

- 547.** In its communication of 30 April 2004, the Government states that in Chile, no teacher, in the exercise of his or her occupation, has as an employer counterpart the central Government or the Minister of Education. Employment contracts are concluded – and hence the economic and social benefits contained in them are agreed – between each teacher and his or her private employer or private subsidized employer, or the municipality employing them, without intervention by the central Government.
- 548.** Concerning the teachers employed in the private sector, whether privately financed or subsidized, they are covered by the Labour Code (a general law) governing the procedure of collective bargaining, which they may engage in and which they do engage in vis-à-vis their employers, without restrictions other than the requirement of representativeness.
- 549.** As for teachers employed in the municipal sector, who may be considered as public officials in the broad sense of the term, their conditions of employment and remuneration are freely determined between the parties to the employment relationship (teacher and municipality) in each particular case, within the framework of the "Statute on Education Professionals", which is a regulation protecting the workers in this sector. Notwithstanding the above, the abovementioned statute does not provide for machinery for negotiation

between these officials of the municipal public sector and the Government, or between the latter and the Teachers' Association of Chile, which is an occupational association for professional representation rather than a trade union representing its members' interests – a legal situation which is fully in conformity with international standards given that, unlike the case of Convention No. 87, whose scope includes all workers, it is possible under Convention No. 98 to exclude a certain category of workers from the exercise of this right.

- 550.** Article 6 of Convention No. 98 provides that it “does not deal with the position of public servants engaged in the administration of the State ...”; without prejudice to this, the Government of Chile – as the complainant organization points out in its complaint – since the restoration of democracy and even before ratifying Convention No. 98 has engaged in negotiations with that occupational organization for the purpose of proposing to the National Congress the establishment or modification of the national legal and financial frameworks having a bearing on the contracts concluded between municipal employers and the teachers employed by them. The provisions affecting the conditions of employment contained in contracts concluded on a decentralized basis are mainly in the form of national laws drafted and approved, in accordance with the Constitution, with the participation of the National Congress and the Executive Branch.
- 551.** The President of the Republic is vested with exclusive power to propose legislation involving or affecting public expenditure, which is crucial in a system in which most of the resources used by the municipalities to finance education come from subsidies or transfers from the national budget. These proposals have been agreed to and implemented in the past up to the present day, and this constitutes a bargaining procedure which has become established practice, in keeping with the principle of good faith, in accordance with which they have been agreed upon and implemented, as noted by the Committee on Freedom of Association when it recognized this form of bargaining in Case No. 1946 of 1998, in which the complainant organization submitted a complaint concerning the bargaining procedure, recognizing its existence.
- 552.** Accordingly, and despite the constraints of the situation and the absence of an explicit regulatory framework, the Government has negotiated the terms and conditions for the sector and complied with the agreements concluded, and continues to do so up to the present day.
- 553.** Concerning the alleged refusal by the authority to negotiate with the complainant organization, the Government points out that the complaint itself submitted by the Teachers' Association of Chile, states the following: “... while it is true that the authority “agreed to bargain” with the organization and a number of bipartite working committees were set up to deal with the items on the list of demands ...”; thus the complaint itself disproves the complainants' assertions, and hence the content of the complaint appears to be reduced to the timing of negotiations, specifically the date on which they were to be concluded, since what the complaint maintains is that the complainants' list of demands was negotiated but did not culminate in an agreement.
- 554.** The Government adds that the time limits and procedures of self-regulated negotiations cannot be fixed unilaterally by one of the parties, as the complainant organization appears to claim, but must be established by agreement between them, as it is essential to a good faith interpretation to take customary practice into account, as well as the context in which the negotiations take place.
- 555.** It is common knowledge in Chile that since 1990 the Government has periodically negotiated the legal and financial frameworks governing terms and conditions of employment of municipal teachers, which are established between the latter and their respective employers, and these negotiations are intrinsically linked to the discussion of the

general budget Act and the evaluation by the financial authority of the possibilities of increasing wage benefits of public employees; pursuant to legal provisions derived from constitutional principles, this is done in the last months of each year in our country.

556. The Government points out that the Committee on Freedom of Association, endorsing the point of view expressed by the Committee of Experts, maintained that “while the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by Convention No. 151, the special characteristics of the public service described above requires some flexibility in its application” (*Digest of decisions and principles of the Committee on Freedom of Association*, 4th edition, para. 899) and that “collective bargaining in the public sector calls for verification of the available resources” (*ibid.*, para. 898).

557. It follows from the above that the Government did not refuse to negotiate, but did so according to the timing and procedures established by customary practice with the complainant organization, in good faith, and reached an agreement with that organization which, among other points, provides for the following socio-economic benefits for teaching staff:

- an increase in teachers’ wages for the years 2004, 2005 and 2006, which includes the general wage adjustment for the public sector equivalent to 3 per cent for 2004; 5.5 per cent for 2005; and 6.5 per cent for 2006, in addition to an increase for the subsidized private sector;
- a cash bonus for teachers for 2004 and 2006;
- an improvement in labour standards for teaching staff;
- an amendment in the regulations on authorization and qualification to engage in the teaching profession;
- implementation of the academic work in the municipal sector;
- improvement in the regulations on administrative disciplinary proceedings for teachers under municipal administration;
- timing of staff meetings in educational establishments;
- provisions on occupational diseases;
- benefits for municipal sector teachers who take retirement;
- special assistance for teachers of establishments in socially vulnerable conditions;
- cash bonus for teachers in charge of rural schools;
- support for the compulsory creation of teacher training courses;
- change in the further training allowance;
- variable individual performance allowance, linked to the performance evaluation system for teaching staff;
- improvement in the designation of responsibility for management positions and technical pedagogical posts.

- 558.** There has thus been no refusal to negotiate; on the contrary, this bargaining round has been one of the most wide-ranging and beneficial for teachers in recent years, which obviously required more extensive and detailed bargaining at a faster pace than usual and a conclusion appropriate to bargaining on this scale.
- 559.** Another aspect of the complaint relates to the alleged existence of anti-union practices, both by the central authority and by the decentralized administrative bodies, allegedly consisting of “threats to teachers who responded to the call for a strike by their national organization with dismissals, disciplinary proceedings, deductions from remuneration for hours not worked and other punitive measures”. In this respect, the Government points out that no teacher, in the exercise of his or her occupation, has as a counterpart the central Government or the Minister of Education. Employment contracts are concluded between each teacher and their private employer or the municipality which employs them, without intervention by the central Government, and hence the Government against which this complaint is being presented lacks any possibility or power to carry out any of the activities described in the complaint.
- 560.** No complaints have been filed with the competent bodies relating to specific cases or situations reflecting such practices, neither is there any reference to them in the complaint itself, which merely refers in general terms to “threats” without citing specific cases. Without prejudice to the above, pursuant to the doctrine of the Committee on Freedom of Association itself, “salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles” [see 230th Report, Case No. 1171, para. 170, 297th Report, Case No. 1770, para. 75, and *Digest*, para. 588].
- 561.** As regards the allegation that an attempt is being made to infringe the right to strike despite the Conventions ratified by Chile, the Government states that the legal system in Chile, through its Constitution, guarantees “the right to associate without prior authorization” (article 19, paragraph 15, of the Political Constitution of the Republic of Chile) and also raises to constitutional rank “the right to affiliation to unions in the cases and in the manner prescribed by law” (article 19, paragraph 19, of the Political Constitution). In addition, section 212 of the Labour Code recognizes that “workers in the private sector and state enterprises, irrespective of their legal nature” have the right to form “trade union organizations of their own choosing”. The same right is recognized, although in different terms, for workers engaged in the administration of the State, in section 1 of Act No. 19,296 on public servants’ associations, which recognizes that workers engaged in the administration of the State, including the municipalities, have “the right to form public servants’ associations of their own choosing”. Employers on their side may form organizations “for the purpose of promoting the rationalization, development and protection of the activities they have in common on the basis of their occupation, trade or branch of production or services”, availing themselves of the provisions contained in Legislative Decree No. 2,757 of 1979.
- 562.** The rights enshrined in Conventions Nos. 87 and 98, as well as the right to strike, are likewise guaranteed both *de jure* and *de facto*. Although no ILO Convention or Recommendation regulates the right to strike, except Paragraph 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which provides that none of its provisions “may be interpreted as limiting, in any way whatsoever, the right to strike”, the Government of Chile is clear about its incorporation in instruments such as the International Covenant on Economic, Social and Cultural Rights (1966) and the International American Charter of Social Guarantees (1948), and hence understands that the right to strike, as pointed out by the Committee on Freedom of Association, is “an intrinsic corollary of the right of association protected by Convention No. 87” and therefore cannot be separated from the body of trade union rights, and hence is considered to be a fundamental right of workers and their organizations in that it constitutes a means

of defending their economic interests. The Government refers to the principles of the Committee on Freedom of Association. In the case at issue, the Government points out that it has not carried out any act involving infringement of the exercise of the right to strike, although it is convinced that the strikes were not legitimate, since they were held without the possibility of safeguarding minimum services and to the clear detriment of the most socially vulnerable segments of the population, i.e. those attending municipal education, whose right to education was infringed in a procedure which was entirely unnecessary, given the time and the context in which it was held.

C. The Committee's conclusions

- 563.** *The Committee observes that in this case the complainant organization has alleged violations of teachers' right to bargain collectively and to strike. Specifically, it alleged that after a list of teachers' demands was presented to the Minister of Education, the 2003 bargaining round was initiated, and the authority had agreed to negotiate, setting up a number of bipartite committees, and that at the time the complaint was submitted (October 2003) the competent authority had not made a formal reply to the items on the list of demands, an attitude which, in the view of the complainant organization, demonstrates that the authority was not genuinely willing to negotiate and conclude an agreement on wages, among other issues, and has not taken the trouble to submit a formal and serious counter-proposal. The complainant organization adds that this refusal to negotiate led it to call a strike on 30 September 2003, and a second strike on 23 and 24 October of the same year.*
- 564.** *The Committee notes that the Government points out that despite the lack of an explicit regulatory framework, since 1990 it has negotiated the terms and conditions of teaching personnel and complied with the agreements concluded, but that in the case at issue, in accordance with customary practice and good faith, the timing and procedures cannot be unilaterally established by one of the parties, especially given that the legal and financial frameworks governing the terms and conditions of employment of municipal teachers are linked to the discussion of the general budget Act and evaluations by the financial authority. Lastly, the Committee notes with interest that the Government reached an agreement with the complainant organization which includes, among other points, increases in teachers' remuneration for the years 2004, 2005 and 2006, which shows that the Government did not refuse to negotiate, but that it did so according to the timing and procedures established through practice with the complainant organization, in good faith.*
- 565.** *As regards the alleged threats by the central authority and the decentralized administrative bodies (dismissals, disciplinary proceedings, deductions of remuneration for hours not worked and other punitive measures against the workers who responded to the call for a strike by the complainant organization), the Committee notes that the Government: (1) denies that it has committed any act which involves infringing the right to strike; (2) recalls the principles of the Committee to the effect that salary deductions for days of strike give rise to no objection; (3) emphasizes that the complainant organization has not cited any specific act which would have infringed the right to strike, neither have any complaints been filed; and (4) points out that in the case at issue the strikes were held without the possibility of safeguarding minimum services. In these circumstances, given that the collective dispute which gave rise to this case ended with the conclusion of a collective agreement and that the complainant organization has not provided details concerning the alleged threats, the Committee will not proceed with the examination of these allegations.*

The Committee's recommendation

566. *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. 2320

INTERIM REPORT

Complaints against the Government of Chile presented by

- the National Inter-enterprise Trade Union of Metallurgy, Communications, Energy and Allied Workers (SME) and
- the World Federation of Trade Unions, Regional Office, Americas (WFTU-ROA)

Allegations: Anti-union practices in the PLASTYVERG conglomerate, including dismissals of trade union delegates and members, pressure on members to withdraw from trade union membership, interference by several enterprises to sideline the trade union and negotiate with workers' delegates appointed by the employer; violent repression of a national strike on 13 August 2003 despite its peaceful nature; detention of trade unionists and threats of intimidation against workers who participated in the strike, use of armoured cars, water cannons and tear gas – including against CUT headquarters – ill-treatment, closure of streets to which access was authorized for the demonstration, assault on the general secretary of the CUT, use of rubber bullets, injuries to workers' physical integrity, torture of a detainee, the drawing up of lists of strike participants in different institutions and dismissal of a teachers' union leader and her sister; and violations of trade union rights by the CODELCO state enterprise and the HERPA S.A., Viñas Tarapacá y Santa Helena enterprise

567. The complaints are contained in communications from the National Inter-enterprise Union of Metallurgy, Communications, Energy and Allied Workers (SME), dated 30 November 2003 and 14 January and 23 February 2004, and in a communication from the World Federation of Trade Unions (Regional Office, Americas) dated 29 March 2004. The SME sent additional information and new allegations in communications dated 10 May, 2 June and 4 September. The Government sent its observations in communications dated 20 May and 30 June 2004. The PLASTYVERG consortium sent its observations in a communication dated 30 April 2004.

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

A. The complainants' allegations

569. In its communication dated 30 November 2003, the National Inter-enterprise Union of Metallurgy, Communications, Energy and Allied Workers (SME) alleges anti-union practices in the PLASTYVERG conglomerate, dismissal by one of the enterprises of the group (the Promociones Packs y Ofertas S.A. enterprise) of trade union delegates José Saavedra Araya (23 September 2003) and Luis Labarca Lazo (27 September 2003) and trade union member Pablo Villavicencio; Luis Martínez, a trade union delegate in the Center Packs enterprise, was also dismissed, although he was subsequently reinstated (being covered by trade union immunity) but transferred to another workplace; this enterprise then asked trade union delegate Luis Martínez Duarte to withdraw from the trade union and to set up a separate group of workers; Mr. Martínez Duarte refused and the Promociones Packs y Ofertas S.A. enterprise then appointed a staff delegate in the enterprise, and got a group of workers to sign this nomination after offering them economic advantages; at the same time, the enterprise began to pressure the trade union members to withdraw from membership and join the abovementioned group of workers.
570. In October 2003, the SME, as the inter-enterprise trade union, submitted draft collective agreements to the different enterprises in the PLASTYVERG group, which refused to accept them and continued to pressure workers to withdraw from the trade union and from the bargaining process. Later the draft agreements were presented as coming from groups of workers (as prescribed by law). The Promociones Packs y Ofertas S.A. enterprise accepted the list of demands from the staff delegate (who was appointed by the enterprise, as mentioned above). In view of the above, the SME filed complaints with the labour inspectorate; pressure to withdraw from membership and from collective bargaining continued; trade union delegate Rafael San Martín Artete was assigned different duties, and sent to package rolls and threatened with a pay cut. On 26 November 2004, the general manager of the PLASTYVERG group informed trade union delegate Sergio Cornejo Durán that the workers would have to withdraw from the trade union once the collective bargaining process was completed.
571. In its communications dated 29 March and 10 May 2004, respectively, the World Federation of Trade Unions (Regional Office, Americas) and the SME allege that SME members Antonio Cordero and Juan Muñoz were dismissed for refusing to consent to the PLASTYVERG enterprise's demand to resign "voluntarily" "on grounds of the requirements of the enterprise". In addition, as a result of pressure and constant harassment by the enterprise, union members Nelson Araneda, Víctor Viera, José Vera, Fernando Martínez, José Poblete, Ramón Lizama and Héctor González gave in and, after being dismissed, consented to sign so-called "voluntary resignations"; the enterprise then hired fewer workers. The enterprise had already notified the workers that anyone who participated in collective bargaining would be dismissed once their period of statutory immunity expired.
572. Starting on Monday, 15 March, of this year, after receiving from the employers' association (SOFOFA) a copy of the complaints submitted by the trade union to the ILO, the enterprise obliged workers to sign a blank document in letter format. All of the workers were threatened with dismissal if they did not support the enterprise with their signature. The threat went, "if you want to continue working, sign" and was issued by line managers or supervisors. A worker who refused would be dismissed "on grounds of the requirements of the enterprise" according to section 161 of the Labour Code, as happened to worker Vladimir Castillo.

- 573.** Demanding their signature, representatives of the enterprise presented each worker, one by one, at the workplace, with a letter from the enterprise and the employers' organization SOFOFA to the International Labour Organization. The letter referred to the complaint of 30 November 2003 submitted to the ILO by the trade union against the State of Chile for violation of international labour Conventions Nos. 87 and 98. Up to Thursday, 19 March, faced with this situation and the total lack of protection against anti-union dismissal, the trade union had advised workers to sign if they were pressured to do so, since this confirmed the existence of anti-union practices. Using this method, by 19 March 2004, 198 signatures of workers in different areas had been collected for purposes of which the complainant organization is not aware, but they are believed to be intended to counter the arguments put forward in the complaint.
- 574.** In the same circumstances, since Wednesday, 17 March 2004, the enterprise and the staff delegates appointed by it have ordered workers to sign a letter that has already been drafted, in which the signatories express their alleged opposition to the trade union, demanding that the trade union delegates be censured. There are three staff delegates appointed by the enterprise who have participated in the collection of signatures to censure trade union delegates (this is the term used in Chilean legislation to refer to workers' representatives); none of them is a trade union member, and they participate in all of the anti-union actions undertaken by the enterprise.
- 575.** According to the complainant organization, all of these processes were set in motion by the fact that on 15 March a copy of the formal complaint of 30 November 2003 presented to the ILO fell into the hands of PLASTYVERG's management, unleashing a wave of actions against freedom of association by the enterprise, to the grave detriment of the workers. The trade union is now awaiting the outcome of an initial complaint filed with the courts covering the first six months of anti-union practices by this enterprise.
- 576.** The following trade union members employed by the enterprises of the PLASTYVERG group have had to stop working for the company: Fernando Martínez (Center Packs), Víctor Viera (Promo Packs), José Poblete (Center Packs), Ramón Lizama (Promo Packs), Nelson Araneda (PLASTYVERG), Vladimir Castillo (Promo Packs), José Vera Vera (Promo Packs), Antonio Cordero Espinoza (Center Packs) Héctor González (Promo Packs), Juan Carlos Muñoz (Promo Packs). Some agreed to sign so-called voluntary resignations – which are not in fact voluntary – in return for which they received a pay rise after having been constantly harassed and dismissed with the aim of disguising the anti-union practice. Two of these workers refused to resign and were dismissed on grounds of the requirements of the enterprise — their posts were taken by other workers.
- 577.** In its communication of 2 June 2004, the SME alleges that the following trade union members were dismissed on 31 May 2004 on grounds of “the requirements of the enterprise” (section 161 of the Labour Code): Mario Sandoval, Guillermo Pérez, Jorge Cerda and Alex Delgado. The enterprise has already hired other workers in the positions of those who were dismissed. The trade union requested the labour directorate to take note of these practices in violation of freedom of association, which have become even worse in the PLASTYVERG enterprise.
- 578.** Lastly, in its communications of 14 January and 23 February 2004, the SME sends allegations concerning violations of trade union rights by the HERPA S.A., Viñas Tarapacá y Santa Helena enterprise and the CODELCO state enterprise.
- 579.** The SME alleges that on 27 May 2003, the workers employed by the Spanish multinational HERPA S.A. Chile elected Mr. Néstor Carrasco as their trade union delegate. The enterprise refused to recognize the SME and the trade union delegate, who was dismissed, and later had to be reinstated by court order. At the trade union's request, the Labour

Directorate carried out an inspection on 11 September 2003, as a result of which it fined the enterprise for failure to pay remuneration, non-compliance with security regulations and unlawful dismissal of a trade union delegate covered by trade union immunity. On 22 October 2003, a vote was held to elect a bargaining committee to begin negotiations, and the following workers were elected: Néstor Carrasco, Marcos Rojas and Andrés Sánchez. The next day, the enterprise unlawfully dismissed Alberto Carrasco, Marcos Rojas and Jaime Vera, all members of the SME, in order to prevent the workers from achieving the quorum required to initiate bargaining. On 11 December 2003, a request was made for an inspection of the enterprise on grounds of anti-union practices: failure to assign the work agreed in the contract; transfer of the trade union delegate to other duties; hiring workers to illegally replace unionized workers; separation of reinstated workers from the rest of the workers at lunchtime to prevent them from communicating among themselves; and threats of dismissal against unionized workers.

- 580.** The enterprise continued to harass Néstor Carrasco in order to get him to resign from the union and the enterprise. Finally, he submitted a “voluntary” resignation to the San Bernardo Labour Inspectorate on 18 December 2003. On 21 January 2004 the enterprise accepted some of the points raised in collective bargaining but rejected all the rest. On the next day, the Labour Directorate was notified of the termination of negotiations, in particular because the employer refused to agree to any wage increase. On 23 January a legal strike began, during which the workers held a sit-in in the enterprise. The courts turned down the enterprise’s request to evict the workers and confirmed that the workers were within their rights. The enterprise lodged an appeal for protection of constitutional rights (*amparo*) with the Court of Appeals, which is still pending. Since the beginning of the strike, the enterprise refused to meet with trade union leaders. On 26 January, inspectors attempted to evict the workers, alleging that the strike was illegal. On 2 February, the enterprise hired 12 strike-breakers from a security company. A complaint was filed against this situation with the labour inspectorate, which took note of the violation and ordered that these workers be removed from the enterprise.
- 581.** On 17 February the workers again held a peaceful sit-in at the enterprise at 6.30 a.m. At 8.30 a.m., a police unit arrived on the scene, but the workers refused to be evicted from the enterprise in the absence of a court order. Later, police reinforcements arrived in large numbers and evicted the workers by force, using considerable and disproportionate violence against the five workers who were in the enterprise. As a result, three workers were seriously injured, and all of them were detained, together with three workers who were offering their support. The police used more than 60 officers, a vehicle equipped with a water cannon, a vehicle equipped with a tear gas launcher and three police cars, two motorcycles and the application of tear gas. Up to the date of the complaint, police officers remained stationed in the enterprise, in a move to intimidate the workers on strike.
- 582.** The complainant organization alleges that these acts occur because of connivance between major export enterprises and the multinationals that provide production services to them, in the absence of appropriate measures by the State to put an end to such practices. The authorities confine themselves to imposing minor fines on enterprises found guilty of violations, but do not put an end to the violation. The SME alleges further that the Viñas Tarapacá and Santa Helena enterprises are also guilty of having allowed strike-breakers to come and work in their installations to replace the striking workers employed by HERPA S.A.
- 583.** The SME points out further that the CODELCO state enterprise, Mina El Teniente division, in Rancagua, region VI, hires subcontractors to work their copper mines, and the latter hire further subcontractors in turn. The CODELCO enterprise thus does not have contractual relationships with all of the miners working in the areas owned by it. The SME alleges that in November 2002 these enterprises refused to engage in collective bargaining.

The Provincial Labour Inspectorate changed its original stance and now supports the subcontractors, citing orders issued by the Labour Directorate itself, which have not been approved by Parliament and which entail in practice an amendment of legislation, since they deny the right to bargain collectively to thousands of unionized workers.

- 584.** Various attempts by the Inter-enterprise Trade Union of Workers of the CODELCO Enterprises (SITELCO) to set up a joint body to seek possible solutions with representatives of the enterprise were rejected on the grounds that the enterprise does not have contractual relationships with the workers. CODELCO refuses to recognize the trade union and has even filed a lawsuit against it, considering it an illegal association.
- 585.** Shortly after the draft collective agreement was presented to the CODELCO subcontractors, Mina El Teniente division, three of the union's leaders were beaten in the public thoroughfare "so that they would stop causing problems". At the beginning of December 2003, the CODELCO enterprise prevented union leaders from going to the worksites where its members were working. On 15 December, workers employed by the subcontractors started a sit-in strike to get the enterprises to negotiate with the trade union on the draft collective agreement. Apparently as a result of CODELCO's intervention, the enterprises rejected the proposal and said that they would only negotiate with staff delegates, excluding the trade union.
- 586.** During discussions at the worksite, the enterprises proposed a particular form of bargaining (enterprise by enterprise) with a trade union presence. Although this proposal was accepted by the trade union, the enterprises subsequently withdrew their proposal. On the afternoon of 15 December the workers peacefully occupied the main entrances to the mine. There were no cases of persons attacked or security endangered. In the morning of 16 December, the workers received an ultimatum from the enterprise ordering them to leave the mine. Without attempting to negotiate a solution, about two hours later the workers were attacked by police using truncheons, firearms and 12-gauge shotguns with rubber-coated steel bullets or shot.
- 587.** A total of 16 workers were injured, some of them seriously. The worker Enzo Pérez was hit by 20 shots. Police arrested 115 strikers (including the wounded) and released them on the afternoon of the same day. The police succeeded in breaking the strike and evicting the workers.
- 588.** As of the date on which the complaint was presented, 220 workers had been dismissed for participating in this action. CODELCO called for dismissal of the striking workers and their inclusion on blacklists so that they would not be able to return to its premises or work for its subcontractors.
- 589.** The SME alleges that there was no court order to evict the strikers and that the police acted illegally on behalf of the CODELCO state enterprise, as it had on many other occasions.
- 590.** The SME emphasizes that the contract workers' real employer is CODELCO, which is jointly responsible for the obligations of its subcontractors towards its workers, including with regard to trade union rights. It adds that, as CODELCO is a state enterprise, the State also bears responsibility for the anti-union measures.
- 591.** In its communication dated 4 September 2003, which was also signed by the National Confederation of Construction Workers (CNTC), the National Confederation of Healthcare Workers (CONFENATS), the National Association of Workers of the Youth Protection Service (ANTRASE), the Metropolitan College of Teachers (CRP), the National Confederation of Road Transport Workers (CONUTT), the National Inter-enterprise Trade Union of Commercial, Textile, Garment and Allied Workers (SCTV) and the National

Inter-enterprise Trade Union of Security Guards, Watchmen and General Services and Allied Workers, the SME alleges that the Single Central Organization of Chilean Workers (CUT), during the May Day celebrations in 2003, called on Chilean workers to hold a nationwide 24-hour strike on 13 August 2003. The workers observed the strike and participated actively; in all of the cities throughout the country there were demonstrations, stoppages and blockages caused by marches and demonstrations of workers, of which the authorities had been duly informed in advance. In order to avoid serious harm to the public, the different trade unions and professional associations maintained emergency services, for example in public health services; even teachers ensured that poor pupils were served meals in schools. The trade union leadership and members had carried out their preparations with a great deal of responsibility and forethought. The Chilean workers had presented their list of demands, entitled “For a fair Chile”, explaining the reasons and demands behind the national strike, at a meeting held in September 2002 with the President of the Republic and his ministers. The reasons and demands are as follows:

- against growing and unfair social inequalities;
- against the application of an economic model that generates unemployment and makes work more precarious;
- the authorities should enforce labour law, because over one-half of the enterprises systematically violate it;
- put a stop to blatant anti-union persecution and guarantee workers the right to form trade unions freely and without threats;
- ensure that workers can engage in genuine collective bargaining, because this right does not exist in practice;
- reject the changes in maternity leave for working women;
- decent jobs, with decent wages and social security;
- genuine and real social protection for all workers, whether dependent or self-employed;
- in protest against the anti-worker policies of the Government of Chile;
- for a reform of the labour court system, given that labour court proceedings lasted years.

592. Previously, at a public meeting in August 2002, the leadership of the CUT had presented their proposals and demands to the highest authorities, and the President of the Republic had assigned the Minister of Labour the task of examining the organization’s proposals in September 2002. The day before the strike, on 12 August, the President of the Republic criticized the call for a strike, saying he was unaware of the reasons for the action taken by the trade union confederation, thus displaying the Government’s lack of interest and callousness.

593. On the eve of the strike, the Government started discrediting this action by the workers, denying its legitimacy. At the same time, the police began their first acts of repression against the trade unionists. For example, on Friday, 8 August, the CUT’s National Adviser, Sergio Troncoso, and the national leader of the Trade Union of Contingent Workers and Unemployed Persons, Pedro Muñoz, were detained by police officers for distributing information leaflets on the national strike. They were released after spending three hours in the police station. All of the propaganda materials were confiscated.

- 594.** In the run-up to the strike, the Ministers of Health and Education issued threats to public sector workers intending to participate in this trade union action. For example, on 23 July, the Secretary of Health wrote the following letter to his staff: “I inform you that this state secretariat does not approve of the total or partial interruption or stoppage of activities ... Accordingly, I instruct you ... to have recourse ... to the use of the police forces”. Similarly, the Secretary of Education, Sergio Bitar, and other senior government officials threatened public employees who participated in the national strike with detrimental consequences, such as disciplinary proceedings and pay deductions.
- 595.** The obvious aim of these intimidation tactics by government authorities was to frighten the workers into not exercising their rights. Similar threats and intimidation were also carried out by the Minister of Transport, who even threatened the workers with a fine and demanded that bus owners dismiss bus transport workers who participated in the strike. The first wave of police violence occurred early on in the strike, forcing the workers to go to work. The government authorities warned employers to hire strike-breakers to break the national strike; metro employees were forced to work 12-hour days.
- 596.** As had already happened in previous public demonstrations, three masked youths, who were not involved in the workers’ marches, appeared punctually on the morning of 13 August, obstructing the public thoroughfare in the vicinity of the column of marching workers. The police did not detain the masked youths, but they did attack and detain leaders and workers who were peacefully marching. On the following day, official statistics mentioned “four instances of serious disturbances of public order and damage to public property”. These isolated occurrences, which were unrelated to the six blockages formed in different parts of the city to peacefully urge workers not to work and to participate in the national strike, served as a motive and a pretext to launch an army of thousands of police officers deployed in the capital.
- 597.** The police officers were fully equipped to repress a rebellious crowd: combat gear, armoured trucks, a large number of water cannons and huge quantities of a powerful new type of tear-gas bomb. This huge police arsenal was not used to detain the isolated vandals, but to attack groups of demonstrators who were attempting to approach CUT headquarters. Some of the groups could not leave because the police had closed off the streets that the demonstrators had been authorized to march through. The others suffered ill treatment to an unprecedented extent. All the weaponry that had been brought in to repress and intimidate the demonstrators was put to violent and brutal use. The marching columns were dispersed using water cannons and even small groups of demonstrators were pelted with tear-gas bombs, and the police indiscriminately detained participants. The police were seen literally hunting people down for no reason other than the aim of carrying out an attack of unprecedented violence to destroy any organized movement. None of the groups of demonstrators managed to reach CUT headquarters in an organized manner.
- 598.** Anyone who came near the CUT premises, whether dispersed members of the groups of demonstrators or individuals, was attacked with water cannons containing chemicals or with tear gas. During the attacks on workers in front of the CUT building, water cannons were aimed as high as the second floor of the building, where the president and secretary-general of the CUT had their offices. This was where the officers targeted most of their tear gas attacks. In addition, as the secretary-general of the CUT and the president of the SME, together with teachers, health workers, transport workers, commercial workers, copper miners and other leaders was addressing the workers outside the premises of the CUT, he was assaulted by police with water canons containing chemicals, for no reason at all.
- 599.** The way in which the members of the police forces had been prepared is further reflected in their behaviour throughout the rest of the day. All of the attempts to organize a trade

union event had already come to a halt, the public thoroughfares were open and there were only a few hours left until the planned end of the strike. Some incidents occurred in a district south of Santiago. Outside the area where the incidents occurred, some police officers fired rubber bullets for no reason at a private house through the window and put an entire family at risk, inflicted a gunshot wound on one person, and fired tear gas at houses from 4 p.m. onwards. In another area of the capital, police armoured cars were brought out. These acts clearly demonstrate a deliberate intention to attack and provoke. This, and not the isolated incidents which occurred, was the most dangerous aspect of the entire day.

- 600.** There are no exact figures on the number of persons injured as a result of the criminal attacks perpetrated by the police forces. A number of workers who suffered physical injury have instituted proceedings against those responsible for truly criminal acts perpetrated against their physical integrity; the leaders lodged a complaint against the attack on the premises of the CUT, as well as an appeal for protection for a detained person who was tortured in a police station in southern Santiago.
- 601.** The Governor of the Metropolitan Region of Santiago himself threatened to dismiss workers in the metropolitan administration if they participated in the strike and, in a speech made early in the morning over the media, pointed out that such actions always resulted in fatalities. In the Youth Protection Service an order was issued to draw up lists of the participants in the national strike, and this was announced to employees so that they would refrain from taking part in the strike.
- 602.** The authorities stated that there was no reason for the strike because they had already met one of the CUT's demands, which was to send draft legislation reforming the labour court system; this was announced publicly before the strike but was not true, as was made clear by the Chamber of Deputies, which stated that the draft had only been received in Parliament in October and was still pending in Congress.
- 603.** The public peaceful demonstration held by the trade unions did not give any justification whatsoever for the use of brute force by the police against demonstrators.
- 604.** After the events of 13 August, a complaint was filed under the Internal Security Act and because of a bus that had been burned, and this was widely publicized in the press, creating a climate of uncertainty, in an attempt to link these acts with the strike, whereas the CUT had called a national strike and its entire leadership had made every effort to organize the activities so as to avoid acts by agents provocateurs and members of the police who infiltrated the demonstration.
- 605.** A teachers' leader, Marcela Mallea Bustos, who was evicted together with other teachers from the Liceo de San Pedro in the metropolitan region for having actively participated in the strike, was dismissed; her sister Patricia Mallea Bustos, also a teacher, was dismissed as well in reprisal.

B. The Government's reply

- 606.** In its communication dated 15 June 2004, the Government states that the complaint made by the National Inter-enterprise Union of Metallurgy, Communications, Energy and Allied Workers (SME) refers to violations of trade union rights alleged to have occurred in the PLASTYVERG group of enterprises. This group is comprised of the following enterprises: Inmobiliaria La Vergara, Poli Packs, Promociones Packs y Ofertas S.A. and Center Packs.
- 607.** The allegations basically concern, on the one hand, pressure brought to bear by enterprises against trade union delegates of the abovementioned trade union and, on the other, refusal

by enterprises to engage in collective bargaining, and during the process of bargaining, exerting pressure aimed at discouraging participation by the abovementioned trade union.

- 608.** In this respect, according to information in possession of the Labour Directorate, the trade union in question, in accordance with section 334bis of the Labour Code, presented draft collective agreements to the enterprises in the group, which, in accordance with the authority conferred on them by the same provisions, expressed their refusal to bargain collectively with the complainant trade union. Section 334bis of the Labour Code specifies that it is optional for enterprises to bargain with an inter-enterprise trade union:

Section 334bis. Notwithstanding the provisions in the second paragraph of section 303, an inter-enterprise trade union may present a draft collective agreement on behalf of its members and workers who join the trade union, to employers employing workers who are members of that trade union; the latter shall be empowered to sign the collective agreements concerned.

In order to present such a draft, the trade union is required to do so on behalf of at least four workers in each enterprise.

In this context, negotiations were started by a group of workers, in accordance with the general regulations on the subject. The drafts were presented on the same day on which the employers stated their refusal to negotiate. All of them had to be notified by the labour inspectorate on the following dates: Promo Packs (20 October 2003), Center Packs (20 October 2003), Poli Packs (27 October 2003) and Immobiliaria La Vergara (27 October 2003).

- 609.** The workers complained of failure by the enterprises to communicate with the rest of the workers, as provided by section 320 of the Labour Code, and this was confirmed by the labour inspectorate. Section 320 of the Labour Code reads as follows;

Section 320. The employer shall notify all the other workers of the enterprise that a draft collective agreement has been presented, and the workers shall have a time limit of 30 days, counting from the date on which the notification was made, to present drafts in the form and under the conditions laid down in this Book or to support the draft that was presented.

The last day of the period referred to in the preceding paragraph shall be understood as the date on which all the drafts are presented, for purposes of calculating the time limits prescribed in this Book for responding to the drafts and initiating negotiations.

The employers communicated their reply to the bargaining committees of Promo Packs and Center Packs on 3 November 2003. These committees had until 29 November to formulate objections as to legality. The employers acted in conformity with the law with regard to the presentation of these drafts, given that, in their view, the bargaining committees had not been appointed in accordance with the provisions of section 326 of the Labour Code, which reads as follows:

Section 326. Representation of workers in collective bargaining shall be carried out by a bargaining committee composed as indicated below.

If the draft collective agreement is presented by a trade union, the bargaining committee shall be the executive committee of that trade union, and, if a number of trade unions made a joint presentation, the committee will consist of the officers of all of them.

If a draft collective agreement is presented by a group of workers joining together for the sole purpose of bargaining, a bargaining committee shall be set up in accordance with the following rules:

- (a) in order to be elected as a member of the bargaining committee, the candidate shall meet the same requirements as those for being an officer of a trade union;

- (b) the bargaining committee shall consist of three members. However, if the bargaining unit consists of at least 250 workers, five members may be appointed; if it consists of at least 1,000 workers, seven members may be appointed; and if it consists of at least 3,000 workers, nine may be appointed.
- (c) the members of the bargaining committee shall be elected by secret ballot, which shall be held in the presence of a certifying officer, if there are at least 250 workers; and
- (d) each worker shall have the right to two, three, four or five votes (which cannot be accumulated) depending on whether the bargaining committee consists of three, five, seven or nine members, respectively.

The employer shall have the right to be represented in the negotiations by up to three agents who belong to the enterprise, which may also be understood to include members of its board of directors and partners authorized to manage the enterprise.

- 610.** In this context, the bargaining committees failed to avail themselves, within the time limit, of the possibility of formulating objections and, hence, in accordance with the doctrine, including that contained in Decision No. 4431/106 of 20 June 1998, this was understood as signifying their acceptance of the employers' reply and observations. Notwithstanding the above, in both enterprises a collective agreement was signed for a term expiring on 30 August 2006, of which the labour inspectorate was notified by the enterprises on 21 January 2004.
- 611.** With respect to the collective bargaining involving the other two enterprises, i.e. Inmobiliaria La Vergara and Poli Packs, the employers discharged their obligation to inform the other workers, in accordance with section 320, and this was confirmed by inspectors during an inspection visit.
- 612.** On 1 December 2003, the employer sent a copy of the replies communicated on 28 November and 1 December, respectively. In its reply to the draft collective agreement, the first enterprise made certain observations as to legality, impugning one of the members of the bargaining committee as a person who was not employed by the enterprise, as well as the lack of a quorum to bargain, given that the draft was accompanied by a list of four workers. The bargaining committee also formulated its own objections as to legality. The reply of the second enterprise also referred to the absence of a quorum, since only four workers were involved.
- 613.** In regard to the above replies, the Maipo District Labour Inspectorate issued Decisions Nos. 450 and 451, both dated 9 December 2003, taking note of the lack of a quorum to negotiate. Notwithstanding the above, the bargaining committees requested a certifying officer to vote on the last offer or a strike, but this request was not accepted by the labour inspectorate.
- 614.** Notwithstanding the above, the Labour Directorate considered, in accordance with the law, that the lack of the necessary quorum to negotiate, which was not denied during the time limit by the bargaining committees, necessarily entails termination of the bargaining process, and hence the workers were no longer covered by immunity and there were no grounds to initiate an investigation to obtain the reinstatement of the dismissed workers, but there was reason to open an investigation on the grounds of anti-union practices.
- 615.** As a result of that investigation, it was confirmed that pressure had been brought to bear by the enterprises in regard to the election of staff delegates and that trade union members had been pressured to withdraw from the union during the collective bargaining process.
- 616.** This investigation led to the filing of a complaint of anti-union practices, Case No. 7939 of 2002, which was examined by the First Court of the First Instance of San Bernardo, which has recently handed down its judgement, which is not yet final, upholding the part of the

complaint concerning undue pressure on the workers to resign from union membership, ordering that this conduct cease and imposing a fine of 75 monthly tax units on the enterprise. It did not uphold the complaint referring to employer interference in the election of the staff delegate. A second complaint has been filed on this subject by the executive committee of the Inter-enterprise Trade Union, and this is currently under investigation.

- 617.** On 6 April 2004 the operations manager of the PLASTYVERG enterprise reported by telephone that premises of the enterprise had been taken over by five trade union delegates and four workers, supported from outside by a group of about 15 persons, and the situation was dealt with through the intervention of police officers, who only acted by their presence.
- 618.** On 29 March 2004 the executive committee of the Inter-enterprise Trade Union presented to the Labour Directorate a copy of a note sent to the Governor of the Metropolitan Region, requesting that the police forces refrain from intervening in the demonstrations that the workers would be carrying out in protest against the anti-union dismissals.
- 619.** Lastly, at the meeting held on 16 April 2004 between the Director for Labour and the Exporters' Association, to which the PLASTYVERG group is affiliated, it was agreed that mediation be offered as an alternative means of solving the disputes that had arisen between the enterprises and the trade union, and this issue will be taken up in the near future.
- 620.** As regards the suggestion to request information from the employers' organization concerned, so that the Committee on Freedom of Association might take its views into consideration, as well as those of the PLASTYVERG group, the Confederation of Production and Trade (CPC), the employers' highest level organization, was consulted, and it transmitted the request to the president of the PLASTYVERG group, who submitted a file containing a considerable amount of information and photocopies of supporting documents, and giving the point of view of the enterprise and the employers' organization in reply to the complaint presented to the ILO. According to the enterprise:
- Mr. José Saavedra committed a serious breach of his duties under his employment contract by getting drunk on 17 September 2003 as he was carrying out his normal tasks, and said that he would seriously damage the enterprise if he were dismissed; in addition, he used vehicles belonging to the enterprise without authorization, photocopied confidential information and spoke disrespectfully to the manager and deputy manager; he had threatened to shoot a worker in the presence of others. For all of these reasons, he was dismissed and asked to leave the house that had been provided during the employment relationship, and was provided with other accommodation (for up to 90 days until he found somewhere to live), in which he would not have direct access to confidential information. Only on 27 September was the enterprise provided with formal certification that Mr. Saavedra and Mr. Luis Labarca had been elected as trade union delegates on 22 September.
 - Given the recalcitrance and lack of commitment displayed by Mr. Luis Labarca in his duties as nightwatchman and guard, during which he allowed free access to the installations to Mr. Saavedra, failed to carry out his night rounds, etc., the enterprise decided to terminate the employment contract on 27 September, of which he was informed, and his severance pay was calculated, with all the wages due. Upon being notified he submitted a copy of certificate No. 2185 of the labour inspectorate certifying that he and Mr. Saavedra were trade union delegates, and hence the dismissal was annulled in view of the trade union immunity he enjoys as a delegate. Mr. Labarca's refusal to discharge his duties at work prompted the enterprise to issue

a communication dated 30 September requesting him to improve his conduct and discharge his duties to the best of his ability. On 4 October Mr. Labarca decided to resign from the enterprise for strictly personal reasons which did not allow him to carry out his duties properly and, in addition, requested an increase in his severance pay in relation to an outstanding debt with a compensation fund. The enterprise accepted his request and his employment was terminated on 6 October in the presence of a notary. He also resigned as trade union leader. Copies of these documents are attached.

- In the light of the above, one has the impression that Mr. Saavedra and Mr. Luis Labarca were using the trade union to negotiate their departures and gain financial advantages from their trade union office. These facts prompted dozens of members to resign from the trade union, as all the workers had witnessed the bad faith displayed by these trade union leaders.
- Concerning the dismissal of Mr. Pablo Villavicencio, allegedly a member of the Inter-enterprise Trade Union, this took place on 27 September and it was only on 8 October, i.e. 11 days later, that the Inter-enterprise Trade Union submitted the list of members together with the draft collective agreement. Prior to that date, the enterprise was not aware of the list of members of the trade union. Finally, with the workers' consent, his employment was terminated in the presence of a notary, by mutual agreement between the parties. His termination agreement is attached.
- Similarly, in the case of Mr. Daniel González, the worker signed his termination agreement in the presence of a notary on the grounds of mutual consent of the parties, on 7 October, and it was only on 10 October that the list of trade union members including his name was presented; it is patently untrue that his electricity and water supply were cut off. His termination agreement, on grounds of mutual consent of the parties, is attached.
- In the case of the worker Luis Martínez, the enterprise decided to terminate his employment contract on 24 September. Only five days later, on 29 September, the worker presented a certificate stating that he was elected as a trade union delegate on 23 September, prior to the dismissal, and he was therefore reinstated in the enterprise. Since the worker had been away from his post for five days, and shifts had been reorganized to cover his absence, he was assigned to another workplace. The worker expressed his disagreement, and therefore the enterprise reassigned him to his previous post and he withdrew his complaint on 15 October, having been transferred to his original post. Supporting documents are attached, including documents in which this worker and four other trade unionists agreed to terminate their employment relationship and waive all legal claims.
- Given the pressure and hostile climate in the enterprise caused by the presence of a bus broadcasting slogans over loudspeakers and notices referring to a strike in the enterprise, the workers who were not members of the Inter-enterprise Trade Union decided to organize themselves quickly and appointed staff delegates, including Mr. Gerardo Díaz. This initiative by the majority culminated on 8 October, when the workers presented lists of signatures and tax registration numbers to the labour inspectorate, to officially ratify the election of the staff delegates. Each list clearly identified the enterprise in question and the identity of the staff delegate whom the workers supported. Mr. Díaz sent a copy of the communication presented to the labour inspectorate on the same day, and all the head of the personnel department did was to inform the rest of the organization that Mr. Gerardo Díaz had been elected as staff delegate.

- The enterprise had never refused to receive its workers, much less trade union or staff delegates. Given that the enterprise had exercised its statutory right under section 334bisA to refrain from bargaining with the Inter-enterprise Trade Union and given the pressure brought to bear by that trade union in the form of telephone calls to enterprise managers outside office hours, etc., it was decided that persons outside the enterprise would not be received, while keeping the channels of communication with all of its employees open.
- At the same time as the *election* of staff delegates in accordance with the law was presented (confirmed by the labour inspectorate), the workers submitted to the enterprise a number of demands reflecting the concerns of the workers they represented, and the enterprise, bearing in mind the tough competition the enterprise was facing, but aware of its workers' needs and the reasonable nature of their demands, decided to accede to them. These demands mainly focused on compensation for the loss of purchasing power of their remuneration. In accordance with the agreement signed by the staff delegates, the workers who had not received wage increases in the last year were granted the equivalent of 200 per cent of the consumer price index for the last 12 months. It was also agreed that they would receive another increase a year later and that they would be issued with work clothes according to a fixed schedule. These staff delegates were freely elected from among their peers and are not a group of workers having close ties to the enterprise, as the complaint disparagingly puts it, but a group of workers representing more than 90 per cent of the enterprise workforce, who defended their enterprise against leaders that do not represent their interests and do not care about the welfare of the enterprise or its workers, or about maintaining a good working climate.
- On 10 October, the Inter-enterprise Trade Union presented a draft collective agreement, and the enterprise, acting in accordance with the law and within the legal time limit of ten days, exercised the right conferred on it by section 334bisA, according to which it is optional for the employer to negotiate with the Inter-enterprise Trade Union, and accordingly opted not to bargain with the union. On the same day, 20 October, after the enterprise had stated its intention not to negotiate with the Inter-enterprise Union, the group of workers who were members of that union presented the same draft collective agreement, with the same format and with the same letterhead of the Inter-enterprise Trade Union, without showing any evidence that they had met to elect a bargaining committee as provided by section 326 of the Labour Code. A number of members of this trade union expressed surprise at this new presentation of a collective agreement and of persons elected as the bargaining committee, saying that they had not been consulted to that end.
- Given the degree of verbal and written violence and the intervention of persons from outside the enterprise who disturbed the workers with trucks fitted with loudspeakers, and notice boards and the publication of articles in a CUT newspaper, it was decided not to allow access to internal files used by the enterprise to publish production statistics, communications on ISO standards, internal communications, etc. Meanwhile, in response to this external intervention, most of the workers increasingly supported the staff delegates, seeing the way in which the enterprise was being attacked and prevented from working peacefully and reaching agreement with the workers to ensure the smooth running of the enterprise. Many workers decided to resign from the Inter-enterprise Trade Union, but the latter refused to accept their resignation. In December 2003, an article appeared in the newspaper *Chile Justo*, mentioning that that trade union was submitting a complaint against the State of Chile. In its complaint, it stated that, on 26 November, the general manager told Mr. Sergio Cornejo to withdraw from the trade union, which is absolutely untrue. What is true is that the workers continued to resign from the outsider trade union because it came from outside the enterprise and behaved badly.

-
- In its reply to the draft collective agreement, the enterprise levelled serious objections as to its legality in terms of form and substance with regard to the manner in which it was presented and handled, and the workers' group did not contest the enterprise's observations within the legal time limit and, hence, according to section 331, the collective agreement is taken to have not been presented. This is even more clear if one considers that, in communication No. 1756 dated 10 November, the Maipo labour inspectorate set the time limits for each step of the bargaining process; the enterprise then sent a letter to the labour inspectorate requesting a decision on what had been stated in the Labour Relations Unit of the labour inspectorate concerning the fact that the workers' group had not contested or expressed its views on the serious objections as to legality formulated by the enterprise, the silence of the bargaining committee was taken to mean acceptance of the objections, thus putting an end to the bargaining process. Decision No. 452 of the labour inspectorate clearly states that the bargaining committee of the workers' group presented its objections after the time limit had expired. The bargaining process is a regulated process and therefore a minimum amount of requirements and time limits clearly have to be observed by both parties; this was not done by the bargaining committee of the workers' group.
 - Notwithstanding the above, the workers held an illegal vote on 9 January 2004, accompanied by considerable publicity and pressure on the workers to vote for the strike or face fines and penalties. This election was attended by staff from the San Bernardo labour inspectorate, sent by the central office of the labour inspectorate, for the sole purpose of serving as certifying officer,
 - Given the circumstances, and despite its conviction that the bargaining process had ended and that the workers' bargaining committee had failed to meet the requirements for a regulated bargaining process, and that the labour inspectorate was not putting a stop to illegal acts, the enterprise decided, on 9 January, to mediate between the parties, so as not to obstruct labour relations with its workers. However, although the trade union leaders had been advised verbally by management, they held an illegal strike on Monday, 9 January, for two hours, obstructing free access by workers until members of the labour inspectorate arrived and summoned them in writing to mediation. This negative attitude is not conducive to good relations between employer and workers. All of this disappointed its members who continued to resign from the trade union.
 - After seven days of negotiations in the Mediation and Conciliation Centre of the labour directorate, the workers' and the employer's representatives agreed to sign a collective agreement on Tuesday, 20 January 2004.
 - Ever since the collective agreement was presented by the Inter-enterprise Trade Union in October 2003, the enterprise has been subjected to several inspections by the labour inspectorate: over 12 visits have been carried out by inspectors to date, including on Sundays, during which they requested access to individual documentation on each worker, whereas on Sunday the personnel department is closed and documentation can only be removed in emergencies; however, the infringement was notified.
 - Many workers, seeing the persecution and harassment against the enterprise by persons linked to the Inter-enterprise Trade Union, wished to resign from the union in order to support the staff delegates, but were prevented from doing so, as their resignation was not accepted, and they turned to the enterprise management, but it was unable to do anything as this would be construed as anti-union practices. The workers were merely advised to consult the labour inspectorate, since, in accordance with the principle of freedom of association enshrined in article 19 of the Chilean Constitution and Conventions Nos. 87 and 98 of the International Labour

Organization, workers are entitled to exercise their right to join or withdraw from a trade union whenever they deem it to be in their interests; this is not the case in the present situation, since the Inter-enterprise Trade Union is not allowing them to resign freely. These are also “anti-union practices” and should be penalized as such.

- To date many applications to resign from the outsider trade union have been rejected, and the workers have presented them again. They have even requested the trade union’s by-laws, but this was refused, contrary to the workers’ rights and freedom of association.
- The degree of violence and harassment has reached the stage where, on 24 March 2004, pamphlets were being distributed in the private residence of the general manager and his neighbours, accusing him of being “a lying exploiter”, a “specialist in anti-union practices”, etc. This constitutes blatant slander and libel. They also contained a demand for compliance with the collective agreement, whereas the enterprise had never stopped complying with the agreement that had been signed. The watchword is reinstatement of two dismissed workers, who are being paid their severance pay in full, but the Inter-enterprise Trade Union argues that it was not consulted before the workers were dismissed and that in future it will have to be consulted on any dismissal.
- In fact, the enterprise has every intention of working in harmony with its workers and fully complying with the terms of the collective agreement with the group of workers who are members of the trade union; what is more, it has extended to the entire enterprise the benefits obtained by the staff delegates, to ensure that the workers are treated equally. The staff delegates have the support of some 90 per cent of the entire workforce of the enterprise. In this connection, the Committee on Freedom of Association is being sent a list of 203 signatures of workers disassociating themselves from the trade union and the complaint presented to the ILO.
- On 6 April, the five trade union delegates, supported by 20 people not employed by the enterprise, headed by Mr. José Ortiz Arcos, took over the enterprise and, using physical and verbal violence, blocked access to workers who had come to work. For about three hours the enterprise was awash in a climate of physical and mental aggression, valuable hours of production were lost, output was damaged by a sudden stoppage of the equipment, etc.; many people now feel uneasy, sensing that these acts of vandalism can recur at any moment. As a result of these acts, four workers sustained physical injuries and were provided with medical assistance in clinics; complaints have been filed concerning these injuries and the illegal takeover. Criminal proceedings have been instituted. As a result of the behaviour and arrogance displayed by the Inter-enterprise Trade Union leaders, combined with the takeover of the enterprise, during which the entrances were blocked with chains and workers and management were denied access, several of the union’s members resigned from membership so that to date, on 21 April, less than 5 per cent of the workers support the union and more resignations are being sent daily.

621. In its communication of 20 May 2004, concerning the alleged violations of freedom of association and, more specifically, the impact on the public order of an illegal 24-hour stoppage called by the Single Central Trade Union of Workers (CUT) on 13 August 2003, the Government states that, by decision of 12 August 2003, the Governor of the Metropolitan Region authorized the CUT to hold a public demonstration consisting of six protest marches starting at 10 a.m. on 13 August 2003, whose itinerary would cover a number of streets of Santiago. The decision stated expressly that the marchers would occupy one lane to prevent vehicular and pedestrian traffic congestion.

622. However, on the day in question, according to information provided by the Chilean police force, a total of 214 persons were detained in the metropolitan region on the following grounds: 24 of them for rioting; 177 for grave disorderly conduct; four for grave disorderly conduct and damage to public property; four for carrying incendiary devices; two persons for injuring police officers; one for assaulting a police officer on duty; and two for violation of section 445 of the Penal Code. The Committee is informed that all 214 of these persons have been released.

623. Section 445 of the Penal Code provides as follows:

Section 445. Any person who manufactures, sells or has in his or her possession skeleton keys, pick-locks or other tools known to be used for breaking and entering and does not account satisfactorily for their manufacture, sale, acquisition or possession shall be punishable with short-term imprisonment to the minimum degree.

624. Approximately 3,000 persons participated in the authorized event, and incidents were registered when demonstrators attempted to block traffic, contrary to the instructions given by police, with the result that police officers were obliged to use deterrents such as water cannons and tear gas. While it is true that the right of assembly is guaranteed by the Constitution, it is no less true that it is subject to the constitutional requirement that it be exercised peacefully and without the use of weapons. Hence, as these requirements were not met, the uniformed police officers had to intervene to safeguard the public order.

625. Paragraph 13 of article 19 of the Political Constitution guarantees the right of assembly as follows:

Constitutional rights and obligations

Article 19. The Constitution guarantees to all persons:

13. The right to assemble peacefully without prior permission and carrying no weapons. Meetings at squares, streets and other public places shall be ruled by general police regulations.

626. The incidents described were registered in 17 districts of the metropolitan region.

627. It is alleged that the Youth Protection Service (SENAME) drew up lists of officials who took part in the illegal 24-hour stoppage. The National Directorate of the Youth Protection Service has stated that the National Association of Workers (ANTRASE) did not submit any direct complaint and there are no facts to its knowledge which confirm the accusation that has been made.

628. In no circumstances did the national authority of the SENAME or any other executive body of that institution order that lists be drawn up with the names of participants who responded to the call for a national strike, much less did they intervene or exert influence on employees who are members of the unions of this service to refrain from participating or agree to participate in the events held by those occupational organizations.

629. As regards the acts described in the complaint, the Committee is informed that, normally, when occupational associations call any kind of industrial action, a statistical register is kept of the number of officials who will remain at their posts in order to have a precise idea of the number of staff available in their service and, if necessary, to assign additional staff to those areas which are understaffed. This is aimed at ensuring, as far as possible with the available human resources, continuity of the function assigned to this service by the law, as provided by Act No. 18,575 of 1986 to issue general regulations governing the administration of the State.

- 630.** In this case, the only information requested from the regional directorates of the service was a report on the situation in the regional directorates and its subsidiary centres dealing directly with youth protection in regard to the response to the call for a strike, and to whether or not their institutional functions were being carried out in the normal way. This is in accordance with the powers conferred by the Constitution and the legislation on the authorities and heads of service in respect of ensuring the smooth administrative and technical operation of their institutions. This was communicated in advance verbally to each of the presidents of the occupational associations existing in the SENAME, which did not make any observation at the time concerning the procedure applied by the national directorate of the SENAME.
- 631.** It is important to point out that the SENAME is a state body in charge of protecting and promoting the rights of girls, boys and adolescents aged under 18 years whose rights have been infringed, and the social integration of adolescents who have committed penal offences and are serving sentences of imprisonment by court order. This work is carried out by 26 centres throughout the country, which operate 24 hours a day and 365 days a year, which means that it is absolutely essential for each of them to function without interruption. Hence the concern to maintain staffing levels in these centres which enable them to provide adequate care to the girls, boys and adolescents placed under their responsibility by court decision. This particular characteristic of the SENAME is understood by all of its employees and their occupational associations, who have been notified of the willingness of the service to refrain from interfering in trade union activities, while requesting them to take the necessary steps to ensure that shifts are kept in the different centres throughout the country. This concern is shared by the trade union leadership and has helped to ensure that at no time has any risk been entailed to the direct care provided to boys, girls and adolescents who use the centres under its administration
- 632.** Based on the national legislation in force and in full compliance with international Conventions and standards ratified by the Government of Chile, the SENAME has fully respected agreements concluded with trade unions and, moreover, constantly makes every effort to maintain a fluid, appropriate and open relationship with the four trade unions operating in it: AFUSE, with about 1,370 members, accounting for 56.45 per cent of the entire workforce; ANFUR, with 149 members, accounting for 6.12 per cent; ANTRASE, which signed the complaint to the ILO, with approximately 550 members, accounting for 22.68 per cent; and ARHSE, with 90 members, accounting for 3.7 per cent.
- 633.** Moreover, it has been customary to hold pre-strike meetings with these organizations, either with each association separately, or with all of them, in order to coordinate action and provide necessary support, to help ensure that these organizations carry out their principal objectives under section 7 of Act No. 19,296.
- 634.** It is alleged that the Minister of Education and other senior officials threatened participants in the stoppage of 13 August 2003. In this respect, the Committee is informed that the authorities of the Ministry of Education do not pursue a policy of infringing the trade union rights of its officials.
- 635.** During the terms of office of the governing coalition “Concertation for democracy”, at no time have deductions been made from their remuneration or threats been made when, in the exercise of the freedoms granted them under the legal system, they have participated in demonstrations aimed at improving their rights.
- 636.** As to the dismissal of the teachers Marcela and Patricia Mallea Bustos, this is a matter which lies outside the remit of the Ministry of Education, since the employment relationships of teachers are established directly between the teachers and the education providers and are governed by the “Teachers’ Statute” in the case of municipal providers,

and by the Labour Code, in the case of private providers. In the event of unjustified dismissal, it is the labour courts that are competent to rule in the case of teachers and in the private sector, and for the Comptroller-General of the Republic in the case of teachers employed by educational establishments administered directly by the municipalities.

- 637.** As regards the expressions attributed to the Minister of Health, described by the complainant as “threats to public sector workers” aimed at discouraging participation in the illegal strike of 13 August 2003, the Committee is informed that the sentences quoted are extracts from instructions issued by the Minister of Health, which were intended to implement the necessary measures to ensure the normal running of the country’s health services in order to safeguard the provision of health care to users in the face of the call for a work stoppage by trade unions in August 2003. This was done in strict conformity with the legal frameworks in force, and by no means constituted threats to public employees.
- 638.** A request for the use of the police forces is only made in the event of disruption of the normal functioning of health services and hospital establishments, caused by acts of coercion which might affect the care dispensed to patients and users.
- 639.** With regard to the trade unions, the Ministry of Health has acted consistently with government policy, since it has abided by a framework of full respect for the labour rights laid down in the ILO Conventions that are in force in Chile, guaranteeing free and organized participation and negotiation of the workers in this sector, one of its main objectives being to make every effort to achieve harmony between the interests and activities of the institution and those of the trade unions, with the aim of improving communications and avenues for participation in the country’s health system.
- 640.** As regards the allegation that workers employed by Empresa Metro S.A. (the metropolitan underground railway) were “obliged to work 12-hour days”, the Regional Labour Directorate of the Metropolitan Region was consulted, and stated that it was not aware of any complaint regarding excessive daily hours of work allegedly performed on 13 August 2003 in Empresa Metro S.A.
- 641.** The National Labour Directorate carried out a review of its entire inspection system and did not find any request for an inspection by the trade union or the workers employed by the metro.
- 642.** As regards the circumstances surrounding the illegal stoppage called for 13 August 2003 by the CUT, the Committee is informed of the following: on 31 December 2002, the CUT had 303 trade union affiliates in both the public and private sectors, with a membership of 408,562; in the days preceding 13 August 2003 only 14 of the 303 affiliates had confirmed their support for the stoppage; the stoppage was marked by the following acts of violence:
- detonation of a bomb at the base of a public electricity post in the Maipú district in the metropolitan region;
 - detonation of an explosive device in front of the premises of the San Ramón municipal council, San Ramón district, metropolitan region;
 - placing of devices known as “*miguelitos*” (a metal device used for puncturing tyres) on a number of main arteries on the periphery of the capital and installation of 15 barricades to block public and private transport in the metropolitan region;
 - interception and illegal appropriation of a public passenger transport vehicle by a number of persons bearing firearms; they later set fire to the vehicle in the metropolitan region;

- confrontation between students of the Universidad de Concepción and uniformed police in Region VIII;
- blockage of river transport on the Pedro de Valdivia river using medium-sized vessels in Region X;
- slowdown of traffic on Vicuña Mackenna Avenue by collective taxi drivers, who also featured prominently in several incidents involving uniformed police officers;
- throwing of a Molotov cocktail into a police vehicle in the metropolitan region;
- violent confrontations between police and demonstrators in Alameda Bernardo O'Higgins Avenue. The latter were using Molotov cocktails, stones and paint bags.

643. The Ministry of the Interior considers that what happened on 13 August 2003 was not a nationwide strike called by the CUT, but only partial demonstrations and marches. Absences of part of the workforce were registered in a number of colleges, health clinics and certain public services.

644. As regards reform of the labour court system, the Committee is informed that in September 2003 the Government submitted to Parliament three Bills on the subject: a Bill to amend Act No. 17,322 on the judicial recovery of social security contributions and fines; a Bill establishing new labour courts and courts for the recovery of labour and social security contributions; and a Bill establishing a new labour court procedure.

645. These three Bills are currently before the Chamber of Deputies, whose Labour and Social Security Committee has examined and discussed the content of the first Bill, which, once it is approved, will be submitted to the Chamber of Deputies for discussion and approval, thus completing the first stage of the constitutional legislative process, and will then be brought before the Senate for the second stage of the process. In the meantime, the Labour and Social Security Committee of the Chamber of Deputies will begin discussion of the second Bill establishing new labour courts throughout the country.

646. In its communication of 30 June 2004, with regard to the allegations concerning the HERPA S.A. enterprise, the Government states that, according to information from the labour directorate, on 29 October 2003 a group of workers employed by the enterprise deposited a draft collective agreement in the Maipo District Labour Inspectorate for notification. On 13 November 2003, the Inter-enterprise Union of Metallurgical, Communications, Energy and Allied Workers complained that the employer had not notified the other workers of the enterprise of this, as provided in section 320 of the Labour Code, and had illegally dismissed workers covered by trade union immunity, a situation which has been resolved, according to information provided by the Inspection Unit of the Maipo District.

647. The inspection visit carried out in the Spanish multinational on 14 November 2003 was aimed at verifying the existence of other collective agreements and other workers who should be informed in accordance with section 320 and informing the bargaining committee that the reply was considered to be pending until expiry of the time limit of 30 days, i.e. until 3 December, and that from this date onwards the bargaining committee would have a time limit of five days within which to present objections as to the legality of the employer's reply. The mediation requested by the employer was terminated on 22 January 2004 without agreement being reached between the parties. On the following day, a legal strike was held with the approval of the eight workers involved. According to information provided by the office manager, on that day access to the enterprise was blocked with chains and the eight workers inside the premises did not allow the employer

or the rest of the workers not involved in the strike to enter the premises. The office manager instructed the members of the bargaining committee to allow the workers to enter but they refused to do so. The legal representative of the enterprise refused to continue talks with the workers as long as they maintained this stance.

- 648.** The labour inspectorate offered mediation to both parties for the sole purpose of seeking a rapprochement to open dialogue. It was in this context that the acts that are the subject of the complaint occurred.
- 649.** As regards the unlawful dismissal of and alleged harassment against trade union delegate Néstor Carrasco, compelling him to hand in his resignation, and pressure on members to resign from the trade union, the Government states that these acts led to a commission being established under the Special Investigation Unit of the Metropolitan Region, which confirmed the truth of the allegations, as well as obstruction of the trade union's activities and harassment of both the delegate and members of the organization. This served as a basis for the complaint filed against the enterprise with the Second Court of the First Instance of San Bernardo, which ordered the reinstatement of Néstor Carrasco, which the enterprise carried out. However, subsequently, on 18 December 2003, Mr. Carrasco signed a voluntary termination of employment.
- 650.** As regards the unlawful dismissal of the workers Alberto Carrasco, Marcos Rojas and Jaime Vera, who were members of the bargaining committee, the Government states that this led to a commission being set up by the Maipo District Labour Inspectorate, which obtained the reinstatement of these workers. An investigation carried out by the Special Unit of the Metropolitan Region confirmed the employer's refusal to receive the members of the bargaining committee, and to assign them work as agreed. In addition, it found that six workers had been hired before the strike began. The investigation confirmed that the employer had refused to see the trade union leaders, saying that he would only talk to the trade union delegate. As regards non-payment of remuneration, it found that, on the contrary, the employer had in fact paid the remuneration through a deposit into an electronic checking account. As regards the hiring of strike-breakers, it was confirmed that an external enterprise had been contracted to increase the number of security guards in the enterprise. The alleged threats of dismissal were not confirmed.
- 651.** In its communication dated 20 July 2004, the Government states that, according to the Regional Labour Directorate of Region VI, in which the El Teniente copper mine owned by CODELCO enterprise is located, as of June 2004 no complaint had been received from the workers or the trade union concerning the allegations made in the communication of January 2004. On 2 December 2003 the Inter-enterprise Union of Employees of Subcontractors of CODELCO Chile, El Teniente Division (SITECO), presented draft collective agreements intended for different subcontractors to the Rancagua Provincial Labour Inspectorate, together with lists of the workers involved in negotiations, but without the required signatures of each worker. These requests were based on ILO Conventions Nos. 87 and 98, and not on section 334 of the Labour Code. Hence this collective bargaining process was not regulated by that Code.
- 652.** The draft collective agreements allowed each employer a time limit up to 10 December to reply, indicating that once the time limit had expired and no reply had been received, the trade union could declare a strike. It also mentioned a proposal for a meeting to be held on 5 December 2003 to lay down a procedure for the bargaining process; none of the 13 enterprises invited attended that meeting. As a result, the workers undertook protest actions beginning on 16 December. According to information given by the SITECO leader, Danilo Jorquera, the most serious of these was a sit-down strike both in the Caletones foundry and inside the mine. In Caletones, the workers signed an agreement to initiate a collective bargaining in each enterprise, but this did not take place. Inside the mine,

uniformed police evicted the workers and detained 100 of them, who were released after taking down their addresses. The police authorities stated that at no time were firearms used, only deterrents such as chemicals and water. The health authorities reported that only two workers had been injured and that the others were declared fit on the same day after having undergone a medical examination.

- 653.** The trade union leadership dropped out of the collective bargaining process; the principal enterprise, CODELCO Chile, El Teniente division, informed its subcontractors that 200 workers could not work in the mines and withdrew their passes.
- 654.** Faced with this situation, the subcontractors dismissed these workers, except for a few trade union delegates covered by trade union immunity. The trade union, through Mr. Luis Salazar, held talks with the principal enterprise with a view to seeking a solution, with the result that CODELCO rescinded its decision to exclude 200 workers from working in its enterprises. No complaint has been filed with the relevant courts in this respect. In recent weeks, the trade union leadership resumed dialogue with the CODELCO Chile enterprise through the Regional Ministerial Secretary for Labour and Social Security, but the outcome is not yet known.

C. The Committee's conclusions

- 655.** *The Committee notes the allegations made by the complainants, referring to: (1) anti-union practices in the PLASTYVERG conglomerate, including dismissals of trade union delegates and members, pressure on members to resign from trade union membership, interference by several enterprises to sideline the trade union and bargain with workers' delegates appointed by the employer; (2) violent repression of the national strike held on 13 August 2003, despite its peaceful nature; detention of trade unionists, threats and intimidation against workers participating in the strike, use of armoured cars, water cannons and tear gas – including against CUT headquarters – ill-treatment, closure of streets to which access was authorized to demonstrators, assault on the general secretary of the CUT, use of rubber bullets, injury of workers, torture of a detainee, drawing up of lists of strike participants in different institutions and dismissal of a teachers' union leader and her sister; and (3) violations of trade union rights by the CODELCO state enterprise and the HERPA S.A., Viñas Tarapacá y Santa Helena enterprise.*

PLASTYVERG conglomerate

- 656.** *As regards the allegations concerning the PLASTYVERG conglomerate, the Committee notes the information given by the Government, in particular its statement that the labour directorate carried out an investigation which confirmed that pressure had been brought to bear by the enterprises in regard to the election of staff delegates, and that trade union members had been pressured to resign from membership during the collective bargaining process, as a result of which a complaint was filed with the courts for anti-union practices; the judicial authority upheld part of the complaint relating to pressure on union members to withdraw from union membership, ordered that this conduct cease and imposed a fine of 75 monthly tax units on the enterprise; it did not uphold the complaint referring to employer interference in the election of the staff delegate; in this respect, a second complaint has been filed by the trade union and is currently under investigation; mediation has been offered and this issue will be dealt with in the near future. The Committee notes the statements made by the enterprises concerned in which they reject the allegations of violation of trade union rights and report that criminal proceedings have been instituted against a number of trade union delegates; the enterprises have sent documentation on the termination of the employment relationship of trade unionists José Saavedra, Antonio Labarca, Pablo Villavicencio, Daniel Antonio Duarte Arce and Luis Osvaldo Martínez*

Duarte, who waived any legal claims; they have also sent a list of 203 workers disassociating themselves from the present complaint before the Committee. In these circumstances, the Committee deplors the anti-union pressure by the enterprise that was confirmed by the judicial authority. Nonetheless, before formulating definitive conclusions on these allegations, the Committee requests the Government to send it a copy of the reports concerning the administrative investigations carried out and all of the judicial decisions which have been handed down.

Violent acts

- 657.** *As regards the allegations concerning the violent repression of the national strike on 13 August 2003 (assaults on physical integrity, detentions, threats and intimidation, use of tear gas and water cannons, dismissal of two trade unionists, torture of a detainee, etc.), the Committee notes that the Government categorically denies the peaceful nature of the strike, referring to 214 criminal offences including possession of explosive devices, placement of tyre-puncturing devices, illegal appropriation of a passenger vehicle which was subsequently set on fire, violent confrontations, disruption of traffic, etc.; the Government also denies that lists of strikers had been drawn up and that the authorities had issued threats; 214 persons had been detained and subsequently released.*
- 658.** *The Committee is bound to take note of the obvious contradiction between the allegations and the Government's reply, deplors any acts of violence which occurred during the general strike, and requests the Government to send any judicial decisions handed down in relation to the criminal proceedings referred to by the complainants or any of the other violent acts mentioned by the Government.*

HERPA S.A., Viñas Tarapacá y Santa Helena enterprises

- 659.** *As regards the allegations concerning the HERPA S.A., Viñas Tarapacá y Santa Helena enterprises, the Committee notes the Government's reply to the effect that on 29 October 2003 a group of workers employed by the enterprise deposited a draft collective agreement in the Maipo District Labour Inspectorate for notification. On 13 November 2003 the SME complained that the employer had not notified the other workers of the enterprise of this, as provided in section 320 of the Labour Code, and also complained that workers covered by trade union immunity had illegally been dismissed, a situation which has been resolved, according to information provided by the Inspection Unit of the Maipo District Labour Inspectorate. On 22 January 2004 arbitration requested by the employer was terminated without agreement being reached between the parties. On the next day, the legal strike approved by the eight workers involved was carried out. On that day access to the enterprise was blocked with chains and the eight workers on the premises did not allow the employer or the rest of the workers not involved in the strike to enter the premises. Although the office manager instructed the members of the bargaining committee to allow the workers to enter, they refused to do so. The legal representative of the enterprise refused to continue talks as long as the workers maintained this stance. The labour inspectorate offered mediation to both parties. The acts reported occurred in this context.*
- 660.** *As regards the allegations of unlawful dismissal of and harassment against trade union delegate Néstor Carrasco, compelling him to hand in his resignation, and pressure on members to resign from the trade union, the Committee notes that, according to the Government, the inspection commission confirmed that this had in fact taken place, as well as obstruction of the trade union's activities and harassment of both the delegate and members of the organization. This served as a basis for a complaint filed against the*

enterprise with the Second Court of the First Instance of San Bernardo, which ordered the reinstatement of Néstor Carrasco, which the enterprise carried out. However, subsequently, on 18 December 2003, Mr. Carrasco signed a voluntary termination of employment.

- 661.** *As regards allegations of the unlawful dismissal of the workers Alberto Carrasco, Marcos Rojas and Jaime Vera, who were members of the bargaining committee, the Committee notes that, according to the Government, these workers were reinstated. An investigation carried out by the Special Unit of the Metropolitan Region confirmed the employer's refusal to receive the members of the bargaining committee, and to assign them work as agreed. In addition, it found that six workers had been hired before the strike began and that the employer had refused to see the trade union leaders, saying that he would only talk to the trade union delegate (elect); on the first point (the hiring of strike-breakers), it was confirmed that an external enterprise had been contracted but only in order to increase the number of security guards in the enterprise.*
- 662.** *In these circumstances, the Committee expresses its concern at the anti-union acts perpetrated in the enterprises HERPA S.A., Viñas Tarapacá y Santa Helena confirmed by the authorities, and observes that the latter's intervention allowed the reinstatement of trade unionists Néstor Carrasco, Alberto Carrasco, Marcos Rojas and Jaime Vera. The Committee requests the Government: (1) to indicate whether the latest administrative investigation in these enterprises gave rise to judicial proceedings and, if so, to inform it of their outcome; and (2) to provide information on the allegations relating to the detention of workers and violent police intervention to evict workers, despite the absence of a court order.*

CODELCO state enterprise

- 663.** *As regards the allegations concerning the CODELCO state enterprise (refusal to bargain collectively with the SME trade union, assault on three trade union leaders in the public thoroughfare, denial of access by trade union leaders to members in the mines, illegal violent intervention by police against strikers, with the result that 115 were detained and released on the same day, 220 dismissals of workers included on blacklists and injuries sustained by 20 workers – one of whom was hit by 20 shots) the Committee notes the information provided by the Government to the effect that during the strike 100 workers were detained and later released after verifying their addresses, that the police did not use firearms, but chemicals and water and only two workers sustained injuries and that the rest were declared fit on the same day. The Committee notes further that the enterprise informed its subcontractors that the dismissed workers could not work in the mines and withdrew their passes from 200 workers, but that this ban was subsequently lifted. Lastly, the Committee notes that no complaint has been filed with the judicial authority and that the trade union leadership has resumed dialogue with the enterprise, through the administrative labour authority.*
- 664.** *The Committee deplores the acts of violence which occurred, as well as the fact that the Government's reply does not refer to all the allegations presented (refusal to negotiate, access by trade union leaders to members, use of blacklists, etc.). The Committee recalls that "workers should enjoy the right to peaceful demonstration to defend their occupational interests" and that "trade unions should respect legal provisions which are intended to ensure the maintenance of public order; the public authorities should, for their part, refrain from any interference which would restrict the right of trade unions to organize the holding and proceedings of their meetings in full freedom" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 132 and 144]. The Committee requests the Government to carry out a full and impartial investigation, including into the injuries sustained by workers, and to inform it of*

its outcome, as well as the results of the dialogue that has been resumed between the trade union leadership and the enterprise.

The Committee's recommendations

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

- (a) As regards the allegations concerning the PLASTYVERG group of enterprises, the Committee requests the Government to send it a copy of the reports concerning the administrative investigations carried out and all of the judicial decisions which have been handed down.*
- (b) As regards the allegations concerning the violent repression of the national strike on 13 August 2003, the Committee is bound to take note of the obvious contradiction between the allegations and the Government's reply, deplors any acts of violence which occurred during the general strike, and requests the Government to send any judicial decisions handed down in relation to the criminal proceedings referred to by the complainants or any other of the acts of violence mentioned by the Government.*
- (c) As regards the allegations concerning the HERPA S.A., Viñas Tarapacá y Santa Helena enterprises, the Committee requests the Government: (1) to indicate whether the latest administrative investigation in these enterprises gave rise to judicial proceedings and, if so, to inform it of their outcome; and (2) to provide information on the allegations concerning the detention of workers and violent police intervention to evict workers, despite the absence of the court order.*
- (d) As regards the allegations concerning the CODELCO state enterprise, the Committee requests the Government to carry out a full and impartial investigation, including into the injuries sustained by workers, and to inform it of its outcome, as well as the results of the dialogue that has been resumed between the trade union leadership and the enterprise.*

CASE NO. 2335

DEFINITIVE REPORT

Complaint against the Government of Chile

presented by

— **the National Association of Ministry of Education Staff (ANDIME)**

supported by

— **the International Confederation of Free Trade Unions (ICFTU)**

Allegations: Anti-trade union transfer of trade union officials by the Undersecretariat of Education

666. The complaint is set out in a letter from the National Association of Ministry of Education Staff (ANDIME) of 13 April 2004, supported by the International Confederation of Free

Trade Unions (ICFTU), in a letter of 4 May 2004. The Government sent its observations in a letter of 14 July 2004.

- 667.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

- 668.** In its letter of 13 April 2004, the National Association of Ministry of Education Staff (ANDIME) submitted a complaint supported by the International Confederation of Free Trade Unions (ICFTU) on 4 May 2004, in which it alleges that Law No. 19891/2003 created the National Culture and Arts Council, an autonomous, decentralized and geographically distributed public service with legal personality and its own capital, directly responsible to the President of the Republic. Transitional article 2 of this law indicates that the staff of the Cultural Extension Division in the Ministry of Education will automatically become part of the establishment of the aforementioned National Culture and Arts Council, without any exception whatsoever concerning officials who were staff representatives in that Ministry.
- 669.** ANDIME adds that, on 7 November 2003, the Undersecretariat of Education proceeded to certify the posts in the Ministry of Education that would be transferred to the new National Culture and Arts Council, including staff in its cultural division, Ms. Marcela Flores Baussa and Ms. Magali del Carmen Rubilar Casanova, ANDIME, officials for San Camilo province level and metropolitan region ministerial secretary in violation of article 25 of Law No. 19296 which states that union officials may not be moved from their post from the date of their election until six months after the end of their term of office, and also they may not be transferred between localities or functions without their express consent.
- 670.** ANDIME states that both transfers challenge their independence and autonomy and constitute an act of unlawful interference by the authority, which has a direct impact on the functioning and administration of ANDIME and is in breach of ILO Convention No. 151 ratified by Chile.
- 671.** ANDIME indicates that, prior to the submission of this complaint, it appealed on 23 January 2004 to the Comptroller-General of the Republic (Rol 4,226), but that control body had not issued a decision.

B. The Government's reply

- 672.** In its letter of 14 July 2004, the Government states that Law No. 19891 was published in the *Official Journal (Diario Oficial)* on 23 August 2003, creating the National Culture and Arts Council and the National Cultural and Arts Development Fund. It is headed by a president with ministerial rank. The law defines the terms governing the classification of staff in the Council:
- *Transitional article 2:* The Cultural Extension Division in the Ministry of Education, the Department of Culture in the Government Secretariat, the Secretariat of the Committee for Assessment of Private Donations shall form the National Culture and Arts Council, with resources and personnel, irrespective the latter's legal status.
 - *Transitional article 3:* The President of the Republic is empowered within 180 days of the date of publication of the present law, to establish the staffing of the National Culture and Arts Council effective from the aforementioned date by a decree with force of law to be issued by the Ministry of Education, and signed by the Minister of Finance.

The staffing established shall not result in additional costs, changes in grades or increase in the number of posts provided in the establishment of the Cultural Extension Division and Secretariat of the Committee for Assessment of Private Donations in the Ministry of Education and the Department of Culture in the Government Secretariat from the date of its entry into force. The posts provided shall be certified by the respective undersecretaries. In addition, up to an additional 20 management or administrative posts may be created.

In exercising this authority, the President of the Republic shall issue all the regulations necessary to ensure the proper organization and operation of the established staffing.

The staff to which paragraph 2 refers shall be deemed to be assigned by the sole force of the law, without interruption of service and, from the date of entry into force, the staff assigned to posts in the new establishment shall have the same grade as they held previously.

The assignment shall not for any legal purpose constitute termination of service or abolition of jobs or posts nor, in general, cessation of functions or termination of the employment contract. Neither can it entail loss of the benefits set out in article 132 of Legislative Decree No. 338 of 1960 in relation to article 14 of Law No. 18834.

Likewise, staff shall conserve the biennial increments acquired and shall retain the length of service in grade for that purpose.

For the sole purpose of the application in practice of the assignment set out in the foregoing paragraphs, the President of the Council, by a resolution, shall notify the specific assignment of each staff member within the establishment.

- 673.** The Government adds that, under the provisions of Law No. 19891, the Undersecretariat of Education proceeded, through exempt resolution No. 10593 of 25 August 2003, to certify the posts provided in the establishment of the Ministry of Education. Subsequently, exempt resolution No. 13139 of 4 November 2003 was issued, which annulled the previous one, and certified the posts held by staff employed in the Ministry of Education Culture Division, where Ms. Marcela Flores Baussa and Ms. Magali del Carmen Rubilar Casanova appear in the professional category, with tenure, scale grade 11.
- 674.** Subsequently, on 23 January 2004, ANDIME, made representations to the Comptroller-General of the Republic, in which it denounced the Undersecretariat of Education for alleged failure to comply with the legal requirements in the transfer of staff members Ms. Marcela Flores Baussa and Ms. Magali del Carmen Rubilar Casanova from the Ministry of Education to the National Culture and Arts Council. On 20 April 2004, the Comptroller-General of the Republic replied to ANDIME's representations in Judgement No. 19466. In that judgement, the control body held that the Undersecretariat of Education had acted in accordance with the law, since the administrative measure adopted "... was based on a mandate from the legislator, in respect of those who were in the situation contemplated in the law, to exercise functions in one of the departments transferred by sole force of law to the new organization that was created". With respect to the action of the Undersecretary for Education, the Comptroller-General indicates that "... it is imperative for the implementation of the prescription of the legislator since, otherwise, not only would it mean disobeying an express legal mandate, but it would also alter the procedure ordered for the transfer, and would additionally constitute a serious infringement by the authority as well as a lack of probity and consequent administrative liability". As regards trade union immunity, a central element in ANDIME'S representation, the Comptroller-General of the Republic indicates that "... this does not apply when it is the law that orders a given measure, as is precisely the case here, in that Law No. 19891 is what orders the disputed transfer".
- 675.** The Government underlines that without prejudice to the judgement of the Comptroller-General, in the sense that the Undersecretariat of Education had acted in accordance with the law, the Ministry decided to accept ANDIME's request to include in the Ministry of

Education's establishment the two staff members who were the subject of the complaint to the ILO. In that respect, an administrative arrangement was agreed with the Staff Association of the Ministry of Education (ANDIME) to resolve the situation. This, clearly, is an expression of the Ministry's desire to strengthen the relationship and quality of dialogue with the staff representatives. In the light of the above, the case has been settled directly between the government education authorities and the staff association, ANDIME.

C. The Committee's conclusions

- 676.** *The Committee observes that, in the present complaint, the complainant organization ANDIME contests the measure taken by the Undersecretariat of Education to transfer two staff members in the Cultural Extension Division of the Ministry of Education, Ms. Marcela Flores Baussa and Ms. Magali del Carmen Rubilar Casanova, to the National Culture and Arts Council, in violation of national legislation and ILO Convention No. 151, ratified by Chile.*
- 677.** *The Committee notes that the Government states with respect to the transfers that: (1) the Undersecretariat of Education had acted in accordance with the law in the framework of an administrative reorganization established in Law No. 19466; (2) the Comptroller-General of the Republic indicated to ANDIME that trade union immunity (protection of trade union officials against transfer or other prejudicial acts) did not apply since it was the law that ordered the transfer contested in the complaint; (3) nevertheless, to strengthen the relationship and quality of dialogue, the ministerial authority had decided to accept ANDIME's request and reinstate the trade union officials, Ms. Marcela Flores Baussa and Ms. Magali del Carmen Rubilar Casanova, in the establishment of the Ministry of Education by means of an administrative arrangement agreed with ANDIME, such that the case has been settled directly between the authorities and ANDIME.*
- 678.** *The Committee notes with satisfaction that the matter which gave rise to the present complaint has been settled directly between the authorities and the complainant organization.*

The Committee's recommendation

- 679.** *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. 1787

INTERIM REPORT

Complaint against the Government of Colombia presented by

- the International Confederation of Free Trade Unions (ICFTU)
- the Latin American Central of Workers (CLAT)
- the World Federation of Trade Unions (WFTU)
- the Single Confederation of Workers of Colombia (CUT)
- the General Confederation of Democratic Workers (CGTD)
- the Confederation of Workers of Colombia (CTC)
- the Trade Union Association of Civil Servants of the Ministry of Defence,
Armed Forces, National Police and Related Bodies (ASODEFENSA)
- the Petroleum Industry Workers' Trade Union (USO)

— the World Confederation of Labour (WCL) and others

Allegations: Murders and other acts of violence against trade union officials and members, and cases of anti-union dismissal

- 680.** The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 388-464]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 18 December 2003, 13 and 19 July, 13 August and 10 September 2004; the World Federation of Trade Unions (WFTU) in communications dated 10 and 20 January, 19 March and 21 April 2004; and the Single Confederation of Workers of Colombia (CUT) in a communication dated 6 August 2004.
- 681.** The Government sent its observations in communications dated 10 February, 3, 25 and 29 March, 16 April, 3, 14 and 17 May, 18 June, 3 and 4 August, 9 and 10 September and 28 October 2004.
- 682.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 683.** At its March 2004 meeting, the Committee made the following recommendations on the allegations that were still pending, which for the most part referred to acts of violence against trade union members and acts of anti-union discrimination [see 333rd Report, para. 364]:
- (a) While noting the Government's extensive reply in which it provides information on a large number of allegations, the Committee expresses its deep concern and can only underline once again the extreme gravity of this case and deplores that 59 new allegations of murders of officials and members have been submitted, which, added to the 11 submitted in the previous examination of the case (see 331st Report of the Committee) make a total of 70 cases of murder in 2003. New allegations were also presented concerning one attempted abduction, three abductions, ten threats, two raids, two disappearances and six acts of violence. The Committee reiterates that freedom of association can only be exercised in conditions in which fundamental human rights and, in particular, those relating to human life and personal safety, are fully respected and guaranteed.
 - (b) The Committee notes with interest the various security measures adopted for the benefit of trade unionists and trade unions at risk, and requests the Government to keep it informed of the protection measures and security schemes in force and those adopted in the future in respect of other unions and other Departments or regions. The Committee requests the Government to take particular account of those trade unions and regions to which it referred in the previous examination of the case, such as the health services and the Barrancabermeja Gas Company, as well as municipal administrations (municipality of Barrancabermeja) and department administrations (Departments of Valle del Cauca and Antioquia). The Committee requests the Government to provide information on all these matters.
 - (c) The Committee requests the Government to inform it whether the protection programme and the "Working Plan of the Inter-Institutional Commission for the Prevention of Violations and the Protection of Workers' Rights" to which it had referred at previous examinations of this case is still functioning or has been replaced by new programmes or organs.

