educational, social affairs and governmental bodies sectors" and that in the present case bargaining took place at the national level and concerned Quebec Government salaried employees, those of the schools and school commissions and those in the social affairs sector (i.e. hospitals, social service centres, reception centres and local community service centres) and in government bodies.

136. The Government confirms that the general labour relations system is characterised by a monopoly of trade union representation. In this system, a single workers' association may be recognised for the purpose of negotiating a collective agreement, provided that it represents the majority of workers in a specific group and this is generally called a "bargaining unit". A specialised court is responsible for determining which representative workers' association in fact has this majority of members and the choice made by that court can be questioned only in the final months preceding the expiry of a collective agreement.

137. It goes on to explain that the Civil Service Act provides for particular arrangements with regard to negotiable items and the definition of essential services involving government officials. In brief, Quebec legislation provides the same organisation and collective bargaining rights for all salaried employees in the public and para-public sectors as apply to salaried employees in the private sector. Bargaining in these sectors covers not only wages but also most of the other conditions of employment and, indeed in certain sectors, all of the conditions of employment. Furthermore, the right to strike is recognised for most salaried employees in these sectors and nearly all of the employees in the public and para-public sectors are organised and negotiate collective labour agreements with the State.

138. In describing the background to previous negotiations, the Government recalls that they took place in a period of economic growth. Since then the radical change in the economic situation - which no one could have foreseen - has led to a change in the remuneration conditions envisaged for the last year of application of the collective agreements and this meant that these agreements resulted in an untenable budgetary imbalance for the State and the population of Quebec. This being so, the Government called upon its salaried employees to make a collective effort to redress the situation by asking them to agree to wage restrictions dictated by the requirements of its economic policy.

139. Before adopting the three Acts referred to in this complaint, the Government tried to induce the unions to agree voluntarily to the exceptional measures required in the national economic interest. As the economic crisis had been accompanied by a budgetary crisis, a slump in tax earnings, an increase in the cost of social assistance programmes and other supplementary costs resulting from the increase in rates of interest on government borrowings and a

reduction in transfers from the Canadian Federal Government, the Government of Quebec claims that the remuneration it was paying as an employer was too high as it accounted for nearly 50 per cent of budgetary expenditure. Indeed as the staff in question comprised more than 335,000 workers, i.e. 15 per cent of all salaried employees in Quebec, the wage bill, i.e. Can.$10,380 million accounted for nearly 50 per cent of the expenditure of the Province of Quebec.

140. This being so, the Government considers that it had no choice in the public interest but to limit wage increases of state employees and to continue with its policy of aligning public sector salaries on those in the private sector.

141. The Government claims to have tried convincing the trade unions to take account of the public interest when they came to negotiating economic and social policies and it invited the main economic and social parties, including representatives of the trade union confederations, to an economic summit meeting in April 1982, at which it publicly announced the dramatic economic and budgetary situation with which it had to cope and where it urged the main social partners to participate in the collective effort in the interests of the Quebec population as a whole.

142. It adds that it explained to them that it was necessary to choose between increasing taxes, cutting back even further on public services or reducing wages paid in the public and the para-public sectors, and that it intended to opt for a policy of reducing the wages of its employees.

143. Between 15 and 20 April 1982, it met with all of the unions in the public and para-public sectors, in order to inform them that it had dismissed the idea of either increasing the burden on the taxpayer, or of substantially cutting back on public services as a means of extricating itself from the budgetary predicament weighing on public finances. It suggested reopening collective bargaining in the public sector as from 1 July 1982, while cutting back the increases envisaged for the last six months inversely proportionally to wage levels. The increases granted for that period amounted to Can.$899 million and the Government states that it asked the trade unions to agree to a reduction of Can.$521 million which would then enable it to balance its budget for 1982-83 and reduce the previously mentioned gap between wages in the public and those in the private sectors. The reorganisation proposed guaranteed full protection against increases in the cost of living for those in the lower salary groups (Can.$13,150) and a 50 per cent indexing of the middle-range salaries (Can.$22,448) while cancelling the increases envisaged in the case of the highest salary range (Can.$37,089 and above).

144. On 10 May 1982, the central trade unions, united as a common front, offered to begin negotiations in early June, but they tempered this offer by laying down prior conditions for the talks which were

unacceptable to the Government. The trade union proposal was, in fact, tantamount to purely and simply relinquishing the wages policy that the Government was trying to have accepted by the unions and it offered absolutely no assurance that a solution could be found in time to allow for the already well overdue preparation of a balanced budget. The Government then let these trade unions know that it accepted their offer immediately to begin negotiations but, in so doing, it pointed out that the unions left it no alternative but to take the steps necessary for balancing its 1982-83 budget. At the same time, the Government undertook, despite all, to pay the wage increases granted up to the expiry of the collective agreements, that is, until 31 December 1982.

145. The Government goes on to explain that, on 25 May 1982 at the reading of its budget speech, it stated that it would waive the unilateral reopening of collective bargaining, and the Minister of Finance announced that, as from 1 January 1983 and for a specified three-month period, some of the increases envisaged for the last six months of the year would be recuperated. The Government, once again on that occasion, reiterated that it was prepared to allow the trade union organisations to negotiate the amounts it would need to balance its budget within the limits determined by the graduated freeze proposed. As difficult as this decision was because of the considerable effects it would have on the outcome of talks to be held with the trade union organisations in the public and para-public sectors, it did show that the government authorities were willing to seek a negotiated solution despite the serious economic and social difficulties caused by the crisis and their concern that employment in the sectors concerned be affected as little as possible because, instead of envisaging massive dismissals in a society which already had a high official unemployment rate (of around 13 per cent) it opted - so it claims - for a cut-back limited exclusively to wages paid by the Public Treasury.

146. The Government confirms that, on 26 May 1982, it tabled Bill No. 70 concerning remuneration in the public sector (L.Q. 1982, c. 35) which was adopted on 23 June 1982, after having passed before a parliamentary committee during which stage the trade union organisations had had the opportunity to express their point of view to the Parliamentarians and the public at large.

147. The Government admits that as it could not reach any agreement with the trade unions on the exclusion from negotiations of certain working conditions, Parliament had to adopt Act No. 70 fixing the remuneration to be paid to salaried employees in the public sector for a three-month period following the date set for the expiry of their collective agreements, even though no agreement had been reached between the parties. The Act extends collective agreements for three months (section 3) and this extension involves a prohibition of all strikes during that three-month period. Furthermore the Act blocks promotions during 1983 and any wage increases based on experience or

productivity, but it allows for the possibility of determining different rules by agreement in so far as these alternatives in no way affected wage costs. In other words, Act No. 70 favours collective bargaining within limits and its provisions on the recuperation of wage increases are applied only because it proved impossible to reach any negotiated agreement.

148. Nevertheless, intensive though unsuccessful negotiations followed the adoption of the Act and, by the end of November, the gap between the two parties to the negotiations was such that it was no longer possible to believe that any agreement could be reached within a reasonable period. Hence, faced by the failure of the negotiations and the announcement of a general and unlimited strike in all of the public and para-public sectors and as the Government had to balance its budget for the years 1983-84 and 1984-85, the Quebec Parliament was, on 11 December 1982, obliged to adopt Act No. 105 which determines working conditions applicable to the public and para-public sectors.

149. The Government claims that Act No. 105 provides for a relaxation of Act No. 70 in such a way as to protect the lower income groups against the wage cuts provided for in Act No. 70 during the period 1 January-31 March 1983 as the negotiations with the trade unions on this point had produced no agreement. The contents of the collective agreements resulting from Act. No. 105 reiterate the clauses on which agreement had been reached between the parties during negotiations and the Government continued to negotiate with the unions in an effort to seek an agreement within the limits beyond which it could not go.

150. It therefore proposed to the unions a moratorium of one year in the application of certain provisions of the decrees relating to security of employment as well as the setting up of a joint salaries body and the creation of joint committees responsible for considering protection of employment and quality and productivity in the services of the social affairs and educational sectors. It also proposed the creation of three working groups responsible respectively for discussing and considering a revision of the Labour Code, the recycling of employees affected by technical changes and the renovation of the negotiating system in the public sector. The trade unions welcomed the proposal concerning a joint body on wages; that body will be responsible for discussing the basis for the Government's wage policy and any alternatives.

151. None the less from the beginning of 1983 certain employees in the public and para-public sectors indulged in illegal work stoppages while negotiations were in progress. As an agreement on principles had been reached with the trade unions in the social affairs sector (hospitals and social services), the strike was limited to teachers. But according to the Government this strike constituted a serious threat to a society shattered by the economic crisis and it would have been irresponsible to tolerate it for any longer.

152. Accordingly, on 17 February 1983, the Quebec Parliament was forced to adopt Act No. 111 to ensure the re-establishment of educational services in the public sector since the teachers were the only organised workers defying the law and their action was paralysing the whole of the primary and secondary public education system in Quebec.

153. The Government confirms that, faced with the threatened disciplinary action provided for in the Act, the trade unions ordered a return to work on 20 February 1983 after a month of illegal strikes and persecution of those who wished to work.

154. The Government admits that the Act imposed a return to work by no later than 17 February 1983 and provided various sanctions for those refusing to comply. Thus each day of illegal strike would result in a reduction in wages equal to the amount that would have been owing for the period of absence due to strike plus a fine. Furthermore, anyone hindering access to a place of work risked dismissal. The Act also provided that, in cases where the sanctions were not enough to ensure the return to work of a sufficient number of workers, the Government could apply additional sanctions. The Government does, however, stress that, in fact, it was not necessary to have recourse to such measures as the teachers decided to return to work shortly after the adoption of the Act.

155. As for the reference, in Act No. 111, to the Quebec Charter of Human Rights, the Government explains that this reference simply allowed for the inversion of the burden of proof in the case of criminal proceedings and that this inversion was justified by the fact that thousands of teachers had broken the law which states, precisely, that teachers absent from work shall be presumed to have broken the law.

156. Once the situation returned to normal, the Government confirms, it convened a Parliamentary commission to examine the causes of the conflict in the education sector and hearings lasted four days during which all parties concerned were able to publicly submit memoranda on the dispute in question. As the result of recommendations made by a number of groups, three arbiters approved by the Quebec Central Teachers' Union were appointed. The arbiters' report, which was accepted by the trade union side, resulted in the signing of agreements amending the decrees applicable to the education sector under Act No. 105. This gesture, claims the Government, shows clearly that - within the limits of its real financial capabilities - it was still prepared to adopt the principle of voluntary bargaining before all else.

157. In concluding, the Government states that there were genuine negotiations throughout the period when the collective agreements were being renewed because the vast majority of unions representing more than two-thirds of salaried employees in the public and para-public

sectors accepted the tenor of the collective agreements or else reached agreements amending the decrees which determine their working conditions. According to the Government it was only because of the intransigent nature of the trade union demands and the failure of discussions and negotiations aimed at convincing them to abide voluntarily by the wage restrictions which were made necessary by the crisis that forced the Government to take exceptional measures aimed at instituting a general negotiating framework dictated by the requirements of its economic and social policy. The Government considers that it acted in such a way as to ensure continued negotiation, even on wage questions, within the framework of Act No. 70. It considers also that the context of the economic and budgeting crisis and the failure of negotiations on voluntary wage reductions forced it to adopt, firstly, Act No. 70, and, subsequently, Acts Nos. 105 and 111 and it claims, furthermore, that it had no alternative but to apply wage restriction measures as wages could not be determined by negotiation. In addition, it states, these exceptional measures were of a limited, three-month duration in the case of Act No. 70 and of three years' duration in the case of Acts Nos. 105 and 111 and Government and unions agreed that the joint wage body would be entrusted with reviewing wage conditions contained in the decrees for the third year of application in the light of developments in the economic situation. The Government adds that it did not have the same means as the private employers for obtaining voluntary wage reductions from the unions. It recalls that, in fact, in many Canadian provinces several trade unions in the private sector had voluntarily agreed to wage reductions in order to allow their undertakings to survive and to maintain their jobs, but that in the public and para-public sectors there would be no question of economic survival of the "undertaking" or even a reduction in activities and massive dismissals because public and para-public employees enjoy total job security; therefore the trade unions were not very forthcoming in agreeing to these restrictions. It states, however, that the Government and unions did manage to reach agreements on the working conditions of more than two-thirds of government employees.

