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Reports of the Committee on Freedom of Association (222nd, 223rd, 224th and 225th) and Reports of Article 24 Committee

222ND REPORT

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[1] The letter S, followed as appropriate by a roman numeral, indicates a supplement.

[2] For communications relating to the 23rd and 27th Reports see Official Bulletin, Vol. XLIII, 1960, No. 3.

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Reports of the Committee on Freedom of Association

222ND REPORT[1]

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 21, 22 and 25 February 1983 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of Argentinian and Ghanaian nationality were not present during the examination of the cases relating to Argentina (Case No. 842) and Ghana (Case No. 1135).

2. The Committee recommends the Governing Body to examine the present report at its 222nd Session.[2]

Cases before the Committee

3. The Committee had before it 78 cases[3] in which the complaints had been submitted to the governments concerned for

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[1] Earlier reports have been published as indicated in the table following the table of contents.

[2] The 222nd, 223rd, 224th and 225th Reports were examined and approved by the Governing Body at its 222nd Session (March 1983).

[3] This figure includes the cases relating to Argentina (Case No. 842), Turkey (Cases Nos. 997, 999 and 1029) and Poland (Case No. 1097) which are examined in the 223rd, 224th and 225th Reports, respectively.

observations. The Committee reached final conclusions in 11 cases and interim conclusions in 8 cases; the remaining cases were adjourned for various reasons.

Cases adjourned

4. The Committee adjourned until its next meeting the cases relating to Iraq (Case No. 1146), Canada (Cases Nos. 1171, 1172 and 1173), Portugal (Case No. 1174), Pakistan (Case No. 1175), Guatemala (Case No. 1176), the Dominican Republic (Cases Nos. 1177 and 1179) and Australia (Case No. 1180), concerning which it is awaiting information or observations from the governments concerned. All these cases concern complaints brought since the last meeting of the Committee.

5. Not having received the observations or information requested from the governments in the cases relating to El Salvador (Cases Nos. 953, 973, 987, 1016 and 1150), Brazil (Case No. 958), Nicaragua (Cases Nos. 1007 and 1129), Bahrain (Case No. 1043), Greece (Cases Nos. 1082 and 1167), Morocco (Case No. 1116), the Dominican Republic (Case No. 1118) and Colombia (Case No. 1140), which the Committee already had before it at its last meeting, it adjourned these cases. It requests all the governments concerned to send their observations at an early date.

6. As for the cases relating to India (Cases Nos. 1069, 1100 and 1113), United States of America (Case No. 1130), Peru (Case No. 1138), Jordan (Case No. 1139), Jamaica (Case No. 1158) and Chile (Case No. 1170) the Committee has received the governments' observations and intends to examine these cases in substance at its next meeting.

7. As regards Cases Nos. 983 and 1124 (Bolivia), the Committee, at its last meeting in November 1982, noted that, despite the time which had elapsed since the last examination of these cases, it had not yet received the Government's observations and it appealed to the Government to send them as a matter of urgency. In a communication dated 27 January 1983, the Government points out that since it took office, in October 1982, it has begun the restructuring of its ministries and therefore is unable to make comments on the cases referred to; it requests that they be adjourned. The Government states that it will make all the necessary efforts to supply its observations before the meeting in May 1983. The Committee notes this information and requests the Government to communicate, as soon as possible, the above-mentioned observations. It also trusts that the Government will, in the near future, transmit the observations requested in relation to Cases Nos. 1076, 1112, 1128 and 1161.

8. As regards Cases Nos. 988 and 1003 (Sri Lanka), the Committee last examined these at its meeting in November 1982 (218th Report, paragraphs 416 to 436). In a communication of 12 January 1983, the Government states that the five trade union leaders who had been released have returned to their trade union activities. Concerning the judicial proceedings that had been instituted against them in the High Court of Colombo, the Government states that it

will forward copies of the judgements as soon as possible after these have been handed down. The Committee takes note of this information and requests the Government to transmit the said judgements as soon as these are available.

9. As regards Case No. 995 (India), the Committee last examined this case at its meeting in February 1982 (214th Report, paragraphs 511 to 521) when it requested the Government to inform it of the outcome of the legal proceedings pending before the Supreme Court to decide whether the General Reserve Engineer Force (GREF) employees could be considered as a wing of the Armed Forces. The Government had stated that the matter was still sub judice and that it would inform the Committee of the position as soon as the judgement was available. The Committee looks forward to receiving the text of the judgement as soon as this is available.

10. The Committee, at its meeting in November 1982, adjourned its examination of Case No. 1041 (Brazil) and renewed its request to the Government to communicate the text of the judgement of the military judicial authorities concerning the case of the trade union leaders, José Francisco da Silva, Joao Maia da Silva Filho, Luis Inácio da Silva and Jacó Bittar. As it has not received the text of this judgement, nor any comment in this respect, the Committee urges the Government to transmit it at an early date.

11. In the case of Colombia (Case No. 1065), the Committee had requested the Government to send the text of the decision handed down by the ordinary penal court in the case of the trade union leader, José Joaquín Romero. In a communication dated 27 January 1983, the Government states that Mr. Romero was released on 5 November 1981 after completing his sentence and that there is no court case pending against him. The Committee considers that the information supplied by the Government does not clarify the facts on which his detention and conviction were based and points out to the Government the danger to the free exercise of trade union rights inherent in the detention and conviction of workers' representatives for activities related to the defence of the interests of the workers whom they represent.

12. As regards Cases Nos. 1098, 1132 and 1153 (Uruguay), the Committee decided to adjourn its examination of these cases since, in the course of its meeting, it received a lengthy additional communication from the Government, dated 21 February 1983. The Committee will examine these cases at its next meeting.

13. As regards Case No. 1110 (Thailand), relating to the death of two trade union leaders employees of the Saha Farm Co. Ltd., the Government had stated that the responsibility for conducting an investigation rested with the police authorities and that the final observations on this case would have to await the decision of the Court of Justice. As the Committee has not received these observations and in view of the seriousness of the allegations, it urges the Government to send its observations at an early date.

14. In case No. 1111 concerning India, the Committee, in its 218th Report (approved by the Governing Body at its 221st Session, November 1982), had requested the Government to supply information

on the alleged arrest on 18 January 1982 of six named trade unionists in the steel sector under section 3(2) of the National Security Act. In a communication dated 18 January 1983, the Government states that, in fact, only four persons are involved, the six names which had been given having included two aliases. According to the Government, Messrs. Brijraj Harkhu, Ram Nagina (alias Pahelwan Ramsuraj), Muneswar Prasad Khubilar and Sachdev Singh (alias Satyadev Singh Harikishan Singh) were ordered to be detained by the Commissioner of Police, Gujarat State, for involvement in six criminal offences under various sections of the Indian Penal Code and that the detention orders were issued with a view to the maintenance of public order. The Government states that these persons were in fact detained on 20 January 1982 and were released on 6 February 1982. The Committee notes the information supplied by the Government that the arrest of the four trade unionists mentioned in this case was based on activities unrelated to their trade union status and that they were released following 17 days in detention. The Committee, accordingly, considers that this case does not call for further examination.

15. As regards Case No. 1134 (Cyprus), the Committee, when it examined this case in November 1982 (218th Report, paragraphs 783 to 800), requested the Government to send it a copy of the Supreme Court's decision concerning the validity of the trade union elections in the Pancyprian Greek Traders' Organisation. In a communication dated 2 February 1983, the Government states that it will forward the judgement as soon as it is issued. The Committee notes this information and awaits receipt of the judgement.

Case for which direct contacts have been requested

16. The Committee most recently examined Case No. 1054 concerning Morocco at its meeting in November 1982 (paragraphs 506 to 555 of its 218th Report). In this report the Committee requested the Government to provide information on various aspects of the case and, in particular, it recommended the Governing Body to request the Director-General to approach the government authorities once again in order that they consent to a visit to Morocco by a representative of the Director-General to discuss the matters at issue. Once again the Committee deeply deplores the fact that, despite the time which has elapsed, and the seriousness of the outstanding allegations, the Government has not sent detailed observations on all the points at issue, and, in particular, on the steps taken by the Director-General since August 1981 towards the carrying out of a direct contacts mission. Accordingly, the Committee wishes to draw all these circumstances to the Government's attention and urges it to send its reply at an early date.

URGENT APPEALS

17. Regarding the cases relating to Grenada (Case No. 963), Honduras (Case No. 1166) and El Salvador (Case No. 1168), the Committee observes that, in spite of the time which has elapsed, the

observations of the governments concerned have not been received. The Committee wishes to point out in this regard that, in conformity with the procedural rules set out in paragraph 17 of its 127th Report approved by the Governing Body, it will present a report at its next meeting on the substance of these cases even if the governments' observations have not been received at that date. Consequently, the Committee asks these governments to transmit their observations as a matter of urgency.

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

18. In Case No. 823 (Chile), the Committee had requested the Government to keep it informed of any developments as regards the trade union legislation as well as on the development of the inquiries under way into the disappearance of trade unionists and former trade unionists. In a communication dated 9 February 1983, the Government sends the redrafted text of the legislation on trade union organisation and collective bargaining, with the amendments. In addition, the Government states that the judicial proceedings relating to the alleged disappearance of trade unionists and former trade unionists fall within the functions and competence of the ordinary courts of law, independent of the executive power, which are in recess during the month of February; the Government thus does not have the information requested. Nevertheless, it has obtained information from the First Criminal Court of Curicó concerning the disappearance of Mr. Luis Eduardo Vega Ramírez. According to this information, the investigating magistrate decided on a stay of proceedings on the grounds that the opening of an investigation was not justified by the offence committed. The Appeals Court of Talca approved this decision. Lastly, the Government states that it will send information on the other persons who interest the Committee once the judicial authorities have passed judgement. The Committee notes this information and the fact that the Government will send the remaining information as soon as this is obtained from the judicial authorities. The Committee also notes the amendments made by the Government to the trade union legislation. It regrets to note that the majority of the provisions on which comment had been made have not been amended. The Committee can only again express the hope that the necessary amendments will be made shortly in the light of the recommendations set out in its 197th Report, in particular, as regards the control exercised by the public authorities over the affairs of the organisations, the conditions of eligibility for trade union office, the denial of trade union rights to public servants, the level of collective bargaining and the restrictions on the right to strike.

