

### B. The Government's reply

328. The Government, in its communication of 25 July 1983, states that the refusal to register the executive committee of the Funza branch of SINTRAIME was due to the fact that the undertaking Grifos y Válvulas S.A. in which the workers of the above-mentioned executive committee are employed is not classified by the Ministry of Economic Development (the Chamber of Industry and Commerce), as a metalworking plant. Since the Chamber of Industry and Commerce is the national body responsible for determining the branch of economic activity to which any given undertaking belongs, the Ministry of Labour and Social Security has to accept its rulings and take into account the legal standards in force. Therefore, it is not in a position to authorise the registration of the executive committee of a trade union organisation of the metalworking industry whose members are workers in a plant which does not belong to this sector.

329. The Government also points out that the workers of Grifos y Válvulas S.A. are entitled to establish and join the executive committee of any industrial trade union provided that the activity carried on by the plant falls within the sector covered by the trade union.

330. The Government annexes to its communication a copy of the administrative rules issued relating to the allegations.

### C. The Committee's conclusions

331. The Committee notes that it appears from the statements of the Government and the administrative resolutions which it has communicated that the workers of the undertaking Grifos y Válvulas S.A. are not entitled to join SINTRAIME (a primary trade union belonging to the metallurgical sector) and establish an executive committee, since the undertaking Grifos y Válvulas S.A. is not part of the metalworking sector. In support of this view, the Government refers to a written statement from the Chamber of Industry and Commerce (Ministry of Economic Development) declaring that the undertaking Grifos y Válvulas S.A. is not part of the metalworking sector. The complainant considers, however, that this opinion does not reflect the real situation, given the nature of the work performed in the plant.

332. The Committee believes that irrespective of whether the undertaking Grifos y Válvulas S.A. should or should not be classified as part of the metallurgical or metalworking sector, the metallurgists or metalworkers of this undertaking - whether their percentage of the total workers is small or large - should be able to join the

industrial trade union of the metallurgical or metalworking sector of their choice and, in particular, SINTRAIME, since in pursuance of Article 2 of Convention No. 87, all workers without distinction whatsoever have the right to join organisations of their own choosing. The Committee notes in this respect that contrary to Article 2 of Convention No. 87, the definition of industrial trade unions contained in section 356 of the Substantive Labour Code (those "established by individual persons who are employed in various undertakings of the same industrial branch") makes it possible to exclude workers of a branch of activity or particular industry from joining the trade union of the corresponding branch of activity if the business of the undertaking which employs these workers does not mostly fall within the said branch of activity.

333. In these circumstances the Committee requests the Government to allow the metallurgical and metalworkers of the undertaking Grifos y Válvulas S.A. to join SINTRAIME and to establish the executive committee of the corresponding trade union branch of this organisation. In addition, it requests the Government to take measures with a view to amending the definition of industrial trade union contained in section 356 of the Substantive Labour Code in order to guarantee fully the right of workers to join organisations of their own choosing (Article 2 of Convention No. 87).

#### The Committee's recommendations

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

The Committee requests the Government to allow the metallurgical and metalworkers undertaking Grifos y Válvulas S.A. to join SINTRAIME and establish the executive committee of the corresponding trade union branch of this organisation, as well as to take measures with a view to amending the definition of industrial trade union contained in section 356 of the Substantive Labour Code in order to guarantee fully the right of workers to join trade union organisations of their own choosing (Article 2 of Convention No. 87).

Case No. 1214COMPLAINTS PRESENTED BY ELEVEN NATIONAL TRADE UNION  
FEDERATIONS AND THE WORLD CONFEDERATION OF LABOUR  
AGAINST THE GOVERNMENT OF BANGLADESH

335. By a communication dated 17 June 1983 the following national trade union federations presented a complaint of violations of trade union rights in Bangladesh: the Bangladesh Sanjukta Sramik Federation, Bangladesh Trade Union Kendra, Samajtantrik Sramik Front, Bangladesh Workers' Federation, Jatio Sramik Jote, Bangla Sramik Federation, Bangladesh Ganatantrik Sramik Andolan, Bangladesh Sramik Federation, Jatio Sramik League, Jatio Sramik Federation and the Bangladesh Federation of Labour. On 19 July 1983, the World Confederation of Labour (WCL) submitted a similar complaint. The Government sent its observations in a communication dated 21 August 1983.

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

A. The complainants' allegations

337. In their letter of 17 June 1983, the 11 national trade union federations allege that certain martial law ordinances violate Conventions Nos. 87 and 98, ratified by Bangladesh. In particular they refer to the Industrial Relations (Regulation) Ordinance (No. XXVI) of 30 August 1982 and the "guidelines for determination of collective bargaining agents" published under that Ordinance on 6 September 1982.

338. The complainants cite the following provisions of the Ordinance: section 4 (prohibition of any election for determination of collective bargaining agents; discretion of the Registrar of Trade Unions to declare any registered trade union as collective bargaining agent; no appeal of declaration to the courts); section 4(3) (to be declared as collective bargaining agent a trade union must cover not less than one-third of the total number of employees in the establishment(s); section 7 (prohibition on the holding of any meeting, including a meeting for the election of the executive committee, without the prior permission of the Government; any breach

punishable with a maximum of two years' imprisonment or a maximum fine of 5,000 Taka<sup>1</sup> or both); section 8 (prohibition of strikes and lockouts; any breach punishable with a maximum of two years' imprisonment or a maximum fine of 5,000 Taka<sup>1</sup> or both).

339. The complainants cite the following provision of the "Guidelines": section 2(d) (where, in the course of verifying membership claims for the determination of a collective bargaining agent, dual membership of unions is detected, the determining factor shall be the most recent membership date).

340. In addition, the complainants refer generally to other legislative restrictions on trade union rights: the Registrar of Trade Unions can arbitrarily cancel the registration of any union having less than one-third of the total number of employees in the establishment(s) concerned; government employees and those in "essential services" are denied trade union rights; prohibition on non-employees of that undertaking from holding trade union office or joining the union concerned; no appeal to a higher court from labour court decisions, only to the Chief Martial Law Administrator.

341. Lastly, the complainants state generally that trade union members and activists are arrested and kept in custody without trial and that since martial law has been introduced, there have been no meetings of the National Tripartite Committee, of which the 11 national federations are members.

342. The WCL, in its communication of 19 July 1983, repeats the above allegations made against Ordinance No. XXVI and requests the authorities to repeal this law and lift all measures which have the effect of restricting the trade union rights and freedoms of workers.

#### B. The Government's reply

343. In its letter of 21 August 1983, the Government states that the restrictive provisions in question are temporary in nature and are under constant review with a view to relaxations/amendments, as well as to ultimate withdrawal which would coincide with the revival of the Constitutional provisions in the country.

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<sup>1</sup> 100 Taka is equivalent to nine (9) Swiss francs (UBS September rate).

### C. The Committee's conclusions

344. The Committee notes that the Committee of Experts on the Application of Conventions and Recommendations, at its meeting in March 1983, examined the legislation at issue in this case and addressed an observation to the Government of Bangladesh concerning the incompatibility of the Industrial Relations (Regulation) Ordinance (No. XXVI) of 30 August 1982 with Articles 2, 3, 8 and 10 of Convention No. 87. The Committee further notes that the Committee of Experts addressed a direct request to the Government in the same connection under Convention No. 98.

345. Despite the Government's assurance that the restrictive provisions in question are temporary in nature and are under constant review with a view to relaxation/amendments, the Committee, on examining these provisions, cannot but fully endorse the Committee of Experts' request, made in its 1983 observation on Convention No. 87, that the Government amend this legislation to bring it into conformity with the principles of freedom of association.

346. More specifically, the Committee would draw the Government's attention to the following aspects of Ordinance No. XXVI:

- section 4 deprives workers of their right to choose their representatives for collective bargaining purposes in full freedom;
- section 4(3) imposes an unnecessarily high membership proportion (one-third) for trade unions to be eligible to be declared as collective bargaining agents;
- section 7 deprives workers of freedom of assembly which is indispensable to the free exercise of trade union rights and, moreover, deprives workers of the right to elect their representatives in full freedom and to organise their administration and activities; taken further, such a prohibition denies workers the right to establish and join organisations of their own choosing;
- section 8 deprives workers of the right to strike by providing a direction to submit labour disputes directly to labour courts from which appeals can only go to the Chief Martial Law Administrator. The right to strike is one of the essential means available to workers of promoting and defending their occupational interests and section 8, when read with section 6 (compulsory arbitration to settle industrial disputes), results in a severe limitation on the workers' right to organise their activities and formulate their programmes;

- this prohibition on the right to strike and discretion to submit disputes directly to labour courts by-passing conciliation has a further drawback in view of the complainants' allegation that appeals from labour court decisions may, under martial law, only go to the Chief Martial Law Administrator, a Government authority. This is contrary to one of the longstanding principles of freedom of association, according to which the final review of labour disputes must be by judicial bodies, not martial law authorities.

347. The Committee notes that the complainants allege other legislative restrictions on trade union rights without citing the specific laws. The Committee observes, however, that these allegations are particularly serious: the Registrar of Trade Unions can arbitrarily cancel the registration of any union having less than one-third of the total number of employees in the establishment(s) concerned; government employees and those in "essential services" are denied trade union rights; prohibition on non-employees of that undertaking from holding trade union office or joining the union of the undertaking.

348. The Committee of Experts has also commented on these restrictions. In particular, that Committee requested the Government to amend the one-third membership rule (section 10(g) of the Industrial Relations Ordinance, 1969) and asked the Government to reconsider the prohibition on non-employees from holding trade union office (section 7A(1)(a)(ii) and (b) of the 1969 Ordinance, as amended). The Committee of Experts also requested the Government to provide further information on the right of public servants to form unions. The Committee would endorse these comments and requests.

349. In view of the lack of specificity in the allegations of arrests without trial of trade unionists under martial law and the lack of meetings in the National Tripartite Committee, as well as the Government's silence on these points, the Committee can only recall generally that one of the civil liberties essential to the free exercise of trade union rights<sup>1</sup> is the right to a fair trial by an independent and impartial tribunal. As regards the lack of tripartite meetings, the Committee would remind the Government of its obligation under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) - recently ratified by Bangladesh - to ensure effective consultations.

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<sup>1</sup> See the Resolution concerning Trade Union Rights and Civil Liberties, adopted at the 54th Session of the International Labour Conference (1970).