- (d) The Committee requests the Government to continue to do everything in its power to institute investigations into all the acts of violence alleged up to June 2003, including those where it does not report that investigations or judicial proceedings have been instituted, as well as those mentioned in the section “New allegations” in the present report, and to continue to send its observations on the progress made in the investigations already begun on which the Government has sent its observations (Appendix II).
- (e) The Committee strongly urges once again the Government to take the necessary measures to put an end to the intolerable situation of impunity and punish effectively all those responsible.
- (f) With respect to the trade union status of certain victims contested by the Government, the Committee requests the complainant organizations to provide the necessary information concerning the victims listed in the previous and present examination of the case in order to clarify the situation.
- (g) As regards those cases where the Government states that the data supplied by the complainants is insufficient to identify the Prosecutor’s Offices conducting the investigations, the Committee once again urges the complainant organizations to do everything in their power to provide the Government with the necessary information concerning the victims for whom the Government does not have sufficient data, listed in the 331st Report as well as the present report, so that the Government can state whether investigations have been instituted into these allegations and what stage they have reached. In turn, the Committee requests the Government to continue to endeavour to send all available information concerning the allegations made.
- (h) As regards the dispute between EMCALI and the union due to failure to comply with the agreement concluded on 29 January 2002, which generated protests which led to the arrest of certain union officials, the Committee requests the Government to keep it informed of developments and whether the persons concerned are still under arrest and to keep it informed about the situation.
- (i) As regards the allegations submitted by the FECODE concerning threatening telephone calls, harassment by armed persons, public statements designating them as military targets, warnings to resign their union office, raids on their homes, warnings not to take part in union activities and numerous murders, the Committee requests the Government to send its observations on these matters without delay.

B. New allegations

684. The complainant organizations present the following allegations:

Murders

- (1) Uriel Ortiz Coronado, member of the Community Aqueduct and Drainage Enterprise Workers’ Union (SINTRAECAASA) of the municipality of Saravena, Arauca, on 22 July 2003.
- (2) Wilson Rafael Pelufo Arroyo, member of the Milk Cooperative Workers’ Union (SINTRACOOLECHERA), on 21 September 2003, in Barranquilla.
- (3) Ricardo Espejo, Treasurer of the Agricultural Workers’ Union of Tolima (SINTRAGRITOL), Cajamarca branch, on 11 November 2003.
- (4) Marco Antonio Rodríguez, member of SINTRAGRITOL, on 11 November 2003.
- (5) Germán Bernal, member of SINTRAGRITOL, on 11 November 2003.
- (6) José Céspedes, member of SINTRAGRITOL, on 11 November 2003.

- (7) José de Jesús Rojas Castañeda, member of the Trade Union Association of Municipal Teachers (ASEM), on 3 December 2003, in Barrancabermeja.
- (8) Orlando Frías Parada, official of the Communications Workers' Trade Union (USTC) on 9 December 2003, in the Department of Casanare;
- (9) Severo Bastos, Deputy Treasurer of the Executive Committee of SINTRADIN, Arauca branch, on 14 December 2003, in the Department of North Santander.
- (10) Ricardo Barragán Ortega, official of SINTRAEMCALI, on 17 January 2004.
- (11) Alvaro Granados Rativa, Vice-President of the Bogotá branch of the Construction Industry and Materials Workers' Union (SUTIMAC), on 8 February 2004, in Bogotá.
- (12) Yesid Chicangana, member of ASOINCA, on 9 February 2004, in Santander de Quilichao.
- (13) Yanet del Socorro Vélez Galeano, member of ADIDA, on 15 February 2004, in Remedios, Antioquia.
- (14) Camilo Kike Azcárate, member of the Fat, Vegetable Oil and Oleaginous Products Workers' National Trade Union (SINTRAGRACO), on 24 February 2004, in the municipality of Buga, Department of Valle.
- (15) Carlos Raúl Ospina, official of the Union of Workers and Employees of Autonomous Public Services and Decentralized Institutes (SINTRAEMSDES), on 24 February 2004, in Tulúa, Department of Valle.
- (16) Ernesto Rincón, member of SINDIMAESTROS-CUT, on 27 February 2004, in Boyacá.
- (17) Luis José Torres Pérez, activist in ANTHOC, on 4 March 2004, in the Department of El Atlántico.
- (18) Oscar Emilio Santiago, member of ANTHOC, on 5 March 2004, in Barranquilla.
- (19) César Julio García, official of the Employees' Association of the National Penitentiary and Prison Institute (ASEINPEC), on 13 March 2004.
- (20) Rosa Mary Daza, member of ASOINCA, on 16 March 2004, in Bolívar.
- (21) Hugo Palacios Alvis, member of SINDESENA, on 16 March 2004, in Since.
- (22) Sandra Elizabeth Toledo Rubiano or Ana Isabel Toledo Rubiano, member of ASEDAR-FECODE, on 19 March 2004, in El Tame.
- (23) Rafael Segundo Vergara, member of the Cartagena Taxi Drivers' Trade Union (SINTRACONTAXCAR) on 21 March 2004, in Cartagena.
- (24) Alexander Parra, member of SINDIMAESTROS-FECODE, on 28 March 2004, in Chiquinquirá, Department of Boyacá.
- (25) Juan Javier Giraldo, member of ADIDA-FECODE, on 1 April 2004, in Medellín.
- (26) José García, member of ASEDAR-FECODE, on 12 April 2004, in Arauca.

- (27) Jorge Mario Giraldo Cardona, member of ASEDAR-FECODE, on 14 April 2004.
- (28) Raúl Perea, in an attempt on the life of his brother Edgar Perea, Vice-President of SINTRAMETAL, on 14 April 2004.
- (29) Carlos A. Chicaiza Betancourt, Secretary of the Assorted Services Enterprise Trade Union (SINTRAENSIRVA) on 16 April 2004, in Cali.
- (30) Julio Vega, regional official of SINTRAINAGRO, by a group of paramilitaries and Colombian soldiers from the 5th Mobile Brigade Units, Counter-Insurgency Battalion No. 43 of the 18th Brigade, and the Narvas Pardo Battalion, together with 12 other residents of the communities of Flor Amarilla y Cravo Charo of the Department of Arauca, on 21 May 2004.
- (31) Fabián Burbano, activist in USO, on 31 May 2004.
- (32) Luis Alberto Toro Colorado, Treasurer of the National Union of Spinning and Textile Industry Workers (SINALTRADIHITEXCO), on 22 June 2004, in the municipality of Bello, Department of Antioquia.
- (33) Hugo Fernando Castillo Sánchez and his wife Diana Ximena Zúñiga. Sánchez was an official of the Administrative Department of Security and at the time of his death was assigned to the protection of members of the Pacific Iron and Steel Enterprise Trade Union (SINTRAMETAL-YUMBO).
- (34) Miguel Espinosa, former union official and founder member of the CUT, on 30 June 2004, in the district of La Pradera, Barranquilla, Department of El Atlántico.
- (35) Camilo Borja, member of the USO, on 12 July 2004, in Barrancabermeja.
- (36) Carmen Elisa Nova Hernández, Treasurer of the Santander Clinics and Hospitals Workers' Union (SINTRACLINICAS), on 16 July 2004, in the district of Provenza, Bucaramanga, Department of Santander.
- (37) Benedicto Caballero, Vice-President of the National Federation of Agricultural Cooperatives of Colombia (FENACOA), on 22 July 2004, in the municipality of Mesitas, Department of Cundinamarca.
- (38) Héctor Alirio Martínez, President of the Agricultural trade Union and official of the National Association of Peasant Concession Holders (ANUC), accused of being a guerrilla fighter, on 5 August 2004, in Caserío Caño Seco, municipality of Fortul, Arauca.
- (39) Leonel Goyeneche, Treasurer of the Arauca Executive Subcommittee of the CUT, accused of being a guerrilla fighter, on 5 August 2004, in Caserío Caño Seco, municipality of Fortul, Arauca.
- (40) Jorge Prieto, President of the National Association of Workers' and Employees in Hospitals and Clinics (ANTHOC), accused of being a guerrilla fighter, on 5 August 2004, in Caserío Caño Seco, municipality of Fortul, Arauca.
- (41) Henry González López, member of the San Carlos Sugar Refinery Workers' Union (SINTRASANCARLOS), on 5 August 2004, in Tulúa.
- (42) Gerardo de Jesús Vélez, member of the San Carlos Sugar Refinery Workers' Union (SINTRASANCARLOS), on 7 August 2004, in Tulúa.

Attacks, acts of aggression and other acts of violence

- (1) Euclides Gómez, official of SINTRAINAGRO, on 31 July 2003, in Ciénaga.
- (2) Yorman Rodríguez, member of FENSUAGRO-CUT, victim of attempted sexual aggression by members of the police, on 23 October 2003.
- (3) Miguel Angel Bobadilla, Education Secretary of FENSUAGRO, on 19 November 2003.
- (4) Explosive device at the headquarters of SINTRAEMCALI, on 6 February 2004.
- (5) Berenice Celeyta, adviser to SINTRAEMCALI, on 6 February 2004.
- (6) Attack on the headquarters of SINTRAINAL and theft of money and property, on 2 March 2004.
- (7) Oscar Figueroa, official of SINTRAEMCALI, was followed on 23 February 2004.
- (8) Edgar Perera Zúñiga, official of SINTRAMETAL, and his brother were attacked on 14 April 2004
- (9) The following officials and union members were the victims of physical aggression during a demonstration on 1 May 2004: Edward Portilla, Treasurer of the CUT, Estiven García, activist in the Trade Union of Workers and Employees of the University of Valle (SINTRAUNICOL), Luis Hernando Rivera, member of the Cali Municipal Enterprises Workers' Union (SINTRAEMCALI), William Escobar, member of the Executive Committee of the CUT-Valle, Harold García, official of the National University of Palmira, Héctor Fabio Osorio, Secretary of the Trade Union of Hospitals and Clinics of the University of Valle (SINTRAHOSPICLINICAS), Eladio Domínguez, Executive Committee of the CUT-Valle, Rodrigo Escobar, member of SINTRAEMCALI, Ever Cuadros, member of the Valle Single Education Workers' Trade Union (SUTEV), Gustavo Tacuma, member of SINTRAEMCALI, Carlos González, President of the National Union of Workers and Employees of the University of Valle (SINTRAUNICOL). [The allegations relating to the EMCALI enterprise were examined under Case No. 2356.]
- (10) Two devices exploded and damaged the offices of SINTRAMINERCOL and SINDIMINTRABAJO on 2 May 2004.
- (11) Luis Miguel Morantes, Secretary-General of the CTC, during a demonstration on 18 May 2004.

Threats

- (1) José Moisés Luna Rondón, member of the Association of University Professors (ASPU), on 31 July 2003.
- (2) David José Carranza Calle, son of Limberto Carranza, an official of SINTRAINAL, on 10 September 2003;
- (3) José Luis Páez Romero and Carmelo José Pérez Rossi, respectively President and member of the National Union of Workers and Employees of the University of Colombia (SINTRAUNICOL) on 29 September 2003.

- (4) José Onofre Luna, Alfonso Espinoza, Rogelio Sánchez and Freddy Ocoro, members of SINTRAINAL in Barrancabermeja, on 11 October 2003.
- (5) Jimmi Rubio, official of the National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA).
- (6) José Munera, President of SINTRAUNICOL, Antonio Florez, inter-union secretary, Luis Otalvaro, Secretary-General of the National Executive Board of SINTRAUNICOL, Elizabeth Montoya, Chairman of the Medellín Executive Subcommittee of SINTRAUNICOL and Norberto Moreno, activist, Bessi Pertuz, Vice-President of SINTRAUNICOL, Luis Ernesto Rodriguez, Chairman of the Bogotá Executive Subcommittee of SINTRAUNICOL, Alvaro Vélez, Chairman of the Montería Executive Subcommittee of SINTRAUNICOL, Mario José López Puerto, Treasurer of the National Executive Board of SINTRAUNICOL, Alvaro Villamizar, Chairman of the Santander Executive Subcommittee of SINTRAUNICOL, Eduardo Camacho and Pedro Galeano, activists of the Tolima Executive Subcommittee; Ana Milena Cobos official of the Fusagasugá Executive Subcommittee, Carlos González and Ariel Díaz, Treasurer and Human Rights Secretary of the Executive Subcommittee of the CUT-Valle were declared military objectives by the Self-Defence Units of Colombia on 27 November 2003.
- (7) Gilberto Martínez, Carmen Torres, Alvaro Márquez, José Meriño and Angel Salas, members of the Executive Board of ANTHOC, on 13 January 2004, by the Self-Defence Units of Colombia.
- (8) Officials of the CUT Risaralda were threatened by Group Commander Rigoberto Zárate Ospina of the Self-Defence Units of Colombia on 16 January 2004.
- (9) Jesús Alfonso Naranjo and Mario Nel Mora Patiño, officials of ANTHOC, were declared military objectives by the Self-Defence Units of Colombia on 21 January 2004.
- (10) Jaime Carrillo, Celedonio Jaimes and Francisco Rojas, officials of ASEDAR of the municipality of Arauca, on 28 January 2004.
- (11) Roberto Vecino, official of the USO, on 7 February 2004.
- (12) Domingo Tovar, Director of the Department of Human Rights of the CUT, is still receiving threats.
- (13) Luis Hernández and Oscar Figueroa, respectively President and official of SINTRAEMCALI.
- (14) Yasid Escobar, President of SINTRAMUNICIPIO, Bugalagrande branch, on 16 February 2004.
- (15) Officials of SINTRAINAL have received threatening telephone calls for calling a strike at the Coca Cola plant.
- (16) Officials of SINTRAINAL, Palmira branch, by the Self-Defence Units of Colombia, on 20 March 2004.
- (17) Martha Cecilia Díaz Suárez, President of the Association of Departmental Workers (ASTDEMP), on 22 and 26 July 2004, in Bucaramanga, Department of Santander.

Arrests

- (1) Alonso Campiño Bedoya, Vice-President of the CUT Saravena, William Jiménez, member of the Union of Workers of the Saravena Town Hall, Orlando Pérez, official of the CUT Saravena, Blanca Segura, President of the Educational Workers' Union (SINTRAENAL), Fabio Gómez, member of the Construction Workers' Union, Carlos Manuel Castro Pérez, member of the Union of Workers of the Saravena Town Hall, Eliseo Durán, member of the Construction Workers' Union, and José López, member of the Saravena Hospital Workers' Union, were arrested in the course of an operation conducted by members of the XVII Brigade and agents of the Public Prosecutors' Office. According to the ICFTU, which lodged the relevant complaint, although some of those arrested were subsequently released others are still in prison.
- (2) Noemí Quinayas and María Hermencia Samboni, activists of the National Association of Workers' and Employees in Hospitals and Clinics (ANTHOC), were held without charge on 27 September 2003.
- (3) Ruddy Robles Secretary-General of SINDEAGRICULTORES, Ney Medrano and Eliécer Flores, members, on 14 October 2003, apparently without a warrant for their arrest.
- (4) Apolinar Herrera, Ney Medrano (SINDIAGRICULTORES), Policarpo Padilla, President of the Quindío Agricultural Workers Union, Calarcá branch, and more than 80 officials in the municipality of Cartagena del Chairán, including Víctor Oime of SINTRAGRIM, in November 2003.
- (5) Perly Córdoba, President of the Peasants' Association of Arauca (ACA) and Director of Human Rights of FENSUAGRO-CUT, and Juan de Jesús Gutiérrez Ardila, Treasurer of the ACA, on 18 February 2004; two of their bodyguards have disappeared and their defence lawyer has received numerous threats.
- (6) Search of the private residence of Nubia Vega, official of the ACA, and arrest of her bodyguard, Víctor Enrique Amarillo.
- (7) Fanine Reyes Reyes, member of the Executive Board of the Sucre Agricultural Workers' Union (SINDEAGRICULTORES), on 3 July 2004.
- (8) Nubia González, daughter of the former President of SINDEAGRICULTORES and national delegate of FENSUAGRO.
- (9) Adolfo Tique, official of the Tolima Agricultural Workers' Union, an affiliate of FENSUAGRO, was arrested by the army in the municipality of Dolores, Department of Tolima on 18 July 2004.
- (10) Samuel Morales Flórez, President of the CUT Arauca, María Raquel Castro, member of the Arauca Educators' Association (ASEDAR), María Constanza Jaimés Fernández, partner of Jorge Eduardo Prieto Chamusero, who was murdered on the same day.
- (11) Jaime Duque Porras, arrested during a demonstration on 1 May 2004 by members of the Administrative Department of Security (DAS), and subsequently released.

Abductions and disappearances

- (1) Víctor Jiménez Fruto, President of SINTRAGRICOLAS, Ponedera branch.

- (2) David Vergara and Seth Cure, officials of SINTRAMIENERGETICA, on 29 September 2003.
- (3) Luis Carlos Herrera Monsalve, Vice-President of the Association of Departmental Employees (ADEA) in Venecia, Department of Antioquia, on 17 March 2004.

Forced relocation

- (1) Ariano León, Julio Arteaga, Pablo Vargas, Alirio Rincón and Rauberto Rodríguez, members of SINTRAPALMA, in November 2003.
- (2) Alfredo Quesada, of SINTRAENERGETICA, forced under threat to leave Barranquilla.

Removal from the protection scheme

- (1) Guillermo Rivera Zapata, official of SINTRAINAGRO.
- (2) Euclides Manuel Gómez Ricardo, official of SINTRAINAGRO.

685. The ICFTU submitted new allegations concerning, in particular, attempts to murder and threats against leaders and members of trade unions in a communication dated 10 September 2004.

C. Further replies from the Government

686. In its communications dated 10 February, 3, 25 and 29 March, 16 April, 3, 14 and 17 May, 18 June and, 3 and 4 August 2004, the Government sent its observations on the allegations presented, pointing out that the reason that, with respect to certain accusations, it has replied that no penal investigation was under way is because they are couched in fairly general terms, in some cases without indicating either the place or the exact date when the events are said to have occurred. As a result it has proved impossible to identify the Prosecutor's Office concerned. Similarly, it can happen that not even a preliminary investigation has been initiated, simply because the act of violence has never been reported or because it never took place. When verifying an event, the Office of the Coordinator of Human Rights of the Ministry of Social Welfare is constantly in contact with all the trade union organizations, so as to clear up any doubts or concerns about the event or about the trade union status of the victim of the violence. Regarding the protection of union officials and members, the Government provides information on those persons who at the time of the aggression were covered by the protection programme run by the Directorate of Human Rights (DDHH) of the Ministry of the Interior and Justice, and on those persons and organizations currently protected under the said programme.

Eighty new allegations

687. Concerning the 80 new allegations, the Government reports as follows:

62 homicides: 51 at the preliminary stage and active, one at the preliminary stage and inhibitory, four at the proceedings stage (with union members and/or persons in custody), three at the trial stage (there have been actual convictions, and persons are in custody); three where there is no investigation, in one case because the attack failed and the person is alive, in another because the person concerned is alive and never was the victim of an aggression, and in the third because the complaint was duplicated and therefore should not be taken into account.

688. The Government states that ten of these 62 homicides are known not to have been acts of violence against union officials or members; in other words, the complaints do not relate to people with whom the Committee's analysis is concerned. Moreover, five of the 62 homicides occurred not because of the trade union activities of the victim but for quite unrelated reasons.

two attempted abductions: at the preliminary stage (one attempt was not directed specifically at a union member).

nine threats: six at the preliminary stage and active (one was not directed at a union member); in three cases the investigation is not being pursued for lack of information about the complaint.

two raids: one institution of judicial proceedings; one inhibitory.

two disappearances: one investigation not being pursued for lack of information about the complaint; one duplicated complaint.

six acts of violence: three at the preliminary stage; two at the trial stage (one not committed for trade union reasons); one investigation not being pursued for lack of information about the complaint.

34 allegations (see Appendix I).

23 homicides: four at the preliminary stage and active (one not committed against a union member); three suspended; one inhibitory; two trial (prosecuted); 13 investigation not being pursued for lack of information about the complaint.

two abductions: at the preliminary stage and active; one investigation not being pursued for lack of information about the complaint.

two attempted homicides: two investigations not being pursued for lack of information about the complaint.

seven death threats: one at the preliminary stage and active; six investigations not being pursued for lack of information about the complaint.

Total: 114 complaints

689. The Government's reply on each of the cases listed in the 333rd Report of the Committee on Freedom of Association, in the exact order that each of the allegations was presented by the complainant organizations, is given below.

Observations relating to the allegations listed in the section "New allegations" in the 333rd Report of the Committee

Murders

- (1) Jamil Mosquera Cuestas, member of the Antioquia Teachers' Association (ADIDA), in Antioquia, on 11 January 2003.

The Government received the complaint and, in order to inform the Committee of the facts and the stage the proceedings have reached within the investigation, contacted the Public Prosecutor's Office – Human Rights National Unit and National Directorate of Prosecutor's Offices – through the Office of Human Rights of the Ministry of Social Welfare. The Public Prosecutor's Office informed it that the investigation into the murder of Jamil Mosquera Cuestas is being pursued under File No. 650.680 by Prosecutor's Office No. 11, Medellín branch, Life Unit, and is at the preliminary stage and currently active. The Antioquia

Teachers' Association (ADIDA) in Medellín (Sra. Sonia Arboleda) stated that Jamil Mosquera was a member of that trade union organization.

Jamil Mosquera was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (2) Luis Hernando Caicedo, member of the Arauca Educators' Association (ASEDAR), in the municipality of Yumbo, Department of Valle del Cauca, on 23 January 2003.

Luis Hernando Caicedo León, a member of UNIMOTOR (not ASEDAR) was murdered on 24 January 2003 (not on 23 January as stated in the complaint). An investigation into the incident is being pursued by Prosecutor's Office No. 22, Cali Branch Directorate of Prosecutor's Offices, through its unit responsible for life, physical integrity and other matters, under File No. 542175, and is at the preliminary stage and currently active. The report of this authority does not indicate that the victim belonged to any trade union organization, though the trade union itself asserts that he was. The motives have not yet been established, but it is known that at the time of his death he was driving a local bus in Aguablanca District, Valle del Cauca.

Luis Hernando Caicedo was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (3) Luis Antonio Romo Rada, member of the Ciénaga Fishermen's Union, in Ciénaga, Santa Marta, on 8 February 2003.

The Government received the complaint and passed it on to the Public Prosecutor's Office, which on 2 May replied that a preliminary investigation is being pursued into the crime, under File No. 6960, by Prosecutor's Office No. 22, Ciénaga branch, Santa Marta Branch Directorate of Prosecutor's Offices, and that it is currently active. The body responsible for the investigation states that the file does not indicate that Romo Rada belonged to any trade union; on the contrary, there is strong evidence that he was a member of the ELN.

Luis Antonio Romo Rada was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (4) Bertha Nelly Awazacko Reyes, member of the Boyacá Teachers' Union (SINDIMAESTROS), in Tunja, Boyacá, on 24 February 2003.

The Government received the complaint and passed it on to the Public Prosecutor's Office. An investigation into the crime is being pursued by Prosecutor's Office No. 24, Chiquinquirá branch, under File No. 550, and judicial proceeding have been instituted. As regards the motives, it is known that the murder was not connected with the victim's union activities but was for personal reasons, as she had reported the rape of a minor – one of her pupil's at the college where she worked – who had been aggressed and raped by her stepfather. Bertha Nelly informed the authorities of the incident and the minor's aggressors killed her for vengeance in Boyacá (not Tunja). She was a member of the Boyacá Teachers' Union but not an official.

Berta Nelly Awazacko was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (5) Alejandro Torres, member of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), in Arauquita, Department of Arauca, on 20 March 2003.

It is known that persons presumed to be paramilitaries executed Dr. Alejandro Torres, a member of ANTHOC working at San Lorenzo hospital, in Arauquita (rehabilitation and consolidation area), in the Department of Arauca.

The Government received the complaint and passed it on to the Public Prosecutor's Office, which stated that an investigation is being pursued into the 13 March 2003 crime committed against Alejandro Torres Villareal, a doctor at San Lorenzo de Arauquita hospital, by Specialized Prosecutor's Office No. 2 through the Bogotá branch of the National

Abduction Unit (UNS), under File No. 145. In connection with the crime, which was reported by Luz Mirella Quintero Trujillo, Miguel Angel Araque Flórez has been charged with abduction for purposes of extortion, as a result of which the victim died while in captivity. The investigation is at the trial stage, at the Single Specialized Court of Arauca, located in Bogotá. Angel Araque Gelves (currently in detention) has been charged with the crime.

Alejandro Torres was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (6) José Rubiel Betancourt Ospina, member of Caldas United Teachers' Union (EDUCAL, in Samana, Department of Caldas), on 26 March 2003.

The incident occurred in Delgaditas, Fresno, Tolima, not in Samana, Caldas. The investigation is being conducted by Specialized Prosecutor's Office No. 3 of Ibagué, under File No. 107974, and is at the trial stage. Two of those responsible are currently being held; they have confessed that they killed José Rubiel Betancourt in order to steal his motorcycle. It is therefore known that the motive was not connected with his trade union activities but with the theft of a motorcycle. According to the Public Prosecutor's Office, José Rubiel was a teacher. The file does not indicate that he was a member of any trade union, but the President of EDUCAL, Hernán Patiño, maintains that he was.

Edwin Narciso Molina Arias was charged with the crime on 13 November 2003.

Mr. Betancourt Ospina was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (7) Cecilia Salas, member of the Valle Department Workers' Union, in Buenaventura, Department of Valle, on 7 April 2003.

The Ministry of Social Welfare contacted the Public Prosecutor's Office and national police through the DDHH Office in order to obtain additional information on the incident. Ana Cecilia, who was 50 years old, worked as secretary of the Juan José Rendón teaching centre and was a member of the Valle del Cauca Workers' Union (SINTRADEPARTAMENTO), was murdered by men who shot her as she was leaving her residence. She was hit by three bullets, two of them in the head, and died on arrival at the hospital. The murder took place on 8 April 2003 as she was leaving her house in the Brisas del Mar district.

According to the media, the police did not provide any details of the murderers, who witnesses said were on a motorcycle. Secret agents of the 7th police district are investigating the possibility that the secretary's death is connected with her trade union activities in the port.

The investigation is being conducted by Prosecutor's Office No. 39, Buenaventura branch, under File No. 8747, and is at the preliminary stage and active (motives as yet unknown); however, the Public Prosecutor's Office stated in May 2004 that the investigation is now being pursued by a different authority, the Buga branch of Office No. 39, under File No. 78012, and is at the preliminary stage and active.

Ms. Cecilia Salas was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (8) Evelio Germán Salcedo Taticuán, official of the (FECODE), on 7 April 2003.

At the request of the Government, the Public Prosecutor's Office provided the following information on the incident. Victim: Evelio Germán Salcedo Taticuán. Crime: homicide. Date and place of the incident: 7 April 2003, in the municipality of Puerres, Nariño. File No. 941. Investigating authority: Prosecutor's Office No. 25, Ipiales branch. Stage of proceedings: preliminary, active. Motives: to be established." He was a teacher, but the file does not indicate that he was ever a member of any trade union. The Prosecutor of the Nariño Teachers' Union (SIMANA), Pedro Leiton, confirmed that Mr. Taticuán was not a union member.

Salcedo Taticuán was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (9) Luz Stella Calderón Raigoza, member of EDUCAL, in Samana, Department of Caldas, on 8 April 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation of being conducted by the Single Prosecutor's Office, Pensilvania branch, Caldas, under File No. 1893, and is at the preliminary stage. The motives have yet to be established. According to the file, Ms. Calderón was a teacher, but there is no indication that she was a member of any trade union, however, the President of EDUCAL, Hernán Patiño, maintains that she was a member of that organization.

Ms. Calderón was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (10) Tito Livio Ordóñez, member of the Union of the Workers of the National University of Colombia, in Cocomá, Antioquia, on 16 April 2003.

Under the name of Tito Libio Hernández Ordóñez, the Public Prosecutor's consolidated investigation system refers to an incident that occurred on 16 February 2002 in Pasto Nariño. The information collected is set out below, and it is suggested that the complainants be asked for further details in order to corroborate or disprove the findings:

File No.	51227
Branch:	Pasto
Prosecutor's Office No.:	4
Stage of proceedings:	preliminary

- (11) Luz Elena Zapata Cifuentes, member of EDUCAL, in Anserma, Caldas, on 25 April 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation of being conducted by the Prosecutor's Office, Viterbo branch, Caldas, under File No. 6410, and is at the preliminary stage and active. The motives have yet to be established. According to the file, Ms. Zapata was a teacher, but there is no indication that she was a member of any trade union; however, the President of EDUCAL, Hernán Patiño, maintains that she was a member of that organization.

Ms. Zapata was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (12) Ana Cecilia Duque, Ana Cecilia Duque, member of the Antioquia Teachers' Association, in Cocomá, Antioquia, on 26 April 2003, by the ELN.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation of being conducted by Prosecutor's Office No. 59, El Santuario branch, Antioquia, under File No. 4134, and is at the preliminary stage and active. According to the file, Ms. Duque was a teacher, but there is no indication that she was a member of any trade union. The precise motives for the crime have yet to be established, but it is known that it was on account of her refusal to accede to the extortion demands of the ELN; consequently, her death was not connected with her alleged trade union activities.

Ms. Duque was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (13) Jorge Ruiz Sara, member of the Magdalena Teachers' Union (EDUMAG-FECODE-CUT, in Barranquilla, Department of North Santander), on 29 April 2003, by paramilitaries.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of

the investigation. The investigation is being conducted by Prosecutor's Office No. 39, El Barranquilla (Life Unit) branch, under File No. 155884, and is at the preliminary stage and active. The file does not indicate that he was ever a member of any trade union; however, the President of the trade union, Carolina Sánchez, asserts that Jorge Ruiz was a member of the organization at the time of his death, though he did not participate actively in union activities as he worked full-time as a teacher. The motives for the crime have yet to be established.

Mr. Ruiz Sara was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (14) Juan de Jesús Gómez, President of the Mina branch of SINTRAINAGRO, in San Alberto, Department of César, on 1 May 2003, by paramilitaries.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The Prosecutor's Office states that Mr. Gómez was murdered in the municipality of San Alberto, Cesar, where the body was recovered by the police. The investigation was placed in the hands of Specialized Prosecutor's Office No. 3 of Aguachica, under File No. 033-33, and is at the preliminary stage and active. Mr. Gómez was a union member of SINTRAINAGRO, César branch. At the request of the central authority, the investigation was subsequently taken over by the DDHH and DIH National Unit with headquarters in Bucaramanga, under File No. 1693; it is currently at the preliminary, collection of evidence stage.

On 7 May 2003, under Reference No. 002896, the Ministry of the Interior (protection programme) reported: "Regarding your request for information on any protection measures taken in respect of Juan de Jesús Gómez Prada (no identification), who you say was a member of the National Union of Farm Workers (SINTRAINAGRO) and President of the Minas branch, in the municipality of San Martín, César, please note that, after consulting our protection programme data bank of witness and persons under threat, no trace was found of any request by Mr. Gómez for protection."

- (15) Ramiro Manuel Sandoval Mercado, member of the Córdoba Teachers' Association (ADEMACOR), in the municipality of Chimá, Department of Córdoba, on 7 May 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Chinú, DSF Montería, Department of Córdoba, branch of Prosecutor's Office No. 22, under File No. 1471, and is at the preliminary stage. Mr. Sandoval was a teacher and member of the Córdoba Teachers' Association (ADEMACOR); he was abducted in Tuchín, district of San Andrés, Córdoba, and found dead in Chimá on 7 May. He is known to have been a member of the indigenous leaders' movement in San Andrés, as was confirmed by its President, Saúl Orozco Rollet.

Mr. Sandoval was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (16) Omar Alexis Peña Cardona, member of the North Santander Teachers' Association (ASINORT), in Cúcuta, North Santander, on 7 May 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the branch Directorate of Prosecutor's Offices of Cúcuta, under the responsibility of the branch Prosecutor's Office (Homicide Brigade) of Cúcuta, under File No. 9346, and is at the preliminary, collection-of-evidence stage. The report on the investigation does not indicate that Mr. Peña was ever a member of any trade union, and the President of ASINORT, North Santander branch, Myriam Tamara, confirmed that he was a teacher in Cúcuta but not a union member.

Mr. Peña was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (17) Jorge Eliécer Moreno Cardona, member of EDUCAL, on 8 May 2003, in Supia, Department of Caldas.

The Government reiterates the need for the complainant organizations to provide accurate information on the incidents reported and not to present events or situations which are not borne out by the facts or which differ from what actually occurred. The incident involving Jorge Eliécer Moreno is a case in point. In the 333rd Report this was presented as a homicide, whereas in fact it was merely an attempt on his life, since the union member is still alive. The information obtained by the DDHH Office of the Ministry of Social Welfare is as follows: "The Vice-President of EDUCAL, Rubio Ariel Osorio, has stated that Eliécer Moreno Cardona is Director of the Supia Technical Institute and a member of Caldas United Teachers' Union (EDUCAL). In the early hours of the morning on 8 May 2003, he was the victim of an attempt on his life in the municipality of Supia, where he received nine bullet wounds that left him seriously injured and close to death. Because of the constant harassment, aggression and threats to which he was subjected, he could not be provided with the necessary protection or a safe working environment. A study by INTERPOL indicated that he was at great risk. His daughter was obliged to leave the university where she was in her third semester.

Prosecutor's Office No. 14 reports that the investigation into this (attempted) aggravated homicide is being conducted by its branch office No. 2 in Caldas, which in charge of two judicial proceedings: criminal charges, and aggravating circumstances. The branch unit of Riosucio informed the DDHH Office of the Ministry of Social Welfare on 15 August 2003 that the preliminary investigation under File No. 4131 into the attempted murder of Jorge Eliécer Moreno Cardona, for motives to be established, has produced the following evidence. Police criminal report No. 193, of 8 May 2003. Request No. 30-50 for warrant to raid the premises located in Avenue 6, Supia, in order search for weapons, persons and evidence connected with the event; the raid took place on 9 May 2003, with a negative outcome. Statements by Mario Grajales Muñoz, Arriyoni Bermeo Joven, Diana María Cifuentes Areiza, María Arnoly Ladino Moreno, Duvan Palacio Castañeda and Luis Horacio Bonilla Parra, and deposition by the victim, Jorge Eliécer Moreno Cardona. Evidence also included working report No. 074, dated 27 May 2003, of the CTI of the Riosucio Prosecutor's Office, the report of forensic tests carried out on the victim, and working report No. 173, dated 30 June 2003, sent to the GAULA of Manizales. The investigation is currently at the preliminary stage, but evidence is still being sought to clarify the events and identify the perpetrators.

Mr. Moreno Cardona was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past. However, following requests from the trade union presented in 2004, the Risk Assessment and Control Committee (CRER) of the protection programme examined this case at a CRER meeting on Wednesday 21 April 2004, at which it was decided to set up an official committee of CRER members to conduct a detailed investigation of the status of this union member in Manizales itself, together with officials of EDUCAL. The committee is to be composed of public servants and representatives of the Single Confederation of Workers of Colombia (CUT), who will assess and analyse the immediate desirability of approving and implementing security measures for Mr. Moreno. The mission to Manizales is scheduled for the first week of May, and the Government will inform the Committee of the outcome.

- (18) Nelson López, Willmer Vergara y Jorge Vásquez, Nelson López, Willmer Vergara and Jorge Vásquez, members of EMCALI, at the Puerto Malarino Drinking Water Treatment Plant, in Cali, Valle del Cauca, on 8 May 2003.

The Government reiterates the need and desirability of the Committee taking account in its reports of the replies that it sends at the request of the International Labour Standards Department between one session of the Government Body and the next. The triple homicide of these members of SINTRAEMCALI is a case in point. The Government sent its observations in communication DH 232 dated 2 July 2003, in response to communication TUR-1-14-51 of 30 May 2003 sent by the International Labour Standards Department; yet the same request appears in the 333rd Report of the Committee.

The Government's reply can be summarised as follows:

Incident:	bombing of the EMCALI water treatment plant, Puerto Mallarino district, Cali
Date:	8 May 2003
Time:	23h50
Unit:	Mecal
Location:	corner of 15th Avenue and 56th Street, Puerto Mallarino district, on the premises of the EMCALI water treatment plant
Municipality:	Cali
Department:	Valle del Cauca
Investigating authority:	Mecal Sipol
Purpose:	collection of evidence
Modality:	explosion
Outcome:	death of three company workers

Description of events: at approximately 21.00, police patrol 7-1 from the Alfonso López police station, composed of Superintendent Walther Ramírez and second lieutenant Jesús Montenegro Montiel, in compliance with their standing orders to check the water treatment plants of the Cali municipal companies, asked the security guard at the main entrance to allow them to enter and check the premises on the inside. In reply, the company's security guard told them that they were not allowed to enter and that they would therefore have to check from the outside only. The police tried to insist and asked the guard whether there was any problem, meanwhile noting that some ten people were gathered together inside the plant. The guard, however, said that everything was normal and that there was no problem.

At about 11.30 p.m. the police patrol covering the treatment plant, which had asked for permission to enter two hours before, heard a powerful explosion from behind the main entrance, where they arrived some three minutes later. On their arrival they carried out an initial search and investigation, questioning a number of passers-by who were there at the time. The latter said that prior to the explosion they had not noticed any suspicious or unusual people or vehicles in the area, other than the guard who work for the company and a taxi which had entered the premises a few minutes before and then left. Meanwhile, another patrol which had arrived on the spot conducted a preliminary inspection of the site and found two persons who had been killed in the explosion, one of them with mutilated arms and head, and a third person who was seriously injured, with burns on much of his body. The injured man was immediately sent by ambulance to the University Hospital, where he died a few hours later from his wounds. When asked if he could identify the dead bodies, the guard who had been on duty at the main gate at first said that he could only recognise the man who had been injured, and whom he identified as Wilmer Hernán Vergara, the owner of the taxi referred to above. He added that he had seen him enter in the same taxi, deposit what looked like a television set in the area where the explosion had occurred and return to the gate, where a taxi was parked. According to the guard, Vergara returned on a motorcycle to the place of the explosion.

Subsequently, the police were able to identify the victims of the explosion as Nelson López Ayala (identity card No. 6.318.141) from Guacarí, Jorge Eliécer Vasquez Cabrera (no identity card found) and the aforementioned Wilmer Hernán Vergara.

Activities of the judicial police

To investigate the incident at the Puerto Mallarino water treatment plant, explosives experts were sent to carry out the necessary technical investigation. They reported the following facts.

On arrival at the water treatment plant they found in the power station two dead bodies and one injured person who was evacuated and later died. All three had suffered characteristic injuries (mutilation, dismembering, burns) which indicated that they had been very close to the point of explosion. They also found a trail of blood on the roof of the internal part of the building, running from the site of the explosion to the edge of a girder on the right-hand side. They noted that they did not find any crater in the ground, which leads them to believe that the explosive device was at a certain height, for example on a table, chair, etc. They carried out a visual and physical search of the area, where they found and bagged pieces of evidence that could help clarify the incident. These they described as follows:

“A yellowy-green powdery substance was found on the inside face of the column where the explosions took place.”

“A grey substance was collected in cotton wool from the left face of the column (viewed from the front of the building).”

“A damp powdery substance, scattered on the floor all over the area, was collected from the ground to the rear of the column (viewed from the front of the building).”

“On the ground to the left of the column (viewed from the front of the building) the remains of a device was collected which was still burning at the time of arrival and continued to do so for about 20-30 minutes.”

“A cardboard roll wrapped in aluminium foil was found on the ground inside the building about one metre from the column where the explosion took place.”

“To the left of item 04 a (burnt) green cardboard packet was found with the following inscription in white: Reynolds 16 metres.”

“Near the point of explosion and all over the area a large number of pieces of metal were found (screws and nuts of various sizes and type, identical pellets 2.7 cms in diameter and weighing 220-250 grams).”

“A piece of material apparently belonging to the clothing of one of the bodies was found on the left face of the column (viewed from the front of the building) where it meets the roof.”

“Bits of clothing (socks, shirt) were found on the body to the right of the building (viewed from the front).”

The report states that items marked 01, 02, 03, 04, 09 and 10 will be sent for chemical analysis to the central laboratory of the National Police in Bogotá, to determine their type and composition and whether they could be used in the manufacture of explosives; items 05, 06, 07 and 08 will be placed at the disposal of the Prosecutor's Office responsible for the investigation.

The investigation identified the sentry boxes assigned to each guard and established that on the day concerned the post situated at the main entrance 200 metres from the explosion was guarded by Wilmer Hernán Vergara, a post 500 metres from the explosion was guarded by Jorge Eliécer Vasquez Cabrera, and the post located in the electricity substation where the explosion took place was guarded by Nelson López Ayala.

These are key security posts, which means the guards are not allowed to go from one post to another, and even less to leave their own posts unattended and meet in one sentry box.

According to the report of the Cali metropolitan police (Colonel Oscar Naranjo), and the report and conclusions of the experts who visited the location of the incident that night: “The inhabitants and neighbours of the district did not see any strangers or non-locals in the vicinity of the EMCALI water treatment plant; according to the chief of security, at that time of night there should have been no staff in the electricity substation as it is a restricted area. And yet the three people were there. Moreover, given the information that a television set had been brought in by the late Mr. Vergara, minutes before the explosion that cost him his life, the investigators asked how easy it was for the guards to use a television in their sentry box. We were told that it was quite impossible. Besides, our explosives experts found no trace of any pieces of a television set. Asked whether pellets, screws, nuts and Reynolds paper were normally used in the treatment plant, several members of the staff said that they were not used either for security work or in the actual operation of the electricity substation. It was concluded from the experts' analysis that the device that exploded was inside the plant where the electricity substation was located, an area where no staff other than maintenance technicians and engineers were allowed, and which should not have been open at the time because it was an emergency substation that was only opened occasionally for maintenance purposes.”

In a telephone conversation on 1 May 2003, the Commander of the Cali metropolitan police, Colonel Naranjo, stated that the intelligence report and that of the police explosives experts suggested that the dead trade union members were manipulating explosive substances (sulphur and potassium chloride on their clothes and bodies) which were used for their well-known “exploding potatoes” or papas explosivas (well known because they were the

explosives that union members used in demonstrations and marches to intimidate people and the authorities), especially since Reynolds aluminium foil, which is used to pack the papas explosivas, was also found in the area. The Colonel added that a fourth person who was apparently in the area had escaped unharmed but was currently in hiding and being sought by the authorities.

Conclusion: it would seem obvious that the incident was not an attempted attack against trade union officials but rather the result of the manipulation of explosives inside the plant by the victims themselves.

In communication No. 1141 of 19 May 2003, the Prosecutor's Office stated that the incident that occurred in Cali on 8 May 2003 was being investigated by Specialized Prosecutor's Office No. 10 of Cali, under File No. 564069, and that the investigation was at the preliminary (collection of evidence) stage. The added that the explosion had damaged the electricity plant that feeds the water treatment plant of Puerto Mallarino, located at the junction of 76th Street and 15th Avenue to the north-east of Cali.

(19) Victoria Sterling and Héctor Jaimes, union membership not specified, in Garzón, Department of Huila, on 11 May 2003.

According to the report of the Branch Directorate of Prosecutor's Offices of Neiva, the victim's name is Héctor Jaimes Victoria Sterling, i.e. only one person. The investigation into the homicide, which took place in the municipality of Tarqui (not Garzón, Huila) on 12 May 2003, is being conducted by the Minors Tribunal.

File No.:	2003-00111-00 (2265)
Branch:	Garzón, Huila
Investigating authority:	First municipal family judge
Charged:	Juan Pablo Santofimio Bermeo and Isaac Naranjo Artunduaga

(20) Luis Oñate Enriquez, member of the Electricity Workers' Union of Colombia (SINTRAELECOL), in the Department of Atlántico, on 24 May 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by Prosecutor's Office No. 9, URI branch, under File No. IPS 956, and is at the preliminary stage. The report does not indicate that the victim was a member of any trade union, and it is believed that the motives were not connected with any trade union activity. However, the Prosecutor of the National Executive Board of SINTRAELECOL states that Mr. Oñate was a member of the Atlántico branch of that organization, and the Government is therefore treating the complaint as an attack that was presumably made on account of the victim's trade union activities. At this point no decision has been reached one way or the other by the investigating authority.

Mr. Oñate was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

(21) María Rebeca López Garcés, member of the Antioquia Teachers' Association (ADIDA), in Uramita, Department of Antioquia, on 29 May 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Branch Unit of Frontino, Antioquia, under File No. 2114, and is at the preliminary stage and active. Ms. Lopez is known to have been a teacher and a member of ADIDA; this was confirmed by the Vice-President of the Antioquia branch of ADIDA, Luis Alfonso Londoño.

Ms. López was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

(22) Nubia Cantor Jaimes, Nubia Cantor Jaimes, member of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), in Arauca, Department of Arauca, on 3 June 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Arauca, DSF Cúcuta, branch of Prosecutor's Office No. 1, under File No. 59322, and is at the preliminary stage and active. The motives are unknown. Ms. Cantor Jaimes worked in the health field and was a member of ANTHOC; this was confirmed by the President of the Arauca branch of the organization, Jorge Prieto.

Ms. Cantor Jaimes was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (23) Jorge Eliécer Suárez Sierra, member of the North Santander Teachers' Association (ASINORT), in San José de Cúcuta, North Santander, on 8 June 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by Homicide Brigade Branch of the Prosecutor's Office of Cúcuta, North Santander, under File No. 59588, and is at the preliminary stage and active. The motives are unknown. Ms. Suárez Sierra was a member of the worked in the health field and was a member of the North Santander Teachers' Association; this was confirmed by the branch President of the organization, Myriam Tamara.

Ms. Suárez Sierra was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past

- (24) Luis H. Rolón, member of the Lottery and Gaming Vendors Union, in the Department of Cúcuta, North Santander, on 16 June 2003, by paramilitaries.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by Prosecutor's Office No. 3, Life Unit Branch in Cúcuta, under File No. 60541, and is at the preliminary stage and active. Mr. Rolón is known to have been President of the trade union (established with juridical personality in 1988) two years ago; this was confirmed by the organization's Treasurer, Bernardo Amaya.

Mr. Rolón was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (25) Morelly Guillén, member of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), in the Department of Arauca, municipality of Tame, on 16 June 2003, by paramilitaries.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Single Branch of the Prosecutor's Office in Tame, under File No. 63226. Subsequently, on 24 March 2004, The Prosecutor's Office informed the DDHH Office of the Ministry of Social Welfare that the homicide is being investigated by the First Specialized Prosecutor's Office of Arauca, under File No. 1025, and is at the preliminary (collection of evidence) stage and active. Ms. Guillén worked in the health field and was a member of ANTHOC; this was confirmed by the President of the Arauca branch of the organization, Jorge Prieto.

Ms. Guillén was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (26) Orlando Fernández Toro, Union of Workers and Employees of Autonomous Public Services and Decentralized Institutes (SINTRAEMSDES), in Valledupar, Department of César, on 17 June 2003, by paramilitaries.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Prosecutor's Office, Life Unit Branch, in Valledupar, under File No. 265, and is at the preliminary stage and active. Mr.

Fernández Toro was the Treasurer of SINTRAEMSDES, César branch, in the EMDUPAR enterprise; this was confirmed by the Vice-President of the branch, Alvaro Almendrales. In May 2004 the Prosecutor's Office reported that the investigation is now being conducted by Specialized Prosecutor's Office No. 5 of Valledupar, under File No. 154481, and is at the preliminary stage.

Mr. Fernández Toro was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (27) Liliana Caicedo Pérez, member of the Nariño Teachers' Union (SIMANA), in Ricaurte, Department of Nariño, on 19 June 2003, by paramilitaries.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation was initiated by the Municipal Mixed Tribunal of Ricaurte, which reported that the body was removed from the scene of the crime by the Ospina Pérez district police inspectorate. Following forensic tests, the investigation was immediately passed on to the Prosecutor's Office, Túquerres branch, Nariño, as the competent authority. In November 2003 the Prosecutor's Office informed the DDHH Office of the Ministry of Social Welfare that the investigation is now being conducted by Specialized Prosecutor's Office No. 6 in Pasto, under File No. 81353, and is at the preliminary stage and active. Ms. Caicedo Pérez was a teacher and Rector of the Ospina Pérez College in Ospina Pérez district, in the municipality of Ricaurte, Nariño. As was confirmed by the President of the trade union, Marcela Aquiles, she had joined the organization two months before the incident.

Ms. Caicedo Pérez was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (28) Fanny Toro Rincón, member of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), in Ibagué, Department of Tolima, on 20 June 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by Prosecutor's Office No. 36, Fresno branch in Tolima, under File No. 126200, and is at the preliminary stage and active. Ms. Toro Rincón was a nurse at the Fresno hospital and was a non-militant member of the Ibagué branch of the trade union; this was confirmed by the President of the branch, Ricardo Barón.

Ms. Toro Rincón was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

- (29) Pedro Germán Flórez, member of the Arauca Educators' Association, in Saravena, Department of Arauca., on 4 July 2003

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Saravena, DSF Cúcuta, branch of the Single Prosecutor's Office, under File No. 79892, and is at the investigation stage. A Mr. Norberto Estupiñán Otero (currently at liberty pending the determination of his juridical status) is involved in this case. The Prosecutor's report does not indicate that Mr. Flórez was a member of any trade union. The motives are unknown but are being investigated. On the other hand, it is known that Mr. Flórez worked as Coordinator at the Rafael Pombo Bachillerato Industrial Technical College. At the time of the aggression he was fulfilling his duty as a teacher, when he was brutally dragged from the College and murdered a few blocks away by unknown assailants. The President of ASEDAR at the departmental level, Jaime Ernesto Carrillo, confirmed to the DDHH Office that Mr. Flórez was a member of the trade union.

Mr. Flórez was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (30) Marco Tulio Díaz, President of the ECOPETROL National Pensioners' Association (ASONAJUB), on 15 July 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the DDHH National Unit with headquarters in Cúcuta, North Santander, under File No. 1745, and is at the preliminary stage and active. Mr. Díaz Hernández was President of the ECOPETROL National Pensioners' Association (ASONAJUB). The current President, Andrés Galvia, stated on 22 July 2003 that the Association was made up of pensioners and therefore did not engage in trade union activities and had no labour relations with the company. He also stated that Marco Tulio Díaz was 53 years old and was not known ever to have been threatened for personal or work reasons. The murder occurred when he went to his mother's home in the Garden City of Cúcuta; a man was waiting for him, burst into the house and shot him twice. Mr. Marco Tulio Díaz had been Secretary-General and Treasurer of the Association and, at the time of his death, its President.

As he was not a union member, Mr. Díaz was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past

- (31) José Evelio Bedoya Alvarez, José Evelio Bedoya Alvarez, member of the Construction Industry and Materials Workers' Union (SUTIMAC), in the municipality of Santa Barbara, Department of Antioquia, on 15 July 2003

Mr. Bedoya worked at the El Cairo cement plant, was a member of a SUTIMAC, Santa Bárbara branch and a well-known militant within the trade union. He was in Santa Bárbara on his rest day, a few blocks from the union building, when a number of armed men shot him several times and killed him.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Specialized Prosecutor's Office of Medellín, Antioquia, as the competent authority, under File No. 2296, and is at the preliminary stage and active. The motives are unknown but are being investigated.

Mr. Bedoya was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (32) Alberto Márquez, member of SINTRAGRITOL, an affiliate of FENSUAGRO, in the municipality of Nantagaima, Department of Tolima, on 15 July 2003.

Unknown persons broke into Mr. Márquez' house at around 1.30 p.m. and killed his bodyguard, Nelson Castiblanco Franco (an employee of DAS-Escolta); his daughter, who was wounded, escaped. He was an active member of the trade union in Natagaima, but left because of the threats he had received. According to Mr. Ever García, a member of the union's executive board, he was able to return to Natagaima under police protection but was subsequently murdered. The President of SINTRAGRITOL, Josué Jesús Buriticá, confirmed that Mr. Márquez was a member of the organization at the time of his murder and that he was an agrarian and indigenous official and militant in the department of Tolima. He was a member of the Patriotic Union Party and of the Colombian Communist Party.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by Specialized Prosecutor's Office No. 3 of Ibagué, under File No. 129390, and is at the preliminary stage and active. The motives are as yet unknown.

Mr. Marquez was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (33) Carlos Barreto Jiménez, member of the Executive Board of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), in Barranquilla, on 23 July 2003.

Mr. Carlos Barrero was an assistant nurse at Barranquilla Hospital. At 7.30 on the morning of 23 July 2003, Mr. Barrero was about to board a bus to go to work when he was

accosted by two individuals on a motorcycle, one of whom shot him several times and killed him.

The Human Rights Office of the Ministry of Social Welfare contacted the National Police and the Public Prosecutor's Office for information on the circumstances in which the incident took place. In communication No. 1691 the police reported on the action it took at the time and place of the incident: "The police are currently trying to establish whether the motive behind the incident being investigated was that the victim had at one time been engaged in trade union activities as an official of ANTHOC, or whether on the contrary the incident was an isolated mugging by common delinquents. In a lengthy interview, the victim's daughter, Elizabeth del Carmen Barrero Berdugo, stated that her father had gone out to collect his bonuses for June and that, as he had alcohol problems, he may have been spotted by one of the delinquents that regularly hang around the area where he was killed, or been killed for some other personal reason."

The Public Prosecutor's Office reported that the investigation into the homicide is being conducted by the National Unit for Human Rights and International Humanitarian Rights based in Barranquilla, under File No. 1724, and is in the preliminary stage and active.

At a Security Council meeting of the Atlántico provincial government on 25 July 2003, Police Commander Colonel Gamboa asserted that everything was being done to catch the perpetrators and that a reward of 10 million pesos was being offered for their capture. At the same meeting the Ministry of the Interior and Justice reported on the following precautionary measures which had been adopted with respect to the members of ANTHOC, Barranquilla:

Precautionary measures adopted in respect of members of ANTHOC, Barranquilla

Edgar Púa Samper:

- By Decision No. 38 of September 2001 he was granted one month of humanitarian assistance and national air tickets to leave the danger area.
- By Decision No. 19 he was granted one month of humanitarian assistance. He is known to have returned to the danger area.

Tomás Ramos Quiroz:

- Has an Avantel radio.
- By Decision No. 38 he was issued national air tickets.
- Has personal protection, consisting of two men and a vehicle.

José Rafael Meriño Camelo:

- By Decision No. 38 he was granted one month of humanitarian assistance.
- By Decision No. 20 he was granted two months of humanitarian assistance. Currently in Barranquilla.

Measures in respect of the organization:

- By Decision No. 5 of 2001 a collective protection scheme was approved for members of the Executive board. The scheme is in operation.
- The installation of a safety perimeter around the headquarters was approved and ratified by Decision No. 16 of 2002; it was recently installed by FONADE.

(34) Juan Carlos Ramírez Rey, member of the Penitentiary and Prison Institute Employees' Association (ASEINPEC), in Villavicencio, on 24 July 2003.

On his way to work from his residence, Juan Carlos Ramírez was accosted by hired killers who shot him several times, killing him instantly. According to the Executive Committee of the General Confederation of Democratic Workers (CGTD), the reasons behind the murder were connected with the complaints that the trade union organization had recently lodged regarding alleged irregularities and corruption within the penitentiary institution.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Villavicencio, Meta, DSF

Villavicencio branch of Prosecutor's Office No. 23, under File No. 100441, and is at the preliminary (collection of evidence) stage. The motives have yet to be established.

Mr. Ramírez Rey was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (35) Elena Jiménez, member of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), on 9 August 2003, in Ocaña, Department of North Santander.

The Government received the complaint from the trade union and contacted the National Police and the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation.

Colonel Luis Alfonso Novoa of the National Police reported that at 10h45 on 10 August, two kilometres down the road from the municipality of Ocaña to the district of Palo Grande, the Public Prosecutor on duty and with units of the Ocaña CTI conducted the examination of the bodies of Victoria Elena Jaimes Vacca (not Elena Jiménez) (identity card No. 37.312.622, 45 years of age, widow, assistant nurse at the Emiro Quintero Cañizares hospital in Ocaña, member and secretary of the ANTHOC trade union of Ocaña), and of Yafride Carrillo Sanabria (identity card No. 88.285.790 of Ocaña, 23 years of age, farmer, resident of Los Pinos district of Ocaña), who had disappeared from the area 10 days before. The bodies revealed head wounds caused by a firearm; the aggressors are being sought. The incident occurred on 9 August 2003 at 11 p.m. at the location where the judicial examination was conducted.

The Prosecutor also reported that the investigation is being conducted by the Ocaña, DSF Cúcuta, North Santander, branch of Prosecutor's Office No. 2, under File No. 75252, and is at the preliminary stage and active. The motives are as yet unknown.

According to a report from the Cúcuta branch of the Prosecutor's Office, the names of the victims were Victoria Elena Jaimes Vacca, nurse, and Yafride Carrillo Sarabia, driver.

File No.:	75252
Branch:	Cúcuta, North Santander
Investigating authority:	Prosecutor's Office No. 2, Ocaña
Stage of proceedings:	preliminary, collection of evidence

Ms. Jaimes Vacca was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (36) Marleny Stella Toledo, member of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), in Puerto Rico, Department of Caquetá, on 9 August 2003.

The Government was informed of the incident, not as a homicide involving "Marleny Stella Toledo" but as an act of violence against Luz Stella Perdomo, member of ANTHOC, on 9 August 2003, in Puerto Rico Caquetá.

The National Association of Workers and Employees in Hospitals and Clinics (ANTHOC) informed the DDHH Office of the Ministry of Social Welfare that on 28 July 2003 an attempt had been made on the life of Luz Stella Perdomo (identity card No. 55.166.896 from Neiva) and her husband, José Darío Parra, who was killed. The attack occurred in Caquetá, a district of Puerto Rico. Until 9 August 2003 Luz Stella Perdomo had also been presumed killed, but she was discovered in the María Inmaculada de Florencia hospital in Caquetá on 13 August 2003. The police suggested that she be given immediate personal protection.

The Public Prosecutor's Office reported that an investigation is being conducted, as follows:

File No.: 36571
 Branch: Florencia
 Investigating authority: Prosecutor's Office No. 16 of Puerto Rico
 Stage of proceedings: preliminary, collection of evidence

Ms. Toledo was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request.

(37) Flor Marina Vargas, member of the Antioquia Teachers' Association, in the La Pava district of the municipality of Alejandría, Department of Antioquia, on 19 August 2003.

Flor Marina Vargas was a teacher and social leader in the La Pave district of the municipality of Alejandría, Department of Antioquia. She worked for an NGO, "Corporación Coredi", a project of the Colombia Plan aimed at recruiting institutions in order to extend educational coverage in the regions.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Cisneros branch of the Branch Directorate of Prosecutor's Offices of Antioquia, under File No. 2978 and is at the preliminary (collection of evidence) stage. The motives have yet to be established. In the same incident Juan Pablo Pamplona Guarín died after having been dragged from a taxi with Ms. Vargas Valencia and shot. In May 2004 the Prosecutor's Office reported that an inhibitory order had been issued on 18 February 2004 owing to the lack of information permitting the identification and location of the perpetrators (section 325 of the Criminal Procedures Code).

Ms. Vargas was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

(38) Cruz Freddy Buenaventura, Cruz Freddy Buenaventura, member of the Cauca Teachers' Association (ASOINCA), on 21 August 2003 in the Department of Cauca.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Bolívar branch Single Prosecutor's Office, Cauca, Branch Directorate of Popayán, under File No. 2186, and is at the preliminary stage and active.

The Bolívar branch Prosecutor's Office, Cauca, reports that the army was stationed on the victim's estate on the day of the incident and that certified copies of the investigation have been sent to the military penal tribunal on grounds of misappropriation of land, inter alia.

Andrés Alfonso Cárdenas, Vice-President of ASOINCA, certified before the DDHH Office of the Ministry of Social Welfare that Mr. Buenaventura was a member of the organization.

Mr. Buenaventura was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

(39) César Augusto Fonseca, member of the Atlántico Department Farm Workers' Union (SINTRAGRICOLAS), in the municipality of Ponedera, Department of Atlántico, on 2 September 2003.

(40) José Rafael Fonseca, member of the Atlántico Department Farm Workers' Union (SINTRAGRICOLAS), in the municipality of Ponedera, Department of Atlántico, on 2 September 2003.

(41) José Ramón Fonseca Morales, member of the Atlántico Department Farm Workers' Union (SINTRAGRICOLAS) in the municipality of Ponedera, Department of Atlántico, on 2 September 2003.

The Government's reply to these three complaints is as follows:

Triple homicide, Fonseca Morales brothers,
 2 September 2003, Ponedera, Atlántico

The Quick Response Unit (URI) of the First Prosecutor's Office in Barranquilla informed the Branch Directorate of Prosecutor's Offices of the investigation cited above as follows : The incident being investigated concerns the presumed disappearance of three people (José Rafael Fonseca Morales, César Augusto Fonseca Morales and Ramón José Fonseca Cassiani) on Tuesday 2 September 2003 and the subsequent discovery of their bodies in a grave on the La Montaña estate in the district of Puerto Giraldo, municipality of Pondera, Atlántico. By decision of 15 September 2003, the Prosecutor's Office ordered the initiation of proceedings against persons unknown and the collection of the following pieces of evidence:

1. Judicial proceedings and topographer's report of 18 September 2003 concerning the La Montañita, Las Torres, sector of the La Montaña estate; these were received on the same day.
2. Sworn statement of Jaime Yimis Rodríguez Villarreal, foreman of the La Montaña estate.
3. The findings of the forensic tests carried out on the victims by the Institute of Legal Medicine and Forensic Sciences; these have not yet been submitted by the Institute.
4. Sworn statement of Lieutenant Colonel Jorge Eliécer Giraldo Arias; this has not yet been obtained, as this officer of the National Police has not so far been able to appear before the Prosecutor's Office.
5. On 19 September 2003 the URI of the First Prosecutor's Office went to the Branch Prosecutor's Office of the municipality of Santo Tomás to take the sworn statement of José Vicente Fonseca Meza, father of the victims; a sworn statement was also taken from Teodoro José Ahumada Valencia, who works on the La Montaña estate, in the district of Puerto Giraldo, municipality of Pondera, Atlántico.
6. The Prosecutor's Office requested the Branch Prosecutor's Office of the municipality of Sabanalarga, Atlántico, to hand over the file on the investigation initiated on 5 December 2000 concerning the death of Belisario Fonseca Morales (known as Sayito), a brother of the victims.
7. The Technical Investigations Force (CTI), Cundinamarca, was given five days to make a judicial enquiry through the Traffic Inspectorate of the municipality of Calera, in order to determine the owner of a vehicle bearing number plate CRD-963, along with the background of the vehicle, which would appear to have transported the victims on the day of the incident.
8. The National Civil Registrar was asked to produce the fingerprints of Johny Rafael Suárez Ibarra (identity card No. 8.732.722 of Barranquilla, Atlántico) who would seem to have threatened the father of the victims because of a dispute over a piece of land he had inherited.
9. On 26 September the Prosecutor went to the police station located in the municipality of Sabanagrande, Atlántico, to seek police support for a visit to the municipality of Santo Tomás, Pondera, and the district of Puerto Giraldo, Atlántico, where he intended to take the sworn statements of Aristancho Bolaños, Carlos Nelly, Smith Vizcaino and retired employee Andrés Fuentes Simile, residents of Puerto Giraldo, who apparently witnessed the events. However, it proved impossible for the Prosecutor to take the depositions because at the time no vehicle was available to take him and the police could only provide an escort. He therefore enlisted the support of the local CTI unit in Santo Tomás, Atlántico, to which he handed over the relevant summonses so that, with the collaboration of the police inspector of Puerto Giraldo, the persons concerned could appear before the Prosecutor and make their sworn statements."

The Prosecutor's conclusions at this stage are as follows:

1. By title Deed No. 1522 dated 27 December 1996 INCORA acquired 322 hectares of land known as Loma Arena Macondal, in the district of Santa Rita. Since then administrative proceedings have been under way to hand the land over to 71 peasant families under the agrarian reform scheme. The land was accordingly divided up on 26 September 2002. Because some of the land already had owners, and the adjudication involved people being relocated away from the plots that they had been used to working, this led to a number of disputes and aggravated the confrontation between previous owners and those

who had been awarded new plots of land. This situation generated numerous incidents, which in turn resulted in complaints being lodged with the Prosecutor's Office in Santo Tomás, where two investigations are currently under way: one, under File No. 2238, initiated on 3 June 2003, and another, under File No. 2866, initiated in September 2002. Another preliminary investigation is being conducted by Prosecutor's Office No. 25 of this city, under File No. 152.803, following a complaint lodged by peasants against the inspector of Ponedera, apparently for having carried out a judicial inspection of the plots of land without resolving the peasants' problem. Ordinary judicial proceedings are also under way in the municipality of Sabanalarga, among them File No. 0815 before the Second Mixed Circuit Tribunal.

2. It should be pointed out that the murder victims found in a communal grave were not part of the group of peasants who were former or new owners of the Loma Arena land; in fact, their father had inherited a plot in Las Torres on another piece of land known as Blanquicet, which had apparently belonged to one Teodoro Ariza before being passed on to his sons and widow. The latter had been represented by Johnny Suárez Ibarra, who for the past eight years has been disputing Mr. Fonseca's ownership of the land, alleging that he had bought it from Teodoro Ariza's widow.
3. To sum up, there are two hypotheses as to the motives behind the horrendous triple murder: (a) the first has to do with the land ownership problem; (b) the second revolves around the alleged involvement of one of the victims, Fonseca Casiani, in the commission of crimes involving the theft of livestock in the area.

However, it is very difficult to make any progress in an investigation if there is no cooperation from ordinary citizens and no physical evidence of what happened. To make matters worse, the judicial procedure of removal of the bodies did not comply even with the most minimal rules provided for in criminal law and there is complete silence on the matter, apparently because the peasants in the area are afraid to talk.

These three peasants named Fonseca Morales were not union members known to have received threats in the past, and they were therefore not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice.

- (42) Iván Muñiz Bermúdez, member of the Guajira Teachers' Association (ASODEGUA), in Guajira, Department of Riohacha, on 9 September 2003.

The Government received the complaint from the trade union and contacted the National Police and the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by the Life Unit Branch of Prosecutor's Office No. 002 in Riohacha, under File No. 21810, and is at the preliminary stage and active. The motives behind the incident are as yet unknown.

The President of the Guajira Teachers' Association (ASODEGUA), the only trade union organization in Guajira, stated in writing to the DDHH and DIH Office of the Ministry of the Interior and Justice that Iván Manuel Muñiz was not a member of the organization.

On 28 August 2003, according to the police, Mr. Muñiz Bermúdez' house was raided and two IM-26 hand grenades and an APBT-65 grenade launcher were found, along with three maps of the Riohacha sector showing the police station and leaflets referring to the FARC-ELN. Three persons were detained, one of whom was the victim. He was released and later murdered in an attack on 4 September at 19h10 at the corner of 40th Street and 12th Avenue, 12c de Riohacha, Divino Niño district. He was hospitalized at the Riohacha Clinic, where he died from three bullet wounds on 9 September.

Mr. Muñiz was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (43) Renzo Vargas Vélez, member of the Tolima Teachers' Association (SIMATOL), in the municipality of Villarrica, Department of Tolima, on 12 September 2003.

The President of the Tolima Teachers' Association (SIMATOL), Mr. Rosemberg Bernal, stated that Renzo Vargas was found shot to death on 12 September. The victim worked at the Los Alpes College in the municipality of Villarrica, Tolima, and until the previous month had

been coordinator of the municipality's trade union committee. He was married to Nidia García and was the father of three children.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.: 136570
 Branch: Cundinamarca
 Investigating authority: Specialized Prosecutor's Office No. 5, Ibagué branch
 Stage of proceedings: preliminary

Renzo Vargas was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

(44) Margot Londoño Medina, member of ADIDA, in Envigado, Department of Antioquia, on 15 September 2003.

Ms. Londoño Medina, who had been working in the Manuel J. Betancourt educational institution for the past seven years, was killed at 7 a.m. on 15 September 2003, while travelling by vehicle with her two children from her home in Envigado to her place of work, in the district of San Antonio de Prado. She was a community leader and very well liked by her students. According to the President of the Trade Union Association of Educators of Medellín (ASDEM), she was a member of that organization.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.: 5931
 Branch: Medellín
 Investigating authority: Prosecutor's Office No. 101, Itaguí branch
 Stage of proceedings: preliminary

Ms. Londoño Medina was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

(45) Dora Melba Rodríguez Urrego, member of the Tolima Teachers' Association (SIMATOL), in Ibagué, Department of Tolima, on 19 September 2003.

Dora Melba Rodríguez Urrego was shot four times and killed at 6 p.m. in the Gaitán district of Ibagué. She was an established departmental teacher, working at the Echandía educational institution. The President of SIMATOL, Rosemberg Bernal, stated that Ms. Rodríguez Urrego (identity card No. 38.232.461) was a member of that organization.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.: 136490
 Branch: Ibagué
 Investigating authority: Prosecutor's Office No. 44, Rapid Response Unit
 Stage of proceedings: preliminary

Ms. Rodríguez Urrego was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

(46) Abel Ortega Medina, member of the Sucre Teachers' Association (ADES), in the municipality of Monroa, Department of Sucre, on 15 September 2003.

Abel Ortega Medina was murdered by persons unknown, along with his 39-year-old wife Nelly Herazo Rivera (allegation No. 47 in the 333rd Report of the Committee on

Freedom of Association), at 7.30 a.m. on Thursday 25 September 2003, as they were going from their home in Corozal to his place of work at the rural school in La Vereda El Tolima, municipality of Morroa, Sucre.

The Government received the complaint from the trade union and contacted the National Police and the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation. The investigation is being conducted by Specialized Prosecutor's Office No. 1 of Sincelejo, Sucre, under File No. 38807, and it at the preliminary stage and active.

The President of the Sucre Teachers' Association (ADES) informed the DDHH Office of the Ministry of Social Welfare that Abel Antonio Ortega Medina (identity card No. 9.311.099 of Corozal, Sucre), who worked as a teacher in the municipality of Morroa, Sucre, was a member of that organization at the time of his murder. Abel Ortega had never been the object of any kind of threats; his wife, Nelly Herazo Rivera, who was killed at the same time on the same day, was not a teacher, and therefore not a member of the organization.

Mr. Ortega Medina was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

(47) Nelly Herazo Rivera, member of the Sucre Teachers' Association (ADES), in the municipality of Monroa, Department of Sucre, on 15 September 2003.

Nelly Herazo Rivera was murdered by persons unknown, along with her husband Abel Ortega, on Thursday 25 September 2003, at 7.30 a.m. on Thursday 25 September 2003, as they were going from their home in Corozal to his place of work at the rural school in La Vereda El Tolima, municipality of Morroa, Sucre.

The President of the Sucre Teachers' Association (ADES) informed the DDHH Office of the Ministry of Social Welfare that Abel Antonio Ortega Medina (identity card No. 9.311.099 of Corozal, Sucre), who worked as a teacher in the municipality of Morroa, Sucre, was a member of that organization at the time of his murder. Abel Ortega had never been the object of any kind of threats; his wife, Nelly Herazo Rivera, who was killed at the same time on the same day, was not a teacher, and therefore not a member of the organization. Not being a union member, Nelly Herazo Rivera could not have been covered by the protection programme of the Ministry of the Interior and Justice, nor could she have made such a request.

The investigation into this incident is classified in the same file as the previous case.

(48) Rito Hernández Porra, member of the National Union of Mining and Power Industry Workers (ACUEDUCTO), in the municipality of Saravena, Department of Arauca, on 27 September 2003.

Rito Hernández Porra was not a union member. The President of the Community Aqueduct and Drainage Enterprise (ECAAS-ESP), Juan Guerra Camargo, informed the DDHH Office of the Ministry of Social Welfare, in reply to an inquiry by telephone as to whether Rito Hernández Porras was engaged in trade union activities within the enterprise, stated that, as the Community Aqueduct and Drainage Enterprise (ECAAS-ESP) was a non-profit-making community body, its employees were not called upon to exercise trade union activities, and that the person concerned did not therefore take part in such activities within the enterprise.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	77776
Branch:	Cúcuta, North Santander
Investigating authority:	Prosecutor's Office No. 1, Saravena, Arauca branch
Stage of proceedings:	Preliminary investigation
Defendant:	Jaime Nelson Londoño (in custody)
State of the investigation:	closed on 30 April 2004

Mr. Hernández Porra was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (49) Luis Carlos Olarte Gaviria, member of the National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA), Segovia branch, on 3 October 2003, in the municipality of Segovia.

Luis Carlos Olarte Gaviria was murdered on 3 October 2003 on his way home from work, shortly after being informed of his appointment as Vice-President of the trade union. The Secretary-General of the CGTD, Julio Roberto Gómez, stated that Mr. Olarte Gaviria had not mentioned any threats on his life. Some sources maintain that his murder was linked to problems between the Frontino Gold Mine and the trade union, since the latter was trying to negotiate the purchase of the company against a deduction from salaries, just after an agreement had been reached. Following the attempted murder of the former Vice-President of SINTRAMIENERGETICA, Alfredo Tobón, this case had been placed before the CRER “for urgent attention” on 24 September 2003, and on the same day a collective security scheme was approved ; the scheme had not, however, yet been implemented. The investigation is being conducted by the Segovia, Antioquia, branch of Prosecutor’s Office No. 110, under File No. 4392, and is active. The National Police Department of Antioquia states: “Concerning the death of Luis Carlos Olarte Gaviria, an employee of Frontino Gold Mines, the incident occurred at about 9 p.m. on 3 October 2003, in the urban district of Galán, when Luis Carlos Olarte Gaviria (41 years old, born in Yolombo, resident in Segovia, Galán district, Sector Terminal, telephone No. 8814848, employee of Frontino Gold Mines, identity card No. 71.080.807 of Segovia) was accosted in the open by four individuals travelling in a blue Chevette who shot him six times in various parts of his body; the victim died immediately. The investigating unit of Segovia went to the site of the incident where it questioned a number of witnesses, including. Javier Dario Gaviria Rivera, who said that, as he was on his way home, he saw a vehicle with its lights on; as it passed the victim, one of the four men inside the vehicle who was tall and heavily built and wearing a poncho, got out, stopped him and fired at him a number of times. Mr. Olarte’s wife, Gloria Estela Alvarez Calderón, stated that her husband had no problems and was in Bogotá to complain about violations taking place in the mines. The previous year he had been a town councillor and had just been appointed Vice-President of Frontino Gold Mines, but he had not yet taken up the post because the assembly that had elected him Vice-President was suing him for damages. Ms. Gloria added that her husband looked after the welfare of the employees of the mines whom he defended tooth and nail.” Hypothesis: It is suspected that Mr. Olarte had denounced more than one person for involvement in the violations taking place in the mines and for what was happening with the company trade union, and that it was for this reason that he was killed.

- (50) Heriberto Fiholl Pacheco, member of the Magdalena Teachers’ Association (EDUMAG-FECODE) in the municipality of Pueblo Viejo, Department of Magdalena, on 3 November 2003.

This complaint was identified as follows: “Arrest and subsequent murder of the teacher Heriberto Fiholl Pacheco, in Pueblo Nuevo, Magdalena, on Sunday, 2 November 2003. Mr. Fiholl Pacheco was a member of EDUMAG, a teacher and a social activist and union militant in the region.” According to sources in FECODE, Bogotá, Mr. Fiholl was arrested by members of the AUC (self-defence groups), tortured and subsequently murdered. His severely damaged body was found on 2 November 2003. The same source maintained that Mr. Fiholl Pacheco was the a leader in a campaign to abstain in the referendum throughout the department of Magdalena, together with Domingo Ayala Espitia, member of FECODE, who has received many murder threats.

The Government received the complaint from the trade union and contacted the National Police and the Public Prosecutor’s Office in order to obtain additional information on the incident and on the state of the investigation. The Public Prosecutor’s Office stated on 21 November 2003 that the Branch Directorate of Prosecutor’s Office of Santa Marta, in communication No. 2292 dated 20 November 2003, reported that a review of the data base of the Judicial Information System of the Prosecutor’s Office (Public) and information provided by the Magdalena branch of the Prosecutor’s Office – the competent authority in matters relating to Pueblo Nuevo, El Difícil district, Department of Magdalena - had not so far brought to light any ongoing investigation into the murder of Heriberto Fiholl Pacheco. In a further

communication in March 2004, the Public Prosecutor's Office reported that the investigation was being conducted by the Ciénaga Santa Marta branch of Prosecutor's Office No. 6, under File No. 7923, and was at the preliminary stage and active.

Mr. Heriberto was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

(51) Nubia Estela Castro, member of the Magdalena Teachers' Union (EDUMAG-FECODE), in the municipality of Tenerife, Department of Magdalena, on 5 November 2003.

The President of EDUMAG, Antonio Peralta, stated that Nubia Estela Castro was not a union member at the time of the events. She was an educator for the municipality but not a member of EDUMAG.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	48140
Branch:	Santa Marta
Investigating authority:	Prosecutor's Office No. 4
Stage of proceedings:	Preliminary

Ms. Nubia Stella was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

(52) Zuly Esther Codina Pérez, member of the Magdalena Teachers' Union (EDUMAG-FECODE), in the municipality of Pueblo Viejo, Department of Magdalena, on 3 November 2003.

The President of the Union of Health and Social Security Workers (SINDESS), Nidia Castañeda, stated that Zuly Esther was killed by four bullets (two in the head, two in the chest) in Santa Marta, as she was leaving her residence at 7.30 a.m. to go to the Central Hospital where she worked as a cashier in the out-patients department. Ms. Codina Pérez was a journalist (she had an opinion programme in the city) and was Treasurer of SINDESS and communal action leader in the district of Concepción de Santa Marta.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	1828
Branch:	national
Investigating authority:	National Unit of the DH-DIH, Barranquilla
Stage of proceedings:	Preliminary

Ms. Zuly Esther was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. She was not known to have received any threats in the past.

(53) Emerson Pinzón, activist in the Union of Health and Social Security Workers (SINDESS), Department of Magdalena, on 11 November 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	7945
Branch:	Santa Marta
Investigating authority:	Ciénaga branch of Prosecutor's Office No. 20
Stage of proceedings:	preliminary

Mr. Emerson José Pinzón Pertuz was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (54) Jorge Peña Moreno, member of the Magdalena Teachers' Union (EDUMAG-FECODE), in Orihueca, Department of Magdalena, on 11 November 2003.

The President of EDUMAG, Magdalena, Antonio Peralta, informed the DDHH Office of the Ministry of Social Welfare that Mr. Peña Moreno was a member of the organization at the time of the events. Consequently, the Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	7945
Branch:	Santa Marta
Investigating authority:	Ciénaga branch of Prosecutor's Office No. 20
Stage of proceedings:	preliminary

Mr. Jorge Peña Moreno was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (55) Mario Sierra Anaya, secretary of the Colombian Institute for Agrarian Reform (SINTRADIN-CUT), Arauca branch, in the municipality of Saravena, Department of Arauca, on 16 November 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	80894
Branch:	Cúcuta
Investigating authority:	Single Prosecutor's Office, Saravena branch
Stage of proceedings:	Preliminary, active

Mr. Sierra Anaya was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (56) Miguel Angel Anaya Torres, member of the Union of Workers and Employees of Autonomous Public Services and Decentralized Institutes (SINTRAEMSDES), in Saravena, Department of Arauca, on 17 November 2003.

Mr. Mario Sierra Anaya, Deputy Secretary of the Arauca branch of SINTRADIN, was murdered in Saravena at 3 p.m. by heavily armed unknown persons who broke into his residence in the administrative centre of INCORA, where he suffered several bullet wounds from which he died almost instantly. The Public Prosecutor's Office stated that its Saravena branch reported that this homicide had not yet been brought to trial. Miguel Angel Anaya Torres, who worked as a driver for the Saravena Aqueduct and Drainage Enterprise (ECAAS-ESP), was in his home when unknown individuals broke in at approximately 9 p.m. and, without saying a word, started shooting at him.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	4233
Branch:	Saravena
Investigating authority:	Prosecutor's Office, Saravena branch
Stage of proceedings:	preliminary

Mr. Miguel Angel was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (57) Elles Carlos de la Rosa, member of the Workers' Union of the Transportes Atlántico company (SINTRAATLANTICO), in Barranquilla, Department of Atlántico, on 30 November 2003.

At 5 a.m. on 30 November 2003, Elles Carlos de la Rosa, Treasurer of SINTRAATLANTICO, was murdered as he was leaving his residence in the Ciudadela 20 de Julio district on his way to work. Neighbours reported the presence of two individuals driving around the area on a motorcycle. One of them accosted the union official as he was leaving his home and stabbed him in the chest. He received assistance and was taken to the social security emergency unit in 30th Street, where he died. This is apparently the latest method used by hired assassins in the city to commit their crimes without alerting the inhabitants and authorities.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	175615
Branch:	Barranquilla
Investigating authority:	Prosecutor's Office No. 40, Life Unit Branch
Stage of proceedings:	preliminary

Mr. de la Rosa was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (58) Orlando Frias Parada, member of the Communication Workers' Union, in Villanueva, Department of Casanare, on 9 December 2003.

At 11 a.m. on 9 December 2003, Orlando Frias Parada, a Telecom worker and official of the Yopal, Casanare, branch of the Communications Workers' Trade Union (USTC), was shot four times in the head and killed, in front of his young children.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	2574
Branch:	Santa Rosa de Viterbo
Investigating authority:	Prosecutor's Office No. 15, Monterrey branch
Stage of proceedings:	preliminary

Mr. de la Rosa was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

Attempted abduction

- (1) Ana Paulina Tovar González, daughter of the CUT Human Rights Director, on 21 March 2003.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	1655
Branch:	Barranquilla
Investigating authority:	Prosecutor's Office No. 6
Stage of proceedings:	preliminary

Abductions

- (1) Luis Alberto Olaya, member of the Valle Single Education Workers' Trade Union (SUTEV), in the Department of Valle del Cauca, on 15 June 2003.

No trace of this incident was found in the investigations data base of the Public Prosecutor's Office. Enquiries were also made of the Cali and Buga branch offices covering the department of Valle del Cauca, and of the Popayán Cauca branch, with no success. The Government therefore wishes to know whether the incident was reported by the victim or by a member of the trade union.

The Government accordingly requests the Committee to inform the complainants of the need for more information in order to locate the relevant file in the Judicial Information System of the Public Prosecutor's Office (SIJUF).

- (2) John Jairo Iglesias, José Céspedes and Wilson Quintero, in the municipality of Cajamarca, Department of Tolima, on 2 November 2003. The complainants must state to which union the abducted persons belonged.

The incident occurred on 2 November 2003 when a group of 20 men went to the Potosí, Anaime, district in Cajamarca, Tolima, and dragged the victims from their homes. The latter's dead bodies were found burnt and mutilated some days later, on 6 November.

Investigation: the Branch Directorate of the Prosecutor's Office of Ibagué reported that, regarding the bodies discovered in a communal grave in Potosí district, in Cajamarca, Tolima, a preliminary criminal investigation was undertaken under File No. 142242 by the Support Unit for homicides and similar incidents. Prosecutor's Office No. 69 of Cajamarca carried out the relevant inspection of the bodies and identified Germán Bernal Vaquiro, Marco Antonio Rodríguez Moreno and Ricardo Espejo and José Céspedes. By Order No. 01035 of 15 March 2004 of the Public Prosecutor, the investigation under File No. 142242 conducted by Prosecutor's Office No. 4 acting on behalf of the specialized circuit judges of Ibagué, was assigned to the DDHH and DIH National Unit, where it is at the preliminary stage under File No. 1893.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.:	5931
Branch:	DDHH and DIH National Unit
Investigating authority:	Specialized UDH-DIH Prosecutor's Office No. 9
Stage of proceedings:	Preliminary, collection of evidence

Mr. José Céspedes was not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. He was not known to have received any threats in the past.

- (3) Antonio Rodríguez and Ricardo Espejo, attorneys of the Tolima Farm Workers' Union (SINTRAGRITOL), in the municipality of Cajamarca, Department of Tolima, on 6 November 2003.

The incident occurred on 2 November 2003 when a group of 20 men went to the Potosí, Anaime, district in Cajamarca, Tolima, and dragged the victims from their houses. The latter's dead bodies were found burnt and mutilated some days later, on 6 November.