19. As regards Case No. 871 (Colombia), the Committee had requested the Government to send a copy of the decision to be handed down against those responsible for the murder of the indigenous leader Justiniano Lame, in the Province of Cauca in 1977. In a communication dated 15 February 1983, the Government states that the Superior Military Court declared null and void the proceedings in the Lame murder case against the trade unionist, Julio Cesar Huertio Rivera, because, during the proceedings, there had been a mistake as to the precise nature of the offence involved. The Government adds

that the case will be transferred to the Commander of the "Santander" Police Department so that the trade unionist can be judged anew and so that the legal situation of this case can be finally determined. Finally, the Government states that it has requested the prosecutor chosen by the National Police to keep the Ministry informed of the developments in the case and will communicate the relevant information immediately it is available. The Committee notes this information and that the Government will keep it informed of developments in this matter.

20. As regards Case No. 968 (Greece), the Committee last examined the case at its meeting in May 1981 (208th Report, paragraphs 174 to 193) and considered that the cancellation of the registration of the complainant trade union was not compatible with the principles of freedom of association. The Government had stated that the Appeals Court of Piraeus was examining the appeal and that it would not fail to keep the Committee informed in this respect. In a communication dated 17 January 1983, the Government states that the discussion of the appeal was again adjourned and that the Appeals Court of Piraeus has set 18 January 1983 as the date for its examination. The Committee notes this information and requests the Government to send it the decision of the Appeals Court of Piraeus as soon as it is given.

21. As regards Case No. 989 (Greece), the Committee had requested the Government to communicate the text of the judgement of the Athens Correctional Court relating to the murder of the student, Sotiria Vassila Kopoulou, which took place when she was distributing leaflets in front of the ETMA factory. In a communication dated 17 January 1983, the Government states that on 14 January 1983 the Appeals Court of Athens convicted the accused of involuntary homicide and sentenced him to 12 months' imprisonment with possible remission on bond. The Committee notes this information.

22. In Case No. 1019 (Greece), the Committee had requested the Government to keep it informed of any measures taken or envisaged to reinstate the 200 teachers dismissed after a strike in December 1980. In a communication dated 25 November 1982, the Government states that it is impossible to reinstate the teaching staff who were not permanent since they were already employed for the scholastic year; however, all the permanent public servants who presented documentary proof were reinstated as permanent employees of the Department of Public Secondary Education. The Committee takes note of this information with interest.

23. As regards Case No. 1024 (India), the Committee had requested the Government to inform it of the outcome of the appeals lodged by members of the Loco Running Staff Association in cases of dismissals that were pending before the courts and of the decisions taken in the remaining cases of compulsory retirement. In a communication of 19 January 1983, the Government states that (i) of the 591 railway employees removed/dismissed from service, one employee has been reinstated after consideration of his appeal, while other cases are still sub judice; and (ii) of the 603 employees prematurely retired from service, 466 have been taken back on duty, 29 have retired in the normal course and 9 cases have been finally settled otherwise. The Committee notes the information supplied by the Government and would request it to take appropriate steps to accelerate the examination of the remaining cases of

compulsory retirement. It would also appreciate being kept informed of the outcome of the dismissal appeals still pending before the courts.

24. As regards Case No. 1028 (Chile), the Committee had requested the Government to send the results of the proceedings before the civil courts concerning the appeal brought by four trade union leaders against the declaration of legal incapacity made by the Labour Directorate against them. In a communication of 26 January 1983, the Government states that the case is pending before the Appeal Court of Santiago and that it will transmit the final decision to the Committee once it is handed down. The Committee notes this information.

25. As regards Case No. 1073 (Colombia), the Committee had requested the Government to keep it informed of the decision of the Ministry of Labour and Social Security regarding the outstanding points of disagreement relating to the latter's agreement with the national trade union and the Industrial de Gaseosas S.A. enterprise to resolve the problem of the dismissed trade union leaders, trade unionists and workers. In a communication of 14 January 1983, the Government states that the points of disagreement were the subject of a decision by the Ministry of Labour and Social Security in so far as these were within its competence and were now totally resolved. The Committee notes the information provided by the Government to the effect that it appears that, despite the efforts of the Ministry of Labour and Social Security, not all the cases of dismissal were settled. Nevertheless, the Committee notes that some workers were reinstated in their jobs.

26. As regards Case No. 1109 (Chile), the Committee had expressed the firm hope that the penalties handed down in the first instance on the National Confederation of Leather, Footwear and Allied Industries Workers and four of its leaders would be withdrawn and requested the Government to keep it informed of the outcome of the matter. In a communication of 12 January 1983, the Government states that, in a sentence dated 16 November 1982, the Second Hall of the Supreme Court accepted the appeal brought by the above-mentioned union and declared null and void the decisions and sanctions for monopolistic practices handed down by the High Commission against Monopolies. The Committee notes this information with interest.

27. As regards Case No. 1117 (Chile), the Committee had requested the Government to communicate the text of any judgement which might be handed down in the matter of the murder of the trade union leader, Tucapel Jiménez Alfaro. In a communication of 26 January 1983, the Government states that the proceedings are in the summary or investigatory stage before the magistrate who is carrying out various proceedings requested by the three defence counsel so as to complete basic aspects of the investigation. The Government adds that it will send the judgement to the Committee as soon as it is handed down. The Committee notes this information.

28. As regards the case concerning Japan (Case No. 1151) the Committee, and the Governing Body at its previous session, had expressed the hope that the extraordinary session of the Diet would be held at an early date and that a decision on the question of the implementation of an arbitration award by the Public Corporation and

National Enterprise Labour Relations Commission (PCNELRC) would be taken, due regard being had to the principles to which the Committee had drawn the Government's attention in its examination of the case. In a communication dated 5 January 1983 the Government states that the extraordinary session of the Diet was convened on 24 November 1982 and that "the arbitration awards by the Public Corporation and National Enterprise Labour Relations Commission were unanimously approved on 14 December in the House of Representatives, and on 18 December in the House of Councillors, respectively". The Government adds that, "therefore, the arbitration awards by the Commission on the wage increase in fiscal year 1982 for employees of public corporations and national enterprises are to be fully implemented as being ruled by the awards". By a joint communication dated 27 January 1983 the General Council of Trade Unions of Japan (SOHYO) and the Japanese Confederation of Labour (DOMEI), on their own behalf and on behalf of a number of their affiliated organisations, referring to the conclusions in this case, submit a report in which they state that full implementation of the awards is yet to be achieved. The Postal, Telegraph and Telephone International (PTTI), in a communication dated 2 February 1983, associates itself with the allegations made by these organisations. The Committee notes the confirmation given by the Government that the arbitration awards granted in respect of employees in public corporations and national enterprises are to be implemented in full. In view, however, of the more recent allegations made by a number of complainant organisations, the Committee, whilst recognising that the awards were concerned with normal monthly wage rates and not with bonuses, nevertheless decides that the new allegations should be transmitted to the Government for its observations. The Committee will examine the questions involved as soon as the observations of the Government have been received.

29. In Case No. 1152 (Chile), the Committee had requested the Government to provide it with a copy of the judgement to be handed down following the appeal brought before the courts by the trade union leader, Mr. Arturo Farias, against his dismissal from the Gino footwear undertaking. In a communication dated 12 January 1983, the Government sends a copy of the decision of the civil judge in which the employer is ordered to reinstate the trade union leader in his usual job and to pay him the wages corresponding to the period in which he was kept away from work. If the employer does not reintegrate him in his job, the judge provided that the employer must pay compensation equivalent to the wages which he would have received from the date of his dismissal until the expiry of his trade union mandate. The Committee notes this information with interest.

30. Lastly, the Committee notes that the governments of Paraguay (Case No. 854), Colombia (Cases Nos. 871 and 919), Malaysia (Case No. 965), Peru (Case No. 967), Kenya (Case No. 984), Brazil (Case No. 1043), United States of America (Case No. 1074), Morocco (Case No. 1077), India (Case No. 1091) and Bolivia (Case No. 1093) have not yet responded to the Committee's requests to be kept informed of developments in these cases. Therefore the Committee requests these governments to be good enough to communicate this information as soon as possible.

COMPLAINT WHICH, THE COMMITTEE RECOMMENDS, IS IRRECEIVABLE UNDER THE PROCEDURE IN FORCE

31. The Director-General has received a complaint against the Government of Cameroon (Case No. 1154) from Mr. Gabriel Nyeck, panel beater and coach work repairer who has been living in exile in France since 1971. Mr. Nyeck states that he was the national adviser of the Federation of Trade Unions of Cameroon which has been dissolved since 1963. He declares that he is supported by resolutions adopted by a general assembly of workers in Cameroon and by the officers and trade union activists of that Federation in exile in France, and dated July 1982 and January 1983 respectively. The Committee considers that this complaint is irreceivable under the terms of the procedure in force as it does not emanate from a body which is an organisation of workers.[1]

CASES NOT CALLING FOR FURTHER EXAMINATION

Case No. 1149

COMPLAINT PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS AGAINST THE GOVERNMENT OF HONDURAS

32. The World Federation of Trade Unions (WFTU) presented its complaint in communications dated 20 and 29 July 1982. The Government replied in a communication dated 13 December 1982.

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

A. The complainant's allegations

34. The WFTU claims that on 6 July 1982 the police surrounded and broke into the home of Mrs. Rosario Roiz, leader of the Workers' Trade Union of the National Electrical Energy Enterprise (STENEE), who nevertheless managed to escape. The complainant adds that the police removed the belongings of Mrs. Roiz and are still looking for her and continue surveillance of her empty house.