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The Committee's recommendations

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

- (a) In view of the fact that the Committee of Experts on the Application of Conventions and Recommendations has recently examined the Industrial Relations (Regulation) Ordinance (No. XXVI) of 1982, as well as the other legislative restrictions which are the subject of this complaint, finding them to be incompatible with the principles of freedom of association contained in Conventions Nos. 87 and 98, ratified by Bangladesh, the Committee endorses the Experts' request that the Government amend its legislation, particularly those provisions prohibiting strikes and freedom of assembly.
- (b) The Committee would generally refer the legislative aspect of this case to the Committee of Experts for continued supervision within the framework of the regular ILO supervisory machinery.
- (c) In view of the lack of specificity in the allegation of arrest without trial of trade unionists under martial law and the Government's silence on this point, the Committee can only recall generally that one of the civil liberties essential for the free exercise of trade union rights is the right to a fair trial by an independent and impartial tribunal.
- (d) Again, in view of the lack of specificity in the allegation of the lack of tripartite meetings and the Government's silence on this point, the Committee can only remind the Government of its obligation to ensure effective consultations that it undertook upon ratifying the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

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

Cases Nos. 988 and 1003

COMPLAINTS PRESENTED BY THE CEYLON FEDERATION OF LABOUR,  
THE WORLD FEDERATION OF TRADE UNIONS AND SEVERAL OTHER  
TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF SRI LANKA

351. The Committee has examined these cases on three occasions since the complaints were first presented in July 1980. On each occasion it presented an interim report to the Governing Body.<sup>1</sup>

352. Since its most recent examination of the complaints, the Government supplied information which was noted in paragraph 8 of the Committee's 222nd Report, approved by the Governing Body at its 222nd Session (March 1983). Since then the following further communications have been received: from the Public Service Trade Union Federation dated 26 April 1983; from 11 national federations (Ceylon Federation of Trade Unions, Sri Lanka Independent Trade Union Federation, Democratic Workers' Congress, Public Service Trade Union Federation, Sri Lanka Independent Government Trade Union Federation, All Ceylon Government Clerks Union, United Corporations and Mercantile Union, Central Council of Ceylon Trade Unions, Sri Lanka National Teachers Union, Post and Telecommunication Clerical Services Union and the Local Government Clerks Union) dated 16 June 1983. The Government sent its observations in communications dated 24 August and 22 September 1983.

353. Sri Lanka has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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<sup>1</sup> See 208th Report, paras. 324 to 341; 214th Report, paras. 497 to 510 and 218th Report, paras. 416 to 436, approved respectively by the Governing Body at its 216th (May 1981), 219th (March 1982) and 221st (November 1982) Sessions.

A. Previous examination of the cases

354. The complainants referred to the victimisation of workers during and after a general strike which lasted from 11 July to 9 August 1980, in particular the passing of state of emergency regulations outlawing strikes, the mass dismissal of several thousand strikers, the arrest without trial of workers, including five named trade union leaders, the closure of trade union premises, and the death of a trade union official.

355. After taking note of the replies, observations and information communicated by the Government on the various aspects of the case, the Committee, at its November 1982 meeting, recommended the Governing Body to approve the following interim conclusions:

- (a) Generally speaking, the Committee notes the discrepancies between the complainants' and the Government's comments on the various aspects still outstanding in this case.
- (b) As regards the closure of trade union premises in particular, the Committee, noting that by the Government's own admission the government premises where union offices were located have not been given back to the respective unions, can only reiterate its previous requests and conclusions concerning the occupation of trade union premises. It recalls that the right to protection of trade union property is one of those civil liberties which is essential to the normal exercise of trade union rights and requests the Government to consider reopening the premises of the 18 unions to which the complainants have referred.
- (c) As regards the death of the trade unionist, Mr. D. Somapala, in the absence of more accurate information, the Committee can only deplore this loss of human life in the context of a labour dispute.
- (d) As regards the reinstatement of the many strikers dismissed following a strike outlawed by the proclamation of the state of emergency, the Committee recalls the great importance which it attaches to the right to strike as a legitimate means of defending the occupational interests of workers. It again invites the Government to re-examine the situation of the persons concerned in order to try to improve the climate of industrial relations.
- (e) Finally, concerning the five trade union leaders who had been arrested, the Committee notes that, according to the Government, they have been released. Since, according to the Government, judicial proceedings have been instituted against them at the High Court in Colombia, the Committee trusts that it will receive a copy of the judgements concerning them as soon as they are

handed down. It also requests the Government to indicate whether the released persons have been able to return to their trade union activities.

B. Further developments

356. The Committee noted at its February 1983 meeting that the Government had supplied information on the five trade union leaders to the effect that their cases were still pending before the High Court in Colombia, and in particular that they have returned to their trade union activities.

357. On 26 April 1983, the Public Service Trade Union Federation supplied details of 25 trade unions, itself included, whose premises remain sealed allegedly as a result of their participation in the July 1980 strike. It furthermore repeats that nearly 13,000 workers who were dismissed after the strike remain out of work and are only being recruited at a very slow pace.

358. In their joint communication of 16 June 1983, 11 national trade unions alleged that two pieces of 1979 legislation - the Essential Public Services Act and the Prevention of Terrorism Act - oppress trade union rights. The first Act allegedly makes it possible to declare strikes illegal in a number of public services even in non-emergency situations and imposes large penalties for the mere act of encouraging an employee to stay away from his work. The second Act allegedly removes the normal legal protections applicable to arrested persons, and suspects held for questioning e.g. a suspect, by order of the relevant Minister, can be detained for up to 18 months without charges being brought against him.

359. These complainants also alleged that the Government refuses to recognise and deal with the elected representative of the Public Service United Nurses Union which claims to represent 90 per cent of the workers concerned.

360. Lastly, these complainants repeated that many trade union offices remain closed and 13,000 workers remain unemployed due to their participation in the July 1980 general strike.

361. The Government in its communication of 24 August 1983, states that the allegation recently presented by the complainants concerning the sealed trade union premises and unemployed strikers are mere repetitions of allegations to which the Government has previously replied and which have already been examined by the Committee.

362. In relation to the outstanding issue of the five trade union leaders committed to the High Court for trial, the Government states

that the indictments against them are being finalised by the Attorney-General. The Government undertakes to report to the Committee when the indictments have been filed and judgement delivered.

363. In its communication of 22 September 1983, the Government states that, in view of its progressive attitude towards adopting pro-worker legislation over the past five years, any criticism of its efforts could only come from elements politically opposed to the present Government. With particular reference to the Essential Public Services Act, 1979, it states that its provisions can only be brought into operation, by Gazette notification, for one month at a time, and subject to Parliamentary Resolution on each occasion, when an extraordinary situation develops which necessitates measures to ensure the performance of services essential to the life of the community. According to the Government, the services covered are confined to those provided by Government departments, public corporations, local authorities and co-operative societies.

364. The Government points out that the Prevention of Terrorism Act only applies to terrorists who advocate the use of force to overthrow the Government and is in no way concerned with trade unions, their rights or legitimate activities.

365. The Government denies that the Public Service United Nurses' Union is not recognised; its right to exist and exercise legitimate trade union activities have not been denied and its officials continue to have access to the relevant Government authorities to discuss matters of interest to its membership.

366. As regards the situation of the dismissed workers, the Government states that it cannot investigate specific cases without the names of these workers. It points out that those workers who vacated their posts during the period of the Emergency Regulations (July 1980) are being re-employed as and when vacancies become available.

367. As regards the allegation that trade union offices remain closed, the Government refer to its previously reported comments.

### C. The Committee's conclusions

368. As concerns the continued closure of trade union offices which had been housed in government premises, the Committee observes that, since its first examination of these cases in May 1981 it has been requesting the Government to consider reopening its premises for use by trade unions, in particular those unions listed by the complainants. The Committee notes that the Government's explanation for the closure of such premises to union use was that security

reasons necessitated this in view of the emergency situation surrounding the general strike. In all these circumstances the Committee cannot but reiterate its request to the Government that, with a view to restoring harmonious industrial relations in Sri Lanka, urgent consideration should be given to the reopening of the trade union premises which were previously housed within the government property.

369. As regards the thousands of workers dismissed after the July 1980 general strike who remain out of work, the Committee observes from the history of the examination of this allegation that the Government construed the deliberate absences from work during the period of the Emergency Regulations as vacation by the worker of his post. Many appeals, however, on the grounds of hardship caused by loss of employment due to the operation of law had been successful and many workers proving legitimate explanations for their absence have been reinstated. In view of the fact that thousands of workers have nevertheless been out of work for over three years, the Committee would again draw the Government's attention to the principle of freedom of association according to which excessively severe measures, such as the mass dismissal of and refusal to re-employ workers on account of their participation in strike action, which is recognised as a legitimate means of defending the occupational interests of workers, is a violation of freedom of association. The Committee accordingly again urges the Government to re-examine the situation of the persons concerned in order to improve the industrial relations climate and, in particular, to ensure that appeals and requests for reinstatement are dealt with rapidly.

370. The Committee notes that the recent allegation concerning 1979 anti-strike legislation is similar to the complainants' initial allegations examined in May 1981 concerning the anti-union nature of the Emergency Regulations passed with a view to putting an end to the July 1980 general strike. The Government at that time argued that restrictions on strike action were introduced temporarily only in essential services because the agitation could have caused severe hardship to the community and jeopardised the Government's development efforts. The Committee notes that in its most recent communication the Government points out that the 1979 legislation can only be invoked in exceptional cases, for one month periods and subject to Parliamentary approval. While noting these safeguards against abusive application of the legislation, the Committee would nevertheless point out that the services covered by the Act might not be strictly essential in view of the criteria concerning the right to strike in the public service or essential services. It therefore recalls that the principle whereby the right to strike may be limited or prohibited in such areas would become meaningless if the legislation defined the public service or essential services too broadly, that is to say, the prohibition should be confined to public servants acting in their

capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population.<sup>1</sup> The hospital sector and air traffic control have, for example, been considered essential, whereas banking, agricultural activities, ports, teaching, radio and television are not essential services in the strict sense of the term.

371. In this connection, the Committee notes that the Committee of Experts, in its examination of Sri Lanka's application of Convention No. 98, refers to the Government's proposed Labour Relations Law. This Committee accordingly requests the Government to consider the above principle concerning the right to strike in the new legislation.

372. Since the Government denies that the Prevention of Terrorism Act, 1979 is concerned with trade union rights or activities, the Committee can only comment generally on the allegation according to which this legislation removes the normal legal protections applicable to suspected or arrested persons. It would therefore draw the Government's attention to the principle that every government should ensure observance of human rights and more especially the right of all detained or accused persons to receive a fair trial at the earliest possible moment.<sup>2</sup>

373. In view of the fact that the complainants, despite being given an opportunity to do so, have not supplied more detailed information on their allegation that the Government refuses to recognise or deal with the representatives of the Public Service United Nurses' Union and the Government's statement that this union and its officers are freely exercising trade union activities, including access to government authorities, the Committee considers that this aspect of the case does not call for further examination.

