INTERNATIONAL LABOUR OFFICE

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Vol. LXVIII, 1985 *Series B, No. 1*

Report of the Committee on Freedom of Association (238th Report)

238th REPORT

Earlier reports of the Committee on Freedom of Association have been published as follows:

Report	Publication		
	Reports of the International Labour Organisation to the United Nations (Geneva, ILO)		
1-3	Sixth Report (1952), Appendix V		
4-6	Seventh Report (1953), Appendix V		
7-12	Eighth Report (1954), Appendix II		
	Official Bulletin		
	Volume	Year	Number[1]
13-14	XXXVII	1954	4
15-16	XXXVIII	1955	1
17-18	XXXIX	1956	1
19-24[2]	XXXIX	1956	4
25-26	XL	1957	2
27-28[2]	XLI	1958	3
29-45	XLIII	1960	3
46-57	XLIV	1961	3
58	XLV	1962	1 S
59-60	XLV	1962	2 SI
61-65	XLV	1962	3 SII
66	XLVI	1963	1 S
67-68	XLVI	1963	2 SI
69-71	XLVI	1963	3 SII
72	XLVII	1964	1 S
73-77	XLVII	1964	3 SII
78	XLVIII	1965	1 S
79-81	XLVIII	1965	2 S
82-84	XLVIII	1965	3 SII
85	XLIX	1966	1 S
86-88	XLIX	1966	2 S
89-92	XLIX	1966	3 SII
93	L	1967	1 S
94-95	L	1967	2 S

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

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

Report	Publication		
	Volume	Year	Number
96-100	L	1967	3 SII
101	LI	1968	1 S
102-103	LI	1968	2 S
104-106	LI	1968	4 S
107-108	LII	1969	1 S
109-110	LII	1969	2 S
111-112	LII	1969	4 S
113-116	LIII	1970	2 S
117-119	LIII	1970	4 S
120-122	LIV	1971	2 S
123-125	LIV	1971	4 S
126-133	LV	1972	S
134-138	LVI	1973	S
139-145	LVII	1974	S
146-148	LVIII	1975	Series B, Nos. 1-2
149-152	LVIII	1975	" No. 3
153-155	LIX	1976	" No. 1
156-157	LIX	1976	" No. 2
158-159	LIX	1976	" No. 3
160-163	LX	1977	" No. 1
164-167	LX	1977	" No. 2
168-171	LX	1977	" No. 3
172-176	LXI	1978	" No. 1
177-186	LXI	1978	" No. 2
187-189	LXI	1978	" No. 3
190-193	LXII	1979	" No. 1
194-196	LXII	1979	" No. 2
197-198	LXII	1979	" No. 3
199-201	LXIII	1980	" No. 1
202-203	LXIII	1980	" No. 2
204-206	LXIII	1980	" No. 3
207	LXIV	1981	" No. 1
208-210	LXIV	1981	" No. 2
211-213	LXIV	1981	" No. 3
214-216	LXV	1982	" No. 1
217	LXV	1982	" No. 2
218-221	LXV	1982	" No. 3
222-225	LXVI	1983	" No. 1
226-229	LXVI	1983	" No. 2
230-232	LXVI	1983	" No. 3
233	LXVII	1984	" No. 1
234-235	LXVII	1984	" No. 2
236-237	LXVII	1984	" No. 3

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Report of the Committee on Freedom of Association

238th REPORT[1]

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 18, 19 and 21 February 1985 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The member of the Committee of Indian nationality was not present during the examination of the case relating to India (Case No. 1232).

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[1] The 238th Report was examined and approved by the Governing Body at its 229th Session (February-March 1985).

3. The Committee is currently seized of 96 cases in which the complaints have been submitted to the governments concerned for observations. At its present meeting it examined 24 cases in substance, reaching definitive conclusions in 14 cases and interim conclusions in ten cases; the remaining cases were adjourned for various reasons set out in the following paragraphs.

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4. The Committee adjourned until its next meetings the cases relating to Brazil (Case No. 1313), Portugal (Cases Nos. 1314 and 1315), Nicaragua (Case No. 1317), Federal Republic of Germany (Case No. 1318) and Spain (Case No. 1320) concerning which it is still awaiting information or observations from the governments concerned. All these cases concern complaints brought since the last meeting of the Committee.