C. The Committee's conclusions

158. The Committee notes that the present case concerns provincial government intervention in wage determination and the exercise of the right to strike in the public and para-public sectors in 1982/83. It further concerns the adoption, in February 1983, of repressive legislation, i.e. Act No. 111, aimed at forcing a return to work of teachers who had taken protest strike action in January 1983 against a unilateral decision by the authorities to reduce their wages. This Act suspended the teachers' right to strike and certain other trade union rights until 31 December 1985.

159. An examination of the legislation, and especially of Act No. 70 of 23 June 1982 accompanied by sessional document No. 350 of 26 May 1982 and of decrees relating to the application of Act No. 70 and amendments thereto introduced by Act No. 105 of 11 December 1982 accompanied by sessional document No. 650 of 9 December 1982, shows that between 1 January and 1 April 1983 many workers in the public and para-public sectors suffered a reduction of some 18 per cent in the salaries which had previously been negotiated between themselves and their employers and that the three-month extension of the collective agreements which would have expired on 31 December 1982 resulted in a suspension of the right to strike for that period. It also appears from Act No. 105 that the wage reductions were imposed on certain employees until 1985.

160. While noting that, according to the Government, negotiations with the trade unions in question did take place and did, for a considerable number of them (two-thirds) including some of the complainant unions, result in the conclusion of collective agreements or other agreements amending decrees determining working conditions, the fact, none the less, remains that Acts Nos. 70 and 105 imposed considerable reductions in wages on one-third of the salaried employees concerned by proclaiming that the Government's financial policy requirements took precedence over collective agreements even though, according to the Government again, intense though fruitless negotiations had taken place since mid-1982. The Committee considers that the imposition under Act No. 105 of such restrictions for three years is too long.

161. The description, advanced by both the complainants and the Government, of the legal framework of collective labour relations in Quebec shows that the Labour Code covers both the public and the private sectors and that the workers in the public and para-public sectors in that province enjoyed the right to free collective bargaining and the right to strike except during the currency of a collective agreement.

162. The Committee would, in general terms, stress the importance it attaches to the principle of the independence of the parties to collective bargaining. This is a principle which was generally recognised during the preparatory discussions leading up to the adoption by the International Labour Conference of the Collective Bargaining Convention (No. 154), 1981. According to this principle, the state bodies should refrain from intervening with a view to amending the tenor of freely concluded collective agreements. The Committee has always indicated that it was aware that in a period of economic and financial crisis a government had to act and find solutions but it is of the opinion that if, for compelling reasons of national economic interest, a government considers that wage rates could not be fixed by collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period and it should be accompanied by adequate safeguards to protect workers' living standards.

163. The Committee observes that, according to the Government in this case, the reorganisation proposed did provide for full protection against the effects of an increase in the cost of living for the lower paid salaried employees, that it had indexed half of the middle range of salaries and that it had cancelled the increases envisaged only in the case of the highest salary range (above Can.$37,089). The Committee further notes that the Government set up a provincial consultative body responsible for future discussions on wage policies in these economic sectors.

164. In these circumstances, the Committee considers that, in order to restore a climate of harmonious industrial relations, the Government should continue striving to convince the parties to collective bargaining voluntarily to take account in their negotiations of the major economic and social policy reasons and of the public interest which it had mentioned in connection with the salaried employees affected by these measures. In order to achieve this, these reasons could be discussed at provincial level by all parties within the consultative body to which the Government refers, and such discussions should be held in accordance with the principles of mutual understanding and trust which are specifically defined in the Consultation (Industrial and National Levels) Recommendation (No. 113), 1960.

165. The Committee therefore recommends the Government to continue collective bargaining in the sectors concerned in order to determine wage conditions of all workers in the public and para-public sectors in a climate of mutual trust.

166. In addition, referring specifically to Act No. 111, the Committee notes that according to the complainants, this legislation - apart from having an immediately dissuasive effect as it resulted in a return to work of the teachers who had been on strike in January 1983 as a protest against the unilateral decisions by the authorities to reduce their salaries - also suspended the right to strike of that occupational category until 1985 and appears to contain numerous restrictions on the normal exercise of trade union rights.

167. The Committee is aware that this legislation (Act No. 111), was adopted in the context of serious economic difficulties and it notes the detailed explanations provided by the Government in this respect.

168. Nevertheless the Committee has, on many occasions, pointed out that the right to strike is one of the essential means available to workers and their organisations for the furthering and defence of their occupational interests and that this right should not be prohibited or restricted other than in services which are essential in the strict sense of the term or in the civil service with respect to officials acting in their capacity as agents of the public authorities. Furthermore, the Committee considers, as it has done in

past cases, that members of the teaching profession cannot be considered as performing essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.[1]

169. In the light of the above considerations, the Committee considers that the suspension of the right to strike imposed until 1985 on teachers should not be maintained.

170. With respect to the other measures envisaged by Act No. 111, the Committee considers that salary reductions for days of strike give rise to no objection from the point of view of the principles of freedom of association, but this does not apply to the restrictions on the normal exercise of trade union rights of teachers contained in the Act (threatened dismissal, strike pickets, loss of years of seniority for strike action and fines, etc.) alleged by the complainants.

The Committee's recommendations

171. 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 Government of Quebec strove to negotiate with the trade unions in the public and para-public sectors, and that for a considerable number of them including certain of the complainant unions these negotiations did lead to the conclusion of a collective agreement or some other agreement amending the decrees determining working conditions in those sectors. It expresses concern nevertheless that Acts Nos. 70 and 105 imposed important salary reductions on certain salaried employees in some cases in the order of 18 per cent, by proclaiming that the requirements of government financial policy take precedence over collective agreements. The Committee considers that the imposition under Act No. 105 of such restrictions for three years is too long.

(b) The Committee recommends that, in order to restore harmonious industrial relations, the Government should continue collective bargaining in the sectors concerned so as to settle the salary conditions of the workers in question in an atmosphere of mutual trust.

---

[1] See for example, 221st Report, Case No. 1097 (Poland), para. 84; 226th Report, Case No. 1166 (Honduras), para. 343.

(c) As regards Act No. 111, the Committee would recall that teachers should enjoy the right to strike since they do not work in an essential service in the strict sense of the term. Consequently, the Committee requests the Government to take measures to ensure that the suspension of the right to strike and other restrictions on trade union rights imposed on teachers until 1985 are not maintained.

Case No. 1174

COMPLAINT PRESENTED BY THE GENERAL CONFEDERATION OF PORTUGUESE WORKERS AGAINST THE GOVERNMENT OF PORTUGAL

172. The complaint of the General Confederation of Portuguese Workers (CGTP-IN) is contained in communications dated 15 December 1982 and 13 January 1983, respectively. The complainant provided further information on this case on 16 May and 18 October 1983. The Government supplied its observations in communications dated 20 April and 3 October 1983.

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

A. The complainant's allegations

174. In its communications of 15 December 1982 and 13 January 1983, the General Confederation of Portuguese Workers (CGTP-IN) challenges the Orders issued by the public authorities to extend the collective agreements which, according to the complainant, had been concluded by minority organisations in various branches of activity, especially the baking and postal and telecommunications sectors, in spite of the fact that the Committee on Freedom of Association, in its recommendation on Case No. 1087, had hoped that it would be possible to avoid situations of such a nature in future.

175. In its very long communication of 13 January 1983, the CGTP-IN briefly reviews the situation of industrial relations in the baking industry. It explains that in 1975 this industry, which it claims represents the largest sector in the foodstuffs industry, accounting for nearly 60 per cent of the jobs in this branch of activity and employing around 28,000 workers, concluded the first collective agreement after the change in government. However, as no agreement was reached on the schedule of wages, the latter was established by administrative authority by means of an Order

regulating work. The agreement, which contained no reference to wages, was negotiated and accepted by the representatives of the new employers' associations, which were in the process of being set up at the time as the former associations had been dissolved after 25 April 1974. However, doubts were raised as to the employers' associations' legal capacity to conclude the agreement and it was published by administrative authority. The complainant explains that this was a de facto agreement, negotiated and concluded as such by the representatives of the parties.

176. As the employers' associations refused to open new discussions in 1976, a new Order regulating work, updating the provisions contained in the previous Order and revising the agreement published by administrative authority, was promulgated at the beginning of 1977. The same procedure was followed in 1978 and 1980 but the new Orders were then restricted to revising wages, since it was impossible to reach negotiated agreements.

177. In short, according to the CGTP-IN, from 25 April 1974 to 1981, working conditions in the baking industry were therefore mostly determined by an agreement published by administrative authority, with the exception of wage questions and particularly schedules of wages which were established by an Order regulating work.

178. Discussions opened in 1981 and, on 22 May 1981, several trade union organisations proposed two draft labour agreements to several employers' organisations. The trade union organisations included the Federation of Unions in the Baking, Food and Allied Industries, the Federation of Electrical Workers' Unions, the Federation of Road and Urban Transport Unions, the National Federation of Civil Engineers and Woodworkers, as well as the Federation of Metal Trades, Mechanical Engineering and Mining Industries of Portugal. The employers' associations included the Central Association of Baking Manufacturers, the Northern Association of Baking Manufacturers, the Association of Baking Industries of Madeira, the Regional Association of Bakers in Alentejo and the Algarve, the Association of Baking Manufacturers in Upper Alentejo and the Association of Baking Manufacturers in Lisbon. Negotiations were held until 29 October 1981, upon which date a negotiating agreement was signed, providing for a new wording of the provisions to be revised and stipulating that the wording of the remaining provisions should be in line with the instrument regulating work in force in the sector, subject to appropriate adjustments. The final wording of the collective agreement was to be the responsibility of the Federation of Unions in the Baking, Food and Allied Industries who had to submit a text to the employers' associations, in principle before 6 November 1981. The parties were pleased that a solution had been found to the difficulties encountered during negotiations and that unanimity had been reached on the first collective agreement applicable to the sector. The complainant points out that discussions were conducted in accordance with the only protocol in the presence of all the

employers' associations, apart from the last two meetings which were not attended by one of the empolyers' organisations. The same employers' association had already failed to attend some meetings during the early stages of the discussions but, explains the complainant Confederation, it had later come to the negotiating table and agreed to the points approved at the meetings held in its absence.

179. At the beginning of November 1981, meetings were held between the trade unions and the employers' association which had been absent during the signing of the agreement. However, this association refused to agree to the minutes of the last two meetings of the negotiations and it was impossible to reach any agreement. According to the complainant, this employers' association intended to recommence discussion of the agreement on the basis of the above-mentioned protocol, in spite of the fact that the negotiations had ended. In other words, it demanded separate negotiations and reconsidered its decision to adhere to the protocol upon which the negotiations had been based. The trade unions then convened all the employers' associations to a meeting on 11 November 1981 to sign the final text, including the text of the agreement concluded on 29 October. However, two employers' associations failed to attend that day and the trade unions were obliged to call a new meeting for the same purpose on 19 November 1981. The summons also served as notice of a request for conciliation. proceedings to the employers' associations which were not present at the meeting and were bound by these proceedings. As several employers' associations once again failed to attend, the meeting was only attended by some employers' associations and the signing of the final text did not take place. The employers' associations at the meeting declared that they would not sign the agreement unless the clause on the check-off of union dues by the employers' associations was removed, although that clause had already been provided for in the labour agreements in force in the sector.

180. On 19 November 1981, the unions accepted to attend the meeting proposed by the employers' associations for 23 November 1981 and added that, if the outcome of this meeting was favourable, the conciliation stage would not be necessary. Under these circumstances, the notice of conciliation no longer represented anything more than a precautionary measure.

181. However, on 21 November 1981, the Official Gazette published an agreement signed by three employers' associations and by the Democratic Union of Baking, Food and Allied Industries, a rival organisation of the complainant Confederation. This organisation, explains the CGTP-IN, emerged as a result of changes made to the field of competence of the Union of Workers in the Baking and Allied Products Industry in the Faro area which incorporated several districts and autonomous regions. It is a rival organisation of the Federation of Unions in the Baking, Food and Allied Industries, affiliated to the CTGP-IN, which carries out its activities in the

same occupational sector and in the same geographical area. The agreement had been signed on 2 November and adopted by the employers' association which had not attended the meetings called for on 11 and 19 November with a view to signing the final text.