374. The Committee notes that the indictments against five trade union leaders committed for trial to the High Court of Colombia are being finalised. It requests the Government to keep it informed of developments in these cases.

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<sup>1</sup> See ILC, Report III (Part 4B), 69th Session, 1983, para. 214.

<sup>2</sup> See, for example, 214th Report, Case No. 1054 (Morocco), para. 674; and 217th Report, Case No. 963 (Grenada), para. 536.

The Committee's recommendations

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

- (a) As regards the continued closure of trade union offices which had been housed in government premises, the Committee reiterates its request to the Government that with a view to restoring harmonious industrial relations, urgent consideration be given to the reopening of the trade union premises for use by the workers' organisations.
- (b) As regards the thousands of workers who were dismissed after the July 1980 general strike and who remain out of work, the Committee would again draw the Government's attention to the principle that excessively severe measures, such as the mass dismissal of and refusal to re-employ workers on account of their participation in strike action, which is recognised as a legitimate means of defending the occupational interests of workers, is a violation of freedom of association. The Committee again urges the Government to re-examine the situation of the persons concerned in order to improve the industrial relations climate.
- (c) As regards the alleged anti-strike provisions of the Essential Public Services Act, 1979, the Committee notes that the legislation contains precise measures to safeguard against abusive application of the legislation. It, nevertheless, recalls that, in view of the large number of services covered by the Act, the prohibition on the right to strike in the public service and essential services should be confined to public servants acting as agents of the public authority and to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee requests the Government to consider this principle when drafting the proposed Labour Relations Law, to which reference has been made by the Government in the context of its application of Convention No. 98.
- (d) As regards the alleged withdrawal of normal legal guarantees under the Prevention of Terrorism Act, 1979, the Committee notes the Government's statement that legitimate trade union rights and activities are not concerned and can only generally recall that every government should ensure observance of human rights, and more especially the rights of all detained or accused persons to receive a fair trial at the earliest possible moment.

- (e) The Committee considers that the allegation concerning non-recognition of the Public Service United Nurses' Union does not call for further examination.
- (f) The Committee requests the Government to keep it informed of developments in the cases of the five trade union leaders who have been committed for trial to the High Court of Colombo.

Case No. 1134

COMPLAINT PRESENTED BY THE PANCYPRIAN GREEK TEACHERS'  
ORGANISATION AGAINST THE GOVERNMENT OF CYPRUS

376. The Committee examined this case in its November 1982 Session, when it presented an interim report to the Governing Body.<sup>1</sup>

377. Since then, both the complainant and the Government sent the ILO a copy of the Judgement of the Supreme Court with letters dated 18 May and 15 June 1983 respectively.

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

A. Previous examination of the case

379. The complaint presented in this case related to the refusal of the Registrar to register the new management of an elementary schoolteachers' union elected in May 1981. According to the Registrar, the refusal to register was due to the violations and omissions imputable to the former trade union management in carrying out the preparations for the elections.

380. The Registrar also ordered the previous management to resume its duties and to organise new elections.

381. The complainant appealed to the Supreme Constitutional Court against the interference of Government officials in the functioning and administration of its union and despite the fact that the Supreme Court issued a provisional order dated 25 February 1982 suspending the decision of the Registrar which ordered the previous management to

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<sup>1</sup> See 218th Report, paras. 783 to 800, approved by the Governing Body at its 221st Session (November 1982).

resume its duties and carry out new elections, the authorities continued to recognise the previous management.

382. The Government, in its communications of 31 May 1982, described the facts as follows: on 28 May 1981, trade union elections did in fact take place in various branches of the POED. The trade union representatives elected then proceeded to elect their trade union management on 28 June 1981. However, after members of the POED sent written communications contesting the validity of the elections in four out of the seven branches of the POED, the Registrar, before registering the new management, carried out, in accordance with section 16 of the Trade Union Regulations, an investigation into whether the elections had been carried out in conformity with the constitution of the organisation.

383. The Registrar's investigation revealed several violations of provisions of the constitution in the elections in five of the branches:

- (a) persons who were not members of the trade union organisation voted, in violation of article 3 of the constitution;
- (b) more representatives were elected than the number provided for in the constitution, in violation of article 18(a);
- (c) ballots which were invalid because the number of candidates exceeded the number provided for by the constitution were counted as valid, in violation of article 18(b) and (c).

384. In view of these violations, the Registrar could not register the change of officers and ordered that the previous management should hold new elections. In addition, he informed the General Secretary of POED that the new management could not be registered on the grounds that it had been elected by representatives who had themselves not been properly elected.

385. In November 1982, the Governing Body, on the Committee's recommendation, took note that the case was pending before the Supreme Constitutional Court, and that the Supreme Court was to rule on the substance of the case, namely whether the trade union elections in question were valid. In order to enable it to make recommendations in full knowledge of the case, the Committee requested the Government to send it a copy of the final decision of the Supreme Court as soon as possible.

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### B. Further developments

386. Since then, both the complainant and the Government sent a copy of the decision of the Supreme Court dated 3 May 1983 which declared the decision of the Registrar of Trade Unions null and void on the ground of the Registrar's incompetence in the matter and the absence of legal grounds.

387. In its communication of 15 June 1983, the Government states that the Attorney-General, acting on behalf of the Registrar, has filed an appeal to the Full Bench of the Supreme Court, and that the appeal is expected to be heard before the end of this year. In the meantime, the Registrar of Trade Unions has been advised by the Attorney-General to abide by the judgement of the Supreme Court.

### C. The Committee's conclusions

388. The Committee notes the Government's comments on the outstanding issues of this case, in particular the information that the Supreme Court declared the decision of the Registrar of Trade Unions null and void. The Committee notes, however, that the Court only considered the issue of the competence of the Registrar, but not the substance of the case, that is, whether the elections were valid or not. The Committee also notes that the Attorney-General has asked the Registrar to abide by the judgement, but acting on behalf of the Registrar he has filed an appeal to the Full Bench of the Supreme Court.

389. In this connection, the Committee would recall that, in order to avoid the danger of serious limitations on the right of workers to elect their representatives in full freedom, cases brought before courts by an administrative authority challenging the results of trade union elections should not - pending the final outcome of the judicial proceedings - have the effect of suspending the validity of such elections.<sup>1</sup> The Committee accordingly trusts that the elected workers' representatives can fulfil their duties in full freedom until the Full Bench of the Supreme Court decides the issue. It requests the Government to inform it of the outcome of this further appeal as soon as a decision has been handed down.

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<sup>1</sup> See for example, 113th Report, Case No. 266 (Portugal), para. 75.

The recommendations of the Committee

390. In these circumstances, the Committee recommends the Governing Body to approve this report, in particular the following conclusion: the Committee requests the Government to send it a copy of the decision of the Full Bench of the Supreme Court concerning the validity of the trade union elections in question as soon as it has been handed down and trusts that, in the meantime, the elected workers' representatives can fulfil their duties in full freedom.

Case No. 1163

COMPLAINT PRESENTED BY THE CYPRUS AIRWAYS CABIN ATTENDANTS  
UNION SOLIDARITY AGAINST THE GOVERNMENT OF CYPRUS

391. The Committee examined this case in its February 1983 meeting, when it presented an interim report to the Governing Body.<sup>1</sup> Since then the Government has sent two further communications dated 9 April and 23 June 1983.

392. Cyprus 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, 1948 (No. 98).

A. Previous examination of the case

393. The complaint concerns allegations of employer interference in the functioning of a newly registered union, the Cyprus Airways Cabin Attendants Union Solidarity (CACAU-Solidarity), through its refusal to negotiate with it and anti-union discrimination in the form of transfer, suspension and threats of dismissals against members of the new union. The complainant union, CACAU-Solidarity, was established and registered, in accordance with the legislation, on 15 November 1982. With some 40 members, it represented 95 per cent of the cabin attendants, whereas the remainder of the total workforce of 1,000 are represented by the Cyprus Airways Employees' Union (SYNYKA),

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<sup>1</sup> See 222nd Report, paras. 301 to 316, approved by the Governing Body at its 222nd Session (March 1983).

from which the CACAU-Solidarity has broken away. The complainant union insisted that the employer recognise it for collective bargaining purposes, and that it reinstate disciplined members of the union, particularly its Secretary-General, Mr. A.N. Zivanas, who was suspended and then transferred, and who later brought a case before the Labour Disputes Courts on the grounds of anti-union discrimination. The complainant also demanded that the employer cease its discriminatory acts.

394. The Government stated that the SYNYKA union, from which the CACAU-Solidarity split and the Workers' Confederation, to which the SYNYKA belongs, regarded the complainant union as a renegade which was trying to secure preferential conditions of employment for cabin attendants; according to the Government, the Confederation had threatened industrial action against the employer if it recognised the new union. As regards the employer's alleged anti-union actions, the Government repeated the views of the employer that no act of anti-union discrimination had been committed and that the disciplinary measures were justified and not based on trade union office and activities. The Government also stated that in the free system collective bargaining operating in Cyprus it cannot force recognition or compulsory reinstatement of disciplined employees.

395. In March 1983, the Governing Body approved the Committee's following interim conclusions:

- (a) As regards the representativity of unions for the purposes of collective bargaining, the Committee considered that steps should be taken by the authorities to verify, in accordance with the principles of freedom of association, the various claims of the unions involved in this case with a view to determining the most representative union for collective bargaining purposes.
- (b) As concerns the acts of alleged anti-union discrimination, the Committee recalled the principle that a workers' organisation should be able to function freely without interference by employers or their organisations and requested the Government to keep it informed of the outcome of the case brought by the transferred trade union leader, Mr. Zivanas, before the Labour Disputes Court. It also asked to be informed of the outcome of any other action that may have been taken by the complainant organisation at the national level to seek redress for the other acts of alleged anti-union discrimination to which its members are said to have been subjected.

B. Further communications from the Government

396. In a communication dated 9 April 1983, the Government states that Mr. Zivanas' case has not yet been heard by the Labour Disputes Court and undertakes to keep the Committee informed of developments.

397. The Government sent a letter dated 23 June 1983, according to which there is no need for an inquiry as to the representativity of the unions in question for the purposes of collective bargaining because on 30 March 1983 the CACAU-Solidarity submitted to the Registrar of Trade Unions a notification for its dissolution in accordance with section 27 of the Trade Unions Law (No. 71 of 1965) and the Registrar was satisfied that all procedures and requirements laid down in the law and in the Constitution of the union itself were followed by the applicant. The Registrar accordingly registered the dissolution of the union on 8 April 1983.