5. Not having received the observations or information requested from the governments in the cases relating to Uruguay (Cases Nos. 1098/1132 and 1290), Paraguay (Cases Nos. 1204, 1275 and 1301), Peru (Case No. 1206), Belgium (Case No. 1250), Burkina Faso (Case No. 1266), Papua New Guinea (Case No. 1267), Morocco (Case No. 1282), Costa Rica (Cases Nos. 1287, 1304, 1305 and 1310), Brazil (Case No. 1294), Antigua and Barbuda (Case No. 1296), Portugal (Case No. 1303), Grenada (Case No. 1308) and Guatemala (Case No. 1311) and which the Committee already had before it at its last meeting, it adjourned these cases. As regards Cases Nos. 1304 and 1305 (Costa Rica), the Committee has taken note of certain observations sent by the Government, but still awaits its further observations on the factual allegations in these complaints. The Committee requests all the governments concerned to send their obervations at an early date.

6. As for the cases relating to the Islamic Republic of Iran (Case No. 1187), Dominican Republic (Cases Nos. 1277 and 1288), Chile (Case No. 1285), Spain (Case No. 1292), Chile (Case No. 1297), Colombia (Case No. 1302), and Ecuador (Case No. 1319), the Committee has only recently received the governments' observations and intends to examine these cases in substance at its next meeting. As regards Cases Nos. 1277 and 1288 (Dominican Republic), the Committee notes that the Office has requested certain additional information from the Government.

7. With regard to the cases concerning Turkey (Cases Nos. 997/999/1029), the Committee last examined these at its meeting in November 1984 (see paras. 5 to 42 of 237th Report) and requested the Government to supply information on a number of matters raised by it in its conclusions and recommendations in these cases. In a communication of 31 January 1985, the Government states that the

Committee's recommendations are currently being examined in detail by the competent authorities and that it will transmit information and observations on the Committee's report as soon as these are available. The Committee takes note of this information and requests the Government to transmit the information and observations at such time as will enable the Committee to examine these cases at its next meeting.

8. As regards Case No. 1129 (Nicaragua), the Committee, at its February 1984 meeting (233rd Report, paras. 236 to 242 and 317) requested the complainants to send additional information on the alleged physical aggression carried out by the authorities against members of the Central of Nicaraguan Workers (CNT) working on State banana and sugar plantations. In addition, the Committee requested the Government to carry out inquiries into the alleged death threats by the official militia against two trade union leaders, Luis Mona - President of the Press Workers Union - and Salvador Sánchez. Subsequently, in a communication dated 13 April 1984, the World Confederation of Labour (WCL) sent a new list of detained trade unionists as well as a list of trade unions the registration of whose managing committees had been refused by the authorities. The WCL, however, provided no details as to the physical violence which was said to have been carried out against members of the CNT. In a communication received by the ILO in January 1985, the Government sent observations on the allegations concerning the situation on plantations and concerning Messrs. Mona and Sánchez. In order to enable it to reach conclusions on the case as a whole at its next meeting, the Committee requests the Government to transmit at an early date its observations on the WCL's most recent communication dated 13 April 1984.

9. The Committee examined Case No. 1185 (Nicaragua) at its February 1984 meeting and requested the Government to supply its observations on certain allegations concerning the trade union leader, Hermógenes Aguirre Largaespada, the trade unionist, Larry Lee Shoures, and concerning the detention of Abelino González Páiz (see 233rd Report, paras. 294 to 307 and 317). In a communiation of January 1985, the Government states that these persons are not detained and requests further information on them to facilitate inquiries. The Committee would draw the Government's attention to paragraph 295 of its 233rd Report (transmitted to the Government on 16 March 1984) in which information and particulars relating to these trade unionists can be found. The Committee accordingly trusts that the Government will be able shortly to send a clear and precise reply on these allegations and on the situation of these trade unionists.

10. As regards the cases relating to Canada (Cases Nos. 1172: Ontario, 1234: Alberta, 1235: British Columbia, 1247: Alberta and 1260: Newfoundland), the Committee, at its November 1984 meeting (see 236th Report, para. 7), decided to adjourn its examination of these