182. In the same issue of the Official Gazette, notice was given of an Extension Order aimed at extending the provisions of the aforementioned agreement to all the employers' organisations and workers in the economic sectors covered by this agreement.

183. At the same time, the meeting with the employers' associations took place as planned on 23 November 1981 but gave no results as the employers did not change their position. Conciliation proceedings consequently began on the following day.

184. An industry-wide strike took place on 28 November 1981, and on 10 December 1981 the unions lodged an opposition to the Notice of Extension Order issued by the Ministry of Labour. On 15 December 1981, a conciliation meeting was held at the Ministry of Labour and the northern and central employers' associations declared that, since the problem raised by the clause concerning trade union contributions had been settled, they were in agreement with the final text of the unions' proposals. However, the other employers' associations refused to sign the final text. In spite of the conciliation efforts at the Ministry of Labour, a new 48-hour strike was declared on 24 December in Lisbon, Upper and Lower Alentejo, Setubal, Faro and Santaren in an attempt to persuade all the employers' associations to sign the collective agreement and not only those in the north and centre of the country. On 31 December 1981, the unions requested that negotiations should continue; they demanded an interview with the Secretary of State but this was not granted. Conciliation proceedings lasted until the end of January 1982, when, to the surprise of the unions, the representative of the Ministry asked both parties if they would be prepared to negotiate on the basis of the occupational rules adopted by the three employers' associations and the Democratic Union of Baking, Food and Allied Industries, published in the Official Gazette. The employers' associations then withdrew all their former proposals and were only prepared to accept a collective labour agreement in so far as it was identical to the agreement concluded by the complainant's rival organisation, the Democratic Union of Baking, Food and Allied Industries.

185. The unions then accused the employers' associations of not acting in good faith and of attempting to force the Federation of Unions in the Baking, Food and Allied Industries, as well as the other unions having accepted the trade union proposals, to agree with or adhere to a contract drawn up on their behalf by a union unrepresentative of the sector, which would withdraw rights and advantages granted in the past to the workers; however, the agreement was published on 22 February and the Extension Order concerning this agreement was promulgated on 12 March 1982, extending its provisions

to all the workers in the occupational sector in question. On 25 March, the unions demanded a hearing at the Ministry of Labour which took place without any concrete results. On 26 April 1982, a request was made for a further interview at the Ministry of Labour which, according to the complainant Confederation, was not granted.

186. The CTGP-IN also points out that approximately 4,900 workers are members of the Federation of Unions in the Baking, Food and Allied Industries, an organisation affiliated to the CTGP-IN, representing 50 per cent of the total employees in this sector, apart from the managerial staff; the other workers are not union members or belong to various other unions including the above-mentioned rival minority union.

187. With respect to the case concerning the postal and telecommunications services, the complainant Confederation explains that negotiations were held between the National Federation of Workers in the Postal and Telecommunications Services, representing the SNTCT and the SINTEL, as well as other trade union organisations, and the Administration of Postal and Telecommunications Services, with a view to revising the agreement concluded between these same organisations, published in the Official Gazette on 29 July 1980; during these negotiations, the Administration communicated the contents of the revision of the above-mentioned agreement to an organisation being set up at the time, whose statutes had not yet been published, known at this juncture as SINDETEL and now called SINDETELCO. As the above-mentioned unions, the SNTCT and the SINTEL, demanded that negotiations be continued, the Administration put unwarranted pressure on them to compel them to subscribe to the agreement negotiated with the organisation named SINDETELCO which, according to the complainant, has very few members; this consisted of demanding the extension of the agreement formerly in force to all the workers, even those represented by the signatory trade unions, which was a violation of the law. The Ministry of Labour allegedly approved this stand, announcing that the conciliation proceedings under way had failed and that, according to the legislation, it was its duty to communicate officially to the conflicting parties its intention to comply with the above-mentioned request made by the Administration. As a result, a notice of the Extension Order of the agreement concluded between the Administration, the SINDETELCO and other organisations was published in the Official Gazette on 22 October 1981. In spite of protests from the unions representing the large majority of workers in the postal and telecommunications services and representations made to government bodies, the aforementioned Extension Order was published in the Official Gazette, in blatant violation of Portuguese legislation.

188. According to the complainant, more than 29,000 workers were employed by the Administration of Postal and Telecommunications Services at the time of the dispute. Amongst these, 18,000 employees were represented by the National Union of Post Office and Telecommunications Workers (SNTCT) and 5,980 workers were represented

by the National Telecommunications Union (SINTEL). At the same period, the organisation which had subscribed to the agreement covered by the Extension Order represented only 210 workers. The Portuguese Government was perfectly aware of the situation, since in the postal administration, trade union dues are deducted from the workers' wages and in March-April 1981, the Administration of Postal and Telecommunications Services had, in accordance with the law, sent staff tables to the Ministry of Labour. These tables contain information on the trade union affiliation of each worker and, according to the complainant, prove beyond doubt that the trade union organisations supporting this complaint represent the overwhelming majority of workers.

189. In its communication of 16 May 1983, the complainant Confederation further alleges that the Government published Extension Orders concerning collective agreements for the mechanical engineering and metal trades, the graphics industries and the clothing industry, although the agreements in question had apparently been signed by trade union organisations which, as the Government knew fully well, were not representative. On 18 October 1983 the complainant stated that contrary to what had occurred in 1981, in 1983 collective agreements were freely negotiated in the Administration of Postal and Telecommunications Services.

B. The Government's reply

190. With respect to the dispute in the baking industry, the Government states in its communication of 20 April 1983 that it is not exactly true to say that from 25 April 1974 to 1981, working conditions in the baking industry had been mainly determined by collective agreement, even though they had been published by administrative authority, wage matters being an exception, particularly wage schedules, which had been fixed by Orders regulating work. Indeed, between 1975 and 1981, the only time that negotiations had taken place between the parties in the baking industry (manufacturing, distribution and sales sectors), and then only on matters not related to wages, was in 1975; even in this case, the agreement reached was published in the form of an administrative instrument regulating work, because there were doubts as to the parties' legal capacity to sign a collective agreement. Since then, it had not been possible to reach any agreement whatsoever and the working conditions in the industry in question had been successively fixed by administrative authority after long and fruitless negotiations.

191. The Government explains that this situation only changed in November 1981, when three employers' associations in the centre and south of the country - the Association of Baking Industries in Lisbon,

the Association of Baking Industries in Upper Alentejo and the Regional Association of Bakers in Lower Alentejo and the Algarve - signed a collective agreement with the Democratic Union of Baking, Food and Allied Industries, affiliated to the central rival trade union of the complainant Confederation, the General Union of Workers (UGT).

192. Finally, it was only in November 1981 that the Federation of Unions in the Baking, Food and Allied Industries, an association of unions affiliated to the complainant, the General Confederation of Portuguese Workers (CGTP), succeeded in signing, together with the other trade union associations, its first real collective agreement in this sector with two employers' associations from the north and centre of the country: the Northern Association of Baking Manufacturers and the Central Association of Baking Manufacturers. However, continues the Government, these unions did not manage to get their proposal of negotiations accepted in the southern part of the country and the Ministry of Labour was first informed of the breakdown in negotiations on 24 November 1981, when the Federation of Unions in the Baking, Food and Allied Industries asked it to make an attempt at conciliation to overcome the dispute existing in the sector.

193. The Government confirms the complainant's claim that a collective labour agreement concluded between three employers' associations - the Association of Baking Manufacturers in Lisbon, the Association of Baking Manufacturers in Upper Alentejo and the Regional Association of Baking Manufacturers in Lower Alentejo and the Algarve - and the Democratic Union of Baking, Food and Allied Industries was published on 21 November 1981, in accordance with the law. It explains that, if the employers' associations signatory to the agreement had not attended the meetings convened by the Federation of Unions in the Baking, Food and Allied Industries, and if they had agreed to a clause revoking the former regulations, the Ministry of Labour cannot be held responsible for this because, in Portugal, the social negotiators are entirely free in their choice of partners, the way they conduct negotiations and the subject matter of bargaining. The public authorities therefore have no right to intervene in these fields.

194. The Government also confirms that a Notice was published in the Bulletin of Labour and Employment, announcing that the above-mentioned agreement might be extended and it explains that, as a general rule in Portugal, collective agreements delivered to the Ministry of Labour with a view to their deposit and later publication in the Official Gazette are usually accompanied by a request for extension; this was the case with the agreement in question. Complying with this request, a Notice of the possible extension was worded in the usual terms to enable those concerned to give their opinions on whether it was appropriate and relevant. Furthermore, the Government states that the Ministry of Labour was unaware of any breakdown in negotiations between the associations in Lisbon, Upper

Alentejo, Lower Alentejo and the Algarve and the Federation of Unions in the Baking, Food and Allied Industries. The Government maintains that the Notice announcing the possible extension of the agreement signed between these same associations and the Democratic Union of Baking, Food and Allied Industries was entirely independent from these negotiations and did not aim to solve any collective labour dispute.

195. Furthermore, it confirms that it received a request for conciliation on 24 November 1981 as no agreement could be reached on the signing of the final text. It also states that there was a strike in the baking sector, on 28 November 1981, to try and bring pressure to bear on the employers' association to make them accept to come to the negotiating table; however, this objective failed, as later events proved. The Government acknowledges that on 10 December 1981, the Federation of Unions in the Baking, Food and Allied Industries opposed the Notice announcing the possible extension of the collective agreement signed with the Democratic Union of Baking, Food and Allied Industries. On this point, it explains that, although the objection had been raised outside the legally prescribed time limits, it had been duly examined by the Ministry of Labour who admitted that there were some grounds for this opposition as the Confederation had pointed out that it was in the process of negotiating a collective agreement which covered the same branch of activity and geographical area as that of the published Notice of Extension Order. According to the Government, it was then decided to wait for the result of the negotiations so as not to interfere in the bargaining process under way.

196. The Government acknowledges that a conciliation meeting was held at the Ministry of Labour on 15 December 1981 and confirms the outcome as described by the complainant. It also confirms the dates of the signing of the collective agreement between the northern and central associations of baking manufacturers and the Federation of Unions in the Baking, Food and Allied Industries, as well as the request made by the Federation of Unions in the Baking, Food and Allied Industries on 3 December 1981 to hold a new conciliation meeting; this actually took place on 28 December 1981, as the parties had refused to accept mediation or arbitration proceedings.

197. The Government confirms the publication of the agreement on 22 February and that of the Extension Order on 12 March 1982 and acknowledges the unsuccessful interview held with the unions at the Ministry of Labour on 15 March 1982.

198. The Government states that, in publishing a Notice announcing the possible extension of the collective agreement concluded between various employers' associations and the Democratic Union of Baking, Food and Allied Industries, the Ministry of Labour acted in accordance with national law and practice with respect to the extension of collective agreements. The aim of publishing Extension Orders is to avoid discrepancies between working conditions and labour

costs amongst workers and employers, within the scope of a specific collective agreement, because they are not affiliated to the trade union and employers' organisations signatory to the agreement. This is the practice, unless imperative reasons are submitted by the organisations to which the extension will be applied; therefore it is indispensable that the Ministry of Labour should inform them by means of a Notice. The only reason for publishing a Notice announcing the possible extension of a collective agreement is to try and learn the opinions of those concerned on the timeliness and relevance of the intended measure. Consequently, according to the Government, the published Notice in question had nothing to do with the negotiations taking place between the baking manufacturers' associations and the Federation of Unions in the Baking, Food and Allied Industries, negotiations of which the Ministry of Labour was unaware.

199. Denying the allegations of the complainant, the Government states that Notices announcing the extension of a collective agreement are fairly often published at the same time as the agreement in question; the fact that there was a delay in publishing the Notice of Extension Order concerning the agreements concluded between the northern and central associations of baking manufacturers and the Federation of Unions in the Baking, Food and Allied Industries was only caused by the need to define the scope of the Extension Order, as there were two agreements in the baking industry, both liable to be extended, whose geographical areas partially overlapped.