35. On the day referred to, according to the complainant, Mr. Calixto Garrido was in the same house; he was attacked and brutally beaten to death. His body was left in a ditch.

36. The WFTU concludes with the assertion that repressive action against political and trade union leaders has been on the

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[1] See, First Report, para. 14.

increase since a recent terrorist attack on two electrical power stations in Tegucigalpa. The authorities are now trying to link these events to the trade union led by Mrs. Roiz, continues the complainant, and she is therefore in serious danger.

B. The Government's reply

37. The Government states that the suggestion that the police attacked Mrs. Roiz's residence on 6 July 1982 in order to arrest her, as the complainant alleges, is absurd as it would have been easier for them to do so at her place of work. To support its declarations the Government has sent documentation from the National Electrical Energy Enterprise, where Mrs. Roiz worked showing that, after being granted leave on several occasions for trade union reasons, Mrs. Roiz returned to work on 16 June 1982 where she remained until 9 July 1982 when she requested, and was granted, leave without pay for a period of two months.

38. The Government also encloses a note from the Director-General of National Investigations stating that no charge has been brought against Mrs. Roiz and that it is untrue that the police are looking for her or that they intend to arrest her.

39. With regard to the death of Mr. Calixto Garrido, the Government states that, according to its information, the incident was perpetuated by criminals with personal grievances against Mr. Garrido who intended to rob him and is therefore quite unconnected with the foregoing.

C. The Committee's conclusions

40. The Committee notes that on 6 July 1982, according to the complainant, the police surrounded and broke into the home of Mrs. Rosario Roiz, leader of the STENEE, removed her belongings and are still looking for her and continue surveillance of her house, where a certain Mr. Calixto Garrido had been on the same day before being murdered. On the latter point the Government has stated that Mr. Calixto Garrido's murder is quite unconnected with the complaint but was perpetrated by delinquents with personal grievances against Mr. Garrido who intended to rob him.

41. With regard to the allegation that Mrs. Roiz, union leader of the STENEE, is being looked for by the police, the Committee notes that the Government has submitted a document from the Director-General of National Investigations stating that no charge has been brought against her and that it is untrue that the police are looking for her or that they intend to arrest her. The Government has also pointed out that, if the police had intended to arrest Mrs. Roiz on 6 July 1982, they could easily have done so at her place of work where, according to information from the enterprise concerned, the trade union leader was working on the day of the incident and thereafter. In these circumstances, the Committee considers that this aspect of the case does not call for further examination.

42. With regard to the remaining allegations (violation of domicile and appropriation of Mrs. Roiz's belongings in her home by the police), the Committee, while observing that the Government has not provided any specific information on the subject, notes that the complainant has not demonstrated that a link exists between the alleged events and an infringement of trade union rights but merely asserts in general terms that the authorities wish to link a recent terrorist attack on two power stations in Tegucigalpa with the trade union led by Mrs. Roiz. In these circumstances, and considering that the complainant has not supplied further details concerning its allegations in spite of being given the opportunity to send additional information, the Committee considers that the allegations do not call for further examination.

The Committee's recommendation

43. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1159

COMPLAINT PRESENTED BY THE "JEREMIAS TADEO MORAZAN KUANT" TRADE UNION OF EMPLOYEES OF TEXACO CARIBBEAN INC. AGAINST THE GOVERNMENT OF NICARAGUA

44. The complaint is contained in a communication from the "Jeremias Tadeo Morazán Kuant" Trade Union of Employees of Texaco Caribbean Inc., dated 22 September 1982. This organisation sent additional information in a communication dated 5 November 1982. The Government replied in a communication dated 9 November 1982.

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

A. The complainant's allegations

46. In its communication of 22 September 1982 the "Jeremias Tadeo Morazán Kuant" Trade Union of Employees of Texaco Caribbean Inc. alleges that, although 42 of the 74 employees of Texaco Caribbean Inc. signed the founding document of this trade union on 23 July 1982 and its constitution on 30 July 1982, the authorities have not yet resolved whether or not to accord legal personality despite successive efforts and letters directed to this end, in contradiction of the provisions of section 195 of the Labour Code which gives the Department of Trade Union Associations a period of ten days to announce its decision on the matter.

47. From the documents submitted by the complainant it emerges that the already existing trade union (the Trade Union of Petrochemical, Related and Similar Workers, Texaco Section - STIPEDS - affiliated to the Sandinista Central of Workers) opposed the creation of the new trade union, saw the number of its own members reduced to 20 in view of the numbers who had resigned their membership, and was notified in September 1982 of a request submitted by the new trade union to the judicial authorities for the dissolution of the STIPEDS, since the Labour Code stipulates that works unions can only be constituted if they comprise an absolute majority of the workers in the respective undertaking.

48. In its communication of 5 November 1982 the complainant organisation states that on 30 October it was registered by the Department of Trade Union Associations and was able to obtain legal personality. The complainant organisation expresses its thanks to the ILO for the co-operation extended in the matter.

B. The Government's reply

49. In its communication of 9 November 1982, the Government declares that whenever the Department of Trade Union Associations of the Ministry of Labour receives a request from trade unions for registration and the granting of legal personality, such request is examined to ascertain that none of the relevant legal provisions in force is being violated. The Government adds that in the case submitted by the complainant organisation there were circumstances that were not clear. Once these doubts had been cleared up the "Jeremías Tadeo Morazán Kuant" Trade Union was registered on 20 October 1982 and it was granted legal personality.

C. The Committee's conclusions

50. The Committee notes with interest that the "Jeremías Tadeo Morazán Kuant" Trade Union of Employees of Texaco Caribbean Inc. was registered by the Department of Trade Union Associations of the Ministry of Labour on 20 October 1982 and was granted legal personality.

51. The Committee notes that, according to the Government, the delay in registering and granting legal personality to this union (requested at the end of July 1982) was due to a number of circumstances which were not clear. The Committee observes in this connection that from the documents sent by the complainant it emerges in any event that in September 1982 a request was submitted to the judicial authorities for the dissolution of the previously existing trade union (STIPEDS), whose membership had dropped below the number required by the law. In these circumstances, since the "Jeremías Tadeo Morazán Kuant" Trade Union of Employees of Texaco Caribbean Inc. has been granted legal personality, the Committee considers that this case does not call for further examination.

The Committee's recommendation

52. In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

Case No. 1103

COMPLAINT PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AGAINST THE GOVERNMENT OF NICARAGUA

53. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 18 December 1981. Additional information was supplied by the ICFTU in a communication dated 24 April 1982. The Government replied in communications dated 25 February and 22 May 1982.

54. 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. Allegations of the complainant

55. The ICFTU states that a course on training methodology for Latin American trade union instructors at the International Centre for Advanced Technical and Vocational Training took place in Turin from 31 August to 20 November 1981, and that a fellowship has been offered to the Confederation of Trade Union Unity (CUS) and another to the Sandinist Confederation of Nicaraguan Workers (CST), each of which was to designate a participant. According to the complainant, while the CST representative obtained the Government's permission, the CUS representative, Mr. Germán Reyes, this organisation's secretary for labour disputes, was denied such permission.

56. The complainant states that on 26 August 1981, the Turin Centre received a telex from the UNDP office in Managua saying that the CST candidate had been approved by the Ministry of Planning but that the CUS candidate had not applied to the Ministry for an authorisation. Subsequently, a telex of 4 September 1981, also sent by the UNDP office in Managua, stated that the Nicaraguan Government had not approved the participation of either of the two candidates.

B. The Government's reply

57. In its communication of 25 February 1982, the Government states that it learned, through conversations with the Office of International Relations of the CST, that this organisation's delegate for the course in Turin, Mr. Mario Ramírez, was unable to attend since he had not presented his papers to the migration offices in time and consequently could not obtain a passport and an exit visa early enough. As regards the CUS delegate, Mr. Germán Reyes, the Government states that he applied for a passport and a visa on 27 August 1981, which were delivered to him four days later, i.e. on 1 September 1981. The Government has sent an official attestation to corroborate these statements.

58. In its communication of 22 May 1982, the Government states that it obtained the following explanations concerning the complaint from the Permanent Resident Representative of the UNDP in Nicaragua:

- since the Turin Centre is an institution belonging to the United Nations system, any co-operation must as a rule be channelled through the UNDP office in the country in question;

- the UNDP will not authorise any co-operation unless approved by the body responsible for co-operation in the country (in the present case, the Ministry of Planning);

- consequently, the UNDP representative contacted the CST and the CUS, informing them that it could give no authorisation unless the designated trade union delegates applied to the Ministry of Planning for the necessary authorisation;

- the CST delegate applied to the Ministry of Planning for the necessary authorisation, which was granted, but the CUS delegate did not, despite the fact that the UNDP reminded the CUS of the need to do so;

- in these circumstances, since the time for the trade union delegates to leave for Turin had expired, the UNDP representative and the competent authority of the Ministry of Planning decided that, in order to avoid any problems between the trade union organisations and any impression of partiality, it was preferable that neither of the delegates should go, even though the CST delegate had obtained the necessary authorisation.

59. The Government concludes by stating that if it had had to intervene in this matter, it was precisely to see that the UNDP could authorise the fellowships for the trade union delegates in question; it did not do so because its authorisation is normally required, and it certainly did not do so to prevent the trade union organisations from participating in international events.

C. The Committee's conclusions

60. The Committee takes note of the complainant's allegations and the Government's reply. It notes in particular that, according to the Government, if the CUS delegate was unable to attend the trade union training course at the International Centre for Advanced Technical and Vocational Training in Turin, it was because, although he had obtained a passport and a visa, he had not applied to the Ministry of Planning for the necessary authorisation. The Committee notes that the CST delegate applied for and obtained the necessary authorisation but not a passport, having failed to produce the necessary papers in time. The Committee also notes that the UNDP Resident Representative and the competent authority of the Ministry of Planning decided that, in order to avoid any problems between the trade union organisations, it was preferable that neither of the two delegates should attend the course, even though the CST delegate had obtained the necessary authorisation.