398. As regards Mr. Zivanas' case before the Labour Disputes Court, the Government stated that there are still no developments in this regard. It undertakes to keep the Committee informed in this connection.

C. The Committee's conclusions

399. The Committee notes the information provided by the Government that on 8 April 1983 the complainant union was voluntarily dissolved in accordance with section 27 of the Trade Unions Law and that the Registrar was satisfied that all procedures and requirements required by the law and by the constitution of the union were followed by the applicants. The Committee notes that the industrial dispute in Cyprus Airways Limited has accordingly been settled and considers that this aspect of the case calls for no further examination.

400. The Committee takes note of the information conveyed by the Government that there are still no developments concerning Mr. Zivanas' case. Having regard to the fact the Committee was informed in October 1982 that the case had been instituted, it would point out that excessively lengthy proceedings can result in a denial of justice. It therefore draws the Government's attention to the importance which it attaches to expeditious proceedings for the examination of cases concerning dismissals or transfers which could result from trade union activities, in the absence of which the offended employee would feel a growing sense of injustice, with

consequent harmful effects on industrial relations.<sup>1</sup> The Committee notes the Government's statement that it will send information concerning the case as soon as the Labour Disputes Court deals with it.

The Committee's recommendations

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

- (a) In view of the fact that the complainant union was voluntarily dissolved on 8 April 1983 in accordance with the legislation in force and its own constitution, and that the dispute in Cyprus Airways Limited has accordingly been settled, the Committee considers that the allegation concerning non-recognition for collective bargaining purposes does not call for further examination.
- (b) The Committee expresses the hope that Mr. Zivanas' case against anti-union discrimination based on transfer will be examined expeditiously and requests the Government to keep it informed of the outcome of the proceedings before the Labour Disputes Court.

Case No. 1181

COMPLAINT PRESENTED BY THE NATIONAL TRADE UNION OF WORKERS  
OF THE BANCO DE LA NACION AGAINST THE GOVERNMENT OF PERU

402. The Committee examined this case at its meeting in May 1983 and submitted an interim report to the Governing Body.<sup>2</sup> Since then the Government has sent a communication dated 12 September 1983.

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<sup>1</sup> See, for example, 181st Report, Case No. 881 (India), para. 193.

<sup>2</sup> See 226th Report of the Committee, paras. 388-403, approved by the Governing Body at its 223rd Session (May-June 1983).

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

A. Previous examination of the case

404. When the Committee examined this case at its meeting in May 1983, a number of allegations were outstanding concerning the legal and labour situation of the employees of the Banco de la Nación, which was to be determined in a Bill that was before Parliament, and the transfer or dismissal of trade union leaders.

405. The Committee expressed the hope that the above-mentioned Bill would be adopted in the near future and that it would recognise the right of the employees of the Banco de la Nación to conclude collective agreements and to join the federations of their choosing. The Committee requested the Government to keep it informed of developments in the legislative proceedings under way.

406. Lastly, noting that the Government had not replied to the allegations concerning the transfer of trade union leader Gilberto Rivera, nor concerning the dismissal of trade union leaders, Matta Durán, Ugarte Ochoa, and Perea González - all for alleged dereliction of duty - and of Fernández Barra and Tamayo Pinto, leaders of the new Executive Board elected in November 1982, the Committee requested the Government to send its observations on these matters and in particular to indicate the grounds for the above-mentioned dismissals.

B. The Government's reply

407. In its communication of 12 September 1983, the Government states that until there has been a change in the system governing employees of the Banco de la Nación, these employees will remain subject to the provisions in force for the public service as regards trade union membership and the right to bargain and to present grievances.

408. As regards the allegations concerning the dismissal of Tamayo Pinto, Fernández Barra, Matta Durán, Perea González and Ugarte Ochoa, the Government states that these workers were dismissed for dereliction of duty. The Government appends several documents concerning these dismissals together with copies of some administrative decisions on appeals lodged by the persons concerned.

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C. The Committee's conclusions

409. As regards the allegation concerning the legal and labour status of the employees of the Banco de la Nación (which should be determined by the Bill now before Parliament), the Committee notes that according to the Government's statements the system to which these employees are subject has still not been changed. Consequently the Committee repeats the conclusions it made on this matter at its meeting in May 1983.<sup>1</sup> The Committee hopes that the aforementioned Bill will be adopted in the near future and that it will recognise the right of the employees of the Banco de la Nación to conclude collective agreements and to join the federations of their choosing; it requests the Government to keep it informed of developments in the legislative proceedings.

410. With regard to the dismissal of trade union leaders (Matta Durán, Ugarte Ochoa, Perea González, Fernández Barra and Tamayo Pinto), the Committee observes that despite the abundant information sent by the Government on the matter, it still does not have sufficient information to form an opinion on the individual cases of dismissal. Nevertheless, the Committee observes that most of the cases are connected with recognition of the right to time off for trade union purposes and that in this respect there are discrepancies between the union and the bank as regards the extent of trade union rights, particularly since the establishment by Presidential Decree No. 003-82-PCM of 24 January 1982, of the trade union system in respect of public servants (to which the National Trade Union of Workers of the Banco de la Nación does not want to be bound, invoking acquired rights). The Committee therefore does not exclude the possibility that some of the leaders who have been dismissed for dereliction of duty may have considered in good faith that they were entitled to time off for trade union purposes.

411. Furthermore, it appears from the documentation furnished by the Government that, since the promulgation of Presidential Decree No. 003-82-PCM, the Banco de la Nación considers the said union as legally non-existent since it is not formed or organised in accordance with the said Decree.

412. In these circumstances, and bearing in mind that it is to be hoped that the Bill concerning the legal and labour situation of employees of the Banco de la Nación will shortly be adopted and that it will determine the exact scope of their trade union rights, the Committee considers that the harmonious development of labour relations would be promoted if measures were taken to reinstate the trade union leaders in question.

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<sup>1</sup> See 226th Report, para. 403.

413. Lastly, observing that the Government has not replied to the allegation concerning the transfer of the trade union leader Gilberto Rivera, the Committee draws the Government's attention to the fact that no one should be the subject of acts of discrimination on the grounds of his trade union function or activities.

The Committee's recommendations

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

- (a) Bearing in mind that Parliament is considering a Bill to determine the legal and labour status of the employees of the Banco de la Nación, the Committee expresses the hope that this Bill will be adopted in the near future and that it will recognise the right of these employees to conclude collective agreements and to join the federations of their choice. The Committee requests the Government to keep it informed of developments in the legislative proceedings under way.
- (b) The Committee considers that the harmonious development of labour relations would be promoted if measures were taken to reinstate the five dismissed trade union leaders.
- (c) The Committee draws the Government's attention to the fact that no one should be subject to acts of discrimination on the grounds of his function or trade union activities.

Case No. 1188

COMPLAINT PRESENTED BY THE UNIFIED WORKERS' CENTRAL AGAINST  
THE GOVERNMENT OF THE DOMINICAN REPUBLIC

415. The complaint is contained in a communication of the Unified Workers' Central of 10 March 1983. The Government replied in a communication of 4 June 1983.

416. The Dominican Republic 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

417. The Unified Workers' Central alleges in its communication of 10 March 1983 that the Textiles K company, in order to avoid discussing the draft collective agreement submitted by the works union, and in order to destroy the union, did not renew the contracts of eight union leaders (Messrs. Ramón del Socorro García, Sergio Tulio Medina León, Emenegildo Polanco, Narciso Trinidad, Juan de Dios García, Pedro Angomás, Víctor Hugo Medina and Genaro Rosario), and nine active members of the union (Messrs. Vicente Devorah, Zacarías Pérez, Luis Germán, Sambay Matos, Bienvenido Amado Pérez, Juan Escoboza, Víctor Lara, Jorge Ramírez and Rafael Báez). Of the afore-mentioned union leaders, four were members of the negotiating committee for the draft collective agreement.

418. The complainant adds that the anti-union aims of the company are further evidenced by the fact that the company had promised to renew the contracts of all the workers, and that on 13 January 1983 the owners divided the company into 13 phantom companies, each having from four to 13 workers.

### B. The Government's reply

419. The Government states in its communication of 4 June 1983 that, since 1979, it has been the practice of the Textiles K company to sign one-year contracts with its workers, reserving the right to extend the contracts of any who so merit and to provide the legally prescribed severance pay to the others. The right of the company to act in this manner is recognised in section 66 of the Labour Code.

420. The Government adds that the collective agreement in force also contains a clause empowering the company to terminate all labour contracts by 24 December of each year, at the latest, regardless of whether the worker is a union leader, by payment of the appropriate labour benefits.

421. The Government further states that under the provisions of section 295 of the Labour Code, union leaders and members automatically cease to belong to the union upon termination of their contracts, by virtue whereof, there being no legal representatives, the company is not required to bargain collectively with an organisation that de facto does not exist.

422. The Government indicates that the 13 companies to which the complainant refers have been legally incorporated and registered in accordance with the legislation in force.

423. The Government concludes by indicating that the mediation undertaken by the Director-General for Labour for purposes of achieving an agreement to resolve the conflict was unsuccessful, and that it considers that there has been no violation of freedom of association in this case since the owners of the Textiles K company have exercised a lawful right.

C. The Committee's conclusions

424. The Committee observes that the present case refers to the refusal of the Textiles K company to renew the contracts of eight union leaders and nine union members active in the union of that company for the alleged purpose of not discussing the draft collective agreement submitted by the union and in order to destroy the union.

425. The Committee takes note of the statements of the Government in this respect, and in particular that, since 1979, it has been the practice of the company to sign one-year contracts, extending these for persons who so merit, and that this is in accordance with the laws and the collective agreement in force.

426. The Committee considers that, while the system of fixed-term contracts is not in itself objectionable from the standpoint of the principles of freedom of association, the application of this system in practice, and more particularly the real motive behind a refusal to extend a labour contract, should not be the trade union office, affiliation or activity of a given individual. In this respect the Committee observes that in the particular circumstances of the case there are serious reasons for considering that the refusal to extend the contracts in question constituted an act of anti-trade union discrimination. At no time has the Government referred to any economic difficulties faced by the company, or to professional faults committed by the parties involved, whereas the complainant has indicated that the refusal to extend the labour contracts involved a large number of union leaders and members in a relatively small company, that prior to the company's refusal to extend the labour contracts, the union had submitted a draft collective agreement, and that shortly after the refusal to extend the contracts, the owners of the company divided it into 13 companies, each with from four to 13 workers. It is important to note here that section 298 of the Labour Code, which applies to works unions among others, establishes that associations of employees shall not have less than 20 members.