200. Concerning the deposit and publication of the two above-mentioned agreements, the Ministry of Labour admits having asked the signatories, in accordance with the law, to define the functions provided for in one of them, to which the parties responded without raising any objections.

201. The Government points out that, as the complainant acknowledges, the publication of the Notice of Extension Order did not necessarily imply that the Order would be published, hence it gave no grounds for not signing the agreement. Furthermore, four months elapsed between the publication of the Notice and the issuing of the Extension Order, time enough for the parties to have settled their dispute themselves. The Government views the signing of an agreement as a conciliation of differing, even opposing interests, and believes that this conciliation can only be achieved if the conflicting parties prove an equal match to each other. However, according to the Government, it is clearly obvious upon studying this case that the Federation of Industries in the Food, Beverage and Tobacco Industries, in spite of the strikes carried out, did not have sufficient bargaining power to oblige also the employers' associations to sign the collective agreement in question, and the Ministry of Labour cannot be held responsible for this fact.

202. Furthermore, it denies the allegation that, upon publishing the Notice, it had made known from the beginning its intention of

publishing an Extension Order as a means of settling an existing dispute since, when it published the Notice, it had no idea there was any dispute. It states that it cannot be a judge of whether or not the parties involved in negotiations on a collective agreement are acting in good faith or not, without violating the principle whereby the parties enjoy freedom and independence in dealing with matters which purely concern them; in addition, under the legislation in force, its only role is to deposit or publish signed collective agreements, to make attempts at conciliation and to regulate working conditions by administrative authority in cases where it is impossible, either de jure or de facto, to arrive at negotiated regulations. In the present case, once it became obvious that the parties involved were incapable of arriving at negotiated regulations, it was essential to publish an Extension Order to standardise and update working conditions in the sector. However, it would have been most unsuitable to publish an Order regulating work since workers in the same undertaking would have found themselves subject to different labour rules, depending upon which union they belonged to, as a result moreover of administrative action.

203. Concerning the representativity of the opposing unions, the Government claims it does not have any facts at its disposal to judge on this matter. The Government has no objections to make if the complainant Confederation provides some information on the representativity of unions affiliated to the Federation of Unions in the Baking, Food and Allied Industries which it has obtained from the National Institute of Statistics (1979); however, with respect to information on this representativity obtained from an assessment of the staff tables carried out in March 1982, it points out that Legislative Decree No. 380/80, of 17 September, stipulates that all undertakings must submit a table of their staff to the Statistical Department of the Ministry of Labour indicating, amongst other things, the union to which each worker belongs.

204. It would therefore seem logical, at first glance, the Government states, that one could conclude from this Legislative Decree that the Ministry of Labour is able to determine strictly the representativity of the unions existing in the various sectors of activity. However, the situation is not so straightforward since Legislative Decree No. 380/80 cannot be interpreted without bearing in mind the provisions of Act No. 57/77, of 5 August, which stipulate that employers cannot deduct trade unions dues from wages unless there is an agreement between the respective trade union and employers' associations and unless the workers concerned authorise them to do so in a formal and individual statement submitted to the trade union and the employer. Undertakings do not, therefore, have exact information on their workers' trade union membership unless they receive a written statement authorising them to check off trade union dues. The Government adds that it can be seen upon examining the staff tables, that the undertakings either do not fill in some of the columns or indicate the trade union membership of their workers in a very

imprecise or incomplete way; it is therefore impossible to reach any valid conclusions from the above-mentioned information.

205. With respect to the dispute in the postal and telecommunications services sector, the Ministry of Labour refrains from commenting on the fact that the Administration of Postal and Telecommunications Services in Portugal had signed a works agreement with the Democratic Telecommunications Union - SINDETELCO - and that it had failed to do so with the SNTCT and the SINTEL. This is a matter uniquely concerning the parties involved in which the Ministry of Labour did not interfere. Furthermore, the Government maintains that when the agreement was deposited, that is on 14 September 1981, SINDETEL's statutes had already been duly registered since 29 April 1981.

206. The Government denies the allegation that the Ministry of Labour stopped attempts at conciliation in order to comply with the request allegedly made by the State Administration concerned, for an extension of the agreement signed by SINDETELCO. It explains that, as can be read in the minutes of the last conciliation meeting, "the parties admitted that all the possibilities of settling the dispute by conciliation were exhausted".

207. The Government confirms, however, that the SNTCT and the SINTEL opposed the Notice of Extension Order but it points out that this objection, having been duly examined, was overruled as it was imperative to settle the dispute at once, in view of the fact that the undertaking concerned was the only one in Portugal to provide postal and telecommunications services, vital to the life of the country. Therefore, in spite of the objection raised, the Extension Order was published. However, the Government does not consider that this publication infringes ILO Convention Nos. 87 and 98 since it does not prevent, either in law or in practice, unsuccessful negotiations from being resumed at the initiative of one or other of the parties concerned.

208. Furthermore, the Government alleges that the extended agreement only centred on a wage scale and that the system of working conditions negotiated by the National Federation of Postal and Telecommunications Workers, published in the Labour and Employment Bulletin, remained unchanged.

209. The Government does not contest the representativity of the trade union associations involved in the negotiation proceedings, but it states that this matter of representativity was not raised when the objection was made to the Extension Order, and for this reason it was not taken into consideration.

210. Concerning the more general issue of Extension Orders, the Government recalls that, contrary to the allegations made by the complainant Confederation, it strictly adhered to the recommendation

made by the Committee on Freedom of Association on Case No. 1087 and points out that no further Extension Orders were published under the same circumstances as those in the Portuguese textile, baking and postal and telecommunications sectors, all of which were issued before the recommendation in question. Furthermore, it maintains that in recent times, it has made it a principle not to intervene in collective labour disputes by issuing administrative regulations to make up for those which the parties have failed to reach by agreement. It would like the General Confederation of Portuguese Workers to indicate the Extension Orders issued after the Committee's recommendation, which are contrary to the principles contained therein. Moreover, it considers there is no reason to restore legality in the cases in the textile, baking and postal and telecommunications sectors, since no illegality was noted in these cases.

211. The Government maintains that the above arguments demonstrate that in publishing the Extension Orders, which form the subject of this complaint, it acted in accordance with national legislation and ILO Conventions Nos. 87 and 98, ratified by Portugal. The Orders in question were published on 29 November 1981 and 22 March 1982, well before the Committee on Freedom of Association's recommendation was made on Case No. 1087 and approved by the Governing Body at its 220th Session (May-June 1982). Since then, no further Order has been published under the circumstances which gave rise to the dispute. The Portuguese Government cannot be accused of having failed to comply totally with the aforementioned recommendation.

212. The Government concludes by pointing out that after the Extension Orders concerned had been published, collective bargaining proceedings resumed in the baking industry and within the Administration of Postal and Telecommunications Services in Portugal and were attended by the trade union associations affiliated to the complainant Confederation, which proves that the right to bargain collectively was not affected by the Orders in question.

213. In its communication of 3 October 1983, the Government confirms that it published the three Notices of Extension Orders referred to by the complainant in its communication of 16 May 1983 but that, in view of the oppositions submitted by the metallurgy and textile federations, it decided to apply the Extension Orders concerning the collective agreements in these sectors only to workers affiliated to the unions which had concluded then. In other words, the agreements do not cover workers represented by the federations which lodged oppositions or non-unionised workers. The Extension Order concerning the agreement reached for graphics workers was opposed by the Federation of Unions of Graphics Workers which supplied evidence of its representativity (inconclusive in the Government's opinion). No extension was therefore made.

C. The Committee's conclusions

214. The Committee notes that the present case refers to certain Extension Orders concerning collective agreements allegedly issued by the public authorities, whereas the collective agreements in question had been concluded by minority organisations in the baking and postal and telecommunications sectors.

215. As the Government points out, the Committee has already been called upon to examine a similar case also concerning Portugal, Case No. 1087, dealing with the textile sector. It has therefore already had the opportunity of recalling that before announcing the extension of a collective agreement and faced with the opposition of an organisation - which alleged that it represented the large majority of workers in the sector - to an agreement it regarded as unprogressive, the Government could have carried out an objective appraisal of representativity of the trade union associations in question, since, in the absence of such an appraisal, the extension of an agreement could be imposed on an entire sector of activity contrary to the views of the organisation representing the workers in the category covered by the extended agreement, thus limiting the right of free collective bargaining of that majority organisation. In May 1982, the Governing Body on the Committee's recommendation had expressed the hope that situations of such a nature might be avoided in the future.[1]

216. In the present case, the Committee notes that the Extension Orders were issued in November 1981 and March 1982, in other words before Case No. 1087 had been examined by the Committee on Freedom of Association in May 1982 and that, since then, the Government has given its assurance that it has not published any further Extension Orders in the circumstances which gave rise to the complaint. The Government also points out that this has been the specific case in the metallurgy, textile and graphics industries.

217. Furthermore, the Committee notes that the Government points out that after the publication of the Extension Orders in question, collective bargaining proceedings were resumed in the baking industry and in the Administration of Postal and Telecommunications Services and that the trade union associations affiliated to the CGTP-IN attended these meetings.

218. Accordingly, the Committee recalls the importance attached to the principle of non-infringement of the right to free collective bargaining of representative organisations and stresses the need for public authorities, before announcing an Extension Order concerning a

[1] See 217th Report, Case No. 1087 (Portugal), paras. 222-224.

disputed collective agreement, to have the necessary ways and means at their disposal to carry out an objective appraisal of representativity of the majority trade union associations. The Committee considers, as the Committee of Experts on the Application of Conventions and Recommendations has always stated, that employers should, for the purpose of collective bargaining, recognise the organisations which are representative of the workers they employ and that, if national legislation establishes machinery for the representation of the occupational interests of a whole category of workers, this representation should normally lie with the organisations which have the largest membership in the category concerned, and the Government should refrain from any intervention which might undermine this principle.

219. In this case, the Committee notes that the Extension Orders concerning the baking sector and the postal and telecommunications sector were published before the recommendation it had made on this subject in a similar case had been adopted, and that new negotiations in the occupational sectors in question are at present being conducted. The Committee also notes with interest that since then the Government has not published any Extension Order extending collective agreements to workers represented by federations which opposed such Orders, nor to workers who do not belong to any union, in the metallurgy, textile and graphics sectors.

220. However, the Committee expresses the firm hope that protective measures will be introduced in the near future whereby it will be possible to prevent conflicting situations from occurring again.

The Committee's recommendations

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

(a) The Committee recalls the importance of not infringing the right to free collective bargaining of a representative organisation.

(b) It considers that the public authorities, before issuing an Extension Order on a disputed collective agreement, should have the necessary ways and means at their disposal to carry out an objective appraisal of the representativity of the trade union associations.

(c) In this particular case, the Committee notes that the disputed Extension Orders in the baking sector and the postal and telecommunications sector were published before the

recommendation it had already made on the matter in a similar case had been adopted and that new negotiations are at present being conducted in the occupational sectors in question. It also notes with interest that since then the Government has not published any Extension Order against the wish of the workers concerned.

(d) However, the Committee expresses the firm hope that protective measures will be introduced in the near future making it possible to prevent conflicting situations from occurring again.

Case No. 1182

COMPLAINT PRESENTED BY THE BELGIAN GENERAL FEDERATION OF LABOUR AGAINST THE GOVERNMENT OF BELGIUM

222. In a communication dated 15 February 1983, the Belgian General Federation of Labour (FGTB) presented a complaint alleging the violation of trade union rights in Belgium. On 25 March 1983 the FGTB sent additional information in support of its complaint.

223. The Government supplied its observations in a communication dated 2 May 1983.

224. Belgium 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 allegation

225. In its communications dated 15 February and 25 March 1983, the Belgian General Federation of Labour called into question two Royal Orders adopted in pursuance of the Act of 2 February 1982 attributing certain special powers to the King.

226. According to the complainant trade union, section 3 of Royal Order No. 180 dated 30 December 1982 concerning certain measures relating to wage moderation and which is simply the prorogation of measures taken in February 1982 (Royal Order No. 11 dated 22 February 1982), modifies the indexation system applied to wages, whether established by legislation or collective agreements, by stipulating that only the part of the wage equivalent to the amount of the guaranteed monthly wage will be subject to indexation on the basis of the wage due for the month of December 1982; and by establishing a

new reference index under section 4 of Royal Order No. 180, which provides that after two wage readjustments in 1983 on the basis of the consumer price index, wage indexation will be determined on the basis of the average index of the last four months.