61. The Committee observes that the Government's reply indicates that the authorisation by the Ministry of Planning for the trade union delegates to attend the trade union training course at the Turin Centre is not an authorisation normally required by the Government, but seems rather to be a procedural requirement of the UNDP co-operation programmes. Since, according to the information available to the Committee, the fellowships awarded to the CUS and the CST were not financed by the UNDP - whose representative acted only as a mediator in the matter - but by another organisation, the authorisation of the Ministry of Planning need not have been required since the UNDP programme procedure was not applicable. The Committee, therefore, can only regret that, owing to a bureaucratic procedure for which the authorities were not entirely responsible, the CUS and CST delegates were unable to attend the trade union training course given by the International Centre for Advanced Technical and Vocational Training in Turin. The Committee trusts that in future the participation of trade union leaders and members in training courses abroad will not be hindered.

The Committee's recommendations

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

The Committee regrets that, owing to a bureaucratic procedure for which the authorities were not entirely responsible, the CUS and CST delegates were unable to attend the trade union training course given by the International Centre for Advanced and Vocational Training in Turin for which they had been awarded fellowships, and trusts that in future the participation of trade union leaders and members in training courses abroad will not be hindered.

Case No. 1114

COMPLAINT PRESENTED BY THE INTERNATIONAL ORGANISATION OF EMPLOYERS AGAINST THE GOVERNMENT OF NICARAGUA

63. The complaint is contained in communications from the International Organisation of Employers (IOE), dated 16 February and 25 October 1982. The Government replied in communications dated 23 July and 17 November 1982.

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

A. The complainant's allegations

65. The IOE alleges that on 11 February 1982 Enrique Bolaños Gayer, acting chairman of the Supreme Council of Private Enterprise (COSEP), was prevented from boarding a flight to Panama en route for Caracas, where the following day he was to participate in a forum on economic co-operation between the Nicaraguan and Venezuelan sectors. According to the complainant his passport was confiscated and he was summoned to appear before the Minister of the Interior.

66. The IOE adds that the Sandinista Government has, on various occasions, prohibited employer leaders from travelling abroad, in some cases denying them a visa and in others in spite of their having one. The IOE indicates that Enrique Dreifus, Chairman of the COSEP, Ismael Reyes, Vice-Chairman of the COSEP, William Báez, Assistant Director of the INDE, Rosendo Díaz, Executive Secretary of the Union of Agricultural Producers, and Alejandro Burgos, Executive Director of the COSEP, have been subjected to travel bans on various occasions.

B. The Government's reply

67. As regards the employer leader Mr. Bolaños, the Government states that the problem was caused by a misunderstanding on the part of the emigration authorities at the Augusto César Sandino Airport but that, once it had been cleared up, Mr. Bolaños was able to make his journey without any problem.

68. As regards the other employer leaders, the Government denies that their journeys abroad were prohibited and provides an extensive list with the dates on which, for various reasons, Messrs. Enrique Dreifus, Ismael Reyes, William Báez and Alejandro Burgos travelled abroad.

C. The Committee's conclusions

69. The Committee notes that, according to the Government, the fact that the acting chairman of the COSEP, Mr. Bolaños Gayer, was prevented from boarding a flight to Panama en route for Caracas, where he was due to participate in a forum on economic co-operation, was caused by a misunderstanding on the part of the emigration authorities at the Augusto César Sandino Airport. The Committee also notes that, once the misunderstanding had been cleared up, Mr. Bolaños was able to make his journey without any problem.

70. The Committee notes, moreover, that the Government denies the allegation that it has prohibited the employer leaders, Messrs. Dreifus, Reyes, Báez and Burgos, from making journeys and that it has forwarded an extensive list with the dates on which, for various reasons, these leaders have travelled abroad.

71. The Committee observes, however, that the Government has not sent specific information on the prohibition or prohibitions on leaving the country to which, according to the complainant organisation, Mr. Rosendo Díaz, Executive Secretary of the Union of Agricultural Producers, was subjected. In these circumstances, the Committee recalls that representatives of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require.

The Committee's recommendation

72. In these circumstances, the Committee recommends the Governing Body to approve this report and in particular to recall to the Government that representatives of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require.

Case No. 1120

COMPLAINT PRESENTED BY THE NATIONAL WORKERS' FORCE (FUERZA NACIONAL DEL TRABAJO) AGAINST THE GOVERNMENT OF SPAIN

73. The complaint is contained in a communication from the National Workers' Force (Fuerza Nacional del Trabajo - FNT) dated 12 March 1982. The FNT supplied further information in communications dated 6, 13 and 14 April, 24 May, 18 and 24 June, 6 and 26 July, 20 and 27 September and 18 and 21 October 1982, as well as an undated communication received at the beginning of February 1983. The Government replied in communications dated 8 October 1982 and 12 January 1983.

74. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and

the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

75. The FNT alleges that the Madrid City Council, in failing to hold trade union elections before 4 February 1982, has infringed the second additional provision of the resolution of the General Directorate for Local Administration dated 29 January 1981.

76. The FNT adds that its General Secretary, Mr. Miguel Bernard Remón, who held the post of head of the Social Activities Section of the Personnel Department of the Madrid City Council, was transferred on 29 March 1982, on the grounds of "the exigencies of the service", to the Finance, Income and Property Branch of the Appeals Section of the Employers' Taxation Department. According to the FNT the transfer was carried out for ideological and political motives and not because of the "exigencies of the service", since Mr. Bernard was given a choice between various senior positions in the Appeals Section. The FNT also states that Mrs. Mercedes Cordero Durán, an FNT delegate, was transferred from her job by a decision of the Madrid City Council, in order to deprive her of her trade union rights.

77. The FNT also alleges that on 25 May 1982 the trade union electoral board set up for the 1982 Madrid City Council trade union elections unanimously agreed to declare inadmissible the electoral pamphlet prepared by the FNT, ordered its seizure and withdrawal and informed the Corporation's legal department of these facts so that it might consider the possibility of lodging a complaint before a criminal court.

78. Finally, the FNT states that disciplinary action, involving suspension from employment and loss of pay, has been taken against FNT union leaders Luis Bachiller García and Miguel Bernard Remón as well as against trade union delegates Jaime Garrido del Sol and Jesús Angel López Martínez. Miguel Bernard Remón is charged with having made statements, "likely to be considered insulting and libellous" in a communication to the Councillor for Finance, Income and Property in which the FNT answers the public statements made by the said Councillor in connection with the results of the last trade union elections as they affected the FNT. The FNT also states that it is suing the said Councillor for coercion, threats and insulting behaviour with regard to FNT delegates. In the case of Luis Bachiller García, the complainant goes on to say, proceedings have been taken against him for having made written threats against the delegate of the Security and Municipal Police Services. In the document in question Mr. Bachiller stated that neither ill-treatment, nor harassment would in any way be tolerated from the said delegate (who a few days previously had stated that FNT representatives would be prosecuted), and informed him of this "to avoid our taking the appropriate measures in response to his anti-democratic and anti-constitutional attitude". In an undated communication received at the beginning of February 1983, the FNT supplied a copy of a statement by the Committee of Workers of the Madrid City Council (made up of representatives of the Workers'

Committees (CC OO), General Union of Workers (UGT), the Independents' Coalition and the FNT), dated 23 July 1982, declaring that it will not accept disciplinary action being taken against any trade union delegate for freely exercising his trade union duties.

B. The Government's reply

79. In its communication of 8 October 1982 the Government states that on 6 March 1981 the General Directorate of Local Administration suspended the agreement reached at a plenary sitting of the Madrid City Council on 9 May 1980 and that this suspension was lifted by the ruling of 20 July 1981 of the Second Civil Chamber of the Madrid Regional Court. Consequently, the agreement of the Madrid City Council of 9 May 1980 is valid. In accordance with this agreement the employees' delegates and members of staff of the Madrid City Council have a two-year mandate as from the first trade union elections which were held on 30 May 1980. The trade union elections were accordingly held on 3 June 1982.

80. The Government adds that the disciplinary action against FNT leaders and delegates is taking its course with all due guarantees and that the complainant organisation has furnished no proof that this action was instituted as a result of the trade union membership of the officials concerned.

81. As regards the transfer of officials within the Madrid Municipal Corporation, the Government states that, once again, the complainant organisation has furnished no proof that this constitutes discrimination on the grounds of trade union membership and that the officials concerned may take the court action they deem appropriate.

C. Conclusions of the Committee

82. As regards the allegation according to which the Madrid City Council has infringed the second additional provision of the resolution of 29 January 1981, adopted by the General Directorate of Local Administration, by not holding trade union elections before 4 February 1982, the Committee notes that according to the Government the judicial authorities declared valid the Madrid City Council's agreement of 9 May 1980, according to which the mandate of the trade union representatives elected on 30 May 1980 was for two years and that, as stated, the trade union elections were accordingly held on 3 June 1982. Consequently, in view of the ruling of the judicial authorities, the Committee considers that this aspect of the case calls for no further examination.

83. With regard to the rest of the allegations (withdrawl of the FNT's electoral pamphlets, the taking of disciplinary action and the transfer to other posts of FNT leaders and its union delegates), the Committee regrets to note that the Government has not furnished sufficiently detailed information on these matters; nor, however, in recent months have the complainants given specific information on

developments and particularly on the outcome of the appeals that they may have lodged with the administrative or judicial authorities. Nevertheless, it is apparent from an examination of the documents supplied by the complainant that there is an atmosphere of discord which, at times, is not without aggressiveness between FNT representatives and the municipal authorities in Madrid, due more to ideological and political reasons than to trade union issues and that this is impeding the development of labour-management relations in the municipal sector in Madrid. The Committee considers that the harmonious development of labour-management relations would be enhanced if the labour authorities were to act as mediators between the FNT and the Madrid municipal authorities with a view to finding solutions, in an atmosphere of mutual trust and respect, to the questions arising out of the present complaint (in particular the taking of disciplinary action and the transfer of trade union leaders and delegates) as well as to any other problem that may arise in the future.