Investigation: the Branch Directorate of the Prosecutor's Office of Ibagué reported that, regarding the bodies discovered in a communal grave in Potosí district, in Cajamarca, Tolima, a preliminary criminal investigation was undertaken under File No. 142242 by the Support Unit for homicides and similar incidents. Prosecutor's Office No. 69 of Cajamarca carried out the relevant inspection of the bodies and identified Germán Bernal Vaquiro, Marco Antonio Rodríguez Moreno, Ricardo Espejo and José Céspedes. By Order No. 01035 of 15 March 2004 of the Public Prosecutor the investigation under File No. 142242 conducted by Prosecutor's Office No. 4 acting on behalf of the specialized circuit judges of Ibagué, was assigned to the DDHH and DIH National Unit, where it is at the preliminary stage under File No. 1893.

The Government received the complaint from the trade union and contacted the Public Prosecutor's Office in order to obtain additional information on the incident and on the state of the investigation:

File No.: 5931
 Branch: DDHH and DIH National Unit, Bogotá
 Investigating authority: Specialized UDH-DIH Prosecutor's Office No. 9
 Stage of proceedings: preliminary, collection of evidence

Marco Antonio Rodríguez y Ricardo Espejo were not covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice and had made no such request. They were not known to have received any threats in the past.

Note: cases nos. 2 and 3 above are being investigated as homicides by the National Unit for Human Rights and International Humanitarian Rights. Victims: Ricardo Espejo Galindo, Marco Antonio Rodríguez Moreno, John Jairo Iglesias Salazar, José Céspedes, Germán Bernal Baquero. The incident occurred on 14 November 2003.

Threats

- (1) National Union of Workers in the Food Industry (SINALTRAINAL), Bucaramanga branch, on 14 March 2003), Bucaramanga branch, on 14 March 2003.

More information is required, as the Branch Directorate of Bucaramanga has been unable to locate the case. However, the Valledupar branch is currently conducting three investigations in which SINALTRAINAL appears as the object of threats, under files nos. 144029, 148763 and 157685, but with a different and city date from those indicated in this section of the report; an investigation is also under way in Cartagena, under File No. 68732, which again differs from the case referred to here.

Because of the repeated allegations of threats against the Coca Cola trade union, SINALTRAINAL, the Government, aware of its responsibility to provide protection to social and trade union leaders who are at risk, has approved and implemented protection measures for the officials of this organization.

The protection measures currently in place for officials and members of the National Union of Workers in the Food Industry (SINALTRAINAL) are as follows:

Headquarters with security perimeter

- Headquarters: Bogotá: 35-18 Avenue 15
- Headquarters: Barranquilla: 41-23 Avenue. 14
- Headquarters: Cartagena: 21 C-30 Transversal 44
- Headquarters: Barrancabermeja: 21-89 71st Street
- Headquarters: Cali: 2 N-23 47th Street
- Headquarters: Medellín: office No. 713, 49 A-27 46th Avenue
- Headquarters: Bugalagrande: 6-35 Avenue. 7
- Headquarters: Bucaramanga: first floor, 41-73 Avenue. 14
- Headquarters: Valledupar
- Headquarters: Cúcuta: 0.99 8th Street, Latino district

Protection schemes

- Bolívar: in August 2003, it was recommended that a single protection scheme be set up for the executive board members of this branch, namely Wilson Castro Padilla and Robinson Domínguez Romero.
- Barrancabermeja: a personal scheme for Juan Carlos Galvis, with an armoured vehicle and an additional bodyguard; a collective scheme and three additional bullet-proof jackets.
- Nacional: collective scheme.
- Bucaramanga: individual scheme for Efraín Guerrero.
- Cartagena: individual scheme for Jaime Santos Dean.

- Santander: individual scheme for William Mendoza Gómez.
- Atlántico: collective scheme.
- Facatativa: a personal scheme for Gerardo Cajamarca Alarcón has not been implemented as he is out of the country.

Means of communication

- Antioquia: 2 means of communication
- Atlántico: 4 means of communication
- Bolívar: 1 means of communication
- Cauca: 2 means of communication
- César: 2 means of communication
- Cundinamarca: 11 means of communication
- Magdalena: 1 means of communication
- North Santander: 4 means of communication
- Santander: 21 means of communication
- Valle del Cauca: 10 means of communication

- (2) Domingo Tovar Arrieta, Director of the CUT Human Rights Department, on 9 May 2003.

No investigations have yet been located at the Bogotá branch directorate. However, the following files are on record:

File No.:	750415
Branch:	Bogotá
Investigating authority:	Individual Freedom and Other Guarantees Unit, Prosecutor's Office No. 328
Stage of proceedings:	preliminary, collection of evidence
Victim:	Domingo Tovar Arrieta
Incident:	Bogotá, 30 October 2003

File No.:	464924
Branch:	Bogotá
Investigating authority:	Prosecutor's Office No. 242, (Individual Freedom and Other Guarantees Unit)
Stage of proceedings:	preliminary
Complainant:	Domingo Tovar Arrieta
Event:	Bogotá, 22 September 1998

Note: Investigation reassigned to the DDHH National Unit, by Decision No. 0388.

File No.:	519785
Branch:	Bogotá
Investigating authority:	Individual Freedom and Other Guarantees Unit, Prosecutor's Office No. 236
Stage of proceedings:	Preliminary
Complainant:	Domingo Tovar Arrieta
Incident:	Bogotá, 16 October 1999

The following investigation is on record at the Cartagena Branch Directorate:

File No.:	98205
Branch:	Cartagena
Investigating authority:	Prosecutor's Office No. 39
Stage of proceedings:	preliminary, collection of evidence

Victim: Domingo Tovar Arrieta
 Complainant: Jesús González Luna
 Incident: Cartagena, 17 July 2002

The Government emphasises that it has reported several times on this complaint and on the various investigations that are being conducted throughout the country in respect of the violation of human rights and threats on the life and physical integrity of union official Domingo Tovar Arrieta.

- (3) Hernán Herrera Villalba, member of the Neiva branch committee of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA).

The consolidated investigation system provides the following data on the event of 25 November and 6 December 2002 involving Hernán Herrera Villalba and Henry Armando Cuellar Valbuena:

File No.: 68032
 Branch: Neiva
 Investigating authority: Prosecutor's Office No. 1, Neiva branch
 Stage of proceedings: preliminary

- (4) Mario Ernesto Galvis Barbosa, whose union membership has to be clarified.

The Government received the complaint and referred it to the Public Prosecutor's Office, which reported on the investigation as follows:

File No.: 7250
 Branch: Neiva
 Investigating authority: Prosecutor's Office No. 1, Pitalito branch
 Stage of proceedings: preliminary

- (5) Leónidas Ruiz Mosquera, chairman of the ASODEFENSA coffee sector subcommittee.

No investigation has been located at the Branch Directorate of the Prosecutor's Offices of Pereira, and additional information is therefore requested regarding the date, place and type of threats. The Government accordingly requests that the complainant organizations to send the Committee more information on the place and date of the incident, so that the relevant file can be located in the Prosecutor's Office concerned.

- (6) Jorge León Sarasty Petrel, National President of SINALTRACORPOICA, on 9 June 2003, in Montería, where he was advising on the formation of the union's Córdoba branch.

The Branch Directorate of the Prosecutor's Offices of Montería was able to establish by a telephone conversation with CORPOICA that Mr. Jorge León is President of SINALTRACORPOICA, in the department of Natagaima, department of Ibagué. However, the organization's headquarters in the municipality of Cereté, Córdoba, does not know whether a complaint has been lodged regarding the incident referred to. The Government therefore wishes to know whether or not a complaint has been lodged so that it can continue its attempts to locate the file and take further action.

- (7) Workers of the Drummond company (2,000 in all) working in conflict zones where paramilitary groups operate and consider them as military targets. Five officials and members have already been murdered and have been considered in previous examinations of the case. Currently, workers are being sent to remote areas where there is no security.

More specific data are required to locate any investigation already initiated or to initiate a preliminary investigation, including: names of the people threatened or of the company's legal representative who may have placed the incidents before the authorities, date and place of the incidents, type of threats.

- (8) Carlos Hernández, President of the NATHOC Union, in Barranquilla, forced into exile following the murder of several of his colleagues.

File No.: 182294
 Branch: Barranquilla
 Investigating authority: Prosecutor's Office No. 21
 Stage of proceedings: preliminary

Mr. Hernández is covered by the protection programme run by the DDHH and DIH Directorate of the Ministry of the Interior and Justice, has been issued international air tickets and humanitarian assistance and is currently out of the country.

- (9) Victor Jaimes, Mauricio Alvarez and Elkin Menco, officials of the Petroleum Industry Workers' Union (USO).

The threat against Mauricio Alvarez Gómez was in the form of a letter of condolence which he received on 15 August 2003. The investigation is being conducted by Prosecutor's Office No. 8, Barrancabermeja branch, under File No. 189.360, and is at the preliminary (collection of evidence) stage.

The threats against Elkin de Jesús Menco were made by unknown persons on 1 January 2002. The investigation is being conducted by Prosecutor's Office No. 5, under File No. 168089, and is at the preliminary stage and active. Threats made on 15 August 2003 are also being investigated.

The threats against Víctor Jaimes are being investigated as follows:

File No.: 189360
 Branch: Bucaramanga
 Investigating authority: Prosecutor's Office No. 8, Barrancabermeja branch
 Stage of proceedings: preliminary

- (10) On 22 October the Risaralda Teachers' Union (SER) received a third written threat warning the members of the union to leave the region. In addition, the administrative authorities have revoked the trade union's licence.

Without being able to confirm that it concerns the same incident, since no date or place is specified, the following information has been found indicating that 12 people have been threatened, including Bernardo Bernal Alvarez, President and complainant, and Antonio José Ramírez, Secretary:

File No.: 107503
 Branch: Pereira
 Investigating authority: 10th Branch
 Stage of proceedings: Preliminary
 Incident: Pereira, 22 October 2003

Measures adopted in respect of social and union leaders of Risaralda

- (1) Diego María Osorio, CPDH:
- One mobile telephone, under the protection programme.
 - By Decision No. 14 of 24 July 2002, the Risk Assessment and Control Committee (CRER) recommended the implementation of a high-level personal security scheme. A UP protection scheme is currently in place.
 - The National Police was requested to implement preventive security measures.
 - The Public Prosecutor's Office was informed of the recent threats.
 - An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.
- (2) Gloria Inés Ramírez Ríos, CUT Executive:

-
- Has a personal security scheme provided by the programme and a mobile phone.
 - The National Police was requested to implement security measures.
 - An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow her to leave the risk area temporarily with her family. The tickets have already been issued.
- The humanitarian assistance was put in place and could be claimed from 6 November 2003.
- (3) Carlos Alberto Ayala Murillo, SER Communications Secretary, member of the Social and Political Front:
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.
 - The National Police was requested to implement security measures.
- (4) William Gaviria Ocampo, President of UNEB, Risaralda, and Secretary of the Social and Political Front:
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.
 - The National Police was requested to implement security measures.
- (5) Fernando Arias Guapacha, Secretary-General of the Social and Political Front:
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.
 - The National Police was requested to implement security measures.
- (6) John Jairo Loaiza, UNIMOTOR official:
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.
 - The National Police was requested to implement security measures.
- (7) Antonio José Ramírez Arias, Prosecutor of the CUT, Risaralda, and UNIMOTOR:
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.

- The National Police was requested to implement security measures.
- (8) Bernardo Bernal Alvarez, Vice-President of the CUT, Risaralda, President of UNIMOTOR:
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.
 - The National Police was requested to implement security measures.
- (9) María Eugenia Londoño, SER Prosecutor:
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow her to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.
 - The National Police was requested to implement security measures.
- (10) Vicente Villada, President of the CUT, Risaralda:
- The National Police was requested to implement security measures.
 - The Public Prosecutor's Office was informed of the threats.
 - By Decision No. 16 of 31 October 2002, the allocation of a mobile telephone was recommended. The telephone has already been provided.
 - Level of risk: medium-low, according to the DAS on 3 April 2003.
 - A personal security scheme has been approved.
 - An extraordinary CRER meeting on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national air tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued.
 - The humanitarian assistance was put in place and could be claimed from 6 November 2003.

Measures for organizations

- By Decision No. 14 of 2002, the installation of a security perimeter for the headquarters of the CUT in Risaralda was approved. The installation had been completed.
- The headquarters of the Risaralda Teachers' Union (SER) has had a security perimeter since the end of last year.
- An extraordinary CRER meeting on 27 October 2003 recommended the allocation of four collective schemes for the following Risaralda organizations: the Single Confederation of Workers (CUT), the Drivers' Union (UNIMOTOR), the Social and Political Front Party and the Risaralda Teachers' Union. They are currently being established.

Raids

- (1) Residence of Laura Guerrero, official of the CUT's Bogotá branch, Cundinamarca, on 11 March 2003.

A telephone call to the CUT (No. 481.50.40) in Bogotá, to request information on the incident referred to above, was attended by Yuly González Villadiego, who stated that Laura Guerrero, whose full name was Laura María Guerrero Sierra, worked at the CUT office, but that the complaint was lodged in Fusagasuga. The name of the authority with which the complaint was lodged was not available.

The consolidated investigation system produced the names of Laura María Guerrero Sierra, Carlos Arturo Rico Godoy and Martha Lilian Carrillo, in connection with personal threats received on 18 May 2001, which differs from the date indicated. The Government therefore requests more information so as to be able to follow up and pursue the investigation.

File No.: 54263
 Branch: Bogotá, National Terrorism Unit (UNT)
 Investigating authority: Specialized UNT Unit No. 16
 Stage of proceedings: inhibitory, 12 February 2002
 Complainants: Bertha Rey Castelblanco and Miguel Antonio Lasso Muñoz

- (2) Residence of Gilberto Salinas, member of the Agricultural Workers' Union of Tolima (SINTRAGRITOL), branch of FENSUAGRO-CUT. He was arrested during the raid.

Without being able to confirm that it refers to the same incident, the consolidated investigation system of the Public Prosecutor's Office only produced the following: report of a raid and search, conducted with a search warrant on 11 June 2003 by Specialized Prosecutor's Office No. 4 of Ibagué, on 150-74, 45th Street South, Picalaña district, the home of Gilberto Salinas Novoa and Gilberto Salinas Alvarez, where they were arrested.

File No.: 120093
 Branch: Ibagué
 Investigating authority: Branch No. 14
 Stage of proceedings: preliminary investigation
 Defendants: Gilberto Salinas Novoa and Gilberto Salinas Alvarez

Disappearances

- (1) Marlon Mina Gambi, son of Yesid Mina, ECOPETROL workers, and member of USO, on 5 May 2003.

The Public Prosecutor's Office reported that a search was made for a trace of this incident, but that nothing was found. The Government therefore requests information on the place where the incident occurred so that another manual or automatic search can be made.

- (2) The Tolima Farm Workers' Union alleges that 18 farm workers who peacefully occupied the La Manigua Estate in March 2003 have disappeared.

Public servants attached to the Technical Investigation Corps of Ibagué went to see an advisor of SINTRAGRITOL, Pedro Bustos, who informed them that the incidents referred to took place in Cajamarca on 16 September 2002 and 25 February, 5 March, 24 August and 11 November 2003 and concern the murders of Ricardo Espejo Galindo and others (incidents already listed in this report as nos. 2 and 3 in the "Abductions" section above).

Acts of violence

- (1) María Clara Baquero Sarmiento, President of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA): according to the allegations presented by the complainant organization, union meetings were obstructed, those attending were intimidated, lists of people participating in union meetings were drawn up, the organizers were transferred to conflict zones, etc. The complainant organization adds that the President of the union was not given the protection to which the Government referred in the Committee's 330th Report.

Report: ASODEFENSA case

María Clara Baquero, National President

Information from the Ministry of the Interior and Justice

DDHH and DIH Directorate – protection programme

The data base of the protection programme run by the Ministry provides the following information on the protection measures adopted for the members of ASODEFENSA:

The Risk Assessment and Control Committee (CRER) has recommended:

- Two personal protection schemes: one (now implemented) for the Bogotá branch, and one (not yet implemented) for the Huila branch. Pending implementation, transport support has been approved for 192 hours.
- Means of communication: two Avantel radios.
- National air tickets: 11 tickets have been issued for bodyguards of the Bogotá branch.
- Security perimeter: installed at the Bogotá headquarters.

Latest decisions of the Risk Assessment and Control Committee (CRER),
24 September 2003

- Considering that the risk assessment indicated a medium-low risk for officials of the Huila branch, for whom a security scheme has been approved but not yet implemented and who are receiving transport support for 192 hours per month, the CRER has recommended maintaining these measures for a further three months, subject to a new risk assessment.

The members of the trade union were informed of the DAS recommendations following the technical reassessment of the level of risk and degree of threat, indicating a medium-low level of risk.

Specific case: María Clara Baquero Sarmiento, President of ASODEFENSA

The data base of the Ministry of the Interior's DDHH and DIH Directorate's protection programme for witnesses and persons under threat indicated that a meeting of the Risk Assessment and Control Committee (CRER) had approved the following protection measures for this trade union official:

- two Aventel radios (by Emergency Decision No. 38 of 15 November 2002);
- a personal security scheme; and
- security perimeter for the union headquarters.

Bearing in mind that the latest assessment of the risk and degree of threat faced by Ms. Baquero indicated medium-low level, the protection measures she currently enjoys are far greater than those recommended by the CRER.

As Ms. Baquero had requested a high-level protection scheme (vehicle and bodyguards) for her children, following an alleged attack on her daughter's bedroom on 7 May 2003, when there was nobody at home, the DDHH and DIH Directorate of the Ministry of the Interior and Justice asked the Administrative Security Department to assess the alleged attack and the level of risk faced by the Baquero family. The DAS's report is as follows:

“On 7 May this year Ms. Baquero's protection unit reported that a bullet struck one of the windows of her residence at approximately 10.32 p.m. The forensic ballistics group of the DAS General Operational Directorate therefore carried out a technical inspection, whose findings were as follows: (1) the hole was caused by a projectile shot from a firearm; (2) the projectile was shot from a mechanical firearm such as a 32 long calibre revolver; and (3) the impact was caused by a long-distance bare lead projectile; the characteristics of the entry point of the projectile indicate that it was not shot directly at the building but was an “air shot”. The investigation established that the incident was not an attempt on the life of María Clara Baquero or a member of her family, but a chance shot.”

In spite of the foregoing, the police was asked to conduct to patrol the area to prevent any attack on her children at her residence.

Ms. Baquero submitted a request for high-level protection for her children to the DDHH Directorate of the Ministry of the Interior and Justice. Although the request was denied, the Ministry was instructed to carry out an assessment of the alleged attempt with a view to providing them with protection. The outcome was as indicated above.

In the light of the assessment made, it is considered that no real threat against the family exists and that there is no call for high-level protection for the children, as Ms. Baquero Sarmiento claims. Moreover, when asked for her children's collaboration in the assessment of the level of risk and degree of threat, Ms. Baquero replied that she did not trust the State

security bodies and did not allow her children to meet them. At the same time, she contradicted herself by saying that she would still like them to provide protection.

Finally, the DDHH and DIH Directorate of the Ministry of the Interior and Justice has asked Ms. Baquero to place the facts of the alleged attacks or threats before the competent authority. However, to date no such evidence has been submitted to the Directorate, which is essential for the protection measures she has requested to be justified and assessed. This is especially true given that section 22 of Act No. 782 of 2002 states that protection measures are temporary and subject to periodic assessment.

Information supplied by the Ministry of National Defence
Office of the Secretary-General

The Ministry of Social Welfare contacted this Office on 30 July 2003 with a request for information on the despatch of civilians to war zones, following a complaint presented to the ILO's Committee on Freedom of Association to which the Government replied in the Committee's 331st Report.

ASODEFENSA claims that the Ministry of National Defence continues to harass trade unions by forcing civilians to go to war zones dressed as soldiers, with no weapons or military training. The following are concerned by these measures:

- (1) Carlos Julio Rodríguez García, member of ASODEFENSA;
- (2) José Luis Torres Acosta, member of ASODEFENSA;
- (3) Edgardo Barraza Pertuz;
- (4) Carlos Rodríguez Hernández; and
- (5) Juan Posada Barba.

In communication No. 00599 MDD-HH725 of 4 September 2003, the Ministry of National Defence, states: "According to the Legal Adviser of the Directorate of Human Right of the Army, it is necessary to clarify the meaning and scope that the trade unions attach to the term "war zone", given that by Decision No. 10412 of 1995 the Ministry of National Defence has defined certain regions of the country as "public order" areas. Because of its inter-institutional nature, the National Army's officials are often obliged to fulfil their function of re-establishing public order, which does not mean that they operate in conflict or war zones. Aware of the need for the military forces to use civilian personnel in public order areas, the legislative body has defined the various circumstances in which their services might be required in those areas. Consequently, since these circumstances, such as the recognition of a public order bonus, are provided for under existing regulations, it is normal that civilian personnel should be assigned to meet the requirements of each case, provided that such personnel, most of whom are drivers, are only required to participate in their official capacity in operations involving the re-establishment and maintenance of public order. As to the claim that civilians are obliged to wear uniforms, it is recalled that such practices are prohibited, and an internal circular to that effect will be distributed by the Directorate of Human Rights of the Army. (...) Moreover, as drivers at the service of the National Police, they are required to transport troops to areas where the unit to which they have been assigned is engaged in re-establishing public order, which does not mean that the drivers are operating in war zones properly so called."

Additional information regarding the complaint presented by ASODEFENSA to the International Labour Organization alleging denial of trade union leave, use of military installations and harassment of trade unions by the Ministry of National Defence:

The Secretary-General of the Ministry of National Defence, made the following answer to the complaint: "The members of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) have held numerous meetings with civilian public servants on the staff of the Ministry of National Defence, at which those responsible for the staff have authorized their affectation to places defined by the union organization."

Regarding the use of military installations for meetings unrelated to the service, the Ministry of National Defence has clearly warned about the constant risk of a terrorist attack on

any of these premises, for which the units concerned have contingency plans that would be seriously undermined by a concentration of people.

Consequently, whenever the Association requires authorization for the holding of seminars, hearings or similar meetings, the authority responds by authorizing the public servants to go wherever the union chooses.

The airborne infantry battalion No. 21, “Batalla del pantano de Vargas”, has 34 public servants, which means that it would be neither logical nor true to assert that the unit commander gave orders to “spy on”, let alone take photos of, those who attend a union meeting. Moreover, all battalion No. 21’s intelligence units were engaged in providing support to the Technical Investigation Corps of the Public Prosecutor’s Office General in the municipality of San Martín during the period from 9 a.m. to 5 p.m. in accordance with Operational Order No. 9, “Centaurus”.

On 28 February 2003, the Commander of the National Army issued an administrative order concerning a number of staff movements, including the transfer of 30 civilian public servants – among them Enrique Ruiz, Isidro Benítez and Víctor Hugo Mendieta Candela, who, once the decision was announced, called a meeting of the 14 members of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA) in Granada Meta, in order to set up a branch executive board. The employer was not informed of this until 7 March 2003, from which date the persons concerned would have trade union immunity.

It must be borne in mind that the accusations published in NIKOR date back to 1996, when infantry battalion No. 21 was under a different commander and when ASODEFENSA did not even exist, as can easily be verified.

The civilian staff rules of the Ministry of National Defence and National Police (legislative Decree No. 1792 of 2000, Chapter V, Grounds for removal, section 32, clause (c)) stipulates that one of the grounds for removal is the existence of a confidential intelligence report; this is because of the nature of the services performed by these units, which is essential to the basic functions of the Ministry of National Defence, the Armed forces and the National Police, namely the defence of the sovereignty, independence and integrity of the national territory and constitutional order.

Administrative staff Order No. 1043 of 14 March 2003 accordingly called for the removal of two public servants, on the basis of a confidential intelligence report; one of these was Richard Antonio Blanco López, employed in infantry battalion No. 6, “Cartagena”.

This is not a totalitarian tactic as the Association unjustly claims, since Mr. Blanco López is at liberty to appeal to the corresponding administrative authority to have the decision annulled and his rights restored, so as to be able to argue the case against his removal from the staff of the Ministry of National Defence in the service of the National Army.

Information supplied by the Public Prosecutor’s Office

Following instructions issued by the headquarters of the National Unit for Human Rights and International Humanitarian Law in accordance with information provided by the investigating Prosecutor’s Office, the investigation into the alleged threats against María Clara Baquero, President of ASODEFENSA, is summarised below:

File No.:	1505
Authority:	National Unit for Human Rights and International Humanitarian Law, with headquarters in Bogotá
Crime:	threats. Alleged threats, on 14 November 2002, in Bogotá, denounced at a plenary meeting of the Senate
Stage:	preliminary
Proceedings:	The Public Prosecutor’s Office was informed of the incident on the day it occurred, 7 May 2003, and assigned the Technical Investigation Corps to determine the motives and identify those responsible. The investigating Prosecutor’s Office concluded, on the basis of statements made on the site of the incident and of the expert’s report, that the bullet that struck a window of the residence of María Clara Baquero Sarmiento was not aimed at the house or at anyone living there.

- (2) Henry Armando Cuéllar Valbuena, member of the Executive Board of ASODEFENSA.

The Public Prosecutor's Office has provided the following report on this incident:

File No.: 68032
 Branch: Neiva
 Investigating authority: Prosecutor's Office, Neive branch
 Stage of proceedings: preliminary

It should be noted that this complaint is directly connected to the previous case concerning María Clara Baquero.

- (3) Jairo Chávez, a worker in the Nariño Teachers' Union, where an explosive device of moderate force exploded, causing enormous material damage, on 5 June 2003.

According to the complainants in their statement to the Committee on Freedom of Association, an explosive device of moderate force exploded around midnight on 5 June 2003 in the city of Pasto at the headquarters of the Nariño Teachers' Union (SIMANA), an affiliate of the CUT. The explosion caused extensive material damage to the union headquarters and seriously wounded Jairo Chávez, a security guard. The perpetrators of the attack are unknown.

Investigation: the Public Prosecutor's Office General stated that its Branch Directorate in Pasto reported by electronic mail on 27 November 2003 that a search of the Judicial Information System of the Public Prosecutor's Office (SIJUF) revealed that there was no ongoing investigation into the incident referred to. It therefore requested additional information on the incident.

A search at the Pasto branch, which covers the department of Nariño, likewise failed to find any ongoing investigation. Consequently, the Government requests information regarding the complainant or the exact place where the incident occurred, so that that it can enquire of the police authorities whether it was reported to the local Prosecutor's Office.

- (4) Manuel Hoyos, President of the Atlantic Workers' Union, affiliated to the CGTD, on 3 July 2003.

Manuel Hoyos Montiel appears in the data base

File No.: 1708
 Branch: DDHH and DIH National Unit
 Investigating authority: Specialized DH y DIH, headquarters in Barranquilla
 Stage of proceedings: Specialized circuit criminal judge
 Defendants: John Fredy Rojas Marín (in custody)

On 28 March 2004 Mr. Manuel Hoyos Montiel was scheduled to go from Barranquilla to Bogotá to have his risk level increased. On Monday, 29 March, the Ministry of Social Welfare arranged for protection during his stay in Bogotá. Through the DAS he was provided with the temporary support of an armoured vehicle and two additional armed bodyguards. Given the seriousness of the circumstances, the Prosecutor's Office suggested a meeting with Mr. Carlos Franco, Mr. Novoa, Mr. Bustamante and Mr. Manuel Hoyos Montiel.

On 30 March 2004 a meeting was held at the offices of the Presidential Programme for Human Rights and International Humanitarian Law, at which the security measures for the union member in Barranquilla were increased, as follows:

1. A rapid and coordinated information and alert system between PONAL Barranquilla, DAS Barranquilla and the union member, so that the latter can be warned of any attempt on his life or physical integrity.
2. Assignment of an additional person to his security scheme, to spend the night at his residence.
3. Improved security for his house, by means of metal bars, etc.
4. Permanent participation of the Ministry of Social Welfare during the negotiation of the collective agreement between Coolechera and the trade union, so that the latter enjoys all necessary guarantees during the meeting. An official of the Public Prosecutor's Office would also be present, as guarantor and supervisor.

On 1 April 2004 the police authorities of Barranquilla arrested John Fredy Rojas Marín for the third time and placed him at the disposal of the Prosecutor's Office and INPEC, with a view to his transfer to the model prison.

(5) Juan Carlos Galvis, on 22 August 2003.

File No.:	182415
Branch:	Bucaramanga
Investigating authority:	Prosecutor's Office No. 009, Barrancabermeja branch
Stage of proceedings:	preliminary

The Government informs the Committee that it has already replied on this matter in several communications sent to the International Labour Standards Department of the ILO, and therefore respectfully asks that the case not be included in the section "New allegations". The Government nevertheless wishes the information to be taken into consideration and therefore submits the following considerations:

Act of violence against Juan Carlos Galvis, Vice-President of SINALTRAINAL and President of the CUT, in Barrancabermeja, on 22 August 2003.

On 22 August 2003, Mr. Juan Carlos Galvis was travelling in an armoured vehicle provided by the Ministry of the Interior and Justice at the junction of 19th Avenue and 47th Street in the city and was attacked by two persons riding a motorcycle, who fired several shots without wounding him. The complaint was made at 12 noon on 25 August by the Barrancabermeja Ombudsman, based on the victim's statements. The same day, judicial proceedings were initiated by the competent investigating authority.

Public Prosecutor's Office: the investigation is being conducted by the branch directorate of Prosecutor's Office No. 8, Barrancabermeja, Santander, and is at the preliminary stage and active.

The National Police wrote to the Human Rights Office of the Ministry of Social Welfare as follows: "In reply to your telephone inquiry addressed today to our office, seeking information on the attempted murder of Juan Carlos Galvis in the city of Barrancabermeja, the following report was sent by the Special Operations Command of Magdalena Medio in communication No. 672: With reference to the incidents that took place at of 22 August 2003 at 12.10 p.m. in 47th Street between 19th and 20th Avenues in the Buenos Aires district, involving Juan Carlos Galvis, President of the CUT in Barrancabermeja and Vice-President of SINALTRAINAL, as he was travelling in the vehicle assigned by the Ministry of the Interior accompanied by his two bodyguards, they were intercepted by two persons riding an RX-115 motorcycle (no other details known), one of them standing on the footrests firing at the vehicle. The bodyguards, who are members of the DAS, fired five shots at the attackers when they were a few metres away. The trade union official, his bodyguards and the attackers were uninjured, and there was no damage to the vehicle in which he was travelling."

"Juan Carlos Galvis has a security scheme consisting of two bodyguards assigned by the DAS in agreement with the Ministry of the Interior, as well as an armoured vehicle, two 9 mm pistols, an UZI machine pistol and an Avantel radio. The union official himself has an Avantel radio, a mobile phone and a revolver."

"The official has repeatedly complained to international and national NGOs about alleged threats and armed attacks against him. However, the national police have carried out inquiries but have not obtained any information to confirm the complaints. As a preventive measure, random patrols have been carried out frequently in the neighbourhood of Juan Carlos Galvis' house at 25-30, 47th Street, Recreo district, and security measures have been maintained around his family's home at 76-15, 18th Avenue A, 20 de enero district; moreover, constant communication has been maintained with the official, thus providing prompt and precise information on threats or intimidation against him."

"The victim was provided with a self-protection manual, indicating precise measure to be taken during his activities."

The Department of Administrative Security (DAS) provided confidential information and gave the information that appears below.

Facts

On 23 August 2003 the paid bodyguards Idelfonso Huertas Moya (identity card No. 0203) and Fabiano Garzón Avila (identity card No. 0202), assigned to the protection scheme of the President of the CUT, Juan Carlos Galvis, reported on the incident that occurred on 22 August 2003 at approximately 12.10 p.m. at the junction of 47th Street and 19th Avenue, opposite Santo Thomas College, when they were attacked by two individuals who were waiting for them. One of the individuals shot at their vehicle several times. The attack was repelled by the bodyguards, and the individuals escaped on an RX 115 motorcycle on which they were travelling (see attached report).

Juan Carlos Galvis also denounced the incident of 22 August 2003 publicly, in an article that appeared in the *Vanguardia Liberal* newspaper of Barrancabermeja (Santander) on Saturday 23, August 2003. The article reads: "He was the victim of an attack but, thanks to the armoured vehicle and the prompt action of his bodyguards, he escaped unharmed. He blamed the incident on extreme right-wing groups operating in the petroleum port, and has reported it to the Public Prosecutor's Office, the Ombudsman and the DAS. His safety and future developments in the case are in their hands." (See attached copy of the *Vanguardia Liberal* article of 23 August 2003.)

Action taken

When we were informed of the incident, we went to the site indicated where we questioned a number of people in the area. One eye witness, who asked not to be identified, gave the following version of the events: "It was midday when I saw a blue four-wheel drive vehicle being stopped just in front of Santo Thomas College by two individuals on a motorcycle, who aimed a gun at the vehicle and fired twice. When the vehicle stopped, the men on the motorcycle swore at the neighbour and stole money from him. (He indicated the house where the victim of the robbery lives.) Just then a pick-up turned into 19th Street and, seeing what was happening, the men inside fired several times in the air, whereupon the thieves threw away their gun and fled. The men in the pick-up gave chase, and that was all I saw."

When we received the report, with this version of the events and the complaint lodged by Juan Carlos Galvis, we called in Fabiano Garzón Avila and Idelfonso Huertas Moya, the bodyguards assigned to the protection scheme who on the day were travelling with the victim, for questioning, informing them of sections 266, 267 and 269 of the Criminal Procedures Code section and section 422 of the Penal Code and that they were under oath.

The latter gave their testimony on 28 August 2003, confirming the version of events in the report, adding that the victim accidentally fired his gun inside the armoured vehicle during the incident. A statement was also taken from Juan Carlos Galvis Galvis, President of the CUT on 8 September 2003, when he corroborated the testimony of the bodyguards and the shot fired accidentally inside the vehicle. (A photo of the hole caused by the projectile, which according to the version given came from the 38 calibre revolver owned by Mr. Galvis, and a photocopy of his safe-conduct, are attached.)

In the light of the eye witnesses' testimony, we went, on 9 September 2003, to 20-41 47th Street in the Buenos Aires district, where the witness said that the victim of the attack on 29 August 2003 lived. After identifying ourselves as DAS officials on active service, we were met by Mr. José Santos and given an account of the events on that day. He was travelling with his cousin Otoniel Gualdrón in a Kia Sportage vehicle, a few metres from his residence, when they were attacked. He spontaneously handed over a plastic bag containing a firearm with the following characteristics: 7-65 calibre pistol, make CZ MOD 83, no identification number, made in Czechoslovakia, colour bluish nickel, no butt, loader containing six 7-65 calibre cartridges), adding that it was the firearm that he picked up at the site of the incident and with which he had been threatened (photograph attached).

With the foregoing testimony, we called in José Libardo Santos Ardila (identity card No. 13.876.997) and Otoniel Gualdrón Ardila (identity card No. 13.887.224), both born in Barrancabermeja, for questioning, informing them of sections 266, 267 and 269 of the Criminal Procedures Code and section 422 of the Penal Code and that they were under oath.

The two men stated that, at midday on 22 August 2003, they were the victims of an armed attack by two individuals on a motorcycle who stopped them at the junction of

47th Street and 19th Avenue and robbed José Libardo Santos of 3 million pesos. The money had been lent to him by CAVIPETROL in the form of a cheque made out to bearer, which had been cashed later in the day at Bancafe bank in this city. (A photocopy of cheque No. 0027452, made out to José Libardo Santos Ardila, for 3 million pesos, dated 22 August 2003, issued by CAVIPETROL, is attached.)

Mr. José Santos states that, just as he had been robbed of the money, a pick-up with polarized windows appeared at the junction of 47th Street and 19th Avenue. Shots were fired in the air from inside the pick-up and the thieves were obliged to throw their firearm to the side of the street and to escape on their motorcycle pursued by the pick-up. Mr. José Santos thereupon told the persons in the vehicle that he had been robbed and then picked up the firearm with which he had been threatened and put it in a plastic bag pending the arrival of the police whom he called by dialling 112. The police said that they would send a patrol, but it never arrived. Minutes later the pick-up came back along 47th Street against the traffic, when he was already in his house some 50 metres beyond the site of the incident. A short, fat white man got out of the pick-up with a revolver in his hand and, without identifying himself, asked what had happened. He replied that he had been robbed of three million pesos, but the man with the revolver said that he could not do anything "because they had got away".

Otoniel Gualdrón Ardila's testimony was much the same as the above, with the addition that, after the incident, he realised that his blue Kia Sportage (Florida registration number FLI 389) had apparently been hit by two bullets, one of them in the front right tyre which it punctured and the other under the back stop-light. He had the tyre repaired at the El Trébol service station at 50-38 23rd Street, Colombia district, and the rear of the vehicle at a workshop opposite the CAS plant, attached.

Conclusions

From all the inquiries into the incident that occurred at the junction of 47th Street and 19th Avenue, near the Santo Thomas College in the Buenos Aires district of this city, on 22 August 2003, when there was an exchange of shots, the following conclusions can be drawn:

1. The incident and its occurrence was a matter of chance, since it was a typical criminal act by common criminals against persons who minutes before had cashed a cheque for three million pesos at the Bancafe bank, just when, by coincidence, the abovementioned Toyota Prado pick-up (registration number OBF 304) assigned to the protection of CUT President Juan Carlos Galvis, was passing. Its occupants observed the incident occurring metres away from them, and took immediate action on seeing the shots fired by the criminals at the victims, firing their own weapons in the air. This caused the attackers to flee on their motorcycle with their helmets down, throwing away the weapon they had used in the crime.
2. The incident was a matter of chance and was at no time an attempted murder as originally claimed by Mr. Juan Carlos Galvis and his bodyguards, Mr. Galvis' assumption being that it was linked to his current office and union membership.
3. As a result of the inquiries and the above, the explanation of the attempt on the life of Mr. Juan Carlos Galvis is wholly discredited, since the inquiries made and recorded in this report show that it was an attack by common criminals against José Libardo Santos Ardila, whom they robbed of three million pesos in cash.

It should be noted that in one part of the statement taken from José Libardo Santos Ardila, it is stated that moments after the incidents and when the car had set off in pursuit of the persons riding the black RX motorcycle, the men in the vehicle returned to the scene of the incident and asked Mr. Santos Ardila about the reasons for the incident. Mr. Santos Ardila told them what had happened. We do not understand why, when the bodyguards and Mr. Galvis knew the true facts, they gave the DAS and the Prosecutor's Office a different version.

- (6) Berta Lucy Dávila, member of the Risaralda Teachers' Union (SER) in Risaralda, on 13 November 2003.

According to the Branch Directorate of the Prosecutor's Offices of Pereira, Berta Lucy Dávila did not report the incident. However, the investigation into the gun-shot injuries is being conducted by the Minors Tribunal of Pereira, under File No. 480-03, as the perpetrators were three minors.

File No.: 480-03
 Branch: Circuit Judge of Pereira
 Investigating authority: Minors Tribunal No. 2

- 690.** The Government also provides information drawn from the consolidated investigation system, from which it appears that some of the cases listed were not found because not enough information was provided (e.g. date, location of the incident, full name of the victim of the crime, type of crime perpetrated against the person or against the organization of which he/she is a member or employee, data regarding the person who lodged the complaint).

Appendix I

Alleged acts of violence against trade union officials or members up to the Committee's meeting of March 2002 for which the Government has not sent its observations or has not reported the initiation of investigations or judicial procedures

Murders

- (1) Edison Ariel, 17 October 2000, SINTRAINAGRO;
- (2) Francisco Espadín Medina, member of SINTRAINAGRO, 7 September 2000, in the municipality of Turbo;

A search is being made for the file in the location indicated, but additional information on the case, such as cause of death and whether the incident took place in a rural or urban area, would be helpful.

- (3) Ricardo Florez, member of SINTRAPALMA, 8 January 2001;

More information is required to locate the file: full name, precise location of the incident, cause of death.

- (4) Raúl Gil, member of SINTRAPALMA, 11 February 2001, in the municipality of Puerto Wilches;

The report from the Branch Directorate of Prosecutor's Offices of Bucaramanga mentions two homicides: Raúl Gil Ariza and Nilson Martínez Peña.

File No.: 2365
 Branch: Bucaramanga
 Investigating authority: Prosecutor's Office No. 2
 Stage of investigation: suspended on 10 March 2001 and provisionally shelved

- (5) Alberto Pedroza Lozada, 22 March 2001;

A search is being made for the file, but additional information on the case, such as the location of the incident, would be helpful in identifying the investigating authority.

- (6) Ramón Antonio Jaramillo, prosecutor of SINTRAEMSDES-CUT, on 10 October 2001, in the Department of Valle del Cauca, when paramilitaries were carrying out a massacre in the region;

Given that the incident is described as a "massacre", there must have been more victims. A search is being made for the file, but the system is unable to locate the case. Further information will be forthcoming once the file has been found, but it would be helpful to know the precise location of the incident.

- (7) Armando Buitrago Moreno, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), 6 June 2001;

File No.: 570661
 Branch: Bogotá
 Investigating authority: Prosecutor's Office No. 34 (Life Unit)
 Stage of proceedings: Preliminary
 Complainant: Domingo Tovar Arrieta
 Location of incident: 69 A-05 55th Avenue Diagonal, Bogotá

- (8) Eduardo Edilio Alvarez Escudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL) on 2 July 2001 in Antioquia, by guerrilla forces;

File No.: 623996
 Branch: Antioquia
 Investigating authority: Specialized Prosecutor's Office No. 16
 Stage of proceedings: preliminary, collection of evidence

- (9) Prasmacio Arroyo, member of the Magdalena Teachers' Union (SINTRASMAG), on 26 July 2001 in Magdalena;

File No.: 2350
 Branch: Santa María
 Investigating authority: Prosecutor's Office No. 29, El Plato branch, Magdalena
 Stage of proceedings: preliminary

- (10) Eriberto Sandoval, member of the National United Federation of Agricultural Workers (FENSUAGRO), on 11 November 2001 in Ciénaga, by paramilitaries;

A search is being made for the file, but additional information on the incident would be helpful in identifying the investigating authority.

- (11) Eliécer Orozco, FENSUAGRO, on 11 November 2001 in Ciénaga, by paramilitaries;

A search is being made for the file, but additional information on the incident, would be helpful in identifying the investigating authority.

- (12) Herlinda Blando, member of the Union of Teachers and Lecturers of Boyacá, on 1 December 2001 in Boyacá, by paramilitaries;

Although it is not possible to establish whether it is the same person, the name of the victim appears as Herlinda Blanco de Peña, whose homicide is being investigated along with that of 14 others in an incident that occurred in the municipality of Labranza Grande, department of Boyacá, on 8 December 2001.

File No.: 1131
 Branch: DDHH and DIH National Unit
 Investigating authority: Specialized DDHH and DIH Prosecutor's Office No. 23
 Stage of proceedings: preliminary

- (13) Alberto Torres, member of the Antioquia Teachers' Association (ADIDA), on 12 December 2001 in Antioquia;

Additional data (complete name of the victim, precise date and place of the incident) are requested, as the National Units alone have 12 investigations on file under the name given; the same is true of the Antioquia branch. The Government requests that this information be sent as soon as possible so that the matter can be followed up and the investigation pursued.

- (14) Adolfo Flórez Rico, activist of the National Union of Workers in the Construction Industry (SINDICONS), on 7 February 2002 in Antioquia, by paramilitaries;

The Branch Prosecutor's Office is unable to locate the victim of members of his family who can provide any information, and there is no trace of his profession or official rank; moreover, the incident occurred on 7 June 2002 in the municipality of Saravena, department of Arauca, and not in Antioquia.

File No.: 64553
 Branch: Cúcuta
 Investigating authority: Prosecutor's Office No. 1, Saravena branch, Arauca
 Stage of proceedings: inhibitory from 20 April 2004

(15) Alfredo González Páez, member of the Association of Employees of INPEC (ASEINPEC), on 15 February 2002 in Tolima, by paramilitaries;

The victim, an INPEC official, was murdered on 15 February 2002, when he and his colleague Meneses were transferring a prison inmate, who was rescued by the murderers.

File No.: 60086
 Branch: Bogotá National Terrorism Unit (UNT)
 Investigating authority: Specialized UNT Unit No. 20

(16) Oswaldo Meneses Jiménez, ASEINPEC, on 15 February 2002 in Tolima, by paramilitaries;

The victim (full name Denis Oswaldo Páez, identity card No. 88.252.383, official of INPEC) was murdered on 15 February 2002, when he and his colleague González were transferring a prison inmate, who was rescued by the murderers.

File No.: 60086
 Branch: Bogotá National Terrorism Unit (UNT)
 Investigating authority: Specialized UNT Unit No. 20
 Stage of proceedings: trial (6th Special Judge, Bogotá)
 Defendant: John Freddy Jiménez López

(17) María Meza Pabón, member of EDUMAG, on 11 August 2000, in Pivijay, Department of Magdalena;

File No.: 1035
 Branch: Santa Maria
 Investigating authority: Magdalena Foundation Branch No. 27
 Stage of proceedings: suspended from 10 July 2001

(18) Edison de Jesús Castaño, member of ADIDA, on 25 February 2002, in Medellín;

No trace of this incident has been found in the Medellín branch, and more information is therefore required (precise location and cause of death). The search is continuing in the other branches, such as Antioquia.

(19) Miguel Acosta García, member of EDUMAG, on 13 April 2002, in Aracataca, Department of Magdalena;

File No.: 1419
 Branch: Santa Maria
 Investigating authority: Magdalena Foundation Branch No. 27
 Stage of proceedings: suspended from 3 January 2003

(20) Nicanor Sánchez, member of ADE, on 20 August 2002, in Vista Hermosa, Department of Meta;

A search is being made for the relevant investigation in the Villavicencio branch, the outcome of which will be communicated as soon as possible; more information (location of the incident and method of homicide) is requested to pursue the search

(21) José del Carmen Lobos, member of ADEC, on 15 October 2002 in Bogotá;

A search is being made for the relevant investigation, the outcome of which will be communicated as soon as possible.

(22) Edgar Rodríguez Guaracas member of ADEC, on 15 October 2002 in Bogotá;

A search is being made for the relevant investigation, the outcome of which will be communicated as soon as possible.

- (23) Cecilia Gómez Córdoba, member of SIMANA, on 20 November 2002, in El Talón de Gómez, Department of Nariño.

A search is being made for the relevant investigation, the outcome of which will be communicated as soon as possible

Abductions and disappearances

- (1) Germán Medina Gaviria, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 14 January 2001, in the neighbourhood of El Porvenir, town of Cali;

File No.:	39
Branch:	Cali
Investigating authority:	Branch Unit
Stage of proceedings:	preliminary

- (2) Iván Luis Beltrán, member of the executive committee of FECODE-CUT, on 10 October 2001.

The location of the incident is needed to identify the file. Information is also requested, if possible, on whether a complaint was lodged and, if so, on the place and authority with which it was lodged.

Attempted murders

- (1) César Andrés Ortiz, member of the CGTD, on 26 December 2000. The CGTD provided the Government with the necessary information but there is no investigation;

The branch directorate of the Prosecutor's Office reports that, after consulting all the Prosecutor's Offices covered by them and by the Judicial Information System of the Public Prosecutor's Office (SIJUF), no trace has been found of any investigation connected with this incident. More data are required to determine whether judicial proceedings have to be initiated.

On 26 May 2003 Julio Roberto Gómez and Cérvulo Bautisto, respectively Secretary-General and Assistant Secretary-General for Prosecutions, responded to communications DH 14010 of 15 April and DH 108 and 110 of 23 April 2003 in the following terms: "In response to your communication DH 14010 of 15 April 2003, at 8 p.m. on Tuesday, 26 December 2000, César Andrés Ortiz (identity card No. 80.231.875 of Bogotá), who was then 21 years old and employed as a messenger for the National Institute of Social Studies (INES) and coordinator of the CGTD Infant-Juvenile Group in the city of Bolívar, was shot by unknown assailants near his residence in Juan Pablo II district. Despite surgery after the incident, he was rendered paraplegic for life and can now only move around in a wheelchair."

The Public Prosecutor's Office reported in May 2004 that a further search of the consolidated investigation system has again failed to locate any investigation into this incident. More information is required (location of the incident, method of attack, or copy of the information allegedly submitted or name of the body to which it was submitted) so that a further search can be made or proceedings initiated.

- (2) The national headquarters of the Union of Electricity Workers of Colombia (SINTRAEELECOL), on 8 July 2002 in Bogotá.

Information concerning the name of the victims, location of the incident and method employed are required to locate the investigation being carried out.

Death threats

- (1) Giovanni Uyazán Sánchez;

More information is required (place and date of the incident, type of threat, whether or not a complaint was lodged) so that a proper search of the system can be made.

- (2) Reinaldo Villegas Vargas, member of the "José Alvear Restrepo" Society of Lawyers;

Several investigations are under way, but the victim is identified as Reinaldo Villegas Villalba (investigation conducted by the National Unit).

- (3) against SINTRHOINCOL workers on 9 July 2001;

The victim's full names or the name of the person who reported the incident are required to establish whether an investigation is under way.

- (4) Jorge Eliécer Londoño, member of SINTRAEMSDES-CUT, received death threats on 2 November 2001;

The Government requests information regarding the location of the incident and the method used, and the name of the person who reported the incident or the authority to which it was reported.

- (5) against trade union officials in Yumbo;

The full names of the victims and the name of the person who reported the incident are required to establish whether an investigation is under way and the name of the investigating authority.

- (6) the headquarters of SINTRAHOINCOL;

Information is required concerning the city, location and date of the incident, and the type of threat involved.

- (7) Gerardo González Muñoz, member of FENSUAGRO-CUT;

File No.: 59361
 Branch: Bogotá National Terrorism Unit (UNT)
 Investigating authority: Specialized UNT Unit No. 16
 Stage of proceedings: preliminary

- (8) workers and members of the Arauca Power Company, by paramilitaries;

Information is required (place and date of the incident, name of the persons who have received death threats and, if possible, the complaint lodged) in order to locate and follow up the investigation.

- (9) in Arauca, activists of the Arauca Educators' Association (ASEDAR) and National Association of Workers and Employees in Hospitals and Clinics (ANTHOC).

Information is requested (place and date of the incident, name of the persons who have received death threats and, if possible, the complaint lodged) in order to locate and follow up the investigation. No trace of the incident has been found at the Cucutá branch; however, the Valledupar branch has the following file on record:

File No.: 134743
 Branch: Valledupar
 Investigating authority: Prosecutor's Office No. 14
 Stage of proceedings: inhibitory from 13 December 2001, on the grounds that the incident never took place
 Complainant: Yesid Camacho Jiménez
 Crime: threats

Harassment

- (1) Esperanza Valdés Amortegui, Treasurer of ASODEFENSA, victim of illegal espionage through the installation of microphones in her workplace;

Information is required concerning the location and date of the incident, whether or not the incident was reported and, if so, the Prosecutor's Office or police station to which it was reported.

- (2) Carlos González, President of the Union of University Workers of El Valle, assaulted by police, on 1 May 2000.

Information is required on whether the incident was reported, the location of the incident and the form the harassment took, in order to determine the category of crime.

691. On 28 October 2004, the Government transmitted a list containing supplemental information on the progress made in the following inquiries:

Name of the victim	Date of the events			State of the case
	Day	Month	Year	
Arango Mejía César	24	8	2001	Deceased due to Herat disease cardiac arrest. He was not affiliated to ASONAL JUDICIAL
Beltrán Sepúlveda José	20	11	2002	Case in process of judgement (there is no data about the responsible people)
Boada Palencia José Ignacio	17	4	1998	Judgement in process. There is a suspected person absent.
Borja Clavijo Bertulfo	30	4	2002	Error. He was not assassinated and is still at work.
Carbono Maldonado Javier Jonás	9	6	2000	In process of investigation, preventive detention.
Charris Ariza Manuel Enrique	11	6	2001	At the investigation stage with an arrest and preventive detention.
Coiran Luis Enrique	19	6	2002	At the investigation stage with a suspected responsible linked to the case.
Colmenares Agustín	26	4	2002	At the preliminary investigation stage with suspected responsible persons from the Fifth Front of the FARC.
Delgado Valencia Oscar Jaime	4	2	2002	Judgement in process. The person who committed the crime has been convicted to 28 years' imprisonment.
Díaz Aristizabal Jorge Ariel	13	10	2002	At the process of investigation against members of the army.
Echeverri Pérez Cristina	15	2	2002	Judgement in progress. Several persons convicted and one more related to the case has been arrested.
Espinel Rubio Luis Miguel	15	7	2001	Judgement in process (no data available about the responsible person).
Girón Campos Abigail	22	8	2002	At the stage of investigation with one person related to the crime.
González Jorge Eliecer	25	11	2001	At the stage of investigation with two persons related to the crime and a third one arrested and condemned to preventive detention.
Hernández Porras Rito	27	9	2003	Was not a trade unionist. Judgement in progress with decision of accusation.

Name of the victim	Date of the events			State of the case
	Day	Month	Year	
Jaimes Torra Rafael	20	3	2002	Six suspected responsible persons detained, one of them is being judged. The remaining investigation is in progress.
Ledesma Albeiro	26	4	2002	At the preliminary stage of investigation with a suspected responsible, the Fifth Front of the FACT.
López Cáceres Hugo	14	8	2001	Died of pneumonia.
Lora Gómez Miguel	9	9	2002	At the instruction stage with one person related to the facts. In the procedure there is no proof of affiliation to a trade union organization.
Marín Jhon Fredy	18	4	2002	At the stage of investigation.
Martínez Alberto	26	4	2002	At the preliminary investigation stage with the suspected responsibility of the Fifth Front of the FARC
Mena Alvarez José Fernando	10	10	2002	Judgement in progress with a responsible person convicted (recognized the accusations).
Mesa Antonio	25	9	2001	Judgement in progress.
Montañés Buitrago Manuel Alberto	25	2	2002	At the instruction stage with a decision of accusation.
Mora Gómez Reynaldo	14	6	2000	Judgement in progress with two suspected responsible persons identified.
Obando Aguirre Fabio Antonio	14	7	2002	At the investigation stage with one suspected responsible linked to the case. Order of detention against him.
Olaya Fernando	12	5	2002	At the investigation stage with a suspected responsible person linked to the case, investigation pending.
Ospina Ríos Hugo	26	2	2002	At the investigation stage, an order of arrest and a detention.
Pavón Bertilda	2	1	2002	Judgement in progress with conviction.
Payares Oscar de Jesús	6	9	2002	At the investigation stage, two persons linked to the case.
Pineda Rafael	8	9	2001	At the investigation stage with a suspected responsible person (absent) identified.
Pungo Carmenza	2	9	2001	At the investigation stage with a suspected responsible person and an order of detention.
Quintero Sandra Liliana	16	3	2002	At the investigation stage with a suspected responsible person, pending decision on his legal status.
Rodríguez Jacobo	18	9	2001	At the investigation stage, judgement active.

Name of the victim	Date of the events			State of the case
	Day	Month	Year	
Salazar Gonzalo	24	11	2001	Judgement in progress. Request of advanced sentence.
Sánchez Coronel Carmen Emilio	5	8	2002	Judgment in progress.
Segura Cortés Miguel	29	4	2002	Error. He was not assassinated, still at his workplace.
Sepúlveda Juan	26	4	2002	At the stage of preliminary investigation, suspected responsibility of the Fifth Front of the FARC
Sierra Vargas Diofanol	8	4	2002	At the investigation stage with two persons linked to the investigation.
Suárez Betancourt Florentino	7	5	2000	At the investigation stage against the higher command of the FARC.

692. Concerning the security and protection measures for trade unionists, the Government continued to pursue its protection policy for vulnerable groups and allocated addition resources to its protection programme for persons at risk. The programme, which is run by the Human Rights Directorate of the Ministry of the Interior and Justice and involves several government bodies, is designed to safeguard the life, physical integrity, safety or freedom of persons who are at risk because they have received threats from illegal armed groups. The Government has passed several decrees defining the people covered by the programme as:

- officials and activists of political groups, especially opposition groups, social, civic and communal groups, craft, trade union, peasant and ethnic groups, NGOs, human rights groups, and witnesses of violations of human rights and international humanitarian law;
- officials and members of the Patriotic Union and Colombian Communist Party (UP-PCC);
- journalists and social communicators;
- mayors, councillors, deputies and spokespersons;
- medical mission (a committee on medical missions was included in Act No. 782 of 2002, but has yet to be established. At present, the medical mission is covered by the protection programme for officials and members of trade union organizations).

693. The protection programme provides for political and security measures for persons at risk. The political measures include public recognition of the legitimacy of activities concerned with the defence of human rights and a rapprochement between the State and civil society by means of inter-institutional coordination meetings at the local, central and departmental levels. The security schemes may be soft, involving communications equipment, humanitarian assistance and temporary relocation, national air tickets, transport and furniture removal, or hard, in the form of security perimeters and armoured vehicle, mobile protection schemes, bullet-proof jackets and international air tickets.

- 694.** The Risk Assessment and Control Committees (CRER), which deal with requests for protection, met 52 times in 2003: 24 times to consider officials and activists of political groups, social, civic, craft and trade union organizations, ethnic groups, human rights organizations and witnesses of violations; ten for officials, members and survivors of the UP-PCC; nine for journalists and social communicators; and nine for mayors, councillors, deputies and spokespersons.
- 695.** In order to meet the requests for protection, the budget was increased by 22 per cent between 2002 and 2003. In 2003 the programme spent 36.648 million pesos, 33.955 million pesos of which were for the year concerned and 2.693 million pesos to cover the arrears for the previous fiscal year. The budget for 2003 was 31.693 million pesos from the national budget (86 per cent) and 4.955 million pesos from international cooperation (14 per cent).

Financial progress of the protection programme 1999-2003

Year	National budget	International cooperation USAID	Total	Percentage increase over previous year
1999	4 520 000	0	4 520.000	0
2000	3 605 015	0	3 605.015	-20
2001	17 828 455	4 095 000	21 923 455	508
2002	26 064 000	4 043 995	30 107 995	37
2003 *	31 692 925	4 954 955	36 647 880	22
Total	83 710 395	13 093 950	96 804. 45	

*Including resources for fiscal year 2002.

Source: Ministry of the Interior and Justice.

- 696.** The vulnerable population on which the largest share of the budget was spent in 2003 was that of trade union members with 56 per cent, followed by the members of NGOs with 17 per cent, UP-PCC officials with 13 per cent, human rights officials with 6 per cent, mayors, councillors, deputies and spokespersons with 6 per cent and journalists with 1 per cent. The record of direct beneficiaries shows that, as proposed in the goals and commitments of the Development Plan, there was an increase of 7 per cent in the number of beneficiaries in 2003 over previous years.

Budget share by target group (2003)

Group	Total
Mayors, councillors, deputies and spokespersons	2 239 281
Trade unions	20 223 994
NGOs	6 806 670
Leaders and witnesses	2 067 492
UP-PCC	4 800 141
Journalists	510 302
Total	36 647 880

Source: Ministry of the Interior and Justice.

Number of people benefiting from direct protection measures, 1999-2003

Group							
Year	Trade unions	NGOs	Human rights officials and witnesses	UP-PCC	Journalists	Mayors, councillors, deputies and spokespersons	Total
1999	84	50	43	0	0	0	177
2000	375	224	190	77	14	0	880
2001	1.043	537	327	378	69	0	2 354
2002	1 566	1 007	699	775	168	642	4 857
2003	1 424	1 215	456	423	71	1 632	5 221
Total	4 492	3 033	1 715	1 653	322	2 274	13 489

Source: Ministry of the Interior and Justice.

697. In 2003, 36.647 million pesos of the budget disbursed (81 per cent of the resources available) were spent on hard measures, 18 per cent on soft measures and 1 per cent on operating costs. Of the resources allocated to hard measures, 86 per cent was spent on the acquisition and implementation of mobile protection schemes, 11 per cent on transport support, 6 per cent on the installation of security perimeters, 2 per cent on bullet-proof jackets and 1 per cent on international air tickets. Percentage expenditure on soft measures was 50 per cent on communications equipment, 40 per cent on temporary relocation support and 10 per cent on national air tickets.

698. The protection programme currently comprises 349 protection schemes or measures. Of these 283 are mobile protection schemes and 66 are transport support schemes, which were approved between 2000 and 2003; 211 schemes are for the protection of trade unionists, 36 for UP-CCP members, 68 for human rights NGOs, 25 for social leaders, six for mayors and three for journalists.

699. In 2003 the protection programme for trade unionists covered 2,633 people, including 1,424 beneficiaries of direct protection measures and 1,209 beneficiaries of extension measures, for a total cost of 20.223 million pesos.

Outcome of the protection programme for the group of trade union members, 2003*

Activity	Number
Number of meetings of the CRER	24
Measures involving armoured vehicles and high-level perimeters	30
Mobile schemes	40
Communications network (number of mobile telephones and Avantel radios)	789
Temporary relocation assistance	244
National air tickets	172

*Data as at 15 December 2003.

Source: Ministry of the Interior and Justice.

700. The fact that trade unionists are the vulnerable population that benefits most from hard protection measures explains in part the very significant reduction in the number of human rights violations perpetrated against them.

701. As a complementary measure, the Working Plan of the Inter-Institutional Commission for the Promotion and Protection of Workers' Rights came into force on 15 January 2003. The

Plan provides for two working groups: the first is responsible for the promotion and protection of freedom of association and the right to organize, to negotiate and to conclude collective agreements and to strike; the second is responsible for justice, the protection of workers' human rights and the prevention of their violation. The operational activities of the Commission and its Technical Secretariat involve the implementation of all the measures and activities set out in the Working Plan, agreed upon and subscribed to by the Vice-President of the Republic, the Minister of Social Welfare, representatives of enterprises and the presidents of the most representative trade union federations, among others.

- 702.** In carrying out its responsibilities and commitments, the Commission fosters conflict resolution meetings through round tables for social dialogue, conflict resolution, consultation and promotion of the human and fundamental working rights of trade unionists.
- 703.** In 2003 round tables were accordingly organized in Barranquilla, Barrancabermeja and Valledupar, attended by representatives of the Government, enterprises and union organizations, who agreed on measures and commitments with a view to preventing violations of human rights, the protection of union officials who are at risk, the follow-up and pursuit of penal investigations and guarantee mechanisms for the exercise of freedom of association and the follow-up of the measures agreed upon, inter alia.
- 704.** Similar meetings were held during the first two months of 2004 in Medellín, Cali, Pereira, Bucaramanga and Arauca.
- 705.** The Government states that work is continuing on the development and implementation of the Working Plan of the Inter-Institutional Commission for the Promotion and Protection of Worker's Rights. The follow-up of each of the activities agreed upon by the Government and the trade union organizations is presented below.
- 706.** The Government refers to the Inter-Institutional Commission for the Promotion and Protection of Workers' Rights.

Assessment and follow-up of the Working Plan

Activities of Working Group No. 1:

Protection of human rights and prevention of violations

Activity No. 1. Monitor and evaluate the risk assessment programmes and systems and make recommendations for the development of an efficient protection programme for workers whose union activities put them at risk.

In the short term an effort shall be made to accelerate protection arrangements and implement those already approved.

Promote the immediate relocation of state and non-state workers who have been threatened, and make arrangements with the central authority for the prompt allocation of the necessary financial resources to implement these measures. Account must also be taken of the role that local authorities must play in the matter of protection.

Sub-activities

- (1) Guarantee the existence of a permanent and efficient protection programme for union officials who have been threatened.

Implementation

As indicated before, the protection programme run by the Ministry of the Interior and Justice — DDHH and DIH Directorate — is already under way and, during the current presidency, has been strengthened in a variety of ways, in terms of financing, budget and institutional development.

- (2) Analyse and evaluate state policies as regards protection. Promote consultation in respect of state policies and of the adoption of protection measures for workers in both the public and the private sector.

Following an external evaluation of the protection programmes, a working group was set up consisting of representatives of the members of the Risk Assessment Committees and of the target population, in order to implement the recommendations of the its assessments. Progress has thus been made and agreement reached on state policy guidelines in the following areas:

- (a) The decree was adopted governing the Risk Assessment and Control Committees of the protection programme for trade union, social and human rights leaders.
- (b) Consultations are currently being held on the decree governing the protection programme, and have reached the final debate stage.
- (3) Arrangements are being made with the competent authorities (DAS, Treasury, National Planning Department, etc.) for the allocation of the necessary resources for the operation of the protection programme.

The allocation of the necessary resources for the operation of the protection programme has been requested through the Risk Assessment and Control Committees and the Human Rights Directorate of the Ministry of the Interior and Justice. The request shows a significant increase both in the resources specifically earmarked for the programme and in those deriving from international cooperation, as will be illustrated in the section "Trade union protection" below.

- (4) Presentation of periodic reports by the Ministry of the Interior and Justice, on state protection policies and the corresponding measures adopted, to the Inter-Institutional Commission for their analysis and evaluation, the formulation of recommendations and monitoring.

Through the Ministry of the Interior and Justice and the Presidential Programme on Human Rights, the Government has presented several reports on the Programme as regards state policies and assessments, which have been publicised through various media and in a number of national and international forums, thus fulfilling its undertaking to render an account of its activities.

- (5) Make arrangements with the Ministry of the Interior and Justice and the DAS for the implementation (effective delivery) of the mobile protection schemes that have been approved, as a matter of priority.

All the mobile protection schemes that had been approved but not implemented were assigned priority status.

- (6) Encourage the decentralization of state policies in respect of human rights, particularly as regards the protection of union leaders and officials. Hold regular meetings of state, municipal and departmental bodies and union officials in order to develop protection measures.

The Presidential Programme on Human Rights and the Ministry of the Interior and Justice are currently working on the decentralization of the Government's policies in respect of human rights, notably as regards the prevention of violations, protection and guarantee of workers' human rights and freedom of association. The protection programme has also held a number of meetings in the various departments of the country, as will be indicated below.

- (7) Issue of presidential guidelines recognising the importance of trade union activities and the duty of the civilian, military and police authorities to protect members of trade unions at the local and national level, and providing for sanctions for public servants who fail to do so.

Ministerial Decree No. 9 was issued on 9 July 2003, in which the Ministry of National Defence orders the security forces to protect workers and union officials and to guarantee the exercise of freedom of association.

Activity No. 2. Conduct national and regional information campaigns on workers' human rights. These campaigns shall be conducted through civil education, seminars and other human rights information and promotional activities. Public awareness campaigns shall also be

undertaken through various media, as well as regular conflict resolution meetings in priority and high-risk areas for workers.

Sub-activities

- (1) Devise and publish a leaflet on workers' human rights for distribution at the municipal and regional level, and design information material for the same purpose.

Development

The first section of the leaflet on workers' human rights is in the process of being designed, illustrated and published by the trade union federations and NGOs and has been approved by the Government.

- (2) Hold eight regional training seminars on human rights with the participation of the local authorities, the police, the Public Prosecutor's Office and the entrepreneurial sector.

This activity is being developed as part of the conflict resolution and social dialogue events (round tables) with the social partners, under the sponsorship of the Ministry of Social Welfare and the Office of the Vice-President of the Republic.

The idea of holding these round tables stems not only from the Working Plan of the Inter-Institutional Commission for the Promotion and Protection of Workers' Rights, but also from Colombia's commitments vis-à-vis the International Labour Organization (ILO).

The Government accordingly convened eight round tables between August 2003 and March 2004, with a high level of participation and extensive decision-making power, in the three departments of the country facing the biggest number of cases and difficulties in this area: Atlántico, Santander, Nariño, Valle del Cauca, Arauca, Risaralda and Antioquia. Other round tables will shortly be held in the departments of Caldas, Quindío, Tolima, Huila, Sucre, Córdoba, Guajira, North Santander and Cundinamarca.

Invitations to attend these round tables were sent to relevant Government institutions, entrepreneurs, trade union organizations, the police force and social organizations, with a view to compiling and debating ideas, complaints, concerns and proposals in the field of human rights and fundamental labour rights, as a basis for future action and undertakings in this area.

The round tables have already adopted commitments in respect of the prevention of human rights violations, the protection of union officials at risk, the holding and follow-up of penal investigations, measures designed to guarantee the exercise of freedom of association, inter alia, and machinery for following up the activities agreed upon.

Activity No. 3. Promote and monitor the adoption of follow-up measures in respect of the recommendations of the United Nations High Commission for Human Rights and other international bodies in the field of justice, prevention and the protection of workers' human rights.

Sub-activities

Monitoring, by a special unit of the Inter-Institutional Commission for the Promotion and Protection of Workers' Rights, of the measures adopted by international protection institutions.

Implementation

Through the Ministry of Social Welfare the Government has devised a work plan with the Office of the High Commissioner for following up its recommendations, including those related to workers' human rights, and has prepared reports on the subject. Under the Presidential Programme, several meetings have also been held with the Office of the High Commissioner to discuss specific state policies on the subject. The most important of these concerned the way the hard protection schemes should be handled as regards the beneficiaries' bodyguards. The Vice-President and the Republic and the Minister of the Interior and Justice have submitted a proposal to the trade union federations which is currently under discussion.

Activity No. 4. Ensure that the aforementioned directorate takes into account the recommendations of the Committee on Freedom of Association of the Governing Body of the ILO on Case No. 1787, the observations of the Committee of Experts on Conventions and Resolutions and the conclusions of the Committee on Standards of the International Labour Conference.

Adoption of recommendations for the submission of reports on Case No. 1787 to the ILO.

Through the Ministry of Social Welfare, the Government has duly submitted the reports requested by the Committee on Freedom of Association regarding Case No. 1787. Every three months the Ministry of Social Welfare reports to the Committee on the general situation, and specifically on trade union violence in the country and all violations of the human rights of trade union members and leaders who have suffered any kind of attack on their life and/or physical integrity. The Government has thus scrupulously complied with its duty to provide periodic reports on the situation of the trade union movement in Colombia and on the violations that it faces.

Activity No. 5. Adopt follow-up measures for recommendations arising from the Ministry of the Interior and Justice's external evaluation of its protection programme, with the assistance of the Office of the High Commission for Human Rights in Colombia and the delegation of the ILO.

Sub-activities

Presentation of the recommendations adopted by the CRER to the Inter-Institutional Commission for the Promotion and Protection of Workers' Rights, for its information and evaluation.

Implementation

Regarding the adoption of these recommendations, a working group comprising representatives of the trade union federations and the Office of the High Commission in Colombia has been set up to facilitate consultation and agreement on the relevant measures to be adopted.

Periodic reports of the protection programme, with specific outcomes and statistics.

The Government has published national and international reports, with specific outcomes and statistics.

Activity No. 6. Design a programme for the prevention and monitoring of the risks faced by workers, including strategies and actions for the resolution of conflicts between the parties involved in labour disputes (authorities, entrepreneurs, workers), in order to avoid violence against union officials.

Sub-activities

Promote the decentralization of state human rights policies, especially as regards the prevention of violence against union leaders and officials. Hold periodic meetings among state, municipal and departmental institutions and trade union officials, in order to carry out preventive measures.

Implementation

This activity is being carried out through the round tables for social dialogue, conflict resolution, consultation and promotion of the human and fundamental working rights of trade unionists.

A quick-response system headed by the Ministry of the Interior and Justice is to be developed in close coordination with the Ombudsman, with a view to the prevention of violations of the human rights of trade union officials.

The Ministry of the Interior and Justice has designed a draft quick-response system (emergency centre) in order to forestall possible violations of the human rights of workers and trade union leaders; the implementation and operation of the system is currently being discussed in conjunction with international cooperation institutions.

Activity No. 7. Maintain an up-to-date data base on violations of workers' human rights and ensure that such violations are followed up and punished systematically by the judiciary. Extend the data base to other kinds of violations, such as those suffered by workers who have been relocated in other parts of the country.

Sub-activities

Create and operate a data base on violations of workers' human rights. Compile and enter the data into the data base systematically. Maintain the data base up to date.

Implementation

The Ministry of Social Welfare has a data base that is used to update and follow up systematically every violation of workers' human rights. The Ministry submits periodic reports on the situation to national and international institutions and circulates them in various forums, such as conflict resolution and social dialogue events, in order to clarify the situation in specific cases.

Activity No. 8. Take all necessary action to compensate the families of victims of violations of workers' human rights.

Sub-activities

Analyse the psychosocial, family and organizational consequences for the victims of violations of workers' human rights. Recommend to the relevant authorities the creation of a social investment programme in municipalities where the members of a specific trade union have been the victims of human rights violations. Submit a bill to amend Act No. 288/96 so that it applies not only to cases regarding which explicit decisions have been taken by international human rights agencies but also to all cases of violation of human rights. Prepare and propose to the relevant legislative authorities a bill requiring the Government to establish a special fund for compensating the victims, families and trade union organizations whose fundamental rights have been violated.

Implementation

The sub-activities proposed are being discussed by the trade union federations and social organizations that are members of the Inter-Institutional Commission. As a preliminary step the Presidential Programme was asked to prepare a document analysing international and national standards, the principles of international law and international doctrine and jurisprudence on the subject of compensation, so as to be able to present specific proposals for action. The document was drafted by the programme and is currently being debated (it has already been discussed) by the technical secretariat of the Inter-Institutional Commission and in its plenary assembly. Specific proposals have been made to resolve the matter.

Activity No. 9. On the basis of the foregoing, conduct a review of existing cases and obstacles to justice and make recommendations aimed at accelerating their investigation. A team of lawyers shall be set up to review the process from the technical standpoint.

Sub-activities

- (1) Set up the team of lawyers so that they can pursue the investigation of existing cases.

Implementation

No agreement has been reached by the Inter-Institutional Commission on the matter. There are two proposals, that of the Government and that of the trade union federations and social and human rights organizations. The Government has already earmarked resources from the national budget for the purpose and is very keen to reach an agreement so that they are not wasted. A proposal to recruit lawyers to review the cases has accordingly been submitted to the Inter-Institutional Commission by the trade union organizations and NGOs. The Government has submitted a counter-proposal. So far no agreement has been reached. However, the Government is studying means of complying with the commitment in such a way that, on the one hand, the aims and proposals of the agreement can be met and, on the other, the resources earmarked under the national budget are not lost at the end of the fiscal year.

- (2) Fix guidelines for the selection of a sample of cases and for the work plan and methodology to be drawn up by the team.

Implementation

This sub-activity was carried out through the proposal and counter-proposal presented by the trade union federations and the government to pursue and follow up the violations of the human rights of union leaders and officials that are being investigated by the Public

Prosecutor's Office. Agreement as was reached on the methodology for selecting the 100 sample cases whose follow-up will be reviewed by the team of lawyers to be recruited for the purpose.

- (3) Selection of sample cases of penal, disciplinary and judicial investigations to be reviewed by the team of lawyers.

The Ministry of Social Welfare and the Public Prosecutor's Office have presented a selection of cases to be pursued and followed up to the trade union federations and human rights social organizations. Agreement has been reached on the cases to be pursued, but the Government is awaiting the Commission's decision regarding the recruitment of lawyers.

- (4) Have the Special Committee on Accelerating Investigations into Violations of Human Rights review the penal investigations being conducted by the Human Rights Unit.

The Special Committee on Accelerating Investigations into Violations of Human Rights and the DIH approved the pursuit and follow-up of 10 penal and disciplinary investigations, i.e. 10 per cent of the cases selected for the Special Committee by the Presidential Programme on Human Rights, the Public Prosecutor's Office and the Ministry of Social Welfare, on the basis of criteria agreed upon with the trade union federations and the human rights social organizations. The penal and disciplinary investigations that have been given priority concern union leaders of national and regional central bodies such as the CUT, USO, ANTHOC, SINTRAOFAN, SINTRAISS, these being of particular concern to union officials and for the national and international community of human rights lawyers.

- (5) Request the Public Prosecutor's Office to draw up a general report on its policy as regards the follow-up of cases of violation of workers' human rights.

The Ministry of Social Welfare submits periodic reports on the state of investigations in accordance with information supplied by the Public Prosecutor's Office; this information in turn is transmitted to the International Labour Organization, as required with regard to Case No. 1787 which is before the Committee on Freedom of Association.

Activities of Working Group No. 2:

Freedom of association, right to strike and to form trade unions

Activity No. 2. Promote workers' fundamental human rights as laid down in international law on human rights, the Conventions and Recommendations of the International Labour Organization and the Constitution and laws of Colombia.

Sub-activities

- (1) Prepare and publish a leaflet on freedom of association for distribution at the municipal and regional level, and design information material for the same purpose.

Implementation

The first section of the leaflet on workers' human rights, based on a draft prepared by the trade union federations and NGOs and approved by the Government, is in the process of being designed, illustrated and published.

- (2) Hold eight regional training seminars on freedom of association with the participation of the local authorities, the police, the Public Prosecutor's Office and the entrepreneurial sector.

This activity is already being carried out through the round tables for social dialogue, conflict resolution, consultation and promotion of the human and fundamental working rights of trade union members and leaders, which have been taking place since August 2003 with the Vice-President of the Republic and the Minister of Social Welfare in the departmental capitals with the most serious problems of trade union violence and the largest number of labour disputes between enterprises and trade unions.

Activity No. 3. Organize conflict resolution meetings among the social partners in areas where social conflict is greatest, so as to strengthen the trade union movement and encourage new forms of organization in accordance with the new models of production and recruitment.

Sub-activities

- (1) Periodic meetings of employers, workers and state institutions for the purpose of devising conflict resolution and collective bargaining strategies and measures and of promoting the implementation at the regional level of state policies in respect of freedom of association.

Implementation

This activity is already being carried out through the round tables for social dialogue, conflict resolution, consultation and promotion of the human and fundamental working rights of trade union members and leaders, which have been taking place since August 2003 with the Vice-President of the Republic and the Minister of Social Welfare in the departmental capitals with the most serious problems of trade union violence and the largest number of labour disputes between enterprises and trade unions.

- (h) As regards recommendation (h) of the Committee on Freedom of Association, the Government the Government submits a report on the current state of negotiations with EMCALI.

707. The Government sent observations on the allegations listed in the section “New allegations” in the 333rd Report of the Committee.

Murders

- (1) Ricardo Barragán Ortega, member of SINTRAEMCALI.

Homicide:	16 January 2004
Place:	Cali
Stage:	preliminary and active
Branch:	Cali
Investigating authority:	Prosecutor’s Office No. 26, Cali branch
File No.:	627693

- (2) Alvaro Grandados Rativa, Vice-President of the Construction Industry and Materials Workers’ Union (SUTIMAC).

Homicide.	8 February 2004
Place:	Bogotá
Stage:	preliminary and active, collection of evidence
Investigating authority:	Prosecutor’s Office No. 31
File No.:	743989

- (3) Yesid Chicangana, member of the Cauca Teachers’ Association (ASOINCA).

Homicide:	9 February 2004
Place:	Santander de Quilichao
Stage:	preliminary and active
Branch:	Popayán
Investigating authority:	Prosecutor’s Office No. 2, Santander de Quilichao branch
File No.:	14403

(4) Yaneth del Socorro, Member of the Antioquia Teachers' Association (ADIDA).

Homicide: 15 February 2004
Place: Vereda Lejanías, municipality of Remedios
Stage: preliminary and active, collection of evidence
Branch: Antioquia
Investigating authority: Prosecutor's Office No. 110, Segovia, Antioquia, branch
File No.: 4439

(5) Camilo Kike Ascárate, official of the Fat, Vegetable Oil and Oleaginous Products Workers' National Trade Union (SINTRAGRACO)

Homicide: 24 January 2004
Place: Buga
Stage: preliminary and active
Branch: Buga
Investigating authority: Prosecutor's Office No. 2, Buga branch
File No.: 91550

(6) Carlos Raúl Ospina, Treasurer of the Union of Workers and Employees of Autonomous Public Services and Decentralized Institutes (SINTRAEMSDES)

Homicide: 24 February 2004
Place: Tulúa
Stage: preliminary and active, collection of evidence
Branch: Buga
Investigating authority: Prosecutor's Office No. 33, Buga branch
File No.: 98910

No record of his having been a union member or of having been threatened.

(7) Ernesto Rincón Cárdenas, Information and Press Secretary, SINDIMAESTROS

Homicide: 27 January 2004
Place: Caldas
Stage: preliminary and active
Branch: Tunja
Investigating authority: Prosecutor's Office No. 25, Chiquinquirá branch
File No.: 1395

- (8) Luis José Torres Pérez, member of the National Association of Workers' and Employees in Hospitals and Clinics (ANTHOC)

Homicide: 4 March 2004
 Place: Barranquilla
 Stage: preliminary and active
 Branch: Barranquilla
 Investigating authority: Prosecutor's Office No. 12, by delegation to the URI
 File No.: 1371

- (9) Daza Nieto Rosa Mary, member of the Cauca Teachers' Association (ASOINCA)

Homicide: 15 March 2004
 Place: district of Trujillo, Bolívar, Cauca
 Stage: preliminary and active
 Branch: Popayán
 Investigating authority: Prosecutor's Office, Bolívar, Cauca, branch
 File No.: 2320

- (10) Hugo Palacios Alvis

Homicide: 16 March 2004
 Place: Vetulia y Since
 Stage: preliminary and active
 Branch: Sincelejo
 Investigating authority: Prosecutor's Office No. 9, Sincelejo branch
 File No.: 43709

- (11) Ana Elizabeth Toledo Rubiano, member of the Arauca Educators' Association (ASEDAR)

Homicide: 18 March 2004
 Place: district of Cano Separay, Tame
 Stage: preliminary and active
 Branch: Cúcuta
 Investigating authority: Prosecutor's Office, Single Tame branch
 File No.: 86074

- (12) Rafael Segundo Vergara Correa, member of the Cartagena Taxi Drivers' Trade Union (SINTRACONTAXCAR)

Homicide: 22 March 2004
 Place: municipality of Campestre and Milagro
 Stage: preliminary and active
 Branch: Cartagena

Investigating authority: Prosecutor's Office No. 9, Cartagena branch
File No.: 142729

(13) Alexander Parra Díaz, member of the Boyacá Teachers' Union (SINDIMAESTROS)

Homicide: 28 March 2004
Place: Chiquinquirá
Stage: preliminary and active
Branch: Tunja

Investigating authority: Prosecutor's Office No. 22, Chiquinquirá branch
File No.: 68139

(14) Juan Javier Giraldo, member of the Antioquia Teachers' Association (ADIDA)

Homicide: 1 April 2004
Place: Medellín
Stage: preliminary and active
Branch: Medellín
Investigating authority: Branch Prosecutor's Office
File No.: 800867

(15) Carlos Alberto Chicaiza Betancourt, official of SINTRAEMSIRVA

Homicide: 15 April 2004
Place: Cali
Stage: preliminary and active
Branch: Cali
Investigating authority: Prosecutor's Office No. 46
File No.: 650784

(16) José García, afiliado a FECODE

Homicide: 12 April 2004
Stage: preliminary, collection of evidence
Branch : Cúcuta
Investigating authority: Prosecutor's Office, Single Tame branch
File No.: 86343

(17) Jorge Mario Giraldo Cardona

Homicide: 14 April 2004
Stage: preliminary, collection of evidence
Branch: Medellín

Investigating authority: Prosecutor's Office No. 156
 File No.: 77950

(18) Peréa Zúñiga Raúl, member of SINTRAMETAL

Homicide: 14 April 2004
 Place: Cali
 Stage: preliminary and active
 Branch: Cali
 Investigating authority: Prosecutor's Office No. 23, JPCTO delegated branch
 File No.: 651376

Abductions

(1) Luis Carlos Herrera Monsalve, Vice-President of ADEA

Abduction: 17 March 2004
 Place: district of Los Sauces, municipality of Caicedo
 Stage: preliminary and active
 Branch: Medellín
 Investigating authority: Specialized Prosecutor's Office No. 48, Medellín
 File No.: 799170

Threats

(1) Jesús Alfonso Naranjo, member of ANTHOC Executive Board

Threats: 16 January 2004
 Place: Honda
 Branch: Nacional
 Investigating authority: DDHH-DIH National Unit
 Stage: preliminary and active
 File No.: 1059

(2) Mario Nel Mora Patiño, President of ANTHOC

Threats: 30 January 2001
 Place: Ibagüé
 Branch: Ibagüé
 Stage: preliminary and active
 File No.: 58375

(3) Domingo Tovar Arrieta

Threats: 24 March 2001
Branch: Bogotá
Investigating authority: Prosecutor's Office No. 245
Stage: preliminary and active
File No.: 751299

(4) Yesid Plaza Escobar, National Union of Workers in Departmental Territorial Entities

Threats: 13 February 2004
Place: Bugalagrande
Branch: Buga
Investigating authority: Prosecutor's Office No. 32
Stage: preliminary and active
File No.: 3313

708. In its communications of 9 and 10 September 2004, the Government sent information communicated by the General Attorney of the Nation's Office concerning trade union members Jorge Eduardo Prieto Chamucero, Leonel Goyeneche Goyeneche and Hector Alirio Martinez (according to the Army, those members were suspected to be part of the armed group ELN). On 5 August 2004, in the municipal territory of Saravena, department of Arauca, the Brioso squad 4 of the Reveiz Pizarro mechanized group No. 18 circled the house inhabited by Jorge Eduardo Prieto Chamucero and his companion Maria Constanza Jainres, where Leonel Goyeneche Goyeneche, Hector Alirio Martinez and Maria Raquel Castro were also spending the night. The three men were killed by several gun impacts. Afterwards, it has been confirmed that a warrant for arrest for the crime of rebellion existed against the three killed people and Maria Raquel Castro, issued by the Attorney No. 12 of the counter-terrorism unit of the special unit of Bogotá. It has also been established that Mr. Prieto Chamucero was the president of the Saravena National Association of hospital workers (ANTHOC), Mr. Goyeneche Goyeneche, treasurer of the Saravena Unitarian Workers' Trade Union and Mr. Martinez, president of the Departmental Association of Peasants (ADUC). The National Unit of Human Rights and Humanitarian International Law is the competent body for the investigation. The Specialized Attorney No. 27 went on the scene to make the investigations necessary to the clarification of the facts. By a resolution dated 6 September 2004, the pre-trial investigation was declared open and a National Army second lieutenant, two professional soldiers and an individual, who were the object of warrants for arrest, were put under examination. Moreover, the authorities have arrested Samuel Morales Florez and Raquel Castro for the crime of rebellion.

709. Furthermore, the Government has obtained information about the arrest, on 11 August 2004 in Arauca, of two trade union members suspected of rebellion and delictual grouping: Weimar Cetina, affiliated to the ANTHOC trade union, a supposed member of the armed group ELN; and Juan Rueda Angarita, secretary of Arauca Services Trade Union, a supposed member of the armed group FARC.

710. Additional information has also been received from the trade unions about the detention of four trade union members, operated in Saravena and Tame-Arauca during the second and third weeks of August, for rebellion and delictual grouping: Henri Meira, member of SINDESS, held prisoner in Saravena; Sergio Velasquez, member of SINDESS, held

prisoner in Saravena; Fransisco Javier Castro, member of ANTHOC in Saravena and Luis Alfonso, member of ANTHOC in Tame. However, the National Public Prosecutor Office has declared that no information concerning the detention of those people can be found in the competent Attorney's offices. The national and regional trade unions requested a meeting, which took place on 24 August in Arauca, with the central Government represented by the Vice-President of the Republic and different regional authorities. The meeting was a success on the base of an agreement relative to different measures for the protection of the trade unionism movement.