227. According to the complainant organisation, these changes in the indexation system led to a reduction in the purchasing power of workers in the order of 4 per cent in 1982 and 3 per cent in 1983.

228. Furthermore, the complainant trade union emphasises that section 6 of Royal Order No. 180 blocks until 31 December 1984 any increase in wages and other financial benefits, including those due under the provisions of collective agreements.

229. The complainant organisation points out that as a result of these measures, the Belgian Government has amended, in violation of Article 3 of Convention No. 87 and Article 4 of Convention No. 98, the Belgian system of indexation which has always used collective labour agreements as its legal basis and which has always been the result in Belgium of free bargaining between workers' and employers' organisations.

230. Furthermore, the complainant alleges that section 2, paragraph 1, subparagraph 3 of Royal Order No. 179 dated 30 December 1982 authorises the Minister of Employment and Labour to relieve certain employers of obligations resulting from collective agreements by granting exceptions to the provisions of sections 19, 26 and 31 of the Act of 5 December 1968 concerning collective labour agreements and joint commissions, in violation of Article 4 of Convention No. 98.

231. The complainant organisation alleges that with a view to the negotiation of the arrangement of working time this same Royal Order establishes a system in which workers' representatives may be elected from outside any of the representative workers' organisations (section 1(4)(b) and (f), paragraph 2). These representatives would be empowered to negotiate the arrangement of working time, notwithstanding the provisions of collective agreements and numerous provisions established under the labour law. The representatives of the staff may, in order to consolidate the experience acquired, conclude new collective agreements for indefinite periods of time outside any of the representative workers' organisations (section 18).

232. The complainant alleges that these measures violate not only Article 4 of Convention No. 98 but also the right enjoyed by workers to elect their representative in full freedom and to organise their activities (Article 3 of Convention No. 87).

B. The Government's reply

233. In its reply the Government confirms that Royal Orders Nos. 179 and 180 were issued on the basis of the Act of 2 February 1982 attributing certain special powers to the King. The Government points out that this Act is designed to achieve four objectives: economic and financial recovery, the reduction of public expenditure, the reorganisation of public finances and the creation of jobs.

234. As regards Royal Order No. 180, the Government points out that this Order is designed to limit wage increases in both the public and private sectors in order to promote employment. It points out that the measure taken under section 3 of Royal Order No. 180, which establishes that indexation will apply only to the part of the wage equivalent to the guaranteed monthly income (30,206 francs), will be discontinued from the end of September or October 1983, when the provisions regarding indexation established under collective agreements will be fully applied. It is only the base reference which is altered, taking into account the average monthly consumer price index of the last four months.

235. The Government also points out that, under section 6 of Royal Order No. 180, for a period of two years there can be no increase in remuneration above indexation, except for cases of wage increases due to age or seniority or those granted as a result of promotion or a change of duties. It states that this measure will be discontinued after 31 December 1984.

236. Furthermore, the Government points out that Royal Order No. 180 must be set in the context of Royal Order No. 181 of 30 December 1982 setting up a wage moderation complementary employment fund and which anticipates that the benefits reaped from such moderation should allow, on the basis of collective agreements, an increase in recruitment in the order of 3 per cent and a reduction of working time of 5 per cent.

237. According to the Government, these measures which were taken as a result of the economic, social and financial situation for the purposes of creating a valid employment policy, apply both to the private and public sectors, are of a temporary and exceptional nature and are limited in scope to what is strictly necessary in order to achieve the objectives set.

238. Furthermore, the Government points out that these measures do not affect the systems established by regulations and collective agreements concerning wage increases due to age and seniority or to promotions and changes of category and that they do not undermine the guaranteed minimum monthly income which is not affected by the limited indexation, thus preserving the purchasing power of the least privileged.

239. It also points out that the workers' organisations participate in the most important aspect of the wage moderation policy. They have negotiated and signed, either at the sectoral level or at the level of the undertaking, collective agreements concerning the use of the sums saved.

240. The Government believes that the measures taken under sections 3 and 6 of Royal Order No. 180 do not violate Article 4 of Convention No. 98. Referring to the statement of the Committee on Freedom of Association that "If, as part of its stabilisation policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards", the Government believes that these measures are in line with the above-mentioned criteria.

241. As regards section 4 of Royal Order No. 180 which stipulates that when indexation ceases to be applied to the part equivalent to the minimum wage (October 1983), the reference index shall not be based on the monthly consumer price index but on the arithmetic average of the consumer price index of the preceding four months, the Government explains that the objective is to iron out anarchic wage increases due to seasonal or accidental variations. This technique allows the adaptation of wages to remain intact and guarantees the purchasing power of workers. A slight delay in adapting wages may occur in only certain sectors as a result of the technique used.

242. According to the Government, this measure falls within the competence of any government which may, by legal means, establish general rules applicable to the reference base of the consumer price index of the kingdom and does not call into question the principle of voluntary bargaining between the social partners which is part of these new rules.

243. With reference to section 2, paragraph 1, subparagraph 3, of Royal Order No. 179 which authorises the Government to grant exceptions to sections 19, 26 and 31 of the Act of 5 December 1968 concerning collective agreements and joint commissions, the Government points out that the aim of this Royal Order is to facilitate, on a voluntary basis, the creation of new jobs by a new arrangement of working time.

244. The exceptions in question must ensure the necessary flexibility to the smooth running of the experiment which the rigour of some of the regulations and agreements currently in force does not provide.

245. Furthermore, the Government points out that these exceptions are strictly limited to the requirements of the experiment concerning

the arrangement of working time in the undertaking. They must in addition be the result of a consensus between the social partners on the basis of negotiations held prior to the signature of an agreement on the arrangement of working time, coupled with the recruitment of additional workers and to which the Ministry of Employment and Labour is a party. It is therefore reasonable to suppose that workers will not sign an agreement which is less favourable than the regulations and collective agreements currently in force. As a consequence, the allegation of the complainant that the Minister of Employment and Labour may relieve employers of obligations resulting from collective agreements is devoid of any basis.

246. Furthermore, the Government points out that not only does Royal Order No. 179 not call into question the principles of the Belgian Act dated 5 December 1968 concerning collective agreements and joint commissions, but actually extends the scope of negotiations between employers and workers to fields which in principle fall within the competence of the legislative body (for example, work performed beyond the statutory weekly or daily hours of work).

247. The Government also points out that the system is an experimental one which will be applied for two years and the results of which will be examined within the framework of a more general appraisal which should result in a reform of labour regulations, in particular those regarding the length and form of work (shift work, etc.).

248. According to the Government, this measure does not infringe Article 4 of Convention No. 98.

249. As regards sections 1(4)(b) and 2, paragraph 2 of Royal Order No. 179, the Government points out that the agreement on the arrangement of working time is not a collective agreement in the sense of the Belgian Act dated 5 December 1968. It is rather an agreement sui generis concluded between three parties for the purpose of the reorganisation of working time coupled with the recruitment of additional workers.

250. Furthermore, as mentioned above, Royal Order No. 179 does not call into question the principles of the Act of 5 December 1968.

251. According to the Government, it is important to note that the representative organisations of workers are partners to the experiment, either as signatories to the agreement in undertakings in which there is a trade union delegation - it should be noted in this respect that in more than 70 per cent of the national joint commissions, agreements to fix the conditions for the establishment of a trade union delegation have been concluded and that some sectors have made provision for such delegations in undertakings with less than ten workers, hence the very large number of undertakings with a trade union delegation - or indirectly, since, in cases where there

are no trade union delegations, representatives of the representative organisations of workers sit on the Commission on the arrangement of working time agreements which must, in particular, adopt unanimous decisions on all such proposed agreements.

252. Since the undertaking provides the framework for the experiment in which workers are directly concerned, it is therefore the responsibility of the workers of an undertaking to appoint their representatives when trade union organisations do not exist. Furthermore, the Government adds that the absence of a trade union delegation cannot be ascribed to the Government.

253. In the view of the Government, sections 1(4)(b) and 2, paragraph 2 of Royal Order No. 179 do not violate the provisions of Article 4 of Convention No. 98.

254. The Government adds that it does not see in what way the sections in question and the entire text of Royal Order No. 179 constitute an obstacle to or limitation on the right of workers to elect their representatives in full freedom and to organise their activities; according to the Government, Royal Order No. 179 is in no way related - directly or indirectly - to the subject matter of Article 3 of Convention No. 87.

C. The Committee's conclusions

255. The Committee notes that the present case calls into question the intervention of the Government in the sphere of wage fixation on the one hand and collective negotiations on the arrangement of working time on the other.

256. The Committee notes that the measures which give rise to the complaint were adopted on the basis of a law of 1982 which attributes certain special powers to the King within the framework of a policy of economic and financial recovery, the reduction of public expenditure and the creation of jobs.

257. It appears from an examination of the legislation related to the first allegation, in particular section 3 of Royal Order No. 180, that with effect from 1 January 1983 the indexation systems established by legislation, regulations or collective agreements will apply only to the part of the wage equivalent to the minimum wage.

258. The Committee notes that under the terms of the final paragraph of section 3 of Royal Order No. 180 this measure is due to expire on a date which according to the Government, sometime during the months of September or October 1983. However, the measure in question is a prorogation of identical measures adopted by Royal Order No. 11 of February 1982.

259. From the date on which this first measure expires, the indexation methods established by laws, regulations or collective agreements will once again be fully applied; however, in application of section 4 of Royal Order No. 180, they will no longer be based on the monthly consumer price index but rather on a monthly index equal to the arithmetical average of the consumer price index of the preceding four months.

260. According to the complainant, this measure is imposed on the social partners for the future. For its part, the Government does not contradict this statement but points out that its power, as a Government, is to give it full competence to establish the reference standard used for the purposes of indexation, without this constituting an infringement of the principles of free bargaining established by Article 4 of Convention No. 98.

261. In addition to these measures concerning the indexation of wages and without prejudice to the increase in wages in line with the price index, there is the measure established under section 6 of Royal Order 180 which prohibits any increase in wages except increases due to age or seniority, promotion or change of duties during the period from 1 January 1983 to 31 December 1984.

262. The Committee notes in this respect that the increases following from indexation (as established by the new system) as well as wage increases for reasons of seniority or age or as a result of normal promotion or individual change of category are not considered to be wage increases.

263. It must be observed that this measure is the prorogation of wage moderation measures taken in February 1981 under the Act relating to wage moderation, and in February 1982 (Royal Order No. 11). However, immediately following the enactment of the Act of February 1981 the social partners had signed an inter-occupational collective agreement which produced the same results as the law. A system of wage moderation has therefore existed in Belgium since 1981 and will cease to be applied only in December 1984.

264. The Committee notes the Government's assurance in its reply that the limitation of indexation only to the part of the wage equivalent to the guarantee monthly income will be discontinued from the end of September or October 1983, and that the prohibition of increases in remuneration above indexation will be lifted as of 31 December 1984.

265. The Committee is aware that in a period of financial and economic crisis, it is the duty of a government to act and find solutions. It notes in particular in this case that the policy of wage moderation is part of the framework for a policy of job creation and reduction of working hours. However, as the Government itself points out, the Belgian system of indexation in the private sector has

always been regulated by collective agreements. In this connection the Committee recalls that the intervention of a government in areas which traditionally have always been negotiated freely by the parties could call into question the principle of free collective bargaining recognised by Article 4 of Convention No. 98 if it is not accompanied by certain guarantees and in particular if its period of application is not limited in time.

266. The Committee therefore hopes that this measure adopted under section 4 of Royal Order No. 180 and which is part of Chapter 2 entitled "Temporary modifications in the linking of wages to the consumer price index" will be applied as an exceptional measure for a reasonable period of time in line with the Committee's recommendations in previous cases.[1]

267. As regards the allegation concerning Royal Order No. 179 and the experiments on the arrangement of working time in undertakings for the purposes of the redistribution of available work, the Committee notes that section 2, paragraph 1, subparagraph 3, authorises the Minister to grant employers temporary exceptions to the collective agreements signed in the joint bodies.