The recommendations of the Committee

84. In these circumstances the Committee recommends the Governing Body to approve the present report and, in particular, to draw the Government's attention to the fact that the harmonious development of labour-management relations would be enhanced if the labour authorities were to act as mediators between the FNT and the Madrid municipal authorities with a view to finding solutions, in an atmosphere of mutual trust and respect, to the questions arising out of the present complaint (in particular the taking of disciplinary action and the transfer of trade union leaders and delegates) as well as to any other problem that may arise in the future.

Case No. 1131

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE UNIONS, THE POSTAL, TELEGRAPH AND TELEPHONE INTERNATIONAL AND THE TRADE UNION CONFEDERATION OF UPPER VOLTA AGAINST THE GOVERNMENT OF UPPER VOLTA

85. The Committee has already examined this case at its meeting in November 1982, when it presented interim conclusions.[1] The Government has since furnished information in a communication received on 21 January 1983.

86. Upper Volta 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).

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[1] See 218th Report, paras. 751 to 782, approved by the Governing Body at its 221st Session (November 1982).

A. Previous examination of the case

87. The complaints in this case related mainly to the dissolution, by administrative authority, of the Trade Union Confederation of Upper Volta (CSV) for having protested against the general ban on strikes declared by the Government in November 1981. The complainants subsequently reported the arrest, on 9 September 1982, of Soumane Touré, General Secretary of the Confederation, as well as the fact that 154 trade unionists had been dismissed and were being prosecuted for having taken part in a three-day strike in April 1982 to protest against a legal text which they considered unduly restrictive as regards the exercise of the right to strike.

88. After examining the allegations and the Government's replies, the Committee, at its meeting in November 1982, recommended the Governing Body to approve the following interim conclusions:

(a) The Committee noted with concern that the Trade Union Confederation of Upper Volta (CSV) had been dissolved by administrative authority because it had apparently protested against the general ban on strikes proclaimed by the Government in November 1981, but since lifted. The Committee emphasised the great importance which it attached to respect for Article 4 of the Freedom of Association and Protection of the Right to Organise Convention (No. 87), ratified by Upper Volta, according to which workers' and employers' organisations should not be dissolved by administrative authority, and expressed the firm hope that the Government would give priority to lifting the measure of administrative dissolution of the CSV. The Committee requested the Government to keep it informed of the measures taken in this respect.

(b) Regarding the warrant for the arrest of the General Secretary of the Trade Union Confederation of Upper Volta issued following the administrative dissolution of the said Confederation, the Committee noted with regret that the Government had not supplied any information on this aspect of the case. It also noted that, according to the complainants, the person concerned had been arrested in September 1982. The Committee recalled that the arrest of trade unionists simply for carrying on legitimate trade union activities was contrary to the principles of freedom of association. The Committee therefore requested the Government to communicate its observations on this aspect of the case, including a copy of any judgement which might be handed down.

(c) Regarding the dismissal of and institution of judicial proceedings against 154 trade unionists for participating in a three-day protest strike against legislation which they considered too restrictive with regard to strikes, the Committee pointed out that, apart from dismissals, the persons concerned incurred a sentence of imprisonment. The Committee pointed out in this respect that the imposition of excessively severe penalties for striking could only damage the development of good industrial relations. It threfore invited the Government to re-examine the situation of the persons concerned with a view to helping to ease the social climate.

(d) Finally, the Committee again invited the Government to amend its legislation, which was excessively restrictive as regards strikes, so as to bring it into line with the principles of freedom of association.

B. The Government's reply

89. In a letter which reached the ILO on 21 January 1983, Mr. Jean Bado, the Minister of Labour, states that with the coming into being of the Council for the Salvation of the Nation (CSP) on 7 November 1982, new perspectives have been opened up as regards respect for trade union rights. He goes on to say that the Head of State, at his press conference in November 1982, had specified that the texts of both the Ordinance of 14 January 1982, respecting the settlement of labour disputes, and of the Decree of 24 November 1981 to dissolve the Trade Union Confederation of Upper Volta, would be studied by the Government.

90. As regards the dissolution by administrative authority of the CSV, the Minister communicates the text of the Decree of 23 December 1982 rescinding this dissolution.

91. With regard to the Ordinance in respect of the settlement of labour disputes, the Minister states that the text is being studied and will be the subject of appropriate measures with a view to guaranteeing trade union rights.

92. As regards Mr. Soumane Touré, the General Secretary of the CSV, the Minister states that he was released on 8 November 1982.

93. Finally, with regard to the 154 workers who were being prosecuted for striking unlawfully on 14, 15 and 16 April 1982, the Minister emphasises that by a Decree of 7 November 1982, all workers against whom arbitrary or repressive measures had been taken, on trade union grounds, under the previous Government had been rehabilitated and that the situation of the 154 workers had been restored to normal. The Decree in question, attached to the Government's communication, provides that "the rights of workers who were the subject of deportation or suspension measures are hereby restored. To this end, any worker against whom such measures were taken under the regime of the Military Committee of Reconstruction for National Progress (CMRPN) is invited to lodge an appeal with the authorities".

C. The Committee's conclusions

94. The Committee notes with satisfaction that the information supplied by the Government concerning the general improvement of the trade union situation resulting from the rescinding, on 23 December 1982, of the Decree dissolving the Trade Union Confederation of Upper Volta, the release on 8 November 1982 of Mr. Soumane Touré, General Secretary of the said Confederation,

and the rehabilitation, by Decree of 7 November 1982 of the 154 strikers who were being prosecuted and who all, under the terms of the Decree, have the right of appeal.

95. Furthermore, the Committee notes the assurances given by the Government regarding the study it has undertaken in respect of the Ordinance of 14 January 1982 concerning labour disputes and the exercise of the right to strike. On this point the Committee would like to recall once again the importance it attaches to the principle that strikes are one of the essential means available to workers and their organisations of promoting and defending their occupational and economic interests in the broad sense and that restrictions on the right to strike are unjustifiable except in cases where the strike might lose its peaceful character. As regards the requisition measures applicable under the Ordinance, these are acceptable only when it is necessary to ensure the running of essential services whose interruption is liable to endanger the existence or well-being of the whole or part of the population. In conclusion, the Committee expresses the firm hope that the legislative amendments undertaken by the Government will bring the legislation into line with the principles of freedom of association.

The Committee's recommendations

96. In the circumstances, the Committee recommends the Governing Body to adopt the following conclusions:

(a) In general, the Committee notes with satisfaction the information communicated by the Government regarding the improvement in the trade union situation in Upper Volta.

(b) It notes in particular that a Decree of 23 December 1982 rescinded the Decree dissolving the Trade Union Confederation of Upper Volta, that on 8 November 1982 Mr. Soumane Touré, General Secretary of this Confederation, recovered his freedom and that a Decree of 7 November 1982 rehabilitated the workers against whom arbitrary or repressive measures had been taken for reasons connected with trade union activities.

(c) With regard to the assurance given by the Government concerning the amendments envisaged to the Ordinance of 14 January 1982 regulating labour disputes and the right to strike, the Committee expresses the firm hope that these amendments will bring the legislation into line with the principles of freedom of association.

Case No. 1147

COMPLAINTS PRESENTED BY THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, THE CANADIAN LABOUR CONGRESS AND SEVERAL OTHER TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF CANADA

97. By communications dated, respectively, 8 July, 13 October, 19 October and 21 December 1982, the Professional Institute of the Public Service of Canada (PIPS), the Canadian Labour Congress (CLC), the Public Service Alliance of Canada (PSA) and the Confederation of Canadian Unions (CCU) presented complaints of violations of trade union rights in Canada. The PIPS sent additional information in support of its complaint on 24 August and the PSA sent additional information on 9 November 1982. The Government sent its observations in communications dated 4 November 1982 and 21 January 1983.

98. 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) or the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

99. In its communication of 8 July 1982, the PIPS - on behalf of eleven duly certified bargaining agents representing a total of 34,047 government employees - alleges that the Public Sector Compensation Restraint Act (known as Bill C-124) removes collective bargaining rights in the Canadian public service. According to the complainant, Bill C-124, introduced in Parliament on 30 June 1982, applies to all public servants presently enjoying collective bargaining rights under the Public Service Staff Relations Act or the Labour Code (depending on the government agency for which they work). It extends the existence of compensation plans for a period of 24 months; all terms and conditions of employment presently existing, other than wage rates, will remain unamended and will continue in effect during this period of two years. The complainant states that, in addition to determining wage increases for public servants without consultation and/or negotiation, the Government, through its Treasury Board, can now arbitrarily and unilaterally make exceptions in the percentage of wage rates and any terms and conditions of employment without any possibility of intervention and consultation with the unions and workers affected. Moreover, every existing collective agreement or arbitral award shall continue in force without change during the 24 months by virtue of section 7 of the Bill.