711. The Government adds that the investigations concerning the murders of trade union member Luis Alberto Toro Colorado, Miguel Antonio Espinosa and Carmen Elisa Nova Fernandez (affiliated to SINTRACLINICAS) are now at the state of searching for evidence. The Government indicates that the examining judge of the case concerning Miguel Antonio Espinoza doubts that the homicide is due to his trade union member function because he had already exercised it ten years ago and, at the moment of the facts, he was a lawyer.

D. The Committee's conclusions

712. *The Committee deeply deplores that the allegations submitted since the previous examination of the case in March 2004 include 42 murders (nine in 2003 and 33 in 2004), 17 threats, three abductions and disappearances, 11 arrests and two forced relocations.*
713. *The Committee notes that the detailed information by the Government concerns some elements of the administrative and judicial investigations being conducted into the murders, disappearances and other acts of violence against trade union leaders set out in the section "New allegations" and in Appendix I of the 333rd Report of the Committee and concerning the recent allegations, as well as a list of the protection measures established for certain trade unions and regions which are particularly threatened. The Committee also notes that on this occasion the Government provides information on those instances where the victims had requested protection and whether such protection was granted.*
714. *The Committee notes that once again the Government refutes the trade union membership of some of the victims who are listed below and in certain cases states that the information provided by the complainants is not sufficient to identify the Prosecutor's Offices conducting the investigations and that the trade unions which had been asked for information had not replied. The Committee regrets that the complainant organizations have not provided further information regarding these victims and reiterates its request to the complainants in this regard. Furthermore, it requests the Government to provide more specifics on the information required.*
715. *The Committee notes further that the Government has provided detailed information on the implementation and stage of the activities carried out by the Inter-institutional Commission on Workers' Rights, an analysis of which is given below.*

Information provided by the Government with respect to the allegations contained in the section "New allegations" in the 333rd Report of the Committee

716. *Concerning these allegations, which include 58 murders, one attempted abduction, three abductions, ten threats, two raids, two disappearances and six acts of violence, the Committee notes that the Government has provided information on a great number of them. It further notes that:*

- (a) *concerning the 58 alleged murders:*
- *there have been no actual convictions;*
 - *two investigations have reached the trial stage;*
 - *four investigations are at the judicial proceedings stage;*
 - *in one investigation, an inhibitory order was made;*
 - *51 investigations are at the preliminary stage; in 36 cases the Government states that the investigations are active, and in five cases that evidence is still being collected; in ten cases it is not clear whether they are still active;*
- (b) *concerning the alleged attempted abduction of Ana Paulina Tovar González, daughter of the Director of Human Rights of the CUT, on 21 March 2003, the Government states that the investigation is at the preliminary stage;*
- (c) *concerning the three alleged abductions:*
- *in the case of Luis Alberto Olaya, member of SUTEV, nothing is reported for lack of sufficient information;*
 - *in the cases of John Jairo Iglesias and José Céspedes, the Government reports that they have been murdered and that the relevant investigations are at the preliminary stage and active;*
 - *in the cases of Wilson Quinteros, Marco Antonio Rodríguez and Ricardo Espejo Céspedes, the Government reports that they have been murdered and that the relevant investigations are at the preliminary stage and active*
- (d) *concerning the 10 alleged threats:*
- *in six cases the Government reports that the investigation is at the preliminary stage;*
 - *regarding the threats against SINALTRAINAL on 14 March 2003, Leónidas Ruiz Mosquera, member of ASODEFENSA, Jorge León Sarasty Petrel, President of SINALTRACORPOICA and the workers of the Drummond enterprise, nothing is reported for lack of sufficient information;*

The Government does, however, provide information on the protection measures provided for SINALTRAINAL at both its headquarters and its various branches, for the trade union organization ASODEFENSA and for union officials of RISARALDA.

- (e) *concerning the two alleged raids:*
- *in one case an inhibitory order was made;*
 - *the other case is at the judicial proceedings stage;*
- (f) *concerning the disappearance of Marlon Mina Gambi, son of Yesid Mina, both employed by ECOPETROL, nothing is reported for lack of sufficient information;*
- (g) *concerning the six alleged murder attempts:*

- *the Government has sent information on five of the relevant investigations;*
- *regarding the attempted murder of Jairo Chávez, member of the Nariño Teachers' Union, nothing is reported for lack of sufficient information.*

Information provided by the Government with respect to the allegations found in Appendix I of the 331st Report (on which it had not communicated its observations or on which it had not reported that investigations had begun)

717. *The Committee notes the following information:*

- (a) *concerning the 23 alleged murders:*
 - *in one case an inhibitory order was made;*
 - *four investigations are at the preliminary stage and active;*
 - *three investigations have been suspended;*
 - *in two cases persons have been charged;*
 - *in 13 cases nothing is reported for lack of sufficient information;*
- (b) *concerning the two alleged abductions and disappearances:*
 - *one investigation is at the preliminary stage and active;*
 - *in the other case nothing is reported for lack of sufficient information;*
- (c) *concerning the two attempted murders, nothing is reported for lack of sufficient information;*
- (d) *concerning the nine alleged death threats:*
 - *one investigation is at the preliminary stage and active;*
 - *in seven cases nothing is reported for lack of sufficient information;*
 - *in one case an inhibitory order was made;*
- (e) *concerning the two alleged instances of persecution, nothing is reported for lack of sufficient information.*

The allegations mentioned in respect of which the Government does not have sufficient information are as follows:

- (1) *Edison Ariel, murdered on 17 October 2000, SINTRAINAGRO;*
- (2) *Francisco Espadín Medina, murdered on 7 September 2000, SINTRAINAGRO;*
- (3) *Ricardo Florez, murdered on 8 January 2000, SINTRAPALMA;*
- (4) *Alberto Pedroza Lozada, murdered on 22 March 2001;*

- (5) *Ramón Antonio Jaramillo murdered on 10 October 2001, in the Valle del Cauca, by paramilitaries, SINTRAEMSDES;*
- (6) *Eriberto Sandoval, member of the National United Federation of Agricultural Workers (FENSUAGRO), on 11 November 2001 in Ciénaga by paramilitaries;*
- (7) *Eliécer Orozco, murdered on 11 November 2001 in Ciénaga, by paramilitaries, FENSUAGRO;*
- (8) *Alberto Torres, member of the Antioquia Teachers' Association (ADIDA), on 12 December 2001 in Antioquia;*
- (9) *Edison de Jesús Castaño, member of ADIDA, on 25 February 2002, in Medellín*
- (10) *Nicanor Sánchez, member of ADE, on 20 August 2002, in Vista Hermosa, Department of Meta;*
- (11) *José del Carmen Cobos, member of ADEC, on 15 October 2002, in Bogotá;*
- (12) *Edgar Rodríguez Guaracas, member of ADEC, on 15 October 2002, in Bogotá;*
- (13) *Cecilia Gómez Córdoba, member of SIMANA on 20 November 2002, in El Talón de Gómez, Department of Nariño;*
- (14) *José Lino Beltrán Sepúlveda, member of ASOINCA, on 20 November 2002, in Popayán, Department of Cauca;*
- (15) *César Andrés Ortiz, member of the CGTD, on 26 December 2000; the CGTD has provided the Government with the necessary information but there is no ongoing investigation;*
- (16) *the national headquarters of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 8 July 2002, in Bogotá;*
- (17) *Giovanni Uyazán Sánchez;*
- (18) *Reinaldo Villegas Vargas, member of the "José Alvear Restrepo" Society of Lawyers;*
- (19) *against SINTRAHOINCOL workers, on 9 July 2001*
- (20) *Jorge Eliécer Londoño, member of SINTRAEMSDES-CUT, received death threats on 2 November 2001;*
- (21) *threats against trade union officials in Yumbo;*
- (22) *threats against the headquarters of SINTRAHOINCOL;*
- (23) *workers and members of the Arauca Power Company, by paramilitaries;*
- (24) *Esperanza Valdés Amortegui, Treasurer of ASODEFENSA, victim of illegal espionage through the installation of microphones in her workplace;*
- (25) *Carlos González, assaulted by police, on 1 May 2001, President of the University of Valle Workers' Union.*

Information provided by the Government with respect to the allegations found in the section “New allegations” in this report

718. *The Committee notes with interest the information provided by the Government with respect to the new allegations presented in this report, concerning:*

Murders: Ricardo Barragán Ortega, Alvaro Granados Rativa, Yesid Chicangana, Yaneth del Socorro, Camilo Kike Azcárate, Carlos Raúl Ospina, Ernesto Rincón Cárdenas, Luis José Torres Pérez, Rosa Mary Daza Nieto, Hugo Palacios Alvis, Ana Elizabeth Toledo Rubiano, Rafael Segundo Vergara Correa, Alexander Parra Díaz, Juan Javier Giraldo, Carlos Alberto Chicaiza Betancourt, José García, Jorge Mario Giraldo Cardona, Raúl Peréa Zúñiga, Jorge Eduardo Prieto Chamusero, Leonel Goyeneche, Héctor Alirio Martínez, Luis Alberto Colorado, Carmén Elisa Nova Fernandez and Miguel Antonio Espinosa.

Abductions: Luis Carlos Herrera Monsalve.

Detentions: Samuel Morales Flores, Maria Raquel Castro, Maria Constanza Jaimes.

Threats: Jesús Alfonso Naranjo, Mario Nel Mora, Domingo Tovar Arrieta (new threats), Yesid Plaza Escobar, Eufrasio Ruiz Santiago.

719. *The Committee notes that all the relevant investigations are at the preliminary stage and active.*

720. *Finally, the Committee takes note of the latest information submitted by the Government concerning the progress made in a number of inquiries. It will examine this information in detail when it next examines this case.*

Freedom of association and human rights

721. *In general, the Committee once again expresses in the strongest of terms that it deplors the extreme gravity of this case in which 42 new allegations of murder of union officials and members have been submitted (nine in 2003 and 33 in 2004). Although this figure is smaller than the number of murders committed in 2003 (79 union members), the state of violence facing the trade union movement in Colombia continues to be extremely serious. As it has done on numerous occasions with respect to several cases concerning Colombia, the Committee reiterates that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 46].*

722. *The Committee notes the information provided by the Government on the protection measures taken in respect of the trade union organizations SINTRAINAGRO, ASODEFENSA and the union officials of RISARALDA. The Committee requests the Government to continue to keep it informed of the protection measures and security schemes in force and those adopted in the future in respect of other unions and other Departments or regions. The Committee must reiterate its request that the Government take particular account of those trade unions and regions to which it referred in the previous examination of the case, such as the health services and the Barrancabermeja Gas Company, as well as municipal administrations (municipality of Barrancabermeja) and departmental administrations (Departments of Valle del Cauca and Antioquia). The Committee requests the Government to send, as a matter of high priority, information on all these matters.*

- 723.** *The Committee notes that the Government has sent detailed information on the Working Plan of the Inter-Institutional Commission for the Prevention of Violations and the Protection of Workers' Rights. The Committee notes that there are two working groups, each of which engages in a variety of activities. Working Group No. 1 is concerned with prevention of violence and protection of human rights. The activities it carries out are designed to monitor and assess the programmes and systems for evaluating risks and to develop an efficient protection scheme in order, in the short term, to pursue the implementation of the protection measures. Its other activities include the familiarization of workers with their human rights by means of campaigns, seminars and educational and promotional activities with the participation of the police. Between August 2003 and March 2004, eight round tables were held, in César, Atlántico, Santander, Nariño, Valle del Cauca, Arauca, Risaralda and Antioquia, which are the departments facing the most serious difficulties. According to the Government these activities will shortly be extended to other regions. The Committee notes that the same Working Group No. 1 is responsible for overseeing activities connected with the recommendations of institutions of international scope such as the Committee on Freedom of Association and the United Nations High Commission for Human Rights. Furthermore, the group is currently devising a system for accelerating the investigation procedures under way.*
- 724.** *The task of Working Group No. 2 is to promote freedom of association and the right to strike. With this in view, it prepares information leaflets, conducts regional training seminars and conflict resolution meetings to ease tension among the social partners. The Committee notes all this information with the utmost interest and requests the Government to continue keeping it informed in detail of developments in the work of the Inter-Institutional Commission for the Prevention of Violations and the Protection of Workers' Rights.*

Investigations

- 725.** *The Committee again notes the efforts made by the Government to inform it about investigations in progress into acts of violence against trade union officials and members and observes with interest that they cover a large number of allegations. The Committee also notes with interest that the Government provides information on investigations into allegations on which it had indicated in previous reports that it did not possess sufficient information. Here too, the Committee notes the efforts made. The Government does, however, mention some cases where it still does not have enough information either to locate the investigation in progress or to determine the possibility of instituting proceedings. The Committee requests the Government to continue to do everything in its power to institute investigations into all the acts of violence alleged up to March 2004, into those regarding which it has not reported the initiation of investigations or judicial proceedings (Appendix I), and into those listed in the section "New allegations" in the present report, on which it has not yet reported, and to continue to send its observations on the progress made in the investigations already begun on which the Government has sent its observations.*

Impunity

- 726.** *The Committee must in the strongest of terms underscore the total lack of any actual convictions in the latest report. Moreover, as in previous examinations of the case, most of the investigations are at the preliminary stage. Once again the Committee must recall that justice delayed is justice denied [See **Digest**, *op. cit.*, para. 56]; bearing in mind the extremely serious situation that prevails in respect of impunity, the Committee finds itself obliged to reiterate the conclusions it reached in its previous examinations of the case, namely, that the lack of investigations in some cases, the limited progress in the*

investigations already begun in other cases and the total lack of convictions underscore the prevailing state of impunity, which inevitably contributes to the climate of violence affecting all sectors of society and the destruction of the trade union movement. The Committee once again urges the Government in the strongest terms to take the necessary measures to put an end to the intolerable situation of impunity and to punish effectively all those responsible.

Trade union status of certain victims and allegations in respect of which information could not be provided because of insufficient data

727. The Committee regrets that once again the complainant organizations have not provided information concerning the trade union status of certain victims, denied by the Government in the last examination of the case (see 333rd Report, para. 460). The Committee notes that, in the present examination of the case, the Government once again denies the trade union status of some of the victims, namely: Luis Antonio Romo Rada, Evelio Germán Salcedo Taticuán, Ana Cecilia Duque, Omar Alexis Peña Cardona, Héctor Jaimes Victoria Sterling, Iván Muñiz Bermúdez, Rito Hernández Porras, Nubia Estela Castro, Miguel Antonio Espinosa. The Committee urges the complainant organizations once again to provide all information relating to the trade union status of the victims, so that the Government can institute the relevant investigations concerning the victims listed in both the previous and the present examination of the case.

728. As regards cases where the Government states that the data supplied by the complainants is insufficient to identify the Prosecutor's Offices conducting the investigations, the Committee again must strongly remind the complainant organizations of their duty to substantiate their allegations to the Committee in all cases where so requested. The Committee observes that to date the complainants have not provided any additional information. In consequence, the Committee once again urges the complainant organizations to do everything in their power to provide the Government with the necessary information concerning the victims for whom the Government claims that it does not have sufficient data, listed in the 333rd Report as well as in the present report, so that the Government can state whether investigations have been instituted into these allegations and what stage they have reached. In turn, the Committee urges the Government to continue to endeavour to send all available information concerning the allegations made.

Other questions

729. Regarding the allegations submitted by FECODE concerning threatening telephone calls, harassment by armed persons, public statements designating them as military targets, warnings to resign their union office, raids on their homes, warnings not to take part in union activities and numerous murders, the Committee deeply regrets that the Government has not sent its observations and requests it to do so without delay.

730. The Committee requests the Government to provide its observations on the new allegations of violence against trade unionists transmitted by the complainants.

The Committee's recommendations

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

- (a) *While noting that this time the Government provided more details on the allegations, the Committee expresses its deep concern about the extreme gravity of the situation and deeply deplores the fact that allegations have been submitted of 42 new murders of union officials and members, 17 threats, three abductions and disappearances, 11 arrests and two forced relocations. The Committee reiterates that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.*
- (b) *The Committee notes the Government's information regarding the protection measures provided for the trade union organizations SINALTRAINAL, and ASODEFENSA and for union officials of RISARALDA. The Committee requests the Government to continue keeping it informed of the protection measures and security schemes in force and those adopted in the future in respect of other unions and other departments or regions. The Committee must reiterate its request that the Government take particular account of those trade unions and regions to which it referred in previous examinations of the case, such as the health services and the Barrancabermeja Gas Company, as well as municipal administrations (municipality of Barrancabermeja) and department administrations (departments of Valle del Cauca and Antioquia). The Committee requests the Government to provide, as a matter of high priority, information on all these matters.*
- (c) *The Committee notes with the utmost interest that the Government has provided detailed information on the Working Plan of the Inter-Institutional Commission for the Prevention of Violations and the Protection of Workers' Rights and requests it to continue keeping it informed in detail of developments in the work of the said Commission.*
- (d) *Concerning the investigations into acts of violence against union officials and members that are currently under way, the Committee requests the Government to continue making every possible effort to initiate investigations into all the alleged acts of violence up to March 2004, into those regarding which it has not reported the initiation of investigations or judicial proceedings (Appendix I), and into those listed in the section "New allegations" in the present report, on which it has not yet reported, and to continue sending its observations on the progress made in the investigations already begun on which the Government has already reported.*
- (e) *In respect of the extremely serious situation that prevails in respect of impunity, the Committee finds itself obliged to reiterate the conclusions it reached in its previous examinations of the case, namely, that the lack of investigations in some cases, the limited progress in the investigations already begun in other cases and the total lack of convictions underscore the prevailing state of impunity, which inevitably contributes to the climate of violence affecting all sectors of society and the destruction of the trade union movement. The Committee once again urges the Government in the strongest terms to take the necessary measures to put an end to the*

intolerable situation of impunity and to punish effectively all those responsible.

- (f) Regarding the trade union status of certain victims and allegations in respect of which information could not be provided because of insufficient data, the Committee observes that once again the complainant organizations have not provided information concerning the trade union status of certain victims, denied by the Government in the last examination of the case, and again urges them to provide all information relating to the trade union status of the victims, so that the Government can institute the relevant investigations concerning the victims listed in both the previous and the present examination of the case.*
- (g) As regards those cases where the Government states that the data supplied by the complainants is insufficient to identify the Prosecutor's Offices conducting the investigations, the Committee must again strongly remind the complainant organizations of their duty to substantiate their allegations to the Committee in all cases where so requested, observes that to date the complainants have not provided any additional information and once again urges them to do everything in their power to provide the Government with the necessary information concerning the victims on whom the Government claims that it does not have sufficient data, listed in the 333rd Report as well as in the present report, so that the Government can state whether investigations have been instituted into these allegations and what stage they have reached. In turn, the Committee urges the Government to continue to endeavour to send all available information concerning the allegations made.*
- (h) Regarding the allegations submitted by FECODE concerning threatening telephone calls, harassment by armed persons, public statements designating them as military targets, warnings to resign their union office, raids on their homes, warnings not to take part in union activities and numerous murders, the Committee requests the Government to send its observations without delay.*
- (i) The Committee requests the Government to provide its observations on the new allegations of violence against trade unionists transmitted by the complainants.*
- (j) The Committee will examine the latest information submitted by the Government when it next examines this case.*

Appendix I

Acts of violence against trade union officials or members up to the Committee's meeting of March 2004 on which the Government has not sent its observations or has not reported the initiation of investigations or judicial proceedings, particularly on the grounds that the information provided by the complainants is insufficient

Murders

- (1) Edison Ariel, 17 October 2000, SINTRAINAGRO;
- (2) Francisco Espadín Medina, member of SINTRAINAGRO, 7 September 2000, in the municipality of Turbo;
- (3) Ricardo Florez, member of SINTRAPALMA, 8 January 2001;
- (4) Alberto Pedroza Lozada, 22 March 2001;
- (5) Ramón Antonio Jaramillo, Prosecutor of SINTRAEMSDES-CUT, on 10 October 2001, in the Department of Valle del Cauca, when paramilitaries were carrying out a massacre in the region;
- (6) Eriberto Sandoval, member of the National United Federation of Agricultural Workers (FENSUAGRO), on 11 November 2001 in Ciénaga, by paramilitaries;
- (7) Eliécer Orozco, FENSUAGRO, on 11 November 2001 in Ciénaga, by paramilitaries;
- (8) Alberto Torres, member of the Antioquia Teachers' Association (ADIDA), on 12 December 2001 in Antioquia;
- (9) Edison de Jesús Castaño, member of ADIDA, on 25 February 2002, in Medellín;
- (10) Nicanor Sánchez, member of ADE, on 20 August 2002, in Vista Hermosa, Department of Meta;
- (11) José del Carmen Lobos, member of ADEC, on 15 October 2002, in Bogotá;
- (12) Edgar Rodríguez Guaracas member of ADEC, on 15 October 2002, in Bogotá;
- (13) Cecilia Gómez Córdoba, member of SIMANA, on 20 November 2002, in El Talón de Gómez, Department of Nariño.

Abductions and disappearances

- (1) Iván Luis Beltrán, member of the Executive Committee of FECODE-CUT, on 10 October 2001;
- (2) Luis Alberto Olaya, member of the Valle Single Education Workers' Trade Union (SUTEV), in the Department of Valle del Cauca, on 15 June 2003.

Attempted murder

- (1) César Andrés Ortiz, member of the CGTD, on 26 December 2000; the CGTD provided the Government with the necessary information but there is no investigation.

Death threats

- (1) Giovanni Uyazán Sánchez;
- (2) Reinaldo Villegas Vargas, member of the "José Alvear Restrepo" Society of Lawyers;
- (3) against SINTRHOINCOL workers, on 9 July 2001;

- (4) Jorge Eliécer Londoño, member of SINTRAEMSDES-CUT, on 2 November 2001;
- (5) against trade union officials in Yumbo;
- (6) headquarters of SINTRAHOINCOL;
- (7) workers and members of the Arauca Power Company, by paramilitaries;
- (8) activists of the Arauca Educators' Association (ASEDAR) and National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), in Arauca;
- (9) SINALTRAINAL, Bucaramanga branch, on 14 March 2003;
- (10) Leónidas Ruiz Mosquera, President of ASODEFENSA, coffee sector subcommittee;
- (11) Jorge León Sarasty Petrel, National President of SINALTRACORPOICA, on 9 June 2003, in Montería, where he was advising on the formation of the union's Córdoba branch;
- (12) the workers of the Drummond company (2,000 in all) working in conflict zones where paramilitary groups operate and consider them as military targets. Five officials and members have already been murdered and this has been considered in previous examinations of the case. Currently, workers are being sent to remote areas where there is no security.

Harassment

- (1) Esperanza Valdés Amortegui, Treasurer of ASODEFENSA, victim of illegal espionage through the installation of microphones in her workplace;
- (2) Carlos González, President of the Union of University Workers of El Valle, assaulted by police, on 1 May 2001.

Acts of violence

- (1) Jairo Chávez, a worker in the Nariño Teachers' Union, when an explosive device of moderate force exploded, also causing enormous material damage, on 5 June 2003.

Appendix II

Acts of violence against trade union officials or members, mentioned in Appendix I of the 333rd Report of the Committee or in the section "New allegations" in the present report, on which the Government has sent its observations

Raúl Gil; Armando Buitrago Moreno; Eduardo Edilio Alvarez Escudelo; Prasmacio Arroyo; Herlinda Blando; Adolfo Florez Rico; Alfredo González Páez; Oswaldo Meneses Jiménez; María Meza Pabón; Miguel Acosta García; Germán Medina Gaviria; Gerardo González Muñoz; workers and union members of the Arauca Power company, by paramilitaries; in Arauca, activists of the Arauca Educators' Association (ASEDAR) and National Association of Workers and Employees in Hospitals and Clinics (ANTHOC).

Complaints against the Government of Colombia presented by

- the General Confederation of Democratic Workers (CGTD)
- the General Confederation of Democratic Workers (CGTD),
Antioquia branch
- the Single Confederation of Workers of Colombia (CUT),
Antioquia executive subcommittee and
- 25 other trade unions

Allegations: Dismissal of workers from the Textiles Rionegro enterprise; refusal to reinstate dismissed trade union leaders of ASEINPEC, denial of appeals for protection of the trade union immunity of a number of trade union leaders of ASEINPEC, refusal to return the offices of the ASEINPEC organization and many anti-union acts against ASEINPEC

- 732.** The Committee last examined this case at its March 2004 meeting [see 333rd Report, paras. 465-486] and submitted an interim report to the Governing Body. The General Confederation of Democratic Workers, Antioquia branch, provided additional information in a communication dated 23 September 2004.
- 733.** The Government sent its observations in communications dated 9 March, 5 April and 14 and 26 May 2004.
- 734.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

- 735.** At its March 2004 meeting, the Committee formulated the following recommendations [see 333rd Report, para. 486]:
- (a) With regard to the dismissal of 34 workers from Textiles Rionegro, the Committee requests the Government to keep it informed of the results of the pending judicial proceedings relating to three workers to whom the Government made no reference in its observations. Moreover, as to the other allegations submitted by SINTRATEXTIL concerning the enterprises Fabricato, Enka and Coltejer and Rio Negro, the Committee requests the Government to send its observations without delay. (These allegations are reproduced below: the National Union of Textile Industry Workers (SINTRATEXTIL) alleges: (a) in the Fabricato enterprise: (1) there is violation of the collective agreement; (2) trade union leave is denied; (3) trade union leaders are denied access to the premises; (b) in the Enka enterprise: (1) non-fulfilment of agreements concluded between the president of the company and the trade union; (2) violation of the collective agreement through the conclusion of contracts with companies to conduct work directly covered by the collective agreement; (3) distribution of the hardest tasks to unionized workers; (c) in

the Coltejer enterprise: dismissals on the grounds of restructuring, in violation of a collective agreement; and (d) in the Textiles Rionegro enterprise: (1) favouritism towards one of the enterprise trade unions to the detriment of the industry union; and (2) violation of the collective agreement.)

- (b) Concerning the allegations presented by ASEINPEC relating to constant threats, sanctions, disciplinary proceedings and transfers involving trade union leaders, the dismissal and suspension of trade union leaders without pay in violation of trade union immunity and the refusal by the director of the INPEC to return the trade union offices, the Committee requests the Government to take measures to ensure that the judicial decisions ordering the reinstatement of the trade union leaders and the return of the trade union offices are implemented without delay and to send its observations with respect to the further allegations of anti-union discrimination relating to threats, sanctions, disciplinary proceedings and transfers involving trade union leaders of ASEINPEC.
- (c) As regards the allegations submitted by ADEM concerning non-compliance with an agreement in which the Government had undertaken to reinstate 83 workers covered by trade union immunity, the Committee requests the Government to carry out an investigation at the office of the Mayor of Medellín to determine whether the agreement was in fact concluded and if it was, to take measures to ensure it is implemented as soon as possible.
- (d) As regards the murders of trade union officials Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, the Committee once again requests the Government to take the necessary steps to ensure that the investigations allow those responsible for these murders to be punished in the near future and to keep it informed in this respect.

B. The Government's reply

736. In its communications dated 9 March, 5 April and 14 and 26 May 2004, the Government states that, as regards the dismissal of 34 workers from Textiles Rionegro, in fact the number of workers dismissed was 31, and not 34, and as regards the legal proceedings pending in the case of three of those 31 workers of Textiles Rionegro, the Government attaches copies of the decisions handed down by the High Court of Medellín, which upheld the decisions of the courts of first instance ordering their reinstatement.

737. As regards the allegations presented by SINTRATEXIL that in the Fabricato enterprise, the collective agreement is being violated, trade union leave is being denied and trade union leaders are denied access to the premises, administrative labour investigations were opened by the Antioquia Territorial Directorate into the denial of trade union leave and anti-union harassment, and a decision was handed down, leaving the parties free to bring the case before the ordinary labour courts. As regards the violation of the collective agreement, two investigations were opened: in the first case, the enterprise was fined, and in the second, the Territorial Directorate declared itself incompetent to rule. The Government states that there are currently three more investigations under way concerning violation of the collective agreement.

738. As regards the allegations that in the Enka enterprise, agreements concluded between the president of the company and the trade union are not being respected, the collective agreement is being violated through the conclusion of contracts with companies to conduct work directly covered by the collective agreement, and the hardest tasks are being distributed to unionized workers, the Ministry of Social Protection, through the Antioquia Territorial Directorate, opened an administrative labour investigation against the enterprise and handed down a decision acquitting the enterprise.

739. As regards the allegations presented by ASEINPEC concerning disciplinary proceedings and transfers carried out against trade union leaders, the dismissal and suspension without pay of trade union leaders in violation of trade union immunity, the Government attaches a

table listing the judgements ordering reinstatement of the officials covered by trade union immunity who were suspended, and a copy of the decisions issued by the secretary-general of INPEC ordering that the judgements be carried out.

- 740.** As regards the allegations presented by ADEM concerning non-compliance with an agreement in which the Government had undertaken to reinstate 83 workers covered by trade union immunity, in accordance with Act No. 617 of October 2000 on fiscal adjustment, which entailed reducing the operating costs of all public bodies, consideration was given to the possibility of eliminating a number of posts in the Medellín Municipal Council. To that end, the municipal administration issued Decrees Nos. 165 and 300 of 2001, eliminating the posts. This prompted protest action by several trade union organizations. With a view to finding a solution to the dispute, the administration called an extraordinary meeting with the trade unions, at which a number of issues were discussed and certain agreements were reached, which were set forth in a document entitled “Memorandum of Understanding between the trade union organizations of Medellín municipality, ADEM, SIDEM, ASDEM and ANDAT, and the Mayor of the city”. As regards possible non-compliance with some of the points agreed upon, in particular the reinstatement of 83 workers covered by trade union immunity, the municipal administration states that although this subject was addressed in the discussions, it was not included in the Memorandum of Understanding. Moreover, Decrees Nos. 165 and 300 ordering the elimination of the posts were issued before the establishment of the SIDEM trade union, and hence the 83 workers alleged to have been covered by trade union immunity did not in fact enjoy such protection. In addition, the workers concerned had brought their case before the ordinary labour courts, which ruled in every case in favour of Medellín Municipal Council.

C. The Committee’s conclusions

- 741.** *As regards the dismissal of 34 workers from Textiles Rionegro (of whom, according to the previous examination of the case, 15 workers have been reinstated and 13 others have reached an agreement with the enterprise [see 333rd Report of the Committee on Freedom of Association, para. 471]), the Committee notes the information provided by the Government according to which the number of persons originally dismissed was 31 and not 34. The Committee points out that out of these 31 workers, it remained for the Government to inform it of the outcome of the pending judicial proceedings relating to three workers, in respect of whom the Government states that the High Court of Medellín ordered their reinstatement.*
- 742.** *As regards the allegations presented by SINRATEXTIL that in the Fabricato enterprise trade union leave is denied and trade union leaders are denied access to the premises, the Committee notes that according to the Government, the Antioquia Territorial Directorate opened administrative labour investigations and handed down a decision leaving the parties free to bring the case before the ordinary labour courts. The Committee requests the Government to inform it whether the trade union has initiated judicial proceedings.*
- 743.** *As regards violation of the collective agreement in the Fabricato enterprise, the Committee notes that five investigations were opened: in the first, the Antioquia Territorial Directorate fined the enterprise, and in the second, it declared itself incompetent to rule; there are currently three more investigations under way concerning violation of the collective agreement. The Committee requests the Government to keep it informed of the final outcome of the three pending administrative investigations and to ensure effective compliance with the collective agreement in the enterprise.*
- 744.** *As regards the allegations that in the Enka enterprise, the agreements concluded between the president of the company and the trade union are not being fulfilled, the collective*

agreement is being violated through the conclusion of contracts with companies to conduct work directly covered by the collective agreement, and the hardest tasks are being distributed to unionized workers, the Committee notes that the Antioquia Territorial Directorate opened an administrative labour investigation against the enterprise and handed down a decision acquitting it. The Committee requests the Government to keep it informed of any judicial appeal lodged by the trade union in this case.

- 745.** *The Committee regrets to note that the Government has not sent observations concerning the remaining allegations presented by SINTRATEXIL referring to dismissals on grounds of restructuring, in violation of a collective agreement, in the Coltejer enterprise and favouritism towards one of the enterprise trade unions to the detriment of the industry union, as well as violation of the collective agreement in the Textiles Rionegro enterprise, and urges it to do so without delay.*
- 746.** *As regards the allegations presented by ASEINPEC concerning the dismissal and suspension without pay of trade union leaders in violation of trade union immunity, the Committee notes with interest the judgements ordering reinstatement of the officials covered by trade union immunity, as well as the decisions issued by the secretary-general of INPEC ordering that the judgements be carried out. The Committee observes, however, that the Government does not state whether INPEC has returned the offices to the trade union as ordered by the judicial authority, neither has it provided information on the other allegations of anti-union discrimination relating to threats, sanctions, disciplinary proceedings and transfers involving ASEINPEC union leaders. The Committee strongly urges the Government to take steps to ensure that the ASEINPEC offices are returned without delay, as ordered by the judicial authority, and to send its observations concerning the remaining allegations.*
- 747.** *As regards the allegations presented by ADEM concerning non-compliance with an agreement in which the Government had undertaken to reinstate 83 workers covered by trade union immunity, under a memorandum of agreement signed between the municipal authorities and the trade union, the Committee notes that according to the Government, this issue was not included in the Memorandum of Understanding and that Decrees Nos. 165 and 300 ordering the elimination of posts on grounds of fiscal readjustment were issued before the establishment of the SIDEM trade union to which the dismissed workers belonged, and hence they could not be covered by trade union immunity. The Committee also notes that according to the Government, these workers brought their case before the ordinary labour courts and that in every case the courts ruled in favour of the employer.*
- 748.** *As regards the murders of trade union officials Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, the Committee deeply regrets that, despite the time which has elapsed since the events occurred and the request of the Committee in its 333rd Report, the Government has not sent its observations, and once again strongly urges it to take the necessary steps without delay to ensure that the investigations allow those responsible for these murders to be punished in the near future and to keep it informed in this respect.*
- 749.** *Finally, the Committee requests the Government to provide its observations concerning the additional information submitted by the CGTD, Antioquia branch, in its communication of 23 September 2004.*

The Committee's recommendations

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

- (a) *As regards the allegations presented by SINTRATEXTIL, to the effect that in the Fabricato enterprise trade union leave is denied and trade union leaders are denied access to the enterprise, in respect of which the Antioquia Territorial Directorate left the parties free to bring the case before the courts, the Committee requests the Government to inform it whether the trade union has initiated judicial proceedings.*
- (b) *As regards the violation of the collective agreement in the Fabricato enterprise, the Committee requests the Government to keep it informed of the final outcome of the three pending administrative investigations and to ensure effective compliance with the collective agreement in the enterprise.*
- (c) *As regards the allegations concerning non-compliance of the agreements concluded between the president of the Enka enterprise and the trade union, violations of the collective agreement through the conclusion of contracts with companies to conduct work covered by the collective agreement, and distribution of the hardest tasks to unionized workers, in respect of which the Antioquia Territorial Directorate carried out an administrative investigation and acquitted the enterprise, the Committee requests the Government to keep it informed of any judicial appeal lodged by the trade union against this administrative decision.*
- (d) *As regards the remaining allegations presented by SINTRATEXTIL, referring to dismissals on the grounds of restructuring, in violation of a collective agreement, in the Coltejer enterprise and favouritism towards one of the enterprise trade unions to the detriment of the industry union, as well as violation of the collective agreement in the Textiles Rionegro enterprise, the Committee urges the Government to send its observations without delay.*
- (e) *As regards the refusal of INPEC to return the trade union offices as ordered by the judicial authority, and the remaining allegations concerning threats, sanctions, disciplinary proceedings and transfers involving ASEINPEC union leaders, the Committee strongly urges the Government to take steps to ensure that the ASEINPEC offices are returned without delay, as ordered by the judicial authority, and to send its observations concerning the remaining allegations.*
- (f) *As regards the murders of trade union officials Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, the Committee deeply regrets that, despite the time which has elapsed since the events occurred and the request of the Committee in its 333rd Report, the Government has not sent its observations, and once again strongly urges it to take the necessary steps without delay to ensure that the investigations allow those responsible for these murders to be punished in the near future and to keep it informed in this respect.*
- (g) *The Committee requests the Government to provide its observations concerning the additional information submitted by the CGTD, Antioquia branch, in its communication dated 23 September 2004.*

CASE NO. 2226

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

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

- the Union of State Workers of Colombia (UTRADEC)
- the Single Confederation of Workers of Colombia (CUT) and
- the Social Security Workers' Union (SINTRASEGURIDADSOCIAL)

Allegations: The complainants allege the default on the collective agreement concluded between the Ministry of Labour and the Social Security Institute with SINTRASEGURIDADSOCIAL, dismissals in conjunction with successive restructuring at the San Vicente de Paul Hospital of Caldas-Antioquia, the dismissal of the entire executive committee of the Trade Union Association of Workers and Public Officials in the areas of Health, Integral Social Security and Complementary Services of Colombia (ANTHOC) without judicial authorization, anti-union harassment against a trade union leader of SINDICIENAGA and failure to pay travel expenses

- 751.** The Committee last examined this case at its March 2004 meeting, when it submitted an interim report to the Governing Body [see 333rd Report, paras. 487-509, approved by the Governing Body at its 289th Session].
- 752.** The Government sent its observations in communications dated 9 March and 14 and 26 May 2004.
- 753.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

- 754.** At its March 2004 meeting, when it examined this case, relating to the default on a collective agreement, anti-union dismissals and harassment and the withholding of trade union dues, the Committee made the following recommendations [see 333rd Report, para. 509]:
- With regard to the dismissal of the executive committee of ANTHOC without the judicial authorization required by Colombian legislation, in the framework of the mass dismissals that took place at the San Vicente de Paul Hospital, the Committee requests the Government to provide information on whether the Hospital requested judicial authorization for the dismissal of the executive committee, as laid down in the legislation

for the dismissal of trade union officials, and, if this is not the case, that it reinstate the dismissed trade union officials in their positions, without loss of pay.

- With regard to the alleged default on the collective agreement concluded between the Ministry of Labour and Social Security and the Social Security Institute with SINTRASEGURIDADSOCIAL, and the suspension of 5,000 workers, the Committee requests the Government to provide information on whether the complainant organization has begun legal proceedings in this respect.
- With regard to the allegations relating to the Government's intention to renegotiate the collective agreement in force in accordance with CONPES document No. 3219, the Committee invites the parties to encourage mutual understanding and good relations and highlights the importance of in-depth discussions on issues of mutual interest in order to arrive, in so far as it is possible, at commonly agreed and accepted solutions. The Committee requests the Government to keep it informed in this respect.
- With regard to the allegations submitted by UTRADEC relating to the anti-union harassment of María Teresa Romero Constante, president of SINDICIENAGA, by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga, who refused to negotiate with her in particular, and issued threats to make her leave the trade union, the Committee requests the Government to keep it informed of the outcome of this investigation.
- With regard to the allegations relating to the default on the collective agreement as regards the payment of travelling expenses and the withholding of trade union dues, also alleged by UTRADEC, the Committee requests the Government to send its observations without delay.
- With regard to the allegations submitted by CUT relating to the dismissal without suspension of trade union immunity and other acts of anti-union harassment against Gloria Castaño Valencia, the Committee requests the Government to keep it informed of the outcome of the administrative investigation that has begun.

B. The Government's reply

755. In its communications of 9 March and 14 and 26 May 2004, the Government states that:

- (a) With regard to the dismissal of the executive committee of ANTHOC without the judicial authorization required by Colombian legislation, in the framework of the mass dismissals that took place in the San Vicente de Paul Hospital, according to Ruling C-262 of 1995 of the Constitutional Court, "the constitutional and legal guarantees on trade union immunity and security in employment are not affected by the provisions at issue, since the legal consequences with regard to the employment relationship challenged by the plaintiff are derived from a legal definition which is general in nature, by virtue of law, and because the constitutional power to restructure a public entity entails, among other consequences, the legal authority to eliminate posts; accordingly, this Court found against the plaintiff in regard to the alleged violation of the constitutional right to trade union immunity of the workers [...] since carrying out a legitimate redundancy, which has been verified as being in conformity with constitutional and legal provisions, obviates the need to seek a judicial determination of trade union immunity as provided in the provision at issue; this is not an absolute limit which might vitiate the ordinary decisions of the legislator in respect of the structure of the national administration". To sum up, in the case of genuine administrative restructuring exercises, it is not necessary to seek judicial authorization in order to eliminate posts of workers covered by trade union immunity, since the power to restructure state enterprises is based on constitutional provisions themselves, especially when such redundancies are carried out in accordance with constitutional and legal provisions.

- (b) With regard to the alleged default on the collective agreement concluded between the Ministry of Labour and Social Security and the Social Security Institute with SINTRASEGURIDADSOCIAL and the suspension of 5,000 workers, according to information provided by the president of the Social Security Institute (ISS), the SINTRASEGURIDADSOCIAL trade union did not file legal proceedings concerning the default on the collective agreement, after the administrative investigation was closed by decision dated 23 March 2003 on the grounds that neither the trade union nor the ISS had attended the hearings to which they had been summoned.
- (c) With regard to the subsequent allegations concerning the Government's intention to renegotiate the collective agreement in force in the ISS, in accordance with document No. 3219 of the National Council for Economic and Social Planning (CONPES), a number of possible solutions were identified, including structural reform of the ISS, improving management methods and increasing its capacity. These proposals were aimed not at dissolving the Institute, but at ensuring its long-term sustainability. As regards the collective agreement, CONPES document No. 3219 provided that it should be revised before its expiry, and to this end a tripartite commission should be set up consisting, of the ISS, the workers and the Government, in order to find a joint comprehensive solution to the problem. This tripartite commission outlined a number of options, from which divergences emerged clearly between the Government and the ISS, on the one hand, and the trade union, on the other. The former considered that the organization could remain viable if expenditure were reduced and management methods improved, while the trade union maintained that viability could be achieved by increasing incomes, rationalizing external purchasing of health services and administrative and management measures to be carried out by the organization. The commission met eight times without reaching agreement. Finally, on 6 June 2003, the complainant organization stated that it would not attend that day's meeting and refused to negotiate. As a result, the Government, availing itself of the extraordinary powers conferred on it by Act. No. 790 of 2002, separated the Social Security Institute from the health service provider sector.
- (d) As regards the allegations relating to the default on the collective agreement in respect of the payment of travel expenses and the withholding of trade union dues owed to SINDICIENAGA by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga in the department of Magdalena, alleged by UTRADEC, the Ministry of Social Protection, through its territorial directorate of Magdalena, opened an administrative investigation and issued decision No. 174 of 12 September 2003 in which it abstained from settling the dispute on grounds of lack of competence, since the decision entailed making a value judgement or the adjudication of rights. An appeal has been lodged against this decision, which is currently before the territorial directorate.
- (e) With regard to the administrative inquiry opened by the territorial directorate of Cundinamarca concerning the alleged dismissal without lifting trade union immunity and other anti-union acts against Gloria Castaño Valencia, that directorate issued decision No. 2194 of 15 September 2003 in which it abstained from taking administrative measures on grounds of lack of evidence. That decision is now final since the administrative and judicial appeals were rejected.

C. The Committee's conclusions

756. *As regards the dismissal of the executive committee of ANTHOC without the judicial authorization required by Colombian legislation, in the framework of the mass dismissals that took place at the San Vicente de Paul Hospital, the Committee notes that the Government states that, according to Ruling C-262 of 1995 of the Constitutional Court, in*

*the case of genuine administrative restructuring exercises it is not necessary to seek judicial authorization before eliminating posts of workers covered by trade union immunity, since the power to restructure state entities is based on constitutional provisions themselves. The Committee recalls that “one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers’ organizations shall have the right to elect their representatives in full freedom” and that “one way of ensuring the protection of trade union officials is to provide that these officials may not be dismissed, either during their period of office or for a certain time thereafter except, of course, for serious misconduct” [see **Digest of decisions and principles of the Freedom of Association Committee**, paras. 724 and 727]. The Committee observes that this protection is reflected in Colombia in the form of “trade union immunity”, which consists in the impossibility of an employer’s dismissing a trade union official without just cause previously determined by the labour court (sections 405 ff of the Substantive Labour Code of Colombia). Noting that according to the Government’s statement there has been no request to lift the trade union immunity of the trade union officials dismissed from the San Vicente de Paul Hospital, the Committee recalls that in its previous recommendation it had requested the Government to provide information on whether the hospital requested judicial authorization for the dismissal of the executive committee, as laid down in the legislation for the dismissal of trade union officials and, if this is not the case, that it reinstate the dismissed trade union officials in their positions, without loss of pay. In these circumstances, the Committee requests the Government to take steps without delay to ensure the reinstatement of the dismissed trade union officials without loss of pay and to keep it informed in this respect.*

- 757.** *With regard to the alleged default on the collective agreement concluded between the Ministry of Labour and Social Security and the ISS with SINTRASEGURIDADSOCIAL, in respect of which the Committee had requested the Government to provide information on whether the complainant organization had begun legal proceedings in this respect, after the administrative investigation was closed by decision of 23 March 2003 on the grounds that neither the trade union nor the ISS had attended the hearings to which they were summoned, the Committee notes the information provided by the Government to the effect that the trade union did not file any legal proceedings.*
- 758.** *With regard to the allegations relating to the Government’s intention to renegotiate the collective agreement in force in the Social Security Institute (ISS) in accordance with CONPES document No. 3219 containing proposals aimed at restructuring the institution, the Committee notes that according to the recommendations made in the framework of that document, a tripartite commission was set up, comprised of members of the Ministry of Social Protection, the ISS and the trade union, in order to achieve a joint comprehensive solution. This commission met on eight occasions, during which a divergence of views emerged between the trade union, on the one hand, and the ISS and the Ministry of Social Protection, on the other. The Committee notes that, according to the Government, as a result of these divergences, SINTRASEGURIDADSOCIAL refused to attend the meeting convened for 6 June 2003 and to continue negotiations in the tripartite commission, and as a result the Government separated the ISS from the health service provider sector, in accordance with the extraordinary powers conferred upon it by Act No. 790 of 2002. The Committee requests the complainant organization to state the reasons why it withdrew from negotiations.*

- 759.** *With regard to the allegations relating to the default on the collective agreement as regards the payment of travel expenses and the withholding of trade union dues by the Institute of Traffic and Municipal Transport of Ciénaga in the department of Magdalena, alleged by UTRADEC, the Committee notes that the territorial directorate of Magdalena opened an administrative investigation and issued decision No. 174 of 12 September 2003, in which it abstained from settling the dispute on grounds of lack of competence, and that an appeal had been lodged against this decision and was now before the territorial directorate. The Committee considers that the powers of the administrative authority should include verifying whether or not the alleged acts occurred, without this entailing any value judgement, in particular given that collective agreements have force of law under Colombian legislation. The Committee requests the Government to keep it informed of the outcome of the appeal lodged against the administrative decision and expects that steps will be taken to guarantee compliance with the collective agreement in respect of the withholding of trade union dues and the payment of travel expenses to trade union officials.*
- 760.** *With regard to the administrative inquiry initiated by the territorial directorate of Cundinamarca concerning the allegations presented by the CUT on the dismissal without the lifting of trade union immunity and other anti-union acts against Gloria Castaño Valencia, the Committee notes that that the directorate issued decision No. 2194 of 15 September 2003, in which it abstained from taking administrative measures on grounds of lack of evidence and that, according to the Government, that decision is now final since the administrative and judicial appeals were rejected.*
- 761.** *With regard to the allegations presented by UTRADEC concerning the anti-union harassment against María Teresa Romero Constante, president of SINDICIENAGA, by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga, which refused to negotiate with her in particular, and issued threats to make her leave the trade union, the Committee notes that the Government has not sent observations on this subject. The Committee once again requests the Government to keep it informed of the outcome of the administrative investigation referred to in its previous examination of the case.*

The Committee's recommendations

- 762.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) With regard to the dismissal of the executive committee of ANTHOC without the judicial authorization required by Colombian legislation, in the framework of the mass dismissals that took place at the San Vicente de Paul Hospital, considering that according to the Government's statement there has not been a request to lift the trade union immunity of the dismissed trade union officials, the Committee reiterates its previous recommendation and requests the Government to take steps without delay to reinstate them without loss of pay and to keep it informed in this respect.*
 - (b) The Committee requests the complainant organization SINTRASEGURIDADSOCIAL to state the reasons why it withdrew from negotiations on the restructuring of the ISS and the renegotiation of the collective agreement.*
 - (c) With regard to the allegations relating to the default on the collective agreement as regards the payment of travel expenses and the withholding of*

trade union dues owed to SINDICIENAGA by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga in the department of Magdalena, the Committee requests the Government to keep it informed of the outcome of the appeal lodged with the territorial directorate against the administrative decision and expects that steps will be taken to guarantee compliance with the collective agreement in respect of the withholding of trade union dues and the payment of travel expenses to trade union officials.

- (d) *With regard to the allegations submitted by UTRADEC concerning the anti-union harassment against María Teresa Romero Constante, president of SINDICIENAGA, by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga, who refused to negotiate with her in particular, and issued threats to make her leave the trade union, the Committee once again requests the Government to keep it informed of the outcome of the administrative investigation referred to in its previous examination of the case.*

CASE NO. 1865

INTERIM REPORT

Complaints against the Government of the Republic of Korea presented by

- **the Korean Confederation of Trade Unions (KCTU)**
- **the Korean Automobile Workers' Federation (KAWF)**
- **the International Confederation of Free Trade Unions (ICFTU) and**
- **the Korean Metalworkers' Federation (KMWF)**

Allegations: The complainants' pending allegations concern the non-conformity of several provisions of the labour legislation with freedom of association principles and the dismissal of several public servants connected to the Korean Association of Government Employees' Works Councils for the exercise of illegal collective action

763. The Committee already examined the substance of this case at its May-June 1996, March and June 1997, March and November 1998, March 2000, March 2001, March 2002 and May-June 2003 meetings, when it presented an interim report to the Governing Body [304th Report, paras. 221-254; 306th Report, paras. 295-346; 307th Report, paras. 177-236; 309th Report, paras. 120-160; 311th Report, paras. 293-339; 320th Report, paras. 456-530; 324th Report, paras. 372-415; 327th Report, paras. 447-506; 331st Report, paras. 165-174; approved by the Governing Body at its 266th, 268th, 269th, 271st, 273rd, 277th, 280th, 283rd and 287th Sessions (June 1996, March and June 1997, March and November 1998, March 2000, March 2001, March and June 2003)].

764. The Government provided its observations in communications dated 29 April and 16 September 2004.

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

A. Previous examination of the case

766. At its June 2003 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

- (a) Noting with interest from the latest government communication an overall desire and willingness to resolve most, if not all, of the outstanding issues in this case, the Committee hopes that all the parties concerned will be able to come together to find mutually acceptable solutions to all these issues and that it will be in a position to note further significant progress made in respect of its recommendations in the near future.
- (b) As regards the legislative aspects of this case, the Committee requests the Government:
 - (i) to take the necessary measures in the very near future so as to ensure that all public servants fully enjoy the right to establish and join trade union organizations of their own choosing;
 - (ii) to take all possible steps to speed up the process of legalizing trade union pluralism, in full consultation with all social partners concerned, in order to ensure full respect for the right of workers to establish and join the organization of their own choosing;
 - (iii) to ensure that the payment of wages by employers to full-time union officials is not subject to legislative interference;
 - (iv) to amend the list of essential public services in section 71(2) of the Trade Union and Labour Relations Amendment Act (TULRAA) so that the right to strike may be prohibited only in essential services in the strict sense of the term;
 - (v) to repeal the notification requirement (section 40) and the penalties for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes (section 89(1) of the TULRAA);
 - (vi) to repeal the provisions concerning the denial of dismissed and unemployed workers from keeping their union membership and the ineligibility of non-union members to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA);
 - (vii) to bring section 314 of the Penal Code (obstruction of business) into line with freedom of association principles;
 - (viii) to keep it informed of the progress made in respect of all of the abovementioned matters.

Noting the Government's request for advice from ILO experts in respect of the bills to be prepared by the industrial relations improvement task force, the Committee reminds the Government that the technical assistance of the Office is entirely at the Government's disposal in this regard.

- (c) As regards the factual aspects of this case:
 - (i) the Committee welcomes the steps taken by the Government to grant special pardons to a certain number of detained trade unionists;
 - (ii) taking due note of the indication in the Government's communication of April 2003 that it will establish a practice of investigation without detention for trade unionists who violate current labour laws, unless they commit an act of violence, the Committee further encourages the Government to take additional steps as appropriate so that all persons still detained or on trial as a result of their trade union activities are released and that the charges brought against them are dropped. In the event of persons charged with violence or assault, the Committee asks the Government to ensure that any such charges are dealt with as soon as possible. It

requests the Government to keep it informed of any measures taken in respect of the above points;

- (iii) the Committee once again urges the Government to ensure that the charges brought against Mr. Kwon Young-kil, former president of the KCTU, in connection with his legitimate trade union activities are dropped and requests the Government to keep it informed of the outcome of his appeal;
- (iv) noting with regret the information provided by the Government that 12 people connected to the Korean Association of Government Employees' Works Councils (KAGEWC) had been dismissed as of January 2003 due to illegal collective actions, the Committee requests the Government to take the necessary measures to ensure that these persons are immediately reinstated in their jobs, without loss of wages. It requests the Government to keep it informed of the progress made in this regard.

B. The Government's reply

767. In its communication dated 29 April 2004, the Government presented its observations with respect to the pending recommendations. The Government confirmed its continuing efforts to improve the relevant institutions in accordance with these recommendations and referred in particular to the establishment of the Research Committee on Industrial Relations System Development, which reviewed and made valuable contributions on various issues including those raised in the recommendations.

768. As regards public officials' basic labour rights, the Government recalls that the Tripartite Commission reached an agreement on 6 February 1998 to first allow the establishment of workplace associations and then trade unions as a second step. Accordingly, the Government legislated the Act on establishment and operation of public officials' workplace associations in 1999 and has enforced the law. Also, there have been discussions on the means to legalize public officials' trade union activities.

769. In October 2002, the Ministry of Government Administration and Home Affairs submitted a legislative bill on guaranteeing public officials' union activities to the National Assembly, but the bill failed to pass the National Assembly due to differences in opinions.

770. Since the inauguration of the new Government in 2003, the Ministry of Labour prepared a new government bill ensuring public officials' right to associate under a wide scope. In June 2003, the Government gathered opinions from public officials' groups and people in other areas and held consultations with related ministries. The bill guarantees public officials' rights to establish and join unions, engage in collective bargaining with the central and local government authorities, sign collective agreements, and join umbrella unions. It does not allow public officials of certain areas, such as police officers and firefighters, to join unions. It also restricts the effects of collective agreements on matters decided by law and budget and the right to collective action of public officials, due to the public nature of the duty performed.

771. A social consensus on the bill was not reached due to strong opposition from the public officials' organization (the Korea Federation of Government Employees' Union) demanding that the three labour rights, including the right to collective action, should all be guaranteed for public officials at once. The Government was therefore not able to submit the bill to the National Assembly in October 2003 as planned. It is, nevertheless, striving to achieve a social consensus on the bill through dialogue and consultation with public officials' organizations and through promoting the legislation of the bill in the shortest possible time.

- 772.** As regards trade union pluralism, the current Trade Union and Labour Relations Adjustment Act (TULRAA) states that multiple trade unions at the enterprise level shall be permitted starting in 2007 with a precondition that measures to unify bargaining channels of multiple unions be developed by the end of 2006. In this regard, the labour unions have argued that multiple trade unions at the enterprise level should be permitted sooner and the method of bargaining should be left to the hands of labour and management. On the other hand, the management has strongly demanded that once multiple trade unions are permitted at the enterprise level, bargaining channels should be unified, citing the concern about the increase in bargaining costs and wages to full-time unionists. Management, in particular, prefers exclusive representation.
- 773.** The government-established Research Committee on Industrial Relations System Development (hereinafter, the Research Committee), which operated from May to November 2003, suggested that once multiple unions at the enterprise level are introduced, labour and management should autonomously unify bargaining channels. If they fail to do so, the Committee suggested that a union which represents the majority of unionists should be the bargaining representative (majority representation) or that unions form a bargaining team comprised of proportional representation among unions (proportional representation).
- 774.** The Committee's Reform Measures for Advanced Industrial Relations Laws and Systems were submitted to the Tripartite Commission in September 2003 and are currently under discussion at the Commission. The discussion is expected to continue until the first half of 2004. As soon as the discussion at the Tripartite Commission is concluded, the Government plans to submit to the National Assembly a bill based on the outcome of these discussions.
- 775.** Under the current TULRAA, employers' payment to full-time unionists is banned since it is considered an illegal labour practice where employers assist in the operation costs of the union. But the enforcement of the provision has been postponed to the end of 2006. Labour has demanded that the current provision be deleted and the employers' payment to full-time unionists be left in the hands of labour and management themselves. But management argues that the provision should be enforced as planned so as to improve the practice where unions heavily depend on employers for payment to full-time unionists and even force employers to provide excessive assistance to unions.
- 776.** In 2003, the Research Committee pointed out that, given the current situation where the financial foundation of many unions is fragile and it is very common for employers to pay wages to full-time unionists, the current law that bans all employers' assistance to full-time unionists punishes all who violate the provision and needs to be improved both because of the reality and legal logic. The Research Committee suggested that instead, the law should stipulate the minimum number of full-time unionists whose wages can be provided by employers and should punish the act of providing wages to more full-time unionists than stipulated.
- 777.** The Government's stance is that legislative intervention is inevitable to redress the prevalent wrong practices where unions take it for granted that employers provide full-time unionists wages and even force employers to do so. The Government will promote a legislation based on the discussions at the Tripartite Commission as soon as the discussions are concluded.
- 778.** The current TULRAA states that essential public services are those whose stoppages and discontinuance may endanger the daily lives of the general public or may undermine the national economy considerably, and whose replacement is not easy (railroad services, intercity rail, water electricity, gas supply, oil refinery and supply services, hospital services, telecommunication services, the Bank of Korea).

- 779.** It may seem that the scope of essential public service is somewhat larger than the essential services suggested by the ILO. But this is because it is not easy to maintain the service to protect public interests in the event of strikes. In reality, Korean labour laws strictly restrain striker replacement and unions often do not use strikes as the last line of resort.
- 780.** Given that the ILO has stated that the scope of essential services may vary from country to country, depending on its unique situations, then the ILO should be able to see that the scope of essential public services in the Republic of Korea does not depart significantly from the essential services proposed by the ILO. For example, oil accounts for more than 50 per cent of domestic energy sources. Thus, if the oil refinery and supply services are stopped, most daily lives and production activities such as cooking, heating and electricity supply would be stopped. If the railroad and intercity railroad are stopped, the public will face great difficulty in their everyday lives, such as commuting. If the Bank of Korea goes on strike, it may endanger the daily lives of the general public and undermine the national economy considerably since the Bank of Korea makes decisions on the nation's monetary policies and enforces them, including currency policies and interest rates.
- 781.** The Government tries to be cautious in enforcing compulsory arbitration to clear the concerns that compulsory arbitration may excessively restrict unions' right to industrial action. Since 2003, the Labour Relations Commissions across the country have decided to refer the cases of strikes to compulsory arbitration, after judging the extent of the public interest infringed by the work stopped and whether some measures have been taken to prevent such infringement of public interest, such as maintaining the minimum level of work. As a result, only one case of strike was referred to officio arbitration in 2003.
- 782.** Taking this into account, the Research Committee suggested that for essential public services compulsory arbitration be abolished and that the law should require public services to maintain a minimum level of work during strikes. The Government plans to promote a legislation based on discussions at the Tripartite Commission, in an attempt to enlarge the scope of trade unions' right to industrial action as well as to set up a countermeasure to protect public interests in case of industrial actions.
- 783.** Section 40 of the TULRAA says that: a trade union and an employer may be supported by industrial federations or a national confederation of which the trade union is a member; an employers' association of which the employer is a member; and a person who has been notified to the administrative authorities by the trade union or the employer concerned to obtain support. It is not that a third party is punished for just not being notified to the Ministry of Labour. The third party is punished only when he/she intervenes in collective bargaining or industrial disputes against the will of the trade union or the employer and hinders the autonomy of the labour and management. So far no union or employer has been punished for violating section 89(1).
- 784.** In effect, employers are demanding that it should be redressed that unionists of an umbrella union who are not employees of a certain company enter the company's workplace without prior permission to support the union of the company or infringe the employer's right to manage the facilities of the company. The Research Committee suggested that the section on notification of third-party assistance and the penal provision should be abolished, citing that the sections are not effective any longer. Based on the result of discussions at the Tripartite Commission, the Government plans to legislate an act that recognizes the freedom of union activities and protects employers' rights to operate their businesses and manage their facilities.
- 785.** The court has judged that, where enterprise-level trade unions account for the majority, the dismissed and the unemployed are not workers who can join trade unions or who can be elected as union executives. The Government has tried revising the related law twice since

1998 when the Tripartite Commission agreed to allow the dismissed to join non-enterprise-level trade unions. But the legislation process has been delayed due to differences of opinion.

- 786.** The Research Committee suggested that the dismissed and the unemployed should be granted the eligibility to become members of non-enterprise unions such as industry-level or regional trade unions, but that, given the current domestic industrial relations where union activities are conducted mainly by the enterprise, the eligibility of members of an enterprise-level trade union needs to be confined to employees of the enterprise. (In this case, membership and executiveship of industry-level union is open to anyone.) Based on the results of discussions of the Tripartite Commission, the Government plans to legislate an act which allows the unemployed to freely join non-enterprise-level unions but restricts them from joining enterprise-level trade unions.
- 787.** The Korean Government applies obstruction of business to workers' collective refusal to work, which has been believed by the ILO to be an infringement on the freedom of association principle. But the Korean Government believes that the ILO's position stems from a misunderstanding of the Korean legal system. Section 314 of the Criminal Act (Penal Code) states that a person who interferes with economic or social activities of another by circulating false facts or by the threat of force, shall be punished. Obstruction of business is a type of extortion crime that forces others to do such thing or not to do other things, or that makes others give up exercising their own rights. An act of interfering with the business of others by means of illegal threat of force is punished under section 314 of the Criminal Act.
- 788.** Section 314 thus punishes certain illegal industrial action such as refusal to work disguised as industrial action which causes damages to employers' business activities. The section is not aimed at regulating illegal industrial action itself.
- 789.** Other countries also punish the act of unionists who obstruct non-unionists and replacement workers from working or who force other unionists to take part in industrial action. This is exactly the same as the Korean Government's application of obstruction of business in that in both cases, the act of unfairly restricting economic activities of employers is punished. Legal strikes based on the right to collective action stipulated in the Constitution are not regarded as obstruction of business nor get punished. Obstruction of business is applied only to certain cases of strikes beyond the boundary of the three labour rights protected by the Constitution. In fact, under paragraph 1 of section 43 of the TULRAA, employers in the Republic of Korea cannot hire new employees or replace strikers to perform the work stopped by industrial action of trade unions during the period of the industrial action.
- 790.** Obstruction of business applies in cases where workers collectively refuse to work, and the work which has been done by the participants to the industrial action is being stopped by collective and coercive means (the Criminal Act describes it as "threat of force"). If such a period is prolonged, it can cause damage to the workplace which is severe enough to make it go bankrupt. But under current labour laws, employers, the victim in this case, do not have any measure against this. This is quite different from the cases in other countries where, in case of industrial action, employers are allowed to replace strikers or are given other countermeasures so that they can maintain their business activities. Thus, the damage to the company caused by industrial action is not extreme.
- 791.** Korean labour laws grant workers with a formidable right to collective action and stipulate that collective refusal to work based on this right shall not be placed under criminal punishment, while limiting the scope of the right to collective action to a certain extent, defining the ones that go beyond the limit as illegal, and punishing them on account of

obstruction of business. In this context, obstruction of business is aimed not at unfairly limiting workers' right to collective action but at creating a level playing field for both workers and employers.

- 792.** Looking at the record of application of the law, one can easily find that most of those arrested received punishment for committing violence with deadly weapons. Most of those who were arrested for obstruction of business are union officers who had prevented unionists from returning to work or occupied the overall facilities of the workplace for a long time. Such personnel get punished by laws in other countries as well. The arrested mobilized unionists, formed so-called "diehard-defence teams" to force unionists to participate in the strike and stop them from returning to work. The team committed violence, often using iron pipes.
- 793.** Article 8, paragraph 1, of Convention No. 87 states, "in exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land". The *Digest of decisions and principles of the Freedom of Association Committee*, 1996, also stipulates that freedom of association principles do not protect the abuse of the right to strike which consists of criminal activities in exercising the right to strike [para. 598].
- 794.** In conclusion, punishing the abusive right to strike can hardly be regarded as a measure against the freedom of association principle. The Korean Government will minimize the numbers of trade unionists arrested, even in the event of an illegal industrial action if it is a violence-free action and it will cautiously interpret and apply the obstruction of business charges.
- 795.** In respect of the factual matters raised, as of 1 January 2004, the number of persons arrested for illegal strikes without use of force is only one. In 2003, 28 workers were arrested for obstruction of business during illegal strikes without direct use of violence; 27 of these were all released by withdrawal of arrest of bail, or being sentenced to a light fine.
- 796.** In 2003, 137 additional workers were arrested not for carrying out trade union activities but for throwing Molotov cocktails, committing violence with iron pipes, etc. Even among them, most of them were released except for those who were arrested for violent demonstrations and assemblies such as those at a union rally on 9 November 2003.
- 797.** Mr. Kwon, Young-kil, former president of the Korean Confederation of Trade Unions (KCTU) was sentenced to ten months' imprisonment with a two-year grace period at the first trial on 31 January 2001. The defendant, Mr. Kwon, filed an appeal which is still under way. The decision of the appeals court is scheduled to be made at the end of April 2004. Withdrawal of the prosecution against Mr. Kwon is technically impossible since the Korean law prohibits withdrawal of a prosecution during the appeal stage. Unlike what the ILO pointed out, he was not prosecuted for "legitimate trade union activities". He was being prosecuted only for violating the Punishment of Violences, etc. Act, instigating illegal and violent demonstrations in the period from June 1994 to November 1995.
- 798.** As shown in article 33 of the Constitution, the Government considers public officials as workers and has made continuous efforts to increase their labour rights and interests by gradually recognizing a broader scope of basic labour rights of public officials, taking into account the characteristics of public officials and public sentiment. Currently, about 50,000 public officials who are manual labourers working in the areas of railroad, postal service, and medical service enjoy all three labour rights, including the right to collective action. Some 370,000 educational public officials such as teachers of primary, middle, and high schools are allowed to establish trade unions. Even among general public officials, 130,000

are members of public officials' workplace associations. They consult with the heads of their respective authorities to improve working environment, increase rights and interests, and deal with grievances.

- 799.** The Korean Constitution states, "all public officials shall be servants of the entire people and shall be responsible to the people. The status and political impartiality of public officials shall be guaranteed as prescribed by the Act." In fact, public officials may not be dismissed against their will, unless they are sentenced, receive disciplines, or there is good reason based on the Public Officials Act.
- 800.** As seen from this, the status of public officials is guaranteed for their lifetime by law. Nevertheless, in March 2002, they attempted to establish a trade union, an act which is illegal according to the current law. They waged a struggle against the Government, insisting that the three labour rights, including the right to collective action, should be guaranteed for them at once. In 2002, they held ten illegal out-of-door assemblies, including the ones held on 27 April, 26 May and 27 October. They refused to accept the Government's requests not to conduct illegal activities and to hold dialogues. On 7 October 2002, they broke into the office of the Minister of Government Administration and Home Affairs, damaged the office fixtures and committed violence to MOGAHA officials. On 30 October 2002 they conducted a ballot on illegal activities and decided to go on a general strike on 1 November 2002. They waged the general strike on 4 and 5 November 2002, taking annual leave without permission and absence without any permission.
- 801.** To restore order and discipline in public service, 12 public officials who broke into the Minister's office, designed or led the illegal assembly, actively participated in the assembly and left the designated workplace without permission were subject to punishment according to the related law, followed by the disciplinary committee's decision. They are: Koh Kwang-shik, Hwang Ki-ju, Ahn Hyun-ho, Kim Jong-yeon, Kang Su-dong, Kang Dong-jin, Kim Young-gil, Ha Jae-ho, Han Seog-woo, Min Jeom-gi, Oh Myeong-nam, Kim Sang-geol. The Administrative litigation and request examination are under way in the court. Four of them (Ha Jae-ho, Ahn Hyun-ho, Kim Jong-yeon, Min Jeom-gi) were reinstated by request examination. Mr. Oh Myeong-nam received his final dismissal sentence from the Supreme Court.
- 802.** In its communication dated 16 September 2004, the Government provides additional information on the main contents of the Public Officials Trade Union Bill. The Bill is to be made into a special law of the TULRAA and separately provide for the establishment of public officials' trade unions, the scope of union membership, bargaining structure, dispute mediation mechanisms, etc. As for the matters not separately stipulated for, the TULRAA will be applied.
- 803.** Regarding the extent to which three labour rights are guaranteed, the right to organize and the right to collective bargaining (including the right to sign collective agreements) will be guaranteed. However, the right to collective action (the right to strike) will not be recognized under the Bill.
- 804.** Public officials will be allowed to establish and join a union at the level of the minimum organizing entity. Examples of the minimum establishment entity are the National Assembly, court, Constitutional Court, National Election Commission, ministries, Special City, Metropolitan City, province, city, Gun, Gu and local education boards. Public officials will also be allowed to establish and join a union, a federation of unions or a confederation of unions, which has as its members, public officials from different organizing entities.

- 805.** Grade 6 or lower public officials, specific and contract public officials, and technical and employed public officials will be allowed to join a trade union. However, special public officials, such as soldiers and policemen, and politically appointed public officials will be prohibited from joining a union. Those who carry out the role of employer, such as personnel and financial administration, will also not be allowed to form a union. Currently, there are more than 910,000 public servants. Among them, the number of Grade 6 or lower officials is 880,000 (96 per cent) while Grade 5 or higher stands at 30,000 (4 per cent). [In a chart attached to the Government's reply, this category of public servant was stated to amount to 60,000.]
- 806.** The bargaining partner from labour will be the representative of a public officials' union and the bargaining partner from Government will be a person responsible for each constitutional agency (National Assembly, court, Ministry of Government and Home Affairs), and for each local government (mayors, governors, etc.). The bargaining agenda will be on wages, welfare and other matters related to working conditions. Management and operation issues, such as making policy decisions not related to working conditions and exercising rights to personnel administration, will be excluded from the bargaining agenda.
- 807.** The full-time union officials will be allowed to fully devote themselves to the union, but the time they spend on union activities will be treated as unpaid leave. In this case, employers should not give any unfavourable treatment on the grounds that they are full-time union officials.
- 808.** The Government adds that given the unique nature of public officials' duty and the technicality of their industrial relations, a mediation committee for public officials will be established under the National Labour Relations Commission. After the Ministry of Labour has gathered public comments and opinions from various circles, it will submit the Bill to the National Assembly Regular Session this autumn.
- 809.** Finally, the Government recalled the proposals made by the Research Committee on all the other pending issues, which have already been set out above.

C. The Committee's conclusions

- 810.** *The Committee recalls that it has been examining this case since 1996. During its last examination of this case in May-June 2003, the Committee observed that, while important steps had been taken over the years to ensure greater conformity between the national legislation and practice and the principles of freedom of association, significant obstacles to the full implementation of freedom of association principles in both law and practice remained. The Committee had, however, noted with interest the Government's indication of its desire and willingness to resolve most, if not all, of the outstanding issues in this case.*
- 811.** *The Committee notes in this respect from the Government's communications that a Research Committee on Industrial Relations System Development was established to review the issues raised in its pending recommendations. The Government transmitted a summary of the final report of this Research Committee entitled "Reform Measures for Advanced Industrial Relations Laws and Systems", dated 3 December 2003, to the Office.*
- 812.** *The Committee will proceed with its examination of the legislative aspects of this case on the basis of the information provided in the Government's communications and the proposals made in the final report of the Research Committee.*

* * *

Legislative issues

- 813.** *The Committee recalls that the outstanding legislative issues concern the need to: ensure the right to organize for public servants; legalize trade union pluralism at the enterprise level; resolve the issue of payment of wages to full-time union officers in a manner consistent with freedom of association principles; amend section 71 of the Trade Union and Labour Relations Amendment Act (TULRAA) so that the right to strike may be prohibited only in essential services in the strict sense of the term; repeal the notification requirement in section 40 of the TULRAA and the penalties provided for in section 89(1) concerning the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes; amend the prohibition on dismissed and unemployed workers from remaining union members or holding trade union office (sections 2(4)(d) and 23(1) of the TULRAA); and amend section 314 of the Criminal Code concerning the obstruction of business to bring it into line with freedom of association principles.*
- 814.** *As regards the **right of public servants to establish and join trade union organizations of their own choosing**, the Committee noted in its previous examination of this case the Government's indication that legalizing the government officials' union had been a campaign pledge of the newly elected President. The Government had given the Ministry of Labour the authority to prepare the Public Officials' Union Bill with a view to granting to government officials the right to organize, the right to bargain collectively and the right to conclude collective agreements. It was expected that the Bill would come into force by 2004.*
- 815.** *In its recent communications, the Government recalls the history of the discussions on public officials' basic labour rights in the Tripartite Commission. The Government explains that a new Bill was drafted by the Ministry of Labour to ensure these basic rights to public officials. The Committee notes that the Bill does not allow public officials of certain areas, such as police officers and firefighters, to join unions nor, according to the Government, will public officials at Grade 5 or higher be covered by the law (a category which according to the Government covers from 30,000 to 60,000 workers). The Bill also restricts the effects of collective agreements on matters decided by law and budget and the right to collective action of public officials. Full-time union officials under the Bill will have to take unpaid leave to carry out their union activities. Due to the strong opposition from the Korea Federation of Government Employees' Union, which also wanted the right to collective action to be legalized, the Government had not been able to submit the Bill in October 2003 as it had planned, but it was striving to achieve social consensus with a view to the Bill's adoption in the shortest possible time.*
- 816.** *The Committee would recall in this respect that public servants should, like all other workers, without distinction whatsoever, have the right to form and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 213]. As regards public servants at Grade 5 or higher, the Committee recalls that it is not necessarily incompatible with freedom of association principles to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirements are met: first, that such workers have the right to form their own associations to defend their interests and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership. In these circumstances, the Committee considers that the total exclusion from the legislation of public servants at Grade 5 or higher is a violation of their fundamental right to organize.*

- 817.** *Furthermore, while exclusions from the right to organize may be permitted for police and armed forces, the Committee considers that the right of firefighters to form and join organizations of their own choosing should also be guaranteed. As regards the right to collective action, the Committee recalls that the right to strike may 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]. The Committee does acknowledge that firefighters may be considered as workers providing an essential service for the purposes of determining their right to collective action.*
- 818.** *As regards the provision in the Bill that states that all trade union activity by full-time union officials will be treated as unpaid leave, the Committee considers that it may be more appropriate to leave such matters for consultation between the competent minimum organizing entity and the union concerned. Finally, given that the Committee has not yet been provided with the actual draft text of the Public Officials' Trade Union Bill, the Committee would request the Government to confirm that the Bill enables public servants to establish more than one union at the various levels, should they so desire.*
- 819.** *Despite the clear efforts on the part of the Government to resolve this issue, the Committee notes with concern that the right to organize of public servants has yet to be consecrated in law. It urges the Government to take the necessary measures in the very near future so as to ensure that all public servants fully enjoy the right to establish and join trade union organizations of their own choosing, bearing in mind the abovementioned principles, and requests the Government to keep it informed of the progress made in this regard.*
- 820.** *Regarding the issue of the **legalization of trade union pluralism at the enterprise level**, the Committee notes the Government's indication of the social partners' views on this question and the recommendations of the Research Committee that once multiple unions are introduced at the enterprise level, labour and management should autonomously unify bargaining channels. If they fail to do so, the bargaining representative should be determined either on the basis of majority representation (the union which represents the majority of unionists) or through proportional representation of all the unions on a bargaining team. As soon as the discussion in the Tripartite Commission on these recommendations has been concluded, the Government plans to submit a bill based on the outcome of these discussions to the National Assembly for adoption.*
- 821.** *While noting the Government's reiteration that the Trade Union and Labour Relations Adjustment Act (TULRAA) provides for the legalization of trade union pluralism in 2007, on the condition that measures to unify bargaining channels have been developed, the Committee recalls that it has been calling for the legalization of trade union pluralism at the enterprise level ever since its first examination of this case and that it has urged the Government to speed up this process ever since the decision was taken in 2001 to delay the legalization of enterprise trade union pluralism until 2007. The Committee therefore urges the Government to take rapid steps for the legalization of trade union pluralism at the enterprise level, in full consultation with all social partners concerned, so as to guarantee at all levels the right of workers to establish and join the organization of their own choosing. It requests the Government to keep it informed of the progress made in this regard.*
- 822.** *As regards the **prohibition of payment of wages by employers to full-time union official** (currently provided in the TULRAA, but the enforcement of which has been postponed until 2007) the Committee notes the Government's indication of the views of the social partners on this matter and the proposal made by the Research Committee that the law should stipulate the number of full-time unionists whose wages can be provided by employers,*

punishing the payment of wages to if it is made to any more than that number. The Government asserts, however, that legislating this matter is inevitable as unions often take for granted that employers will provide wages to full-time unionists and even force employers to do so.

- 823.** *The Committee recalls its previous conclusions that such matters should not be subject to legislative interference. While mindful of the concerns raised by the Government relating to excessive pressure that might be brought to bear on employers to pay the wages of full-time union officials within an environment of multiple trade unions, the Committee believes that permitting this matter to be a subject for negotiations between the parties, coupled with any reasonable safeguards suggested by the Research Committee in this respect, should be adequate to address these concerns while ensuring respect for the free and voluntary nature of collective bargaining. The Committee trusts that the Government will bear in mind these principles when promoting any legislative changes in this respect and requests the Government to keep it informed of the progress made in this regard.*
- 824.** *As regards the **scope of essential public services** where the right to strike may be prohibited (section 71(2) of the TULRAA), the Committee notes the Government's explanation that, while the services listed would appear to be larger in scope than the definition set out by the ILO, this is due to: the difficulty that exists in maintaining a service to protect public interests; the strict restraint placed on striker replacements; and the fact that unions often do not use strike action as a measure of last resort. The Committee further notes the Government's indication of the difficulties that would be experienced by the public in the event of strikes in the oil sector, the railroad and intercity rail and the Bank of Korea. Nevertheless, the Government has indicated that it tries to be cautious in enforcing compulsory arbitration and refers strikes only after judging the extent of the public interest infringed and whether efforts had been made to provide a minimum service. As a result, only one case was referred to compulsory arbitration in 2003.*
- 825.** *Taking this into account, the Research Committee has proposed that compulsory arbitration be abolished in essential public services and that the law should provide instead for the maintenance of a minimum service during strikes. The Government has indicated its plan to promote legislation, based on discussions at the Tripartite Commission, in an attempt to enlarge the scope of trade unions' right to industrial action, while setting up a countermeasure to protect public interests. In this respect, the Committee notes from the report of the Research Committee that it proposes to lift the restriction on striker replacements for public interest services, with a slightly expanded definition of these services.*
- 826.** *While noting with interest the Government's indication that it is planning to enlarge the scope of trade unions' rights to industrial action, the Committee wishes to recall that the hiring of workers to replace striking workers in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association. Moreover, the Committee has already considered that measures taken to mobilize workers at the time of disputes in transport companies and railways are such as to restrict these workers' right to strike as a means of defending their occupational and economic interests [see **Digest**, op. cit., paras. 570 and 575].*
- 827.** *Recalling its previous conclusions that railroad services, intercity rail and the petroleum sector do not constitute essential services in the strict sense of the term, the Committee trusts that the abovementioned principles will be borne in mind when amending the legislation in respect of compulsory arbitration and when considering permitting the use of*

striker replacements in public interest services. The Committee requests the Government to keep it informed of the progress made in this regard.

- 828.** *The Committee notes the explanation given by the Government concerning the notification requirement for third-party intervention in collective bargaining and industrial disputes (section 40 of the TULRAA) and the indication that no union or employer has been punished for such a violation under section 89(1). The Committee further notes the proposal of the Research Committee that the notification requirement and the penal provision be abolished and the Government's indication that, based on the results of discussions at the Tripartite Commission, it plans to legislate an act that recognizes the freedom of union activities and protects employers' rights to operate their businesses and manage their facilities. The Committee again requests the Government to take the necessary measures in the near future to repeal the notification requirement for third-party intervention in collective bargaining or industrial disputes (section 40) and the corresponding penalties (section 89(1)) and requests the Government to keep it informed of the progress made in this regard.*
- 829.** *As regards the denial of dismissed and unemployed workers from keeping their union membership and the ineligibility of non-union members to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA), the Committee notes the proposal made by the Research Committee that dismissed and unemployed workers should be allowed to become members of non-enterprise unions, such as industry-level or regional trade unions, echoing the tripartite agreement of 1998. Recalling its previous conclusions in this respect, the Committee once again urges the Government to repeal these provisions, as recommended, and to ensure that membership in enterprise-level unions is not limited in respect of dismissed persons until their final appeal has been heard and that candidates who had previously been employed in the occupation concerned may be eligible for trade union office and a reasonable proportion of the officers of an organization may be exempt from the occupational requirement [see **Digest**, op. cit., para. 371]. The Committee requests the Government to keep it informed of the progress made in this regard.*
- 830.** *As regards the term "obstruction of business" under section 314 of the Criminal Code, the Committee takes due note of the Government's concern that the Committee may have misunderstood the Korean legal system. The Government states that this section punishes the act of refusing to work, disguised as industrial action, but is not aimed at regulating illegal industrial action itself. The Government also refers to the punishment of acts that obstruct non-unionists and replacement workers from working or that force other unionists to take part in industrial action. Thus, according to the Government, obstruction of business applies to cases where workers collectively refuse to work and this work is stopped by collective and coercive means. The Government further raises the concern that a prolonged period of such action may lead to bankruptcy. In the Government's opinion, obstruction of business is aimed not at unfairly limiting workers' right to collective action, but at creating a level playing field for both workers and employers.*
- 831.** *The Government adds that this provision has been applied mostly in cases involving violence, the prevention of unionists from returning to work or the occupation of workplaces. The Government thus considers that the obstruction of business provision merely protects against the abusive exercise of the right to strike and cannot be regarded as a measure against freedom of association. Finally, the Government states that it will minimize the numbers of trade unionists arrested, even in the event of an illegal industrial action, if it is a violence-free action, and it will cautiously interpret and apply the obstruction of business charges.*
- 832.** *In its previous examination of this case, the Committee noted with interest the Government's general indication that it would establish a practice of investigation without*

detention for workers who violated current labour laws, unless they committed an act of violence or destruction. The Committee considered this statement of paramount importance, particularly in a context where certain basic trade union rights had yet to be recognized for certain categories of workers and where the notion of a legal strike had been seen as restricted to a context of voluntary bargaining between labour and management for maintaining and improving working conditions [see 331st Report, para. 348].

- 833.** *In its latest communication, the Government states that 28 workers were arrested in 2003 for obstruction of business during illegal strikes, without direct use of violence; 27 of these workers were released by withdrawal of arrest or bail or being sentenced to a light fine. In addition, 137 workers were arrested for violent acts in 2003 and most of these have been released with the exception of those who were arrested for violent demonstrations and assemblies, such as those at a union rally on 9 November 2003.*
- 834.** *The Committee must once again recall that it considers the legal definition of “obstruction of business” so wide as to encompass practically all activities related to strikes and that the charge of obstruction of business carries extremely heavy penalties (maximum sentence of five-years’ imprisonment and/or a fine of 15 million won). While taking due note of the Government’s indication that it will apply and interpret this provision cautiously but that it considers it necessary to the creation of a level playing field, the Committee is of the opinion that section 314 as drafted and applied over the years has given rise to the punishment of a variety of acts relating to collective action, even without any implication of violence, with significant prison terms.*
- 835.** *The Committee, therefore, once again emphasizes that it does not consider the situation created by the obstruction of business provision to be conducive to a stable and harmonious industrial relations system and requests the Government to bring section 314 of the Criminal Code in line with freedom of association principles so as to ensure that non-violent industrial action may not be penalized under this provision. The Committee requests the Government to rectify the situation of any workers who may have been penalized under this provision for non-violent industrial action. It also requests the Government to provide further details, including any court judgements, on the 28 cases of workers arrested for obstruction of business in 2003, despite the absence of any violent acts, so that it may obtain a fuller understanding of the application of this provision.*

Factual issues

- 836.** *The Committee recalls that the factual issues in this case concern the arrest and detention of Mr. Kwon Young-kil, former president of the KCTU, and the dismissal of leaders and members of the Korean Association of Government Employees’ Works Councils (KAGEWC).*
- 837.** *The Committee notes the information provided by the Government in respect of the appeal process of Kwon Young-kil, former president of the KCTU. Given that the Government had indicated that the decision of the appeals court was scheduled to be made at the end of April 2004, the Committee requests the Government to provide information on the outcome of his appeal, as well as a copy of the court judgement.*
- 838.** *As regards the dismissals of 12 people connected to the KAGEWC, the Committee takes due note of the illegal activities that the Government states these individuals have committed, including the attempt to establish a trade union, the holding of illegal outdoor assemblies, the break-in at the offices of the Minister of Government and Home Affairs (MOGAHA) and consequent damage, the illegal decision to go on a general strike and the taking of annual leave and absences, without permission, so as to wage that strike. The*

Government states that, in order to restore order and discipline in the public service, 12 public officials were subject to punishment according to the related law, followed by a decision by the disciplinary committee. Four of these were reinstated following a request for examination. One worker, Oh Myeong-nam, has received his final dismissal sentence from the Supreme Court. The other cases are pending administrative litigation and request for examination.