268. The Committee considers that the negotiation on the arrangement of working time by the elected representatives of the workers is not an infringement of the right of workers to elect their representatives in full freedom (Article 3 of Convention No. 87) since, in the undertakings where a trade union delegation exists, it is the members of this delegation and the representative organisations which are empowered to bargain.

269. On the other hand, the institution of a system of exceptions to collective agreements concluded by the organisations empowered to negotiate at the level of the joint body may, in the view of the Committee, weaken the negotiating power of these organisations, all the more so because under the terms of Section 17 of Royal Order No. 179 agreements may be concluded for an unlimited period of time after the duration of the experiment on the arrangement of working time. The Committee believes that these provisions could contribute to a major change in the collective bargaining system which has been established and accepted for a long time by the workers of Belgium since it would risk displacing the level of collective bargaining, at least as regards certain questions, away from the national joint bodies within the undertaking.

---

[1] See, for example, 129th Report, Case No. 385 (Brazil), para. 65, 130th Report, Case No. 691 (Argentina), para. 27.

The Committee's recommendations

270. 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 measures which gave rise to the complaint were adopted on the basis of a law of 1982 which attributes certain special powers to the King within the framework of a policy of economic and financial recovery, the reduction of public expenditure and the creation of jobs.

(b) With regard to the measures taken under Royal Order No. 180, the Committee notes the assurances given by the Government that the prohibition of increases in remuneration above indexation will be lifted as of 31 December 1984. The Committee recalls that the intervention of a government in areas which traditionally have always been negotiated freely by the parties could call into question the principle of free collective bargaining recognised by article 4 of Convention No. 98 if it is not accompanied by certain guarantees and, in particular, if its period of application is not limited in time.

(c) As regards Royal Order No. 179 concerning experiments for the arrangement of working time, the Committee considers that the possibility of granting exceptions to collective agreements concluded by the organisations empowered to negotiate at the level of joint bodies may weaken the power of negotiation of these organisations and could contribute to a major change in the established collective bargaining system.

(d) The Committee expresses the hope that all these measures thus adopted will be applied on an exceptional basis and that they will be lifted within a short period of time.

(e) The Committee refers this entire case to the attention of the Committee on Experts on the Application of Conventions and Recommendations for an examination within the framework of the supervision of the application of Conventions Nos. 87 and 98, ratified by Belgium.

Case No. 1184

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

271. The complaint is contained in a communication from the World Federation of Trade Unions (WFTU) of 21 February 1983. The Government replied in communications of 5 May and 17 August 1983.

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

A. The complainant's allegations

273. In its communication of 21 February 1983, the WFTU alleges the arrest of Messrs. Luis Caro Molina, Juan Cunuecán and Lino Contreras Espinoza, leaders of the Colbún-Machicura Hydroelectric Complex Construction Union, who are currently in the custody of the Chief Justice of the Court of Appeals.

274. According to the WFTU, the three leaders were arrested in Maipú while soliciting trade union support for the strike in which the workers of the Colbún-Machicura Hydroelectric Complex have been engaged for over a month. The WFTU indicates that it fears for the physical well-being and the life of the three leaders.

B. The Government's reply

275. The Government states in its communication of 5 May 1983 that on 3 February 1983 Messrs. Luis Rafael Caro Molina, Juan Cunuecán Alvarez and Lino Alberto Contreras Espinoza, were arrested and turned over to the courts on charges of violating Act No. 12.927 on State Security. According to the Government, there is no proof that these persons were trade union leaders of the Colbún-Machicura Hydroelectric Complex Construction Union.

276. The Government adds that the Court of Appeals of Santiago appointed one of its members as examining magistrate to investigate the facts and determine responsibility therefor. The examining magistrate issued an indictment by which, having questioned the accused, he committed them for trial on the grounds that the existence of the crime under investigation had been established and that there

was sufficient evidence of involvement of the accused as authors, accomplices or accessories after the fact. The defence appealed to a higher court which, having considered the plea, upheld the indictment issued by the magistrate.

277. The Government further indicates that, notwithstanding the indictment of the persons concerned, the judge in charge of the case released them on bail on 24 February 1983. Consequently, the complainant's allegation that the defendants are in jail is not accurate.

278. In its communication of 17 August 1983 the Government indicates that on 14 July 1983 the Supreme Court upheld an appeal brought by the defence stating that the existence of the offences in question had not been proved. Consequently, the charges against those concerned have been dropped and they enjoy complete freedom.

C. The Committee's conclusions

279. The Committee notes that the allegations refer to the arrest on 21 February 1983 of three leaders of the Colbún-Machicura Hydroelectric Complex Construction Union while soliciting trade union support for the strike of the workers of the hydroelectric complex.

280. The Committee takes note of the Government's statements and, in particular, that the examining magistrate in the case against the aforesaid persons released them on bail on 24 February 1983 and committed them for trial on the grounds that the existence of crimes in violation of Act No. 12.927 on State Security had been established and there was sufficient evidence that the accused had taken part in such crimes. The Committee also notes that since 14 July 1983 those concerned have enjoyed complete freedom as the Supreme Court found that there was no proof of the existence of the crimes of which these persons had been charged.

281. In this respect, the Committee notes that the Government has not indicated the specific acts of which the three leaders of the Colbún-Machicura Hydroelectric Complex Construction Union were accused, whereas the complainant organisation has indicated that the arrests were related to the conduct of trade union activities (seeking trade union support for a strike). The Committee also notes that Act No. 12.927, the basis for the charges, contains penal provisions relating to acts such as paralysing electrical, water and similar services, or unlawful work stoppages and strikes in public services or utilities which upset public order or disrupt public utilities or services the functioning of which is required by law or damage any essential industries.

282. In these circumstances, the Committee wishes to draw the attention of the Government to the fact that one of the bases of the principles of freedom of association is that there should be no recourse to measures depriving an individual of his liberty for the mere fact of organising or participating in a peaceful strike. Furthermore, the imposition of penal sanctions for such strikes is incompatible with the principles of freedom of association.[1]

The Committee's recommendations

283. 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 union leaders Luis Caro, Juan Cunuecán and Lino Contreras, who were detained between 21 and 24 February 1983, have been released in full freedom due to a decision by the judiciary that there was no proof as to the existence of the crimes of which they had been charged. The Committee notes that the law on which the charges against them were based imposes penal sanctions for the carrying out of certain trade union activities which is incompatible with the principles of freedom of association.

(b) The Committee draws the Government's attention to the fact that no one should be deprived of liberty or be subject to penal sanctions for the mere fact of organising or participating in a peaceful strike.

Case No. 1194

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

284. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 12 April 1983. The Government's reply is contained in communications of 11 and 19 May and 2 September 1983.

---

[1] See, for example, 214th Report, Case No. 1097 (Poland), para. 748.

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

A. The complainant's allegations

286. The ICFTU alleges that, on 7 March 1983, at the time the new school year was announced, the Offical Gazette published a decision of the Ministry of the Economy arbitrarily revoking the legal personality of the Professional Association of Educators of Chile (AGECH) for alleged violations of legal provisions, without giving the association any opportunity to defend itself and without stating the grounds for the revocation. The complainant adds that the AGECH has never violated the law, and that it must be presumed that the sole reason for revocation of the legal personality of AGECH is its opposition to the educational and labour policy of the Government.

287. The complainant further states that the dissolution of the AGECH by decree comes at a time when teachers are facing serious problems of lack of job security, low pay, progressive reductions in vacation time, increased dismissals and growing unemployment in the profession.

B. The Government's reply

288. In its communication of 11 May 1983, the Government states that, by Resolution No. 21 of 21 January 1983, published in the Official Gazette of 7 March 1983, the Ministry of the Economy, Development and Reconstruction, by virtue of the laws applicable to serious violations of legal, regulatory and statutory provisions by occupational associations, revoked the legal personality of the Professional Association of Educators of Chile (AGECH). The grounds for taking this measure were the fact that the Association was found to be engaged in political activities, in express breach of section 1 of Legislative Decree No. 2757 of 1979 which prohibits occupational associations from engaging in this type of activity. The Government indicates that the AGECH leadership appealed the revocation to the courts.

289. In its communication of 19 May 1983, the Government states that on 10 May 1983 the court of first instance cancelled Resolution No. 21 of 21 January 1983 revoking the legal personality of the AGECH. In its communication of 2 September 1983, the Government sends a copy of the aforementioned decision which is now definitive since the Ministry of Economy, Development and Reconstruction made no appeal against it within the prescribed legal period.

C. The Committee's conclusions

290. The Committee takes note of the allegations of the complainant relative to the revocation by administrative authority of the legal personality of the Professional Association of Educators of Chile (AGECH), and of the Government's reply.

291. The Committee takes particular note that the court of first instance, in a decision of 10 May 1983, cancelled the resolution of the Ministry of the Economy, Development and Reconstruction revoking the legal personality of the AGECH, but observes that this ministerial decision was enforceable as from the date of its publication in the Official Gazette. In this respect, the Committee can only regret that the Government violated the principle of freedom of association according to which workers' organisations shall not be liable to dissolution by administrative authority, or to any other type of administrative measures producing the same result. In this connection, the Committee wishes to draw to the Government's attention that, in order to guarantee the aforesaid principle, and consequently the rights of defence, it is not sufficient for the laws to confer upon the trade union organisation concerned the right to appeal to the courts against a decision of dissolution or revocation of its legal personality. It is also necessary for the appeal procedure provided under the law to have a suspensive effect so that such measures can enter into force only after a period of time provided for under the law has elapsed without an appeal having been filed, or when the decision in question has been upheld by the courts.[1] The Committee further observes that the grounds for revoking the legal personality of AGECH were that it was found to be engaged in political activities contrary to the provisions of section 1 of Legislative Decree No. 2757 of 1979. In this respect, the Committee recalls that provisions which produce a general prohibition of political activities of trade unions for the promotion of their specific objectives are contrary to the principles of freedom of association.[2]

292. In these circumstances, the Committee requests the Government to take measures to amend the legislation so that revocation of the legal personality of occupational associations - which produces effects similar to those of dissolution - can be effected only by the courts, and to remove the general prohibition of political activities of occupational associations so that they may, if they wish, engage in political activities relating to the promotion of their trade union objectives.

---

[1] See, for example, 113th Report, Case No. 266 (Portugal), para. 87, and 214th Report, Cases Nos. 1083 and 1085 (Colombia), para. 448.

[2] See 197th Report, Case No. 823 (Chile), para. 387.

The Committee's recommendations

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

(a) The Committee regrets that the Government violated freedom of association in revoking the legal personality of the AGECH by administrative action as it is entitled to do under the legislation in force - although it notes that, following an appeal filed by the AGECH leadership, the courts cancelled the aforesaid revocation.

(b) The Committee draws the Government's attention to the principle of freedom of association according to which workers' organisations shall not be liable to dissolution by administrative authority or to any other type of administrative measures producing the same result.

(c) The Committee requests the Government to take measures to amend its legislation so that revocation of the legal personality of occupational associations can be effected only by the courts. It also requests the Government to remove the general prohibition of political activities of occupational associations so that they may, if they wish, engage in political activities relating to the promotion of their trade union objectives.

Case No. 1193

COMPLAINT PRESENTED BY THE ATHENS WORKERS' CENTRE, SECTION OF THE GENERAL CONFEDERATION OF LABOUR, AGAINST THE GOVERNMENT OF GREECE

294. The Athens Workers' Centre, an organisation which claims to be a section of the Greek General Confederation of Labour (hereafter referred to as the GCL), submitted a complaint alleging violation of freedom of association in Greece on 13 April 1983. It sent additional information in support of its complaint on 18 May 1983. The Government, for its part, replied in a communication of 11 August 1983. Furthermore, the President of the Free Democratic Trade Union Movement, Mr. Karakistos, who signed the initial complaint in his capacity as President of the Athens Workers' Centre, stated that he supported the complaint from the Athens Workers' Centre in a communication received on 4 October 1983. This communication was immediately sent to the Government for its comments.