427. The Committee further recalls that recently it has had occasion to examine allegations of anti-union discrimination in the

Dominican Republic and has had to emphasise the need to adopt provisions giving effective protection against acts of anti-union discrimination.<sup>1</sup> The Committee of Experts on the Application of Conventions and Recommendations has also made a statement to this effect.<sup>2</sup>

428. In these circumstances, the Committee requests the Government to take measures to bring about the speedy reinstatement of the 17 trade union leaders and members mentioned by the complainant, and to keep the Committee informed on this matter.

429. Finally, the Committee takes note that according to the Government, by virtue of section 295 of the Labour Code ("when the employee leaves the undertaking, for whatever reason, he shall cease to be a member of the union"), union leaders and members automatically cease to belong to the union upon termination of their contracts, and, there being no legal representatives, the company is not required to bargain collectively with an organisation that de facto does not exist. The Committee considers that this provision is not consistent with the right of workers to join organisations of their own choosing (Article 2 of Convention No. 87) and can give rise to acts of anti-union interference by the employer in a manner contrary to the provisions of Article 2 of Convention No. 98, especially in circumstances in which the company is empowered to terminate all labour contracts at the end of each year. The Committee emphasises the need for the Government to adopt provisions giving effective protection against acts of anti-union discrimination and interference, and draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative implications of the case.

#### The Committee's recommendations

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

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<sup>1</sup> See for example, 211th Report, Case No. 1053, para. 165 and 226th Report, Case No. 1118, para. 45.

<sup>2</sup> See, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 69th Session, 1983, Report III (Part 4A), p. 172.

- (a) The Committee requests the Government to take measures to bring about the speedy reinstatement of the 17 union leaders and members mentioned by the complainant, and to keep the Committee informed on the matter.
- (b) The Committee emphasises the need for the Government to adopt provisions giving effective protection against acts of anti-union discrimination and interference, and draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative implications of the case.

Case No. 1191

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

431. The complaint of the International Confederation of Free Trade Unions (ICFTU) is contained in a communication dated 31 March 1983. The ICFTU sent additional information in a communication of 5 May 1983. The Government replied in communications dated 11 May and 13 September 1983.

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

A. The complainant's allegations

433. The ICFTU alleges that in the early morning of 24 March 1983 (day of public protest against unemployment and the lack of economic and social improvements), armed members of the National Information Agency (CNI) arrested, under Executive Decree No. 4121 of 24 March, 12 persons including the trade unionists Reinaldo Flores del Pino, Alejandro Wladimir Cisterna Canales (former trade union leader in the textile undertaking "Yarrur"), José Enríquez Nuñez Estrella (member of the Youth Department of the Metallurgical Confederation), José Ramón Avello Soto (Chairman of the San Juan Dockyard Trade Union in charge of educational activities at the Metallurgical Confederation and Chairman of the Youth Department of the National Trade Union Co-ordinating Body) and Ricardo Fernández Riquelme (Vice-Chairman of the Building Workers' Trade Union in the city of Concepción). According to the complainant, arrests were made in some cases without an arrest warrant being produced and those concerned were required to sign documents in which only their name was listed. The

above-mentioned trade unionists, with the exception of Reinaldo Flores who was released on 25 March 1983, were banished on 29 March 1983 to Pisagua. Furthermore, Ricardo Fernández Riquelme had received blows during his arrest and at the police station, which resulted in bruises on his right shoulder and a scalp wound.

434. The complainant further alleges that on 24 March 1983, 227 persons were arrested in the centre of Santiago, 40 in Valparaíso and 14 in Concepción; all were accused of having taken part in a protest march against unemployment and the lack of economic and social improvements. The complainant points out that, since early in the morning, police forces had already taken over the centre of Santiago armed with water cannon and that the carabineros had been extremely violent when making arrests. Out of the 227 persons arrested on 24 March in Santiago, one was released on the following day and 209 were released on 26 March; the remaining 17 persons were detained at the First Commissariat and banished to Pisagua on 29 March upon an order from the Ministry of the Interior. Those persons detained in Valparaíso were released between 25 and 29 March with the exception of three, who were banished to Pisagua. The complainant encloses a report drawn up by a group of doctors on the 34 persons banished to Pisagua upon an order from the Ministry of the Interior under article 24 of the new Constitution, where they spent 90 days. According to the above-mentioned report, 12 out of the 34 persons banished were arrested at their homes in the early morning of 24 March 1983 by members of the CNI and transferred to establishments belonging to this unit, where they remained six days before being finally transferred to Pisagua. These persons - according to the report - were subjected to various methods of torture during lengthy sessions, such as immersion or the application of electric shock treatment, preceded by intimidation, threats and interrogations. They were also subjected to sexual harassment. The 22 remaining persons banished were arrested by carabineros and harshly beaten. They showed evidence of haematomas, bruises and grazes. The building in which they were lodged lacked the necessary hygienic conditions.

#### B. The Government's reply

435. In its communications of 11 May and 13 September 1983, the Government states that on 24 March 1983, a group of persons caused various disturbances on the public thoroughfare, blocking the passage of passing vehicles and pedestrians, hurling insults at the authorities and throwing flying objects at the police. The latter, acting in the interest of public order and safety and the protection of citizens' peace and calm, proceeded to put a stop to these excesses and managed to detain some of the persons involved. The authorities of the Interior Government, acting in accordance with the legal provisions in force, assigned those arrested to forced residence in

two localities in the north of the country. On Wednesday 22 June 1983, the detainees were released from forced residence ahead of time and returned to their places of origin.

436. The Government also states that there are no records on the 12 trade unionists who, according to the complainant organisation, had allegedly been abducted from their homes.

437. The Government adds that those persons mentioned in the complaint, amongst whom were several students who had been described as "trade unionists", were not arrested either in this alleged capacity or for activities connected with their presumed trade union activities but because they had been causing politically-motivated disturbances, aimed at subverting law and order.

438. Furthermore, the Government states that it rejects the accusations that these persons had been subjected to violence and torture, claiming that they have no basis whatsoever and constitute an unacceptable falsehood.

439. The Government encloses a press cutting in which it is stated that the 34 persons banished (giving their names) to Pisagua and Camiña, accused of having repeatedly taken part in subversive activities contrary to the public order, were released on 22 June 1983. The same source of information points out that the banished persons were released one week before completing the 90 days' sentence they had been given.

#### C. The Committee's conclusions

440. The Committee notes that the complainant alleged the arrest of 293 persons, including several trade union leaders and trade unionists, on 24 March 1983, a day of public protest against unemployment and the lack of economic and social improvements, during which public demonstrations were held in the cities of Santiago, Valparaíso and Concepción. The complainant also alleged that several detainees were banished to Pisagua and subjected to torture, ill-treatment and received injuries.

441. The Committee notes first of all that the Government's reply merely gives information on the 34 persons banished to Pisagua and Camiña for 83 days and does not refer at all to the other arrests made on 24 March 1983 which, according to the complainant, involved 259 persons who were later released between 25 and 29 March 1983. In this respect, bearing in mind that there were trade union leaders and trade unionists amongst those arrested on 24 March 1983 and that the demonstration was held in the defence of workers' interests, the Committee considers that, although the complainant has not given all

the details which might have been desired, there is enough evidence to consider these demonstrations as trade union activities, irrespective of whether non-trade union organisations played a role of primary or secondary importance in the planning and carrying out of these demonstrations. In these circumstances, the Committee deplores the Government's failure to supply information on the reasons for the alleged arrest of 259 persons. The Committee regrets these arrests even more in view of the fact that there is nothing to suggest that the judicial authorities upheld any charges whatsoever against those concerned.

442. With respect to the 34 persons who were first arrested and then banished for 83 days to the localities of Pisagua and Camiña, the Committee notes that, according to the Government, the police had arrested these persons in the interest of safeguarding public law and safety and protecting social peace and calm as, on 24 March 1983, a group of people were causing disturbances on the public thoroughfare, blocking the passage of passing vehicles and pedestrians, hurling insults at the authorities and throwing flying objects at the police. The Committee also notes that the Government authorities, acting in accordance with the legal provisions in force, assigned this group of persons to forced residence in two localities in the north of the country. The Committee further notes that, according to the Government, there were several students amongst those arrested and that those persons described as "trade unionists" by the complainant organisation were not arrested either in this capacity or for actions connected with their presumed trade union activities but because they had caused politically-motivated disturbances aimed at subverting law and order.

443. In this respect, the Committee notes that the Government's reply and the information submitted by the complainant organisation do not correspond; for example, according to the latter, several trade union leaders and trade unionists (whose names are given), who were banished to Pisagua on 29 March 1983 were arrested at their homes in the early morning of 24 March, that is, before they could have taken part in any demonstration whatsoever. Furthermore, the Committee notes that although the Government has given a general description of the type of activities it accuses the 34 persons in question of having committed, which infringed public order, physical integrity and private property, it did not give details of the charges with which each one is to be individually accused, especially those attributed to the trade union leaders; the Government only stated that they were causing disturbances for political reasons.

444. In these circumstances, the Committee must emphatically point out to the Government that measures depriving persons of their freedom and imposing sanctions such as banishment for trade union reasons constitute violations of the principles of freedom of association and it considers it unacceptable that sanctions of this nature should be imposed by administrative action.

445. With respect to the allegations of ill-treatment, injuries and torture inflicted on the 12 banished persons who, according to the complainant, had been arrested at their homes on 24 March 1983 (including trade union leaders) and the physical assaults to which these banished persons were subjected while in detention, the Committee considers inadequate the Government's brief statement that such allegations have no basis whatsoever and constitute an unacceptable falsehood. While expressing its grave concern at these allegations, the Committee, as it has done on previous occasions when similar cases have been referred to it, asks the Government to undertake a prompt and independent legal investigation of the alleged cases of torture with a view to elucidating the facts in full, to identifying the persons responsible and to taking proceedings against them,<sup>1</sup> as well as to keep it informed of the outcome of its investigations.

#### The Committee's recommendations

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

- (a) The Committee notes that the persons arrested (293 according to the complainant) on a "day of protest against unemployment and the lack of economic and social improvements" (24 March 1983), were released and that the period of banishment imposed on 34 of those persons has now come to an end. All therefore now enjoy complete freedom.
- (b) With respect to the arrest and subsequent banishment of 34 persons, including several trade union leaders and trade unionists, the Committee emphatically points out to the Government that measures depriving persons of their freedom and imposing sanctions such as banishment for trade union reasons constitute violations of the principles of freedom of association, and it considers it unacceptable that sanctions of this nature are imposed by administrative action.

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<sup>1</sup> See, for example, 213th Report, Case Nos. 964, 957, 975, 978 and 1026 (Guatemala), para. 56; 207th Report, Case Nos. 997 and 999 (Turkey), para. 304; and 208th Report, Case No. 1007 (Nicaragua), para. 387.