100. In its communication of 24 August 1982, the PIPS states that Bill C-124 became law on 4 August 1982 with the following amendments: section 7 now allows the parties to a collective agreement, or bound by an arbitral award that includes a compensation plan extended under the legislation, to amend any terms

and conditions of employment, other than wage rates or the terms of the plan, by agreement. The complainant considers that this is still unsatisfactory because (a) the definition of "compensation" remains extremely broad, encompassing "all forms of pay, benefits and perquisites paid or provided, directly or indirectly, by or on behalf of an employer to or for the benefit of an employee"; (b) the employer is under no obligation to meet and bargain on non-monetary matters; (c) all changes to non-monetary provisions require joint agreement of the parties; (d) there is no right of reference to an impartial third party in the event of a negotiating dispute or impasse, the Government having stated that it will permit this only where the employer agrees and under procedures determined by the employer. Section 16 of the final Act was also changed to allow the Governor in Council to terminate the application of the legislation in respect of all or some public servants. The complainant states that this provision is intended to permit substitution of the compensation plan extension by a different "negotiated" collective agreement containing changes to monetary and non-monetary items, where such changes are consistent with the total compensation increases mandated by the Act, i.e. within the 6 per cent and 5 per cent limitations laid down in the Act. However, according to the complainant, this section suffers the same shortcomings as pointed out above in relation to section 7, in addition to the fact that there is no right to apply to the Governor in Council for exemption.

101. In its communication of 13 October 1982, the CLC makes the same allegations against Bill C-124, stressing that it is contrary to Article 4 of Convention No. 98 in particular. According to the documentation attached to this communication, the CLC considers that Bill C-124 does not only freeze wage increases at 6 per cent and 5 per cent for two years and eliminate free collective bargaining for federal public servants, it also reduces their standard of living by 10 per cent, retards progress in achieving equality of treatment between men and women workers and prohibits improvement of other conditions of employment such as health and safety conditions. The documentation also questions the usefulness of Bill C-124 as an element of economic policy, arguing that reduction of wages deepens the recession and does not affect inflation which is caused primarily by the declining value of the Canadian dollar, rising energy prices and high interest rates.

102. In its letter of 19 October 1982, the PSA stresses that two decisions of the Public Service Staff Relations Board (copies of which were attached) dated 31 August and 6 October 1982 respectively, clearly state that the right of collective bargaining for federal public sector workers no longer exists. In particular, it quotes two statements from the decisions: "... no collective bargaining may take place and no changes made or ordered to the existing collective agreements except as expressly permitted by the Public Service Compensation Restraint Act"; "... the Board found that it has no authority or jurisdiction to deal with any interest disputes because collective bargaining as contemplated by the Public Service Staff Relations Act has been rendered inoperative during the restraint period established by the Public Service Compensation Restraint Act". The PSA also alleges that Bill C-124 also eliminates the right to strike for all workers concerned for the two-year period, and may apply to certain categories of employees (e.g. programme administrators) for three years depending on the date on which their existing collective agreements were to have

expired; the documentation supplies statistics arguing that other measures, such as a decline in interest rates, would be more effective economic controls than the wage controls provided for in Bill C-124.

103. On 9 November 1982, the PSA submitted additional information, alleging that, during the public hearings on the proposed legislation before it became law, the arguments which it presented concerning conformity of Bill C-124 with ILO Conventions were not taken into account and the Ministry of Labour, which is responsible for ILO relations, was not given an opportunity to present its views. In addition, the complainant states that, by extending the duration of a compensation plan under sections 4 and 5 of Bill C-124, the Government violates Article 2 of Convention No. 87, ratified by Canada, in that it denies groups of federal public servants their right to change bargaining agents. The PSA further states that Bill C-124 renders new certifications meaningless because section 2 thereof defines "a compensation plan" to cover the terms and conditions of employment of non-unionised employees as well. It considers that the new legislation prevents the lawful exercise by a union of its right to formulate programmes related to collective bargaining during the extension period, in direct violation of Article 3 of Convention No. 87. It also reiterates that sections 4 and 5 of Bill C-124 are direct violations of Article 4 of Convention No. 98 and Articles 7 and 8 of Convention No. 151, stressing that section 7 of the Bill only provides for discussion instead of the "machinery" mentioned in the ILO instruments. The PSA explains that the right to strike is suspended because paragraph 101(2)(a) of the Public Service Staff Relations Act provides that no employee shall participate in a strike "where a collective agreement applying to the bargaining agent in which he is included is in force" and section 6(1) of the new legislation provides that a compensation plan, including a collective agreement, is to continue in force for the period of applicability of the Act. Lastly, the PSA states that section 12 of the new legislation imposes permanent wage controls in this sector by stipulating that compensation plans, entered into "at any time", allowing for higher wage increases "are of no force", i.e. even after the termination date given in the Act. In this connection it recalls that section 9(1)(a)(ii) of the Act provides the Treasury Board with the legal authority to roll back a previously negotiated wage increase if it was to be paid subsequent to 29 June 1982; this superseding power directly affects federal government clerks whose union had signed a collective agreement with the Treasury Board for a wage increase of 12.25 per cent as of 12 December 1982, but who, under the Act, will now only receive 6 per cent. The PSA concludes with the statement that Bill C-124 is not simply wage control legislation but an absolute assault on the freedom of association and collective bargaining rights of some 500,000 federal public servants.

104. In its communication of 21 December 1982, the CCU states that Bill C-124 violates Convention No. 87 because, while not overtly suspending or dissolving workers' organisations, its invalidation of their efforts to defend and further workers' interests through collective bargaining strips the guarantees of freedom of association of any practical significance. The complainant makes similar allegations as concerns Conventions Nos. 98 and 151 as are outlined by other complainants above. Lastly, it challenges the Government's justification of Bill C-124 arguing that

(1) even business-oriented economists recognise that wages are not the cause of inflation in Canada and therefore such legislation is not an economic necessity; (2) the wage limits set by the Act do not provide adequate safeguards to protect workers' living standards.

B. The Government's reply

105. In its communication of 4 November 1982, the Government states that it recognises the right of Canadian workers to organise into associations and unions and to bargain collectively, as is evidenced by the provisions of the Labour Code (which applies to employees in undertakings under federal competence) and the Public Service Staff Relations Act (which applies to government employees), and that the Public Sector Compensation Restraint Act does not in any of its provisions interfere with the freedom of association of Canadian workers. It explains that this Act determines, for a period of 24 months, the wage increases of public servants: namely a 6 per cent increase for the first 12 months and a 5 per cent increase for the following 12 months with other terms and conditions, such as negotiated overtime clauses and paid leave entitlements remaining in place.

106. According to the Government, section 7 of the Act provides for amendment - by agreement of the parties - of terms and conditions of employment not related to compensation, such as health and safety and the grievance procedure. It points out that, where mutual agreements cannot be reached, the terms and conditions of employment in place prior to the 24-month period of application of the Act will continue in effect.

107. The Government quotes the following ILO statement:

> ... the (ILO) supervisory bodies have not ignored the serious problems that may arise in certain circumstances in the economic field, and they have accordingly stated that it would be difficult to lay down an absolute rule concerning voluntary collective bargaining because, under certain circumstances, governments might feel that the economic position of their countries called at certain times for stabilisation measures during the application of which it would not be possible for wage rates to be fixed freely through the medium of collective bargaining. Nevertheless, any such 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.[1]

It claims that the Act, while admittedly restricting collective bargaining of compensation, meets the criteria set out in this statement. First, it is being imposed as an exceptional measure; secondly, it has a two-year definite term of application; thirdly, it contains safeguards to protect workers' living standards and to maintain other important terms and conditions of employment.

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[1] ILO Principles, Standards and Procedures (ILO, 1978), p. 21.

108. The Government points out that section 16 of the Act (which reads as follows, "The Governor in Council may, by order, terminate the application of the Act in respect of all employees or a group of employees to which this Act applies") does not require the concurrence of the employer to seek an order.

109. Lastly, the Government points out that its Constitution has recently been amended to include a Charter of Rights and Freedom identifying freedom of association as a fundamental right of all Canadians, a right which has not and will not be interfered with by the Government.

110. In its communication of 21 January 1983 the Government stresses that sections 6, 7 and 16 of the Act permit collective bargaining, proof of which is that the PIPS and the Treasury Board, as employer, signed voluntarily negotiated memoranda of settlement on 7 December 1982 (for the home economics bargaining unit) and on 8 December 1982 (for the historical research bargaining unit); the parties agreed to introduce paid maternity leave as a new benefit for employees of those groups. Negotiations leading to these settlements are allowed under section 16 of the Act. Moreover, according to the Government, the allegations in this case are misleading as they focus only on the lack of third-party intervention in the bargaining process and ignore the willingness, already shown by the Government, to enter into negotiations and bargain collectively under the Act. For example, as of 13 December, negotiations under section 16 are being held for the nurses bargaining unit between the PIPS and the Treasury Board and negotiations under section 7 are being held for the radio operators and the aircraft operators bargaining units between the Board and the Canadian Union of Professional and Technical Employees. In addition to this, consultations and negotiations are continuing within the framework of the National Joint Council, a body which brings together public service unions and the Treasury Board; the PSA is a party to these activities.

111. The Government states that the two decisions of the Public Service Staff Relations Board referred to by one of the complainants simply recognise that the new Act has suspended collective bargaining under the Public Service Staff Relations Act; these decisions do not find that collective bargaining "per se" is suspended. The Chairman of the Staff Relations Board recognised this in one of the decisions when he stated "I would like to point out, however, that all provisions of the PSSRA which are not inconsistent with the PSCRA, remain in effect, including the provision of the PSSRA which allows the Chairman to appoint a mediator to assist the parties in the resolution of all manner of disputes which may arise during the restraint period established by the PSCRA".

C. The Committee's conclusions

112. The Committee notes that the Public Sector Compensation Restraint Act, which became law on 4 August 1982, restricts collective bargaining for federal public servants for a period of 24 months, with the possibility of this period commencing much later than 29 June 1982. The provisions of the Act are applicable to compensation arrangements in force on 29 June 1982.

113. The principal sections of the Act read as follows:

4. (1) Every compensation plan that is in effect on 29 June 1982 for employees to whom this Part applies, including every compensation plan extended under section 5, shall be extended for the period of twenty-four months:

(a) from the day on which the first increase in wage rates on or after 29 June 1982 would ... occur under the compensation plan; or

(b) where no increase in wage rates is to occur under the compensation plan on or after 29 June 1982, from the day immediately following the day on which the compensation plan would, but for this section, expire. [...]