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

A. The complainant's allegations

296. The Athens Workers' Centre, which claims to consist of 625 trade unions and 400,000 members, alleges in its communication of 13 April 1983 that the Government forced the GCL's Executive, which had been elected just 45 days before, to resign, and appointed a new Executive, of which 80 per cent of the members belong to organisations of the party in power. The complaint also concerns Act No. 1264/82 which allegedly deprived workers of their right to draw up the statutes of their occupational organisations and to elect their representatives, Act No. 1320/80 which abolished free collective bargaining, and Act. No. 1346/82 which allegedly empowered the Minister of Labour to finance occupational organisations so as to bring them under his influence in view of the forthcoming GCL Congress; the complaint also alleges a wave of persecution launched by the Government against opposing trade unionists in order to frighten people into accepting a state form of trade unionism, which, states the complainant organisation, is "a phenomenon only encountered in totalitarian countries". This communication is signed, amongst others, by the former Minister of Labour, Mr. Laskaris, the former Minister of Justice, Mr. Stefanakis, an Honorary President of the GCL, the Secretary-General of the Administration elected by the GCL, Mr. Saitis, a legal expert from the Court of Appeal and the former Secretary of the Administration elected by the GCL; it also lists the names of President Karakitsos and the Secretary-General Mr. Saitis, referring to them as members of the Executive of the Administration legally elected by the Greek GCL, which was dismissed by judicial decision.

297. In a second very long communication of 18 May 1983, the complainant organisation points out that the executives of many trade union organisations had allegedly been dissolved, not only that of the GCL. Whilst acknowledging that these dissolutions had been ordered by judicial courts, it maintains that they had been carried out "in a climate of terror and unprecedented psychological pressure", enabling the Government to pass an Act, which aims at completely subjugating the trade union movement and silencing the voice of the workers.

298. According to the complainant organisation, the GCL Executive was dissolved in the following way: 32 days after the GCL Congress ended, when Andréas Papandreou had been in power since 18 October 1981, five trade union organisations linked to the government party lodged an appeal with the Athens Peace Tribunal, questioning the validity of the elections of the GCL Executive and requesting that

measures be taken to stay execution of the decisions taken at the GCL Congress. In fact, recalls the complainant, the Executive had been elected with a majority of 65 per cent of the votes. Deferment of the decisions taken at the GCL Congress was announced on 17 November 1981 by the Justice of the Peace which, states the complainant organisation, is the lowest instance in the Greek legal system. This decision was obviously the result of pressure from certain circles because it granted the wishes of trade unions affiliated to the Government. On 7 December 1981, the five above-mentioned trade union organisations proceeded to request the appointment of a provisional Executive. The hearing of the matter was held on 9 December, following lightning legal proceedings. The representatives of 26 trade union federations and workers' centres upheld the complainant's point of view in the presence of a single Justice of the Peace, but the applicants, rival organisations of the complainant, requested and obtained the appointment for one year of a new Executive, made up of trade unionists belonging exclusively to the party in power and to the two Communist Parties existing in Greece. On 15 December 1981, the applicants, rival organisations of the complainant, asked the Justice of Peace to defer an appeal until March 1982, to which he agreed by fixing the hearing on 12 February 1982. Meanwhile, on 29 December 1981, the Athens Court of First Instance had appointed the provisional Executive at the head of the GCL, made up of totally incompetent people. This decision was adopted upon an order from the party in power, without taking account of the 26 trade union organisations who were present at the hearing and which pleaded on behalf of the elected GCL Executive. The appeal lodged by the rival organisations of the complainant was examined on 12 February 1982 by the Justice of Peace who excluded the respondent, that is the complainant, from the hearing. The complainant alleges that the decision granted the GCL Executive, imposed from outside, the right to pass judgement on the allegations concerning electoral fraud during the Congress. Furthermore, it alleges that, through appeals to the courts, other trade union organisations had been taken over by militants, whom it qualifies as "fanatics" from Pasok (Greek Socialist Party) and the two Greek Communist Parties. The Executive elected by the GCL lodged an appeal against the appointment of the provisional Executive, in which it stated that the court had failed to take into account all the parties present at the hearing; furthermore, it alleged that the court had adjudicated more than was asked for, and it had gone beyond the scope of the matter referred to it by the organisations concerned. The complainant adds that the appeal was first examined on 1 October 1982 by the members of the first instance of the Appeal Court, presided over by Mr. Consta who had just been appointed to this position. The Appeal Court, concludes the complainant, rejected this appeal as it considered that the Athens Workers' Centre, even if it was one of the respondents during the hearing which had resulted in the unfavourable decision, was not entitled to appeal to the Court since it was not a correspondent party in the decision.

299. With respect to the allegation that Act No. 1264/82 of 1 July 1982 denies workers the right to draw up their own statutes and elect freely their representatives, the complainant states that in section 1(3) of the Act, local sections of trade unions are considered as first-level trade union organisations; this, it claims, is contrary to Articles 2, 3 and 4 of Convention No. 87 which acknowledges as an established principle the pyramid-shaped structure of the trade union organisation. Sections 1 and 2 of the Act confer legal personality on mere works committees, thereby contravening Article 5 of Convention No. 87 which does not authorise the setting up of a federation or confederation by one simple trade union organisation and does not provide for the setting up of local associations by this organisation. Sections 2 and 3 of the Act, stipulating that documents and any other material concerning the trade unions (account books, etc) must be put at the disposal not only of the members of this organisation but also of persons having "legitimate interests", might enable the state to control the trade unions' activities. The complainant alleges that section 7 of the Act, which obliges unions to accept members because the Justice of Peace (the lowest legal instance) can automatically have them enrolled if the union in question has refused to accept them, and section 12, which imposes proportional representation as the electoral system and establishes the number of votes required for election and the distribution of seats between each organisation, are contrary to Articles 3 and 8 of Convention No. 87; indeed, the impugned sections are not in keeping with the general principles of the right of association in Greece, in other words with the provisions contained in the Civil Code. Section 9 of the Act, stipulating the length of the executive bodies' term of office and forbidding a trade union which does not obtain a specific number of members to stand for election to the second-level organisations, would force more organisations to disband and is contrary to the spirit and letter of Convention No. 87. This is also the case for section 14 of the Act which abolishes the right to vote and eligibility of retired journalists.

300. With respect to the allegation concerning the abolition of the right to free collective bargaining, the complainant considers that it results from section 27 of Act 1320/82. The provisions contained in this Act stipulate that any strike to support wage claims is illegal and should be sanctioned as such.

301. With respect to the allegation concerning government interference in the trade unions' financial matters, the complainant is of the opinion that under section 23 of Act No. 1346 of 14 April 1983, the Government has deprived unions of their financial independence. It affirms, for example, "in this way, the Government's objectives, i.e. to subjugate the trade union movement, are clearly brought to light and its enormous lies are uncovered". It believes that the Government adopted this Act to mislead the international trade union organisations, the ILO and public opinion, by granting the Minister the power to finance the trade unions with

government leanings, as he thinks fit in an arbitrary way, in order to pressure every trade union organisation into joining the trade union movement affiliated to the Government. Furthermore, according to the complainant, the funds of ODEPES (Trade Union Special Fund Management Organisation) have been handed over to a workers' hostel - a governmental body - and the Minister of Labour will distribute these funds as he thinks fit.

302. As regards the allegation concerning the persecution of trade unionists, the complainant maintains that never in the history of the Greek trade union movement has there been such a wave of persecutions against trade union leaders. These consist of transferring independent trade unionists to remote areas of the country and subjecting them to psychological pressure and blackmail by downgrading their positions in the job hierarchy. There are hundreds of these persecutions and it would be impossible to list them in detail. The complainant ends by stating that it has the intention of submitting lists of the victims' names in due course.

B. The Government's reply

303. In its reply of 11 August 1983, the Government explains that, as soon as it came to power in 1981, it committed itself to restoring workers' trade union rights and democratising the trade union movement. It maintains that, as a result, the trade union movement now enjoys an independence and financial autonomy based on democratic principles which are acknowledged both inside the country and abroad, whereas the legislation previously in force fell short in this respect, especially Acts Nos. 330 of 1976 and 643 of 1977.

304. Denying all the allegations of the complainant organisation, the Government considers that Act No. 1264 of 1 July 1982 on the democratisation of the trade union movement and the protection of trade union freedoms adopted by the Greek Parliament is one of the most progressive pieces of legislation in existence and that it complies with the requirements laid down in the provisions of Conventions Nos. 87 and 98. It states, moreover, that this fact had been noted with satisfaction by the ILO Committee of Experts on the Application of Conventions and Recommendations[1] at its 53rd Session on 23 March 1983; indeed, it referred to many sections in Act No. 1264, and commented especially on improvements to the existing legislation including the widening of the hitherto limited scope of protection afforded to trade union leaders and trade

[1] See Report III (Part 4A), International Labour Conference, 69th Session, 1983.

unionists, the abolition of ODEPES (Organisation for the Management of Trade Union Special Funds), the possibility of the unions to finance themselves by the check-off system and especially the employers' obligation to re-engage workers who, under Act No. 330, had been dismissed for trade union activities.

305. Going back in detail over the various points contained in the complaint, the Government regrets that the complainant, by producing tracts and making slanderous accusations, has tried to libel and undermine the honour of Greek justice. With respect to the appointment of the GCL Executive, it states that the matter was conducted in accordance with the official procedure laid down by the legislation in force, without intervention from any authority whatsoever and without interference in the internal affairs of the trade union organisations, which had established their own legal machinery for settling disputes.

306. The Government explains more specifically that the terms of office of the second-level trade union organisation members would normally have terminated at the end of 1982, but that on 3, 4 and 5 October 1981, well before the normal date on which they were due to expire, the GCL convened a "Congress" at Halkidiki in great haste to elect new members so that, according to the Government, it could subordinate the trade union movement to a fraction of trade union representatives and exclude second-level trade union organisations from the GCL. This prompted the latter trade union organisations, which have the greatest number of members, to lodge an appeal against the validity of this Congress as the Executive had refused their request, although made within the allotted time limit for the registration of adherent members, to attend the Congress in Halkidiki.

307. The competent court, the Athens Peace Tribunal, decided on 8 December 1981 to stay the decision taken by the GCL Congress concerning the election of returning Officers for the General Council and the GCL Executive, thus acting upon the request made on 10 December 1981 by the five trade union organisations with the highest membership rate. On 26 April 1982, the Government continues, the same Peace Tribunal declared the Congress null and void. The Government cites some examples from the reasons adduced for the judgement in question, specifying that the Congress was held "contra legem" and infringed the provisions of the GCL statutes: firstly, the trade union organisations had, more than two years previously, made a request to be included in the special register of members affiliated to the respondent confederation (13 organisations are quoted), however (in breach of Article 7, paragraph 2 of the respondent confederation's statutes), the respondent confederation's Executive did not register these organisations as affiliated members during the following six months, but waited until just before the date of the Congress so that they would be excluded, leading to a falsification of the election results; secondly, in breach of the statutes in force (Article 18), the provisional officers of the Congress had not allowed persons to

stand as candidates for election for the chair of the Congress and their officers, or for the election of the Credentials Committee; thirdly, although the competent Peace Tribunal had annulled the election results appointing representatives from the workers' centres of the islands of Eboea and Eleusis (of which more than 20 were delegates at the Congress in question), these delegates illegally attended the Congress and influenced the election results with their votes; furthermore, during a secret ballot to elect a tripartite committee for supervising the running of the elections, persons who were not adherent members had attended, such as staff from the GCL, other federations, the hotel etc; and fourthly, by unlawfully using the right conferred upon it by statutory provisions, the GCL Executive Committee refused to enrol adherent members of second-level trades union, etc., in its register.

308. The Government acknowledges that several trade union organisations with the highest number of members, i.e. the General Federation of Workers' in the State Electrical Company, the Federal of Insurance Companies, the Federation of Building Workers, the Panhellenic Federation of Accountants, the Federation of Workers in the Building and Woodworking Industries, the Panhellenic Federation of Trade Unions for Specialised Workers in the Tile, Pottery and Allied Industries and the Federation of Retired Bank Employees, filed actions with the Athens Court of First Instance (with a single judge) on 7, 8, 9, 10 and 14 December 1981, to appoint a new provisional Executive and to renew members of the GCL Governing Body. These appeals were declared admissible on 29 December 1981 and the judge proceeded to make the said appointments, in proportion to the electoral capacity granted to the representatives on behalf of their trade union organisations within the GCL.