- 839.** *The Committee deeply regrets that a number of the difficulties faced by these 12 public servants appear to be due to the absence of legislation ensuring their basic rights of freedom of association, in particular the right to form and join organizations of one's own choosing, respect for which has been called for by the Committee ever since its first examination of this case. In this respect, the Committee refers to its conclusions in paragraphs 814-819 above. The Committee requests the Government to provide information on the outcome of the administrative litigation and requests for examination under way, as well as a copy of the Supreme Court judgement in the case of Oh Myeong-nam.*

* * *

- 840.** *The Committee must observe with regret that, while the Government has, over recent years, been expressing its willingness to resolve the pending issues at hand in this case, no progress has actually been made in this respect since the adoption of the TULRAA. While many of the remaining issues are admittedly complex and do not lend themselves to simple resolution, the Committee is convinced that the quicker a solution can be found to these matters which is acceptable to the parties concerned and in conformity with internationally accepted freedom of association principles, the better it will be for the overall industrial relations climate in the country. The Committee therefore urges the Government to take all possible steps to accelerate this process, while ensuring full consultation throughout with all the social partners concerned, including those not represented on the Tripartite Commission.*

The Committee's recommendations

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

(a) As regards the legislative aspects of this case, the Committee requests the Government:

- (i) to confirm that the Public Officials' Trade Union Bill permits the possibility of trade union pluralism and to take the necessary measures in the very near future so as to ensure that all public servants fully enjoy the right to establish and join trade union organizations of their own choosing;*
- (ii) to take rapid steps for the legalization of trade union pluralism, in full consultation with all social partners concerned, so as to guarantee at all levels the right of workers to establish and join the organization of their own choosing;*
- (iii) to enable workers and employers to conduct free and voluntary negotiations in respect of the question of payment of wages by employers to full-time union officials;*

- (iv) *to amend the list of essential public services in section 71(2) of the Trade Union and Labour Relations Amendment Act (TULRAA) so that the right to strike may be restricted only in essential services in the strict sense of the term;*
- (v) *to repeal the notification requirement (section 40) and the penalties for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes (section 89(1) of the TULRAA);*
- (vi) *to repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA);*
- (vii) *to bring section 314 of the Penal Code (obstruction of business) in line with freedom of association principles and to rectify the situation of any workers who may have been penalized under this provision for non-violent industrial action and to provide further details, including any court judgements, on the 28 cases of workers arrested for obstruction of business in 2003, despite the absence of violent acts;*
- (viii) *to keep it informed of the progress made in respect of all of the abovementioned matters.*
- (b) *As regards the factual aspects of this case:*
- (i) *the Committee requests the Government to provide information on the outcome of the appeal made by Kwon Young-kil, former president of the KCTU, and to transmit a copy of the court judgement in this case;*
- (ii) *noting that the dismissal of 12 public servants connected to the Korean Association of Government Employees' Works Councils was in large part due to the absence of legislation ensuring their basic rights of freedom of association and that four of the dismissed have already been reinstated, the Committee requests the Government to provide information on the outcome of the administrative litigation and requests for examinations under way, as well as a copy of the Supreme Court judgement in the case of Oh Myeong-nam.*

CASE NO. 2138

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

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

- **the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL)**
and
— **the International Confederation of Free Trade Unions (ICFTU)**

Allegations: Attempts to obstruct registration of a trade union at the COSMAG company through pressure by the company on workers to make them withdraw from the union in order to prevent its registration on grounds of insufficient membership; refusal to convene an arbitration tribunal in the case of the Hotel Chalet Suisse; legislation restricting trade union rights; criminal proceedings against 11 trade union officials who had prompted a work stoppage in the social security sector

- 842.** The Committee examined this case at its meetings in March 2002 and June 2003, and on both those occasions submitted an interim report [see the Committee's 327th Report, paras. 525-547; and 331st Report, paras. 396-415, approved by the Governing Body at its 283rd and 287th Sessions in March 2002 and June 2003, respectively].
- 843.** The Government sent new observations in communications dated 16 September 2003 and 13 April 2004.
- 844.** Ecuador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 845.** When it examined the case at its meeting in June 2003, the Committee made the following recommendations which remained pending [see 331st Report, para. 415]:
- (a) The Committee requests the Government to send the report by the labour inspectorate concerning the alleged pressure by the COSMAG company for workers to renounce union membership, thus preventing the registration of the trade union owing to it not having the legal minimum number of members.
 - (b) The Committee requests the Government to send the up-to-date text of the Promotion of Investment and Citizen Participation Act.

[According to the complainants, sections 190 and 191 allow an employer to negotiate a collective agreement with workers without any requirement that the workers in question be unionized.]

- (c) As concerns the allegations objecting to article 94 of the Economic Transformation Act which provides for the "standardization of salaries", the Committee requests the complainant organizations to indicate specifically the manner in which the application of this provision violates trade union rights. The Committee also requests the Government to communicate its position in this respect in greater detail.
- (d) The Committee once again requests the Government to send its observations concerning the allegations relating to the Hotel Chalet Suisse.

[The allegations refer to failure of the administrative authority to set up a conciliation and arbitration tribunal in response to a request by the trade union organization ("works council") representing workers at the Hotel Chalet Suisse following presentation of a collective agreement.]

- (e) The Committee requests the Government to indicate whether the 11 trade union officials of the IESS (Roberto Checa, Ana Herrera, Marlene Cartagena, José Ortiz, Gloria Correa, Wilson Salguero, Lenin Villalba, Bolívar Cruz Vasquez, Judich Chuquer, Angel López and Adolfo Nieto) have had criminal proceedings brought against them and, if so, to communicate the charges and specific facts of which they have been accused. The Committee also requests the Government to send it any decisions or rulings that have been handed down in this respect.

B. New reply from the Government

- 846.** In its communications of 16 September 2003 and 13 April 2004, the Government states that the workers of the COSMAG company expressly abandoned their intention to form a union in 2000. Moreover, there were voluntary termination agreements (ending the employment relationship by agreement between the parties), and there is no knowledge of these former COSMAG workers, either as a group or individually, applying to administrative or judicial authorities to enforce any right or to allege the violation of any right. The Ministry of Labour has confined itself to pursuing the administrative procedure for registration of the union, and in this context it noted that the union lacked the minimum membership required, and some of the members even had probationary contracts, which meant that they did not remain in the company so as to follow up their claim to form a union. As is noted in the inspection report, four of the workers who previously wished to set up a union were interviewed, and the employer was informed in their presence of the right of workers to freedom of association and the employer's obligation to refrain from interfering in trade union affairs, and that if in future attempts were made to do this, things would proceed according to the law. The Government sent a report by the labour inspectorate, a statement signed by the company manager (both in March 2003), and copies of six termination documents and four probationary contracts.
- 847.** As regards the allegations regarding the Hotel Chalet Suisse, the Government states that the authority has confined itself in this case solely to applying the law, and relations between workers and employers are defined by the contractual provisions established in accordance with the law. It was noted that the workers involved in the internal dispute have lost any legal right to act as representatives among themselves, and the majority have clearly indicated to the labour authority that they do not wish to take collective action. The reasons of the party that initiated the administrative action are not known, since it did not appear before the labour authority to set out its case, as indicated in the statement by the Quito Labour Department dated 14 September 2000; the Ministry cannot pursue the action as there is an express application to revoke the collective claim, with the signatures required, and this is not opposed. The Government attaches a communication dated August 2000 signed by the workers of Hotel Chalet Suisse, stating that the collective claim was submitted without any consultations with them, and demanding that it be set aside; as well as a statement by the General Department of Labour dated 14 September 2000, which notes that those who presented the collective claim did not appear, although they were invited to do so and to attend a meeting on the abovementioned communication of August 2000.
- 848.** With regard to section 94 of the Economic Transformation Act, the Government states that this legislation does not violate workers' fundamental rights, and its sole purpose is to standardize the various wage components, since over a number of years, especially over the last two decades, different general forms of remuneration have been established, in some cases only at the institutional or local level, without affecting basic pay; the aim was to standardize these different components with wages to create a single wage component. This would also make it possible to rationalize public spending especially with regard to the payment of public servants' salaries, without this resulting in any loss of value. This consolidation in no way restricted bargaining or any wage increases that might be won in

the private sector by collective bargaining. Section 94 of the Act in question reads as follows: “Standardization of salaries. As from the entry into force of this Act, the amounts corresponding to the fifteenth monthly salary and the sixteenth salary will be added to the remuneration received by workers in the country’s private sector; as a result, said wage components will no longer be paid in the private sector.”

- 849.** The Government has sent the ILO a copy of the Promotion of Investment and Citizen Participation Act, and states that it does not violate any principles relating to workers’ rights. Section 190 of the Act replaces former section 224 of the Labour Code with the following:

Section 224. A collective contract or agreement is an agreement between one or more employers and one or more legally constituted workers’ associations, as the case may be, for the purpose of establishing the conditions or basic principles in accordance with which subsequent individual employment contracts must be drawn up.

Section 191 of the Act repeals section 225 of the Labour Code, which stated:

Section 225. An employer who hires 15 or more workers belonging to an association shall be required to conclude a collective agreement when that association requests it. Where there is a works council, its officers will be required to represent the workers in the collective agreement. Where there is no such council, representation shall be determined by decision of the contracting association in accordance with its by-laws.

The Government cites a ruling by the Constitutional Court that section 190 was unconstitutional.

C. The Committee’s conclusions

- 850.** *The Committee notes that the present case concerns: (1) the alleged pressure by the COSMAG company in 2000 to force workers to leave the union, thus preventing registration of the union under formation on the grounds that it lacked the minimum number of members; (2) articles 190 and 191 of the Promotion of Investment and Citizen Participation Act which, according to the complainants, allow collective bargaining with non-unionized workers; (3) article 94 of the Economic Transformation Act, which allegedly restricted salary negotiations.*

- 851.** *As regards the alleged pressure by the COSMAG company in 2000 to force workers to leave the union, thus preventing registration of the newly formed union on the grounds that it lacked the legal minimum number of members, the Committee notes that according to the Government: (1) no worker has taken legal action on this matter; (2) some workers had a probationary contract and therefore did not remain with the company in order to follow up their request to form a union; (3) four of the workers who were interested in organizing remain with the company. According to an inspection report (March 2003), the current manager stated that the majority of the unionized workers had been tricked by the supervisor, who made them sign blank sheets which were later put together for the purpose of establishing the union, and that the company has never opposed free unionization. In a report by the labour inspectorate (March 2003), the following is found in the conclusions:*

According to Mr. Mayor José Cano (currently Managing Director of the company), the workers who formed an organization decided to leave the company and only four of them were left, so it is obvious that the organization was not legally registered because membership fell below the legal minimum. However, it is hard to believe that having got as far as announcing that they were forming a trade union, they suddenly resigned, and it is not possible to know what actually happened since the workers in question have now left the company and there exist termination statements duly legalized, in accordance with section 592 of the Labour Code.

The documents supplied by the Government indicate that six workers ended their employment with the company by mutual agreement (most of them in December 2000) and four others had probationary contracts dated 1995 (two), 1998 (one) and 2000 (one).

- 852.** *Under these circumstances, taking into account the fact that the version of events given by the new manager was not accepted by the labour inspectorate, the Committee cannot rule out the possibility that in 2000 the new trade union had ceased to have the legal minimum membership for registration as a result of anti-union practices. As the allegations go back to 2000, it might be difficult to reinstate the dismissed workers, especially given the labour inspection report which appears to indicate that the whereabouts of those concerned are not known. Nevertheless, the Committee requests the Government to ensure that no person is prejudiced in his or her employment by reason of their trade union membership or legitimate trade union activities, whether past or present. It recalls that where a government has undertaken to ensure that the free exercise of trade union rights shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should when necessary be accompanied by measures which include the protection of workers against anti-union discrimination in their employment. The Committee therefore requests the Government to undertake all necessary efforts to locate the workers in question, so that they may be reinstated in the company or, if that is impossible, they receive adequate compensation.*
- 853.** *As regards the allegation regarding the Hotel Chalet Suisse (failure on the part of the administrative authority to set up a conciliation and arbitration tribunal at the request of the union following presentation of a collective agreement), the Committee notes the Government's statement and the documents it has provided, according to which: (1) the workers in question were not consulted on the request to form a trade union, and asked to have the request or claim set aside; (2) the signatories to the request did not appear before the administrative authority when invited to do so in 2002 in connection with the application to set aside the request.*
- 854.** *As regards the allegation concerning section 94 of the Economic Transformation Act (the gist of which is given by the Government in its reply), the Committee notes the Government's statement to the effect that the provisions in question do not restrict negotiation of wage increases, and are intended only to standardize various elements of pay. It is the Committee's understanding that this provision is intended to simplify the way in which workers' pay is set, and that while it does not rule out wage increases, it does appear to prohibit additional increases based on special criteria.*
- 855.** *As regards the allegation regarding sections 190 and 191 of the Promotion of Investment and Citizen Participation Act (which, according to the complainants, allow collective bargaining with non-unionized workers), the text of which is given in the Government's reply, the Committee notes that the Constitutional Court has found section 190 unconstitutional on the grounds that it violates the constitutional guarantee of collective bargaining and Convention No. 98, and that section 191 simply repeals section 225 of the Labour Code. Consequently, the Committee requests the Government to amend section 190 so as to bring it into conformity with Conventions Nos. 87 and 98, ratified by Ecuador and requests the Government to keep it informed in this respect.*

The Committee's recommendations

- 856.** *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 ensure that no person shall be prejudiced in his or her employment by reason of their trade union*

membership or legitimate trade union activities, whether past or present. The Committee therefore requests the Government to undertake all necessary efforts to locate the workers who have been victims of acts of discrimination, so that they may be reinstated in the COSMAG company or, if that is impossible, that they receive adequate compensation.

- (b) The Committee requests the Government to amend section 190 of the Promotion of Investment and Citizen Participation Act (which has been ruled unconstitutional by the Constitutional Court) so as to bring it into conformity with Conventions Nos. 87 and 98, ratified by Ecuador and requests the Government to keep it informed in this respect.*

CASE NO. 2330

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

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

- **the Association of Secondary Teachers of Honduras (COPEMH) and**
- **the Professional Association of School Teachers of Honduras (COPRUMH),
supported by Education International (EI)**

Allegations: Prohibition of teachers' organizations from holding meetings and demonstrations classifying such activities as offences: imposition of fines for alleged illegal acts by the teachers' organizations; application by the Public Prosecutor's Office for suspension of the legal personality of two teachers' organizations; suspension of the deduction of trade union dues of members of the teachers' organizations thus impairing members' social protection; prosecution of 12 trade union officials on charges of arson and damage to property, and of one of those leaders for alleged slander, libel and defamation; refusal by the authorities to recognize the right of the teachers' organizations to represent their members; violation of collective bargaining and the Honduran Teachers' Statute in salary matters

- 857.** The complaint is set out in a joint letter from the Association of Secondary Teachers of Honduras (COPEMH) and the Professional Association of School Teachers of Honduras (COPRUMH) of 9 March 2004. In a letter of 22 March 2004, Education International (EI) supported the complaint. The Government sent its observations in a letter of 16 August 2004.

858. Honduras 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

859. In their letter of 9 March 2004, the Association of Secondary Teachers of Honduras (COPEMH) (affiliated to the United Confederation of Workers of Honduras, which is in turn a member of the Inter-American Regional Organization of Workers, to the International Confederation of Free Trade Unions and Education International) and the Professional Association of School Teachers of Honduras (COPRUMH) (a member of Education International) allege that the Secretariat of State in the Ministry of Education and other state institutions initiated a series of acts of repression, discrimination and interference in trade union affairs in order to circumvent and eliminate the Honduran Teachers' Statute which is the legal instrument equivalent to a collective agreement, and the product of many years of struggle, contained in Decree-Law No. 136-97 of 11 November 1997 and approved by the Honduran National Congress.

860. These acts of repression, discrimination and interference in trade union affairs consist of:

- (a) Prohibition of COPEMH and COPRUMH and their president from organizing trade union activities and events, such as meetings and demonstrations, classifying such activities as a criminal offence. This prohibition was ordered by the Secretary of State for Education in a resolution of 22 August 2002.
- (b) Imposition of economic sanctions (fines) on the said organizations by the Secretariat of State in the Ministry of Education without any legal authority. This was done by summons dated 9 October 2002, requiring the president of COPEMH to pay to the General Treasury of the Republic within 24 hours a fine of 500 lempiras in respect of alleged illegal acts committed by the organization. Likewise, by summons dated 28 August 2002 COPEMH and COPRUMH were required through their presidents to pay to the General Treasury of the Republic within 24 hours a fine of 1,000 lempiras, which fine was imposed according to the Secretariat for renewed acts in contravention of the resolution of 22 August 2002. All of this is a manoeuvre to force the organization and its members to conform to government guidelines and policies, in contempt and in violation of the right freely to organize activities and formulate a programme of action set out in ILO Convention No. 87, and also contained and developed in the Honduran Teachers' Statute and the constitutions of the teachers' associations.
- (c) An application to suspend the legal personality submitted by the Public Prosecutor's Office to the labour court of first instance, announced on 17 May 2003 in the national newspapers.
- (d) Suspension of the deduction of trade union dues of members of COPEMH and COPRUMH. Having failed to achieve the subjection of the teachers' organizations to its policies, the Secretary of State for Education informed them in a letter, ref: 027-SE-03 of 7 January 2003, that with effect from December 2002, the Secretariat of State for Education would not make deductions from teachers' salaries for their contributions or dues to their organization (trade union dues). This is in breach of article 10, paragraph 2, of the Honduran Teachers' Statute and article 20, paragraph 1, of the General Teachers' Regulations. The deductions had been made from the inception of both organizations up to the date when the Minister notified that he would no longer do so. Thus, the life insurance policy was suspended, as a result of which the teachers were left without protection. The hospital health insurance

policy was suspended, as a result of which teachers and their dependents are not entitled to the medical care provided by that insurance. The medical and funeral expenses insurance was suspended. The survivors insurance for survivors of pensioners was suspended. Personal loans to members were suspended, forcing them to resort to moneylenders to the detriment of the family budget.

- (e) Prosecution of officials and members of the organization. In October 2002 several of the organization's officials were prosecuted: Professor Eulogio Chávez Doblado (president at that time), Carlos Alberto Murillo, Andrés Martínez, Ricardo Pastrana, Joel Núñez Medina, Nelson Edgardo Cálix (president of the organization for the period 2004-05), Carlos Alberto Lanza and Luis Alonzo Sosa, of COPEMH and Professors Jorge Alberto Franco (president of the organization at that time), German Yobany Hernández, Fátima Mercedes Andino, Carlos Roberto Leal and Angel Octavio Martínez (president of the organization for the period 2004-05). They were indicted by the Public Prosecutor's Office in the Tegucigalpa Lower Criminal Court, charged with arson and damage to property belonging to the State of Honduras and offences committed by individuals who exceeded their duties in the exercise of the rights guaranteed them under the Constitution. However, as they were innocent, they were acquitted by the Court.

861. Subsequently, the Minister of Education, Mr. Carlos Avila Molina, instituted proceedings against the current president of the organization, Professor Nelson Edgardo Cálix, accusing him of slander, libel and defamation for denouncing acts of interference by the Secretariat of State for Education to control the teachers' organization and seeking to install candidates supportive of the Government. The Court acquitted Professor Nelson Edgardo Cálix of the offences in its judgement of 21 October 2003, but the Minister of Education lodged an appeal which is to be heard by the Supreme Court of Justice, with the risk that he may be imprisoned and thus prevented from carrying out his duties as president of the organization.

862. The complainant organizations add that their right to represent their members and provide them with legal defence is being impeded and denied. On 10 December 2002, these organizations applied for an injunction against the State of Honduras seeking its compliance with the economic arrangements set out in articles 46-53 of the Honduran Teachers' Statute and articles 161 and 162 of the General Regulations of the Statute and against the substitution of those arrangements by an act concluded between the State and some of the teachers' organizations on 5 July 2002. In this case, the Administrative Disputes Court and the Administrative Disputes Appeal Court in that city, on application by the Public Prosecutor's Office, in January 2004, denied the right of members under the Constitution to be represented by the organization. At the present time an appeal for protection of constitutional rights is pending before the Supreme Court of Justice against the decisions that deny the organization's right to represent its members.

863. In addition, the complainants continue, the right of collective bargaining has been denied. From 1 January 2002, the salaries of members of the complainant organizations were paid in accordance with the act (contract) signed by the government authorities and other teachers' organizations on 5 July 2002, totally ignoring the economic arrangements established in the Honduran Teachers' Statute. In January 2004, Decree No. 220-2003 of 19 December 2003, published in the official journal of 12 January 2004 came into force. It contains the law on the restructuring of the central government salary system which abolishes the Honduran Teachers' Statute, at the same time violating and diminishing the agreement of 5 July 2002 between the State and the other trade unions. These actions are in violation of Article 4 of Convention No. 98.

B. The Government's reply

- 864.** In its communication of 16 August 2004, the Government states with respect to an alleged prohibition by the Secretariat for Education of the teachers' associations (COPEMH and COPRUMH) from organizing trade union activities and events (meetings, demonstrations) that on 22 August 2002 the Secretariat for Education issued a resolution requiring the teachers' organizations to "cease their acts of disobedience and calls to secondary education teachers to disobedience, ill-timed suspension of work and walkouts, participation in acts of contempt and breach of public order and actions which affect the free movement of persons, goods and services, either by inciting or participating in them, and also to cease making public pronouncements and statements which offend and demean the image of the institution and its representatives". This resolution was based specifically on Article 8, paragraph 1, of Convention No. 87 which states: "In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land." The latter is precisely the purpose of the resolution, i.e. that the exercise of the principle of trade union independence is circumscribed by the legal framework ruling in the country. What happened overstepped the bounds of the country's legal framework when members of the teachers' associations engaged in violent demonstrations using clubs, homemade bombs (molotov cocktails), stones, burning tyres, setting fire to a vehicle, causing damage to state property (destruction of the railings surrounding the National Congress Building), blocking roads, preventing the free movement established in the Constitution of the Republic. In no way and at no point was there a ban on exercising the principle of trade union independence nor did the State engage in "acts of interference" as stated in the complaint. In this respect, it should be clearly understood that the concept of act of interference contemplated in paragraph 2, of Article 2, of Convention No. 98 in no way covers the matters to which the complaint refers. The decision in question led to the teachers' association seeking to have it nullified, which was declared inadmissible.
- 865.** As to the alleged imposition of economic sanctions (fines) on the teachers' organizations by the Secretariat of Education without allegedly any legal provision to allow that, the Government states that the fines mentioned by the complainants were ordered by virtue of the illegal acts committed by the trade union organizations mentioned above. The legal basis was article 500, paragraph 2(a), of the Labour Code which states that "Any violation of the provisions of this Title (Freedom of Labour) shall be subject to the following sanctions: 2(a) fines of up to five hundred lempiras (Lps 500.00) for the first offence; ...". It is not true that the fine was imposed to "force the organization and its members to conform to government guidelines and policies, in contempt and in violation of the right freely to organize activities and formulate a programme of action set out in ILO Convention No. 87". The fines were imposed for violent acts and ill-timed strikes which constituted a breach of the peace.
- 866.** As regards the application to the Court for the suspension of the legal personality of the teachers' organizations, COPEMH and COPRUMH, by the Public Prosecutor's Office, the Government says that this was a case of a legitimate act by the Public Prosecutor's Office. The action was not taken on grounds of repression of the organizations in question for supposedly demanding compliance with the Honduras Teachers' Statute. The application for suspension was due to the unreasonable and violent behaviour of the two teachers' organizations which chose to unleash public demonstrations at national level, involving roadblocks, occupation of streets and public buildings, setting fire to vehicles, looting and destruction of school furniture, expression of insults through the media, homemade incendiary bombs (molotov cocktails), use of clubs, stones and bricks, all of which caused injury to members of the public and the police, and, of course, suspension at national level of their teaching duties, leaving the entire school population without education. At the root of all of this was the agreement concluded with the Government through the bipartite

committee consisting of representatives of the Administration and four teachers' organizations. Under this agreement, the Act of 5 July 2002 was concluded for the application of the Honduran Teachers' Statute to teachers' pay claims and the times at which increases would occur. This Act was approved by Legislative Decree No. 347-2002, published in the official journal on 4 December 2002. This agreement was rejected in the manner described above by the leadership of the two teachers' associations, COPEMH and COPRUMH. Even when their members received the benefit of the salary increase, none of them returned that payment, nor did they make any claim or reservation in respect of the pay received, thereby consenting to the agreements from which they derived benefits. Faced with disorder and anarchy at national level, where there was a total disruption of public order, the Public Prosecutor's Office took action, seeking the suspension of legal personality.

- 867.** As regards the allegation of suspension by the Secretariat for Education of the deduction of the contribution paid by members of COPEMH and COPRUMH, the Government states that the decision by the Secretariat for Education not to make deductions of contributions of members of COPEMH and COPRUMH was purely due to economic reasons. On the one hand, there was no legal requirement for the Secretariat to make such deductions, and on the other, the operation involved very high administrative costs. It is not true that the Secretariat for Education was in breach of paragraph 2, of article 10, of the Honduran Teachers' Statute, since this provision does not require the Secretariat of State to make such deductions. The actual text of the provision states as follows: "Make voluntary, legal and judicial deductions from the teacher's salary and pay them promptly to the corresponding institutions". In addition, article 30 of the constitution of the Association of Secondary Teachers of Honduras (COPEMH) states in paragraph (d): "Demand and collect the agreed ordinary and extraordinary dues", and the constitution of the Professional Association of School Teachers of Honduras (COPRUMH), article 25, paragraph (c), provides that the duties of the organization's finance secretary include "collecting the association's income and making legally authorized payments".
- 868.** It is clear from the foregoing that the Secretariat of Education is under no obligation to deduct contributions by teachers to their respective teachers' associations and that in view of the administrative constraints to which the Secretariat of Education is subject, it was necessary to reduce its costs. Moreover, as teachers' organizations have an obligation under their respective rules to collect dues from their members, it is not clear why the non-deduction by them causes injury to their members. Appropriate legal appeals were lodged by COPEMH and COPRUMH against the decision of the Secretary of Education not to continue making the deduction of members' dues, and the litigation is in progress (the matter was settled by conciliation on 10 July 2004, as described below).
- 869.** As to the prosecution of officials and members of the teachers' associations, the Government states that in view of the acts of vandalism committed by the teachers' leaders and members, totally outside the law, the Prosecutor-General, as legal representative of the State of Honduras, indicted the leaders of the teachers' associations for wounding, arson and damage against the State of Honduras and its internal public order during the events of 24 and 25 October 2002. The towns of Tegucigalpa were witness to these lamentable events. It should be noted that the charge of slander, libel and defamation by Mr. Nelson Edgardo Cáliz against the Minister of Education, Mr. Carlos Avila Molina, was the subject of a personal action and the law which assists anyone to have access to the courts as laid down in article 82 of the Constitution of the Republic. Mr. Cáliz was the subject of a criminal indictment and the case is still in progress in the courts. It should be clearly understood that all the actions instigated against teachers' members and leaders have nothing to do with trade union activities under the principle of trade union freedom.

- 870.** As regards the complainants' allegation that supposedly "their right to represent their members and provide them with legal defence is being impeded and denied", the Government points out that the teachers' associations applied for an injunction to set aside the administrative act consisting of Legislative Decree No. 347-2002, which approves the resolution of 5 July 2002 on salary adjustments with which they did not agree. On 19 May 2003, the Administrative Disputes Court declared the application inadmissible, since it had been submitted by a person with legal capacity who was not properly represented and not authorized since neither the constitution of COPEMH nor that of COPRUMH contains any provision allowing them to act as legal representative of their members. The argument advanced by the teachers' organizations is that this decision denies "the right of members to be represented by the organization conferred by the Constitution". This argument, firstly, has nothing to do with the Secretariat of Education, since it is a decision by the judicial authority and, secondly, it is not stated which part of the decision contains this assertion.
- 871.** Concerning the alleged breach of the right of collective bargaining, the Government indicates that the complainants argue that Decree No. 220-03 of 19 December 2003, which contains the law on the restructuring of the central government salary system derogates from the regime established in the Honduran Teachers' Statute, violates and diminishes the agreement of 5 July 2002 between the State and the other trade unions. This assertion is based on Article 4 of ILO Convention No. 98 and Articles 3, 8 and 10 of ILO Convention No. 87.
- 872.** In this respect, the growth in the salary account of central government and decentralized institutions in recent years has had no relation to inflation and economic growth, limiting the ability of the Honduran State to meet, from its own resources, the needs of the most vulnerable social groups and those who live in conditions of poverty, as well as its capacity for investment.
- 873.** With respect to the foregoing, it should be noted that the law on the restructuring of the central government salary system applies to all public servants generally, without any distinction whatsoever.
- 874.** Lastly, the Government states that on 10 July 2004, the Government ended the teachers' dispute through a conciliation commission which heard the complaint by COPEMH and COPRUMH. Thus, as the parties to the dispute reached an agreement with the title "Proposed solution to the education problem", the causes underlying the dispute disappeared and the dispute was settled. The settlement document, which includes salary and remuneration clauses, and a commitment by the Government to deduct the arrears of members' dues to the complainant organizations, is attached. For their part, the organizations undertake to make up all the days lost to strikes. The settlement includes clauses on social security, training, provision of materials, improvement of building and maintenance programmes, etc. The Government also undertakes not to take any kind of reprisals against the teachers for their actions during the campaign and the teachers undertake to return to their classes immediately.

C. The Committee's conclusions

- 875.** *The Committee observes that in this complaint the complainant organizations have presented the following allegations mostly concerning 2002 and 2003 and that they are set against a background of a salary dispute in the teaching sector: ban on teachers' organizations from organizing meetings and demonstrations classifying such activities as offences; imposition of fines for alleged illegal acts by the teachers' organizations; application by the Public Prosecutor's Office for suspension of the legal personality of two teachers' organizations; suspension of the deduction of trade union dues of members of the*

teachers' organizations, thus impairing members' social protection; prosecution of 12 trade union officials, on charges of arson and damage to property (the court later acquitted them) and one of the leaders for alleged slander, libel and defamation, and refusal of the authorities to recognize the right of the teachers' organizations to represent their members. The complainant organizations also allege that the Government breached collective agreements and the Honduran Teachers' Statute by issuing Decree No. 220-2003 which came into force on January 2004 and which, according to the complainants, violates the Honduran Teachers' Statute and an act (contract) concluded by the authorities and other teachers' organizations on 5 July 2002 containing salary-related clauses.

- 876.** *As regards the last allegation, and the suspension of deduction of members' dues to the complainant organizations, the Committee notes with interest the conciliation settlement of 10 July 2004, concluded between the Government and the teachers' organizations (including the complainants in this case) which includes salary and remuneration clauses, and a commitment by the Government to deduct the arrears of members' dues to the complainant organizations. For their part, the organizations undertake to make up all the days lost to strikes. The settlement includes clauses on social security, training, provision of materials, improvement of building and maintenance programmes, etc. The Government also undertakes not to take any kind of reprisals against the teachers for their actions during the campaign and the teachers undertake to return to their classes immediately. The Committee recalls in this respect 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].*
- 877.** *As regards the allegations relating to 2002 and 2003, the Committee notes the Government's statements that: (1) in 2002 there were violent demonstrations by teachers in which members of the complainant organizations used clubs, homemade bombs (molotov cocktails), stones, destroyed public and private property and blocked roads, committing offences of injury (against members of the public and police) arson and damage to property which had nothing to do with trade union activities. In this connection, the Secretariat of Education issued a call in the form of a resolution to cease the disruption and breach of the peace and ill-timed suspension of work and walkouts and to cease making public pronouncements and statements which offended and demeaned the image of the institution and its representative; (2) fines were imposed for acts of violence and ill-timed strikes which breached the peace; (3) application for suspension of the legal personality of the organizations was a result of the acts of violence mentioned above and the suspension by teachers of their duties at national level which left the entire school population without education; (4) the prosecution of officials and members of the complainant organizations was a consequence of the abovementioned offences (the complainants pointed out that the persons in question were acquitted by the courts); the lawsuit for slander, libel and defamation committed by the president of the teachers' organization (Mr. Nelson Edgardo Cáliz) was filed by the Minister of Education as a personal action; (5) as regards the salary adjustment signed by other organizations on 5 July 2002, no legal provision authorizes the complainant organizations to engage in legal representation of their members; the salary question, as indicated, was the subject of a conciliation settlement with the participation of the complainant organizations.*
- 878.** *The Committee deplores the acts of violence which occurred arising out of the salary dispute in late 2002. The Committee recalls that trade unions should respect legal provisions which are intended to ensure the maintenance of public order; the public authorities should, for their part, refrain from any interference which would restrict the right of trade unions to organize the holding and proceedings of their meetings in full*

freedom [see **Digest**, *op. cit.*, para. 144]. The Committee observes that the conciliation settlement of 10 July 2004, signed by the complainant organizations, contains a clause on non-reprisal against teachers for their actions during the campaign (dispute). The Committee requests the Government to indicate whether by virtue of that non-reprisal clause the sanctions (fines) on the president of COPEMH and against COPEMH and COPRUMH and the application for suspension of these organizations' legal personality have been abandoned or set aside. The Committee also requests the Government to keep it informed of the result of the lawsuit by the Minister of Education against the official Nelson Edgardo Cáliz for slander, libel and defamation.

879. Finally, the Committee requests the Government to keep it informed of the result of the application for protection of constitutional rights entered by the complainant organizations against the judgements which, it is alleged, deny the right of these organizations to represent their members.

The Committee's recommendations

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

- (a) *While noting with interest the settlement reached on 10 July 2004 between the Government and the complainant organizations and in particular its clauses on salaries and deduction of trade union dues, the Committee requests the Government to indicate whether by virtue of that non-reprisal clause the sanctions (fines) on the president of COPEMH and against COPEMH and COPRUMH and the application for suspension of these organizations' legal personality have been abandoned or set aside.*
- (b) *The Committee also requests the Government to keep it informed of the result of the lawsuit by the Minister of Education against the official Nelson Edgardo Cáliz for slander, libel and defamation.*
- (c) *Finally, the Committee requests the Government to keep it informed of the result of the application for protection of constitutional rights entered by the complainant organizations against the judgements which, it is alleged, deny the right of these organizations to represent their members.*

CASE NO. 2228

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

Complaint against the Government of India presented by the Centre of Indian Trade Unions (CITU)

Allegations: The complainant alleges acts of anti-union discrimination including dismissals, the suppression of a strike by the police and refusal to negotiate in Worldwide Diamonds Manufacturers Ltd. which is situated in the EPZ

of Visakhapatnam in the state of Andhra Pradesh

- 881.** The Committee has examined this case and produced interim reports at its May-June 2003 meeting [see 331st Report, paras. 448-472, approved by the Governing Body at its 287th Session (June 2003)] and at its November 2003 meeting [see 332nd Report, paras. 730-751, approved by the Governing Body at its 288th Session (November 2003)].
- 882.** 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

- 883.** In its last examination of the case in November 2003, the Committee made the following recommendations [see 332nd Report, para. 751]:
- (a) The Committee requests the Government to take all necessary steps urgently in order to ensure that an independent and thorough investigation, with the cooperation of the complainant organization, is carried out on the following:
 - (i) The concrete facts which motivated the alleged workers' dismissals, suspensions and fines in Worldwide Diamonds Manufacturers Ltd. If it is found that these measures were by reason of workers' trade union activities, the Committee requests the Government to take all necessary steps to reinstate the dismissed workers and compensate those who were suspended or fined. The Committee requests to be kept informed in this respect.
 - (ii) The concrete facts which motivated the alleged dismissals of 14 persons during and after the strike staged at Worldwide Diamonds Manufacturers Ltd. If it is found that the dismissals were on anti-union grounds, the Committee requests the Government to take all necessary steps to have the workers reinstated without loss of pay. The Committee requests to be kept informed of developments in this respect.
 - (iii) The allegations concerning the brutal suppression of the strike, the detention of hundreds of striking workers and a trade union officer by the police, the prohibition of meetings in the complainant's local office, excessive police violence (caning and chaining of workers), and the visit of police officers to workers' homes in order to threaten them so that they return to work. The Committee requests to be kept informed of the outcome of this investigation so as to fully clarify the facts, and if the allegations are confirmed, determine responsibility, punish those responsible and prevent the repetition of such acts.
 - (b) The Committee requests the Government to undertake consultations urgently with the Minister for Heavy Industries, the District Collector and the Commissioner of Police with a view to ensuring that any assurances which might have been given to the workers of Worldwide Diamonds Manufacturers Ltd. to the effect that they would not be victimized by reason of their participation in a strike, are fully observed in practice.
 - (c) The Committee requests the Government to provide information on the actual situation with regard to negotiations in Worldwide Diamond Manufacturers Ltd., and any settlement in this respect. The Committee requests to be kept informed of developments concerning such settlement.
 - (d) The Committee requests the Government to take all necessary steps so as to ensure that the functions of Grievance Redressal Officer (GRO) are not performed by the Deputy Development Commissioner (DDC) in the EPZ of Visakhapatnam (currently the GRO and the DDC are the same person) but by another independent person or body, having the confidence of all parties and to keep it informed in this respect.

- (e) The Committee requests the Government to ensure that no permission by the labour authorities is required for trade unions to have access to justice, and if necessary, to amend the legislation accordingly. The Committee requests to be kept informed of developments in this respect.
- (f) The Committee hopes that the forthcoming report by the provincial government of Andhra Pradesh mentioned by the Government in its communication, will fully address all the points raised above.

B. The complainant's additional information

884. In a communication dated 19 January 2004, enclosing a letter to the Minister of Labour dated 7 January 2004, and a communication dated 16 April 2004, the CITU stated that no action had been taken to implement the Committee's recommendations.

C. The Government's new observations

885. The Government of India provided further information to the Committee by way of a communication dated 15 July 2004. This communication enclosed an undated report of the Visakhapatnam Export Processing Zone (VEPZ) Development Commissioner responding to the Committee's recommendations. The Development Commissioner's report is itself based upon two reports, the first dated 4 May 2004 from the state Police Commissioner, and the second dated 19 May 2004 from the Deputy Commissioner of Labour for Andhra Pradesh, both of which are also enclosed. The Government states that it will transmit to the Committee any further developments in the case received from the state government.

886. In relation to the request by the Committee that an independent and thorough investigation be carried out into the alleged dismissals, suspensions and fines, the VEPZ Development Commissioner reiterates that the strike had been carried out in violation of the law, as prior notice had not been given nor had a charter of demands been submitted. Joint meetings had been called by the Labour Department and, following the intervention of the state Minister, the police and the VEPZ Commissioner, employees resumed work. The Development Commissioner states that all the dismissed workers have since filed cases before the Labour Industrial Tribunal. These cases are currently at various stages of hearing and until "awards on the issue of terminations" are given, it is not possible to determine whether the termination of these workers' employment was legal or not.

887. In relation to the request by the Committee that an independent and thorough investigation be carried out into the allegations concerning the suppression of the strike, the detention of striking workers, the prohibition of meetings in the complainant's local office, excessive police violence, and visits by police officers to workers' homes, the Development Commissioner states that the Commissioner of Police had "ascertained" that such allegations were false and baseless. The police had intervened in a timely manner and had taken prompt and appropriate action to maintain law and order.

888. The Commissioner of Police's report on these matters states that the union, supported by leaders of various other unions, "indulged in violent acts leading to law and order problems by defying the prohibitory orders in force". The report provides details as follows:

- (a) On 10 January 2002, the workers in the Israeli-run part of Worldwide Diamonds Manufacturers Ltd. obstructed the vehicle of the Commissioner and other officials for about 20 minutes before the police arrested 16 "agitators" and dispersed the crowd. A case concerning this incident was "posted to" 9 June 2004, when certain witnesses were to be heard by the local Metropolitan Magistrate's Court.

- (b) On 22 January 2002, 46 “agitators” from Worldwide Diamonds Manufacturers Ltd., including the state president of the CITU, were arrested for breach of a prohibitory order made pursuant to section 144 of the Criminal Procedure Code. Of those 46 arrested, the ten women were released on bail, and the 36 men were sent for judicial remand. This case was posted for hearing on 5 June 2004 by the local Metropolitan Magistrate’s Court.
- (c) On 23 January 2002, 16 “agitators” were arrested pursuant to section 151 of the Criminal Procedure Code on the basis of unlawful assembly at a public place. They were later released on bail.

889. In relation to the Committee’s requests to the Government to provide information on negotiations in the company and any settlement reached, the Development Commissioner states that the state government had formed a committee on 16 May 2002 to study the issues of industrial relations raised by the trade unions in Worldwide Diamonds Manufacturers Ltd. The members of the committee were the District Collector, the Joint Commissioner of Labour, the VEPZ Development Commissioner, and the VEPZ Joint Development Commissioner. The Development Commissioner states that this committee considered all aspects of the allegations, negotiated with the parties, and issued strict guidelines on labour welfare measures to the units. In cases in which “wage agreements could not be reached, the same have been concluded now”.

890. The Development Commissioner further stresses that every effort has been made to maintain harmonious relations in the VEPZ and, due to the efforts of the VEPZ, currently the factories are running more smoothly “without any disturbance to the productivity”. Management has provided additional facilities to the workers.

891. The Deputy Commissioner of Labour’s report reiterates that the CITU union in question covers the entire VEPZ and that no specific union is registered for Worldwide Diamonds Manufacturers Ltd., one of the units operating within the zone. In relation to the governmental committee set up on 16 May 2002, the Deputy Commissioner of Labour states that as the Joint Commissioner of Labour was “abolished”, the committee could not meet and no meetings took place. Further, as at the date of the report, no bilateral negotiations had been held between the CITU general union and the management of Worldwide Diamonds Manufacturers Ltd. “for settlement of the issues”. It appears that the management of the company objects “that there is no special registered union in their unit and the existing union is a general union for the entire VEPZ”.

892. In relation to the Committee’s request to the Government to take steps so as to ensure that the functions of the Grievance Redressal Officer (GRO) are not performed by the Deputy Development Commissioner (DDC) but by another independent person or body having the confidence of all parties, the Development Commissioner reiterates that the VEPZ’s role in relation to the implementation of law in the company is solely advisory. As the coordinating and conciliating authority, VEPZ undertook to resolve the disputes between management and workers by appointing the DDC as GRO. As the differences are best resolved through dialogue, and as the office of the Development Commissioner/GRO is respected by both parties, this is the ideal mechanism for an amicable resolution of the issues. This is an arrangement that has worked successfully throughout the country for many years.

893. In relation to the Committee’s request that the Government ensure that no permission from the authorities is required for trade unions to have access to justice, the Development Commissioner states that there is nothing in the laws or circulars to suggest that trade unions need to obtain permission from the labour authorities to have access to justice. A grievance or dispute can be filed before the labour officer of the area, to the Assistant

Commissioner of Labour, or to the Deputy Commissioner of Labour. A case may be filed against the management of a company in the Industrial Tribunal or Labour Court. Special economic zones are not exempted from the provisions of the labour laws. In summary, “workers are free to approach labour authorities or the Labour Court directly for the redressal of their grievances and obtain justice accordingly”.

D. The Committee’s conclusions

894. *The Committee recalls that this case concerns allegations of anti-union discrimination involving restrictions on the right to join and establish trade unions; dismissals, suspensions and fines imposed on trade union members; dismissals for taking part in a strike; the brutal and disproportionate suppression of that strike by the police; and a lack of collective bargaining in Worldwide Diamonds Manufacturers Ltd., in the Visakhapatnam EPZ, Andhra Pradesh. The allegations concern anti-union discrimination both in relation to the general functioning of the union, as well as the responses by the authorities to a strike in January 2002.*
895. *Concerning the allegations that workers at Worldwide Diamonds Manufacturers Ltd. had been dismissed on the basis of their trade union activities, the Committee recalls that it was alleged that two workers were dismissed by the company on account of having been active in the union; eight workers were dismissed during their participation in a strike in January 2002; and a further seven workers were dismissed on 25 March 2002 following the strike. The Committee recalls that the Government had provided information that one of the workers dismissed following the strike (Mr. Sudharkar) was dismissed on the basis of poor performance during his traineeship, but that the information provided in relation to the remaining 14 workers did not sufficiently indicate whether the dismissals had anti-union purposes.*
896. *The Committee notes the information from the Government that the usual judicial system is currently considering the complaints of all those workers who were dismissed and trusts that this process will constitute the full, impartial and speedy procedure required into the complaints of anti-union discrimination. The Committee requests to be kept informed of the progress of these cases.*
897. *In relation to the workers allegedly suspended or fined on the basis of their trade union activities, the Committee regrets that the Government has not provided additional detailed clarification on this matter. In this regard, the Committee emphasizes that no person should be prejudiced in his or her employment by reason of membership of a trade union [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th (Revised) edition, para. 701]. Further, the Committee recalls the general principle that 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 national procedures which should be prompt, impartial and considered as such by the parties concerned” [see **Digest**, op. cit., para. 738]. Such a process should be quick, so as to ensure that if the allegations are found to be correct, the “necessary remedies can be really effective” [see **Digest**, op. cit., para. 749].*
898. *For these reasons, the Committee requests the Government to take measures to ensure respect for these principles in the cases of the workers suspended or fined and, if it is confirmed that the imposition of the suspensions and fines were linked with the legitimate trade union activities of the workers, to take measures to ensure that the workers concerned are appropriately compensated.*
899. *Concerning the alleged police brutality and violence, detentions, and threats during the strike, the Committee notes in particular the reports prepared by the Development*

Commissioner and the state Police Commissioner that conclude that the police intervened in a timely manner, took prompt and appropriate action to maintain law and order, and that such allegations “are false and baseless”. The Committee recalls the statements in the report prepared by the Police Commissioner to the effect that workers had obstructed the vehicles of senior officials, had breached orders made under section 144 of the Criminal Procedure Code which prohibits gatherings in certain places, and had unlawfully assembled in a public place, suggesting they were preventing the free movement of traffic.

- 900.** *The Committee notes that the comments of the Development Commissioner and Police Commissioner submitted by the Government stress the behaviour of the workers, but limit information concerning the behaviour of the police and government to very general statements that simply contradict the allegations of the complainants. The Committee further recalls that in its previous report it had requested the Government to undertake an independent and thorough investigation into this matter. In this respect, the Committee notes that although it has been provided with the reports of three state officials concerning the issues raised by this case (the VEPZ Development Commissioner, the Police Commissioner, and the Deputy Commissioner of Labour) none of these can be said to amount to an independent and thorough investigation into the various outstanding issues, in particular because these officials were, according to the complainant, involved in the events in question.*
- 901.** *The Committee recalls, at this point, the principle that police intervention “should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence” [see **Digest**, op. cit., para. 582]. The Committee once again requests the Government to establish an independent and thorough investigation, by bodies or persons having the confidence of the parties, into the alleged police violence in the strike at Worldwide Diamonds Manufacturers Ltd. in January 2002. The Committee requests to be kept informed of the investigation’s conclusions and, if the allegations are established to be well founded, the measures proposed to be taken in response.*
- 902.** *Further, the Committee notes that the report of the Police Commissioner provides details of three sets of criminal prosecutions brought against various workers for their actions during the strike. These relate to the obstruction of the vehicles of senior officials and to the breach of prohibitory orders issued pursuant to the Criminal Procedure Code. The Committee notes that it has been provided with details of the progress of two sets of these cases through the court system, but has not been provided with information as to the progress through the courts of the cases concerning those workers arrested on 23 January 2002 pursuant to section 151 of the Criminal Procedure Code for unlawful assembly at a public place. The Committee requests to be kept informed of the progress of all these criminal prosecutions.*
- 903.** *In its previous report, the Committee had requested the Government to provide information on the actual situation regarding negotiations in Worldwide Diamonds Manufacturers Ltd. and any settlement reached. The Committee notes that a governmental committee composed of the District Collector, Joint Commissioner of Labour, Development Commissioner and Joint Development Commissioner was established by the state government on 16 May 2002 to study the issues raised by the trade unions in relation to Worldwide Diamonds Manufacturers Ltd. The Committee notes the Development Commissioner’s statement that in addition to considering the allegations raised by the trade union, this committee “negotiated with the affected parties and strict guidelines on labour welfare measures to be undertaken in the zone were issued to the units and, wherever wage agreements could not be reached, the same have been concluded now”. Further, the Development Commissioner states that the VEPZ authorities have made every*

effort to maintain harmonious relations between management and workers and, as a result, there has been a change in attitude.

- 904.** *Nevertheless, the Committee observes that the previous statements of the Development Commissioner contradict those of the Deputy Commissioner of Labour for Visakhapatnam, who states that the committee never met for failure to reach a quorum. Further, the Committee notes that the Deputy Commissioner of Labour clearly states that there has been no bilateral negotiation between the company and the workers “for settlement of the issue”. The Committee notes that the management of the company objects “that there is no specific registered union in their unit and the existing union is a general union for the entire VEPZ”.*
- 905.** *The Committee reminds the Government of the universal nature of the principles of freedom of association and therefore asks the Government to ensure that all workers in export processing zones have the right to form and join trade unions of their own choosing for the purposes of collective bargaining. The Committee requests steps to be taken to ensure that the CITU Visakhapatnam Export Processing Workers’ Union, if it is a representative trade union, is allowed to take part in negotiations with the company. The Committee requests to be kept informed in this regard.*
- 906.** *The Committee had requested the Government to ensure that the same person did not perform the functions of both GRO and DDC. The Committee notes the Development Commissioner’s comments in this regard, to the effect that such a person has the confidence of all parties, and the appropriate standing to do the job effectively, as well as the fact that this is a usual solution in India. The Committee is obliged to note that the Government has not implemented its recommendation, and can only repeat its earlier request that the Government ensure that the two roles are carried out by different people or bodies.*
- 907.** *The Committee’s final recommendation concerned its request to the Government to indicate whether access to justice by workers and trade unions requires the permission of the competent labour authorities, or whether workers and trade unions may initiate an action and approach the Court directly. In this context, the Committee reiterates the principle that “workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial” [see **Digest**, op. cit., para. 741]. The Committee notes the Development Commissioner’s clear statement that workers do not require prior permission to take disputes and grievances to court. Nevertheless, in light of its earlier conclusions in the 93rd Report of the Committee on Freedom of Association (Case No. 420) and the fact that the Industrial Disputes Act 1947 appears to restrict the right of workers and trade unions to take cases to court, the Committee requests the Government to confirm that workers and trade unions are able to approach the court directly without being referred by the state government, and to indicate the ways in which the legislation has been amended accordingly.*

The Committee’s recommendations

- 908.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a)** *Referring to its recommendation concerning the dismissal of 14 workers at Worldwide Diamonds Manufacturers Ltd (see paragraph 883(a)(ii) above) adopted in its earlier examination of the case, the Committee requests to be*

kept informed of the progress of the cases brought by those workers alleging anti-union discrimination resulting in dismissals.

- (b) The Committee requests the Government to ensure that the principle that complaints of anti-union discrimination are examined in the framework of national procedures which are prompt, impartial and considered as such by the parties concerned, is observed in the cases of the workers suspended or fined and, if it is confirmed that the imposition of the suspensions and fines were linked with the legitimate trade union activities of the workers, to take measures to ensure that the workers concerned are appropriately compensated.*
- (c) The Committee requests the Government to take all necessary steps urgently to ensure that an independent and thorough investigation, with the cooperation of the complainant organization, is carried out in relation to the allegations concerning the brutal suppression of the strike, the detention of hundreds of striking workers and a trade union officer by the police, the prohibition of meetings in the complainant's local office, excessive police violence (caning and chaining of workers), and the visit of police officers to workers' homes in order to threaten them so that they return to work. The Committee requests to be kept informed of the investigation's conclusions and, if the allegations are established to be well founded, the measures proposed to be taken in response so as to determine responsibility, punish those responsible and prevent the repetition of such acts.*
- (d) The Committee requests the Government to keep it informed of the progress of the criminal cases brought by the police against the workers arrested during the strike in January 2002.*
- (e) The Committee requests the Government to ensure that the CITU Visakhapatnam Export Processing Workers' Union be allowed to take part in negotiations, if it represents a sufficient number of the workers at Worldwide Diamonds Manufacturers Ltd and requests the Government to ensure that all workers in export processing zones have the right to form and join trade unions of their own choosing for the purposes of collective bargaining. The Committee requests to be kept informed in this regard.*
- (f) The Committee once again requests the Government to ensure that the roles of GRO and DDC are carried out by different persons or bodies.*
- (g) The Committee requests the Government to confirm that workers and trade unions are able to approach the Court directly without being referred by the state government, and to indicate the ways in which the legislation, and in particular the Industrial Disputes Act 1947, has been amended accordingly.*

CASE NO. 2236

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

**Complaint against the Government of Indonesia
presented by
the Chemical, Energy and Mines Workers' Union (Federasi Serikat Pekerja
Kimia, Energi dan Pertambangan Serikat Pekerja Seluruh Indonesia –
DPP SP KEP SPSI)**

*Allegations: Anti-union discrimination by the
Bridgestone Tyre Indonesia Company against
four union officers suspended without pay
pending the outcome of dismissal procedures
initiated by the company*

- 909.** The Committee examined this case at its May-June 2003 meeting and presented an interim report to the Governing Body [331st Report, paras. 473-515, approved by the Governing Body at its 287th Session (June 2003)].
- 910.** The Government sent additional observations in a communication dated 28 May 2003, which was received after the first examination of the case by the Committee, and in communications dated 11 September and 4 November 2003, and 26 and 31 March, 30 June, 31 August and 2 November 2004. It should be mentioned that in its communication of 4 November 2003, the Government transmitted the views of the Employers' Association of Indonesia (*Asosiasi Pengusaha Indonesia-APINDO*). The complainant organization sent additional submissions in communications dated 9 September 2003, and 1 and 18 March, 14 May and 18 August 2004. A number of communications were sent by the local union as part of the attachments to the communication of 18 March 2004, and in particular the decisions of the National Committee on Labour Disputes Settlement concerning Mr. Sarnoh H., Mr. Machmud Permana and Mr. Nazar. The letter of 14 May 2004 transmitted the decision of the National Committee on Labour Disputes Settlement concerning Mr. Setio Rahardjo and referred to a letter of 4 May 2004, which apparently transmitted the seventh set of additional information, and which the Committee has not received, although it was specifically requested.
- 911.** Indonesia has ratified the Freedom of Association and Protection of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 912.** At its meeting in May-June 2003, the Committee noted that the case concerns the initiation of dismissal procedures by the Bridgestone Tyre Indonesia Company in respect of four workers who were officers of the union recognized by the company, and who had been suspended without pay from their work pending the outcome of the dismissal procedures [see 331st Report, para. 507 of the Committee's conclusions].
- 913.** More specifically, the following elements identified by the Committee in its conclusions should be recalled. The case stemmed from difficult negotiations on a salary increase, between the local union and the company. In this context, four union officers, representing

the local union in the salary negotiations, issued a communication on 27 March 2002 telling workers to refuse requests to work overtime and to continue their work according to the normal working time. On 26 April 2002, an agreement on the salary increase was eventually reached, and the union withdrew its recommendation that workers refuse overtime. Through four decisions emanating from the chairperson of the company, dated 22 May 2002, the union officers who signed the 27 March 2002 communication were suspended from their work for infringements of the collective labour agreement; the same day, the company sought from the competent authorities the authorization to dismiss them [see 331st Report, para. 509 of the Committee's conclusions]. It should be recalled that the four union officers concerned are Mr. Hazrial Nazar, chairperson of the local union of the Karawang factory; Mr. Julio Setio Rahardjo, chairperson of the local union of the head office in Jakarta; and Mr. Sarno H. and Mr. Machmud Permana, respectively chairperson and secretary of the local union of the Bekasi factory.

- 914.** These events resulted in two kinds of proceedings. The first one related to the procedures engaged by the company in order to obtain the authorization to dismiss the four union officers, which fell initially within the authority of the local administration. A second proceeding was initiated by the complainant organization, on behalf of the four union officers, alleging infringements of trade union rights by the company. The central administration was designated to deal with these allegations [see 331st Report, para. 510 of the Committee's conclusions].
- 915.** The dismissal procedures evolved differently in each individual case, but no dismissal had been definitively authorized by the time of the Committee's May-June 2003 meeting. With respect to the allegations of infringement of trade union rights, the most recent information communicated by the complainant at the time of the Committee's May-June 2003 meeting related to the transmission of the allegations to the chairperson of the civil court [see 331st Report, para. 511 of the Committee's conclusions].
- 916.** At its 287th Session, in light of the interim conclusions of the Committee, the Governing Body approved the following recommendations:
- (a) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.
 - (b) In order to pronounce itself on this case in full knowledge of all the facts, the Committee requests the Government to submit its observations on the three sets of additional information submitted by the complainant and in particular on the description given therein of the dismissal procedures.
 - (c) Noting the Government's comments on the absence of a specific procedure for the examination of allegations of anti-union discrimination, the Committee draws to the attention of the Government that it can avail itself of the technical assistance of the Office in this regard.
 - (d) The Committee requests the Government to take the necessary steps to ensure that the procedure on the allegations of anti-union discrimination reaches its conclusion without delay and in a fully impartial manner and to submit its observations thereon.
 - (e) The Committee requests the Government to: (i) take the necessary measures so as to guarantee that the procedure concerning the allegations of anti-union discrimination takes precedence over the four dismissal procedures; and (ii) examine ways of providing adequate assistance to the four workers concerned and to ensure that all the national procedures implemented in the present case are brought to a speedy conclusion.
 - (f) The Committee requests the Government to send its observations on the complainant's contention that the suspension without pay is contrary to article 6(4) of Manpower Decree No. 150/2000.

B. The Government's observations

917. In its communications, the Government conveyed the employers' organization's views, and provided observations on the dismissal process and the allegations of anti-union discrimination. The Government has also indicated that the Fact-Finding and Conciliation Commission requested by the complainant organization is unnecessary, since national bodies are appropriately considering the issue.

Observations from the APINDO

918. Following the Committee's interim recommendations, the Government solicited information from the employers' association of Indonesia. The observations from the APINDO, as they are stated in a letter of 22 October 2003, can be summarized as follows.

919. The APINDO confirmed that the case arose in the context of basic salary negotiations. Since the parties did not reach an agreement, the matter was brought before the mediator and thus became an industrial dispute within the framework of Act No. 22/1957 on the settlement of labour disputes. While the issue was pending before the Regional Committee for Labour Disputes Settlement, the APINDO alleged that the four union officers put the company under pressure through various means such as: (1) the letter of 27 March 2002, which instructed workers to refuse to work overtime until an agreement was reached on the basic salary increase, in violation of section 10 of the collective labour agreement; (2) a strike on 3 April 2002 before the Office of the Mayor and the House of Representatives of Bekasi, in violation of section 6 of Act No. 22/1957; and (3) a threat, in a letter addressed to the President-Director of the company on 10 April 2002, to strike on 19 April 2002 if no agreement was reached on the basic salary increase, in contravention to section 67(8) of the collective labour agreement.

920. The APINDO underlined that the communication of 27 March 2002 led to physical intimidation and physical violence towards workers who wanted to work overtime and, in particular, damage to their vehicles. These infringements of the collective labour agreement as well as of Act No. 22/1957 led the Bridgestone Tyre Indonesia Company to suspend the workers and initiate the dismissal procedures, in accordance with Act No. 12/1964.

921. The APINDO also stated that the four union officers exerted pressure on the company and governmental institutions by requesting the interruption of the dismissal procedures, in particular by contending that the company committed anti-union discrimination contrary to section 28 of Act No. 21/2000 and by initiating a separate procedure. In this respect, the APINDO indicated that the Office of the Attorney sent the case back several times to the "Civil Servant Investigator" of the Department of Manpower and Transmigration so that the file could be substantiated with more evidence of anti-union discrimination. The APINDO stated that the four union officers were unable to submit such evidence. No criminal action was therefore initiated against the company. Finally, the APINDO indicated that Mr. Permana "sued" the President-Director of the company "to the police" of Jakarta for slander, but the action came to an end for lack of evidence.

922. The APINDO concluded that the case between the workers and the Bridgestone company was a genuine labour case that had been handled by the company in an appropriate manner according to Act No. 22/1957 and Act No. 12/1964. The APINDO asserted that the Bridgestone Tyre Indonesia Company did not take any action against the local union and, in particular, did not undertake reprisals against the trade union itself. The APINDO also stated that parties to any legal process should refrain from exerting pressure or influence

thereon, and expressed the view that the Government should take steps to ensure the enforcement of the law and to create a positive climate for investment.

Observations on the dismissal process

- 923.** In its communication dated 4 November 2003, the Government confirmed that the Regional Committee for Labour Disputes Settlement authorized the dismissals of Mr. Nazar, Mr. Permana, Mr. Sarno H. and Mr. Setio Rahardjo. The four union officers lodged an appeal with the National Committee for Labour Disputes Settlement. At the time, the Government noted that it was following the procedures and was obliged to await the decisions of the National Committee. On 26 March 2004, the Government confirmed that the National Committee had decided to refuse the union officers' appeals and allow their dismissals. On 30 June 2004 the Government noted that the National Committee on Labour Disputes Settlement's decisions may be appealed to the District Administrative Court under certain circumstances. In its communication dated 31 August 2004, the Government indicated that appeals had been lodged by both the workers and the company in March-April 2004 in relation to the four dismissals. The appeals are at different stages in the judicial process. Further, it is unclear whether the four union officers have received formal notification of their dismissals by the company.
- 924.** In reply to the complainant's contention that suspension without pay was contrary to section 6(4) of Manpower Decree No. 150/2000, the Government indicated in its communication dated 11 September 2003 that such a suspension might be applied by an employer while relevant decisions of the competent judicial bodies are pending.
- 925.** With respect to the Committee's request to the Government to provide adequate assistance to the four union officers concerned, the Government stated that such assistance was indeed provided through the normal judicial process, from the conciliation stage to the procedure before the labour committees. The Government also indicated that it had urged the employer, the workers concerned and the competent authorities to settle the case amicably and without delay.
- 926.** The Government indicated that before the National Committee's decision, it had taken some initiative to clarify the situation and to contribute to an amicable settlement. In its 4 November 2003 communication, the Government noted that it had organized a consultative meeting on 22 October 2003 to seek information on the dismissal procedures. This meeting was attended by representatives of the Department of Manpower and Transmigration, the local governments concerned, the Office of the Attorney, representatives from the police headquarters, and by the mediators concerned. During this meeting, the labour inspectors and mediators of Bekasi and Karawang districts indicated particularly that Mr. Sarno H.'s and Mr. Permana's suspensions had been carried out following the company's request to the Regional Committee for Labour Disputes Settlement for their dismissal. This request was based on the alleged infringements of the following sections of the collective labour agreement:
- article 10, which states that the labour union must obtain prior approval from the employer before distributing printed materials or documents;
 - article 63(1), which recognizes the employer's right to determine sanctions;
 - article 66(5) which describes as a serious violation any infringement of the employer's prohibition relating to circular letters or such act causing confusion in the employer's premises;

- article 67(4) and (8), which describe as a major violation any attempt to persuade an employer or colleagues to commit an act contrary to the law or decency and the prevailing laws and regulations, as well as any action of persecution, intimidation or rude insult directed at the employer or colleagues.

On 31 March 2004, the government noted that it had tried to set up a tripartite meeting to discuss the case, but was unable to do so as the President-Director of Bridgestone Tyre Indonesia Company was out of the country.

Observations on the allegations of anti-union discrimination

- 927.** In its communication of 28 May 2003, the Government noted that on 7 September 2002, a report on the examination of witnesses and suspects was submitted to the police headquarters that coordinates the investigation. On 7 March 2003, the “Coordinator of Civil Servant Investigator” of the police headquarters asked the “Directorate General of Labour Inspection” of the Department of Manpower and Transmigration to complete the documentation of the case with all the necessary information. The complement of information was sent on 28 April 2003. By 1 May 2003, the report on the examination of witnesses and suspects had been sent to the High Court – Jakarta by the police headquarters.
- 928.** The Government maintained that facts should be established through an investigation. In its communication of 11 September 2003, the Government stated that, so far, it had not found any indication that there had been anti-union discrimination, but that the investigation by the Office of the Attorney was still continuing. In its 4 November 2003 communication, the Government indicated that on 12, 26 and 29 September 2003, the Ministry of Manpower and Transmigration, the Office of the Attorney and the police held consultative meetings and decided that a further examination of the case was necessary. As a result of these meetings, the Minister of Manpower and Transmigration sent a letter to the Office of the Attorney to follow the allegations.
- 929.** In response to the complainant organization’s contention that there was a difference of opinion between the Chief of the Bureau of Law and International Cooperation and the Director-General of Manpower Control on whether the employer had violated the right to organize specified in Act No. 21/2002, the Government stated in its 31 March 2004 communication that it was not aware of the difference of opinions. It also posited that the disagreement would be irrelevant, since the investigation is currently being handled by the Office of the Attorney. In its 26 March 2004 communication, the Government indicated that the anti-union discrimination proceedings were at that time “being processed to be delegated to” the Court of the First Instance for adjudication. It appears from the Government’s communication dated 31 August 2004 that the case has proceeded to court. The Government explained that at this point Mr. Kawano (the President-Director of the company against whom the allegations of infringement of freedom of association were made) had not attended court because he had since ended his term at the company and left the country. The Government explained that on 8 August 2004, the Office of the Attorney had stated that, while the file is complete, “it shall be followed up by handing over of the suspect – Mr. Kiwano Hisahi, and the evidence”. The “Director-General of Labour Inspection” will ask the “Police-Investigation Department” to “make the suspect come”.
- 930.** Regarding the Office’s offer of technical assistance in developing a specific procedure for the examination of allegations of anti-union discrimination, the Government underlined in its communication of 11 September 2003 that the absence of such a procedure at the national level was due only to the fact that the bill on industrial relations was still before

the Parliament, but that several related regulations were currently being drafted nonetheless.

C. The complainant organization's additional submissions

931. In its communications the complainant organization submitted information on the evolution of the dismissal procedures, the procedure on the complaint for infringement of trade union rights, and the state of industrial relations at the Bridgestone Tyre Indonesia Company before the dismissals were authorized, and responses to new allegations presented through the Government by APINDO in its 22 October 2003 letter. Finally, the complainant has commented more broadly on the follow-up to the interim recommendations of the Committee.

Procedures regarding dismissal

The Regional Committee decisions

932. In each of the four cases, the district mediators recommended reinstatement with a warning letter. However, in each case the Regional Committee for Labour Disputes decided to allow the dismissal. The Regional Committee's reasoning can be summarized as follows: (1) when the workers distributed their 27 May 2002 overtime communication without management approval, they violated section 10 of the collective labour agreement; and (2) since the workers' action was incompatible with the applicable collective labour agreement, section 28 of Act No. 21/2000 did not apply and therefore did not provide protection.

The National Committee decisions

*Procedure concerning the dismissals of Mr. Sarno H. and Mr. Machmud Permana, respectively chairperson and secretary of the local union of the Bekasi factory:
Decision of 4 November 2003*

933. The National Committee noted that based on the Regional Committee's report, the company had made the following representations:

- (1) that the union officers in question signed a 27 March 2002 letter to the workers telling them not to work overtime until a wage agreement was reached;
- (2) that the company denied permission to circulate the letter, but it was circulated anyway, and workers who wanted to work overtime were subjected to intimidation, including damage to their vehicles;
- (3) that the letter was intended to apply pressure to the company in wage negotiations;
- (4) that issuing the letter violated article 10 of the collective labour agreement, which requires the employer's permission for circulating communications to union members, article 67(4) of the collective agreement against persuading fellow workers to act contrary to laws or regulations, and article 66(12), which prohibits disturbing colleagues' work;

- (5) that the workers in question tried to provoke other workers with analysis of comparable wages at other companies;
- (6) that the workers violated the standing order on negotiation, which requires “smoothness” during salary negotiation, by agitating their colleagues;
- (7) that the workers violated article 67(8) of the collective agreement and the agreement between the parties to try to avoid illegal strikes by their 10 April 2002 letter giving notice of the intent to strike; and
- (8) that the two union officers had generally not had a cooperative attitude, having been involved in instigating three previous strikes.

934. The National Committee also noted, based on the Regional Committee’s report, that the workers had made the following representations:

- (1) that their actions were within their union capacity as protected by ILO Conventions Nos. 87 and 98;
- (2) that overtime is voluntary and cannot be prohibited or mandated;
- (3) that they had committed no previous infractions nor received any warning letters;
- (4) that the goal of the overtime letter was to save the company money and therefore give it more flexibility in wage negotiations; and
- (5) that investigations under Act No. 21/2000, article 28, which prohibits anti-union discrimination, were still ongoing.

935. The National Committee observed that overtime is voluntary and that the workers violated that voluntariness with their “instruction” in the 27 March 2002 letter, thereby violating in turn article 10 of the collective labour agreement. The National Committee further noted that “incidents” resulted from the letter. The National Committee noted the employer’s contention that the 10 April 2002 letter giving notice of the intent to strike was a threat. The National Committee further noted that the Director-General of Manpower Supervision and the Director-General of Industrial Relations Supervision had stated that the anti-union discrimination issue need not be decided before the dismissal action. The National Committee granted the company permission to terminate the workers with severance pay.

936. The other two cases noted similar arguments by the company and the union officers, with certain additions as described below.

*Procedure concerning the dismissal of Mr. Hazrial Nazar
(chairperson of the local union of the Karawang factory):
Decision of 19 November 2003*

937. The company’s allegations noted by the National Committee were principally the same as those alleged in Mr. Sarno H.’s and Mr. Machmud Permana’s hearing.

938. The National Committee also noted that the worker alleged:

- (1) that his dismissal was based on his union membership or activity, which basis is prohibited by Indonesian law;
- (2) that since the overtime letter was withdrawn on 26 April 2002 the company should not rely on it in dismissing him;

- (3) that any intimidation of workers wanting to work overtime was entirely unrelated to the union or the union officers;
- (4) that in fact production difficulties were due more to mismanagement at all levels of supervision and mishandled negotiations, which caused morale to fall, than to the overtime instruction.

939. In giving permission to dismiss the worker with severance pay, the National Committee cited the threat of a strike, and concluded that the letter on overtime was a form of pressure or threat that resulted in “incidents” and violated article 10 of the collective labour agreement, and that withdrawing the letter did not eliminate the worker’s error. The National Committee also noted that the Director-General of Manpower Supervision and the Director-General of Industrial Relations Supervision had stated that the anti-union discrimination issue need not be decided before the dismissal action.

*Procedure concerning the dismissal of Mr. Julio Setio Rahardjo,
(chairperson of the local union of the head office
in Jakarta): Decision of 20 January 2004*

940. The company’s allegations noted by the National Committee were principally the same as those alleged in Mr. Sarno H.’s and Mr. Machmud Permana’s hearing.

941. The National Committee noted that the worker had made the following representations: (1) that the 27 March 2002 letter was withdrawn on 26 April 2002; and (2) that the company ultimately adopted the suggested overtime policy in April 2002, thereby justifying the workers’ claims that it would save the company money.

942. The National Committee did not believe the worker’s explanation of the overtime letter, instead attributing it to pressure and threat in violation of article 10 of the collective labour agreement. It further noted that “incidents” resulted from the letter and concluded that withdrawing the letter did not erase the worker’s error. The National Committee further cited the 10 April 2002 letter giving notice of the intent to strike as a threat to the employer. It noted that the Director-General of Manpower Supervision and the Director-General of Industrial Relations Supervision had stated that the anti-union discrimination issue need not be decided before the dismissal action. The National Committee gave permission for the worker’s dismissal with severance pay.

Procedure concerning the allegations of anti-union discrimination

943. In its additional submissions, the complainant organization has indicated that since the Committee’s previous examination of the case, the matter has gone through the following stages.

944. In its communication of 9 September 2003, the complainant organization provided the following observations. In May 2003, the “Inspection Commission of Civil Servant Investigation Officer” at the Indonesian police headquarters referred the allegations to the Office of the Attorney in Jakarta. In June 2003, the latter returned the case to the national police with some guidance on the manner in which the investigation file should be completed. On 23 June 2003, the four union officers were requested by the “Civil Servant Investigation Officer” from the Department of Manpower and Transmigration to again be interviewed about the company’s alleged violation of trade union rights. In July 2003, the case was referred back to the Office of the Attorney, although investigation continued at the national police headquarters.

- 945.** In its communication of 1 March 2004, the complainant organization produced a letter dated 19 March 2003, in which the Acting Director-General of Manpower Supervision and Control indicated that the police and the investigating officer were still investigating the allegations. The Acting Director-General indicated that the time taken to examine the allegations was that normally required by such investigation, that there was no intention on the part of his department to unduly delay the procedure. Further comment from the Acting Director-General, set out in a letter of November 2003, was brought to the attention of the Committee on Freedom of Association by the complainant organization in the same communication. According to the letter, the civil servant conducting the investigation remained of the opinion that the Bridgestone Tyre Indonesia Company had violated article 28(a) of Act No. 21/2000, which relates to termination aimed to discourage or prevent union activity. Finally, reference was made to meetings between the local union and the Minister of Manpower and Transmigration on 8 and 16 January 2004. The Minister mentioned the investigation conducted by the “Civil Servant Investigation Officer” and indicated that he would urge the local union and the company to reach a consensus.
- 946.** Finally, it appears from the documentation submitted that before the National Committee’s decisions granted permission to dismiss each of the four union officers, the local union and the complainant organization made further representations against the Bridgestone Tyre Indonesia Company for non-compliance with the provisions of the collective labour agreement, related to its treatment of the four union officers while their cases were pending before the National Committee. Both unions took the view that, since no dismissal had yet been authorized, the Bridgestone Tyre Indonesia Company had the obligation to pay the workers’ wages and benefits in accordance with the applicable legislation and the collective labour agreement. It appears, from a letter dated 14 January 2004, that the Director of “Manpower Norm Control” had instructed the Manpower Control Officer to carry out an investigation and to issue a warning to the company so that it would fulfil its obligations until the union officers’ dismissal was authorized. There is no indication on the file of the outcome of this particular investigation.

*Complainant organization’s response
to allegations of illegal strike activity*

- 947.** With respect to the action staged on 3 April 2002, the complainant organization submitted the local union’s response in its letter of 1 March 2004. The local union contended that it was not a strike, but a public expression of opinion on the basis of a document entitled “Attitude statement on the wish of all workers who work at the Bridgestone Tyre Indonesia Company”. The local union underlined that the production process was undisturbed, since all participants were either on leave or had finished their shift for the day. The action took place in an orderly and secure manner with the assistance of the police. In support of the contentions, two documents were produced. The first was a letter dated 2 April 2002 from the local union to the head of the police of the Bekasi city. In this letter, referring to Act No. 9/1998 relating to freedom of opinion and expression, the local union requested the right to hold a “peace feeling show”, to be organized on 3 April 2002, in view of the failure of the negotiations concerning the salary increase. The union specified that the number of participants would amount to 400 workers of the company, apparently during their off-work hours. The “attitude statement”, intended for the mayor of Bekasi and the head of the manpower office, described in detail the union’s claims with respect to the salary increase.
- 948.** On the other hand, the local union recognized that it had planned to stage a full strike but that, in doing so, it had every intention to abide by Act No. 22/1957. In this respect, the union submitted a copy of the collective agreement entitled “Collective agreement concerning the prevention of illegal strike”. This agreement was referred to by the complainant organization in the original complaint [see 331st Report, para. 480]. The

agreement, signed on 4 January 2002, provided that the parties would endeavour to prevent strikes to the extent possible and that they recognized the right to strike as guaranteed and governed by Act No. 21/2000 concerning trade unions and Act No. 22/1957. Further, the union would be entitled to stage a strike provided it complied with section 6 of Act No. 22/1957. In the letter of 10 April 2002, a copy of which has been produced by the complainant, referring to section 6 of Act No. 22/1957, the local union informed the President-Director of the Bridgestone Tyre Indonesian Company that, in view of the failure to reach an agreement on the basic salary increase, a strike would be organized from 9 April 2002 (this is the date mentioned in the translation provided by the complainant, but it appears from the letter of 15 April referred to below that it should read 19 April) until such time as an agreement was reached. This notification was copied both to the Regional Committee for Labour Disputes and the Minister of Manpower and Transmigration. In a letter of 15 April 2002, the chairman of the Regional Committee for Labour Disputes reacted to the strike notification by underlining that the salary increase, for which the strike was organized, was under examination by the Regional Committee. In light of section 23 of Act No. 22/1957, the chairman underlined that no strike could take place while efforts to settle the dispute were under way. From the documentation presented, it seems that at that point the union decided not to pursue the strike.

Industrial relations at the Bridgestone Tyre Indonesia Company following the suspension and dismissal of the four union officers

- 949.** The complainant organization indicated in its 9 September 2003 communication that since the initiation of the dismissal procedures, the four workers had participated in collective bargaining with the company and that three agreements were concluded including another agreement on the basic salary increase. On the other hand, the complainant organization alleged that the four union officers were prevented from entering the company's premises to talk with union members. The complainant organization included, in its 1 March 2004 submission, a letter from the local union to the Office of the Attorney (the date appearing on the letter is 10 December 2004) alleging anti-union discrimination in the company's current actions, citing continued refusal to allow the union officers on the company premises – where the local union office is – and cuts in pay and complete refusal to pay wages while the employment relationship still existed.
- 950.** As part of the attachments to the 18 March 2004 communication, the complainant organization included letters from the company to the local union, stating that the four union officers would no longer be allowed to represent the local union in negotiations, in light of the National Committee on Labour Disputes Settlement's authorization of their dismissal. The local union was therefore requested to modify the composition of its "negotiation team". The local union replied, in particular, that since the decisions of the National Committee on Labour Disputes Settlement could be appealed against, the four union officers were still in a position to represent the local union in negotiations. Similarly, it was alleged that they continued to be prohibited from the workplace, and written communications from them to union members required but never received company permission. In its 18 August 2004 communication, the complainant organization provided details of a meeting and a "socialization programme" during May 2004, that the dismissed workers had been prevented from attending, as well as details of the company's refusal to negotiate with the four workers in relation to the collective labour agreement in June 2004. The complainant organization explained that the company had relied on the fact that the four workers had been dismissed and that they were prevented from entering the company's premises.

Follow-up of the Committee's interim recommendations

- 951.** In several of its communications, the complainant organization indicated that it had taken the initiative of diffusing the Committee's report on the case to a number of institutions. On this basis, it asked the Minister of Manpower and Transmigration to ensure that the allegations of anti-union discrimination be examined before the dismissal proceedings, and to accept a Fact-Finding and Conciliation Commission review of the issue, given the absence of a specific procedure at the national level. The complainant organization asked the Regional Committee for Labour Disputes Settlement to end the dismissal proceedings. It asked the national police and the Office of the Attorney to accelerate the investigation process.
- 952.** The complainant organization has continued to emphasize that the Government has not implemented the Committee's recommendation that the procedure relating to the allegations of anti-union discrimination take precedence over the procedure relating to the four dismissals. In particular, the complainant organization has stressed that despite its requests, the Regional and National Committees for Labour Disputes Settlement decided to examine the dismissal cases before conclusion of the anti-union discrimination proceedings. Further, the complainant organization has expressed concern over the slowness of the procedure relating to the allegations of anti-union discrimination and the fact that either the police or the Office of the Attorney may decide to put an end to the procedure. The complainant organization has repeatedly asked the relevant authorities for quicker process.
- 953.** The complainant organization requests that the Committee pursue its examination of the case so that the four union officers may be reinstated, and that the Office send a Fact-Finding and Conciliation Commission to establish the facts concerning the allegations of anti-union discrimination.

D. The Committee's conclusions

- 954.** *The Committee takes note of the complainant organization's and the Government's additional submissions. The Committee also takes note of the employer organization's observations and the local union's reply, transmitted respectively by the Government and the complainant organization.*
- 955.** *In light of the additional documents placed at its disposal, the Committee considers that the elements identified during its previous examination can usefully be recalled and completed in the following manner. Difficult salary negotiations between the Bridgestone Tyre Indonesia Company and the local union sparked off the case. Because of failure to reach an agreement on the salary increase, both parties agreed to submit the matter to the mechanisms provided for the settlement of labour disputes under Act No. 22/1957 on the settlement of labour disputes. On 22 May 2002, following a salary agreement, the company suspended the four union officers from work and initiated dismissal proceedings against them for alleged violations of Indonesian law and the collective labour agreement during negotiations.*
- 956.** *The company's arguments in support of its initiation of the dismissal proceedings can be summarized as follows. The local union officers violated the collective labour agreement in certain respects, and in particular by distributing the letter of 27 March 2002, signed by them, telling workers to refuse requests to work overtime until a salary agreement was reached. The letter's purpose was to pressure the company in salary negotiations, and that when the union officers circulated the letter on company premises, despite the company's refusal of permission, intimidation of workers wanting to work overtime resulted. The company also alleged a strike on 3 April 2002, and that a letter dated 10 April 2002, which*

gave notice of an intention to strike on 19 April 2002 if no salary agreement had been reached, constituted a threat. Finally, the company argued that the four union officers did not generally have cooperative attitudes, and had been involved in instigating earlier strikes.

- 957.** *The complainant organization's response can be reflected as follows. The purpose of the 27 March 2002 letter was to save the company money, thereby allowing a higher salary increase. Any acts of intimidation that might have occurred were not at the initiative of the four union officers. Concerning the allegations of illegal strikes, the complainant organization disputes the categorization of the 3 April event as a strike, arguing that it was a public expression of opinion, which did not remove anyone from work, and which was held in an orderly and secure manner with the assistance of the police. It recognizes that the local union intended to stage a full strike on 19 April, but contends that the step it took on 10 April complied with the collective agreement and the law. It appears that the local union decided not to pursue the strike after the chairman of the Regional Committee for Labour Disputes indicated that further pursuit of the strike would be contrary to the law.*
- 958.** *The company's suspension and dismissal decisions resulted in two concomitant processes. First, the company initiated dismissal proceedings pursuant to Act No. 22/1957 and Act No. 12/1964 on termination of employment in private undertakings. Second, the complainant organization lodged, on the four union officers' behalf, a complaint of anti-union discrimination with the central administration against the company, pursuant to section 28 of Act No. 21/2000. At the same time, the four workers concerned requested their reinstatement and cancellation of the dismissal proceedings.*
- 959.** *The Committee notes that the National Committee on Labour Disputes Settlement found the company's request to dismiss the four union officers justified because of their violation of the collective labour agreement. In so deciding, the National Committee observed that working overtime is voluntary, and that the union officers' 27 March 2002 letter violated that voluntariness. The National Committee also found the 10 April 2002 letter, giving notice of the intent to strike, to constitute a threat. Finally, the National Committee noted that the Director-General of Manpower Supervision and the Director-General of Industrial Relations Supervision had stated that the dismissal action could be decided before, and independently of, the anti-union discrimination issue.*
- 960.** *The Committee further notes that while the dismissal procedures have resulted in four decisions from the National Committee for Labour Disputes Settlement, the anti-union discrimination procedure is only now at the Court of the First Instance after a two-year preliminary investigation stage. The anti-union discrimination procedure was first delayed because the file was not completed to the satisfaction of the Office of the Attorney and the police, and subsequently due to the failure of the former President-Director to attend the court. The Committee notes that the "Director-General of Labour Inspection" will approach the police to take measures to ensure the attendance of the former President-Director.*
- 961.** *With respect to the suspension of the four union officers (with partial pay and then without pay from the end of November 2002), the Committee takes note of the Government's reply on the compatibility of such suspension with national legislation and of its views on the assistance provided to the workers. The Committee notes the Government's indication that before the National Committee's decision, it took some initiative to clarify the situation and to contribute to an amicable settlement. The Committee also takes note of the consultative meeting organized by the Government on 22 October 2003 to seek information on the dismissal procedures. The Committee further notes that, in its communication of 31 March 2004, the Government observed that it tried to set up a tripartite meeting to discuss the case, but the President-Director of Bridgestone Tyre*

Indonesia Company was out of the country. The Committee notes finally that appeals have been lodged against the National Committee's decisions by both the workers and the company, and that decisions in those cases have not yet been reached. The Committee requests to be kept informed of any decision reached in the appeals.

- 962.** *The Committee has duly taken note of the complainant organization's allegations that before the dismissals, when the four union officers were still able to represent the local union in collective bargaining with the company and three agreements have been concluded, the company restricted the union officers' union activity, including prohibiting the four union officers' access to its premises to communicate with union members.*
- 963.** *In light of the National Committee on Labour Disputes Settlement's decision, the Committee wishes to recall that "[t]he principle that a worker or trade union official should not suffer prejudice by reason of his or her trade union activities does not necessarily imply that the fact that a person holds a trade union office confers immunity against dismissal irrespective of the circumstances" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th [Revised] edition, 1996, para. 725]. The Committee notes at the same time that the competence of the National Committee for Labour Disputes Settlement was limited to examining the request of the company to dismiss the four workers and did not extend to covering the allegations of anti-union discrimination. The Committee has duly taken note of the APINDO's observations that the four union officers have failed to produce evidence in support of their allegations. On the other hand, the Committee notes that the most recent communication of the Government on the matter indicates that the authorities in charge of the allegations of anti-union discrimination are still in the process of adjudicating the matter.*
- 964.** *In light of the fact that in this case the national authorities have initiated separate processes, the Committee notes that the conclusions reached to date in the dismissal procedures are limited to that subject matter and cannot therefore lead to any conclusions on the subject of anti-union discrimination. In the Committee's view, it is necessary to determine whether the company's decisions to initiate dismissal proceedings were part of a broader course of anti-union action or were in fact isolated acts factually distinct from legitimate trade union issues and justified by the union officers' actions.*
- 965.** *Further, the Committee recalls that in its earlier report, it stated that the outcome of the anti-union discrimination proceedings, especially if the allegations are found to be justified, "will have a substantial impact on the dismissal procedures; indeed, at one point, the local authorities were apparently of the view that they could only proceed with the dismissal procedures once the investigation into the allegations of anti-union discrimination had been concluded" [see 331st Report, para. 514, approved by the Governing Body at its 287th Session (June 2003)].*
- 966.** *The Committee is obliged to underline that it specifically requested that the Government take the necessary measures to guarantee that the procedure concerning the allegations of anti-union discrimination takes precedence over the dismissal procedures. The Committee notes that while the Government took some initiative in the case, such efforts did not correspond to the Committee's request. The Committee strongly regrets that to date the Government has failed to take steps to have the anti-union discrimination proceedings concluded first. To the contrary, as noted in the decisions of the National Committee on Labour Disputes Settlement, the Director of Manpower Supervision and the Director-General of Industrial Relations Supervision have stated that the anti-union discrimination proceedings need not be decided before the dismissal action. As appeals have been lodged against the National Committee's decisions, the Committee urges the Government to now take the necessary measures to guarantee that the anti-union discrimination proceedings*

take precedence over the dismissal procedures, and requests to be kept informed in this respect.