- (c) As regards the arrest of the remaining 259 persons, the Committee regrets that the Government did not supply information as to the reasons for their arrest. The Committee deplores these arrests, even more so in view of the fact that there is no evidence to show that the judicial authorities upheld any charges whatsoever against those concerned.
- (d) With respect to the allegations of ill-treatment, injuries and torture inflicted in particular on trade union leaders, the Committee, while expressing its grave concern at these allegations, requests the Government to carry out a prompt and independent legal investigation of the alleged cases of torture with a view to elucidating the facts in full, to identifying the persons responsible and taking proceedings against them, as well as to keep it informed of the outcome of its investigations.

Case No. 1218

COMPLAINT PRESENTED BY THE UNITARY CONFEDERATION OF  
WORKERS (CUT) AGAINST THE GOVERNMENT OF COSTA RICA

447. The complaint presented by the Unitary Confederation of Workers (CUT) is contained in a communication dated 20 June 1983. The Government replied in a communication dated 30 August 1983.

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

A. The complainant's allegations

449. The CUT alleges in its communication of 20 June 1983 that the trade unionists Ricardo Quirós Castro, Edgar Salazar Murillo and Luis Angel Gamboa Venegas were arrested by the metropolitan police on 14 June 1983 as they were putting up posters of the Committee on Central American of Trade Union Unity in the Amón district of the capital. According to the CUT, during the period of their detention, which lasted until almost midnight on 15 June, these trade unionists were subjected to numerous acts of ill-treatment and torture (blows, kicks, threats with dogs, insults, etc.) by officers of the National Security Agency, and remained blindfolded for more than 10 hours and without eating or drinking for more than 20 hours.

450. The CUT includes a copy of the complaint lodged by the above-mentioned trade unionists against the National Security Agency, and which provides a detailed account of what happened.

B. The Government's reply

451. In its communication of 30 August 1983 the Government states that it appears from the files of the Second Agency of the Public Prosecutor, of the Supreme Court of Justice, that the event which led to the arrest of the trade unionists is typical of those covered by legislation in force, in Title VI of the Penal Code referring to violations against property and patrimony, section 384, second paragraph of which reads as follows: "Imprisonment of between three and 30 days and a fine will be imposed for: (2) Notices on walls. On those persons who, for the purposes of advertisement or propaganda and without the permission of the owner or possessor, or of the respective authority, as the case may be, writes or draws on or attaches papers or posters to the exterior part of a building, whether public or private, residential house or wall". On the basis of this legal provision, the trade unionists referred to by the complainant were found guilty of disturbing the peace and defacing public property.

452. Furthermore - the Government continues - it should be stressed that the propaganda in question did not concern a trade union activity in the strict sense of the term but made statements such as "End the foreign invasion in Central America" which are in no way related to trade union matters.

453. As regards the allegations concerning the supposed treatment of the trade unionists during the period of their detention, the Government states that the national security officers accused before the courts say that they fully respected human rights as regards the treatment given to the detainees and that they acted in accordance with the procedure established by regulations of the Ministry of Public Security concerning interrogations.

454. However, the Government points out that the proceedings against the security officers in question are still pending in the First Penal Court. At the same time, a detailed enquiry is being held by the Office of Human Rights of the Attorney-General of the Republic, the results of which will be immediately communicated as soon as they are available.

### C. The Committee's conclusions

455. The Committee notes that the allegations concern the arrest of three trade unionists (Messrs. Ricardo Quirós, Edgar Salazar and Luis Angel Gamboa) for two days, as well as acts of torture and the unsatisfactory conditions of their detention.

456. The Committee notes that it appears from the allegations and the Government's reply that the event which led to the arrest of the trade unionists was the posting of bills in public places without authorisation, an act which is punishable under the second paragraph of section 384 of the Penal Code by the deprivation of liberty when the fixing of posters is carried out "without the permission of the owner or possessor, or of the respective authority". The Committee accordingly considers that this aspect of the case does not call for further examination.

457. As regards the unsatisfactory conditions of detention and the acts of torture to which these trade unionists were allegedly subjected, and which are described in detail in the complaint lodged by the latter before the judicial authorities of Costa Rica, the Committee expresses its deep concern at these allegations. The Committee notes that, according to the Government, a detailed investigation is being carried out by the First Penal Court and by the Office of Human Rights of the Attorney-General, the results of which will be transmitted. The Committee hopes that the Government will inform it shortly of the results.

### The Committee's recommendations

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

- (a) The Committee notes that the trade unionists Ricardo Quirós, Edgar Salazar and Luis Angel Gamboa remained in detention for two days for putting up, in public places, posters without authorisation. It considers that this aspect of the case does not call for further examination.
- (b) The Committee expresses its deep concern at the allegations concerning unsatisfactory conditions of detention and the acts of torture which according to the complainant, were suffered by the above-mentioned trade unionists. The Committee hopes that the Government will send it shortly the results of the inquiry into the matter.

CASES IN WHICH THE COMMITTEE HAS REACHED  
INTERIM CONCLUSIONS

Case No. 1130

COMPLAINT PRESENTED BY THE CAPITOL EMPLOYEES ORGANISING GROUP  
AGAINST THE GOVERNMENT OF THE UNITED STATES OF AMERICA

459. The Committee has already examined this case at its November 1982 meeting when it presented interim conclusions to the Governing Body.<sup>1</sup> Since then, the Capitol Employees Organising Group (CEOG) has sent additional information in communications dated 22 December 1982, 17 and 25 January, 3 February, 11 August and 21 September 1983. The Government transmitted communications dated 18 February, 13 May and 18 October 1983 concerning the case.

460. The United States of America 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. Previous examination of the case

461. The Committee observed that, according to the CEOG, - a trade union formed in December 1979 and representing a majority of Senate restaurant employees - the US Senate had refused - since the CEOG's first recognition petition dated 3 March 1980 - to grant it exclusive bargaining agent status for employees of the Senate restaurants and was harassing its members. The Committee further noted that a high-level Senate study into this situation was under way and it requested the Government to supply a copy of the findings and recommendations of the study, which, according to the Government, was to be completed, hopefully, before March 1983. In the meantime the Committee expressed the hope that the study and dialogue between the parties would ensure a situation in which the workers concerned might carry out normal trade union activities in full conformity with the principles of freedom of association.

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<sup>1</sup> 218th Report, paras. 737 to 750, approved by the Governing Body at its 221st Session (November 1982).

## B. Further developments

462. On 22 December 1982, the CEOG communicated additional information to the effect that in mid-1980 the management had convened a meeting with a representative of the union and officials of the Hotel and Restaurant Employees Union Local 25 in order to direct the restaurant workers to organise through Local 25. The CEOG decided not to associate with Local 25 because the constitution of that Local disfranchises those union members who are not American citizens, whereas about 20 per cent of the CEOG's members are Hispanic Americans who do not hold US citizenship. The CEOG complained thereafter to the management about certain anti-union activities such as inviting Local 25 representatives to the restaurants to distribute literature when CEOG representatives were absent. In addition, the CEOG states that, on 21 October 1982, it requested the President of the Senate to introduce a petition to the Senate to amend Senate Rule 50 which at present prohibits discrimination but provides no enforcement mechanism or remedies. According to the CEOG, although the Senate met throughout December, its petition was not recorded in the Senate Journal in accordance with Senate Rules although many petitions from ordinary citizens and organisations were presented to the Senate for action and it has received no notice that its petition was somehow technically deficient, thus preventing its presentation, nor has it received any information as to the fate of the petition.

463. In its communication of 17 January 1983, the CEOG explains that, on 15 December 1982, it presented the Senate Committee on Rules and Administration with a proposed contract between the CEOG and the Architect of the Capitol (the employer), which includes remedies for grievances, in an attempt to end the tension in the restaurants. According to the complainant, despite its declaration of willingness to negotiate the terms of the agreement, no reply has been received.

464. In its communication of 25 January 1983, the CEOG supplies a copy of the reply of the Senate Committee stating that it has no authority to accord exclusive recognition to any labour organisation or to engage in collective bargaining with it. The CEOG again raises the comparison of other Congressional employees - the employees of the Library of Congress and the Government Printing Office - who have the right to collective bargaining under the Civil Service Reform Act, 1978, and who had been negotiating with the management before the passage of that Act. The complainant states that the Senate Committee met on 25 January 1983 - the CEOG being present - and discussed the restaurant employees' situation in terms of turning the Senate restaurants over to a private employer. In previous communications the CEOG has stated its unease at this alternative because it would constitute an attempt to thwart the creation of a free, democratic trade union movement in the Senate. In its communication of 3 February 1983, the CEOG complains that Senate restaurant employees were expressly forbidden to attend a major parade

in Washington whereas the President of the United States had given all Executive Branch employees two hours' administrative leave to join the parade.

465. In its communication of 11 August 1983, the complainant states that the Senate Committee has decided to organise a poll in September among Senate restaurant employees to determine whether they wish to become members of a union and whether they prefer to work for a private employer. The CEOG cites a 1969 US Supreme Court decision obligating employers to bargain with a union once that union can prove that it represents a majority of the concerned workers. In addition it alleges that the management is continuing its unfair labour practices by trying to discredit the CEOG and its officers. In its most recent communication of 21 September 1983, the CEOG states that on 12 and 13 September the US Senate Committee conducted the poll among 210 eligible restaurant employees, asking them, among other things, if they wished to become "a member of a union for the purposes of collective bargaining". According to the CEOG, such a poll would not ordinarily be permitted under US labour laws following the numerous unfair labour practices of the type the Senate has engaged in during the three-and-a-half years preceding the poll. Nevertheless, the CEOG points out, the election was conducted in a manner which also violates US labour-management fairness standards. For example: the management encouraged a number of employees to prepare and distribute a leaflet attacking the CEOG and alleging that a union victory would cost the employees their jobs; management officials met with a number of Hispanic-American employees and told them that a vote for the union could mean they would be thrown out of work; although a CEOG member was permitted to participate in the ballot-counting, no CEOG member was permitted to observe or monitor the election process as the balloting took place; the employer conducted its own election according to its own rules and procedures after formulating its own questions without consulting the CEOG about the procedures or the questions and without a neutral third party conducting the balloting as it requires other public and private employers to do under the nation's labour relations statutes; a management official was seen instructing employees on how to mark their ballots. The complainant attaches a signed statement of a witness to this last allegation.