5. (1) Subject to subsection (2), where a compensation plan for employees to whom this Part applies would, but for this subsection, have expired before 29 June 1982 and no new compensation plan was established before that date, or on or after that date in accordance with subsection 4(2), the compensation plan shall be extended:

(a) where the compensation plan would have expired on or after 29 June 1981, for the twelve month period immediately following the day the plan would have expired; or

(b) where the compensation plan would have expired before 29 June 1981, until 29 June 1982. [...]

6. (1) Notwithstanding any other Act of Parliament except the Canadian Human Rights Act but subject to this section and section 7, the terms and conditions of:

(a) every compensation plan that is extended under section 4 or 5, and

(b) every collective agreement or arbitral award that includes such a compensation plan,

shall, subject to this Part, continue in force without change for the period for which the compensation plan is extended. [...]

(3) The Treasury Board may change any terms and conditions, including any increase in wage rates of not more than 9 per cent,

(a) of a compensation plan that would, but for section 5, have expired before 29 June 1982; or

(b) of a collective agreement or arbitral award that includes such a compensation plan,

where the parties to the plan fail to agree to change those terms and conditions.

7. The parties to a collective agreement, or the persons bound by an arbitral award, that includes a com-

pensation plan that is extended under section 4 may, by agreement, amend any terms and conditions of the collective agreement or arbitral award other than wage rates or other terms and conditions of the compensation plan. [...]

12. A provision of a compensation plan for employees to whom this Part applies entered into or established at any time is of no force or effect to the extent that it provides for an increase in wage rates that would bring wage rates to a level that they would, but for this part, have reached.

114. The complainants allege that this legislation violates Articles 2 and 3 of Convention No. 87, Article 4 of Convention No. 98 and Articles 7 and 8 of Convention No. 151 and argue that this measure was not necessary for the recovery of the Canadian economy. The Government, on the other hand, considers that the legislation was necessary, that it is acceptable because it only applies for a limited period of time and that it provides guarantees to maintain the workers' living standards both through the discussions which are permitted under sections 7 and 16 of the Act and through the consultations and negotiations which are continuing in the National Joint Council, as well as through the possible appointment of an independent mediator in cases of disputes.

115. As regards the alleged violation of Article 2 of Convention No. 87, the Committee, after a thorough examination of the Act, considers that the right of workers in the federal public service to establish and join organisations of their own choosing without previous authorisation would not appear to be adversely affected. Although the complainants argue that there is a restriction - implicit in the "without change" stipulation of section 6 - on the right of these workers to change bargaining agents during the wage restraint period, the Committee considers that such a consequence is not immediately apparent from a reading of this section which relates specifically to compensation plans and not to the parties or bodies that have participated in their negotiation. In addition, this very section explicitly recognises the supremacy of the Canadian Human Rights Act which lays down the right of all workers to form organisations to further and defend their interests.

116. The allegation that Article 3 of Convention No. 87 is violated by the combined effect of section 6(1) of the new Act and paragraph 101(2)(a) of the Public Service Staff Relations Act (resulting in the prohibition of the right to strike during the wage restraint period) must be examined in the light of the principles and standards of ILO supervisory bodies concerning the right to strike in the public sector. The Committee has considered in the past[1] that the right to strike may be restricted or even prohibited in the civil service or essential services in the strict sense of the term on condition that adequate guarantees - such as speedy and impartial conciliation and arbitration procedures in which the parties concerned can take part at every stage - are provided to the workers to compensate them for this limitation on their freedom of action. The Committee would also recall that Article 8 of

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[1] See, for example, 211th Report, Case No. 1074 (USA), para. 366.

Convention No. 151 amplifies the examples of disputes settlement procedures to include, for example, negotiation and mediation. In the present case, the Committee notes that, according to the Government, adequate guarantees do exist, e.g. section 7 of the Act allows for limited collective bargaining, section 16 allows for exemptions from the Act to be made, and that the mediation procedures under the Public Service Staff Relations Act still apply. In addition, the Committee notes that, under s. 6(2) of the Public Sector Compensation Restraint Act, the Treasury Board may, in certain circumstances, including cases where the parties fail to agree to change the terms and conditions of a compensation plan, authorise change, including any increase in wage rates of not more than 9 per cent. Taking account of all these factors, the Committee is of the opinion that the denial of the right to strike in the present case, despite the measures taken to place certain restrictions on wage bargaining, is nevertheless accompanied by procedures which allow not only for bargaining beyond the minimum levels fixed by the new legislation (i.e. 6 per cent and 5 per cent), but which, in certain cases, allow for exceptions to be made as well as providing for mediation in case of dispute. The extent to which these procedures adequately compensate the workers concerned for this denial of the right to strike will depend on their effectiveness in practice and the Government should ensure that individual claims are examined fully and in good faith in order to determine whether an exception to the application of the Act should be made.

117. As regards the allegation that Article 4 of Convention No. 98 is violated by the suspension of collective bargaining imposed by the Act, the Committee would recall the criteria established by ILO supervisory bodies and quoted by the Government in this connection, namely that stabilisation measures restricting the right to collective bargaining might be acceptable on condition that they are of an exceptional nature, and only to the extent that they are necessary, without exceeding a reasonable period, and that they are accompanied by adequate safeguards to protect workers' living standards.[1] The Committee observes that the duration of the wage restraint legislation, viz. two years, is for a period which the Government stresses as being a "definite" one. The Committee can accept, under certain conditions, the imposition by law of wage limitation in exceptional circumstances and for a strictly limited period to commence on a particular date. However, as regards those compensation plans that were freely negotiated prior to the date on which the legislation became applicable, and which provided for increases in excess of those provided for in the Act, the Committee considers that consultations should take place between the parties in order to determine the extent to which such freely negotiated agreements can be implemented within the provisions of the Act.

118. The Committee notes that there is provision for certain limited wage increases of 6 per cent in the first year and 5 per cent in the second year of the applicability of the Act and that discussions and negotiations on a number of other matters are available to the workers concerned. Furthermore, there is provision for exceptions to be made and already, it appears, some have been made. The Committee takes particular note of the Government's

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[1] General Survey of the Committee of Experts, 1973, para. 169.

statement that, in December 1982, memoranda of settlement were signed, after voluntary negotiations, to give certain income-related benefits to two bargaining units and that negotiations were continuing between the Government and the relevant public service unions of three further bargaining units. Accordingly, the Committee considers that, although collective bargaining in the federal public sector is restricted for the limited period set out in the Public Sector Compensation Restraint Act, some provision is made to protect the living standards of the workers involved. The Committee expresses the hope that the Government will keep the situation under constant review and negotiate and consult with the unions concerned with a view to ensuring that any adverse effects of the legislation are overcome.

119. As regards the alleged violation of Article 7 of Convention No. 151 concerning procedures for determining terms and conditions of employment, the Committee recalls that Article 7 allows a certain flexibility in the choice of procedures to be used in the determination of the terms and conditions of employment.[1] It also notes that some of the parties in the present case are continuing negotiations on certain issues, and that two bargaining units have voluntarily signed income-related memoranda of settlement even though the Act in question applies to them. In these circumstances, and in view of the Government's declarations that it is willing to continue such activities during the duration of the wage restraint legislation, the Committee is unable to conclude that public employees cannot participate in the determination of their terms and conditions of employment through machinery established for this purpose.

120. As regards the alleged breach of Article 8 of Convention No. 151 concerning the settlement of disputes, the Committee recalls that, in view of the preparatory work which preceded the adoption of the Convention, this Article has been interpreted as giving a choice between negotiation or other procedures (such as mediation, conciliation and arbitration) in settling disputes.[2] In the present case, the temporary exclusion of third party arbitration procedures that are normally available under the Public Service Staff Relations Act would not conflict with the requirements of Article 8 provided the possibility for negotiation remains open to the parties, and is established in such a manner as to ensure their confidence. In this connection, the Committee takes particular note of the Government's reference to continuing consultations and negotiations within the National Joint Council, a body in which at least one of the complainants is actively participating. The Committee also notes that, according to the Government, the possibility of appointing an independent mediator to settle disputes remains open, despite the new legislation. The Committee would, however, stress the importance of the principle contained in Article 8 of Convention No. 151 that the settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery,

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[1] See, for example, 211th Report, Case No. 1038 (United Kingdom), para. 135.

[2] See, for example, supra, para. 136.

such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved. The Committee expresses the hope that this principle will be fully respected, especially during the two-year period laid down in the Act in question.

The recommendations of the Committee

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

(a) As regards the alleged violation of Article 2 of Convention No. 87, the Committee, after a thorough examination of the Public Sector Compensation Restraint Act of 1982, considers that the restriction on collective bargaining set out therein would not appear to adversely affect the right of federal public servants to establish and join organisations of their own choosing without previous authorisation.

(b) Likewise, as regards the alleged violation of Article 3 of Convention No. 87 by the prohibition of the right to strike during the wage restraint period, the Committee is of the opinion that the denial of this right in the present case, despite the measures taken to place restrictions on collective bargaining, is accompanied by procedures which allow not only for bargaining beyond the minimum levels fixed by the Public Sector Compensation Restraint Act, but which allow for exemptions to be made as well as providing for mediation in case of dispute. As the extent to which these procedures adequately compensate the workers concerned for the denial of the right to strike will depend on their effectiveness in practice, it considers that the Government should ensure that individual claims are examined fully and in good faith in order to determine whether an exception to the application of the Act should be made.

(c) As regards the alleged violation of Article 4 of Convention No. 98, the Committee recalls that restrictions on the right to collective bargaining might be acceptable on condition that they are of an exceptional nature and only to the extent that they are necessary, without exceeding a reasonable period, and that they are accompanied by adequate safeguards to protect workers' living standards.