967. *Concerning the allegations of anti-union discrimination, to date no conclusions have been reached by the competent national authorities, including any conclusion to the effect that the allegations should be rejected for lack of evidence. Further, more than two years have elapsed since the submission of the allegations of anti-union discrimination. The following principles should therefore be recalled:*

- (1) One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see **Digest**, op. cit., para. 724].*
- (2) The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see **Digest**, op. cit., para. 739].*
- (3) Respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Digest**, op. cit., para. 741].*
- (4) The law should make express provision for the possibility to appeal against acts of anti-union discrimination by employers against workers and their organizations, as well as for penalties in this respect, in order to ensure the effectiveness in practice of Article 1 of Convention No. 98 [see **Digest**, op. cit., para. 745].*

968. *In the Committee's opinion, the present case clearly illustrates that the prohibition set out in Act No. 21/2000 is insufficient; this shortcoming is accentuated when a dismissal process, governed by well-established procedures, occurs simultaneously. Indeed, while Act No. 21/2000 contains a general prohibition of any act of anti-union discrimination (section 28) accompanied by dissuasive sanctions (section 43), it does not provide any procedure by which workers can seek redress. The Committee recalls that during its first examination of the case, the Government recognized the absence of a specific procedure for the examination of allegations of anti-union discrimination. The Committee has further noted the Government's response to the possibility of the Office's technical assistance and its statement that the lack of a specific procedure was being remedied in a bill on industrial relations. In this respect, the Committee notes that Act No. 2/2004 concerning industrial relations dispute settlement was adopted 14 January 2004. The Act notes at the outset that it was enacted in view of, inter alia, Act No. 21/2000. In article 2(a) it states that it is meant to cover "disputes on rights", and in 2(c) "disputes over termination of employment". The Act outlines a generalized process of complaint, adjudication and appeal, and in the Explanatory Notes attached to the Act, it is stated that the appeals process under the Act is designed "[i]n order to guarantee a prompt, appropriate, just, and inexpensive settlement". The Committee notes, however, that there is no specific mention of article 28 or article 43 of Act. No. 21/2000, or of anti-union discrimination in general. Therefore, the Committee requests that the Government clarify how*

Act No. 2/2004 fits within the principles recalled above, and in particular whether the bodies specified in Act No. 2/2004 will be competent to order the sanctions described in article 43 of Act No. 21/2000. It further requests that the Government submit any draft regulations associated with the Act to the Committee in due course.

- 969.** *As far as the cases of the four union officers are concerned, the Committee urges the Government once again to take the necessary steps to ensure that the procedure on the allegations of anti-union discrimination be brought to a speedy conclusion in a fully impartial manner, and to keep it informed in this respect. It requests that the Government provide a copy of any decision reached with due reasons. Further, if the allegations are found to be justified, but the workers have already received formal notification of their dismissals, the Committee requests that the Government ensure, in cooperation with the employer concerned, that the workers concerned are reinstated or, if reinstatement is not possible, that they are paid adequate compensation. The Committee requests that the Government keep it informed of developments in this respect.*
- 970.** *Finally, the Committee recalls that freedom of association implies the right of the organizations themselves to pursue lawful activities for the defence of their occupational interests [see **Digest**, op. cit., para. 447]. The Committee therefore requests that the Government investigate the allegations of the complainant organization that, while they were allowed to act as trade union representatives in negotiations with the company, the four union officers were significantly restricted in their union activity while the employment relationship still existed. The Committee requests that the Government take, if need be, appropriate steps to ensure that the local union may freely organize its activities to defend the occupational interests of its members, and that it keep the Committee informed in this regard.*

The Committee's recommendations

- 971.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee strongly regrets that to date the Government has not taken the necessary measures to guarantee that the procedure concerning the allegation of anti-union discrimination takes precedence over the dismissal procedures. As appeals have been lodged against the National Committee's decisions, the Committee urges the Government to now take the necessary measures to that effect. The Committee requests to be kept informed both in relation to the measures taken by the Government and any decisions reached in the appeals.*
 - (b) Noting the adoption of Act No. 2/2004 concerning industrial relations dispute settlement, the Committee requests that the Government clarify to what extent this Act provides, in case of anti-union discrimination, means of redress that are expeditious, inexpensive and fully impartial, and in particular, that it clarify whether the competent bodies under this Act will have the necessary authority to apply the sanctions provided under article 43 of Act No. 21/2000.*
 - (c) Noting that the allegations of anti-union discrimination submitted by the complainant organization on behalf of the four union officers have not led to any conclusion more than two years after their submission: (i) the Committee urges the Government, once again, to take the necessary steps to*

ensure that the procedure on the allegations of anti-union discrimination be brought to a speedy conclusion in a fully impartial manner, and to keep it informed in this respect, including by providing a copy of any decision reached; (ii) further if the allegations are found to be justified, but that the workers have received formal notification of their dismissals, the Committee requests that the Government ensure, in cooperation with the employer concerned, that the workers are reinstated or, if reinstatement is not possible, that they are paid adequate compensation; the Committee requests to be kept informed in this regard.

- (d) *Recalling that freedom of association implies the right of the organizations themselves to pursue lawful activities for the defence of their occupational interests, the Committee requests that the Government look into the allegations that the four union officers were significantly restricted in their union activity while the employment relationship still existed, and to take, if need be, appropriate steps to ensure that the local union may freely organize its activities to defend the occupational interests of its members; the Committee requests to be kept informed in this respect.*

CASE NO. 2304

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

**Complaint against the Government of Japan
presented by
the Japan Confederation of Railway Workers' Unions (JRU)**

Allegations: The complainant alleges that on the pretext of certain minor incidents, the police conducted massive operations against the complainant and its affiliates, including the arrest of seven trade union officers and members and their detention for ten months, searches of 134 trade union premises and residences of trade union leaders, and confiscations of 2,757 items of trade union property, thus seriously impeding the complainant's activities and undermining its image to society

- 972.** The complaint is contained in communications from the Japan Confederation of Railway Workers' Unions (JRU) dated 1 and 25 August and 14 October 2003. The International Transport Workers' Federation (ITF) associated itself to the complaint in a communication dated 16 March 2004.
- 973.** The Government sent its observations in a communication dated 25 May 2004.
- 974.** Japan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 975.** The complainant states that since November 2002, it has been facing, along with its affiliates, East Japan Railway Workers' Union (JREU) and JR Toukai Union, a series of actions by the police, prosecutors and judicial authorities which greatly impede their trade union activities. According to the complainant, these actions include the arrest and long-term detention of union members, domiciliary search of union offices and union officers' residences, and confiscation of many union-related documents and items. The above were, according to the complainant, based on charges of: (1) the ordinary crime of coercion; and (2) the alleged violation of the Law on Punishment against Violent and Other Acts. The complainant believes that the authorities use these penal provisions in order to obstruct and intervene in lawful trade union activities. It adds that they continue to take various actions under the pretext of conducting investigations with the intention to weaken the union. The complainant recalls that Conventions Nos. 87 and 98, ratified by Japan, contain an obligation to avoid undue interference with or obstruction of lawful trade union activities.
- 976.** The complainant adds that a trial is currently pending in this case and that the judgement will determine the question whether the alleged acts with which trade union members are charged fall within the scope of criminal acts or constitute normal trade union activities. The complainant also emphasizes that it is determined to prove the union members' innocence in court. However, the complainant requests that the Government be urged in the meantime to stop the obvious obstruction of and intervention in its trade union activities.

Coercion case

- 977.** More specifically, the complainant states that on 1 November 2002 the Public Safety Department of the Metropolitan Police Agency arrested the following seven union members on charges of coercion: Kunio Yanaji who is a full-time union worker, and Satoru Yamada, Jyun-ichi Uehara, Shuichi Saito, Kakunori Oguro, Tomio Yatsuda, Keiitsu Ohma who are trade union members. The above remained detained until October 2003. According to the complainant, the reason for their detention amounts to an incident which occurred in the Omiya region when one union member of the Urawa Electric Train Depot sub-branch of the JREU, an affiliate of the complainant, repeatedly acted against the union and its policies. The sub-branch of the Urawa Electric Train Depot tried to persuade the said union member through discussions to stop the aggressive actions against the union but the member did not respond in a sincere manner, continuously lying to the other members. Therefore, the sub-branch went ahead with a procedure to let the member leave the union upon his own request. No violence was involved.
- 978.** However, the complainant continues, the Public Safety Department of the Tokyo Metropolitan Police Agency applied the crime of coercion to this case after the said union member seceded from the union and later on resigned from the company. The crime of coercion is defined as: "a person who, by intimidating another through threats to his life, body, freedom, fame or property or by use of physical violence, causes the other to perform an act which the other has no obligation to perform, or hinders the other from exercising a right, shall be punished by imprisonment with appointed work for not more than three years" (article 223 of the Penal Code). According to the complainant, the Public Safety Department of the Tokyo Metropolitan Police Agency proceeded to the arrests and investigation of this case one year after the facts had occurred. The complainant adds that, on 22 November 2002, the Tokyo Public Prosecutor's office indicted the seven trade union officers and members and their trial has been under way at the Tokyo District Court. The complainant has argued during the trial that the crime of coercion does not apply to the facts of this case and seeks the acquittal of all the defendants.

- 979.** The complainant adds that apart from the seven members' arrest, the Public Safety Department carried out a domiciliary search at 53 spots including union offices and union officers' residences, confiscating 1,008 items such as union members' lists and other union property. The complainant notes that all sorts of items are listed on the search warrant as materials concerning the "formation, history, principles, doctrine, policy, organizational structure, activities and finance" of the JRU and that consequently, items totally unrelated to the allegation of the "crime of coercion" or "law on punishment against violent and other acts" have been confiscated (e.g. lists of union members, accounting books, bank accounts, documents related to trials, legal action documents for the labour committee, computers, mobile phones, pocketbooks, files, books and magazines, etc.). The complainant attaches a list of searched places and items seized. The places searched include the residences of the seven suspects (239 items seized), nine union offices (379 items seized), 31 residences of other union members and officers (288 items seized) and trade union facilities in the company. Among the seized items figure pocketbooks, address lists, telephone lists, letters, drafts, memos, internal regulations, work agreements, files of petition, materials for the trial, union meeting materials, event plans, reports, records, union magazines and pamphlets, accounting books and bankbooks, cassette and video tapes, films, newspapers, magazines, books, mobile phones, personal computers, and micro cassette recorders. According to the complainant, most of the searched premises and the confiscated items had nothing to do with the allegations.
- 980.** According to the complainant, this confiscation of indispensable property for carrying out union activities has had a tremendously negative impact on its daily union activities. In particular, the confiscation by the Public Safety Department in June 2003 of materials related to the trial of the seven defendants, hinders the activities of the trade union in court so as to protect its members. Moreover, the complainant states that it is undue interference to collect information on ordinary activities of the union and personal information on the union officers and members through confiscated materials.
- 981.** The complainant adds that repeated requests for bail were made to the Tokyo District Court. Most of them were dismissed on the grounds of the possibility of destruction of evidence and escape. On 1 August 2003, the Tokyo District Court made a judgement to grant bail pursuant to a request submitted on 29 July 2003 by the complainant. However, the Tokyo Prosecutor's Office made an appeal to the Tokyo High Court and the bail was immediately suspended. On 4 August 2003, the Tokyo High Court accepted the appeal and cancelled the judgement granting bail on the basis of the "possibility of destruction of evidence". On 11 August 2003, the complainant made a special appeal to the Supreme Court for the cancellation of the judgement rendered by the Tokyo High Court but the Supreme Court dismissed the appeal on 3 September 2003. Finally, the complainant notes that on 9 October 2003, the Tokyo District Court decided to bail out the defendants. The Prosecutors made an immediate appeal to the Tokyo High Court which dismissed the appeal on 10 October 2003.
- 982.** The complainant adds that the seven defendants were detained for almost nine months while payment of their wages had been suspended by the company causing great hardship to them and their families. The detained union members were only allowed to see their family members and their attorneys so that union officers and members could not visit them in prison. The complainant adds that requests for bail were dismissed by the Tokyo District Court because the Tokyo Public Prosecutor's Office insisted on the risk of destruction of evidence based on the fact that the JREU had been not only uncooperative but also critical during the whole process of the investigation. The complainant notes that it is clearly an infringement of basic union rights to maintain someone in detention because the union has been critical of the manner in which the investigation has been carried out by the police and prosecution.

**Violation of the Law on Punishment
against Violent and Other Acts**

- 983.** The complainant further alleges that another large-scale search and confiscation of union property took place on 12 June 2003 when the Public Safety Department of the Tokyo Metropolitan Police Agency conducted a domiciliary search at 18 spots including the union offices and residences of union officers, confiscating 538 items. The complainant attaches a list of searched places, including six union premises (447 items seized) and 11 residences of trade union officers and former officers including the complainant's president, two vice-presidents and the secretary-general (91 items seized). The list of items seized is similar to the one noted above.
- 984.** The complainant alleges that the reason for the search was a minor incident which took place on 21 June 2002. On that day, members of the JR Toukai Union who are affiliated to the complainant handed out fliers protesting against an unjust transfer of a union member and the complainant had also dispatched its members to hand out the fliers. The manager of JR Toukai Company persistently followed the union members who handed out the fliers, repeatedly checked and threatened the participating members and even followed all the members who were in a group after having finished their action. One officer of the complainant union protested to the manager of the company and stopped him holding his arm. One year later, without any prior notice, the Public Safety Department of the Tokyo Metropolitan Police Agency abruptly conducted a large-scale investigation and confiscation with the pretext that this act should be prosecuted since it was violating the Law on Punishment against Violent and Other Acts.
- 985.** The complainant adds that on 26 June 2003, it filed an application of quasi-interlocutory appeal to the Tokyo District Court claiming that the warrant for the 12 June searches was illegal. After this appeal, the Public Safety Department of the Tokyo Metropolitan Police Agency started to return part of the confiscated items, as "these were not necessary".

Trespass case

- 986.** The complainant finally alleges that prior to the release of the abovementioned seven trade union officers and members, in September-October 2003, the police carried out further domiciliary searches at 63 places including the JREU offices and the union officers' residences, confiscating 1,211 items on the grounds of "intrusion of residence". According to the complainant, this accusation was fabricated from the mere fact that the JREU members had put union fliers in the mailboxes of an apartment complex in Tokyo on 13 June 2003. A concierge made a phone call to the police and policemen rushed in and took five union members to the police station. After their interrogation, they were released. The complainant adds that three months later, the police searched the union offices and residences of union officers and members, confiscating among other things, 12,500 sheets of union fliers on 27 October 2003.
- 987.** Overall, according to the complainant, during the ten months' detention of the seven trade union officers and members, the number of places targeted for domiciliary search amounted to 134, with 2,757 confiscated items. Finally, the complainant notes that these incidents created tremendous obstacles to its activities and caused an irreversible loss as fear was instigated against it and its social reputation was undermined. This was enhanced by the fact that the police made a one-sided announcement to the media in which it mentioned the involvement of extremists in the union, an accusation which is not even mentioned in the bill of indictment. The complainant notes that these facts clearly show the authority's intention to isolate the trade union and undermine its image to society.

988. In its communication dated 16 March 2004, the ITF alleges that the actions of the law enforcement authorities are totally disproportionate to the original offences and designed to seriously hinder the union's ability to carry out its normal functions in clear breach of the ILO standards on freedom of association.

B. The Government's reply

Coercion case

989. In its communication dated 25 May 2004, the Government states that according to the indictment in this case, the facts are as follows. The seven defendants, who were members of the Omiya District Headquarters of the East Japan Railway Union (JREU), an affiliate of the complainant concluded that the victim, who was also a member of JREU and worked for the East Japan Railway Company (JR East) as an engine driver, was a disrupter of JREU. They therefore intended to make him secede from JREU and resign from the company since he joined the campaign sponsored by another union which was hostile to the JREU and made false excuses when he was asked about it.

990. According to the indictment, from 21 January until around the end of June 2001, the defendants intimidated the victim 14 times yelling "Hey you guys! Get out of the union. I mean to make you quit the company. I am a member of the Kakumaru sect. I'll tease you every time I see you. I'll do it so that you feel inclined to resign, as you get tired of hearing it. It's about time for you to think of your future." The Government specifies that the Kakumaru sect is the most powerful of all the ultra-leftist violent groups in Japan and gave rise to a number of terrorism and guerrilla incidents in the past while at present, it has deeply infiltrated the complainant and the JREU which is affiliated to the complainant. The Government states that one of the defendants in this case is a member of the sect. The Government adds that, as a result of the repeated intimidation, the defendants made the victim secede from JREU on 28 February 2001 and resign from the company on 31 July of the same year.

991. The Government indicates that the investigation progressed as follows: on 11 February 2002 the victim submitted an incident report to the Metropolitan Police Department (MPD) with regard to the abovementioned coercion. Through careful investigation, the MPD found out that the acts of the defendants constituted the crime of coercion as prescribed in paragraph 1, of article 223 of the Penal Code. Therefore, based on the arrest warrants issued by the Tokyo Summary Court, the MPD arrested the defendants on 1 November 2002. The defendants were detained on 3 November 2002 and indicted on the 22 November by the Tokyo District Public Prosecutor's Office under charges of coercion. The Government then provides detailed information on the progress of the trial which has reached 19 sessions in court and is currently at the stage of examination of witnesses.

992. The Government also indicates that the defendants continued to be in detention after their indictment. Their defence counsel applied for bail but the Tokyo District Court rejected it once. The Tokyo District Court later on granted bail on 1 August 2003. However, the public prosecutor filed an appeal against this decision which was cancelled by the Tokyo High Court on 4 August 2003. The defence counsel filed a special appeal to the Supreme Court. The appeal was rejected and the decision of the High Court was sustained on 3 September 2003. Finally, the Tokyo District Court granted bail on 9 October 2003 and although the public prosecutor filed an appeal, the Tokyo High Court rejected it on 10 October. Thus, all the defendants were released and are now free.

993. The Government rejects the complainant's assertion that the arrest of the defendants was illegal or unjust as such arrest was conducted in conformity with the provisions of the

Code of Criminal Procedure on “ordinary arrest” and was based on warrants issued by a judge on the basis of objective evidence which proved that there was a reasonable cause to suspect that the acts of the defendants constituted the crime of coercion. The Government emphasizes that in this case, there was a need to arrest the defendants in that they had committed such an organizational, cunning and atrocious crime that there was a reasonable cause to strongly suspect that they might destroy, conceal or alter evidences unless they were arrested. Although immunity from punishment is applicable to appropriate trade union acts, with the exception of use of violence as prescribed in paragraph 2, of article 1 of the Trade Union Law, the defendants in this case had intimidated the victim many times for a long period of time to make him mentally exhausted, to finally force him not only to secede from the union but also to resign from the company; the abovementioned evil deeds of the defendants were far from proper acts of the trade union, and were also deemed to correspond to the use of violence. Therefore, the aforementioned immunity could never apply.

- 994.** The Government rejects as groundless the complainant’s assertion that the search and seizure conducted by the MPD was illegal or unjust. The Government indicates that according to the Code of Criminal Procedure, a judge is competent to decide through a strict prior judicial examination, not only whether investigative authorities may or may not make a search and seizure but also where to search and what to seize. The Government acknowledges that the MPD searched 72 places including the residences of the defendants in the process of investigating this case, and adds that each place searched was believed to be where the real evidence concerning the case existed and was specified as a place to search in the warrant. The Government also acknowledges that the MPD seized 1,870 goods and documents through the abovementioned searches, and adds that each item was specified as an item to seize in the warrant and was believed to have something to do with this case. Thus, according to the Government, all searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure and were completely legitimate and proper.
- 995.** The Government adds that giving consideration to the fact that the seizure inevitably entails restrictions on property, the MPD paid a considerable amount of attention to the rights of the persons involved in this case. Thus, the MPD never seized any goods or documents of which no need for seizure existed, and promptly returned the seized items to their original possessors when they turned out to be, as a result of analyses, less related to the case and less necessary for proving the case than the MPD initially believed.
- 996.** The Government rejects as groundless the complainant’s assertion that the defendants were detained for an unduly long time noting that such an assertion simply expresses dissatisfaction with the judgement of the court on this issue. The Government recalls that, according to the facts for which an indictment was issued, the acts of the defendants constitute the crime of coercion, which is very vicious as they intimidated the victim many times for a long period of time forcing him to resign from his place of work and cease the employment relationship which is the only means of making his living. Though their acts did not involve physical violence, it was eminent that their acts were organized and cunning. Thus, they cannot be said to constitute a “petty offence” as the complainant asserts. Also, in light of the fact that the incident took place inside the workplace and the intimidation was done only orally, which makes it difficult to obtain objective real evidence, the law enforcement agencies in such a case cannot but rely upon the statements of a limited number of eyewitnesses and find facts by carefully and widely collecting evidence and examining it closely.
- 997.** The Government adds that criminal procedure in Japan is designed to harmonize two elements, i.e. to guarantee basic rights to the suspected or accused persons while allowing

for the truth to be found. Thus, the physical restraint of a suspected or accused person is subject to the strict control of the judiciary and the protection of the rights of a detained person is fully guaranteed. Physical restraint prior to indictment, arrest and detention are conducted in limited circumstances, as a general rule, after very strict judicial control and the right to file a complaint against detention is also guaranteed to everyone. After the indictment has been issued, the defendant may be detained in cases where, inter alia, there is a reasonable cause to suspect that the accused may destroy or alter evidence or escape. The period of detention in such cases is two months after indictment and if it is necessary to continue further detention, it may be renewed every one month by ruling setting forth the concrete reasons thereof. The defendant in detention or his defence counsel may also apply for bail which must be granted, except where the defendant has committed a very serious offence, or where there is a reasonable cause to suspect that the defendant may destroy or alter evidence, cause bodily harm or harm the property of the witnesses or victims or threaten them, or there exist other reasons as prescribed in article 89 of the Code of Criminal Procedure. Whether or not such conditions exist is upon the judgement of the court. In addition to this, a suspect or an accused under physical restraint may be prohibited from having an interview with a person other than his/her defence counsel if there is a reasonable ground to suspect that he/she may destroy or conceal evidence.

998. The Government further emphasizes that the detention of the defendants in this case was made lawfully. Strict judicial control was exercised on each renewal of the period of detention every month. When the defence counsel filed an appeal with the Tokyo High Court, the latter rejected it in August 2003 on the ground that there was a reasonable cause to suspect that the defendants may destroy or alter evidence if released on bail. Thus, their detention continued, without raising any problem from a procedural or substantive point of view. The High Court which handled the appeal held as reasons for refusing the bail, the connection between the position of the defendants and the persons involved in the case, and also the substance of the court hearings together with the attitude of the defendants in response to the case, finding that if they were released on bail at the stage when the examination of the chief and deputy chief of the Urawa Train Depot was scheduled, there was a reasonable cause to suspect that the defendants would conspire or exert influence upon the persons related to the case to destroy or alter evidence.

999. With regard to the complainant's assertion that fundamental trade union rights were infringed when the authorities decided to continue the detention because the union was critical of the investigation, the Government notes the circumstances of this case, i.e. the fact that this case should be seen in the context of the organization concerned and that the defendants deny the charges thus endorsing the fears that they may destroy or alter evidence. The Government adds that, one cannot derive from the above the conclusion that the authorities are infringing upon the basic rights of the union. When the court examined the abovementioned appeal it held that "it cannot be said at this stage, considering the nature of this case and also the circumstances of the hearing by the court, that they are detained for an unduly long time".

1000. Finally, the Government notes that when the Tokyo District Court granted bail on 9 October 2003, and the Tokyo High Court rejected the appeal filed by the public prosecutor on 10 October, both Courts granted bail to the defendants under the condition that they are prohibited from contacting the witnesses to be examined in the future since the examination of important witnesses was already finished. Thus, the judgement did not imply that it had not been proper for the court to refuse bail earlier on.

1001. As for the prohibition of interviews during detention, the Government states that while the court prohibited the defendants from having interviews with persons other than the defence counsel after the indictment, it lifted part of the ban regarding interviews with their families. The Government is of the view that this was a proper step, considering the nature

and pattern of this case, the connection between the position of the defendants and other persons involved, the condition of court hearings and the attitude of the defendants responding to the case.

- 1002.** The Government rejects as groundless, in law or in fact, the assertion of the complainant that the police issued a one-sided press release on the investigation of this case in order to socially isolate and weaken the complainant. The Government notes that all the facts announced in the MPD press release as to the investigation of this case were either true or believed to be true on reasonable grounds. Thus, according to the Government, it is a fact that the contents of the aforementioned announcement included private information on the defendants such as their names, and it is undeniable in general that a press release by the police on a criminal investigation is in conflict with the privacy of a suspect. According to the laws and judicial precedents of Japan, however, an act of defamation is not unlawful both from a criminal and civil point of view when it is found to relate to matters of public interest and to have been done solely for the benefit of the public and the alleged facts are proven to be true to an important extent. Also, an act of defamation is not unlawful from both a criminal and civil point of view in case there is a reasonable cause for the person who alleged the facts to believe them true even when the alleged facts are not proven to be true. Therefore, no matter how much the announcement of police concerning the criminal act of a suspect has hurt his/her social reputation, it is still not unlawful when it is found to relate to matters of public interest and to have been made solely for the benefit of the public, or when the announced facts are true or the police had reasonable cause to believe them true even when they are not proven to be true in the end. The abovementioned press release was found to relate to matters of public interest and to have been issued not for the purpose of socially isolating and weakening the complainant, but solely for the benefit of the public, in the interest of the right to be informed. The announced facts were limited to the objective truth or to what was believed to be true at that time on appropriate grounds. Thus, the Government concludes that the aforementioned press release was completely legal.
- 1003.** The Government also rejects as groundless the complainant's assertion that the press release which referred to "the involvement of extremists" and the reference made to the relationship between the JREU and the Kakumaru sect hurt the social reputation of the JREU. The Government answers that the police authorities had grasped, by investigating past cases concerning the Kakumaru sect, the fact that this sect had deeply infiltrated both the complainant and its affiliated organization JREU. This had already been revealed in statements in the Diet in November 2000 and February 2001, preceding the investigation of this case, by the Director of Security Bureau, National Police Agency, in response to the questions of the Diet members. Furthermore, several newspapers had reported the content of former government statements in December 2000. These facts mean, according to the Government, that the relationship between, on the one hand, the complainant (JRU) and its affiliate JREU and, on the other hand, the Kakumaru sect was already publicly known when the aforementioned announcement was made.

Violation of the Law on Punishment against Violent and Other Acts

- 1004.** With regard to the case of the violation of the Law on Punishment against Violent and Other Acts, the Government indicates that the outline of the case, as revealed by the investigation of the MPD, is as follows. The JR Toukai Union, an affiliate of the complainant, held an assembly in front of Tokyo station on 21 June 2002, in order to protest against the transfer of a member of its executive committee who had been transferred from the JR Toukai Company because he had not obeyed instructions in the course of employment. The three suspects of this case were members of the complainant's executive committee and were at the assembly in order to support the struggle of the

JR Toukai Union. They noticed the presence of a supervisory employee of the aforementioned company (the victim), who watched the movements of the participants to prevent them from committing offences (bursting into the facilities of the company, etc.). Therefore, the suspects attempted to threaten and attack him in conspiracy, then surrounded him and used physical violence against him, pulling him by the arm and both lapels of his jacket. The Government adds that on 21 June 2002, the very day when the incident occurred, the victim submitted an incident report to the MPD with regard to the physical violence. Through careful investigation, the MPD found out that the acts of the suspects constituted a violation of the Law on Punishment against Violent and Other Acts. Therefore, the MPD has been conducting the necessary investigation, interrogating the suspects several times without arresting them.

- 1005.** The Government rejects, as unfounded, the complainant's assertion that the search and seizure conducted by the MPD was illegal or unjust. The Government acknowledges that the MPD searched 35 places, including the residences of the suspects, in the process of investigating this case and adds that each place searched was believed to be where the real evidence concerning the case existed and was specified as a place to search in the warrant. The Government also acknowledges that it seized 1,039 goods and documents through the abovementioned searches and adds that each item was specified as an item to seize in the warrant, and was believed to have something to do with this case. Thus, according to the Government, all searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure and were completely legitimate and proper.
- 1006.** The Government adds that giving consideration to the fact that the seizure inevitably entails restrictions on property, the MPD paid a considerable amount of attention to the rights of the persons involved in this case. Thus, the MPD never seized any goods or documents of which no need for seizure existed and promptly returned the seized items to their original possessors when they turned out to be, as a result of analyses, less related to the case and less necessary for proving the case than the MPD initially believed.

Case of trespass

- 1007.** With regard to the case of trespass, the Government indicates that the outline of the case as revealed by the investigation of the MPD and other investigative authorities are as follows. The 11 suspects who were members of the Tokyo District Headquarters of JREU broke into several apartment buildings in the area of Tabata-shinmachi, Kita-ku, Tokyo, without permission from the residents or janitors (the victims) on 13 June 2003, in order to deliver a large amount of handbills in which they appealed to the law enforcement authorities to release the detained defendants of the aforementioned coercion case. On 14 June 2003, i.e. the following day, one of the victims submitted an incident report to the MPD in relation to the fact of trespass and some others followed suit. Through careful investigation, the MPD found out that the acts of the suspects constituted the crime of trespass as prescribed in article 130 of the Penal Code. The MPD conducted the necessary investigation until 23 February 2004. The Tokyo District Public Prosecutor's Office decided, on 24 March 2004, to suspend indicting all the suspects mainly due to the small damage and to their conceding the fact of trespass.
- 1008.** The Government rejects as unfounded the complainant's assertion that the search and seizure conducted by the MPD was illegal or unjust. The Government acknowledges that the MPD searched 63 places including the residences of the suspects in the process of investigating this case, and adds that each place searched was believed to be where the real evidence concerning the case existed and was specified as a place to search in the warrant. The Government also acknowledges that it seized 1,251 goods and documents through the abovementioned searches, and adds that each item was specified as an item to seize in the

warrant, and was believed to have something to do with this case. Thus, according to the Government, all searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure, and were completely legitimate and proper.

- 1009.** The Government adds that giving consideration to the fact that the seizure inevitably entails restrictions on property, the MPD paid a considerable amount of attention to the rights of the persons involved in this case. Thus, the MPD never seized any goods or documents of which no need for seizure existed, and promptly returned the seized items to their original possessors when they turned out to be, as a result of analyses, less related to the case and less necessary for proving the case than the MPD initially believed. Furthermore, the seized items still in custody are to be returned soon, as their examination was finished.

C. The Committee's conclusions

- 1010.** *The Committee notes that this case concerns allegations that on the pretext of certain minor incidents, the police conducted massive operations against the complainant and its affiliates, including the arrest of seven trade union officers and members and their detention for ten months, searches of 134 trade union premises and residences of trade union leaders, and confiscations of 2,757 items of trade union property, thus seriously impeding the complainant's activities and undermining its image to society.*
- 1011.** *The Committee observes that one trade union officer and six members of the JREU which is an affiliate of the complainant (Kunio Yanaji, a full-time union worker, and Satoru Yamada, Jyun-ichi Uehara, Shuichi Saito, Kakunori Oguro, Tomio Yatsuda, Keiitsu Ohma who are trade union members), have been indicted for the crime of coercion on the ground that, from 21 January until around the end of June 2001, they intimidated a member of their union 14 times, thus making him secede from the union on 28 February 2001 and resign from his job in the East Japan Railway Company on 31 July of the same year. According to the Government, the victim submitted an incident report to the Metropolitan Police Department (MPD) with regard to the alleged coercion on 11 February 2002. The MPD arrested the defendants on 1 November 2002. The arrest was based on a judicial warrant. According to the Government, there was a need to arrest the defendants in that they had committed such an organizational, cunning and atrocious crime that there was a reasonable cause to strongly suspect that they might destroy, conceal or alter evidence unless they were arrested.*
- 1012.** *The Committee also observes that the defendants were arrested on 1 November 2002, detained on 3 November 2002 and released on 10 October 2003; thus, they remained in detention more than 11 months. Requests for bail were dismissed on the grounds of the possibility of destruction of evidence and escape. The Committee notes that according to the Government, preventive detention is subject to a general two-month limit established by law. Any extension beyond the two-month limit must be accorded every month on the basis of a court decision stating the concrete reasons thereof. The Committee notes that the reasons put forward in this case for extending the detention for an additional nine months were according to the Government, the connection between the position of the defendants and the persons involved in the case, the substance of the court hearings and the attitude of the defendants in response to this case. In particular, the Government emphasized that if the defendants were released on bail at the stage when the examination of the chief and deputy chief of the Urawa Train Depot was scheduled, there was a reasonable cause to suspect that the defendants would conspire or exert influence upon the persons related to the case in order to destroy or alter evidence. The Committee notes that, apparently for the same reasons, the seven defendants were prohibited from communicating with anyone except their family members and their attorneys, so that they could not have any contact*

with other trade union officers and members. The Committee further notes that the trial of the seven defendants is currently under way at the Tokyo District Court. The complainant seeks their acquittal by arguing that the crime of coercion does not apply to the facts of their case.

- 1013.** *The Committee recalls that, in general, measures of preventive detention may involve a serious interference with trade union activities which can only be justified by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 85]. The Committee notes that in this case, even though the preventive detention exceeded the general two-month limit established by law, each extension was decided in the framework of a judicial procedure. The Committee takes note of the fact that the seven trade union officers and members accused of coercion have now been released while their trial is under way at the Tokyo District Court. It requests the Government to keep it informed of the progress of the judicial proceedings and to communicate the final judgement once rendered.*
- 1014.** *The Committee takes note of the Government's statement that, in order to investigate this crime after the seven defendants were arrested and detained, 72 trade union premises and residences of trade union members and officers were searched and 1,870 items were seized, in accordance with warrants issued by the Courts. The Committee observes that the searches continued in 2003 in response to two incidents. On 12 June 2003, the police searched, according to the Government, 35 premises including the residences of the complainant's president, two vice-presidents and the secretary-general, and seized 1,039 items. This action was taken in order to investigate an incident which had taken place one year earlier, on 21 June 2002, and which was prosecuted on the basis of the Law on Punishment against Violent and Other Acts. The Committee takes note of the information provided by the Government concerning the incident between members of the JR Toukai Union and a supervisory employee of the JR Toukai Company. Moreover, the Committee notes that in September-October 2003, the police searched 63 premises and seized 1,251 items in the process of investigating a case of trespass which, according to the Government itself, involved very small damage. The incident concerned 11 trade union members who left fliers calling for the release of the seven defendants in the mailboxes of apartment buildings in Tokyo without the permission of the residents or janitors.*
- 1015.** *The Committee notes that according to the complainant, the searches were conducted on the basis of judicial warrants which were overly comprehensive, ordering the seizure of all sorts of items concerning the formation, history, principles, doctrine, policy, organizational structure, activities and finance of the JRU, items which according to the complainant were totally unrelated to the allegations. The items seized allegedly included lists of union members, accounting books, documents related to trials, legal action documents, computers, mobile phones, pocketbooks, files, books and magazines. The seizure of these items had, according to the complainant, a negative impact on its daily trade union activities. In particular, the confiscation of trial-related materials hindered its efforts to defend its members in court. According to the Government, the wide range of places and items listed in the warrants were justified by the fact that the law enforcement agencies had to rely on statements of a limited number of eyewitnesses and find facts by carefully and widely collecting evidence and examining it closely. All searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure and were completely legitimate and proper while the MPD returned promptly the seized items to their original possessors when they turned out to be less related to the case and less necessary for proving the case than the MPD initially believed. The Committee also notes that with*

regard to the case of trespass, the Government indicates that the seized items still in custody are to be returned soon, as their examination has been completed.

- 1016.** *While taking due note of the fact that the searches took place on the basis of a judicial warrant, the Committee notes that the Government has not specified the grounds on the basis of which the Courts ordered the search of premises other than the domicile of those accused of the crime of coercion, thus ordering the search of a large number of trade union offices and residences of trade union officers and members who were not indicted. The Government has also not indicated the reasons why the seizure concerned not simply items related to the offences under investigation, but also anything related to the internal functioning of the complainant trade union (JRU). The Committee recalls that the defendant in this case is not the JRU but seven of its officers and members who are, moreover, accused on the basis of ordinary criminal law. The Committee recalls that any sentences passed on trade unionists on the basis of the ordinary criminal law should not cause the authorities to adopt a negative attitude towards the organization of which these persons and others are members [see **Digest**, op. cit., para. 66]. This is all the more so in this case where sentences have not been pronounced yet and the procedure is still at the stage of the examination of evidence. Moreover, the Committee recalls that it has drawn attention to the importance of the principle that the property of trade unions should enjoy adequate protection. With regard to searches of trade union premises, it is stated in the resolution on trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session (1970), that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights [see **Digest**, op. cit., paras. 184 and 204]. Noting that the searches and confiscations against the complainant trade union and its members have apparently ceased, the Committee requests the Government to take all necessary measures in order to ensure that any remaining confiscated items which do not have a direct connection to the facts of the case are immediately returned to the complainant and to keep it informed in this respect. It also requests the Government to ensure that the judicial procedures under way do not interfere in the free exercise of trade union activities.*
- 1017.** *The Committee further notes that according to the complainant, the police caused great damage to its social reputation by making a one-sided announcement to the media in which it mentioned the involvement of extremists in the union, an accusation which is not even mentioned in the bill of indictment. The Committee notes that in answer to this allegation, the Government indicates that: (1) according to the indictment, the seven trade union officers and members are accused of having made verbal threats by using, among other things, the phrase "I am a member of the Kakumaru sect"; (2) this sect is the most powerful of all the ultra-leftist violent groups in Japan and gave rise to a number of terrorism and guerrilla incidents in the past; (3) at present, the sect has deeply infiltrated the complainant and its affiliate JREU while one of the defendants in this case is a member of the sect; (4) the abovementioned announcement is not illegal as it related to matters of public interest and the police had reasonable cause to believe it true even if it does not prove to be true in the end; (5) the relationship between the complainant, the JREU and the Kakumaru sect has been publicly known from the investigation of past cases and had already been revealed in statements by the Director of Security Bureau, National Police Agency in the Diet in November 2000 and February 2001; and (6) several newspapers had reported the content of former government statements on this issue in December 2000.*
- 1018.** *With regard to the Government's comments, the Committee observes that the alleged infiltration of the complainant by the Kakumaru sect is not included among the accusations contained in the indictment and that therefore, the Court is not requested to pronounce itself on this issue. The Committee considers that the police should abstain from any declaration which might damage the reputation of a trade union as long as the matters in question have not been confirmed by the judicial authorities.*

The Committee's recommendations

1019. *In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:*

- (a) *The Committee takes note of the fact that the seven trade union officers and members accused of coercion have been released while their trial is pending at the Tokyo District Court. It requests the Government to keep it informed of the progress of the judicial proceedings and to communicate the final judgement once rendered.*
- (b) *Noting that the searches and confiscations against the complainant trade union and its members have apparently ceased, the Committee requests the Government to take all necessary measures in order to ensure that any remaining confiscated items which do not have a direct connection to the facts of the case are immediately returned to the complainant and to keep it informed in this respect. It also requests the Government to ensure that the judicial procedures under way do not interfere in the free exercise of trade union activities.*
- (c) *The Committee considers that the police should abstain from any declaration which might damage the reputation of a trade union as long as the matters in question have not been confirmed by the judicial authorities.*

CASE NO. 2308

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

Complaint against the Government of Mexico presented by the National Trade Union of Electrical and Allied Workers of the Mexican Republic (SNIPES)

Allegations: Refusal by the authorities to accept an amendment of the complainant organization's by-laws to enable it to extend its coverage to workers in the cable television sector, radio broadcasting, and the manufacturing of radios, televisions, light bulbs and electronics in general

1020. The complaint is contained in a communication from the National Trade Union of Electrical and Allied Workers of the Mexican Republic (SNIPES) dated 8 October 2003. The Government sent its observations in a communication dated 22 April 2004.

1021. Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegation

1022. In its communication of 8 October 2003, the National Trade Union of Electrical and Allied Workers of the Mexican Republic (SNIPES) states that it is a national industry-wide trade union with legally approved by-laws and is registered with the Secretariat of Labour and Social Security of the Federal Government of the United Mexican States.

1023. The complainant organization states that on 11 November 2001 it held its ninth extraordinary congress to adopt comprehensive amendments to its by-laws and elect its executive committee. The amendments to the by-laws were adopted by an absolute majority of votes of the members of the trade union, with section 3bis amended to read as follows:

Section 3bis. The following persons may be members of the trade union: permanent, casual and temporary workers providing services in any enterprise, company, factory or workplace engaged in manufacturing electrical parts or auto parts, fuses, connectors, switches, cables, conductors, cable television, radio broadcasting, assembly of electrical parts, the manufacturing of radios, televisions, light bulbs and electronics in general, electrical parts repair shops, and anything containing electricity for use in the home, industry and the State and in work in the electrical industry in general, such as electrical and electricity installations, including the generation, distribution, sale, transformation and transmission of electrical energy and any infrastructure works in general, and allied workers, in the Mexican Republic.

1024. The complainant states further that, irrespective of the above, the Government, through the National Directorate for the Registration of Associations of the Secretariat of Labour and Social Security, issued an illegal decision stating that it: “refuses to take note of the amendment to section 3bis of the by-laws concerning the extension of the coverage of the trade union in question”. In the view of the complainant organization, the foregoing represents interference in the internal affairs of the organization which amounts to a system of corruption and licensing of trade unions. Moreover, this decision infringes the provisions of sections 357 and 359 of the Federal Labour Act, as well as those of ILO Convention No. 87.

1025. The complainant organization states further that on 23 October 2002 it filed an appeal for review with the General Directorate for the Registration of Associations against the decision handed down on 6 September 2002. In reply to this appeal, the Under-Secretary for Labour of the Secretariat of Labour and Social Security issued a decision which, among others, stated the following: “The decision dated 6 September 2002, contained in communication No. 21122-2724, is upheld in its entirety on the grounds that it was well founded and justified.”

1026. The complainant organization considers that the Government of Mexico should not refuse to take note of the amendments to its by-laws, which were approved at its congress by a majority vote of its members, given that it should abstain from obstructing and hampering the free exercise of freedom of association of the members of the complainant organization.

B. The Government's reply

1027. In its communication of 22 April 2004, the Government states that on 29 January 2002 the National Trade Union of Electrical Workers requested the General Directorate for the Registration of Associations of the Secretariat of Labour and Social Security to take note of the amendments to its by-laws agreed on at its ninth extraordinary congress. These included an amendment of section 3bis concerning the extension of its coverage.

- 1028.** The Government adds that on 6 September 2002 the General Directorate for the Registration of Associations issued a decision in which it refused to take note of the amendment of section 3bis of the by-laws of the National Trade Union of Electrical Workers, leaving the other amendments unaffected.
- 1029.** In its decision, the General Directorate for the Registration of Associations pointed out that section 3bis of the by-laws extended the coverage of the trade union to include, in addition to the activities recognized when it had been registered and which related to the electrical industry, other activities such as “cable television, radio broadcasting ...” which require a federal contract or concession, as provided in article 123, paragraph XXXI, clause (b), point 2, of the Political Constitution of the United Mexican States and section 527, paragraph II, point 2, of the Federal Labour Act. Moreover, activities relating to “the manufacturing of radios, televisions, ... electronics in general, electrical parts repair shops, ... and any infrastructure works in general ...” come within the remit of local government and are covered by section 529 of the Federal Labour Act; it is hence inappropriate to include these activities in section 3 of the by-laws given that this distorts the original nature of the union, since these activities are not of the same nature as those that constitute the *raison d’être* of this trade union.
- 1030.** The Government states that the National Trade Union of the Electrical Industry filed an appeal for a review against the decision of the General Directorate for the Registration of Associations with the Under-Secretary for Labour of the Secretariat of Labour and Social Security, which upheld in its entirety the decision of the General Directorate for the Registration of Associations.
- 1031.** Section 357 of the Federal Labour Act stipulates that workers and employers have the right to establish organizations without previous authorization. Article 2 of ILO Convention No. 87 also provides that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.
- 1032.** In this particular case, the National Trade Union of the Electrical Industry exercised its right to establish itself as a trade union, as stated in its communication.
- 1033.** Section 359 of the Federal Labour Act and Article 3 of Convention No. 87 provide that trade unions have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. The National Trade Union of the Electrical Industry has legally registered by-laws, which were amended at its ninth extraordinary congress. In addition, it has freely elected its representatives, organized its administration and activities and formulated its programme. It is clear from the above that the National Trade Union of the Electrical Industry fully exercised its right laid down in the abovementioned provisions.
- 1034.** The Government points out that the National Trade Union of the Electrical Industry filed an appeal for protection of its constitutional rights (*amparo*) against the refusal by the General Directorate for the Registration of Associations to take note of the amendment of section 3bis of its by-laws and the decision of the Under-Secretariat for Labour to uphold this administrative act. The appeal for *amparo* was examined by the competent district labour court.
- 1035.** On 10 November 2003 the competent district labour court ruled that the National Trade Union of the Electrical Industry belongs to the electrical industry sector (which comes within the federal remit) and hence, in extending its coverage and amending its by-laws, it cannot include other sectors which come within the local remit under section 527 of the

Federal Labour Act, and different jurisdictions cannot be combined. It therefore denied the protection of the federal justice system to the National Trade Union of the Electrical Industry.

1036. On 23 December 2003, the National Trade Union of the Electrical Industry filed an appeal for review against the ruling denying it constitutional protection. On 20 February 2004, the competent collegiate circuit court for labour affairs upheld the ruling handed down by the district court denying protection to the National Trade Union of the Electrical Industry and declared the case definitively closed, so that the decision of the General Directorate for the Registration of Associations remains in force.

1037. In this particular case, the Government recalls that the Committee on Freedom of Association has stated that:

Legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organizations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body so as to avoid any risk of excessive or arbitrary interference in the free functioning of organizations [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 331].

1038. The Government therefore considers that the labour authorities have acted in conformity both with Mexican labour legislation and with ILO Convention No. 87. Moreover, the National Trade Union of the Electrical Industry made use of the available legal remedies by appealing against the decisions by which it deemed itself affected, before an impartial and independent judicial body, the Judicial Branch of the Federation.

C. The Committee's conclusions

1039. *The Committee observes that the complainant organization, the National Trade Union of Electrical and Allied Workers of the Mexican Republic, objects to decisions by the General Directorate for the Registration of Associations of the Secretariat of Labour and Social Security, of the latter Secretariat and of the district labour court refusing to "take note" of the amendment of section 3bis of the by-laws of the complainant organization, which was intended to extend its coverage. The Government states that, as is clear from the administrative decisions and the ruling handed down in this case, the sectors to which the complainant organization wishes to extend its coverage fall within the remit of local government, according to section 527 of the Federal Labour Act (in particular, the amendment to the by-laws is aimed at extending trade union representation to cable television, radio broadcasting, and the manufacturing of radios, televisions, light bulbs and electronics in general, instead of being confined to the electrical industry), while the complainant organization belongs to the electrical industry, which falls within the federal remit, and different jurisdictions cannot be combined.*

1040. *The Committee notes that the Government: (1) refers to the different stages in the administrative and judicial proceedings initiated in relation in this case; (2) emphasizes that the labour authorities acted in conformity both 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 under sections 357 and 359 of the Federal Labour Act, workers have the right to establish trade unions without previous authorization and to draw up their by-laws. The Committee also notes that the last judicial decision denied the complainant organization constitutional protection and the protection of the justice system.*

1041. *As it has done in previous cases [see for example 330th Report, Case No. 2207 (Mexico), para. 907], the Committee recalls that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions, and that national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 275 and 333]. The Committee emphasizes that the complainant trade union is a national trade union and that, for the purposes of the guarantees laid down in Convention No. 87, it is irrelevant whether it seeks to cover only a federal sector, such as electricity, or also a local sector, such as radio, television or electronics in general. The Committee therefore requests the Government to take steps to register the amendments to the by-laws requested by the complainant organization, and to keep it informed in this respect. Nonetheless, the Committee must emphasize that the fact that the by-laws involve an extension of the coverage of the trade union does not in any way prejudice its representativeness in the sectors covered and thus its right to bargain collectively with the employers or employers' organizations concerned. Lastly, the Committee emphasizes that the fact of being able to bring a case before a judicial body in the event of refusal by the authorities to recognize amendments to trade union by-laws does not constitute an absolute guarantee of application of the Convention, in so far as the judicial authority may base its decision on legal provisions or principles which may not be in conformity with the provisions of Convention No. 87.*

The Committee's recommendation

1042. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

The Committee requests the Government to take steps to register the amendments to the trade union's by-laws requested by the complainant organization and to keep it informed in this respect.

CASE NO. 2317

INTERIM REPORT

Complaints against the Government of the Republic of Moldova presented by

- **the Federation of Trade Unions of Public Service Employees (SINDASP)**
- **the Confederation of Trade Unions of the Republic of Moldova (CSRM)**
- **the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND) supported by**
- **the International Confederation of Free Trade Unions (ICFTU)**
- **the General Confederation of Trade Unions (GCTU)**
- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and**
- **the Public Services International (PSI)**

Allegations: The complainants allege that the Government attempts to adopt legislation contrary to freedom of association. They further allege that the public authorities and employers interfere in the internal matters of their

organizations and pressure their members to change their affiliation and become members of the trade union supported by the Government

- 1043.** The Federation of Trade Unions of Public Service Employees (SINDASP) forwarded its complaint in communications dated 20 January 2004. In communications dated 20 November 2003, 29 January, 5 March, 9 April and 30 June 2004, the Confederation of Trade Unions of the Republic of Moldova (CSRM) forwarded similar allegations. In communications dated 10 and 25 June 2004, the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND) sent further allegations concerning this case. The International Confederation of Free Trade Unions (ICFTU), the General Confederation of Trade Unions (GCTU), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Public Services International (PSI) associated themselves with the complaint in communications dated 30 April, 1 and 7 June and 15 September 2004, respectively. The PSI and the IUF submitted additional information in communications dated 11 October and 21 October 2004, respectively.
- 1044.** The Government forwarded its observations in communications dated 10 May, 22 June and 11 October 2004.
- 1045.** The Republic of Moldova 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

- 1046.** In its communications dated 20 January 2004, the Federation of Trade Unions of Public Service Employees (SINDASP), one of the affiliates of the Confederation of Trade Unions of the Republic of Moldova (CSRM), alleges that, in October 2003, the president of the Communist Faction of Parliament ordered employees of the public administration at the national, regional and local levels to withdraw their trade union membership from the SINDASP and to join the "Solidaritate" trade union, supported by the Communist Party. The complainant indicates that, at the date of the complaint, trade union organizations from six districts and some organizations from the municipality of Chişinău were forced to leave the SINDASP and affiliate to the "Solidaritate". In violation of the statutes of the SINDASP, the procedure of disaffiliation took place without a representative of the SINDASP being present and without an official report being made to the SINDASP. The complainant alleges that the CSRM has informed the President of the Republic of Moldova and the First Secretary of the Communist Party of this situation. No answer had been received at the date of the complaint.
- 1047.** In communications dated 20 November 2003, 29 January, 5 March, 9 April and 30 June 2004, the CSRM forwards similar allegations. In its communication of 29 January 2004, the complainant indicates that the period of transition to a market economy in the Republic of Moldova gave rise to anti-unionism as trade unions are considered to be obstacles to the transition to a market economy. The complainant indicates that anti-union tactics carried out by the employers under the pressure of public authorities take the form of opposition by employers to the establishment of trade union organizations. In this respect, the CSRM points out that the administration of the Ecological College and the Lyceum "Mircea Eliade" opposed the establishment of trade union organizations in these institutions.
- 1048.** According to the CSRM, the anti-union intentions of the authorities can be observed through the legislation it is currently trying to adopt. The complainant mentions the

proposal to amend section 11 of the Law on trade unions, to provide that the activities of trade unions could be prohibited or suspended on the grounds provided for in the Law on prevention of extremist activities. Furthermore, the draft Law on non-commercial organizations contains a section which provides that the Registrar has a right to conduct verification of trade union documents, to participate in actions undertaken by the trade unions, etc. The same draft Law also provides that trade unions would have an obligation to annually inform the Registrar of their activities and to present annual reports in writing. The Registrar would have the right to initiate a procedure of dissolution of a trade union organization.

- 1049.** The CSRM furthermore alleges that legislation and decisions are often adopted without any consultation with trade unions or discussions at the Republican Commission for Collective Bargaining. Moreover, the complainant states that the Commission is established by Presidential Decree and is not a permanent body. Its decisions are not always taken into account by the public authorities or employers.
- 1050.** The complainant alleges that the authorities also adopted a plan of action to ensure affiliation of the CSRM members to the “Solidaritate”. According to this plan of action, trade union members were to be threatened with dismissals if they did not change their union membership. The plan also provided for establishment of district trade union councils and the calling of extraordinary conferences to examine the question of disaffiliation from the SINDASP and affiliation to the “Solidaritate”. The complainant alleges that, to implement this plan of action, trade union meetings were chaired by the authorities in the districts of Ocnita, Briceni and Edinet. Furthermore, prior to the SINDASP conference of 17 October 2003, instructions on the actions to take in order to ensure the process of disaffiliation from the SINDASP and consequent affiliation to the trade union under the Government’s control were distributed to the trade union leaders by the local authorities.
- 1051.** The CSRM further mentions cases of disaffiliation of its members and their consequent affiliation to the unions supported by the authorities. In this respect, the CSRM lists the following unions, previously members of the CSRM, which under the pressure of the authorities and employers changed their affiliation and became members of alternative trade unions: the Federation of Unions of Chemical Industry and Energy Workers, the “Moldsindcoopcomet” Federation, the “Raut” Trade Union and the Trade Union of Workers of Cadastre, Geodesy and Geology “SindGeoCad”.
- 1052.** In its communication of 5 March 2004, the CSRM provides further details of the alleged acts of interference by the authorities in the trade union activities of its affiliates – the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND), the Union of Education and Science and the SINDASP.
- 1053.** As concerns the AGROINDSIND (in its communication of 10 June 2004, the AGROINDSIND forwarded the same complaint), the complainant alleges that, since the beginning of 2002, state officials and employers have been trying to break it up. The reason for the systematic interference in the activities of the AGROINDSIND was its refusal, on 19 February 2002, to associate itself with a declaration of support for government policy. At the meeting in Parliament, the President of the Parliament labelled as enemies all trade unions which refused to join the declaration. Two days later, on 21 February 2002, two officials from the Tax Inspectorate came to the AGROINDSIND office, supposedly to carry out a routine investigation into “certain aspects of financial activities of the AGROINDSIND”. They were accompanied by an official of the Information and Security Service of the Republic of Moldova. The investigations lasted from 13 March to 7 June 2002, when a criminal investigation was initiated against the trade union. However, the AGROINDSIND was not informed of this decision until

25 August 2002. On 20 August, an investigator from the Prosecutor's Office came to the trade union's office with a demand to hand over financial documents of the Federation. The complainant indicates that, since then, there has been no sign of any investigation being conducted. The financial documents seized from the Federation on 20 August 2002 were not returned. On 5 September 2002, the AGROINDSIND national conference discussed and approved the report of the trade union's audit committee, which confirmed the correctness of the expenditures. The complainant points out that this fact proves that its financial activities are in order and are approved by the trade union members and, therefore, there should be no further investigation by the public authorities. In its communication of 21 October 2004, the IUF submits that, since the proceedings were instituted in June 2002, no information on the progress of the case has been presented to the AGROINDSIND. The IUF considers that this case is an additional means aimed at undermining the union and intimidating its members. In its view, the inability of the Prosecutor's office to prove the case after such a long period only underlines its lack of merits. The IUF officially appealed to the Government of Moldova to dismiss the case and provide necessary explanations to the AGROINDSIND. However, no reply was received by the IUF nor by the AGROINDSIND.

- 1054.** According to the CSRM, the state authorities, having failed to intimidate the leadership of the AGROINDSIND through the different investigations conducted by the Security and Information Service, the Prosecutor's Office and the Tax Inspectorate, changed their strategy to now direct it at splitting the AGROINDSIND and transferring it to the "Solidaritate" favoured by the Government. This task is being carried out by the public authorities and employers, acting themselves under the pressure of the authorities.
- 1055.** The CSRM alleges that, as the result of this strategy, on 13 November 2003, following pressure on trade union activists by the director of Viorika-Cosmetic Ltd. and the Ministry of Agriculture, the trade union committee of the enterprise voted for the transfer of their affiliation to "Solidaritate".
- 1056.** Moreover, on 13 November 2003, during the wine-producers' conference, Mr. Mironescu, the managing director of the "Moldova-Vin" state enterprise instructed directors of vineyards to "work" on local unions so as to ensure that they agreed to leave the AGROINDSIND and join the "Solidaritate". Blank forms were provided to the managers of wine-producing enterprises for holding trade union meetings to decide to withdraw their membership of the AGROINDSIND. Mr. Mironescu also personally spoke with the chairpersons of some trade unions in the wine industry about the need to leave the AGROINDSIND.
- 1057.** The CSRM alleges that the following events took place after that meeting. On 22 December 2003, at the Kozhushna Wine Producing Company, members of the trade union committee were summoned by the director of the company who demanded that they leave the AGROINDSIND and join the "Solidaritate". In January 2004, an official of the "Moldova-Vin" state enterprise went to the Mileshti-Mish Winery and strongly demanded that the vineyard collectively leave the AGROINDSIND by the specific deadline and join the "Solidaritate". On 13 January 2004, following the instruction of the enterprise's director, the trade union committee (and not the conference as required by the trade union statutes) of the Barza Alba Brandy Factory Ltd. took the decision to leave the AGROINDSIND. On 16 January 2004, under pressure from the 18 members of the management board present, the conference of the Balti Drinks Company trade union also voted for disaffiliation from the AGROINDSIND. During January 2004, officials of the "Moldova-Vin" state enterprise exercised pressure of the deputy chairperson on the trade union committee of the National Chamber of Wine Producers and Wine Growers. The managing director of the enterprise demanded that the union leave the AGROINDSIND and join "Solidaritate" by 31 January. The complainant states that, as a result of this

pressure, three out of the 39 trade union committees of wine collectives had taken the decision to leave the AGROINDSIND.

- 1058.** The complainant alleges that the managing director of the “Moldova-Vin” state enterprise admitted to Mr. Porchesku, the chairperson of the AGROINDSIND, that he himself was under pressure from the Prime Minister of the Republic of Moldova, who regularly asked for concrete progress reports in that respect.
- 1059.** In order to further divide the AGROINDSIND, on 27 January 2004, the Government of Moldova removed the chairperson of the AGROINDSIND, Mr. Porchesku, from the Executive Board of the “Moldova-Vin” state enterprise and appointed to the board the chairperson of the “Solidaritate”.
- 1060.** The CSRM further alleges that the heads of local authorities also carry out tactics against the AGROINDSIND. In December-January, the president of the Ungheni district had repeated meetings with the leadership of the local AGROINDSIND trade union during which he exerted pressure on trade union leaders and encouraged the transfer of the trade union to the “Solidaritate”. On 16 January 2004, the president of the Calarasi district, in a meeting with the chairperson of the local AGROINDSIND trade union, stressed the need to transfer the trade union to the “Solidaritate”. Despite the refusal of the trade union chairperson, the Calarasi district president’s proposal was presented to the meeting of workers at the Agricultural Machinery Plant where, under pressure from the management, the decision was taken to leave the AGROINDSIND and join the “Solidaritate”. A few months earlier, on 13 August 2003, the same meeting had unanimously decided to maintain its membership in the AGROINDSIND.
- 1061.** On 23 January 2004, the Balti City Council held a meeting with directors and accountants of different companies, during which the mayor and his deputy told them that they must work through “Solidaritate”. The director of the “Barza Alba” Company and the Drinks Company were recognized for their success concerning the transfer of trade unions from the AGROINDSIND to the “Solidaritate”. At the same meeting, the deputy mayor of Balti was elected deputy president of the interregional trade union council of the “Solidaritate”.
- 1062.** As concerns the Union of Education and Science, the CSRM alleges that in November 2003, the head of the Department of Education, Youth and Sport of the Floresti district council convened a meeting of members of the board of the council, where he ordered them to sign documents approving the affiliation to the “Solidaritate”. Those who were against were threatened with forced resignation.
- 1063.** On 12 January 2004, following the instructions of the head of Gagauzia, the head of the general administration of education, youth and sport in Gagauzia called a meeting of heads of educational institutions and chairpersons of trade union committees in the region with Mr. Lashku, the chairperson of the “Solidaritate”, who urged trade unions to withdraw their membership from the Union of Education and Science and join the “Solidaritate”.
- 1064.** On 23 January 2004, the deputy mayor of the municipality of Balti and the head of the municipal Department of Education, Youth and Sport summoned the directors and the chairpersons of the trade union committees of Schools Nos. 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15 and 18 where they were strongly urged to change their affiliation to the “Solidaritate”.
- 1065.** On 4 February 2004, trade union leaders in Ocnita districts were also called for the meetings with heads of educational institutions where they were told to transfer affiliation of their local unions to “Solidaritate”. Under pressure from the Department of Education, Youth and Sport of Ocnita, an trade union extraordinary conference was held on

10 February 2004. Following a vote of two-thirds of the 50 delegates present, including the heads of educational institutions, it was decided that the union should become an affiliate of the “Solidaritate”. Although, officially, all trade unions of workers in educational institutions in the Ocnita district were transferred to the “Solidaritate”, none of them has been notified of that decision.

- 1066.** As concerns the SINDASP, the CSRM alleges that local authorities, using various means (face-to-face conversations, telephone calls and letters) have exerted pressure on trade union leaders in order to achieve a complete transfer of the SINDASP to the “Solidaritate”.
- 1067.** In its communication of 9 April 2004, the CSRM alleges that the Government confers privileges on the “Solidaritate” by including representatives of this organization in the work of certain tripartite councils, while excluding the representatives of the CSRM. For example, by Government Decision No. 74 of 30 January 2004, the president of the “Solidaritate” became a member of the council responsible for granting government prizes for quality, productivity and competitiveness achievements. By Government Decision No. 270 of 17 March 2004, the president of the “Solidaritate” became also a member of the Council on Economic Affairs to the Prime Minister. Furthermore, the chairperson of the “Viitorul” Union, which is a member of the “Solidaritate”, was appointed by the Government to the working group on reorganization of the Lyceum “B.P. Hasdeu”.
- 1068.** The CSRM also alleges that, on 10 March 2004, the deputy president of the Rezina district ordered the mayors to take all the necessary measures to ensure that school directors ensure that trade unions affiliated to the Union of Education and Science affiliate to the “Viitorul”. To this effect, copies of the minutes of trade union meetings to be held on the question of affiliation were distributed to those present at the meeting for subsequent distribution by school directors among trade union leaders. Following this meeting, directors of several schools in Balti held meetings with workers to whom they presented prepared documents attesting the change of trade union affiliation. Similar events took place in the district of Edinet.
- 1069.** In its communication of 30 June 2004, the CSRM alleges cases of interference in the activities of the “Sanatate” Trade Union – one of its affiliates. The complainant indicates that, on 25 May 2004, the Minister of Health gave orders to the leaders of the medico-sanitarian institutions to take urgent measures in order to ensure that trade union organizations in the health field (otherwise affiliated to the “Sanatate” Trade Union) join the “Solidaritate”. Under the pressure of the Minister, on 27 May 2004, during a meeting of the staff of the Ministry of Health, a decision was taken to disaffiliate from “Sanatate”. By its communication of 11 October 2004, the PSI submits several documents in support of the allegations of interference in the activities of the “Sanatate” Trade Union. In particular, the PSI provides a copy of a “Declaration” made by the Minister of Health on 1 June 2004, where he suggests that the Ministry of Health takes “a constructive, independent position and distances itself from the policy promoted by the leaders of the CSRM”.
- 1070.** In its communications of 25 June and 16 July 2004, the AGROINDSIND further provides details on the alleged acts of interference in its activities. In particular, it alleges that the management of “Moldcarton” enterprise is now trying to convince its workers to file claims to return trade unions dues which were deducted from their salaries during the last three years but never transferred to the trade union account. Despite two court decisions binding the enterprise to transfer deducted but not transferred trade union dues, the enterprise’s administration printed and distributed to the workers applications requesting reimbursement of the deducted fees.

- 1071.** The complainant further alleges that, on 11 March 2004, the director of “Mileshti-Mish” prevented representatives of international trade union organizations, the ICFTU and the IUF, as well as of the chairperson and two other representatives of the AGROINDSIND, from participating in a trade union meeting which took place on enterprise premises. In its communication of 21 October 2004, the IUF corroborates this allegation.
- 1072.** Finally, AGROINDSIND indicates that, on 29 June 2004, under employers’ and state authorities’ control, a new national branch trade union centre of food industry, affiliated to “Solidaritate”, was created. Under the pressure made by employers, trade union organizations from the following enterprises affiliated to the newly created union: “Tutun CTC”, “Aroma”, “Cricova”, “Barza Alba”, “Franzeluta” and the Factory of Food Products of Balti municipality.

B. The Government’s replies

- 1073.** In its communications of 10 May, 22 June and 11 October 2004, the Government states that the existence of two trade union confederations at the national level gives the opportunity to trade union organizations to make their own choice and define their relations with the branch federations and to adhere to any of the existing structures in a democratic way. The Government, in its position as social partner, treats these confederations equally and in no case gives priority to any of them in social partnership relations. Both confederations are members of the National Commission for Consultations and Collective Bargaining on an equal basis and participated in negotiations of the Collective Labour Agreement at the national level for the years 2001, 2002, 2003 and 2004. Furthermore, representatives of both organizations participate on an equal basis in the drafting of laws, decisions and regulations. As social partners, both organizations are recognized by all state structures and employers’ organizations. The chairpersons of the confederations participate in the annual International Labour Conference.
- 1074.** As regards the allegation that certain privileges were conferred on the “Solidaritate” by including representatives of this organization in the work of certain tripartite councils, the Government confirms that only representatives of the “Solidaritate” have been included in the work of the council responsible for granting government prizes for quality, productivity and competitiveness achievements, the Council on Economic Affairs to the Prime Minister and the Departmental Council Agroindsind “Moldova-Vin”. The Government states however that the choice of the “Solidaritate” representatives was based on the fact that the abovementioned councils dealt with the sectors of economy represented by the “Solidaritate”.
- 1075.** As regards the specific allegations of the instances of interference in the activities of the CSRM, the Government indicates that the process of trade union organizations moving from one sectoral trade union to another or from one confederation to another is conducted according to their own will and free choice. The Government had not dissolved or suspended, on an administrative basis, any trade union organization from either of the two confederations.
- 1076.** The Government indicates that neither the Federation of Trade Unions of Public Service Employees (SINDASP), nor the Confederation of Trade Unions of the Republic of Moldova (CSRM) had contested the decisions of their members to change their affiliation. As concerns the cases of the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND) and the Union of Education and Science, the Government points out that there is no concrete proof of direct interference or pressure exercised by the public authorities.

- 1077.** The Government further states that, according to the regulations of the SINDASP, in order to withdraw a territorial trade union organization from the Federation, an application to this effect and a decision signed by the higher body of the organization should be deposited with the Operational Committee. The Operational Committee examines the application and adopts the final decision in this respect. The Government indicates that no such decision has been adopted. Therefore, the territorial trade union organizations from Ocnita, Briceni, Floresti, Chişinău, Riscani, Cimislia, Donduseni, Balti, Calarase, Ungheni and Edinet continue to be members of the SINDASP. At the same time, the Government indicates that the Ministry of Labour and Social Protection had supervised the situation in the SINDASP when the primary organizations and the territorial association of 18 districts and municipalities had decided to withdraw from this Federation and to affiliate to the “Solidaritate”. It points out that all persons involved in the process were members of the SINDASP and their actions could only be evaluated as members of the trade union and not as public employees exercising their duties.
- 1078.** The Government further indicates that, upon the request of the CSRM, the ICFTU mission had visited the Republic of Moldova to meet both Confederations, branch trade unions and their members. The recommendations of the ICFTU to improve the reciprocal constructive collaboration between trade unions and to stop the internal confrontations have been accepted by both Confederations. The Government also emphasizes that the Law on trade unions ensures the right to establish trade unions and provides for the necessary guarantees of their administration and activities.
- 1079.** According to the Government, the existing situation is the result of divergences and problems that appeared in the trade union movement many years ago and are of an internal character. The state bodies do not create obstacles and do not interfere in trade union activities and their internal matters.

C. The Committee’s conclusions

- 1080.** *The Committee notes that this case was presented by the Confederation of Trade Unions of the Republic of Moldova (CSRM) and by two of its affiliates – the Federation of Trade Unions of Public Service Employees (SINDASP) and the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINDSIND). In addition to the direct complainants, this case also concerns the Union of Education and Science and the “Sanatate” Trade Union, also affiliates of the CSRM. The Committee notes that the complainants allege that the Government is trying to adopt legislation contrary to freedom of association. They further allege various acts of interference by the authorities and the employers in the internal matters of their organizations and, in particular, acts of pressure on trade union members to change their union membership to become members of trade unions supported by the Government.*
- 1081.** *As concerns the first set of allegations, the Committee notes the CSRM’s allegation to the effect that the Government is trying to adopt legislation contrary to freedom of association. The complainant mentions the proposal to amend section 11 of the Law on trade unions, which would provide that the activities of trade unions could be prohibited or suspended on the grounds provided for in the Law on prevention of extremist activities. According to the complainant, the draft Law on non-commercial organizations contains a section which provides that the Registrar has a right to conduct verification of trade union documents, to participate in actions undertaken by trade unions, etc. The same draft Law also provides that trade unions would have an obligation to annually inform the Registrar of their activities and to present annual reports in writing. The Registrar would also have the right to initiate a procedure of dissolution of a trade union organization. Moreover, the complainant states that the legislation and decisions are often adopted without any consultation with trade unions or discussions at the Republican Commission for Collective*

Bargaining. The Committee notes that the Government provides no information on the draft laws in question, but submits that trade unions participate in the drafting of laws, decisions and regulations. The Government also states that the present Law on trade unions ensures the right to establish trade unions and provides for the necessary guarantees of their administration and activities. The Committee requests the Government to provide copies of the draft laws mentioned and to send its observations in this regard.

- 1082.** *The Committee further notes the complainant's allegation that the Government confers privileges on the "Solidaritate" trade union by including representatives of this organization in the work of certain tripartite Councils and by excluding the CSRM representatives from such commissions. For example, by Government Decision No. 74 of 30 January 2004, the president of the "Solidaritate" became a member of the council responsible for granting government prizes for quality, productivity and competition achievements. By Government Decision No. 270 of 17 March 2004, the president of the "Solidaritate" became also a member of the Council on Economic Affairs to the Prime Minister. Furthermore, the chairperson of the "Viitorul" union, a member of the "Solidaritate", was appointed by the Government to the working group on reorganization of the Lyceum "B.P. Hasdeu". The CSRM further states that the Government removed the chairperson of the AGROINDSIND, Mr. Porchesku, from the Executive Board of the "Moldova-Vin" state enterprise and replaced him with the chairperson of the "Solidaritate". The Committee notes the Government's statement that the reason behind the choice of the "Solidaritate" representatives is that the abovementioned councils deal with the sectors of the economy represented by "Solidaritate". The Government further states that, in its position as social partner, it treats both confederations equally and that this is proven by the fact that the chairpersons of both confederations participate in the annual International Labour Conference. The Government points out that both organizations are members of the National Commission for Consultation and Collective Bargaining and that both of them participated in negotiations of the Collective Labour Agreement at the national level for the years 2001, 2002, 2003 and 2004.*
- 1083.** *The Committee notes the Government's statement concerning the participation of "Solidaritate" in certain tripartite councils. It nevertheless recalls that the fact that a trade union organization is debarred from membership of joint committees does not necessarily imply infringement of the trade union rights of that organization. However, for there to be no infringement, two conditions must be met: first, that the reason for which a union is debarred from participation in a joint committee must lie in its non-representative character, determined by objective criteria; second, that in spite of such non-participation, the other rights which it enjoys and the activities it can undertake in other fields enable it to effectively further and defend the interests of its members within the meaning of Article 10 of Convention No. 87 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 946]. The Committee also considers that certain advantages, especially with regard to representation, might be accorded to trade unions by reason of the extent of their representativeness. But, the intervention of the public authorities as regards such advantages should not be of such a nature as to influence unduly the choice of the workers in respect of the organization to which they wish to belong [see **Digest**, op. cit., para. 311].*
- 1084.** *As concerns the allegations of interference in the internal matters of trade unions, the Committee notes that the CSRM alleges that employers often oppose the establishment of trade union organizations at their enterprises, as was the case at the Ecological College and the Lyceum "Mircea Eliade". The Committee regrets that no information was provided by the Government in this respect. Recalling that Article 2 of Convention No. 98 prohibits employers from interfering in the establishment of trade unions, the Committee requests the Government to conduct an independent inquiry into this allegation and keep it informed in this respect.*

- 1085.** *The Committee further notes that the AGROINDSIND alleges that the management of “Moldcarton” enterprise is trying to convince its workers to file claims to return trade unions dues which were deducted from their salaries for the past three years but never transferred to the trade union account. Despite two court decisions binding the enterprise to transfer deducted but not transferred trade union dues to the trade union account, the enterprise administration printed and distributed applications to the workers requesting reimbursement of the deducted fees. The Committee regrets that no information was provided by the Government in this respect. The Committee considers that such action on behalf of the management of “Moldcarton” enterprise constitutes an act of interference in the internal affairs of the trade union and is therefore contrary to Article 2 of Convention No. 98. The Committee requests the Government to take all the necessary measures in order to ensure that court decisions ordering the enterprise to transfer deducted trade union dues to the trade union account are enforced without delay and to keep it informed in this respect.*
- 1086.** *The Committee notes the allegation of the AGROINDSIND that, on 11 March 2004, the director of “Mileshti-Mish” prevented representatives of international trade union organizations, the ICFTU and the IUF, as well as the chairperson and two other representatives of the AGROINDSIND, from participating in the trade union meeting which took place on enterprise premises. The Government provides no information in this respect.*
- 1087.** *The Committee considers that, for the right to organize to be meaningful, the relevant workers’ organizations should be able to further and defend the interests of their members by enjoying such facilities as may be necessary for the proper exercise of their functions. It further recalls that governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management [see **Digest**, *op. cit.*, para. 954]. The Committee further considers that trade union organizations should be allowed to benefit from their international trade union contacts. The Committee requests the Government to take the necessary measures in order to ensure that access to enterprise premises during trade union meetings is allowed to trade union leaders and representatives with due respect for the rights of property and management. It requests the Government to keep it informed in this respect.*
- 1088.** *The Committee further notes the AGROINDSIND’s allegation that, since the beginning of 2002, public authorities have been trying to break up the Federation. Different tactics have allegedly been used to achieve this aim, including investigations into financial activities of the Federation conducted by the Security and Information Service, the Tax Inspectorate and the Prosecutor’s Office. These investigations were followed by the opening of a criminal investigation. The complainant indicates that since the beginning of the criminal investigation in 2002, there has been no sign of it being conducted. Moreover, the documents seized from the trade union in 2002 have still not been returned. The Committee regrets that the Government provides no information concerning this allegation and requests it to send its observations as a matter of urgency.*
- 1089.** *As concerns the allegations concerning pressure exercised since the end of 2003 by the authorities and the employers on trade unions affiliated to the CSRM, in order to force these unions to change their affiliation and become members of the “Solidaritate”, the Committee notes the following. As concerns the SINDASP, the Committee notes the complainant’s allegation that employees of the public administration were ordered to withdraw their membership from the SINDASP and join the “Solidaritate”. The complainant mentions in particular that, in the districts of Ocnita, Briceni and Edinet, trade union meetings chaired by the authorities’ representatives were called to decide on the question of disaffiliation from the SINDASP and affiliation to the “Solidaritate”. Following pressure and threats of dismissal of trade unionists, trade unions from six*

districts and the municipality of Chişinău were forced to leave the SINDASP and to affiliate to the "Solidaritate". Furthermore, the Committee notes that, according to the complainant, the Government provided no answer to its numerous complaints.

- 1090.** The Committee notes that the CSRM lists the following unions, previously members of the CSRM, which allegedly, under the pressure of the authorities and employers, changed their affiliation and became members of alternative trade unions: the Federation of Unions of Chemical Industry and Energy Workers, the "Moldsindcoopcomet" Federation, the "Raut" Trade Union and the Trade Union of Workers of Cadastre, Geodesy and Geology "SindGeoCad".
- 1091.** As concerns the AGROINDSIND, the Committee notes that the complainants list the following examples where pressure was exercised upon local trade unions by the employers of the enterprises, who themselves acted under the pressure of the authorities: the trade unions of the Wine Producing Company, Mileshti-Mish Winery and of the National Chamber of Wine Producers and Wine Growers were ordered to change their affiliation. As a result of this pressure, trade unions of Viorika-Cosmetics Ltd., "Barza Alba", "Tutun CTC", "Aroma", "Cricova", "Franzeluta", Agricultural Machinery Plant in the Calarasi district and the Factory of Food Products of Balti municipality were forced to change their affiliation.
- 1092.** As concerns the Union of Education and Science, the Committee notes the complainants' allegation that, under pressure from the head of the general administration of education, youth and sport, the heads of the departments of education, youth and sport of the Floresti, Gagauzia, Balti, Ocnita and Edinet districts held meetings with trade union leaders and instructed them to ensure disaffiliation from the Union of Education and Science and consequent affiliation to the "Solidaritate" and "Viitorul". The complainants indicate that, following a vote at the extraordinary conference of the trade union in Ocnita district, where heads of educational institutions were present and voted, all local trade unions of the Union of Education and Science in Ocnita district were transferred to the "Solidaritate".
- 1093.** As concerns the "Sanatate" Trade Union, the Committee notes that the complainants allege that, on 25 May 2004, the Minister of Health gave orders to the leaders of the medico-sanitarian institutions to take urgent measures in order to ensure that trade union organizations in the health field (affiliated to the "Sanatate" Trade Union), join the "Solidaritate". The complainants indicate that under the pressure of the Minister, on 27 May 2004 during a meeting of the staff of the Ministry of Health, a decision was taken to disaffiliate from the "Sanatate".
- 1094.** The Committee notes the Government's statement, according to which the process of trade union organizations moving from one sectoral trade union to another or from one confederation to another is conducted according to their own will and free choice. The Government indicates that it has not dissolved or suspended, on an administrative basis, any trade union organization from either of the two confederations. Moreover, the Government considers that as concerns the cases of the AGROINDSIND, and the Union of Education and Science, there is no concrete proof of direct interference or pressure exercised by the public authorities. Concerning the SINDASP, the Committee notes that, on the one hand, the Government indicates that the territorial trade union organizations from Ocnita, Briceni, Floresti, Chişinău, Riscani, Cimislia, Donduseni, Balti, Calarase, Ungheni and Edinet are still members of the SINDASP. On the other hand, it indicates that all persons involved in the process of disaffiliation of the SINDASP primary and territorial organizations of 18 districts and municipalities and consequent affiliation to the "Solidaritate" were members of the SINDASP and their actions could only be evaluated as members of the trade union and not as public employees exercising their duties. The

Government points out that neither the SINDASP nor the CSRM had contested the decisions of their members to change their affiliation. Finally, the Government states that the existing situation is the result of divergences and problems which first appeared in the trade union movement many years ago and are of an internal character and the state bodies do not create obstacles and do not interfere in trade union activities and their internal matters. The Committee notes that no information concerning "Sanatate" was provided by the Government.

- 1095.** *The Committee notes that the Government denies the complainants' allegations of interference by the authorities and more particularly the pressure it had exercised directly or through employers. It further notes that the Government provides rather ambiguous information concerning SINDASP. The Committee understands, however, that massive disaffiliation from the CSRM and consequent affiliation to the "Solidaritate" took place in different sectors and within a short period of time. In these circumstances, the Committee has reasons to doubt that this process was due only to the free will and free choice of the organizations concerned. The Committee therefore requests the Government as a matter of urgency to conduct independent inquiries into the allegations of pressure being exerted upon trade unions in the districts of Ocnita, Briceni, Edinet and the municipality of Chişinău, as concerns the SINDASP; in the districts of Floresti, Gagauzia, Balti, Ocnita and Edinet, as concerns the Union of Education and Science; at the Wine Producing Company, Mileshti-Mish Winery, the National Chamber of Wine Producers and Wine Growers, the Viorika-Cosmetics Ltd., "Barza Alba", "Tutun CTC", "Aroma", "Cricova", "Franzeluta", Agricultural Machinery Plant in the Calarasi district and the Factory of Food Products of Balti municipality as concerns the AGROINDSIND. It further requests the Government to conduct an independent inquiry into the allegations of the CSRM concerning trade union organizations in the health field and, more particularly, as concerns the disaffiliation of the trade union of the Ministry of Health from the "Sanatate" Trade Union, as well as into the circumstances of disaffiliation of the Federation of Unions of Chemical Industry and Energy Workers, the "Moldsindcoopcomet" Federation, the "Raut" Trade Union and the Trade Union of Workers of Cadastre, Geodesy and Geology "SindGeoCad" from the CSRM. It requests the Government to keep it informed of the results of these investigations.*

The Committee's recommendations

- 1096.** *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 provide copies of the draft laws mentioned by the complainant and to send its observations in this regard.*
 - (b) The Committee recalls that certain advantages, especially with regard to representation, might be accorded to trade unions by reason of the extent of their representativeness. But it has taken the view that the intervention of the public authorities as regards such advantages should not be of such a nature as to influence unduly the choice of the workers in respect of the organization to which they wish to belong.*
 - (c) Recalling that Article 2 of Convention No. 98 prohibits employers from interfering in the establishment of trade unions, the Committee requests the Government to conduct an independent inquiry into the allegation of the employers' refusal to accept the establishment of trade unions at the Ecological College and the Lyceum "Mircea Eliade" and keep it informed in this respect.*

- (d) The Committee requests the Government to take all the necessary measures in order to ensure that court decisions ordering the enterprise to transfer deducted trade union dues to the trade union account are duly enforced and to keep it informed in this respect.*
- (e) The Committee requests the Government to take the necessary measures so as to ensure that access to enterprise premises during trade union meetings is allowed to trade union leaders and representatives, with due respect for the rights of property and management. It requests the Government to keep it informed in this respect.*
- (f) The Committee considers that trade union organizations should be allowed to benefit from their international trade union contacts.*
- (g) The Committee requests the Government to send as a matter of urgency its observations as regards the criminal investigations instituted over two years ago against the AGROINDSIND.*
- (h) The Committee requests the Government to conduct as a matter of urgency the following independent inquiries into the allegations of pressure to change trade union affiliation:*
 - (i) in the districts of Ocnita, Briceni, Edinet and the municipality of Chişinău, as concerns the SINDASP;*
 - (ii) in the districts of Floresti, Gagauzia, Balti, Ocnita and Edinet, as concerns the Union of Education and Science;*
 - (iii) at the Wine Producing Company, Mileshti-Mish Winery, the National Chamber of Wine Producers and Wine Growers, the Viorika-Cosmetics Ltd., “Barza Alba”, “Tutun CTC”, “Aroma”, “Cricova”, “Franzeluta”, Agricultural Machinery Plant in the Calarasi district and the Factory of Food Products of Balti municipality as concerns the AGROINDSIND;*
 - (iv) into the allegations of the CSRM concerning trade union organizations in the health field and, more particularly, as concerns the disaffiliation of the trade union of the Ministry of Health from the “Sanatate” Trade Union;*
 - (v) into the circumstances of disaffiliation of the Federation of Unions of Chemical Industry and Energy Workers, the “Moldsindcoopcomet” Federation, the “Raut” Trade Union and the Trade Union of Workers of Cadastre, Geodesy and Geology “SindGeoCad” from the CSRM.*

The Committee requests the Government to keep it informed of the results of these investigations.

CASE NO. 2274

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

**Complaint against the Government of Nicaragua
presented by
the National Federation of Heroes and Martyrs Trade Unions of the Textiles,
Clothing, Leather and Shoe Industry on behalf of the Roo Sing Garment Co.
Workers' Union (STERSG)**

Allegations: the complainant organization alleges the dismissal of several officials of the Roo Sing Garment Co. Workers' Union (STERSG); refusal by the Roo Sing Garment Co. to comply with a court order to reinstate a trade union leader; negotiation of a collective agreement with a trade union financed by the employer, setting aside the agreement that was being negotiated with STERSG; application for suspension of STERSG by the company in July 2002; criminal proceedings against the STERSG executive board for slander and libel, suspension of a trade unionist's wages and drawing up of blacklists of trade union members

- 1097.** The complaint is set out in a letter from the National Federation of Heroes and Martyrs Trade Unions of the Textiles, Clothing, Leather and Shoe Industry on behalf of the Roo Sing Garment Co. Workers' Union (STERSG) of 29 May 2003. In a letter of 14 July 2003, the complainant sent additional information.
- 1098.** The Government sent its observations in letters of 29 September and 14 October 2003 and 2 February 2004.
- 1099.** 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 complainants' allegations

- 1100.** In its letter of 29 May 2003 the complainant organization begins by stating that, after having to overcome problems with its formation in January 2001, the Roo Sing Garment Co. Workers' Union (STERSG) submitted a list of demands on 18 April 2001. In May 2001, the Trade Unions Directorate convened the trade unions (STERSG and another trade union called "18 January" also active in the company) and the company to begin negotiations. Eight meetings were held in this way and over 60 per cent of the clauses were negotiated. In June the same year, the company sent a letter requesting suspension of the negotiations because the leadership of the 18 January union had been contested. The complainant alleges that from that moment, the company in connivance with officials of the Ministry of Labour, set out to contest the STERSG.