466. In a communication dated 18 February 1983 the Government makes reference to the 25 January meeting of the Senate Committee on Rules and Administration at which it was decided that, in order to gain a better understanding of the number and variety of maintenance and operations jobs potentially affected by a decision on organisational rights, the Committee's staff would prepare a total inventory of all categories of permanent personnel of the Senate, including the terms of their contracts and their status as salaried or non-salaried workers. From a copy of the minutes of the meeting - supplied by the Government - it appears that the question will remain on the Committee's agenda until the overall study is completed.

467. The Government, in its communication of 13 May 1983, states that in May 1983 the Senate Committee examined the inventory and decided to examine the question of turning the restaurant management over to private firms (which are subject to the general labour legislation) and to study how this would affect present restaurant staff, in particular the protection of wages and other benefits. It undertakes to keep the Committee informed of the outcome of this study.

468. In the annexes attached to this communication the Government explains why the CEOG's petition of 21 October 1982 has not been placed before the Senate: under the relevant Senate Rules, such petitions will not be recorded in the Senate Journal unless any Senator requests that they be laid before the Senate; this did not happen for the CEOG's petition. It also explains that the refusal to allow the restaurant employees to attend a major parade in Washington was not harassment because the Presidential Order granting 2 hours' leave to executive branch employees to attend the parade did not apply to those Executive Branch restaurant workers employed by private firms nor to legislative branch employees; there was also concern over feeding the congressional employees within that time.

469. To its communication of 18 October 1983 the Government annexes a copy of the minutes of the August meeting of the Senate Committee on Rules and Administration at which it was decided to conduct a secret ballot of restaurant employees to decide whether they would like to organise for collective bargaining purposes or to work for a private concessionaire. Two hundred and fourteen employees were determined to be eligible to vote, management, temporary and probationary employees being excluded. Sample ballots and voting procedures were posted on restaurant bulletin boards and were included in eligible employees' pay envelopes on 2 September 1983. The ballot took place on 12 and 13 September 1983 and the Government indicates that 187 or 89 per cent of eligible employees voted. The results are as follows: 35 (19 per cent) employees wished to become a member of a union for collective bargaining purposes and 146 (81 per cent) did not; 26 (15 per cent) employees agreed to private management if their wage and employment benefits could be guaranteed and 149 (85 per cent) did not. To a third question concerning outside management without guarantees as to current wage and employment benefits 11 (6 per cent) employees agreed and 165 (94 per cent) disagreed. The fourth question requested a rating of the present management between poor - below average - average - above average - excellent. According to the Government, the results of the ballot will be used solely by the Senate Rules Committee to assist in its review of the issues concerning the management and operation of the Senate restaurants; the Committee is to meet on this in the near future.

C. The Committee's conclusions

470. The Committee notes that the results of the Senate Committee study into the situation of the CEOG - which claims to represent the majority of Senate restaurant employees - led the Senate Committee to call for a further study, this time into the effects of turning the restaurant management over to private firms (which are subject to the general labour legislation) and to organise a ballot of the employees concerned. The Committee also notes that since its last examination of the case the complainant has supplied information concerning management harassment of its members such as inviting other unions to the workplace, silence on the presentation of a petition and a proposed contract, refusing time off to attend a major parade and employer interference in the polling of restaurant employees.

471. While appreciating the thoroughness of the Senate studies and the time required to organise the ballot, the Committee would recall that the CEOG's original claim for recognition dates from March 1980 and that the Senate has been studying this question since August 1982. The Committee would point out that excessively lengthy proceedings to determine the status of employees and bodies claiming to represent them can result in a growing sense of injustice and it requests the Government to send a copy of the findings and recommendations of the Senate Rules Committee study of the question, which it hopes will be completed rapidly. In the meantime, the Committee would once again express the hope that a dialogue may continue between the parties and that the conclusions of the second study will result in a situation in which the workers concerned may be able to carry out normal trade union activities in full conformity with the principles of freedom of association.

472. As regards the alleged harassment of unionised staff, while appreciating the Government's explanations as to the treatment of the CEOG's petition and proposed contract as well as to the refusal of time off, the Committee would point out that if these explanations had been made to the staff involved at the various meetings with the employer and the Senate Committee itself, the ongoing tension in the Senate restaurants might have been avoided. In the absence of more specific replies from the Government, the Committee would recall that no person should be prejudiced in his employment by reason of his trade union membership, even if that trade union is not recognised by the employer as representing the majority of workers concerned. It trusts that, pending the outcome of the further Senate study, care will be taken to avoid any form of discrimination towards Senate restaurant workers who are members of the CEOG.

473. The Committee, while taking note of the recent specific allegations concerning the September opinion poll, observes that the Government has not yet had an opportunity to reply to them. It would make a preliminary observation, however, based on the detailed

information supplied by the Government in its October communication, that the actual running of the ballot and the layout and content of the ballot form do not jeopardise trade union rights.

The Committee's recommendations

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

- (a) The Committee requests the Government to send a copy of the findings and recommendations of the Senate study into the situation of Senate restaurant workers, which will bear upon any possible recognition of the Capitol Employees Organising Group, and which the Committee hopes will be completed rapidly.
- (b) The Committee again expresses the hope that a dialogue may continue between the parties, and that the conclusions of the study will result in a situation in which the workers concerned may be able to carry out normal trade union activities in full conformity with the principles of freedom of association.
- (c) As regards the alleged harassment of the members and leaders of the complainant union, the Committee, while appreciating the Government's explanations of these incidents, would point out that no person should be prejudiced in his employment by reason of his trade union membership or activities, even if that union is not recognised by the employer as representing the majority of workers concerned. The Committee trusts that care will be taken to avoid any form of discrimination towards CEOG members.
- (d) The Committee requests the Government to transmit as soon as possible its observations on the specific allegations of employer interference in the opinion poll that was taken amongst the restaurant workers in September 1983.

Case No. 1135

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF  
FREE TRADE UNIONS, THE ORGANISATIONS OF AFRICAN TRADE  
UNION UNITY AND VARIOUS OTHER TRADE UNION ORGANISATIONS  
AGAINST THE GOVERNMENT OF GHANA

475. The Committee has examined this case on two previous occasions, the most recent being during its May 1983 meeting when it presented an interim report to the Governing Body.<sup>1</sup> Since then the Government transmitted information in a communication dated 7 July 1983 and one complainant organisation, the International Federation of Building and Woodworkers, sent additional information in support of the complaints in a communication dated 15 July 1983.

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

A. Previous examination of the case

477. The allegations outstanding after the Committee's last examination of this case concern anti-union repression - directly or indirectly by the Government - during early 1982. The Governing Body, on the Committee's recommendation, approved the following conclusions:

- (a) As regards the allegations relating to the freezing of trade union bank accounts and those of certain trade union leaders, the Committee notes that, according to the Government, the bank accounts of the Trades Union Congress have been released; it requests the Government to supply detailed and precise information concerning the measures that are being taken, or are envisaged, to release the bank accounts of those other trade unions and trade union leaders whose assets were frozen.
- (b) As regards the confiscation of the passports of a certain number of trade unionists, the Committee requests the Government to inform it of the precise situations of the trade unionists so affected; it expresses the firm hope that measures will be taken at an early date to regularise the situation of the trade

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<sup>1</sup> See 226th Report, paras. 205 to 229, approved by the Governing Body at its 223rd Session (May-June 1983).

unionists concerned, some of whom have been unable to return to the country to participate in the current trade union elections. The Committee also requests the Government to supply information on those trade unionists released on bail.

- (c) With regard to the current elections, the Committee requests the Government to inform it whether all of these elections have now taken place and to confirm whether all the former members of the TUC who were ousted following the events of April 1982, and who have remained in Ghana, as well as the ten trade union leaders mentioned by the complainants, were able to participate in those elections; more specifically, the Committee requests the Government to indicate whether these ten trade union leaders are able to carry out normal trade union activities and to supply precise information concerning their legal status.
- (d) As regards the alleged attack upon, and occupation of, the headquarters of certain trade unions, including the TUC, the Committee again trusts that genuine and democratically elected leaders are, or soon will be, in possession of these premises; it requests the Government to provide information on the situation regarding these premises and to take steps to return these to the unions concerned, if this has not already been done.
- (e) The Committee requests the Government to transmit its observations on the latest allegations concerning the operations of "workers defence committees" in workplaces, which are elected by workers but depend on government support and can be easily used to undermine trade unions and their representatives.
- (f) As regards the case as a whole, the Committee considers that, in order to reach conclusions in full knowledge of the facts, and in view of the contradictory information supplied by the complainants and the Government on a number of the allegations made, it would be useful if a representative of the Director-General could visit the country to examine the situation on the spot; it, accordingly, requests the Government to state whether it would be willing to receive a mission to Ghana by a representative of the Director-General who would submit a report on the case as a whole to the Committee prior to its next meeting, in particular on the following aspects of the case: the freezing of trade union assets and of those of certain trade union leaders, the confiscation of passports of certain trade union leaders and the situation of those on bail, the current trade union elections and the situation of trade union premises.

B. Further developments

478. In its communication of 7 July 1983 the Government states that the bank accounts of the Trades Union Congress and the 17 national unions involved in this case have been released since February 1983 and are being operated freely by those organisations in accordance with their own financial procedures.

479. As concerns the alleged attack upon, and occupation of certain trade union headquarters, the Government reiterates that the occupation was carried out by local branch trade unions under the leadership of the Association of Local Trade Unions without any government involvement whatsoever. It states that the premises have all along been in the possession of the labour movement and the national unions continue to operate from there. Moreover, it repeats that it immediately extended security protection at that time to TUC property and leaders and that this was not a form of preventative detention. It denies that the leaders' passports were confiscated and states that they have been free to travel outside Ghana.

480. With regard to the trade union elections taking place in May 1983, the Government states that 16 national unions have held their national delegates conferences and have elected permanent officers. It emphasises that all trade union leaders, including those mentioned by the complainant organisations, were free to carry on their trade union activities and participate in the elections. In addition, it states that the TUC is planning its own national delegates conference to approve its new constitution and elect national officers and the dates will be communicated to the Committee.

481. The Government lastly states that the workers' defence committees are political organs of the sovereign State of Ghana and do not fall within the jurisdiction of the ILO, therefore any attempt to involve them in the discussion of this case is considered as undue interference in the sovereign affairs of Ghana. The Government adds that the operation of the workers' defence committees in no way infringes on the role, rights and responsibilities of trade unions which are fully recognised by the Government.

482. The International Federation of Building and Woodworkers, in its communication of 15 July 1983, does not deny that the elections held in national unions have been largely free but repeats that some serious restrictions were placed on the freedom of the previous leaders to participate in the elections (see para. 220 of the Committee's 226th Report). It is concerned that the authorities are not doing all they could to protect trade unionists, in particular from attacks by mobs instigated by the workers' defence committees. For example, according to this complainant, on 9 May 1983 an organised mob attacked trade union leaders who were participating in a postponed May Day rally and wounded several of them. The complainant cites a

second example of such a mob attack, on 1 June, on the TUC Regional Office at Takoradi during which some of the union officers were beaten and wounded. At the same time union property was taken away to the office of the Regional Co-ordinator of the workers' defence committees but was later returned to the union.