309. The judge conferred a trusteeship on the provisional Executive so that it could run the Confederation's affairs, as laid down in the statutes and by laws; furthermore, a GCL Congress to elect the representatives of the Executive was convened for 21-23 October 1983.

310. With respect to the impugned provisions of Act No. 1264 of 1982, the Government replies that, through this Act, effective measures were taken to try to improve and democratise the trade union movement; other forms of trade union organisations are acknowledged for the first time as, in Greece, there are local sections of trade unions for wider areas or for the whole of Greece, as well as associations of individuals. The Act provides for a procedure regulating membership formalities (concerning the entry of adherent members, under judicial control, in the trade union organisations' special registers) and the revision of their registers. The Act dissolved ODEPES and opened the way to the trade union organisations' financial autonomy. It laid the foundations for the restructurisation of organisations in order to correct the organisational weaknesses caused by the fragmentation in tasks and

lack of order. A worker may be affiliated to two unions, i.e. to the one in his specific branch of activity and to the one within his undertaking but, to elect his representatives to higher level organisations, he must opt for one trade union; similarly, any first-level trade union organisation may become a member of two second-level trade union organisations (a workers' centre and a federation) but second-level trade union organisations may only join one third-level organisation (confederation). The Act tried to overcome fraud and double representations by laying down provisions stipulating that first-level trade union organisations can only elect their representatives to a third-level trade union organisation through a second-level trade union organisation, in other words, a federation or workers' centre. It introduced the simple majority system for elections to the Executive of the organisation concerned and extended protection to trade union officers, to founders of organisations and, for the first time, to trade union activities in the workplace. It enforced the right to strike by prohibiting the recruitment of strike breakers, lock-out and the suspension of strikes by provisional ordinance. It obliged employers to place premises and a meeting room at the disposal of trade union organisations at the workplace and to receive regularly trade unionists once a month. It provided for penal sanctions against employers and their representatives who violate trade union rights or infringe the free exercise of trade union activities. It abolished all penal sanctions against trade union leaders.

311. Concerning section 22 of Act No. 1320 of 1983, the Government states that it does not abolish the right of collective bargaining but that it fixes a maximum limit for wage increases during a specific period; moreover, it authorises the free exercise of collective bargaining for all other matters which are the subject of collective agreements. By setting a maximum limit for wage increases, the Government is acting in accordance with Article 106 of the Constitution which stipulates that: "In order to consolidate social peace and protect the general interest, the State shall plan and co-ordinate economic activity in the country aiming at safeguarding economic development of all sectors of the national economy". Several judgements have already upheld this decision.

312. With respect to section 23 of Act No. 1346 of 1983, the Government recalls that the Trade Union Act No. 1264 dissolved ODEPES, the organisation for managing the special funds of trade unions which administered, without supervision, the finances of trade union associations, and that the same Act No. 1264 consolidates and guarantees the self-financing of trade union organisations. The latter are now entitled to collect their members' dues either at the workplace or through the check-off system. The legislator left the organisations to decide upon this check-off system by means of collective bargaining, a general collective agreement or an arbitration award. If the organisations delay in settling the matter, it will be settled by Presidential Decree after consulting the

most representative organisations. Finally, the Workers' Institute, the so-called "workers' hostel", was granted financial aid on a provisional basis (but in accordance with objective criteria) from the most representative second-level trade union organisations, i.e. the trade union centres. The Government points out that, in accordance with Act No. 1264, this system of financing will be entirely abolished in three months after the promulgation of the above-mentioned Presidential Decree and that the GCL and the Federation of Greek Industries have responded to the Minister of Labour's request by submitting proposals aimed at helping to draw up the Presidential Decree in question.

313. Concerning the allegation that trade union delegates are persecuted, the Government regrets that this is vague, and categorically denies it. It recalls that, on the contrary, it has taken measures to promote the reinstatement of persons dismissed between 1976 and 1982 for having taken part in trade union activities or in a strike. With respect to the isolated cases of dismissals of trade unionists, it stresses that the Ministry of Labour's competence has been widened under the new Act and it is now invested with responsibilities enabling it, to a considerable extent, to contribute towards settling disputes.

C. Additional allegation

314. In a communication received on 4 October 1983, Mr. Karakistos, in his capacity as President of the Free Democratic Trade Union Movement, who also signed the initial complaint as President of the Athens Workers' Centre, stated that he supported the complaint from the Athens Workers' Centre. He points out that the Executive of the Athens Workers' Centre had been dissolved by judicial decision No. 4644 of 16 September 1983, made by one judge, and he denounces the takeover of the Athens Workers' Centre by the Communist Party and PASOK. He also states that he will not attend any congress whatsoever that is convened by the Governing Body appointed to the Athens Workers' Centre and the GCL.

D. The Committee's conclusions

315. The Committee notes that this case concerns, firstly, the dispute within the Greek General Confederation of Labour, secondly, a criticism of recent trade union legislation and thirdly, the alleged repression of trade union leaders.

316. With respect to the first grievance raised by the complainant organisation, i.e. the dissolution of the Governing Body of the highest Greek trade union organisation, the Greek General Confederation of Labour (GCL) which had been elected only 45 days before, announced by the Government and the alleged appointment of a new Governing Body to head the confederation, made up of persons belonging to the organisations affiliated to the party in power, the Committee notes the long and detailed arguments provided both by the complainant and the Government.

317. Generally in cases of disputes concerning trade union elections, the Committee has always emphasised that the authorities should refrain from any interference which would restrict the right of organisations to elect their representatives in full freedom and to organise their administration and activity;[1] furthermore, the Committee also considers that it is not competent to make recommendations on internal dissentions of this nature, so long as the Government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organisation.[2] One of the basic principles of freedom of association is that the supervision of trade union elections should always been entrusted to the judicial authorities.

318. In this case, it appears from the information supplied by the Government that the date of the trade union elections had been brought forward by the retiring Governing Body, that these elections had been disputed by the rival trade union organisations of the complainant who had been refused the right by the retiring Governing Body to enter their names on the list of voters so that they might take part in the elections, and that these organisations referred the dispute to the judicial authorities, which rendered a final judgement on the matter. While noting that, according to the complainant, the Greek Judiciary did not make an entirely independent judgement in this case, the Committee is not in a position, given the facts in this matter, to agree with this opinion. As the judicial authorities have handed down a final judgement on the dispute concerning the trade union elections, the Committee considers that this aspect of the case does not call for further examination.

---

[1] See, for example, 83rd Report, Case No. 418 (Cameroon), paras. 345-347; 165th Report, Case No. 843 (India), para. 44 and, more recently, 217th Report, Case No. 1086 (Greece), para. 93.

[2] See 172nd Report (Ecuador), para. 74 and 217th Report, Case No. 1086 mentioned above.

319. With respect to the legislative aspect of the case, the Committee, whilst noting the grievances raised by the complainant concerning Act No. 1264 of 1 July 1982, points out that the Committee of Experts on the Application of Conventions and Recommendations,[1] at its session in March 1983, examined this legislation in the light of Conventions Nos. 87 and 98 and that it, as the Government mentions, noted with satisfaction certain changes introduced by the new Act and asked to be kept informed of the final solution adopted with respect to the collection of union dues. Concerning the withdrawal of the right to vote and eligibility of retired journalists, the Committee of Experts also pointed out to the Government that this matter should be left up to the statutes of the trade union organisations concerned. The Committee can only reiterate the requests made by the Committee of Experts on these various points. Furthermore, having examined Act No. 1264, the Committee is of the opinion that the issues relating to trade union structure, to elections based on the proportional system, to free access of workers in trade unions under the control of the courts, as well as to the consultation of trade unions' registers deposited with the Clerk of the Court in a case of legitimate interest, do not appear to infringe the principles of freedom of association.

320. With respect to the grievances raised by the complainant concerning section 23 of Act No. 1946/83 of 14 April 1983 on the alleged suppression of the trade union's financial autonomy by the Government which, from henceforth, would be in control of the trade union's financing itself, the Committee, as did the Committee of Experts, notes with satisfaction that, as the supervisory machinery had requested on several occasions, the Trade Union Special Fund Management Organisation (ODEPES) was dissolved by Act No. 1264 which transferred the rights and obligations of this body to the Workers' Institute (section 27 of the Act). However, the Committee trusts that section 23 of Act No. 1326/83 of 14 April 1983 does not empower the Government to intervene in the financial management of the trade unions. It refers this matter as a whole to the Committee of Experts on the Application of Conventions and Recommendations.

321. With respect to the grievance concerning section 27 of Act No. 1320/82, the Committee notes that this provision delays the right of employers to grant wage increases during a period of one year and forbids the same employers to offset any increases in production costs; however, it maintains the right to bargain collectively over working conditions, except for those relating to wage matters. In view of the fact that this provision is more dissuasive rather than mandatory in nature and that it is limited to a period of one year, the Committee considers that it does not appear to contain any measures contrary to Article 4 of the Right to Organise and Collective Bargaining Convention (No. 98), especially as, contrary to the complainant's allegation, Act No. 1320/82 does not contain any prohibition of strikes over wage increases. However, if the

[1] See RCE, 69th Session, 1983, Report III (Part 4A).

situation which, in certain respects, restricts the freedom of collective bargaining, should remain unchanged, the Committee might consider it open to criticism.

322. With respect to the alleged persecution of trade unionists, the Committee notes the vague nature of the complainant's allegation and the Government's firm denials. It also notes that the complainant has not supplied information to support its allegation. The Committee therefore considers that this allegation does not call for further examination.

The Committee's recommendations

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

(a) concerning the allegations of the dissolution of the GCL Governing Body and of persecution against trade unionists, the Committee considers that these allegations do not call for further examination;

(b) concerning the legislative aspects of the case, the Committee can only reiterate the requests made by the Committee of Experts on the Application of Conventions and Recommendations, in particular as to how the question of the collection of union dues will be resolved and as to the denial of eligibility to hold trade union office of retired journalists;

(c) concerning the allegation that the Government has deprived trade unions of their financial autonomy by taking over the control of their finances, the Committee, as did the Committee of Experts, notes with satisfaction that the ODEPES had been dissolved and that the rights and obligations of this body have been transferred to the Workers' Institute. However, the Committee trusts that section 23 of Act No. 1346/83 does not empower the Government to intervene in the financial management of trade unions. It refers this matter as a whole to the Committee of Experts on the Application of Conventions and Recommendations.

(d) concerning the allegation that the right to collective bargaining has been abolished, the Committee notes that section 27 of Act No. 1320/82 is of limited duration because it is in force for one year; furthermore, with respect to wage increases that employers might grant, it is more dissuasive than mandatory in nature, it does not infringe the right to bargain collectively on matters other than those relating to wages and it does not contain any

prohibition of the right to strike for wage claims, as alleged by the complainant. In these circumstances, the Committee considers that this section does not appear to include measures contrary to Article 4 of Convention No. 98. However, if the situation, which in certain respects restricts collective bargaining, should remain unchanged, the Committee might consider it open to criticism.

Case No. 1210

COMPLAINT PRESENTED BY THE NATIONAL FEDERATION OF METALWORKERS AGAINST THE GOVERNMENT OF COLOMBIA

324. The complaint is contained in communications from the National Federation of Metalworkers (FETRAMETAL) dated 31 May and 27 June 1983. The Government replied in a communication dated 25 July 1983.

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

A. The complainant's allegations

326. The complainant in its communication of 31 May 1983 alleges that just over three weeks ago the Ministry of Labour issued a directive which prohibits the workers of the undertaking Grifos y Válvulas S.A. from joining the National Union of Workers of Metalworking, Metallurgical and Iron and Steel Industries - SINTRAIME - (a primary industrial organisation) and that the Ministry refuses to register the executive committee of the trade union branch of SINTRAIME located in Funza, where the above-mentioned undertaking operates.

327. The complainant points out that the argument put forward by the undertaking and followed by the Ministry of Labour, is that the undertaking Grifos y Válvulas S.A. is not a metallurgical undertaking, which is not correct, according to the complainant since the undertaking in question manufactures faucets and metal taps and, in fact, in some sections of the plant, 90 per cent of the workers are employed as metallurgists or mechanics.