- 1101.** On 20 June 2001, the STERSG held an extraordinary general meeting to restructure its executive board and elect new negotiators. The documentation was submitted to the Trade Unions Directorate which, on 25 June, issued a directive stating that certain items must be rectified as they were illegible. Subsequently, on 2 October of the same year, the Directorate issued resolution No. 231-2001 in which it decided not to accept the request for restructuring. Two days later, the company sent a letter to the Trade Unions Directorate requesting the negotiations of the list of demands to be archived. Meanwhile, the company had presented a counter-proposal to the list of demands and the STERSG had in turn presented counter-proposals to reach a final agreement and conclude the collective agreement. On 15 October, the Trade Unions Directorate reiterated its decision to refuse approval of the restructuring of the executive board and ordered the suspension of the other board members. In consequence, it accepted the company's request and ordered the records of the negotiations to be archived. The complainant alleges that the Ministry of Labour ignored article 234 of the Labour Code which provides that "when trade union leaders are involved in negotiations over an industrial dispute and their term of office expire, that circumstance shall not be grounds for not recognizing their representative capacity". On 16 October, the company dismissed the general secretary of the STERSG, Edwin García. The court action for reinstatement was heard by the labour court and is now before the Labour Chamber in the Court of Appeal.
- 1102.** On 19 March 2002, elections were held in the STERSG for new trade union officers at an extraordinary general meeting. On the following day, the company unjustly dismissed the elected trade union officers, Blanca Alejandrina Aráuz, minutes and agreements secretary, Wilfredo Genaro Palacios, labour affairs secretary, and Johanela Conde Morales, women's secretary (who in addition was pregnant at the time). Actions for reinstatement were initiated in the labour courts. Subsequently, two of them dropped their actions. In the case of Blanca Alejandrina Aráuz, the labour judge ordered her reinstatement but the company refused to comply. The case is currently before the Court of Appeal.
- 1103.** The complainant alleges that on 14 February 2002, the company signed a collective agreement with a pro-management trade union affiliated to the (autonomous) Nicaraguan Workers' Federation (CTN) based in the Ministry of Labour. In this way, the Ministry of Labour and the CTN were able to exert pressure on the STERSG. The complainant points out that the CTN is an organization which receives funds from employers. The help received is intended to isolate, along with Ministry of Labour officials, organizations such as the STERSG which defend the workers' interests.
- 1104.** The complainant also alleges that, in July 2002, anti-union acts worsened when the manager of the company asked the Ministry of Labour to suspend the STERSG.
- 1105.** In September 2002, 39 workers reported acts of sexual harassment and abuse of their position by company supervisors to the departmental labour inspectorate for the agro-industry sector. Following the inspection that was carried out, the supervisors initiated criminal proceedings for abuse and libel against members of the STERSG executive board and workers who testified against them during the special inspection by the Ministry of Labour. Those concerned are: César Pérez Rodríguez, Walter Chávez García, Walter Pérez Canales, Gretchel Suárez Martínez, Francisco Rodríguez Alvarado, Adriana Aguirre Traña, Hazel Briones, Paula Pavón, Tania Carazo Rodríguez, Johana Mejía Obando, Socorro del Carmen Bello, Martha Lorena Trujillo, Ana Sánchez, Xochilt Gonzáles, Janneh Balladares and Cenely Benevidez. The complainant reports that the criminal proceedings are continuing, that the company is paying for the supervisors' lawyer and that the majority of these workers have been dismissed.
- 1106.** On 19 March 2003, a new executive board of the STERSG was elected, with Ms. Gretchel Suárez Martínez as general secretary. On 25 March the same year, the company informed

her that it had decided to suspend her from work with pay. This violation was reported to the departmental labour inspectorate. However, as at the date of submission of the complaint, it had not taken any action in that respect. The general secretary has not been paid her wages for two months.

- 1107.** Lastly, the complainant alleges that after the trade unionists have been dismissed, employers in the free zones draw up blacklists to prevent them being hired by other companies.
- 1108.** In a letter of 14 July 2003, the complainant reports that the Labour and Trade Union Affairs Committee in the National Assembly made a public statement in June 2003 condemning violations of the human, labour and trade union rights of workers in free zones by various companies including the Roo Sing Garment Co. The complainant encloses the text of this statement.

B. The Government's reply

- 1109.** In a letter of 29 September 2003 the Government states, with respect to the complaint of sexual harassment of workers by two supervisors, that the departmental inspectorate carried out an inspection of the company in September 2002 and that, through several interviews with workers, confirmed the complaint. The inspectorate decided to fine the company the maximum fine of C\$10,000 córdobas and ordered the company to discipline those responsible on pain of further sanctions.
- 1110.** As regards the suspension of Ms. Gretchel Suárez Martínez' contract, the Government states that on 25 March 2002 the company presented a request for individual cancellation of her contract, based on articles 48(d) and 18(a), (b) and (d) of the Labour Code and articles 32, 39, 54 and 57 of the Company's internal regulations. None of the parties attended the conciliation proceedings. After examining the evidence presented by the parties and verifying that the parties were not undefended, it was found that there were no grounds for cancelling Ms. Suárez' contract as the company had not succeeded in proving the grounds invoked. In May the same year, the company entered an appeal which was decided by the Inspectorate General, which fully upheld the decision of the departmental inspectorate for the industry sector.
- 1111.** In a letter of 23 March 2004, concerning the dismissal of Mr Edwin García, the Government confirms that the reinstatement proceedings are before the labour courts.
- 1112.** With regard to the case of Blanca Alejandrina Aráuz, it states that the case is in progress in the Labour Chamber of the Court of Appeal.
- 1113.** As regards the negotiation of a collective agreement between a trade union and the company, the Government points out that on 17 April 2001, the 18 January union, also belonging to the Roo Sing Garment Co., presented a list of demands. On the following day, the complainant presented another list of demands. Subsequently, in May 2001, the two unions together presented a joint list of demands to the company. In June the same year, the company presented a letter in which it stated that it did not agree with the 18 January union continuing to participate in the negotiations on the list of demands because it had sought to have that union challenged in the Trade Unions Directorate which had accepted its request. On 11 June 2001, the company presented a letter to the Directorate of Collective Bargaining and Individual Conciliation, requesting suspension of the negotiations on the list of demands because the 18 January union "was not legally constituted and did not have any trade union credentials". The Government also states that on 21 June 2001, the STERSG presented a decision of the extraordinary general meeting electing a new executive board in order to obtain the necessary certification. On

21 September, the STERSG again presented a decision of another meeting held on 20 June in which it had agreed on a new executive board. On 2 October 2001, the Trade Unions Directorate decided not to accept the restructuring of the STERSG's executive board. On 3 October, at 12.20 p.m., a further extraordinary general meeting was held to change the executive board, the decision of which was sent to obtain certification. On 4 October, the company sent a letter requesting the records of the negotiation to be archived taking into account that the STERSG "had lost its representativeness" by virtue of the abovementioned resolution of 2 October 2001. On 11 October 2001, the Directorate of Collective Bargaining and Individual Conciliation issued an order based on that resolution, accepting the company's request and ordering the proceedings to be archived. Subsequently, in February 2002, the Directorate was informed of the conclusion of a collective agreement between the Roo Sing Garment Co. and the Roo Sing Garment Co. Democratic Workers' Union (Nicaragua) with the request that it be registered. The registered agreement was signed on 14 February 2002 for a period of two years. The agreement covers all the company's workers, irrespective of the trade union to which they belong.

1114. As regards the alleged request for suspension of the STERSG, the Government states that on 18 June 2002, the Roo Sing Garment Co. asked the Trade Unions Directorate to undertake an inspection of the STERSG to ascertain whether it satisfied the legal requirements, such as the minimum number of members. In the course of the inspection, the Trade Unions Directorate informed the company, with respect to its request for cancellation of the STERSG's legal personality, that such an action should be addressed to the competent authority, in accordance with article 219 of the Labour Code.

1115. Finally, the Government states that no evidence has been found of blacklists of workers or of members of trade unions in companies covered by the free zone scheme. Under no circumstances do the administrative and judicial authorities allow such practices which are a serious violation of workers' rights and the legal framework in which such companies are set up in the country.

C. The Committee's conclusions

1116. *The Committee observes that the present case refers to allegations of a series of anti-trade union acts, in particular: the dismissal of several officials of the Roo Sing Garment Co. Workers' Union (STERSG); refusal by the Roo Sing Garment Co. to comply with a court order to reinstate a trade union leader; negotiation of a collective agreement with a trade union financed by the employer, setting aside the agreement that was being negotiated with STERSG; application for suspension of the STERSG by the company in July 2002; criminal proceedings against the STERSG executive board for slander and libel, suspension of a trade unionist's wages and drawing up of blacklists of trade union members. The committee observes the existence of a statement by the Labour and Trade Union Affairs Committee of the National Assembly in June 2003 condemning violations of the human, labour and trade union rights of workers in free zones by various companies including the Roo Sing Garment Co.*

Dismissal of trade union officials

1117. *The Committee notes the allegations concerning the dismissal of trade union official Edwin García in October 2001 whose legal proceedings for reinstatement are currently before the Labour Chamber of the Court of Appeal. The Committee also notes that on 19 March 2002, on the day following their election, the trade union officials Blanca Alejandrina Aráuz, Wilfredo Genaro Palacios and Johanela Conde Morales (who was also pregnant at the time) were unjustly dismissed. According to the complainant, the latter two*

dropped their legal proceedings. In the case brought by Blanca Alejandrina Aráuz, although the court ordered her reinstatement, the company refused to comply and the case is currently before the Court of Appeal. The Committee notes that the Government confirms that the legal proceedings initiated by Mr. Edwin García and Ms. Blanca Alejandrina Aráuz are now pending in the labour courts and the Labour Chamber of the Court of Appeal, respectively. The Committee also notes that on 25 March 2003, days after being elected, Ms. Gretchel Suárez Martínez, general secretary of the complainant union, was suspended from her post. In this respect, the Government reports that the departmental inspectorate for the industry sector decided not to allow the cancellation of Ms. Suárez' contract requested by the company as the company had not succeeded in proving the grounds invoked, a decision that was upheld by the Inspectorate General.

- 1118.** *The Committee emphasizes that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate if they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed and recalls that the Government is responsible for preventing all acts of anti-trade union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, 4th edition, paras. 737-738]. Observing that the dismissals of Mr. Edwin García and Ms. Blanca Alejandrina Aráuz took place in 2001 and 2002, the Committee deplores the delay in the judicial proceedings and trusts that if the judicial authority confirms the anti-trade union character of those dismissals, both officials will be reinstated without delay and without loss of pay. If the judicial authority determines that reinstatement is not possible, both officials should be fully compensated. The Committee requests the Government to keep it informed in this respect. The Committee further requests the Government to inform it if Ms. Suárez was in fact reinstated in her post.*

Restrictions on collective bargaining

- 1119.** *The Committee notes that the STERSG, together with the 18 January trade union, both active in the Roo Sing Garment Co., presented a joint list of demands in May 2001 for the negotiation of a collective agreement. The Committee notes that the complainant alleges that after negotiating over 60 clauses of the agreement, the company contested the 18 January trade union and requested suspension of the negotiations claiming that the latter had ceased to be representative. The complainant alleges that the company then also set out on a campaign to contest the STERSG.*
- 1120.** *The Committee points out that, according to the information provided by the Government on 21 September 2001, the STERSG held an extraordinary general meeting to restructure its executive board and submitted the decision of that meeting to the Trade Unions Directorate in order to obtain the relevant certification. On 2 October 2001, the Trade Unions Directorate decided not to accept the restructuring of the STERSG's executive board. The Committee observes that it appears from the notice sent by the Trade Unions Directorate to the STERSG, attached by the complainant to the complaint, that the rejection of the restructuring was due to the failure to comply with the legal requirements for holding the meeting of 21 September. According to the documentation attached to the complaint, it also appears that on 2 October the employer sent a letter of apology for not being able to participate in the negotiations planned for 3 October and asking for the negotiating meeting to be rescheduled. According to the Government, on 3 October, the STERSG held a further extraordinary general meeting to change its executive board and sent the decision to obtain the relevant certification. As confirmed by the Government, on 4 October the company sent a letter requesting the negotiating proceedings to be archived considering that the STERSG had ceased to be representative, invoking the*

abovementioned resolution of 2 October 2001. On 11 October 2001, the Directorate for Collective Bargaining and Individual Conciliation issued an order in respect of that resolution allowing the company's request and ordered the proceedings to be archived.

- 1121.** *The Committee observes that the company, two days after sending apologies for being unable to attend the negotiating meeting and requesting its rescheduling, requested the archiving of the proceedings, thus ending a bargaining process in which over 60 clauses on the list of demands had been negotiated. The Committee also observes that the administrative authorities ordered the collective bargaining proceedings to be archived despite the fact that the union had held a further extraordinary meeting to restructure its executive board and had sent the minutes for certification by the authorities, this being the executive board whose validity was not disputed by the Government in its reply. In these circumstances, the Committee recalls the importance of the obligation to encourage and promote collective bargaining, as provided in Article 4 of Convention No. 98 and requests the Government to adopt the necessary measures to ensure its application in the future. The Committee also recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of harmonious development of industrial relations [see **Digest**, op. cit., para. 814] and requests the Government to adopt the necessary measures to ensure observance of this principle in the future. The Committee recalls to the Government that the technical assistance of the ILO is available in this regard.*

Request for suspension of the STERSG

- 1122.** *As regards the alleged request for the suspension of the STERSG, the Committee notes that the Government states that in 18 June 2002, the Roo Sing Garment Co. presented a request for the cancellation of the trade union's legal personality and requested the Trade Unions Directorate to carry out an inspection to verify if it satisfied the legal requirements. The Committee notes that the Directorate carried out the inspection and informed the company, on several occasions, that the application for cancellation should be made to the competent judicial authority, in accordance with article 219 of the Labour Code. The Committee notes this information and observes that neither the complainant nor the Government have reported the submission of any application by the company to the courts.*

Conclusion of an agreement with a trade union financed by the employer

- 1123.** *The Committee notes that the complainant alleges that, in February 2002, the company concluded an agreement with the Roo Sing Garment Co. Democratic Workers' Union (a pro-management union according to the complainant) affiliated to the (autonomous) Nicaraguan Workers' Federation (CTN) based in the Ministry of Labour. The Committee notes that the Government confirms the conclusion of the abovementioned agreement which covers all the company's workers, but does not send information on the pro-management character of the trade union in question. The Committee requests the Government to undertake an investigation into the complainant's allegation and to keep it informed of the result, in particular as regards the representative character or otherwise of the Roo Sing Garment Co. Democratic Workers' Union.*

Criminal proceedings for slander

- 1124.** *The Committee observes that two company supervisors initiated criminal proceedings for slander and libel against members of the STERSG executive board and workers who testified against them during the special inspection by the Ministry of Labour, within the context of a report of sexual harassment and abuse of position by these company supervisors. According to the complainant, the trade union leaders and workers against*

whom the slander proceedings were brought are: César Pérez Rodríguez, Walter Chávez García, Walter Pérez Canales, Gretchel Suárez Martínez, Francisco. Rodríguez Alvarado, Adriana Aguirre Traña, Hazel Briones, Paula Pavón, Tania Carazo Rodríguez, Johana Mejía Obando, Socorro del Carmen Bello, Martha Lorena Trujillo, Ana Sánchez, Xochilt Gonzáles, Jannah Balladares and Cenely Benevidez. The complainant reports that the criminal proceedings are continuing, that the company is paying for the supervisors' lawyer and that the majority of these workers have been dismissed. In this respect, the Committee notes that the Government reports that the inspection confirmed the reported acts of sexual harassment and it was decided to fine the company. The Committee requests the Government to keep it informed of the progress in the criminal proceedings initiated against the members of the trade union's executive board and other workers and hopes that the dismissals resulting from the union testimony in the inspection concerning sexual harassment will be cancelled and the criminal proceedings against the trade unionists for slander and libel declared inadmissible.

Blacklists

- 1125.** *Finally, the Committee notes that the complainant alleges that after the trade unionists are dismissed, the employers in the free zones draw up blacklists to prevent them being hired by other companies. The Committee notes that the Government confines itself to stating that no evidence has been found of such blacklists and that under no circumstances do the administrative and judicial authorities allow such practices. The Committee, observes that there is nothing in the Government's statement to indicate that an investigation was conducted into the specific case. The Committee, recalling that all practices involving the "blacklisting" of trade union officials constitutes a serious threat to the free exercise of trade union rights and governments should take stringent measures to combat such practices [see **Digest**, op. cit., para. 734], requests the Government to conduct a thorough and independent investigation into the alleged existence of blacklists and to keep it informed in this respect.*

The Committee's recommendations

- 1126.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) As regards the dismissal of a number of trade union officials, observing that the dismissals of Mr. Edwin García and Ms. Blanca Alejandrina Aráuz took place in 2001 and 2002, the Committee deplores the delay in the judicial proceedings and trusts that if the judicial authority confirms the anti-trade union character of those dismissals, both officials will be reinstated without delay and without loss of pay. If the judicial authority determines that reinstatement is not possible, both officials should be fully compensated. The Committee requests the Government to keep it informed thereof. The Committee further requests the Government to inform it if Ms. Suárez was in fact reinstated in her post.*
 - (b) As regards the alleged restrictions on collective bargaining, the Committee requests the Government to adopt the necessary measures to ensure in the future the implementation of the obligation to encourage and promote collective bargaining provided in Article 4 of Convention No. 98 and observance of the principle of good faith in collective bargaining. The Committee recalls to the Government that the technical assistance of the ILO is available in this regard.*

- (c) *As regards the allegation concerning the conclusion of a collective agreement with a trade union financed by the employer, the Committee requests the Government to undertake an investigation in this respect and to keep it informed of the result, in particular as regards the representative character or otherwise of the Roo Sing Garment Co. Democratic Workers' Union.*
- (d) *As regards the proceedings for slander and libel initiated against trade union officials and members, the Committee requests the Government to send information on the criminal proceedings initiated against the members of the trade union's executive board and other workers and hopes that, since the administrative authority has confirmed that there had indeed been acts of sexual harassment, the dismissals will be cancelled and the criminal proceedings against the trade unionists declared inadmissible.*
- (e) *As regards the alleged drawing up of blacklists, the Committee requests the Government to conduct a thorough and independent investigation into the matter and to keep it informed in this respect.*

CASE NO. 2311

DEFINITIVE REPORT

Complaint against the Government of Nicaragua

presented by

the José Benito Escobar Workers' Trade Union Confederation (CST-JBE)

Allegation: The complainant organization alleges excessive delays and difficulties in the revision procedure for a collective agreement

- 1127.** The complaint is contained in a communication from the José Benito Escobar Workers' Trade Union Confederation (CST-JBE), dated 21 November 2003. The Government sent its observations in a communication dated 15 March 2004.
- 1128.** Nicaragua has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 1129.** In its communication dated 21 November 2003, the CST-JBE states that, as a consequence of the non-compliance of the Mayor's Office of the Municipality of León with a collective agreement which entered into force in 2001, on 9 June 2003 the Trade Union of Workers of the Mayor's Office of the Municipality of León (SITRADEL) presented a list of demands to the Departmental Labour Inspectorate of the Department of León with the aim of activating a revision procedure for the agreement.
- 1130.** The complainant organization adds that the administrative authority acknowledged SITRADEL as representing the workers and appointed a Counsel for Conciliation. The two parties were subsequently summoned to a conciliation hearing on 11 August 2003. Six conciliation sessions were held on 2 September 2003. SITRADEL requested the Minister of

Labour to appoint a new Counsel for Conciliation, as the existing Counsel had proven to be biased towards the employer. A new Counsel for Conciliation was appointed and a further nine conciliation sessions were held. The complainant organization states that the employer was not present at the last few meetings, and, following a request from SITRADEL, the new Counsel for Conciliation declared the Municipality of León to be in default for not having attended sessions Nos. 7, 8 and 9 of the negotiations regarding the list of demands.

- 1131.** The complainant organization states that, upon receiving notice that it had been found to be in default, the Municipality of León submitted an application on 17 September 2003 requesting the Directorate of Collective Bargaining and Individual Conciliation to appoint a new conciliator and to transfer the bargaining procedure to the city of Managua. The Departmental Labour Inspector for the city of León turned down the request and SITRADEL requested the Minister of Labour to appoint a Chair for a Strike Council.
- 1132.** The complainant organization alleges that the Directorate for Collective Bargaining and Individual Conciliation did exceed its mandate in unilaterally proceeding to dismiss the Counsel for Conciliation. According to the complainant organization, only the Minister of Labour who had appointed the Counsel for Conciliation could reverse her appointment.
- 1133.** The complainant organization states that the bargaining procedure in question went on for five months, breaking the time limit set down in legislation (15 days extendable by a further eight days). The complainant organization states that this occurred as a consequence of the difficulties created by the employer and the complacent attitude adopted by the Ministry of Labour. According to the complainant organization, the employer failed to attend three sessions and attended four others without displaying any willingness to continue with the bargaining procedure. Finally, the complainant organization states that, in an effort to avoid having to appoint a Chair for a Strike Council, the Ministry of Labour failed to deal correctly with the bargaining procedure, the relevant request has been made on seven occasions and the administrative authority has so far failed to rule with regard to this.

B. The Government's reply

- 1134.** In its communication dated 15 March 2004, the Government states that the bargaining procedure involving SITRADEL and the Mayor's Office of the Municipality of León was conducted in accordance with the labour laws currently in force. The Government states that SITRADEL presented a list of demands to the Departmental Labour Inspectorate of the city of León and Chinandega, requesting that the collective agreement signed on 12 July 2001 be revised. The said list was accompanied by complaints of non-compliance with the labour standards contained in the aforementioned collective agreement and in particular with regard to methods of payment for the normal working day, overtime, social benefits and wages. As to this issue, article 240 of the Labour Code states that "the collective agreement shall be revised before its validity expires at the request of one of the parties, if there are substantial changes to the social and economic conditions of the company or the country that make this advisable".
- 1135.** The Government states that the Departmental Labour Inspectorate of León issued a decision in which it admits the list of demands that was submitted and appoints a Counsel for Conciliation, to whom proceedings were transferred so that negotiations could be initiated. On 12 June 2003, the Directorate for Conciliation and Trade Union Associations for León and Chinandega ordered that the Mayor's Office of the Municipality of León be informed and also ordered the appointment of a negotiating committee within 72 hours, in accordance with the terms of article 238 of the Labour Code, whilst at the same time SITRADEL submitted an application in which it appointed its negotiating committee. On

7 August 2003, the Counsel for Conciliation confirmed the negotiating committees of both parties and set the first hearing for Monday, 11 August 2003, both parties being informed of this decision.

- 1136.** The Government states that during the first hearing both parties were reminded that although differences might arise during the process, they should be discussed in a cordial and harmonious manner, with the Ministry of Labour ensuring that any subsequent agreement between the parties did not in any way infringe the minimum guarantees established in the Labour Code. The two parties set out convergence criteria regarding the spirit of the negotiations and had it recorded in the minutes that they would revise fully the points that made up the list of demands whilst agreeing on a timetable for meetings. The Government states that this is not a question of a dispute, as none of the grounds established in article 243 of the Labour Code apply.
- 1137.** The Government states that 12 meetings took place in total and that subsequently the parties participated in a session with the Minister of Labour.
- 1138.** As to the appointment of conciliators for the bargaining procedure, the Government states that, on 22 September 2003, the Directorate for Collective Bargaining and Individual Conciliation of Managua ordered that all proceedings related to the case be transferred to a lawyer, Irella Esther García Guillén, in her capacity as ad hoc conciliator regarding the list of demands submitted by SITRADEL. The parties were also summoned for a hearing on Wednesday, 1 October 2003 and a lawyer, Liduvina Molinares Canelo was appointed as Counsel for Conciliation.
- 1139.** The Government states that the Ministry of Labour's actions with regard to the appointment of public servants for the bargaining procedure regarding the revision of the collective agreement with the Mayor's Office of the Municipality of León, were strictly in accordance with the existing instruments. The Government adds that although the Minister is involved in the decision-making process at the highest level and has the legal authority to exercise authority over those departments and public servants within his Ministry, it is equally the case that the same legislation is clear when it states that these powers fall within the scope of his authority; that is to say, faced with the dilemma of having two general directorates at the same level in the hierarchy, a level at which they cannot and should not interfere in one another's particular field. It is the Minister who has the authority over their duties and departments and who, in the end, has the power to make the final decision in such disputes. Nevertheless, despite having the legal authority to appoint a labour inspector as an ad hoc conciliator, with regard to the scope of duties and authority, this automatically appointed ad hoc conciliator remains directly under the control of the Directorate for Collective Bargaining and Conciliation as it is the only competent authority with jurisdiction over the signing and revision of collective agreements. To proceed in any other manner would be to infringe the law set down in the Labour Code, known as the "law on constituting a Strike Council".
- 1140.** The Government adds that on 1 October 2003, the "Salvador Espinoza" Trade Union for the Mayor's Office of the Municipality of León (SITRALSE) submitted an application in which it requested that it be considered a full party to the negotiating committee. On 7 October 2003, the Directorate for Collective Bargaining and Individual Conciliation of Managua issued the following decision: "the 'Salvador Espinoza' Trade Union for the Mayor's Office of the Municipality of León, SITRALSE Trade Union, is considered to be one of the parties to the negotiations regarding the list of demands concerning the Mayor's Office of the Municipality of León". This action led to a dispute between the trade unions with regard to the participation of the trade union SITRALSE in the negotiations. The trade union SITRADEL maintains that it refuses to negotiate jointly with SITRALSE. On 16 October 2003, SITRALSE submitted an application in which it requests that the

Directorate for Collective Bargaining and Individual Conciliation should issue a decision on the parties participating in the negotiations as soon as possible.

- 1141.** The Government states that under no circumstances can, or indeed should, a duly established trade union organization with legal identity be refused the right to collective bargaining. The status of the trade union organization is always assessed once the process has moved ahead, that is to say, when no list of demands has been consolidated by the trade union organizations due to begin the bargaining procedure and so as not to delay the negotiations, the trade union organization which was the most recent in becoming a signatory to the action is accepted, which was not the case with the trade union organization SITRALSE. The Mayor's Office of the Municipality of León has expressed its willingness to continue the bargaining procedure with the existing trade unions within the Municipality of León. However, the Mayor's Office states that until the trade unions resolve the situation, they will not be permitted to sit at the negotiating table.
- 1142.** The Government adds that on 22 August 2003, the Mayor of León requested that he be excused from the upcoming hearings on the negotiations, given that he had been summoned by the Minister of Labour on the same day as the meeting. On 17 September 2003, the Mayor of León stated that on 12 September of the same year he sent an application to the Minister of Labour in which he requested that the negotiations concerning the list of demands related to the Mayor's Office of the Municipality of León be transferred to the central administration and dealt with by a conciliator from the Ministry of Labour in Managua. On 25 September 2003 the employer was ruled to be in default. On 26 September 2003, SITRADEL, taking account of the default ruling, requested that the dossier be transferred to the Ministry of Labour in Managua for the relevant legal proceedings and the appointment of a Chair of a Strike Council.
- 1143.** The Government states that the decision issued by the ad hoc conciliator declaring the Mayor's Office of the Municipality of León to be in default was revoked for being unjustified. The Government states that it is regrettable that although in this case the negotiating procedure has not been exhausted, it has been interrupted owing to a prevailing negative position regarding the incorporation of another organization affiliated to the same trade union federation. The Ministry of Labour recognizes that the spirit and willingness of the parties must always prevail in the negotiations this being the reason behind the process in the first place. Consequently, the Ministry urges those involved in the process to put aside their differences and continue negotiating.

C. The Committee's conclusions

- 1144.** *The Committee notes that the complainant organization alleges that: (1) as a consequence of the non-compliance of the Mayor's Office of the Municipality of León with a collective agreement which entered into force in 2001, on 9 June 2003 the Trade Union of Workers of the Mayor's Office of the Municipality of León (SITRADEL) presented a list of demands to the Departmental Labour Inspectorate of the Department of León with the aim of activating the revision procedure for the agreement; (2) the bargaining procedure in question went on for five months, breaking the time limit set down in legislation (15 days extendable by a further eight days); (3) the delays were due to the attitude displayed by the employer which failed to attend several meetings (and was even declared to be in default by a conciliator) and attended meetings but was unwilling to continue with negotiations; and (4) the Ministry of Labour failed to deal correctly with the bargaining procedure and failed to initiate the appointment process of a Chairperson at the Strike Tribunal, as requested by the complainant organization.*
- 1145.** *In this respect, the Committee notes that the Government states that: (i) the bargaining procedure between the Trade Union of Workers of the Mayor's Office of the Municipality*

of León (SITRADEL) and the Mayor's Office of the Municipality of León was carried out in accordance with the existing labour laws; (ii) with regard to the conciliators appointed as a part of the process of revising the collective agreement, the administrative authority's actions were strictly in accordance with the instruments in force at that time; (iii) on 1 October 2003, the "Salvador Espinoza" Trade Union for the Mayor's Office of the Municipality of León (SITRALSE) requested that it be allowed to participate in the bargaining procedure, leading to a dispute with the trade union organization SITRADEL which refuses to negotiate jointly with SITRALSE; (iv) the Mayor's Office of the Municipality of León has expressed its willingness to continue the negotiating process. However, the Mayor's Office states that until the trade unions resolve the situation they will not be permitted to come to the negotiating table; (v) the default ruling was revoked; and (vi) it is regrettable that the bargaining procedure should have been interrupted owing to a prevailing negative position regarding the incorporation of another trade union organization.

- 1146.** *In this context, the Committee notes that for different reasons, the process of revising the collective agreement concluded between the trade union organization SITRADEL and the Mayor's Office of the Municipality of León has continued for an overly long period and the timetable envisaged in legislation has not been respected. In this respect, the Committee stresses "... the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations" and that "the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 814 and 816].*
- 1147.** *Under the circumstances, the Committee requests the Government, taking into account the terms of Article 4 of Convention No. 98, ratified by Nicaragua, to encourage the parties to conclude a new collective agreement to regulate the working conditions of the workers of the Mayor's Office of the Municipality of León as soon as possible.*
- 1148.** *Finally, as to the Government's declaration on the delay affecting the bargaining procedure which was caused by a dispute between SITRADEL and another trade union organization (SITRALSE) which wishes to participate in the negotiation of the agreement, the Committee notes that the Nicaraguan Labour Code allows for the participation of more than one workers' organization and does not simply grant exclusive bargaining rights to the most representative organization. The Committee therefore considers that any dispute between workers' organizations over participation in a bargaining procedure should be resolved by an impartial arbitrator chosen by the parties, or by the courts.*

The Committee's recommendations

- 1149.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee requests the Government, taking into account the terms of Article 4 of Convention No. 98, ratified by Nicaragua, to encourage the parties to conclude a new collective agreement to regulate the working conditions of the workers of the Mayor's Office of the Municipality of León as soon as possible.*
- (b) *The Committee considers that any dispute between workers' organizations over participation in a bargaining procedure should be resolved by an impartial arbitrator chosen by the parties, or by the courts.*

CASE NO. 2273

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

**Complaint against the Government of Pakistan
presented by
the International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers' Associations (IUF) on behalf of the Pakistan Sugar
Mills Workers' Federation (PSMWF)**

Allegations: The complainant alleges that the Army Welfare Trust ordered the dissolution of the Army Welfare Sugar Mills Workers' Union (AWSMWU), instructed the union to cease its activities and told the managers not to have any relations or communications with the union

- 1150.** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) presented a complaint – on behalf of its affiliate, the Pakistan Sugar Mill Workers' Federation (PSMWF) – in a communication dated 30 May 2003.
- 1151.** The Government forwarded its observations in communications dated 17 December 2003 and 1 September 2004.
- 1152.** The Committee has been obliged to postpone its examination of the case on two occasions [see 332nd and 333rd Reports, paras. 5 and 6, respectively]. At its meeting in May-June 2004 [see 334th 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 full observations requested had not been received in due time.
- 1153.** Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 1154.** In its communication dated 30 May 2003, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) alleges that the management of the Army Welfare Sugar Mill ordered the dissolution of the Army Welfare Sugar Mills Workers' Union (AWSMWU), one of the founding members of the Pakistan Sugar Mill Workers' Federation (PSMWF), which in turn is an IUF affiliate, instructed the union to cease its activities and told the managers not to have any relations or communications with the union.
- 1155.** In particular, the IUF alleges that on 19 May 2003 the union office bearers were called to the office of the company general manager who showed them a confidential letter from the director of farms of the Head Office of the Army Welfare Trust (AWT) in which the latter noted that the Army Welfare Sugar Mill was the only enterprise of the AWT in which a union existed. The letter further noted that the sugar mill was running at a loss yet the

union had continued to serve a charter of demands. Therefore, trade union activities in the factory could not continue and the union should be dissolved immediately. Pursuant to the letter, the general manager ordered the union to cease its activities and close down the union office. He further told the union office bearers that, if the union did not stop its activities, he would do so by force.

- 1156.** Following the refusal of the union officers to dissolve the union, the general manager convened a meeting of factory managers at which he instructed them not to have any relations or communications with the union officers.
- 1157.** Considering that the action of the AWT violated its right to freedom of association and section 63 of the Pakistan Industrial Relations Ordinance (IRO) of 2002, the AWSMWU sent protests to the Governor of Sindh, the Chief Minister of Sindh and the Provincial Minister of Labour, as well as to the President of Pakistan, the Prime Minister and the Federal Minister of Labour. As at the date of the complaint, no response was provided by the authorities to the union.

B. The Government's replies

- 1158.** In its communication of 17 December 2003, the Government indicates that, in its letter dated 22 August 2003, the Army Welfare Trust (AWT) stated that it has not banned the union but only directed the management of the mill to take action against the collective bargaining agent pursuant to the laws of Pakistan on trade union activities.
- 1159.** The Government further indicates that the AWT is of an opinion that the Trust and its industrial units are exempted from the IRO 2002 (as they were from the IRO 1969), in conformity with the decision of the National Industrial Relations Commission of 3 July 2002 and the judgement of the Punjab Labour Appellate Tribunal of 6 December 2001. The Government also indicates that the matter regarding registration of the AWSMWU is before the appropriate legal forums.
- 1160.** In its communication of 1 September 2004, the Government indicates that the Labour Court No. 6 in Hyderabad, in its judgement of 7 August 2004, dismissed the case brought by the Registrar following the application of the Army Welfare Sugar Mills requesting to cancel registration of the Union. On that occasion, the Court declared the following: "since the services of the Army Welfare Sugar Mills are not exclusively connected with the armed forces, hence its employees having the fundamental right guaranteed by the Constitution of the Islamic Republic of Pakistan to form unions and that right cannot be snatched by mere fact that the mill is a subsidiary of the Trust". The Government further indicates that the union elections were held in the Army Welfare Sugar Mills on 15 March 2004.

C. The Committee's conclusions

- 1161.** *The Committee notes that the complainant in this case alleges that, following the orders of the director of farms of the Head Office of the Army Welfare Trust (AWT), the management of the Army Welfare Sugar Mill ordered the dissolution of the Army Welfare Sugar Mills Workers' Union (AWSMWU), instructed the union to cease its activities and close down the union office and told the managers not to have any relations or communications with the union.*
- 1162.** *The Committee notes with interest the Government's reply contained in the communication of 1 September 2004 to the effect that the Labour Court considered that the services of the Army Welfare Sugar Mills were not exclusively connected to the armed forces and that its*

employees should therefore enjoy a fundamental right to form a trade union. In these circumstances the court dismissed the case brought by the Registrar following the application of the Army Welfare Sugar Mills requesting to cancel registration of the AWSMWU. Noting that this decision should permit the trade union to operate freely and to exercise its collective bargaining rights, the Committee requests the Government to ensure the implementation of the judicial decision. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendation

1163. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

Noting that the Labour Court decision should permit the trade union concerned to operate freely and to exercise its collective bargaining rights, the Committee requests the Government to ensure the implementation of the judicial decision. The Committee requests the Government to keep it informed in this respect.

CASE NO. 2111

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

Complaints against the Government of Peru presented by

- **the Peruvian General Confederation of Workers (CGTP)**
- **the Federation of Peruvian Light and Power Workers (FTLFP) and**
- **the National Federation of Miners, Metalworkers and Steelworkers of Peru (FNTMMSP)**

Allegations: Dismissal of a union officer from the regional electricity utility enterprise Electronorte Medio S.A.; dismissal of union officers from the mining company Iscaycruz, pressure upon members to resign from their union and requests from the company to dissolve the union; dismissal of a union officer from the Compañía de Minas Buenaventura S.A. and criminal proceedings for defamation against officers of the Toquepala Mineworkers' Union at the Southern Peru Copper Corporation

1164. The Committee examined this case at its meeting in March 2003 when it presented an interim report to the Governing Body [see 330th Report, paras. 989-1009, approved by the Governing Body at its 286th Session (March 2003)].

1165. Since the Government had not replied to the allegations which remained pending, the Committee issued an urgent appeal to it at its May-June 2004 meeting [see 334th Report, para. 9, approved by the Governing Body at its 290th Session (June 2004)], drawing the Government's attention to the fact that, in conformity with the current procedure, it would

present a report at its next meeting on the substance of the case even if the Government's observations had not been received by that date. Since then no reply has been received from the Government.

1166. 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

1167. When the case was last examined, in March 2003, the Committee made 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.

B. The Committee's conclusions

1168. *The Committee deplores the fact that the Government has not sent the information requested by it when it examined the case at its March 2003 meeting, the more so since some of the allegations are of an extreme gravity and since at its March 2004 meeting it had addressed an urgent appeal to the Government requesting it to transmit its observations without delay. Given that the Government has not replied since the Committee's March 2003 meeting, the Committee is obliged to present a report to the Governing Body even in the absence of observations on the allegations.*

1169. *The Committee reminds the Government, first, that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations concerning violations of freedom of association is to ensure respect for the rights of employers' and workers' organizations in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating, for objective examination, detailed factual replies concerning the substance of the allegations brought against them [see First Report of the Committee, para. 31].*

- 1170.** *The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned.*
- 1171.** *In these circumstances, the Committee repeats the conclusions it reached at its March 2003 meeting, urging the Government immediately to investigate and submit information as requested regarding the dismissal of union officer Mr. Victor Taype Zúñiga (Compañía de Minas Buenaventura S.A.); the criminal case for alleged aggravated defamation initiated by the Southern Peru Copper Corporation against the Toquepala Mineworkers' Union and others; the dismissal from the mining company 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 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 and the ruling on union official Mr. José Castañeda Espejo (regional electricity utility enterprise Electronorte Medio S.A.).*

The Committee's recommendations

- 1172.** *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 solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned.*
 - (b) The Committee deplores the fact that the Government has not sent the information requested by it at its March 2003 meeting regarding the allegations that remained pending.*
 - (c) The Committee urges the Government once again to send it a copy of the final ruling on the dismissal of trade union officer Mr. Víctor Taype Zúñiga and hopes that the judicial authority will give a ruling on the matter without delay.*
 - (d) Regarding the allegation relating to the criminal case for alleged aggravated defamation brought by the Southern Peru Copper Corporation against the Toquepala Mineworkers' Union and others, the Committee urges the Government to inform it of the judicial authority's ruling.*
 - (e) With regard to the FNTMMSP's allegations dated 5 September and 1 October 2002 (the dismissal from 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 immediately into these serious allegations and, should the alleged anti-union acts be proven,*

to take the necessary measures to rectify the situation. The Committee requests the Government to keep it informed in this respect.

- (f) 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. 2285

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

**Complaint against the Government of Peru
presented by
the Federation of Peruvian Light and Power Workers (FTLFP)**

Allegations: The complainant organization alleges that against a background of anti-union discrimination and in violation of the provisions of national legislation, the authorities are attempting to collect back taxes from the FTLFP; moreover, the complainant organization objects to the Municipality of Lima's decision to ban rallies and protests in the historic centre of the city of Lima

- 1173.** The complaint is contained in a communication dated 6 June 2003 presented by the Federation of Peruvian Light and Power Workers (FTLFP).
- 1174.** As a consequence of the lack of a response on the part of the Government, at its June 2004 meeting [see 334th Report, para. 9], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case even if the observations or information from the Government in question have not been received in due time (GB.248/8, para. 8). To date, the Government has not sent its observations.
- 1175.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 1176.** In a communication dated 6 June 2003, the Federation of Peruvian Light and Power Workers (FTLFP) states that the Municipality of Metropolitan Lima is attempting to confiscate its trade union assets invoking supposed back taxes despite the fact that, under national legislation, trade union organizations are exempt from tax. For the last 27 years the headquarters of the FTLFP have been located at Jirón Chacay, No. 747 and Cercado de Lima, No. 753 during which period no attempt whatsoever has been made under any pretext to collect supposed back taxes. However, the complainant organization alleges that, under the Government of Mr. Fujimori, the municipal administration attempted, and continues to attempt, to collect supposed back taxes. The complainant organization adds that the facts of the case have also been sent to INFOCOR, a governmental organization

providing information on debtors whose inclusion in a list of creditors renders insolvent any natural or legal person attempting to obtain credit within the financial system in which they operate.

- 1177.** The complainant organization adds that the FTLFP is a national trade union institution, representing trade unions and workers from the electrical industry throughout Peru.
- 1178.** The complainant organization states that, in order to levy supposed and illegal back taxes and collect them in full, the public servants of the Municipality of Lima have divided the single building that is the institutional headquarters of the FTLFP into several different buildings. Likewise, the trade union states that, in accordance with its statutes and according to the law, the FTLFP is a not-for-profit organization, whose activities revolve around representing the workers of the national electricity industry in their individual and collective labour disputes, and the provision of advice to and social and economic promotion of its members.
- 1179.** The complainant organization explains that the FTLFP was unduly and illegally called on to pay property taxes for 1997, 1998, 1999, 2000, 2001, 2002 and 2003 for the property located at No. 753 calle Chancay, even though subsection (I) of article 17 of Legislative Decree No. 776, amended through Law No. 27616 states that trade unions are exempt from payment of tax on property assets in which they carry out trade union activities. According to the complainant organization, in Peru the tax system is based on the principle of legality as set out in article 74 of the Political Charter which provides that, in order for any tax to be levied, it must necessarily be established by law, the same being true for tax relief. The Municipal Tax Law Legislative Decree No. 776, article 17, subsection (L) states that property assets belonging to trade union organizations are exempt from tax, but despite the existence of this specific law, the municipal tax authorities are attempting to tax the property assets belonging to the FTLFP through a tax containing powers of confiscation related to trade union assets, hence these same tax authorities proceeded in a biased fashion and with the sole aim of obtaining tax revenue by dividing up the FTLFP's building, tacitly altering the organization and administration of the federation's assets.
- 1180.** Finally, the complainant organization alleges that in addition to the action of an anti-union and discriminatory nature carried out against the FTLFP by the Municipality of Metropolitan Lima, the municipal authority issued, last January, a municipal decree banning unionized workers and other sections of the working class from joining rallies or protests in the historic centre of Lima. The complainant organization states that this undemocratic and discriminatory ban has no historical precedent in the context of Peru, as the workers have always held rallies in and around the centre of Lima because that is where the offices of the President of the Republic, the Ministry of Economics and Finance, the Ministry of Foreign Affairs, the Ministry of Women, the Public Ombudsman, the Constitutional Court, a part of the office of the Congress of the Republic and other institutions are located.

B. The Committee's conclusions

- 1181.** *The Committee regrets that, despite the time which has passed since the presentation of the complaint, to date the Government has not responded to the allegations made by the complainant organization, although the Committee has urged it to send its observations or information on the case on several occasions, including through an urgent appeal launched at the Committee's June 2004 meeting. Under these circumstances, in accordance with the procedure established in paragraph 17 of its 127th Report as approved by the Governing Body, the Committee stated that it would present a report on the substance of this case at its next session, even if the observations or information requested had not been received in due time.*

- 1182.** *The Committee reminds the Government, firstly, that the aim of all the procedures established by the International Labour Organization in relation to the examination of allegations related to violations of freedom of association is to ensure that the rights of workers' and employers' organizations are respected, in fact and in law; the Committee thus believes that though this procedure protects governments from unfounded accusations, those same governments should in turn recognize the importance of providing detailed and precise responses concerning the substance of the alleged facts for objective examination [see Report No. 1, para. 31].*
- 1183.** *The Committee notes that the complainant organization alleges that although trade unions are exempt from tax, the Municipality of Metropolitan Lima is attempting to collect supposed back taxes from the Federation of Peruvian Light and Power Workers (FTLFP), levied on the site of its headquarters (according to the complainant organization it has only been during the time of the last two governments that any attempt has been made to collect these back taxes). Recalling that the authorities should not discriminate against a trade union organization as concerns imposition of taxes, the Committee requests the Government to confirm whether or not trade union organizations generally benefit from tax exemption and, if so, to take measures to ensure that the complainant organization is not discriminated against and so that the back taxes being demanded by the Municipality of Metropolitan Lima from the FTLFP are not levied. The Committee requests the Government to keep it informed in this respect.*
- 1184.** *As to the allegation related to the ban declared by the municipal authorities of Lima on rallies or protests in the historic centre of Lima, the Committee stresses that restrictions to the right to demonstration have to be reasonable and that the authorities should examine the requests to authorize these demonstrations on a case-by-case basis. The Committee recalls that the requirement of administrative permission to hold public meetings and demonstrations is not objectionable per se from the standpoint of the principles of freedom of association and that trade union organizations must conform to the general provisions applicable to all public meetings and must respect the reasonable limits which may be fixed by the authorities to avoid disturbances in public places [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 138 and 141]. Under these circumstances, the Committee requests the Government to respect those principles.*

The Committee's recommendations

- 1185.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) Recalling that the authorities should not discriminate against a trade union organization as concerns the imposition of taxes, the Committee requests the Government to confirm whether or not trade union organizations generally benefit from tax exemption and, if so, to take measures to ensure that the complainant organization is not discriminated against and so that the back taxes being demanded by the Municipality of Metropolitan Lima from the Federation of Peruvian Light and Power Workers (FTLFP) are not levied. The Committee requests the Government to keep it informed in this respect.*
- (b) The Committee requests the Government to respect the abovementioned principles concerning the exercise of trade union rights to organize demonstrations.*

CASE NO. 2289

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

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

- **the Federation of Peruvian Light and Power Workers (FTLFP) and**
- **the General Confederation of Workers of Peru (CGTP)**

Allegations: The complainant organizations allege that, in violation of the terms of an arbitral award, Electro Sur Este, a state enterprise, has used threats of sanctions in order to insist that trade union travel expenses should be accounted for; the dismissal of the Secretary-General of the Unified Trade Union of Electricity Workers of Lima and Callao (SUTREL) and the administrative authority's refusal to register the executive committee of the Peruvian Union of Folklore Artists (SITAFP), as well as the violent occupation of their trade union premises

- 1186.** The complaints are contained in communications from the Federation of Peruvian Light and Power Workers (FTLFP) dated 17 July 2003, and from the General Confederation of Workers of Peru (CGTP) dated 1 and 10 December 2003.
- 1187.** The Government sent partial observations in communications dated 4 May and 22 June 2004. At its June 2004 meeting, the Committee issued an urgent appeal to the Government to transmit its observations [see 334th Report, para. 9].
- 1188.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 1189.** In its communication of 17 July 2003, the Federation of Peruvian Light and Power Workers (FTLFP) alleges that, in violation of the terms of the existing collective agreement/arbitral award, state enterprise Electro Sur Este S.A.A. used threats of dismissal and other sanctions in order to insist that trade union travel expenses should be accounted for. The complainant organization adds that this facility afforded to trade unions in the national electricity industry dates back to the 1970s. The complainant points out that, since the time of the entry into force of the agreement/arbitral award regarding trade union travel expenses, the enterprise in question has paid such expenses without laying down any requirements or requiring accounts. The complainant organization notes that, on this matter, the latest arbitral award, dated 30 May 2004, stipulated the following: "In addition, those officials on trade union business away from their normal place of work and/or attending trade union events shall continue to receive trade union travel expenses to cover

expenses incurred whilst carrying out their duties and the cost of their transportation as set out under the aforementioned previous point.”

- 1190.** FTLFP adds that, recently, at the start of the annual collective bargaining process, some of the enterprise’s employees have been harassing union officials and putting pressure on them. More specifically, the complainant organization states that union officials Nazario Arellano Choque and Efrain Yopez Concha were subjected to scare tactics by employees of Electro Sur Este S.A.A.
- 1191.** In its communication dated 1 December 2003, the General Confederation of Workers of Peru (CGTP) states that the Luz del Sur company is the property of two transnational companies, Sempra Energy International and Public Service Enterprise Group (PSEG). The CGTP notes that the Unified Trade Union of Electricity Workers of Lima and Callao (SUTREL) took action in support of a decision handed down by the Tax Court which stated that, as a part of its supervisory remit, the National Tax Administration Superintendency (SUNAT) should review divisions, mergers, revaluations and depreciations of electricity companies in line with regulation VIII of the Tax Code.
- 1192.** The complainant organization adds that, having acquired Luz del Sur, as has been the practice in privatized companies in Peru, the management then proceeded to dismiss over 50 per cent of the company’s permanent workforce, in accordance with section 34 of Presidential Decree No. 003-97-TR that allows for arbitrary dismissal “with no reason given”. At the same time, the company replaced these workers with employees of (temporary) service enterprises and ultimately outsourced several aspects of its main activity with the clear aim of slashing the number of workers belonging to the trade union. This action was also intended as an attack on freedom of association in that it was aimed at: (a) penalizing union membership through the threat of dismissal; (b) weakening as far as possible the trade union organization representing the workers; (c) outsourcing services such as billing, complaints, repairs, power cuts, amongst others, with the aim of denying workers the right to join a trade union and, consequently, to collective bargaining.
- 1193.** The CGTP points out that, in carrying out its responsibility as a representative body in accordance with the Act on labour relations and with section 9 of Act No. 26,636 and article 28 of the Political Constitution, SUTREL has run campaigns, not only for the defence of the individual and/or collective rights of its members, but also with the aim of giving people guidance regarding the defence of their rights and the nation as a whole. These perfectly legal activities have taken the form of written representations addressed to government authorities for protection against arbitrary charges, etc. As is natural, in his role as chief representative of the union, the Secretary-General of SUTREL, Mr. Luis Martín del Río Reátegui, has always been at the forefront of these activities. As already mentioned, as a part of these activities SUTREL launched a campaign to publicize the tax problem affecting the Luz del Sur S.A.A enterprise.
- 1194.** The CGTP alleges that, for no apparent reason, Luz del Sur S.A.A. initiated dismissal proceedings against Mr. Luis Martín del Río Reátegui and that, on 23 August 2003, he received a letter from the company, dated 22 August, giving him his notice. The letter contained several totally unsubstantiated accusations as to his behaviour. More specifically, CGTP points out that the Secretary-General was accused of the following: (a) sending out public communications, together with other individuals, to various recipients and systematically and repeatedly issuing statements to the press containing slanderous comments regarding his employer (Luz del Sur), as well as the company’s management and board of directors; (b) drafting SURTEL communications in which “slanderous” accusations were directed against Luz del Sur (describing the company’s conduct using words such as “arrogance”, “blackmail” and “benefits” and “regulations drawn up by the mafia in the Fujimori/Montecinos government”); (c) stating in the daily

newspaper *La Republica* that the company had carried out “fraudulent” revaluations, as well as tax evasion; (d) displaying a lack of loyalty towards his employer and betraying the latter’s trust by damaging the company; (e) intending to damage the image and good name of the company by contacting the President of the Republic and other national authorities, accusing the company of tax evasion, as well as fraudulent recourse to Act No. 26,283; and (f) being intent on damaging the company and its executives, as well as its public image.

- 1195.** The CGTP indicates that, based on the aforementioned facts and in application – erroneous, according to CGTP – of section 25 of Presidential Decree 003-97-TR, the Luz del Sur company accused the Secretary-General of SUTREL of having committed the following serious offences, punishable with dismissal: (a) failure to fulfil work-related obligations and consequent loss of industrial goodwill and failure to observe internal work regulation No. 18.25; and (b) a serious lack of discipline, making slanderous remarks and issuing offensive verbal and written statements regarding the company, the company’s representatives, management staff and other workers.
- 1196.** The complainant organization denies that the Secretary-General of SUTREL committed any of the offences of which he has been accused. In particular the complainant organization stresses the fact that he took part in the presentation of a written representation addressed to the state authorities in his capacity as a union member and as Secretary-General, exercising his right to trade union autonomy, freedom of opinion, and to defend workers’ rights and national interests. It also points out that, in none of the texts that have been published is it stated or hinted that the company or its employees have in the past committed an offence, or that they are doing so now. SUTREL was not in any way, be it explicitly or tacitly, directly or indirectly, suggesting that there had been criminal conduct. It sought, rather, to explain that inappropriate use had been made of tax benefits, and hence the tax assessment would have technical and legal elements that justify it.
- 1197.** The complainant organization points out that SUTREL has not adopted a confrontational stance in the face of the company’s subjective claims that it has been damaged, insulted and slandered. Rather than starting a legal and political battle, SUTREL has sought to establish a direct dialogue through the labour authority. Prior to the dismissal of the Secretary-General there had been a request and two summonses to appear before the administrative labour authority, to which Luz del Sur refused to respond. The CGTP and other representative organizations have protested vigorously and have requested that Mr. Luis del Río be immediately reinstated in his post as a matter of urgency.
- 1198.** In its communication dated 10 December 2003, the CGTP alleges that the administrative labour authority has not registered the executive committee of the Peruvian Union of Folklore Artists (SITAFP), under the pretext that six former members put forward objections. The complainant organization further alleges that those same workers who opposed the registration of the executive committee used weapons to violently seize the trade union’s premises on 2 December 2003; the complainant organization states that, hours later, the premises were returned to the trade union with the help of the National Police.

B. The Government’s reply

- 1199.** In its communication dated 4 May 2004, the Government notes that Luz del Sur S.A.A. states that it is not true that Mr. Luis Martín del Río Reátegui was dismissed because of the campaign that was started to support SUNAT. He was dismissed because of the serious offence he had committed in making slanderous and insulting remarks about the company and its employees in various media. The company adds that the official in question then acted improperly in attempting to hide behind his trade union office. Furthermore, it was

not necessary to make slanderous remarks in order to carry out any kind of defence or support, as there is no law that authorizes lack of respect or personal slander as a consequence of a complaint, since this should be done through legal channels. Consequently, Mr. del Río Reátegui could have initiated and run his campaign in support of SUNAT without resorting to insults or slander.

1200. The company points out that the following statements were included in the appeal addressed to the President of the Republic, members of Congress and of the Tax Board on behalf of SUTREL: (1) "... At the current time ... the workers must ... take a stand with respect to national interests when these interests are unjustly affected, as is the case with the tax evasion committed by the electricity companies over the last nine years ..."; (2) "upon transfer to the Edelnor, Edegel and Luz del Sur companies, the said fixed assets are revalued at scandalously high rates ..., in addition to the unscrupulous and shameful increase in the value of the fixed assets, the value of fixed assets belonging to Electrolima S.A., which were not received, was also included. ... It having been clearly shown that all of this was done with the aim of evading income tax, making fraudulent use of Act No. 26,283, we, the workers employed at these companies, testify that the mergers and divisions involving our employers were manifestly not carried out in accordance with Act No. 26,283; on the contrary the sole aim was to carry out a fraudulent revaluation of fixed assets ..."; (3) "... it is unclear why these companies do not pay tax, despite the fact that, since 1994, they have been generating significant revenues ... we have been saying since 1994 that they have been generating significant revenues ... we call on the representatives of our employers, as well as on those holding shares in these companies, to stop setting a bad example and to acknowledge what they have done and show some shame in front of the nation...".

1201. According to the enterprise, the above statements made by Mr. Luis Martín del Río Reátegui contain various slanderous elements, e.g.: (a) the expression "blackmail" is used repeatedly, a term which refers to criminal, or at least reprehensible, behaviour and is therefore slanderous; (b) he uses the words "arrogance", "scandalously" and "perpetrated" to describe the company's actions, displaying intent to damage or obstruct, insult and not simply argue or even condemn; (c) he links Luz del Sur S.A.A. to "benefits", "advantages" granted by "the mafia", "the corrupt fugitive Fujimori government". Here, his intention is also clearly, to present the company as being an accomplice to corruption or linked to corruption, thus damaging its image; (d) alongside this, he accuses Luz del Sur S.A.A. of "political blackmail" and of having launched a "campaign of destabilization". This is not a trade union speaking up for workers' rights, but an individual acting deliberately to damage the image of his employer; (e) he uses the terms "tax evasion", "fraudulent use of the Act" and "fraudulent revaluation", all of which suggest that he is openly accusing officials of Luz del Sur S.A.A. of having committed an offence; (f) he accuses Luz del Sur S.A.A. of "non-payment of tax". Here, he is making a groundless accusation in an attempt to ruin the company's image. Luz del Sur S.A.A. has always paid its taxes, as evidenced by the fact that, every year since privatization, the company has paid the workers their shares in the profits (except for the financial year 1994, when the company made a tax loss); and (g) the representatives of and shareholders in Luz del Sur S.A.A. are called on to "stop setting a bad example" and to "acknowledge what they have done and show some shame". The remarks made attacking the representatives and shareholders of Luz del Sur S.A.A. are extremely offensive and damaging, both to their images and that of the company, considering that they have always acted within ethical, moral and legal bounds.

1202. The company denies that it has dismissed over 50 per cent of the permanent workforce by sheltering behind the existence of section 34 of Presidential Decree No. 003-97-TR, the consolidated text of the Act on productivity and labour competitiveness. The company explains that most of the staff at Luz del Sur S.A.A. retired of their own free will, taking advantage of the incentive schemes that the company offered in certain cases, which

included reasonably attractive financial incentives, independent of the social benefits (the financial incentives were always higher than the amount set as severance pay for arbitrary dismissal). The company denies that the reorganization process was aimed at penalizing union membership through threats of dismissal, nor was it aimed at weakening trade union organizations, as evidenced by the fact that, each year, the company concludes collective agreements with the two trade union organizations represented in it.

- 1203.** The company adds that, prior to dismissing Mr. Luis Martín del Río Reátegui, it had fulfilled all the relevant procedural requirements involved in the dismissal of an employee: a letter, certified by a notary and dated 22 August 2003, was sent to him in which the charges which led to his dismissal were clearly laid out. Mr. Luis Martín del Río Reátegui answered the letter but did not contest the charges made against him, thus confirming his guilt. The letter sent to Mr. Luis Martín del Río Reátegui explained that he had committed serious offences under the terms of subsections (a) and (f) of section 25 of Presidential Decree No. 003-97-TR, the consolidated text of the Act on productivity and labour competitiveness, and regulation 18.25 of the internal work regulations. The company goes on to say that Mr. del Río Reátegui's attempt to shield his individual actions behind his trade union official is not valid as a defence, as his trade union office does not exonerate him from his duties as a worker and that he had wrongly claimed to represent all the workers in the company.
- 1204.** For its part, the Government notes that Mr. Luis Martín del Río Reátegui has appealed to the judiciary in relation to his dismissal, bringing an action against Luz del Sur S.A.A. before the 9th Labour Court of Lima for nullity of arbitrary dismissal, with the aim of being reinstated in his post according to the terms of subsection (a) of section 29 of Presidential Decree No. 003-97-TR, the consolidated text of Legislative Decree No. 728 (Act on productivity and labour competitiveness) which establishes that any dismissal motivated by trade union membership, or participation in trade union activities, is null and void. Thus nullity applies in the case of any dismissal illegally impairing freedom of association. The Government states that the Republic of Peru, like any other constitutional democracy, makes provision for the separation of powers (article 43 of the Peruvian Political Constitution), according to which public functions are distributed. The Government therefore declares that it undertakes to keep the International Labour Organization informed of the outcome of the legal proceedings against the employer.
- 1205.** In its communication dated 22 June 2004, the Government refers to the allegations that the administrative labour authority, acting through the Subdirectorate of General Registrations and the Directorate for the Prevention and Settlement of Labour Disputes, has been blocking the registration of the executive committee of the Peruvian Union of Folklore Artists (SITAFP).
- 1206.** The Government states that it requested information on this case from the Subdirectorate of General Registration and Certification and the latter replied on 2 March 2004, as follows:
- on 15 November 2002, the administrative labour authority became aware of the latest meeting of the executive committee of SITAFP, with the election as Secretary-General of Mr. Fausto Castillo Huiza for the 2001-03 period;
 - when the latter Secretary-General died, a communication was received on the restructuring of the executive committee represented by Mr. Eladio Rogelio Sánchez Rodríguez but, at the same time, Mr. Carlos Rolando Guillén Oporto announced that another executive committee had been formed for the 2002-05 period. Given the situation, the administrative labour authority decided not to issue a decision, in accordance with the terms of section 8 of Presidential Decree No. 011-92-TR,

implementing regulation of the Act on collective labour relations. This decision was confirmed through Directorate Order No. 096-2003-DRTPEL-DPSC dated 28 April 2003;

- on 9 June 2003, the representatives of the restructured executive committee (Rómulo Mendoza Castillo and Eladio Rogelio Sánchez Rodríguez) requested that official stamps be placed on four books. In reply, on 14 June 2003, the administrative labour authority issued a resolution referring back to the aforementioned resolution (in which the administrative labour authority decided not to issue a decision);
- an action for nullity was lodged against the latter resolution on 14 June 2003, and was found to be groundless on 5 September 2003; an appeal was then lodged against this decision, and the case was referred to the Directorate for the Settlement of Disputes for decision;
- the trade union represented by Mr. Carlos Rolando Guillén Oporto sent a communication announcing the election of the executive committee for the 2003-06 period, through application No. 019846 dated 28 November 2003;
- through application Nos. 020308 and 020372 dated 10 and 11 December 2003, respectively, an electoral committee, presided over by Filomeno Malpica Iparraguirre and Rogelio Sánchez Rodríguez, announced the election of another executive committee that is represented by Mr. Porfirio Gonzáles Sánchez, for the 2004-06 period;
- through document No. 002443 dated 12 January 2004, presented by Mr. Carlos Guillén Oporto, the former Minister of Labour and Employment Promotion was requested to intercede so that the executive committee could be registered;
- on 13 January 2004, Mr. Rogato Lucio Zavala Molina, in his capacity as a member of the trade union, contested the election of the executive committee represented by Mr. Porfirio Gonzáles Sánchez;
- on 27 January 2004, in application No. 001277, Mr. Porfirio Gonzáles Sánchez reiterated his request for the recognition of the executive committee headed by himself for the 2004-06 period. The applications will be processed once the supporting documents that are needed for issuing a decision have been returned.

1207. The Government adds that the complainant organization has not taken into account the reason why the Ministry for Labour and Employment Promotion decided to issue the resolution dated 15 November 2002, confirmed by Directorate Order No. 96-2003-DRTPEL-DPSC dated 28 April 2003, in which the administrative labour authority decided not to handle the applications for recognition and registration of the restructured executive committee of SITAFP. The Ministry of Labour refrained from acting because two applications were presented to the administrative labour authority at the same time, requesting the registration of executive committees whose terms of office overlapped and which were made up of different members; such a situation meant that it was not possible to determine which of the executive committees was the one that had been elected to represent the members of the aforementioned trade union organization. As this situation arose out of a dispute within a trade union, it was decided to apply the legal provisions contained in section 8 of Presidential Decree No. 011-92-TR, implementing regulation of the Act on collective labour relations, which specifies that, in the case of disputes between trade unions or within a trade union, the administrative labour authority shall be guided by the findings of the judiciary. The Government emphasizes that, for the reasons already given, it can be seen that the Ministry of Labour and Employment Promotion has not intervened in SITAFP's activities, neither does the fact that the trade union organization

has not been registered constitute a violation of the complainants' right to freedom of association; on the contrary, respect has been shown for the decisions taken within each trade union by leaving it to the judiciary to clear up the disputes that arise within trade unions.

- 1208.** Finally, the Government confirms that Peru's legal system contains the guarantees necessary for the effective protection of the right to freedom of association. Furthermore, the State, in accordance with the international Conventions signed with the ILO, has at no time attempted to obstruct the right of the complainant organization to organize. On the contrary, in order to safeguard these rights, the administrative labour authority, on seeing that the election of Mr. Carlos Rolando Guillén Oporto as Secretary-General of the trade union for the 2002-05 period overlapped with that of the trade union's executive committee for the 2002-03 period, represented by Mr. Eladio Rogelio Sánchez Rodríguez, has prudently chosen to refrain from handling the case and from issuing a ruling until the controversy within the aforementioned trade union has been resolved.

C. The Committee's conclusions

- 1209.** *The Committee observes that: (1) the Federation of Peruvian Light and Power Workers (FTLFP) alleges that state enterprise Electro Sur Este S.A.A. has violated the terms of an arbitral award by using threats of dismissal and other sanctions when insisting that trade union travel expenses should be accounted for; and (2) the General Confederation of Workers of Peru (CGTP) alleges: (i) the dismissal of the Secretary-General of the Unified Trade Union of Electricity Workers of Lima and Callao (SUTREL), Mr. Luis Martín del Río Reátegui from the Luz del Sur company, as a consequence of actions undertaken by the trade union in relation to the company's tax situation (it is also alleged that, since the privatization of the company, there has been an ongoing campaign to penalize trade union membership) and (ii) the administrative labour authority's refusal to register the executive committee of the Peruvian Union of Folklore Artists (SITAFP), as well as the violent seizure of the trade union's premises by a group of workers opposed to the registration of the executive committee.*
- 1210.** *With respect to the allegation that state enterprise Electro Sur Este S.A.A. has violated the terms of an arbitral award by using threats of dismissal and other sanctions when insisting that trade union travel expenses should be accounted for, the Committee regrets the fact that, despite the time which has elapsed and after having issued an urgent appeal for the Government to send its observations as a matter of urgency [see 334th Report, para. 9], the Government has still not sent its observations. The Committee therefore urges the Government to carry out an investigation without delay into this allegation and to keep it informed in this respect.*
- 1211.** *As regards the allegation that, having acquired Luz del Sur, the management then proceeded to dismiss over 50 per cent of the company's permanent workforce, in accordance with section 34 of Presidential Decree No. 003-97-TR that allows for arbitrary dismissal "with no reason given" and replaced these workers with employees of (temporary) service enterprises and ultimately outsourced several aspects of its main activity with the clear aim of slashing the number of workers belonging to the trade union, the Committee observes that the company: (1) denies that it has dismissed over 50 per cent of the permanent workforce by sheltering behind the existence of section 34 of Presidential Decree No. 003-97-TR, the consolidated text of the Act on productivity and labour competitiveness; (2) explains that most of the staff at Luz del Sur S.A.A. retired of their own free will, taking advantage of the incentive schemes that the company offered in certain cases, which included reasonably attractive financial incentives, independent of the social benefits; (3) denies that the reorganization process was aimed at penalizing union membership through threats of dismissal, nor was it aimed at weakening trade union*

organizations, as evidenced by the fact that, each year, the company concludes collective agreements with the two trade union organizations represented in it. Noting the contradiction that exists between the statement of the complainant and that of the company, the Committee requests the Government to send additional observations in this regard.

- 1212.** *With respect to the alleged dismissal of the Secretary-General of the SUTREL trade union, Mr. Luis Martín del Río Reátegui, from the Luz del Sur company, as a consequence of the actions undertaken by the trade union in relation to the company's tax situation, the Committee notes that the Government states that, according to the company, the dismissal in question was based on the individual in question having committed serious offences under sections (a) and (f) of section 25 of Presidential Decree 003-97-TR and regulation 18.25 of the internal work regulations, having made slanderous and insulting remarks about the company and its officials. The Committee also notes that the Government states that Mr. Luis Martín del Río Reátegui has brought an action against his dismissal before the judiciary, with the aim of being reinstated in his post. The Committee expresses the hope that the judicial authority will come to a quick decision on the dismissal in question and, should it order that Mr. Reátegui be reinstated, asks the Government to ensure that the judicial decision is put into effect immediately and that he is paid any outstanding wages. The Committee requests the Government to keep it informed of the judicial decision and to send it a copy of the judgement handed down. Lastly, with respect to the general allegation that, since the privatization of the Luz del Sur company, there has been an ongoing campaign to penalize trade union membership, the Committee notes that the enterprise denies that the reorganization process was aimed at penalizing union membership through threats of dismissal, nor was it aimed at weakening trade union organizations, as evidenced by the fact that each year the company concludes a collective agreement with the two trade unions represented within the company.*
- 1213.** *With respect to the administrative authority's alleged refusal to register the executive committee of the SITAFP, the Committee notes that the Government states that: (1) the administrative authority decided to refrain from recognizing and registering the executive committee of SITAFP because two applications to register executive committees whose terms of office overlapped and which were made up of different members were presented to the administrative labour authority at the same time; (2) against this background, it was decided to apply the terms of Presidential Decree No. 011-92-TR, the implementing regulation of the Act on collective labour relations, which specifies that, in the case of disputes between trade unions or within a trade union, the administrative labour authority shall be guided by the findings of the judiciary. The Committee observes that, according to the Government's observations, there are still two appeals pending which were lodged with administrative bodies. The Committee therefore asks the Government to keep it informed of the result of the pending administrative appeals related to these allegations, as well as of the outcome of any legal proceedings initiated in this respect.*
- 1214.** *With regard to the alleged violent seizure of SITAFP's trade union premises by a group of workers opposed to the registration of an executive committee, the Committee observes that the Government has not sent its observations on this issue. However, the Committee observes that, according to the complainant organization, the premises were returned with the help of the National Police. In these circumstances, the Committee will not pursue its examination of this allegation.*

The Committee's recommendations

- 1215.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee urges the Government to carry out an investigation without delay into the allegation that state enterprise Electro Sur Este S.A.A. violated the terms of an arbitral award by using threats of dismissal and other sanctions in order to insist that trade union travel expenses should be accounted for. The Committee requests that the Government keep it informed in this respect.*
- (b) *The Committee requests the Government to send additional observations concerning the allegation that over 50 per cent of the permanent workforce at Luz del Sur has been dismissed.*
- (c) *The Committee expresses the hope that the judicial authority will come to a quick decision on the dismissal of the Secretary-General of SUTREL, Mr. Luis Martín del Río Reátegui, from the Luz del Sur S.A.A. company and, should it order that Mr. Reátegui be reinstated, asks the Government to ensure that the judicial decision is put into effect immediately and that he is paid any outstanding wages. The Committee requests the Government to keep it informed of the judicial decision and to send it a copy of the judgement handed down.*
- (d) *Regarding the registration of the executive committee of the Peruvian Union of Folklore Artists (SITAFP), the Committee requests the Government to keep it informed of the result of the pending administrative appeals, as well as of the outcome of any legal proceeding initiated in this respect.*

CASE NO. 2293

INTERIM REPORT

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

- **the Peruvian Petroleum Workers' Federation (FETRAPEP)**
- **the Single Trade Union of Talar Petroleum Refinery of Peru S.A. (SUTREPPSA) and**
- **the National Trade Union of Health Social Security Workers (SINACUT ESSALUD)**

Allegations: The complainants allege that the National Fund for Financing State Enterprise Activity (FONAFE) has issued Executive Board Decision No. 008-2003/010 introducing salary freezing, which severely restricts collective bargaining

1216. The complaint is contained in a communication from the Peruvian Petroleum Workers' Federation (FETRAPEP), the Single Trade Union of Talar Petroleum Refinery of Peru S.A. (SUTREPPSA) and the National Trade Union of Health Social Security Workers (SINACUT ESSALUD) dated 6 August 2003. The SINACUT ESSALUD presented additional information in a communication dated 29 September 2003.

1217. The Government sent its observations in a communication dated 4 December 2003.

- 1218.** SINACUT ESSALUD sent new allegations in a communication dated 2 August 2004.
- 1219.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 1220.** In their communications of 6 August and 29 September 2003, the Peruvian Petroleum Workers' Federation (FETRAPEP), the Single Trade Union of Talar Petroleum Refinery of Peru S.A. (SUTREPPSA) and the National Trade Union of Health Social Security Workers (SINACUT ESSALUD) state that workers at state enterprises such as Petr6leos del Per6 (PETROPERU S.A.) and workers in the public sector such as those in Health Social Security (ESSALUD) have had their salaries frozen as a result of legal and administrative provisions. They add that the National Fund for Financing State Enterprise Activity (FONAFE) has issued Executive Board Decision No. 008-2003/010-FONAFE of 24 June 2003 introducing, in its main text and annexes, an operational reorganization of enterprises in order to implement a new organizational structure and to reduce running costs by 10 per cent and representation costs by 90 per cent, which makes it impossible to increase workers' salaries and improve working conditions, and also limits the process of collective bargaining which has already begun.
- 1221.** The complainants state that, in order to reduce and limit public spending in the public administration sector, Act No. 28034 entitled "Act establishing complementary measures of austerity and rationality in public spending" was promulgated on 22 July 2003, and that this Act applies to government organizations and bodies, as well as to state enterprises which are subject to or controlled by FONAFE, amongst which are PETROPERU S.A. and ESSALUD. They add that section 3, paragraph 2, of the aforementioned Act prohibits adjusting and/or increasing remuneration, remuneration scales, bonuses, allowances and benefits of any kind, whatever their form, modality or source of financing, preventing workers at these enterprises from receiving any increase in remuneration and/or better salaries or working conditions of an economic nature. They also state that workers at PETROPERU S.A. have seen the process of collective bargaining almost paralysed, since the enterprise is unable to negotiate in the face of the restrictions imposed by the disputed Act, which they consider to be government interference in the free exercising of the right to collective bargaining. They add that the enterprise's representation, in clear submission to government orders, is based on precisely these restrictions in order to avoid holding more meetings within the stage of direct negotiation and making any offers which would allow the process to move forward. It is restrictive and compulsive, obstructing and restricting the progress of collective bargaining. They state that leaving these legal provisions in force would represent a restriction of the right to freely engage in collective bargaining, affecting both current and future negotiations.
- 1222.** In summary, they consider that the loss of labour rights and, consequently, the violation of the right to freedom of association are confirmed and maintained by Executive Board Decision No. 008/2003/010-FONAFE and, mainly, by section 3 of Act No. 28034.
- 1223.** SINACUT ESSALUD sent new allegations in an extensive communication dated 2 August 2004. These allegations concern the failure to recognize the trade union organization because it does not represent 20 per cent of all workers entitled to unionize, which implies that this organization cannot enjoy trade union privileges and cannot resort to strikes.

B. The Government's reply

- 1224.** In its communication of 4 December 2003, the Government states that Petr6leos del Per6 (PETROPERU S.A.) is a state-owned enterprise which falls within the purview of the National Fund for Financing State Enterprise Activity (FONAFE), in accordance with Act No. 27170, the National Fund for Financing State Enterprise Activity Act, which regulates the management and budgetary processes of state enterprises, as well as dictating remuneration policy. In this respect, it adds that collective bargaining took place in previous years and has been concluded by direct negotiation or arbitration. It adds that the policy dictated by FONAFE establishes the need for supply which every state enterprise must have but which does not affect free negotiation or the freedom of trade unions to make proposals. With regard to the process of collective bargaining, it reports that, in CODIPP letter No. 028-2003 of 14 November 2003, the national convention of trade unions of PETROPERU S.A. stated that the stage of direct negotiation had been exhausted, and that on 17 November 2003 FONAFE issued circular letter No. 038-2003/DE-FONAFE, containing policies on the basis of which negotiations with trade unions have been reopened.
- 1225.** With regard to the Peruvian labour system, the Government states that there are two labour systems within the public sector: the system of private workers and the system of public workers or administrators.
- 1226.** The first system has its constitutional basis in article 28 and the applicable regulations are contained in Supreme Decree No. 010-2003-TR, a single text based on the collective labour relations Act and regulations, which contains provisions expressly protecting freedom of association, collective bargaining and the right to strike, reflecting an adequate level of protection and involving the Ministry of Labour and Employment Promotion as the competent authority.
- 1227.** With regard to the second system, suffice to say that article 42 of the Constitution recognizes public servants' right to freedom of association and the right to strike. The Government states that, with the dissolution of the Institute of Public Administration (INAP), the body previously responsible for conducting the various processes contained in Legislative Decree No. 276, the main act governing administrators and remuneration in the public sector, its functions have been transferred to the Presidency of the Council of Ministers, which has at its disposal the Directorate General of Public Management, currently in charge of dealing with problems connected with trade union membership, collective bargaining and strikes in the public sector. The Ministry of Labour and Employment Promotion is responsible only for the provisions of Act No. 27556, which provides for the registration of trade unions of public servants in the primary, secondary and tertiary levels of the sector. In this regard, there is currently a competent body responsible for resolving problems which may arise concerning freedom of association, collective bargaining and strikes in relation to trade unions representing workers in the public sector or administration. These organizations are also able to approach the heads of their sectors and discuss their concerns.
- 1228.** With regard to the complainants' allegations concerning Act No. 28034, the Government states that the public sector budget Act for the 2003 tax year, Act No. 27879, contains measures of austerity, rationality and transparency in public spending, comprising general administrative provisions allowing public spending to be rationalized. These must be observed without exception in budget submissions from central Government and decentralized bodies, in order to develop a disciplined budget management system which makes rational, efficient and effective use of scarce public resources, abiding strictly by the principle of balancing the budget contained in article 78 of the Constitution.

- 1229.** In this regard, Act No. 28034, the “Act establishing complementary measures of austerity and rationality in public spending”, was promulgated to complement Act No. 27879, with the aim of releasing funds which could be channelled into, among other things, financing the costs incurred in implementing the budget according to the priority needs expressed by the public sector entities; and, furthermore, in order to be able to balance the budget for 2003, for reasons of public interest and better state management, it was necessary to pass this Act so as to avoid the risk of a deficit produced by increased levels of spending without the necessary funds available.
- 1230.** The Government states that, if the complainants consider that Act No. 28034 violates any constitutional regulation, legal channels are open to them to bring a constitutional rights action before the judicial authority or constitutional court, in order to examine whether or not the regulation or its effects are unconstitutional, in accordance with article 200 of Peru’s Constitution, because no legal requirement may be incompatible with the Constitution, which has primacy over all other regulations. Irrespective of this, it should be pointed out that Act No. 28034 expired on 31 December 2003, since it was only applicable to the 2003 tax and budget year.
- 1231.** The Government adds that, according to the enterprise, negotiations are continuing with the unions to reach a settlement which could be embodied in a collective agreement, so it would be wise to wait for the parties’ decision in concluding the negotiations.
- 1232.** Lastly, it states that the Constitution lays down that one of the principal labour rights is the right to collective bargaining (article 28.2 of the Constitution), which the State shall promote, giving full effect to agreements reached and the provisions thereof, which must be complied with by the parties involved.

C. The Committee’s conclusions

- 1233.** *The Committee observes that the complainants object to Executive Board Decision No. 008-2003/010 issued on 24 June 2003 by the National Fund for Financing State Enterprise Activity (FONAFE) and Act No. 28034 of 22 July 2003, entitled “Act establishing complementary measures of austerity and rationality in public spending”, which make provision for a reorganization of public enterprises to reduce running costs (10 per cent) and representation costs (90 per cent), involving the freezing of salaries, which creates significant obstacles to collective bargaining in the public sector. Section 3 of Act No. 28034 does indeed prohibit adjusting and/or increasing remuneration, remuneration scales, bonuses, allowances and benefits of any kind, whatever their form, modality or source of financing. The Committee notes that, according to the complainants, Petr6leos del Per6 (PETROPERU S.A.) is using these provisions as a basis for refusing to hold meetings within the stage of direct negotiation.*
- 1234.** *The Committee further notes the Government’s statements that Act No. 27879 on the public sector budget for the 2003 tax year contains measures of austerity, rationality and transparency in public spending and that, to complement this, Executive Board Decision No. 008-2003/010 and Act No. 28034 were subsequently issued, with the aim of releasing funds to be channelled into financing the costs incurred in implementing the budget and to balance the budget for 2003, avoiding the risk of a deficit.*
- 1235.** *In this regard, the Committee recalls that on previous occasions it has stated 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*, 4th edition, 1996, para. 882].

- 1236.** *The Committee observes that, according to the Government's statements, Act No. 28034 expired on 31 December 2003 since it was only applicable to the 2003 tax and budget year and that, according to PETROPERU S.A., negotiations are still being conducted with the unions to reach a collective agreement.*
- 1237.** *The Committee recalls that any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the employers' and workers' organizations in an effort to obtain their agreement [see *Digest*, op. cit., para. 884] and hopes that in future the public authorities will be able to guarantee fully the right to collective bargaining in the public sector.*
- 1238.** *The Committee notes the new allegations presented by SINACUT ESSALUD concerning the non-recognition of that organization as it does not represent 20 per cent of workers entitled to unionize. The Committee requests the Government to provide its observations in this respect.*

The Committee's recommendations

- 1239.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *As concerns the freezing of salaries pursuant to Act No. 28034, to which the complainants object, the Committee notes that, according to the Government's statements, this Act expired on 31 December 2003 since it was only applicable to the 2003 tax and budget year and that, according to PETROPERU S.A., negotiations are still being conducted with the unions to reach a collective agreement. The Committee recalls 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.*
- (b) *The Committee recalls that any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the employers' and workers' organizations in an effort to obtain their agreement and hopes that in future the public authorities will be able to guarantee fully the right to collective bargaining in the public sector.*
- (c) *As regards the new allegations presented by SINACUT ESSALUD concerning the non-recognition of that organization because it does not represent 20 per cent of all workers entitled to unionize, the Committee requests the Government to send its observations in this respect.*

**Complaint against the Government of Portugal
presented by
the Occupational Association of Professional Police Officers (ASPP-PSP)**

Allegations: The complainant alleges lack of dialogue with the employer and failure to consult it in the adoption of legislation directly affecting it

- 1240.** The complaint is contained in a communication from the Occupational Association of Professional Police Officers (ASPP-PSP) dated 1 March 2004.
- 1241.** The Government sent its observations in communications dated 22 March and 5 May 2004.
- 1242.** Portugal 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

- 1243.** The complainant organization, the Occupational Association of Professional Police Officers, states that as a trade union established in accordance with Act No. 14/2002, it has the right to participate, in particular, in the amendment of the statutory pensions scheme and in defining the underlying principles of the training and further training policy of the Public Security Police (PSP), and to be consulted in the drafting of legislation regulating the PSP which is not subject to negotiation (section 38 of the Act). Moreover, section 32 of the Act lays down the principle of collective bargaining based on good faith, which includes responding promptly to requests for meetings and the presentation of proposals and on the principle that both parties may request information from one another.
- 1244.** The complainant organization alleges the following: (a) lack of dialogue by the Minister of Internal Administration since January 2003, in the form of refusal to receive its representatives; (b) failure to take action to resolve the issues raised in the memorandum presented to the Minister of Internal Administration in June 2002, which were directly related to PSP personnel and deemed urgent by the complainant organization; (c) adoption of Decree No. 939/2003 of 30 June by the Minister of Internal Administration, establishing regulations on the service evaluation system for personnel performing police duties in the Public Security Police, without prior consultation of the complainant organization, despite the fact that the preamble to the Decree states that it was negotiated by the occupational organizations of the PSP, in accordance with the law; (d) the fact that the Ministry of Internal Administration drafted a preliminary draft Decree intended to create a new post in the PSP, that of "chief", with a justification note stating that the instrument was negotiated with the occupational associations of the PSP, in accordance with Act No. 14/2002, which does not correspond to reality.
- 1245.** The complainant organization alleges that on 8 April 2002 its National Executive requested an audience with the Minister of Internal Administration, which was only granted two months later, on 11 June. At that meeting, the complainant organization

presented the Minister with a memorandum listing 39 issues which it considered as needing an urgent solution. The Minister committed himself to responding to these concerns. However, to date no steps have been taken in that direction. In September 2002, the complainant organization was informed that the Ministry was still examining the issues. Given the total lack of action by the Ministry, the complainant organization held a protest in front of it on 12 December 2002.

- 1246.** On 7 January 2003, at the last time the Ministry received the complainant organization, it was informed that a solution had been found for four of the issues raised, which in fact had little impact on the magnitude of the problems that had been mentioned. The complainant organization emphasizes that the Ministry has refused to receive it for over a year, and that from April 2002 to January 2003 the so-called consultations were devoid of genuine dialogue.
- 1247.** Despite this lack of dialogue, the Ministry of Internal Administration approved the regulations on the service evaluation system for personnel performing police duties in the Public Security Police (Decree No. 939/2003 of 30 June 2003), which wrongly states that that Decree was negotiated with the occupational associations of the PSP in accordance with the law.
- 1248.** Moreover, the Ministry of Internal Administration decided to establish a new post in the PSP, that of “chief”, and, in the justification note attached to the preliminary draft instrument creating the post, states that it was negotiated with the occupational associations of the PSP in accordance with the law. The complainant organization alleges once again that the Ministry made a false statement and acted in bad faith, since the complainant was not consulted at any time on this subject. The complainant organization maintains that this constitutes a violation of Convention No. 98 and Act No. 14/2002 of 19 February.

B. The Government’s reply

- 1249.** In its communication of 5 May 2004, the Government sends information on the various allegations contained in the complaint. As regards the alleged lack of dialogue by the Ministry of Internal Administration, the Government lists the meetings at which it received the complainant organization and attaches documentary evidence in support of this. Specifically, meetings were held on 12 April (four days after the complainant organization requested an audience, and not two months, as alleged), 11 June, 10 September and 20 December 2002; 7 January, 3 February, 14 and 16 May and 11 June 2003; and 17 February 2004.
- 1250.** As regards the issues presented by the complainant organization to the Ministry of Internal Administration in the memorandum on 11 June 2002, on which it alleges that the Government has not taken any action, the Government states that the following instruments have been adopted: Decree No. 1522-A/2002 of 20 December, approving regulations on staff competitions for personnel performing police duties in the PSP; Decree No. 881/2003 of 21 August, approving regulations on the service evaluation system for personnel performing police duties in the PSP; Legislative Decree No. 228/2003 of 27 September amending the Staff Regulations of the PSP; and Joint Order No. 997/2003, approving regulations on drug and alcohol abuse testing. In addition, in a communication to the National Director of the PSP dated 21 November 2003, the Minister of Internal Administration considered that the solution of a number of issues was a matter of priority, and working parties were set up to this effect in the National Directorate of the PSP. These were charged with the task of preparing the draft instruments to revise the Act on the organization and functioning of the PSP and the Staff Regulations of the PSP. The Government states that, in accordance with Act. No. 14/2002 of 19 February, the occupational associations of the PSP were sent the draft Legislative Decree to establish the

compensation to be paid to members of the PSP and their families in the event of death or permanent invalidity as a result of occupational accidents.

- 1251.** As regards the allegation that the complainant organization was never consulted or contacted with a view to negotiating the regulations on the service evaluation system for personnel performing police duties, the Government attaches documents which in its view prove that the complainant organization participated in the meetings held in the Ministry of Internal Administration on 16 May and 11 June 2003, at which precisely these draft regulations were negotiated in accordance with Act. No. 14/2002.
- 1252.** As regards the allegation that the Ministry of Internal Administration had stated in the justification note of the preliminary draft legislation intended to establish the post of “chief” as director of personnel performing police duties in the PSP, that the procedures established in Act No. 14/2002 had been complied with when they had not in fact taken place, the Government emphasizes firstly that this is only a preliminary draft Legislative Decree sent by the Minister of Internal Administration to the National Director of the PSP in order for him to give his views on the subject. It maintains that once his opinion has been obtained, if the draft is negotiated with the trade union organizations, only then will the justification note contain this indication. It points out that even before the complaint was presented the complainant organization was convened, in a communication from the Director of the Office of the Minister of Internal Administration dated 5 February 2004 (attached to the complaint), to a meeting to negotiate that project, which was held on 18 February 2004 and was attended by the complainant organization, which did not make any observations on the draft.
- 1253.** Lastly, the Government emphasizes that it is clear and obvious from the documents attached to its observations that the allegations put forward by the complainant organization as constituting violations of the right to participate and bargain collectively do not correspond to the facts: the documents prove that, contrary to what was alleged, the representatives of the complainant organization were received in the Ministry of Internal Administration on ten occasions between 12 April 2002 and 18 February 2004, including the period from January 2003 to the date of the complaint (in the latter period alone, a total of four meetings were held).