### C. The Committee's conclusions

483. The Committee has taken careful note of the Government's observations on the outstanding allegations in this case.

484. As regards the freezing of trade union bank accounts and those of certain trade union leaders, the Committee notes that, according to the Government, all trade union accounts have been released and are being operated freely. However, it notes that the Government gives no information on the situation of the accounts of trade union leaders which were also frozen in February 1982. It accordingly repeats its request to the Government to supply details on the measures that are being taken or envisaged to release the bank accounts of the individuals concerned.

485. The Committee notes the Government's statement that the passports of a certain number of trade unionists have not been confiscated and the persons concerned have been free to travel outside Ghana. It would point out, however, in this connection that it had also requested the Government for information on those trade unionists allegedly released on bail of 100,000 cedi each after being detained in April 1982. The Committee accordingly repeats its request for information on the bail situation.

486. The Committee notes with interest that 16 of the 17 national trade unions have completed their elections and that the Trade Union Congress intends to hold its elections in the near future. It requests the Government to keep it informed of the completion of these pending elections.

487. As regards the alleged attack upon, and occupation of headquarters of certain trade unions, the Committee notes that the Government confines its remarks to stating that the premises in question have always been in the possession of the national unions which continue to operate freely from there. The Committee would accordingly request the Government to supply further detailed information on this aspect of the case.

488. As regards the alleged violent operations of workers' defence committees, the Committee notes that the Government considers them as political organs unconnected with trade unions, their rights or activities. Nevertheless, in view of the most recent allegation

that two mob attacks on trade unionists, in May and June 1983, apparently involved members of the workers' defence committees, the Committee would adjourn its examination of this aspect of the case until it receives the Government's specific comments on these incidents.

489. More generally, the Committee notes with regret that the Government makes no reference to the proposal made by the Committee that a visit by a representative of the Director-General be carried out to the country to examine the situation, which is the subject of contradictory information from the complainants and the Government. The Committee reiterates its hope that the Government will shortly agree to such a mission which could contribute to a better knowledge of the trade union situation and to a useful examination of possible solutions to the problems at issue. The Committee requests the Government to indicate at an early date its willingness to accept an on-the-spot mission to Ghana by a representative of the Director-General in order to enable the Committee to have at its disposal sufficient and reliable information on which to base its conclusions.

#### The Committee's recommendations

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

- (a) The Committee requests the Government to send its specific comments on the most recent allegations of anti-union mob violence in May and June 1983 by members of the workers' defence committees.
- (b) The Committee repeats its request to the Government to supply details on the measures that are being taken or envisaged to release the bank accounts of individual trade union leaders which were frozen in February 1982.
- (c) The Committee notes the information supplied by the Government to the effect that the passports of a certain number of trade unionists have not been confiscated and the persons concerned have been free to travel outside Ghana. It nevertheless requests the Government to clarify the allegation that these unionists remain on bail.
- (d) As regards the pending trade union elections for the Trade Union Congress, the Committee notes that they will soon take place. It requests the Government to keep it informed of the results of the pending elections.

- (e) As regards the attack upon and occupation of the headquarters of certain trade unions the Committee, in view of the contradictory information before it, requests the Government to supply further detailed information on this aspect of the case.
- (f) More generally the Committee notes with regret that the Government makes no reference to the proposal made by the Committee that a visit by a representative of the Director-General be carried out to the country to examine the situation and reiterates its hope that the Government will shortly agree to such a mission which could contribute to a better knowledge of the trade union situation and to a useful examination of possible solutions to the problems at issue. The Committee requests the Government to indicate at an early date its willingness to accept an on-the-spot mission to Ghana by a representative of the Director-General in order to enable it to have at its disposal sufficient and reliable information upon which to base its conclusions.

Case No. 1146

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

491. By a communication dated 14 February 1983, the International Confederation of Free Trade Unions (ICFTU) submitted a complaint of violations of trade union rights in Iraq. The Government replied in communications dated 22 June and 6 October 1983.

492. Iraq has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

493. The ICFTU bases its complaint on allegations received from the Workers' Democratic Trade Union Movement of the Republic of Iraq, according to which Iraqi workers are suffering violations of trade union rights and freedoms accompanied by persecution, murder, torture and detentions.

494. According to the complainant, a trade union leadership isolated from the working masses was imposed in circumstances of

undemocratic, rigged elections in 1969; since then, it is alleged, trade union activities have been reserved solely for members of the ruling Ba'ath party, trade union membership has become compulsory although the Labour Code (No. 151 of 1970) provides for voluntary union membership, and the payment of contributions is also compulsory. Furthermore, according to the complainant, the official trade union leadership has turned into puppets in the hands of the Government which manipulates them and impels them to implement its decisions, particularly in the period after the sixth Congress which was held in August 1980 following the physical liquidation of Mohamed Ayesh and Baden Fadel (respectively President and General Secretary of the Federation of Trade Unions of Iraq) and other militants. The trade unions have since allegedly been turned into a police tool linked with the intelligence and security services. On this point, the complainant indicates that the trade unions have allegedly been used to facilitate the compulsory recruitment of workers for the war between Iraq and Iran.

495. The complainant quotes the names of 13 workers who allegedly died under torture and at places of execution (see Annex) and the names of six trade union leaders who they state have disappeared. They are the following: Handaal Jaadar, of the Union of Food Industry Workers, who was President of the Dockers' Union at Basrah; Badran Rasan, Zaemil Hatem and Abdulla Hatem, of the Cigarette Workers' Union, and Abdel Razzak Ahmed and Faed Mustapha Abdel Karim of the Mechanical Engineering Workers' Union.

496. Lastly, the complainant refers generally to "unjust amendments" introduced by the Government to the Labour Code and Social Security Code, which favour employers and parasitic sections of the population who benefit from national enterprises. It also points out that the Government has exempted multinational firms from coverage under these two Codes.

#### B. The Government's reply

497. In its communication of 22 June 1983, the Government denies the existence of the so-called "Workers Democratic Trade Union Movement" either in the past history or present of the Iraqi trade union movement; accordingly it disputes the authenticity of the information supplied on alleged violations of trade union rights.

498. According to the Government, the Federation of Trade Unions in Iraq was freely and democratically set up as a result of elections in which the majority of Iraqi workers participated. In this connection, it points out that new trade union elections will take place from 21 to 25 August 1983 and again all Iraqi workers are free to participate in them. According to the Government, if the

"Workers' Democratic Trade Union Movement" really exists it is also invited to take part in the elections in full freedom.

499. The Government stresses that the complainant's allegations are false and aimed at jeopardising the Iraqi Revolution. It also states that the complaint unjustly attacks the legitimate democratic trade union movement which was set up and operates under the Labour Code, legislation which together with the Constitution of Iraq assures full freedom of association.

500. In its communication of 6 October 1983, the Government repeats that the elections - held in 1980 - for the General Federation of Trade Unions in Iraq were free and democratic, and were attended by more than 70 international organisations. According to the Government, the recent trade union elections were equally free from any interference and it supplies a copy of the election regulations in support of this. In addition, the Government denies that trade union committees and activities are monopolised by the Arab Ba'ath Socialist Party and that trade union membership is compulsory. It points out that under section 216 of the Labour Code, union subscriptions are not compulsory nor is trade union membership. As an example of the independence of the Iraqi trade union movement, the Government refers to an incident at the 69th Session of the International Labour Conference this year at which the Iraqi Workers' delegates left the plenary session in protest to a certain speaker but the Government delegation remained.

501. As regards the allegation that the President and General-Secretary of the Federation were liquidated for trade union reasons, the Government states that this is untrue because neither were trade unionists at the time that they were legally tried, in 1979, for conspiracy against the security of the State. They were sentenced to death in accordance with the laws in force.

502. The Government supplies details on each of the 13 workers who allegedly died under torture, stating that in six cases<sup>1</sup> no person of that name could be found, in five cases<sup>2</sup> the persons concerned died natural deaths at home and in two cases<sup>3</sup> the persons named have left Iraq of their own free will. As for the six

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<sup>1</sup> Abdul Rahman Abdul Kahim, Abed Ali Ubaid, Abi Abdul Razzaq, Hami Wahab, Rashid Jaaffar, Jabbar Safeh (Abou Ibas).

<sup>2</sup> Mhamoud Matar, Bakr Abdul Malik Obis, Joda Hussain, Saad Bachai, Abdul Hussain Faraj Said.

<sup>3</sup> Qassem Hussain Yassin and Abdul Hussain Kamal.

alleged trade unionists who disappeared, the Government states that, firstly, there is no union known as the Mechanical Engineering Workers' Union and, secondly, that two of the names are unknown (Abdul Razzaq Ahmed and Fayeque Mustafa Abdul Karim), one of them died a natural death at home (Abdulla Hatam), one was tried and sentenced under the laws in force for espionage (Handal Jadir), one travelled abroad for medical treatment and did not return (Badran Risan) and one of those persons named is a fugitive from justice charged with espionage (Zmil Hatam).

### C. The Committee's conclusions

503. As a preliminary remark the Committee would point out that the Government's denial of the existence of the "Workers' Democratic Trade Union Movement" does not render this complaint irreceivable, since the complainant, the ICFTU, being an organisation having consultative status with the ILO is, under the procedure in force, entitled to present complaints of infringements of trade union rights.

504. The Committee notes the contradictions existing between the complainant's allegations and the Government's reply concerning the torture and death of 13 workers and the disappearance of six trade union leaders. In the absence of more detailed evidence from both the complainant and the Government, the Committee can only recall generally that murders and torture constitute serious violations of fundamental human rights.

505. The Committee also observes the contradiction between the complainant's allegation that the President and General-Secretary of the General Federation of Trade Unions in Iraq were executed on account of their trade union activities and the Government's reply that they were not trade unionists at the time and were legally tried in 1979 for conspiracy against the security of the State, and were sentenced to death. In view of this, the Committee requests the Government to supply a copy of the judgement handed down against these persons and information as to when they ceased to be trade union leaders.

506. The Committee notes that the Government makes no specific reference to the allegation of "unjust amendments" to the Labour Code but cites its Constitution and the Labour Code as assuring full freedom of association. Since the complainant gives no details on this allegation and since the Committee of Experts on the Application of Conventions and Recommendations, in its periodic examination of Iraq's application of Convention No. 98, has made no comment on any amendments to the Code, the Committee considers that this aspect of