(d) As regards the compensation plans that were freely negotiated prior to the date on which the legislation became applicable, and which provided for increases in excess of those provided for in the Act, the Committee considers that consultations should take place between the parties concerned in order to determine the extent to which such freely negotiated agreements can be implemented within the provisions of the Act.

(e) The Committee expresses the hope that the Government will keep the situation under constant review and negotiate and consult with the unions concerned, with a view to ensuring that any adverse effects of the legislation are overcome.

(f) As regards the alleged violation of Article 7 of Convention No. 151, the Committee, in view of the flexibility of the choice of procedures to be used in the determination of terms and conditions of employment recognised in this Article and of the continuing negotiation of certain issues taking place, is unable in this case to conclude that public employees cannot participate in the determination of their terms and conditions of employment through machinery established for this purpose.

(g) As concerns the alleged breach of Article 8 of Convention No. 151, the Committee would stress the importance of the principle that the settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiations between the parties or through independent and impartial machinery established in such a manner as to ensure the confidence of the parties involved. It expresses the hope that this principle will be fully respected, especially during the two-year period laid down in the Public Sector Compensation Restraint Act.

Case No. 1162

COMPLAINT PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AGAINST THE GOVERNMENT OF CHILE

122. In a communication, dated 1 October 1982, the International Confederation of Free Trade Unions (ICFTU) submitted a complaint of violation of trade union rights in Chile. The Government supplied its observations in a letter dated 24 November 1982.

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

A. The complainant's allegations

124. In its complaint, the ICFTU alleges that Mr. Hernán Mery Toro, a leader of the Coordinadora Nacional Sindical (CNS) was subjected to harassment by the Chilean security services. It explains that, on 27 September 1982, Hernán Mery left his home at 9 a.m. to go to the headquarters of the CNS in order to attend a meeting of the National Executive of the organisation and to give a press conference on the economic and social situation of Chilean workers.

125. On entering his car, continues the ICFTU, he realised that he was being watched by individuals in plain clothes who, on seeing him drive off, followed closely behind in another car. In the middle of the journey, the pursuing car shot forward and bumped

violently into that of Hernán Mery. The occupants of the car identified themselves as members of the National Central Information Organisation, and abused and threatened Hernán Mery for his activities.

126. The ICFTU observes that this attack presents the same characteristics as the acts of intimidation perpetrated against Tucapel Jiménez, chairman of the National Grouping of Public Employees, before he was murdered. The ICFTU declares in conclusion that it fears for the life of Hernán Mery.

B. The Government's reply

127. The Government indicates, in reply to the complaint, that the authorities responsible for protecting public order and safety have no information about the facts recounted in the ICFTU's communications. It adds that the police and security organs have not received any complaint from the person concerned on this subject. Likewise, Mr. Hernán Mery has not filed any accusation with the courts. The Government considers therefore that the ICFTU's complaint should be rejected as unfounded.

C. The Committee's conclusions

128. The Committee notes that the allegations in this case concern the harassment by the security services of the leader of a national trade union organisation. The Government, for its part, declares that it has no knowledge of the facts mentioned in the complaint.

129. The Committee must express its concern over the fact that the authorities do not seem to have carried out an inquiry to determine the responsibility in this case. It must recall that it has already had to deal with allegations of this type in other cases relating to Chile.[1] It considers it useful to draw the Government's attention to the fact that a climate of insecurity and fear characterised by acts of intimidation against trade union leaders constitutes a serious threat to the exercise of trade union rights and that such acts should call for severe measures on the part of the authorities.

Recommendations of the Committee

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

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[1] See 177th Report, Case No. 823, para. 206; 217th Report, Case No. 1117, para. 487.

(a) The Committee expresses its concern over the fact that the authorities do not appear to have carried out an inquiry to determine the responsibility in this case.

(b) The Committee points out that a climate of insecurity and fear characterised by acts of intimidation against trade union leaders constitutes a serious threat to the exercise of trade union rights and that such acts should call for severe measures on the part of the authorities.

Case No. 1164

COMPLAINT PRESENTED BY THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION AGAINST THE GOVERNMENT OF MALTA

131. By a communication dated 11 October 1982, the World Confederation of Organisations of the Teaching Profession (WCOTP) submitted a complaint of violations of trade union rights in Malta. The Government sent its reply in a communication dated 22 November 1982.

132. Malta 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

133. In its letter of 11 October 1982, the WCOTP presents a complaint on behalf of the Movement of United Teachers of Malta (MUT) against the Government for excessive measures taken against teachers and other public employees for having absented themselves from work on 29 June 1982. According to the WCOTP these workers had requested a day off on 29 June or had registered themselves as ill; this right to a day off was not accorded. It appears from the information attached to the complainant's communication that 29 June had been called as a public holiday by the Nationalist Party, an opposition party which - according to the complainant - had won 51 per cent of the votes at the December 1981 General Election, but due to the proportional representation system, secured only 31 of the 65 seats of Parliament. The Nationalist Party had called for a public holiday because its discussions with the Government concerning fresh elections had reached an impasse, and this particular day was chosen because it used to be a public holiday which the Government had unilaterally suppressed in 1977, such action still being subject to an appeal before the Court of Appeal by the Government. From the attached information it appears that the MUT and other trade unions did not support or oppose the Nationalist Party directive, but when their members did not report for work on 29 June the Government responded by suspending 78 of the MUT members as well as about 400 other workers in the public service or employees of parastatal

organisations. According to the complainant disciplinary procedures were also instituted against these persons, whereas private employers apparently took no action whatsoever against thousands of their employees who stayed away from work on 29 June.

134. The WCOTP points out that in seven cases out of nine, where the teachers cases came before the Public Service Commission (disciplinary body), they were told that there was "no case" against them. The other government employees who also appeared before the Commission were notified that they had been found "not guilty". However, continues the complainant, on 8 August the Prime Minister announced that the Government would pardon the suspended workers if they signed a declaration admitting their guilt. Failure to sign would bring about instant dismissal. The WCOTP states that this requirement to sign under duress infringes both political and civil rights, especially in the case of the seven employees concerning whom the disciplinary board had ruled that there was no case to answer.

135. The complainant also alleges that in 1976 an Industrial Relations Act was passed providing a machinery for negotiations on conditions of service of public employees which has not yet been implemented. It states that instead of this, the Government has unilaterally curtailed the vacation leave entitlement, has abolished a number of public holidays, has changed conditions of service and has unilaterally determined salaries at a level well below the demands of the unions.

136. According to the complainant, a 1977 amendment to the above-mentioned Act gave the right to the Government to declare any grade of public service employees as working in an "essential service" and thus to restrict or prohibit the right to strike. It encloses a copy of the amended legislation, the schedule of which lists a number of offices which are required to be manned at all times for the continued provision of essential services to the community. These offices include the posts of, for example, resident medical superintendent, physician, child health officer, etc. It appears from section 10 of this amending legislation that the schedule to the Act may be altered, added to or otherwise amended by a resolution of the House of Representatives or by the Prime Minister by order in the Gazette provided that an order so made does not increase the total number of offices to more than 70.

137. In addition, the WCOTP alleges that in 1981 legislation was enacted according to which public service employees are now precluded from seeking legal redress on any matter concerning their conditions of employment (an Act to amend further the Code of Organisation and Civil Procedure Act). This legislation also creates a "Working of the Law Court Commission" appointed by the Prime Minister with the function, among others, of supervising the workings of all courts of civil, commercial and criminal jurisdiction, including the Constitutional Court, and of supervising the professional conduct of advocates and legal procurators. From an examination of the Act which is enclosed with the complainant's communication, it appears that section 743 of the principal law has been amended to include a new subsection 5 which reads as follows: "For the purposes of this section, and of any other provision of this and of any other law, service with the Government is a special relationship regulated by the legal provisions specifically

applicable to it and by the terms and conditions from time to time established by the Government, and no law or provision thereof relating to conditions of employment or to contracts of service or of employment applies or ever heretofor applied to service with the Government except to the extent that such law provides otherwise".

138. In conclusion, the WCCTP states that in 1982 a Foreign Interference Act was passed according to which no foreign activity can take place without the permission of the Government, such permission only being given to activities listed in the legislation such as cultural and educational activities. The complainant sees this legislation as a restriction on international solidarity between trade unions.

B. The Government's reply

139. In its communication of 22 November 1982, the Government states that the allegations concerning the absence from work on 29 June are not justified. According to the Government, the disciplinary action taken refers to the offence of rank disobedience in defiance of authority because instructions had been given to all employees in the public service to report for work on 29 June 1982. The Government maintains that, contrary to what is stated by the MUT, this offence is more serious than ordinary absence from work and does not fall within the scope of section 20(2) of the Conditions of Employment (Regulation) Act of 1952.

140. The Government states that it is not a question of refusal of "the right to a day off", but a political directive for stopping work for one day. As it was not a directive for industrial action, continues the Government, it was not protected by the provisions of the Industrial Relations Act. In order to ensure the continuity of public services, vacation leave in respect of 29 June was curtailed and public service employees were specifically instructed to report for work as usual on that day. Those employees who failed to do so, without a valid reason, were subjected to disciplinary procedures which could lead to dismissal by virtue of the Public Service Commission (Disciplinary Procedures) Regulations of 1977. The Government explains that the employees concerned were in fact suspended from work and a start had been made on processing the various cases before the Public Service Commission Disciplinary Board. However, on 8 August, the Government decided to stop these disciplinary procedures for those employees who signed a declaration acknowledging their responsibility for the offence with which they were charged and who were prepared to give a written undertaking that they would not commit a similar offence in the future. It states that those employees who signed such declarations and gave such undertakings were taken back to work. The Government emphasises that no employee was asked to sign a declaration or give the written undertaking against his of her will and denies that employees were threatened with instant dismissal if they failed so to sign.

141. The Government states that the complainant is misinformed as regards the cases of seven teachers in the public service who continued to be subjected to disciplinary procedures