C. The Committee’s conclusions

- 1254.** *The Committee observes that this case concerns allegations of: (a) a lack of dialogue by the Minister of Internal Administration with the complainant organization, the Occupational Association of Professional Police Officers, since January 2003, in the form of refusal to receive its representatives; (b) failure to take action to resolve the issues considered as urgent by the complainant organization; and (c) failure to consult the complainant organization concerning the adoption of legislation directly affecting it. The complainant organization points out that this attitude by the public authorities constitutes a violation of Convention No. 98.*
- 1255.** *The Committee observes that the documentation sent by the Government shows that the complainant organization did in fact participate in a number of meetings with the Ministry of Internal Administration and was consulted on the different regulations adopted, in particular, Decree No. 939/2003 of 30 June on regulations on the service evaluation system for personnel performing police duties in the Public Security Police, and the preliminary draft Decree on the creation of a new post of chief in the police service.*
- 1256.** *In any case, the Committee emphasizes that Article 5 of Convention No. 98 provides that the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.*

1257. *In light of this provision, there is no doubt that the International Labour Conference intended to leave it to each State to decide the extent to which it considered it appropriate to grant the rights provided for in the Convention to members of the armed forces and the police; in other words, ratifying States are not obliged to recognize the rights set out in the Convention to these categories of workers [see 332nd Report, Case No. 2240 (Argentina, para. 264)]. Accordingly, while a number of member States have recognized the right to organize and bargain collectively for the police, it is not for the Committee to make a determination concerning the recognition of such rights or their application in practice.*

1258. *In these circumstances, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

1259. *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. 2265

INTERIM REPORT

Complaint against the Government of Switzerland presented by the Swiss Federation of Trade Unions (USS)

Allegations: The complainant organization alleges that, in respect of anti-union dismissals in the private sector, Swiss legislation is not in keeping with international labour standards, particularly Convention No. 98, which Switzerland has ratified, in that it does not provide for the reinstatement of trade union officials or representatives and only results in the payment of nominal compensation which fails to act as a deterrent, amounting to approximately three months' salary and limited to six months' salary

1260. The Swiss Federation of Trade Unions (USS) presented the complaint in a communication dated 14 May 2003, which contained appendices. In a communication dated 10 June 2003, USS submitted additional information.

1261. The Government sent its observations in a communication dated 1 April 2004, which contained appendices.

1262. Switzerland 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

1263. USS points out that Swiss legislation inadequately protects trade union officials and representatives, in violation of Article 1 of Convention No. 98 and the Workers' Representatives Convention, 1971 (No. 135). Although Convention No. 135 has not been ratified by Switzerland, according to USS the resulting principle of the protection of workers' representatives at the enterprise must be respected by Switzerland in its position as a Member of the ILO. To support its complaint, USS presents, on the one hand, the relevant legislative provisions (1) and, on the other hand, examples of dismissals which allegedly show the extent of anti-union practices in Switzerland; practices which the legal system is not in a position to stop (2).

1. Legislative provisions and case law

1264. USS refers to the second paragraph, subparagraphs (a) and (b), of section 336, III – Protection against dismissal, of the Code of Obligations (CO).¹ This provision states that notice of dismissal given by the employer is unfair:

- (a) by reason of the workers' membership or non-membership of a workers' organization or legitimate trade union activities;
- (b) while the worker, who is an elected workers' representative, is a member of a works council or enterprise institution and the employer cannot prove that there were justified grounds for dismissal.

1265. USS indicates that, by virtue of section 336(a) of the CO, the penalty for such unfair dismissal is compensation, the amount of which is set by the judge and limited to six months' salary. The complainant organization states that the Federal Council had initially suggested setting the maximum amount at 12 months' salary, but this amount was halved during the preparatory work. Furthermore, USS highlights that, in recent years, in most cases courts have only allocated a maximum of three months' salary.

1266. According to USS, the payment of three months' salary is not a deterrent for employers who wish to dismiss trade union representatives. The same applies to compensation amounting to six months' salary for an enterprise which intends to terminate a collective agreement or prejudice the working conditions of its employees. Furthermore, the dismissal of one or several trade union representatives can lead to intimidation.

1267. USS continues by stating that Swiss legislation does not provide for the reinstatement of trade union officials or workers' representatives who have been dismissed unfairly.

1268. In fact, under Swiss legislation, there is only one circumstance under which persons dismissed unfairly are reinstated, namely unfair dismissal covered by section 10 of the Gender Equality Act (LEg). The complainant organization cites three paragraphs of this section, particularly paragraph 1, which provides that:

The termination of the contract of employment by the employer is annulable when it is not based on justifiable grounds and when it follows a complaint made to a superior or another relevant body within the enterprise, the establishment of a conciliation procedure or the institution of legal proceedings.

¹ See the full text of section 336 and 336(a) in the appendix.

Paragraph 3 of section 10 even provides for provisional reinstatement by the judge “for the duration of the procedure when it appears probable that the requirements for the annulment of the dismissal are met”.

1269. USS highlights therefore that when a trade union official or elected workers’ representative asserts claims other than those relating to wage equality, for example claims relating to the wages of both men and women or, more generally, simply initiating collective bargaining procedures, his or her reinstatement cannot be ordered by the courts even if the dismissal has been recognized as unfair. According to the complainant organization, the Swiss legislature recognizes reinstatement as a measure to reassure women who wish to prove that they have suffered wage discrimination. However, the legislature should especially protect trade union representatives since they are the first to be able to give employees information on their rights, especially as regards wage equality.

2. Specific examples of anti-union dismissal

1270. USS cites 11 specific examples to support its complaint, whilst highlighting that these do not constitute an exhaustive list, and that examples 4 to 8 occurred before Switzerland had ratified Convention No. 98.²

1271. The *first example* relates to a worker who, after being employed by an enterprise since 1990, was elected by his colleagues in 2001 to be a member of the council founding the enterprise’s pension fund. He was still a member of this council when he was dismissed. He was also a trade union representative of the Industrial, Construction and Service Trade Union (FTMH). He was also a member of the election committee responsible for appointing workers’ representatives. Some of his activities to defend the interests of workers at the enterprise are briefly described by USS. On 15 November 2002, the enterprise notified the worker of his dismissal as of 28 February 2003. Following opposition from the worker, the enterprise explained that he was dismissed owing to economic difficulties and that several people would also be affected by such a measure. The person concerned initiated legal proceedings on 20 March 2003, a copy of which was attached to the complaint, with the aim of having his dismissal declared unfair under section 336, paragraph 2(b), of the CO (and incidentally under section 336, paragraph 2(a), of the CO) and having the enterprise sentenced to pay him six months’ salary under the terms of section 336(a) of the CO. Among other things, the complainant organization alleged that only one other person was affected by a similar measure. USS indicates that the claim is pending.

1272. The *second example* relates to a worker affiliated to the FTMH. The person began working at an enterprise in 1973. Following restructuring, she was first dismissed in 1983, then re-employed in 1984. In 1996 she became a member of the works council, and some of her activities to protect workers’ interests at the enterprise, particularly as regards wage equality, are mentioned by USS. In 2002, following various incidents, she resigned from the works council. A request for reinstatement to the council was introduced by the FTMH but the enterprise put off coming to a decision. The contract of employment of the person concerned was finally terminated through a letter dated 31 May 2002 with effect from 30 September 2002, owing to the downsizing of the production facility and for economic reasons. The person concerned initiated legal proceedings against the enterprise on 9 December 2002, a copy of which was attached to the complaint, for wage discrimination and unfair dismissal. Her claim indicated that her post has since been refilled.

² Switzerland ratified this Convention on 17 August 1999.

- 1273.** The *third example* is that of someone who, according to the complaint, was president of the works council at the time of his dismissal. Through a letter dated 29 October 2002, he was notified of his dismissal on economic grounds with effect from 30 January 2003, following which date legal proceedings were initiated. Lastly, on 7 February 2003, an agreement between the worker and the enterprise was concluded. This agreement committed the employer to pay the worker Sw.frs.10,000 as a “full and final settlement” and Sw.frs.1,200 for legal costs. In addition to the agreement, USS submitted a letter from the worker’s counsel through which a copy of this agreement was sent to the FTMH. In this letter, the lawyer indicates that “it would have been fairer to have obtained compensation amounting to three or four months’ salary given the circumstances of this dismissal. Unfortunately, the judge kept to the relatively restrictive practice of the courts in respect of the granting of compensation”. Nonetheless, the lawyer states that the person concerned was satisfied with this settlement which made it possible to resolve the dispute quickly; reference is also made to the “dubious solvency” of the enterprise.
- 1274.** The *fourth example* is that of the dismissal of a member of the FTMH, who had worked for more than 30 years for an employer who went bankrupt. In 1988 he was re-employed by another enterprise to do the same work. In 1996, he was president of the works council when the management decided to rescind a collective agreement, but in the end backed down to workers’ demands. On another occasion, intervention by the person concerned, following an attempt to reduce annual leave, led to his dismissal in 1998, after 40 years of service. On 19 August 1999, the labour court dealing with the dispute sentenced the enterprise to pay three months’ salary in compensation for, according to USS, unfair dismissal.
- 1275.** The *fifth example* relates to the dismissal of the president of the works council on 3 May 1989. Legal proceedings resulted in a ruling on 28 January 1991 sentencing the enterprise to pay compensation amounting to six months’ salary. Extracts from this ruling were attached to the complaint. The court recognized that the worker was indeed the president of the works council when he received his notice of dismissal and that this was a case of “increased protection for workers’ representatives”. Therefore, the employer had to provide evidence of justified grounds for dismissal. Nonetheless, the court established that in this instance there were no justified grounds and thus “by dismissing the complainant [...] the defendant enterprise acted improperly”. It was therefore sentenced to pay compensation. The court stated that the compensation provided for in section 336(a) of the CO “has a punitive and compensatory role” and must be paid “even in the absence of injury”. Such compensation is set by the judge, but cannot exceed six months’ gross salary. The court considered that in this instance this maximum amount “appeared to take into consideration the set of circumstances, particularly the seriousness of the attitude adopted by the defendant enterprise”.
- 1276.** In the *sixth example*, USS states that the courts allocated one-and-a-half months’ salary as compensation for unfair dismissal to a worker who represented her colleagues within a welfare committee. Extracts from this ruling of 16 September 1998, which was issued in Italian, were attached to the complaint. The *seventh example* relates to a worker who was employed by an enterprise between 1960 and 1992 and was a member of the FOBB (currently the Industry and Construction Trade Union – SIB). Among other things, he had been a trade union official since around 1980 on the Joint Committee of Building Trades. Through a letter dated 31 March 1992, the enterprise notified him of his dismissal with effect from 31 May 1992 owing to its economic situation. In a ruling of 26 April 1994, the appeals chamber of the labour court dealing with the dispute (extracts of its ruling were attached to the complaint) concluded that the enterprise should be “reproached for unfair dismissal exclusively based on the CO, section 336, paragraph 2(a)”. The courts considered that the enterprise was guilty of serious misconduct “given that the trade union activity of the respondent alone had led to his dismissal ...”. USS states that the appeals

chamber of the labour court sentenced the enterprise to pay the worker the equivalent of five months' salary.

- 1277.** The *eighth example* is that of two workers unfairly dismissed by an enterprise. USS states that the appeals chamber dealing with the dispute (extracts of its ruling written in Italian were attached to the complaint) considered that these workers had been unfairly dismissed. Indeed, one of the two workers had played a very important role in trade union activity at the enterprise. According to the complainant organization, the two workers had been dismissed for being trade union “spies”. USS does not state whether the workers were paid compensation. The *ninth example* is that of a worker who was dismissed, according to USS, because he had demanded better pay for employees. The complainant organization indicates that in August 2001 the courts allocated him compensation amounting to five months' salary for unfair dismissal. In its communication of 10 June 2003, USS sent extracts of the ruling sentencing the enterprise to pay, amongst others, the amount of Sw.frs.25,000 in compensation.
- 1278.** The *tenth example* refers to the dismissal of a trade union official, according to USS, because of his rejection of an amendment to the annual working hours which was not approved by the joint committee. Through its communication dated 10 June 2003, the complainant organization sent a copy of an agreement concluded between the two parties and by virtue of which the enterprise agreed to pay compensation based on section 337 of the CO (unjustified dismissal).
- 1279.** The *eleventh and final example* concerns a worker who, employed since 1998, was involved with the Comedia media trade union in 1999. Comedia approached the management of the enterprise where the person concerned worked, with a view to concluding a collective agreement. The person concerned was involved in various trade union activities as a member of the trade union in 2001. Through a registered letter dated 22 March 2001, she was notified of the termination of her contract of employment as of 31 May 2001, owing to the fact that her reduced level of activity was causing serious production planning problems. Legal proceedings were initiated on 12 September 2001 to have the dismissal declared unfair since it was based on the worker's trade union activities (paragraph 2(a), section 336, of the CO). The labour court dealing with the case in the first instance rejected the complainant's suit through the ruling of 7 May 2002, a copy of which was attached to the complaint. In its ruling, the court recalled that when an allegation is made that a worker has been dismissed by reason of trade union membership or activities, “the burden of evidence lies with the complainant ...” and that “the judge can indeed presume that unfair dismissal has occurred when the employee produces sufficient evidence to show that the reasons given by the employer are fictitious. However, the burden of evidence cannot be reversed on the basis of this presumption”. The court considered that in this instance, the complainant had not “provided the evidence required by section 336, paragraph 2(a), of the CO”. An appeal was lodged, which the appeals chamber partially accepted in a ruling given on 24 September 2002, a copy of which was also attached to the complaint. While confirming the ruling on the burden of evidence by virtue of section 336, paragraph 2(a), of the CO, the appeals chamber indicated that it was “indisputable that the complainant was involved in trade union activity at the defendant enterprise and that she was one of the two representatives of the Comedia trade union at this enterprise”. Therefore, the court concluded that “owing to the coexistence of inferences, it was possible to state that the complainant's membership of a trade union and her trade union activities at the defendant enterprise had a predominant influence on the decision to dismiss her [...] the principle of this dismissal is unfair”. The appeals chambers granted compensation amounting to two months' gross salary to “take the set of circumstances of the case into account”. Indeed, the chamber considered that “the behaviour of the employer [...] was moderately at fault ...”. As regards the compensation,

the appeals chamber stated that it “had a dual punitive and compensatory role [...] it must be paid even if the victim has not suffered from, or is unable to prove, injury”.

3. Conclusions

1280. USS concludes by pointing out that Swiss legislation as such, by not providing for the possibility of ordering the reinstatement of a trade union official at an enterprise, in cases of unfair dismissal, makes it impossible to meet the obligations resulting from Convention No. 98. This situation is aggravated by the fact that compensation for anti-union dismissal is nominal.

1281. USS maintains that Convention No. 98 should be applied directly to the national legal system. The courts should therefore order the reinstatement of unfairly dismissed trade union officials, as well as workers dismissed by reason of legitimate trade union activities. Nevertheless, the complainant organization recognizes that, in the absence of a specific legislative provision, the courts are unlikely to order the reinstatement of a worker based on the provisions of the Convention.

B. The Government’s reply

1282. The Government’s reply is divided into four parts. In the introductory part of its reply, the Government responds to the argument put forward by USS that Switzerland should be bound by the principles resulting from Convention No. 135. The Government points out that: (1) the body of Swiss law, particularly the Code of Obligations (CO) and the Employee Participation Act (Lpart), currently contains provisions that protect trade union representatives and elected workers’ representatives; (2) Convention No. 135 is not one of the eight ILO core Conventions relating to the fundamental principles and rights that Members of the ILO must respect and promote, regardless of the number of Conventions that they have ratified; (3) members of the tripartite federal commission dealing with ILO activities have the right to suggest the ratification of international labour Conventions; therefore, as a member of this commission, it is down to USS to put forward a proposal for the ratification of Convention No. 135. The Government therefore concludes that since Switzerland has not ratified this Convention, it is not bound by it or the principles contained therein. Another reason for not being bound by this Convention is the fact that it is not a core Convention.

1. Part I of the reply

1283. In this part of the reply, the Government recalls the position of the Swiss Federal Council (executive body) on Article 1 of Convention No. 98 as explained in its message providing for the ratification of this instrument; examines the issue of reinstatement, in light of Convention No. 98 and the Gender Equality Act (LEg); deals with the issue of the direct applicability of Convention No. 98 in national law; and analyses Swiss law on unfair dismissal.

The position of the Swiss Federal Council

1284. The details given by the Federal Council, in its message concerning the ratification of the Convention, on the protection of workers against acts of anti-union discrimination provided for in Swiss law can be summarized as follows: (1) the principle of freedom of association is contained in the federal Constitution and based on the international instruments ratified by Switzerland, particularly Convention No. 87; (2) as regards acts of anti-union discrimination committed by the employer, workers in the private sector enjoy the general protection of the personality established in section 328 of the CO and

section 28 of the Civil Code (CC) and can refer the matter to the civil courts; (3) prior to recruitment, workers are not completely unprotected against certain acts of anti-union discrimination given that, in addition to the abovementioned section 28 of the CC, their protection was increased when the Data Protection Act (LPD) entered into force on 1 July 1993, which particularly led to the introduction of a new section 328(b) in the CO (employers can only access information on workers relating to their ability to carry out their work; therefore, employers do not have the right to ask questions about the opinions or trade union activities of workers, who are not required to provide accurate replies to such questions); in addition, the LPD states that trade union activities come under the category of sensitive data which have special legal status, with the communication of such data to a third party being forbidden without supporting grounds; (4) since 1 January 1989, once an employment relationship is established, workers have enjoyed special protection provided for in section 336, paragraph 2(a), of the CO; if an employer unfairly terminates a contract of employment by reason of trade union membership or trade union activities, he must pay the worker compensation, the amount of which is set by the judge but cannot exceed six months' salary; this compensation may be in addition to damages paid for other reasons; the employer is under no legal obligation to reinstate the dismissed worker, who is responsible for proving that his or her contract was terminated on anti-union grounds.

- 1285.** In its message, the Federal Council considered that, as regards the protection of workers against acts of anti-union discrimination, the general principle set out in Convention No. 98 was reflected in the Swiss legal system and could therefore be accepted.

The issue of reinstatement

- 1286.** The Government maintains that the text of Convention No. 98 does not call for the reinstatement of workers who are unfairly dismissed by reason of trade union activities. It points out that for this reason no case law or practice by the ILO's supervisory bodies recognizes that the reinstatement of an unfairly dismissed worker is provided for by the text or scope of the Convention. Furthermore, the Government notes that civil courts or labour courts are responsible for dealing with cases of unfair dismissal. The procedure followed by these courts is simplified, non-contentious and quick when the sum involved does not exceed Sw.frs.30,000. The Government emphasizes that, as clearly shown in the message from the Federal Council, in Swiss law, various parliamentary proceedings and case law show that reinstatement is not an option. Furthermore, Swiss law does not differentiate between compensation for anti-union dismissal and that for another type of dismissal. The courts may take into consideration the grounds for dismissal (anti-union or not) in each specific case when determining the amount of compensation.
- 1287.** The Government considers that the complainant organization cannot unilaterally interpret the text of the Convention to arrive at one principle – that of the reinstatement of unfairly dismissed workers – which would then become directly applicable in the national law of a single State. The Government also points out that the complaint fails to define the boundaries and limits that should be imposed on the principle of reinstatement according to the Convention. The Government recognizes that some countries have adopted measures to protect workers against dismissal, going as far as providing for reinstatement in some cases. As regards Switzerland, the Government highlights that the legislature kept to the principles of the equality of the parties and neutrality of the State, and that at present neither Parliament nor the Government intends to establish protection against unfair dismissal which provides for the reinstatement of workers, since such a solution goes against the spirit of Swiss law.
- 1288.** With regard to the penalty for employment discrimination, the Government emphasizes that the aim of the LEg is different to that of the CO. The LEg has the specific aim of effectively promoting the constitutional principle of equality between women and men by

prohibiting any discrimination based on gender in respect of employment, whereas the CO governs the rights and obligations of the parties to a contract of employment. Under the LEg, the prohibition of discrimination covers not only wage inequalities, but all aspects of employment relationships, including access to employment and dismissal.

- 1289.** The Government provided the text of section 10 of the LEg which is cited in the complaint and added the following explanations. First, it cites an extract of the comments made by the Federal Council on the draft provision which would later become section 10. After having recalled that wage equality is a constitutional principle which requires that women be in a position to enforce their rights, the Federal Council states that:

To enable female workers to effectively exercise their rights during employment relationships, it is necessary to provide for a period of protection during which dismissal can be invalidated. The current situation does not provide sufficient protection. Sections 336 onwards of the Code of Obligations which entered into force on 1 January 1989 only provide for compensation, with dismissal remaining valid. Therefore, this provision does not guarantee wage equality and equal treatment during employment relationships [...]. The bill provides for the voidability of dismissal and not its nullity. Therefore, dismissal will not be void automatically and must be invalidated by the judge ...

- 1290.** The Government states that the solution adopted by the legislature to ensure the promotion of the constitutional principle of equal treatment between men and women therefore lies in the voidability of dismissal, and not in the principle of reinstating the worker. The Government highlights that, moreover, the solution is more flexible given that under paragraph 4, section 10, of the LEg, the worker has the right to abandon the annulment of the dismissal and request compensation under the terms of section 336(a) of the CO. The Government highlights that it and the Swiss Parliament wanted to establish social protection in respect of equal treatment between men and women. To this end, a specific law was adopted which derogates the general principles governing employment relationships. The Government repeats that, on the other hand, there are no clear indications that the legislature intends to offer trade union officials and representatives additional protection in the form of reinstatement.

- 1291.** The Swiss Government considers that Swiss law provides trade union officials and representatives with adequate protection, in full application and full respect of Article 1 of Convention No. 98.

Direct applicability

- 1292.** Generally speaking, the Swiss Government states that Switzerland is a State with monist traditions: an international treaty ratified by the Federal Council is an integral part of the Swiss legal system as soon as it enters into force, without the need to transpose it into the national legal system through the adoption of a specific law. However, the Government indicates that, according to case law, “a rule contained in an international agreement in force in Switzerland can only be invoked directly by a citizen in so far as [...] it is unconditional and sufficiently precise in order to have a direct effect, apply as such to a specific case and constitute the basis of a specific decision”. The Government emphasizes that the issue of direct applicability is to a large extent left to the judgement of national bodies, particularly the Swiss courts.

- 1293.** As regards Convention No. 98, the Government points out that the wording of the text is general and that reference is made on several occasions to measures appropriate to national conditions. In Switzerland, the implementation of the Convention is guaranteed by a provision of the Constitution which relates to the principle of freedom of association and

by adequate legal requirements.³ The Government highlights that “no judicial ruling recognizes the direct applicability of Article 1 of Convention No. 98”. Therefore, the Government concludes that this Convention is not directly applicable.

Swiss law on unfair dismissal

- 1294.** After having reproduced the full text of section 336 and 336(a) of the CO, the Government provides explanations concerning the drafting of these two provisions and indicates that at the time the Federal Council suggested increasing the protection of workers against unfair dismissal.
- 1295.** As regards current section 336, paragraph 2(a) and (b), of the CO (unfair dismissal by reason of union membership or non-membership or legitimate trade union activities, or while an elected workers’ representative is a member of a works council or enterprise institution), the Government states that the Federal Council had proposed a separate provision on the dismissal of “workers’ representatives at the enterprise” that would therefore differ from the provision on unfair dismissal in general. The draft also provided for the payment of twofold compensation as a penalty: compensation based on the draft section referring to the dismissal of workers’ representatives, and compensation based on the general section relating to unfair dismissal. Nonetheless, Parliament adopted a different approach and integrated the protection of workers’ representatives into the general section on unfair dismissal, which led to current paragraph 2(a) and (b), section 336, of the CO. Multiple penalties were removed given that Parliament considered that such an exception for workers’ representatives was not justified since it was an “inadmissible” restriction on the freedom to terminate a contract of employment.
- 1296.** With reference to section 336(a), paragraph 2, of the CO (compensation for unfair dismissal), the Federal Council had initially set the maximum amount at 12 months’ salary. At that time, it had stated that this amount, which was admittedly high, “highlighted the preventive nature of compensation and must prevent cheap pay-offs for unfair dismissal”. In addition, the Federal Council had explicitly excluded the possibility of penalizing unfair dismissals through their nullity or voidability or the reinstatement of the worker, given that “prolonging employment relationships against the will of the parties is inappropriate, even unachievable”. Parliament reduced the amount of compensation to six months’ salary since this amount appeared to be sufficient to act as a deterrent “in view of average salaries in Switzerland (for example, six months’ salary in low grade jobs amounts to Sw.frs.20,000 ...) [...], especially given that a large majority of workers in Switzerland are employed by small enterprises, for which this amount is already very high”.
- 1297.** Lastly, the Government adds that “workers’ representatives in enterprises” enjoy better protection than that provided against other types of unfair dismissal: in section 336, paragraph 2(b), of the CO, dismissal is unfair when issued *while* the worker is a workers’ representative and without good reason (justified grounds for dismissal must be provided by the employer). As regards other types of dismissal, including those on the grounds of union membership or non-membership and trade union activities, dismissal is unfair if unacceptable reasons are given for the dismissal.
- 1298.** Therefore, the Government concludes that the penalty for unfair dismissal is an effective deterrent. Therefore, a specific legal provision providing additional protection against anti-union discrimination is not necessary.

³ At this point it should be noted that, since the aforementioned message was issued by the Federal Council on Convention No. 98, a new federal Constitution entered into force on 18 April 1999 and section 28 now explicitly refers to the freedom of association of workers and employers.

2. Part II

1299. In this part, the Government outlines Switzerland's policy on the ratification of international labour agreements; describes the ratification procedure of Convention No. 98 followed by the Swiss Government and Parliament; provides information on the current political context regarding the issue of the unfair dismissal of workers' representatives at the enterprise; briefly describes the provisions, other than those already mentioned in its reply, which protect unionized workers and workers' representatives; and presents case law on unfair dismissal.

Switzerland's policy on the ratification of international labour agreements

1300. The Government explains that Switzerland ratifies international labour agreements "if there is no fundamental difference between [this] agreement and the national legal system". If there are "minor differences", ratification can take place when it is possible to bridge gaps through the provisions of the agreement which would be directly applicable or through the adoption of legislative measures. The Government states that this policy had been made more flexible for the ILO core Conventions.

The ratification procedure of Convention No. 98 followed by the Swiss Government

1301. On 2 September 1998, the Federal Department of Economic Affairs put forward the suggestion to the Federal Council that Convention No. 98 be ratified. This proposal and the draft message providing for the ratification of the Convention were the subject of preliminary consultations within all of the relevant departments of the federal administration. These consultations did not lead to the conclusion that it was necessary to adopt legislative measures to ratify the Convention.

1302. The proposal made by the Federal Department of Economic Affairs to the Federal Council highlighted a number of arguments in favour of ratification. Among other things, the Department pointed out that if the ratification of the Convention had not been proposed previously, this had been owing to the lack of a specific provision in Swiss law to protect workers against acts of anti-union discrimination prior to recruitment. This divergence had since been rectified with the adoption of the Data Protection Act. Between the referral to the Federal Council on 2 September 1998 and its decision, federal departments had the opportunity to make additional proposals. The Government indicates that no proposals were put forward. On 21 September 1998, the Federal Council decided to propose the ratification of Convention No. 98 to the Swiss Parliament, without submitting legislative amendments to increase the protection of trade union representatives, for example, through provisions for their reinstatement following dismissal.

The procedure followed by the Swiss Parliament

1303. The ratification of the Convention took place in two stages: discussions within the relevant committees of the two chambers, followed by discussions and a decision in plenary. The Government highlights that in neither of the two committees was a proposal made for a legislative amendment relating to the protection of trade union representatives, or even to their reinstatement following dismissal. Both committees adopted the federal order providing for ratification. After having considered the report of their respective committees and the message of the Federal Council, the two chambers unanimously approved the order providing for ratification.

- 1304.** The Government emphasizes that at no point during the ratification procedure, and although it had complete freedom to do so, did Parliament request an increase in the protection of trade union representatives through an amendment to section 336 and 336(a) of the CO, even though parliamentary proceedings on this issue were already pending.

The current political context

- 1305.** The Government indicates that some parliamentary proceedings relating to the provisions of the CO on unfair dismissal – and reproduced in full in the reply – have been tabled. The following elements taken from the summary provided by the Government should be noted.
- 1306.** A motion, tabled on 28 April 1997, particularly requested the Federal Council to amend the CO and the Employee Participation Act (Lpart) so as to establish real protection for trade union activists within the enterprise and to grant them a particular status. This motion was particularly aimed at extending the rights given to workers' representatives to all trade union activists at the enterprise and at providing for the nullity of dismissal and the reinstatement of workers' representatives and trade union activists who suffer from unfair dismissal. The author of the motion considered that the protection provided by section 336 of the CO, although not insignificant, was not sufficient.
- 1307.** As regards section 336 of the CO, the Federal Council replied that the distinction made between the protection of elected workers' representatives and that of workers conducting trade union activities was justified, since representatives must have better protection against unfair dismissal than workers carrying out trade union activities generally outside the enterprise. The Federal Council adds that "the motion's request to declare notice of dismissal given to workers' representatives and workers involved in trade union activities as unfair, and consequently void, goes against the system of protection against dismissal provided for in Swiss law". As regards Lpart, which relates to information and consultation with workers within the enterprise, the Federal Council said that it was willing "to propose amendments to Parliament if it became apparent that the rights granted to workers' representative were ineffective". On 5 March 2003, when the author of the motion recalled his motion in an ordinary question and stated that it had not led to any proposals, the Federal Council had to "firmly" reject his request to increase protection against the unfair dismissal of workers' representatives and workers involved in trade union activities. The Federal Council highlighted that it would not propose a revision of the CO as far as trade union militants were concerned, but was willing to examine an increase in the protection of workers' representatives against unfair dismissal.
- 1308.** A parliamentary initiative submitted on 4 October 1999 requested the Federal Council to amend section 336, paragraph 1(d) (general protection against unfair dismissal), so as to reverse the burden of evidence: the party terminating the contract should prove the legitimacy of the termination. The Federal Council has not followed up this initiative.
- 1309.** A motion dated 17 April 2002 requested an increase in protection against the dismissal of officials representing workers on boards establishing pension funds. The author of the motion considered that, in order for protection against dismissal to be effective, it was necessary to provide for: (1) the annulment by the judge of the termination of the contract of employment (similar to that provided for by the LEg); (2) the impossibility of terminating a contract during the period of office unless the conditions for "immediate termination" are met. The Federal Council stated that it was willing to consider the possibility of improving the protection of elected workers' representatives against unfair dismissal. However, following opposition, the National Council (peoples' chamber) decided to dismiss the issue. Lastly, the Government refers to a parliamentary question submitted by the socialist group on 19 June 2003 which has still not been addressed. This parliamentary question requested increased protection against dismissal for elected

representatives in view of the enlargement of the European Union and the extension of the bilateral agreement between Switzerland and the enlarged European Union (particularly given the risks of “social dumping” and “wage undercutting” which could result in the arrival of workers from Central and Eastern European countries in the labour market).

- 1310.** The Government emphasizes that the Swiss Parliament did not follow up the parliamentary questions relating to the reinstatement of dismissed workers.

Other provisions in Swiss law to be taken into consideration

- 1311.** Lpart does not require any protection for trade union members, who cannot be elected to represent workers in an enterprise if they do not work at that enterprise. On the other hand, section 12 of Lpart provides for the protection of elected workers’ representatives at the enterprise:

- (1) The employer does not have the right to prevent workers’ representatives from carrying out their mandate.
- (2) The employer must not discriminate against workers’ representatives during or after their period of office by reason of this activity. This protection also covers people standing for election as workers’ representatives.

- 1312.** Lpart provides protection only when there is a relationship between dismissal and the activities of workers’ representatives. This protection is complemented by the provisions of paragraph 2(a) and (b), section 336, of the CO which apply when a worker is dismissed by reason of his or her trade union activities during the period of office as workers’ representative.

- 1313.** Section 48 of the Labour Act (LTr) relates more specifically to the right of workers or their representatives to be informed or consulted. It makes no specific provisions for unionized workers, and its provisions do not directly relate to the protection of workers, which is dealt with by the CO. Trade unions have the right of appeal against decisions made by virtue of the LTr. The Government highlights that this right of appeal can be widely exercised in practice and provides a good level of protection for unionized (or non-unionized) workers. Trade unions often exercise this right. The Government also emphasizes that workers have the right to hold discussions with the labour inspector without their employer being present.

- 1314.** Lastly, the Government refers to attendant measures in the form of bilateral agreements between Switzerland and the European Union which were adopted by Parliament on 8 October 1999, and states that they do not contain any provisions relating to the protection of unionized workers or workers’ representatives. The Government indicates that this issue is included in the claims made by USS within the context of the extension to ten new countries of the agreement on the free movement of persons concluded between Switzerland and the European Union.

Cantonal and Federal Supreme Court (TF) case law on unfair dismissal

- 1315.** The Government states that case law relating to section 336 and 336(a) of the CO is abundant and mainly relates to qualifying various examples of unfair dismissal. Case law on the amount of compensation is less common. As regards the principle and nature of compensation, the Government cites in particular a ruling by the Federal Supreme Court which states that such compensation has two purposes since it is punitive and compensatory. It does not represent damages in the traditional sense of the term in that it is

due even if the victim does not provide evidence of injury or has not suffered any form of injury.

- 1316.** The Government also refers to a ruling by the Federal Supreme Court which states that the judge has discretionary power to set the amount of compensation to be paid within the maximum amount established by law. This discretionary power is exercised whilst respecting the principle of equality and takes into account the following elements: the seriousness of the debtor's misconduct and its financial capability; the duration of the employment relationship; the economic effects of dismissal; the concomitant misconduct of the dismissed worker.
- 1317.** The Government refers to several examples of case law – some of which are cited by USS – on the amount of compensation, highlighting that the amount reflects the circumstances of each case: (1) a ruling by the Civil Court of Neuchatel on 28 January 1991 which states that “the fact that during the preparatory work the compensation envisaged went from 12 to nine months, and then to six, leads one to believe that the employer must expect a ‘sentence’ close to the maximum, particularly so that the compensation maintains its role”; indeed in this example, which is the fifth example cited by the complainant organization, the court sentenced the enterprise to pay six months' salary; (2) in another case, the Appeals Chamber of the Labour Court of Geneva awarded compensation to the amount of five months' salary to a worker employed for 31 years and dismissed because of his trade union activity (seventh example cited by USS); (3) in one case, in view of the worker's conduct, the Federal Supreme Court awarded compensation amounting to four months' salary; (4) in the eighth example mentioned by USS, the First Civil Court of the Appeals Court of the Canton of Tessin set the amount of compensation at three months' salary on the basis of the amount provided for by the sector's collective labour agreement in such cases.

The status of members of works councils:

Case law on the protection granted under section 336, paragraph (2), subparagraph (b), of the CO

- 1318.** From the examples cited by the Government, the following should be noted. In the aforementioned ruling by the Civil Court of Neuchatel on 28 January 1991, it is stated that the increased protection granted by this provision merely requires that the worker was a member of a works council or enterprise institution at the time of dismissal and dismissal does not have to be caused by one of the circumstances listed in this section. In the sixth case cited in the complaint, the Appeals Court of the Canton of Tessin recognized that the protection granted by this provision also applies to workers' representatives in a welfare foundation established at an enterprise.
- 1319.** As regards the burden of evidence, a ruling handed down by the Federal Supreme Court on 12 August 1997 considers that the burden of evidence has been reversed: the employer is responsible for providing the evidence of justified grounds for dismissal and evidence that dismissal was indeed caused by this reason. The Government indicates that, according to the Federal Supreme Court, justified grounds are “when the employer, acting in a rational and level-headed manner, cannot avoid dismissing the worker as a last resort”. Lastly, if purely objective reasons, such as economic difficulties within the enterprise, can justify the dismissal of a workers' representative, the Government indicates that the judge cannot “only refer to the general difficulties of the economic sector considered”.

3. Part III

- 1320.** In this part, the Government provides additional information to that submitted by USS on the examples cited in the complaint and, above all, on those cases which are still pending. As regards those cases for which a ruling has already been handed down, the Government indicates that it will not go into any further details regarding these cases. Generally speaking, the Government highlights that all of the cases were dealt with according to the rules of a fair trial, with due respect for rules of procedure and the rights of the parties, particularly when the parties chose to come to an out-of-court agreement in private.
- 1321.** As regards the *first example*, the Government summarizes the position of the worker and that of the enterprise. In its reply of 18 July 2003, the enterprise concludes that the complainant's pleadings should be rejected. With figures to support its claim, the enterprise describes its "worrying" economic situation. It recognizes that it opted for individual yet fair dismissals, instead of mass dismissals, as part of large-scale restructuring. The complainant's case is straightforward. He was dismissed because his post was abolished owing to the fact that the enterprise had had to abandon the entire sector of activity in which the complainant was employed. The enterprise states that the complainant's involvement in the council founding the pension fund is not related to his dismissal; therefore, the complainant cannot invoke the application of section 336, paragraph 2(b), of the CO. The enterprise does not refer to his membership of FTMH or his trade union activities.
- 1322.** The Government states that an arbitration attempt between the parties failed on 29 August 2003 and that a proposal for an out-of-court settlement has since been suggested.
- 1323.** As regards the *second case*, the Government recalls the position of the worker as shown in her legal proceedings of 9 December 2002. The Government notes that these proceedings do not make any reference to the legal provisions applicable to the case. With regard to the enterprise, the Government indicates that the federal authorities are not aware of its position. From the various documents brought to the Government's attention, it appears that the enterprise stresses the fact that the complainant resigned from the works council on 22 January 2002 of her own free will. Therefore, it appears that at the time of her dismissal she was no longer a member of the works council. Moreover, in light of the letter of dismissal and the service certificate given to the person concerned, it appears that the employment relationship was terminated on economic grounds.
- 1324.** The proceedings are pending. An arbitration attempt on 10 June 2003 failed. The Government highlights that since the case has not been tried (the information from the Government dates back to the beginning of December 2003), there is no element to qualify this as unfair dismissal on anti-union grounds.
- 1325.** As regards the *third example*, based on the document submitted by the parties, the Government presents the following elements. The enterprise gave notice of dismissal on 29 October 2002 on economic grounds. Through his counsel, the worker opposed his dismissal, claiming that it was unfair, in violation of section 336, paragraph 2, of the CO. He requested either his reinstatement or the payment of compensation corresponding to six months' salary. In its reply to this opposition, the works council stated that the enterprise could not confirm that the worker in question was appointed president of the works council since he had resigned and the enterprise had not been notified of the election of a new president. The enterprise denied that it had terminated the contract of employment because of the worker's trade union activities. It highlights that, owing to its financial situation, it had been forced to completely shut down its machine shop where the worker in question had been the only employee. The Government confirms that an agreement was concluded between the parties on 7 February 2003 under the terms stated in the complaint. The

worker's counsel noted that the agreement corresponded to a proposal made by the court. The enterprise repeated that the complainant had been dismissed for economic reasons and that the case had not gone to court. No ruling would come to the conclusion that the worker had been dismissed because of his trade union activities.

- 1326.** As regards the *fourth example*, the Government states that the worker in question initiated legal proceedings on 14 December 1998 for unfair dismissal. In his claim, he recalled his terms of appointment since 1988 and that he was president of the staff committee. It was in this capacity that he reportedly advised staff not to sign new contracts which had been drawn up by the enterprise and contained a reduction in annual leave. Through the letter dated 27 May 1998, he was dismissed for economic reasons by his employer. He opposed his dismissal, which he considered to be unfair under the terms of section 336, paragraph 1(d) and paragraph 2(a) and (b), of the CO. The enterprise highlights that the dismissal was based on strictly economic grounds. An arbitration attempt failed. The Government indicates that the statement of the hearing and ruling handed down by the Labour Court, dated 19 August 1999, sentenced the enterprise to pay compensation to the amount of Sw.frs.14,217 and stated that "all other and more generous verdicts are rejected". The Government highlights that since it was not necessary to state the grounds for the ruling, it does not refer explicitly to unfair dismissal, or to a specific legal basis. The Government adds that no appeal was lodged against this statement or ruling and that the enterprise went bankrupt in 2001.
- 1327.** As regards the *fifth example*, the Government highlights that it has already mentioned the relevant ruling in Part II of its reply (paragraphs 58 and 59) and that it does not intend to go back over this ruling, other than to note that it was issued by a judicial body to which cases are regularly referred and that, presented with a case of unfair dismissal, the judge had applied the principle of equity.
- 1328.** As regards the *sixth example*, the Government highlights that it has already mentioned the relevant ruling in Part II of its reply (paragraph 59). It confirms that the court recognized that the dismissal was unfair and ordered the payment of compensation amounting to one-and-a-half months' salary. The Government does not intend to go back over this ruling, other than to note that it was issued by a judicial body to which cases are regularly referred and that the principle of equity was applied. As regards the *seventh example*, the Government has already mentioned the ruling handed down in this case in Part II of its reply (paragraph 58) which recognized that the employer was guilty of serious misconduct. The Government does not intend to go back over this ruling, other than to note that it was issued by a judicial body to which cases are regularly referred and that the principle of equity was applied.
- 1329.** With reference to the *eighth example*, the Government confirms that the dismissal was recognized as unfair. Since the Government has already mentioned the ruling handed down in this case in Part II of its reply (paragraph 58), it does not intend to go back over this ruling, other than to note that it was issued by a judicial body to which cases are regularly referred and that the principle of equity was applied.
- 1330.** As regards the *ninth example*, the Government highlights that the following details should be noted. The ruling, extracts of which were sent by USS, was overturned by the Court of Appeal of Berne. The parties finally concluded an agreement in private. Furthermore, the request for information made by the Government to the relevant court in Berne was denied given that the parties concluded an agreement in private.
- 1331.** As regards the *tenth example*, the Government states that the enterprise dismissed the worker with immediate effect owing to his refusal to work an extra 30 minutes per day, in keeping with the provisions of the relevant collective agreement. As far as the enterprise is

concerned, this refusal to work an extra 30 minutes per day was the sole reason for the worker's dismissal. The Government notes that the agreement finally concluded in private between the two parties states that the payment to be made by the enterprise is based on section 337 of the CO, namely the provision relating to immediate and unfair dismissal. Therefore, there is no ruling sentencing the enterprise, under section 336, paragraph 2(a), of the CO, for unfair dismissal on the grounds of the worker's trade union activities.

1332. As regards the *eleventh example*, the Government recalls that there were two subsequent rulings and summarizes the ruling handed down by the appeals chamber cited above (paragraph 20).

4. Part IV

1333. The Government concludes by highlighting that Swiss law provides trade union officials and representatives with adequate protection, thus fully implementing Article 1 of Convention No. 98. Parliament considers that the compensation provided for in respect of unfair dismissal, which can amount to a maximum of six months' salary, is an effective deterrent given that a large majority of Swiss enterprises are small and medium-sized enterprises (SMEs). Parliament did not wish to introduce into Swiss labour contract law the principle of the reinstatement of dismissed workers which, in any case, is not required by the Convention or the ILO's supervisory bodies. The system provided for by Swiss law is the result of a democratic decision confirmed by several parliamentary proceedings. Therefore, there is no question of proposing a legislative amendment by establishing additional protection against acts of anti-union discrimination, with such protection being doomed to failure. When setting the amount of compensation to be granted to the worker, the judge implements the principle of equity and takes into account all of the objective and subjective circumstances. The Government highlights that during the ratification procedure of Convention No. 98, no request was made to amend legislation so as to increase the protection given to workers against unfair dismissal.

1334. The Government adds that: (1) Convention No. 98 is not directly applicable in Switzerland; (2) Convention No. 135 is not binding in Switzerland, given that it has not been ratified and is not a core Convention; (3) the cases cited by USS were all given due process and the rights of the parties were respected.

C. The Committee's conclusions

1335. *The Committee notes that the complaint raises the issue of whether national legislation and practice guarantee trade union officials and representatives within enterprises with adequate protection against anti-union dismissal, in keeping with Article 1 of Convention No. 98, which has been ratified by Switzerland.*

Main arguments given by the complainant organization and the Government

1336. *The Committee notes that the complainant organization alleges that national legislation – namely section 336 and 336(a) of the Code of Obligations (CO) – does not meet the requirements of Convention No. 98, in that it does not provide for the possibility of ordering the reinstatement of trade union representatives who have been dismissed on anti-union grounds and that, furthermore, the compensation provided for in such cases is nominal and fails to act as a deterrent. Indeed, by virtue of section 336(a) of the CO, the amount of compensation is set by the judge and cannot exceed six months' salary, and in recent years in most cases the courts have allocated a maximum of three months' salary.*

- 1337.** *The Committee notes that the complainant organization states that, under national legislation, reinstatement is provided for only in cases of unfair dismissal which violate the principle of equal treatment between women and men (section 10 of the Federal Act of 24 March 1995 on equality between women and men – Gender Equality Act (LEg)). Trade union representatives should have the same kind of protection given that they are the first to be able to inform workers of their rights relating to equal treatment. To support its allegations, the complainant organization presents 11 examples of dismissals which it believes show the extent of anti-union practices at the national level.*
- 1338.** *The Committee notes that the Government considers that national legislation provides adequate protection to trade union officials and representatives against acts of anti-union discrimination, and does so in keeping with Article 1 of Convention No. 98. The drafting of section 336 and 336(a) of the CO demonstrates that the legislature had the specific intention of increasing the protection of workers against unfair dismissal. The compensation provided for by section 336(a) of the CO, which can amount to a maximum of six months' salary, is an effective deterrent given that a large majority of Swiss enterprises are small and medium-sized enterprises (SMEs). This compensation is set at the discretion of the judge, taking into account all of the relevant circumstances, and through a simplified, non-contentious and quick procedure when the sum involved does not exceed Sw.frs.30,000. Furthermore, the protection of workers' representatives against unfair dismissal, provided for in section 336, paragraph 2(b), of the CO, is greater than that provided in other cases of unfair dismissal. Indeed, in this case, dismissal is unfair when notice of dismissal is issued whilst the worker in question represents workers on a works council, and in the absence of justified grounds for termination, which must be provided by the employer. Therefore, a specific legal provision providing additional protection against anti-union discrimination is not necessary.*
- 1339.** *The Committee notes that the Government emphasizes that Convention No. 98 does not require the reinstatement of workers dismissed on anti-union grounds, and that neither is this required by the bodies supervising the implementation of the Convention. Therefore, as regards equal treatment, LEg aims to promote effectively the constitutional principle of equality between women and men by prohibiting any gender-based discrimination in respect of employment. The solution adopted by the legislature to this end is the voidability of dismissal and not the principle of reinstating the worker; furthermore, the person concerned has the right to withdraw the annulment of dismissal and request compensation under section 336(a) of the CO.*
- 1340.** *Lastly, the Committee notes that beyond the protection against dismissal, the Government provides explanations on the general protection provided against acts of anti-union discrimination. In this respect, it highlights that, during the ratification procedure of the Convention, the national authorities had not observed fundamental differences between the Convention and national legislation. In its message on ratification, the Federal Council had pointed out that: (1) in addition to the general protection of personality, which can be invoked in cases of anti-union discrimination, workers enjoy protection prior to recruitment through the Data Protection Act (LPD); (2) workers enjoy special protection under section 336, paragraph 2(a), of the CO. As regards the examples cited by the complainant organization, the Government indicates that they were all given (and some are still being given) due process of law in which the rights of the parties were respected.*

National legislation and practices

- 1341.** *The Committee notes that trade union representatives are protected against anti-union dismissals by virtue of section 336, paragraph 2, of the CO, section 336 being the general provision on unfair dismissal. In this respect, the Committee notes that the Federal Council had initially proposed a separate provision on the protection of workers'*

representatives at enterprise level against dismissal, and that Parliament finally decided to integrate this protection into the general section on unfair dismissal.

- 1342.** *The Committee notes that paragraph 2, section 336, of the CO differentiates between unfair dismissal by reason of trade union membership or legitimate trade union activities (paragraph 2(a)) and notice of dismissal issued while the worker, who is an elected workers' representative, is on a works council or a member of an enterprise institution (paragraph 2(b)). The Committee took due note of the explanations given by the Government and the rulings highlighting that protection in the latter case is increased; dismissal is unfair simply because the worker is a member of a works council or an enterprise institution, in which case the employer is responsible for providing justified grounds for dismissal. In addition, the Committee notes that when workers cannot assert this increased protection, they must provide evidence that their dismissal occurred by reason of their trade union membership or legitimate trade union activities. However, the rulings brought to the knowledge of the Committee show that the judge takes into account the fact that it is difficult to provide such evidence and presumes that dismissal is unfair when the worker has provided sufficient indications to "make the reasons given by the employer appear fictitious".*
- 1343.** *The Committee notes that all cases of unfair dismissal, including those covered by paragraph 2, section 336, of the CO, result in the payment of compensation provided for by section 336(a) of the CO. This amount is set by the judge according to all of the relevant circumstances and within the limit set by this section, namely six months' salary. In this respect, the Committee notes that the Federal Council had initially proposed in cases of the dismissal of workers' representatives, on the one hand, the payment of twofold compensation (compensation based on the specific provision on workers' representatives and compensation based on the general provision on unfair dismissal) and, on the other hand, a maximum amount of 12 months' salary as compensation to be paid to the victims of unfair dismissal. The Committee took due note of the elements which are taken into account by judges to set the amount of compensation and points out that case law considers this compensation to have two purposes: it must provide the unfairly dismissed worker with compensation whilst at the same time penalizing the employer. This compensation is payable even when the injury criterion is not met or injury has not occurred.*
- 1344.** *Lastly, the Committee notes that civil courts or labour courts are responsible for identifying cases of unfair dismissal and that the procedure before these courts is simplified, non-contentious and quick when the sum involved does not exceed Sw.fr.s.30,000. In some cases parties reach an agreement, thus making it possible to resolve their dispute more quickly.*

Assessment of national legislation and practices in light of the principles of freedom of association

- 1345.** *As noted by both the complainant organization and the Government, paragraph 1, Article 1, of Convention No. 98 requires that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment". Article 3 of the Convention stipulates that "machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles".*
- 1346.** *On the basis of these two Articles, the Convention does not stipulate a specific model of protection against acts of anti-union discrimination, but does generally oblige States to ensure adequate protection by establishing, where necessary, "machinery appropriate to national conditions". The Committee highlights that, according to the principles of*

freedom of association recalled below, this protection is made up of various elements, and that penalties (in the broad sense and including all measures, including compensatory measures) are an important element.

- 1347.** *In general terms, the Committee recalls that legislation should lay down explicitly remedies and penalties against acts of anti-union discrimination in order to ensure the effective application of Article 1 of Convention No. 98 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 697]. More particularly, as regards trade union leaders and representatives, one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see **Digest**, op. cit., para. 724].*
- 1348.** *As regards procedures to ensure the effectiveness of Article 1 of Convention No. 98, the Committee shall recall the following principles: (1) the Committee highlighted that the existence of basic legislative provisions prohibiting acts of anti-union discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice. Thus, for example, it may often be difficult, if not impossible, for a worker to furnish proof of an act of anti-union discrimination of which he has been the victim. This shows the full importance of Article 3 of Convention No. 98, which provides that machinery appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize [see **Digest**, op. cit., para. 740]; (2) besides preventive machinery to forestall anti-union discrimination (such as, for example, a request for the prior authorization of the labour inspectorate before dismissing a trade union leader) a further means of ensuring effective protection could be to make it compulsory for each employer to prove that the motive for the decision to dismiss a worker has no connection with the worker's union activities [see **Digest**, op. cit., para. 752]; (3) respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Digest**, op. cit., para. 741].*
- 1349.** *The Committee notes that in many respects national legislation and practices are in keeping with the abovementioned principles. Indeed, national legislation provides protection against acts of anti-union discrimination, and the issue was carefully examined by the Swiss authorities during the ratification of Convention No. 98. Although the present case relates only to anti-union dismissals, the Committee notes that the Data Protection Act (LPD) provides workers with specific protection against acts of anti-union discrimination when they are appointed. The Committee also notes that there is also specific protection against anti-union dismissal and for elected workers' representatives. The Committee has also duly noted the observations made by the Government on section 12 of the Employee Participation Act (Lpart) on the protection of elected workers' representatives at the enterprise which is supplemented by section 336, paragraph 2(a) and (b), of the CO. Lastly, the Committee notes the reversal of the burden of evidence, stipulated by law, when an elected workers' representative is dismissed, and the reduction in the burden of evidence, accepted by the courts, for workers who allege to be the victims of anti-union dismissal but are not elected workers' representatives.*

- 1350.** *The Committee also notes the explanations provided by the Government on the judicial procedure for acts of anti-union discrimination. Indeed, the Committee notes the following timescales of some of the examples cited in the complaint: in the third example, a little more than three months passed between the notification of dismissal and the conclusion of the agreement that put an end to the dispute; in the fourth example, a little more than eight months passed between the institution of legal proceedings and the ruling; in the eleventh example, eight months passed between the institution of legal proceedings and the ruling in the first instance, little more than four months passed between this ruling and that handed down by the appeals chamber.*
- 1351.** *As regards the penalty as such, the Committee shall recall the following principles: (1) the Committee has stated that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities [see **Digest**, op. cit., para. 707; see also the 326th Report, Case No. 2116, para. 592; the 332nd Report, Case No. 2262, para. 394; the 333rd Report, Case No. 2186, para. 351]; (2) 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., para. 743]. With regard to the issue of reinstatement in cases of anti-union dismissal, the Committee recalls that: (1) no one should be subjected to anti-union discrimination because of his or her legitimate trade union activities and the remedy of reinstatement should be available to those who were victims of anti-union discrimination [see **Digest**, op. cit., para. 755]; and (2) the necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish [see **Digest**, op. cit., para. 757].*
- 1352.** *In this instance, the Committee notes that the maximum amount of compensation provided for by section 336(a) of the CO was set by Parliament to act as a deterrent, taking into account the following national circumstances: the average national salary and the fact that a large majority of workers are employed by SMEs. The Committee notes that the courts consider that compensation must provide redress as well as act as a penalty and that it is payable simply because of the unfair nature of dismissal, without the worker having to provide evidence of injury.*
- 1353.** *However, the Committee notes that the compensation envisaged for cases of unfair dismissal is the same regardless of whether the worker is dismissed by reason of his or her trade union membership, legitimate trade union activities, or mandate on a works council, or for other unjustified reasons. In this respect, the Committee notes that the Government explains clearly that "the law makes no differentiation between compensation payable in cases of anti-union dismissal and that payable for other types of dismissal ... the courts may take into consideration the reasons for dismissal (which may be anti-union or not) when setting the amount of compensation to be paid in each specific case". The Committee notes that in the examples provided by the complainant organization, particularly the eighth and eleventh examples, the courts did not systematically grant the maximum amount of compensation for cases of anti-union discrimination. The Committee also notes the allegation made by the complainant organization that "in recent years, in most cases the courts have only allocated a maximum of three months' salary". Although the Committee is not in a position to verify the legitimacy of this allegation using only the 11 examples, some of which show that the maximum amount is granted by courts when they believe it to be appropriate, the Committee notes that the Government has not clearly rejected this allegation.*

1354. *It follows from the preceding paragraph that, in terms of the national legislation and practice, the maximum compensation that can be received by a dismissed worker is the same for dismissals based on anti-union reasons as for other cases of unfair dismissal. The courts can, however, take the motive for the dismissal into account in setting the amount of the compensation. Moreover, the Committee notes that, in the light of the information provided by the Government, the national legislation provides for the voidability of dismissal in cases of violation of the principle of equality of treatment, which is a principle enshrined in the Constitution of the country, as is freedom of association. Finally, the Committee notes that, within the framework of the Swiss federal public service, the annulment of the termination of the contract of an employee is possible in certain cases.*

1355. *Taking into account the preceding paragraphs, the Committee invites the Government, together with the employers' and workers' organizations, to examine the present situation in law and in practice as concerns protection against anti-union dismissals in order that, in the light of the principles set out above and if the tripartite discussion considers it necessary, measures are taken so that such protection is truly effective in practice.*

The Committee's recommendation

1356. *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendation:*

The Committee invites the Government, together with the employers' and workers' organizations, to examine the present situation in law and in practice as concerns protection against anti-union dismissals in order that, in the light of the principles set out above and if the tripartite discussion considers it necessary, measures are taken so that such protection is truly effective in practice. The Committee requests the Government to provide it with information on the evolution of the situation dealt with in the case.

Appendix

III. Protection against dismissal

1. Unfair dismissal

A. Principle

SECTION 336⁴

1. Dismissal is unfair when notice is given by one party:
 - (a) for a reason inherent to the personality of the other party, unless this reason is linked to the employment relationship or, in a key area, is of serious detriment to work within the enterprise;
 - (b) by reason of the exercise by the other party of a constitutional right, unless the exercise of this right violates an obligation resulting from the contract of employment or, in a key area, is of serious detriment to work within the enterprise;

⁴ New content according to Chapter I of the Federal Act of 18 March 1988, in force since 1 January 1989 (RO 1988 1472 1479; FF 1984 II 574).

- (c) merely to forestall legal claims made by the other party, resulting from the contract of employment;
- (d) because the other party asserts in good faith claims resulting from the contract of employment;
- (e)⁵ because the other party performs compulsory, military or civil defence service, or a public service, by virtue of federal legislation, or because said party fulfils a legal obligation without having volunteered to do so.

2. Notice of dismissal given by the employer is also unfair:

- (a) by reason of the worker's membership or non-membership of a workers' organization or legitimate trade union activities;
- (b) while the worker, who is an elected workers' representative, is a member of a works council or enterprise institution and the employer cannot prove that there were justified grounds for dismissal.
- (c)⁶ when it fails to respect the consultation procedure provided for collective dismissals (section 335f).

3. In the cases provided for in paragraph 2, subparagraph (b), the protection given to a workers' representative whose period of office has come to an end owing to the transfer of an employment relationship (section 333) is maintained until the same date on which this period of office would have expired had the transfer not occurred.⁷

B. Penalty

SECTION 336(A)⁸

1. The party who unfairly terminates the contract must pay the other party compensation.

2. The compensation is set by the judge, taking into account all of the circumstances; however, it cannot exceed an amount corresponding to six months' salary of the worker. There is no prejudice to damages that might be payable for other reasons.

3. For cases of unfair dismissal under section 336, paragraph 2, subparagraph (c), compensation cannot exceed an amount corresponding to two months' salary of the worker.⁹

⁵ New content according to Chapter III of the appendix to the Federal Act of 6 October 1995 on the civil service, in force since 1 October 1996 (RS 824.0).

⁶ Introduced by Chapter I of the Federal Act of 17 December 1993, in force since 1 May 1994 (RO **1994** 804 807; FF **1993** I 757).

⁷ Introduced by Chapter I of the Federal Act of 17 December 1993, in force since 1 May 1994 (RO **1994** 804 807; FF **1993** I 757).

⁸ New content according to Chapter I of the Federal Act of 18 March 1988, in force since 1 January 1989 (RO **1988** 1472 1479; FF **1984** II 574).

⁹ Introduced by Chapter I of the Federal Act of 17 December 1993, in force since 1 May 1994 (RO **1994** 804 807; FF **1993**).

CASE NO. 2303

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

**Complaint against the Government of Turkey
presented by
the Glass, Cement and Soil Industries Workers' Union (KRISTAL-IS)**

Allegations: The complainant alleges that: (1) the Pasabahce Eskisehir Glassware Industries and Trade Limited Company dismissed 296 trade union members on anti-union grounds; and (2) the Government violated the complainant's right to strike by issuing Decree No. 2003/6479 to suspend a major strike in the glass industry on grounds of national security

1357. The complaint is contained in communications from the Glass, Cement and Soil Industries Workers' Union (KRISTAL-IS) dated 2 October, 3 November and 12 December 2003.

1358. The Government replied in communications dated 13 April and 18 May 2004.

1359. Turkey 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

1360. In a communication dated 2 October 2003, the Glass, Cement and Soil Industries Workers' Union (KRISTAL-IS) alleges that, on 15 September 2003, 700 glass workers from Pasabahce Eskisehir Glassware Industries and Trade Limited Company became union members, including subcontracting workers, who were employed contrary to the Labour Code. On 27 September 2003, the employer dismissed 246 of them and employed new workers in their place. The complainant attaches a list with the names of the dismissed workers as well as the dates on which they joined the union and on which they were dismissed.

1361. The complainant alleges that the dismissals, which were in violation of national law regarding termination of employment, aimed to undermine the union and prevent it from reaching the 51 per cent representativeness requirement provided in section 12 of the Collective Agreements, Strike and Lockout Act, No. 2822. The complainant adds that, due to this provision, trade unions which do not fulfil the 51 per cent criterion are totally deprived of the essential means for defending the interests of their members and that this situation violates in practice the right of workers to join organizations of their own choosing and implies a certain restriction for the right to organize and to strike.

1362. In a communication dated 3 November 2003, the complainant adds that another 50 trade union members were unfairly and unjustifiably dismissed due to their trade union activities and membership, bringing the total number of dismissed union members to 296. The workers in question had joined the trade union on 8 and 9 September 2003 and were dismissed between 30 September and 10 October 2003. The complainant attaches a list of

the names of the dismissed members, as well as the dates on which they joined the union and on which they were dismissed.

- 1363.** In a communication dated 12 December 2003, the complainant alleges that on 8 December 2003 the Government issued Decree No. 2003/6479 to suspend, on the grounds of “national security” and for 60 days, a major strike in the entire glass industry (13 companies, 90 per cent of total glass production of Turkey and 5,000 workers) which was to take place on 9 December 2003. The Decree was based on section 33 of Act No. 2822 which allows the Government to suspend any strike for 60 days if it is deemed to endanger “national security and public health”. The complainant expresses the view that there is no reasonable connection between the glass industry and the country’s national security and that the real reason for the Decree was the demands made by the glass and car-maker employers. The complainant attaches press clippings with declarations by ministers on this issue.
- 1364.** The complainant claims that this strike has been suspended twice in the last two years as, on 8 June 2001, the Government banned another strike in the glass sector for the same reason. The complainant considers that this practice amounts to a serious and systematic violation of the right to strike and makes reference to occasions in which strikes were suspended over the last ten years for reasons of national security or public health in the glass and rubber sector (8 December 2003, 25 June 2003, 27 May 2002, 8 June 2001, 5 May 2000), the municipality services (24 August 2000) and state-run undertakings (16 October 1995).
- 1365.** Finally, the complainant alleges that suspension of any strike under the law usually means an indefinite ban in practice, since the law empowers the Labour Ministry to impose compulsory arbitration at the end of 60 days, unless the parties have either come to an agreement or voluntarily sought arbitration. The complainant concludes that section 33 of Act No. 2822 is not in conformity with Convention No. 87 and should be modified immediately as noted in the reports of the Committee of Experts on the Application of Conventions and Recommendations as well as the Committee on Freedom of Association. In this respect, the complainant notes that, despite the promises made by the Government for many years, there is no meaningful improvement to change the current labour legislation.

B. The Government’s reply

- 1366.** In a communication dated 13 April 2004, the Government indicates, with regard to the allegations concerning the dismissal of 50 trade union members, that the complainant brought this issue to the Ministry of Labour and Social Security and to the Labour Directorate of the Province of Eskisehir on 29 and 30 September 2003. The Directorate conducted an investigation on the complaint on 6, 7 and 14 November 2003. The main points raised in the investigation report dated 19 December 2003 are the following:
- The principal employer in the workplace is Pasabahce Eskisehir Glassware Industry and Trade Limited Company; the subcontractor is Metro Limited Company. Two unions, including the complainant, are in activity in the workplace and are affiliated to the confederation of TÜRK-IS.
 - Upon the termination of their contracts, all of the 50 workers mentioned in the complainant’s communication dated 3 November 2003 filed a lawsuit in accordance with section 25/II of Labour Act No. 4857 (which concerns the justified grounds for immediate termination of employment) at the 8th Istanbul Industrial Court.

- Contrary to the complainant's allegations, none of the union members' contracts was terminated by the principal employer. Rather, the contract was signed for a fixed duration of one year with the subcontractor company Metro Limited Company and ended on 30 September 2003. The contract was not renewed by the principal employer (Note: The principal employer is the Pasabahce Eskisehir Glassware Industry and Trade Limited Company). The report found that there was no fraudulent termination of employment.
- The report found that the main reason for the complaints was the actual struggle between the union officers and the union members.
- Since an infringement of section 29 of the Labour Act was determined (Note: This section applies in case of mass dismissals and establishes an obligation to notify the trade union and undertake consultations), an administrative fine of a total 40,000 euros was imposed on Metro Limited Company for the dismissal of 308 workers.
- All the conclusions of the investigation have been duly communicated to the union.

1367. As to the allegations concerning the suspension of the strike which was to be carried out at the workplaces of the Pasabahce Eskisehir Glassware Industry and Trade Limited Company, the Government states that the complainant lodged an appeal to the 10th Department of the Council of State against the decision of the Council of Ministers to suspend the strike for a period of 60 days on the grounds of national security (Case No. 2003/6134). The 10th Department of the Council of State rendered the Decree of the Council of Ministers unenforceable. As a result, the union initiated the strike again on 30 January 2004. However, because of the Decree of the Council of Ministers dated 11 February 2004 (No. 2004/6782), which suspended the strike again, an official mediator was designated for the resolution of the dispute. Through the efforts of the Minister of Labour and Social Security, a consensus has been ensured between the employers and workers' unions and the union abandoned its decision to strike.

1368. Finally, the Government indicates that studies on the draft Bill so as to amend some sections of the Collective Labour Agreement, Strike and Lockout Act, No. 2822, are currently being carried out by a committee of academics composed of university faculty and the draft Bill has almost been completed. The Government attaches a copy of the draft Bill (in Turkish). It indicates that the draft Bill provides that the Council of Ministers may issue an order to suspend a strike under section 33 of the Act upon receiving an opinion by the Council of State on this issue. Thus, the Government notes that in taking a decision to suspend a strike, the contribution of the judiciary would also be received.

C. The Committee's conclusions

1369. *The Committee observes that this case concerns allegations that: (1) the Pasabahce Eskisehir Glassware Industry and Trade Limited Company dismissed 296 trade union members on anti-union grounds; and (2) the Government violated the complainant's right to strike by issuing Decree No. 2003/6479 to suspend a major strike in the glass industry on grounds of national security.*

1370. *With regard to the first set of allegations, the Committee notes that, according to the complainant, on 27 September 2003 the employer dismissed 246 workers who had joined the union a few days earlier and employed new workers in their place. According to the complainant, the employer did so in order to prevent the union from reaching the 51 per cent representativeness requirement which is established in section 12 of the Collective Agreements, Strike and Lockout Act, No. 2822.*

- 1371.** *The Committee observes that the Government has not provided any information on these allegations. The Committee also notes from the Government's report, that the Labour Directorate imposed on the employer a fine for violation of section 28 of Labour Act No. 4857, which establishes an obligation to notify the trade union and undertake consultations in case of mass dismissals. Thus, the Committee understands that the Government might have considered this case as one of mass dismissals in which the obligation to notify and hold consultations with the trade union was not respected. However, even if this is the case, the Committee observes that the Government does not comment on the allegations concerning the replacement of the dismissed trade union members with other workers and the purpose of the dismissals which allegedly was to prevent the union from reaching the 51 per cent representativeness requirement. The Committee considers that acts of anti-trade union discrimination should not be authorized under the pretext of dismissals based on economic necessity [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 718]. The Committee is of the view that, where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment; it recalls that it has already observed in a similar case concerning Turkey that the Government needed to amend its legislation in order to ensure a more effective protection of workers against all acts of anti-union discrimination, including dismissal [**Digest**, op. cit., para. 698 and Case No. 2126, 330th Report, para. 152]. The Committee requests the Government to ensure that the competent labour authorities conduct an investigation promptly into the reasons for which 246 trade union members were dismissed on 27 September 2003 and if it is found that there has been anti-union discrimination, to take all necessary measures with a view to their reinstatement in their posts without loss of pay or, if the competent court were to decide that reinstatement is not possible, to ensure that the dismissed workers receive full compensation for the prejudice suffered. The Committee requests to be kept informed in this respect.*
- 1372.** *The Committee further notes that, according to the complainant, between 30 September and 10 October 2003 the employer unfairly and unjustifiably dismissed another 50 workers who had joined the union in early September, bringing the total number of workers dismissed on anti-union grounds to 296. The Committee observes from the Government's response, that the competent Labour Directorate conducted an investigation into these allegations and reached the conclusion that there were no fraudulent dismissals because the workers in question had fixed-term contracts with a subcontractor named Metro Limited Company which expired on 30 September and were not renewed. In this respect, the Committee observes that no provision in Convention No. 98 authorizes the exclusion of staff having the status of contract employee from its scope [**Digest**, op. cit., para. 802]. Therefore, contract employees are entitled to protection against anti-union discrimination in accordance with Article 1 of Convention No. 98 ratified by Turkey. Thus, the Committee considers that it is not sufficient to state the mere fact that fixed-term contracts were not renewed as proof that there has been no anti-union discrimination. The Committee also notes that it is unable to understand the Government's statement according to which "the main reason of the complaints was the actual struggle between the union officers and union members", in the absence of further information. The Committee notes that the 50 trade union members who were dismissed between 30 September and 10 October 2003 have filed a lawsuit for unjustified dismissal at the 8th Istanbul Industrial Court and requests the Government to keep it informed on the progress of the proceedings and to communicate a copy of the final decision once rendered.*
- 1373.** *The Committee also notes that, according to the complainant, section 12 of the Collective Agreements, Strike and Lockout Act, No. 2822, which establishes the criteria for*

representational rights, totally deprives the trade unions which do not fulfil its criteria of the essential means for defending their members' interests. The Committee recalls that it had already requested the Government in an earlier case to amend the criteria set forth in that section so as to bring it into conformity with Conventions Nos. 87 and 98 ratified by Turkey [Case No. 2126, 327th Report, paras. 846 and 847(d)]. The Committee also recalls that, with regard to a provision that stipulates that a collective agreement may be negotiated only by a trade union representing an absolute majority of the workers in an enterprise, the Committee considered that the provision does not promote collective bargaining in the sense of Article 4 of Convention No. 98 and it invited the Government to take steps, in consultation with the organizations concerned, to amend the provision in question, so as to ensure that, when no trade union represents the absolute majority of the workers, the organizations may jointly negotiate a collective agreement applicable to the enterprise or the bargaining unit, or at least conclude a collective agreement on behalf of their members [*Digest*, op. cit., para. 831]. The Committee requests the Government to amend section 12 of the Collective Agreements, Strike and Lockout Act, No. 2822, so as to bring it in line with the principle according to which, if there is no union covering more than 50 per cent of the workers in a unit, collective bargaining rights should nevertheless be granted to the unions in this unit, at least on behalf of their own members. The Committee requests to be kept informed in this respect.

- 1374.** *As to the second set of allegations, the Committee notes that by Decree No. 2003/6479 the Government suspended a strike in the glass industry on the grounds of national security as provided in section 33 of Act No. 2822; nevertheless, according to the complainant, there is no reasonable connection between the glass industry and the country's national security. The Committee also notes that according to the complainant, the suspension of strikes by applying section 33 of Act No. 2822 to sectors such as rubber and glass, municipality services and state-run undertakings, which have nothing to do with national security or public health, is not an isolated incident but a veritable strategy which amounts to a systematic violation of the right to strike in the country. The Committee further notes that, according to the complainant, a suspension of a strike means an indefinite ban in practice, as the law empowers the Labour Ministry to impose compulsory arbitration in such cases.*
- 1375.** *The Committee observes from the Government's response that Decree No. 2003/6479 was rendered unenforceable by a decision of the 10th Department of the Council of State and consequently, the union started the strike on 30 January 2004. However, the Council of Ministers issued a new Decree on 11 February 2004 (No. 2004/6782) which suspended the strike again. Following this, an official mediator was designated and a consensus was reached between the employer and the union.*
- 1376.** *The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [*Digest*, op. cit., para. 515]. It has also stressed that the imposition of compulsory arbitration is acceptable in cases of acute national crisis. The Committee thus considers that section 33 of Act No. 2822, which allows the Government to suspend a strike and impose compulsory arbitration on the grounds of national security or public health, is not in itself contrary to freedom of association principles as long as it is implemented in good faith and in accordance with the ordinary meaning of the terms "national security" and "public health". However, the Committee observes that the Government indicated no reason why a strike in the glass industry might be considered as harmful to national security. It also considers that the repeated application of this provision so as to prevent strikes in sectors such as glass and rubber, municipality services and state-run*

undertakings, which do not appear to have any direct connection to national security or public health, might amount to a systematic violation of the right to strike. The Committee deplores the fact that strikes have been suspended and compulsory arbitration imposed in numerous cases, and requests the Government to ensure in the future that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis.

1377. *The Committee also considers that, in the particular circumstances of this case, responsibility for suspending a strike on the grounds of national security or public health should not lie with the Government, but with an independent body which has the confidence of all parties concerned. In this respect, the Committee takes note of the Government's statement that, as a result of the work of a committee of academics, a draft Bill to amend some sections of the Collective Labour Agreements, Strike and Lockout Act, No. 2822, has almost been completed; the draft Bill will provide that, prior to issuing an order to suspend a strike under section 33 of the Act, the Council of Ministers shall receive an opinion from the Council of State. The Committee takes note of the text of the draft Bill which has been attached to the complaint in Turkish. However, the Committee notes that the proposed draft Bill seems to envisage a consultative role for the Council of State as to whether a strike should be suspended and, therefore, does not seem to constitute an improvement in relation to the current legislation on this point; it might even lead to a weakening of the role of the Council of State which, as already seen above, has the power to review the decisions of the Council of Ministers and render them unenforceable. The Committee requests the Government to amend section 33 of Act No. 2822 so that the authority to decide whether to suspend a strike rests with an independent body which has the confidence of all parties concerned. The Committee requests to be kept informed in this respect.*

The Committee's recommendations

1378. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) Recalling that it has already observed in a similar case concerning Turkey that the Government needed to amend its legislation in order to ensure a more effective protection of workers against all acts of anti-union discrimination, the Committee requests the Government to ensure that the competent labour authorities conduct an investigation promptly into the reasons for which 246 trade union members were dismissed on 27 September 2003 and, if it is found that there has been anti-union discrimination, to take all necessary measures with a view to their reinstatement in their posts without loss of pay or, if the competent court were to decide that reinstatement is not possible, to ensure that the dismissed workers receive full compensation for the prejudice suffered. The Committee requests to be kept informed in this respect.*
- (b) Noting that 50 trade union members who were dismissed between 30 September and 10 October 2003 have filed a lawsuit for unjustified dismissal at the 8th Istanbul Industrial Court, the Committee requests the Government to keep it informed on the progress of the proceedings and to communicate a copy of the final decision once rendered.*
- (c) The Committee requests the Government to amend section 12 of the Collective Agreements, Strike and Lockout Act, No. 2822, so as to bring it in*

line with the principle according to which, if there is no union covering more than 50 per cent of the workers in a unit, collective bargaining rights should nevertheless be granted to the unions in this unit, at least on behalf of their own members. The Committee requests to be kept informed in this respect.

- (d) *The Committee deplores the fact that strikes have been suspended and compulsory arbitration imposed in numerous cases, and requests the Government to ensure in the future that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis.*
- (e) *The Committee requests the Government to amend section 33 of Act No. 2822 so that the authority to decide whether to suspend a strike rests with an independent body which has the confidence of all parties concerned.. The Committee requests to be kept informed in this respect.*

CASE NO. 2270

INTERIM REPORT

Complaint against the Government of Uruguay presented by

- **the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT) and**
- **the National Ports Administration United Trade Union (SUANP)**

Allegations: The complainant organizations allege that following the dockworkers' participation in the labour day celebrations, as a reprisal, the PLANIR S.A. company ceased hiring workers. A blacklist was also drawn up to prevent those workers finding work

- 1379.** The complaint is set out in a letter from the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT) and the National Ports Administration United Trade Union (SUANP) of 23 May 2003. The SUANP sent additional information in a letter of 30 June 2003. The Government sent partial observations in a letter of 30 December 2003. At its meeting in May-June 2004, the Committee addressed an urgent appeal to the Government to send complete observations [see 334th Report, para. 9].
- 1380.** Uruguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 1381.** In their letter of 23 May 2003, the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT) and the National Ports Administration United Trade Union (SUANP) report that, on 30 April 2002, the manager of the PLANIR. S.A. asked the

workers whether they would be at work on 1 May 2002. The workers said that they would not be at work as they would be attending the labour day celebrations. The complainants add that, according to the operating companies roster, PLANIR S.A. was not scheduled to operate on that day.

- 1382.** The complainant organizations state that PLANIR S.A. belongs to a group of three port operators, together with ESTIBAMAR S.A. and PORTACOR S.A., which provide services for MONTECON S.A. They say that during the day of 1 May 2002 loading and unloading continued normally, with the other two operators, PORTACOR and ESTIBAMAR, working. In those companies, too, there were dockworkers not at work because they were attending the celebrations but they were not penalized by their companies. The complainants allege that, on 2 May 2002, on arriving for the call up for work, the PLANIR S.A. workers found that they were not allowed to enter the company's premises, as the guards had an express order, with a list of their names, to refuse access. From that moment, a blacklist of dockworkers was drawn up and they were not allowed to return to work, without any explanation by PLANIR S.A.
- 1383.** The complainants point out that this situation was reported by the SUANP to the Ministry of Labour and Social Security which, through its Division of Collective Bargaining, called a tripartite meeting which met four times. The first meeting took place on 1 May 2002, when a lawyer representing PLANIR S.A. appeared. The company's representative said he was unaware of the system of calling to work and the situation of the workers concerned. For this reason, the SUANP considered that the lawyer was not a valid interlocutor for negotiating with the company. A further meeting was therefore requested, in which someone with some knowledge of the subject would attend for PLANIR S.A. The second meeting was held the following day, when the same lawyer arrived accompanied by another person, likewise a lawyer who, in the opinion of the complainants, also had no knowledge of dock work. These representatives claimed that PLANIR S.A. was not calling for day workers because MONTECON S.A. was not requesting PLANIR S.A.'s services and also expressed readiness to call on the workers if they provided services to that company.
- 1384.** The complainants explain, and indicate that they also explained this during the meeting convened by the Ministry, that MONTECON S.A. is a group of companies consisting of CHRISTOPHERSEN S.A. and CARGAS Y SERVICIOS S.A. which participate represented by PLANIR S.A. and ESTIBAMAR S.A. respectively. The complainants indicate that all these companies have the same capital, directors and business interest, and freely organize the call for workers to work. That means that they direct work to one or other operating company as they see fit. There is a third operator introduced by MONTECON S.A., PORTACOR S.A., which expressly does not observe 1 May or recognize trade union actions of any kind, precisely to prevent membership by workers interfering with the continuity of dock work.
- 1385.** The complainants state that, in the light of the above, the SUANP requested that PLANIR S.A. and MONTECON S.A. should be invited together to a further meeting to resolve responsibility for calling to work, reminding the Ministry and the company that, on 9 May 2002, the union's general meeting had decided unanimously to support the group of workers who had been harmed. The third meeting was attended by representatives of PLANIR S.A. and MONTECON S.A. as had been requested. MONTECON S.A. said that it awarded services to "the company it considered most reliable", citing that PLANIR S.A. workers might take trade union action which would harm operations. Despite that, after an exchange of views, MONTECON S.A. undertook to maintain the order of call up for the three operating companies, which is what did indeed happened.

- 1386.** The complainants report that, with respect to the form of call up used by PLANIR S.A., there was a change in its behaviour, which the SUANP considers to be a sanction against the workers. Although PLANIR S.A. called the suspended workers, it did so without considering the order previously used and observed by both parties until then, citing the casual nature of the dockworkers' employment and the company's power to call up whoever they wished from the greater number of workers available. For this reason, each of them worked fewer days, thus turning it into an economic sanction. This situation has not changed since. A fourth and final meeting was held, without bringing the positions closer together. Against this background, the SUANP stated in the final report which was signed in the Ministry of Labour and Social Security that PLANIR S.A. had for several years been keeping a register of workers in all categories, a matter determined by company practice. Those workers, now sanctioned, had priority for dock work in the call up because of their length of service and qualifications. The workers always expressed their availability for work in the form requested by PLANIR S.A. The complainants allege that this form of hiring was suddenly changed after 1 May 2002, when the workers, when asked by their employers whether they would be attending the labour day celebrations, replied in the affirmative.
- 1387.** The complainants state that PLANIR S.A. has shown that it does not recognize the SUANP and is not prepared to engage in dialogue since its representatives denied the truth of the events which occurred citing operational and not trade union problems. No final solutions resulted from the contacts with the company and hiring continued with trade union members relegated to second place in the list, even though they were the most senior.
- 1388.** The complainant organizations allege that a new case of anti-trade union discrimination towards the same group of workers occurred on 24 May 2002 when the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT) decided a general strike of three hours, which was observed by dockworkers belonging to the SUANP. Once again, following the strike, the dockworkers were not called up for work by the company, a situation that it was not possible to reverse in the negotiations conducted between the SUANP and the Ministry of Labour. Following that event, PLANIR S.A. informed the Ministry of Labour and the union at the bargaining table that it was ceasing its activity as container loading and unloading operator, which was where the dispute arose, and would continue its other operations on frozen goods and general cargo.
- 1389.** Lastly, the complainant organizations allege that there is a blacklist which has been in effect since the date of the events described (1 May 2002) and, until now, which prevents the workers on the list from obtaining new work, not only in PLANIR S.A. but also in the other port operating companies. The list includes the following stevedores: Washington Antelo, Fernando Martínez, Luis Pensado, Javier Martínez, Carlos Martínez, Daniel Duarte, Tomás Callero, Pablo Gordillo, Olinmpto Trivel, Alex Lemos, Ramón Corbalán, Miguel Da Luz, Julio Cabrera, Washington Guillenea, Daniel Pérez, Oscar Cardozo, Angel González, Eduardo Hernández, Pablo Occelli, Carlos Cabrera, Wilson López, Marcelo Melgar, Fabián Martínez, Yimy Hernández, Alfredo De Los Santos, Carlos Calvete; tally clerks: Ricardo Cornú, Eduardo Costa, Miguel Panizza, Oscar Quiroga, Carlos Traverso, Carlos Pérez, Jacinto Pérez, Juan Carlos González, Osvaldo Pérez; foremen: Julio Rico and Artigas Fernández.

B. The Government's reply

- 1390.** In its communication of 30 December 2003, the Government reports that it has passed the complaint to the Chamber of Industry (the national business organization) asking it to send its observations and that it sent a note to the General Inspectorate of Labour to undertake

an independent investigation. The Government indicates that it will send its observations once it has obtained the information in question.

C. The Committee's conclusions

- 1391.** *The Committee observes that the complainant organizations allege that, after participating in the 1 May celebrations 2002, several workers in the dock sector ceased to be hired by the PLANIR S.A. company and other companies belonging to a group, and that a blacklist was drawn up preventing the dockworkers on the list from obtaining work.*
- 1392.** *The Committee regrets that, after the complaints had been made in May 2003 and despite addressing an urgent appeal to the Government [see 334th Report, para. 9], the Government has confined itself to reporting that it requested the General Inspectorate of Labour to conduct an investigation into the allegations (which has not yet been concluded) and the Chamber of Industry to send its observations.*
- 1393.** *The Committee recalls that the right to organize public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of trade union rights [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 134], and considers that participation by workers in a meeting or activities of this type should not have the consequence of disadvantaging them in subsequent hiring by a company.*
- 1394.** *In addition, the Committee highlights the gravity of the allegation concerning the drawing up of a blacklist (the complainant organization provides the names of the persons included on it) which, according to the complainants, prevents the workers mentioned in it from obtaining work in the port companies. In this respect, the Committee recalls that "Workers face many practical difficulties in proving the real nature of their dismissal or denial of employment, especially when seen in the context of blacklisting, which is a practice whose very strength lies in its secrecy. While it is true that it is important for employers to obtain information about prospective employees, it is equally true that employees with past trade union membership or activities should be informed about the information held on them and given a chance to challenge it, especially if it is erroneous and obtained from an unreliable source. Moreover, in these conditions, the employees concerned would be more inclined to institute legal proceedings since they would be in a better position to prove the real nature of their dismissal or denial of employment and that the practice of blacklisting workers seriously undermines the exercise of trade union rights" [see **Digest**, op. cit., paras. 710 and 711].*
- 1395.** *In these circumstances, the Committee requests the Government to take measures to ensure that the investigation requested from the Inspectorate of Labour into the grave allegations submitted by the SUANP and the PIT-CNT is rapidly concluded and expresses the hope that the investigation will cover all the matters mentioned by the complainants. The Committee requests the Government to send the results of the investigation in question so that it can pronounce itself on the basis of all the elements.*

The Committee's recommendation

- 1396.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendation:*

The Committee requests the Government to take measures to ensure that the investigation requested from the Inspectorate of Labour into the grave allegations submitted by the SUANP and the PIT-CNT is rapidly completed

and expresses the hope that the investigation will cover all the matters mentioned by the complainants. The Committee requests the Government to send the results of the investigation in question so that it can pronounce itself on the basis of all the elements.

Geneva, 12 November 2004.

(Signed) Professor Paul van der Heijden,
Chairperson.

Points for decision: Paragraph 208; Paragraph 665; Paragraph 1096;
Paragraph 227; Paragraph 679; Paragraph 1126;
Paragraph 247; Paragraph 731; Paragraph 1149;
Paragraph 267; Paragraph 750; Paragraph 1163;
Paragraph 365; Paragraph 762; Paragraph 1172;
Paragraph 388; Paragraph 841; Paragraph 1185;
Paragraph 411; Paragraph 856; Paragraph 1215;
Paragraph 470; Paragraph 880; Paragraph 1239;
Paragraph 512; Paragraph 908; Paragraph 1259;
Paragraph 528; Paragraph 971; Paragraph 1356;
Paragraph 535; Paragraph 1019; Paragraph 1378;
Paragraph 566; Paragraph 1042; Paragraph 1396.