since it was of the view that it would be necessary to obtain additional information, particularly through a study and information mission, which could assist in clarifying aspects of the laws and practices involved. It requested the Government to indicate its consent to such a procedure, so that appropriate arrangements could be made at an early date. In a letter dated 1 February 1985, the Government indicates that, after consultation with the various Provincial governments concerned, it has no objection to such a mission taking place. However, given the comprehensive information already supplied on all the cases in question the Government states that it would be grateful if the Committee could specify what additional information is required since much of the information could seemingly be provided to the Office in the usual way. The Committee notes with appreciation that the Government has no objection to a study and information mission taking place, it being understood that this will take place as part of the Committee's examination of the cases. Having further examined the cases in question, and in response to the Government's request for preliminary indications as to the nature of the additional information which the Committee might need in order to reach definitive conclusions on the cases, the Committee considers that it would be useful to have further information for example, on the continuing consequences or effects of the application of former legislation (Ontario, 1172); the effects in practice of amendments to existing legislation (Alberta, 1234); the application in practice of new labour legislation and the use made of the machinery and procedures set up under new labour legislation (Alberta, 1247 and Newfoundland, 1260). The Committee wishes to emphasise that its proposal for a study and information mission stems from a desire on its part to reach conclusions in as full a knowledge and understanding as possible of the complex issues involved. It is convinced that its work would be greatly facilitated by an on-the-spot appreciation of the day-to-day practical operation in local conditions of the legislation that is the subject of the complaints. The Committee would, accordingly, express the hope that arrangements can be made at an early date for the proposed study and information mission to be carried out.

11. As regards the case concerning Canada/British Columbia (Case No. 1235) the Committee notes that the Government supplied further information in response to the definitive conclusions it reached in this case in May 1984 (234th Report, paras. 316-328). Although the Committee considers that British Columbia need not be included in the proposed study and information mission, it would repeat its earlier recommendation that the Government considers introducing appropriate amendments to s. 2 of the Employment Standards Amendment Act which appears to afford to the public authority power to interfere in the collective bargaining process and restricts the right of workers' organisations to organise their activities and formulate their programmes.

12. As regards Cases Nos. 1183, 1191, 1205 and 1212 (Chile), the Government, referring to the allegations of torture, states in a communication of 4 January 1985, that the Supreme Court has appointed an ad hoc public prosecutor to investigate the alleged crimes of unnecessary violence and unlawful constraint carried out against certain persons after their detention and before they were banished to various parts of the country. The ad hoc prosecutor carried out nine trials and proposed, during the months of July and August 1984, to the Second Military Court a temporary stay in proceedings by virtue of s.409(1) of the Code of Criminal Procedure since there was no definitive proof that the crimes under examination had been committed. The Second Military Court approved the temporary stay. Those persons prejudiced by the temporary stay appealed to the courts martial, which rejected them and confirmed the temporary stay decided on by the judge and the ad hoc prosecutor. The Government adds that one of the persons involved appealed to the Supreme Court against the decision of the courts martial. This appeal is at present under examination. The Committee takes note of this information as well as the Government's assurances that it will transmit the Supreme Court's decision to the Committee as soon as it is handed down.

13. As regards Case No. 1219 (Liberia), the Committee last examined this case at its meeting in May 1984 (see 234th Report, paras. 585 to 611) when it requested the Government to send further detailed observations on certain allegations still pending in this case. In a communication of 22 January 1985, the Government states that it has referred the matter to the appropriate authorities and that it will communicate their reaction as soon as it is available. The Committee takes note of the Government's statement and hopes that it will transmit its observations shortly.

14. As for Case No. 1220 (Argentina), the Government points out, in communications of 4 and 18 February 1985, that there is no question of the dissolution of a trade union but the dissolution of the Complementary Fund for Teachers' Retirement and Pensions. It adds, in particular, that the judicial decisions in this matter have not yet been handed down. The Committee requests the Government to transmit the text of these decisions as soon as they are rendered.

15. As regards Case No. 1222 (Bahamas), the Committee, at its meeting in November 1984, taking into account the time which had elapsed since the presentation of this complaint, requested the Government to transmit its observations as a matter of urgency. In a communication of 4 February 1985, the Government states that its observations will be communicated shortly. The Committee takes note of this statement and looks forward to receiving the observations of the Government.

16. In Cases Nos. 1254, 1257, 1299 and 1316 (Uruguay), the Government supplied certain information on the numerous allegations presented by the complainants. The Committee took note of these

replies and decided to adjourn its examination of the cases in question in particular in view of the change of government that is taking place in the country. The Committee considers that, before examining these cases in substance, it would be useful to have before it information from the new government - which will shortly take office - as regards the future development of the trade union situation in the country.

17. The Committee examined Case No. 1270 (Brazil) at its November 1984 meeting (see 236th Report, paras. 603 to 622) and requested the Government to inform it of measures taken or envisaged towards the reinstatement of the trade union leaders who had been dismissed, as well as to transmit information on the reasons for the refusal of the iron and steel undertaking, Belgo Mineira, to negotiate. In a communication dated 21 December 1984, the Government states that, after various conciliation meetings in the Regional Labour Directorate of the Province of Minas Gerais, and since no solution had been reached concerning the negotiation of a new collective agreement, judicial proceedings were instigated under the Labour Code. These are still continuing before the labour courts. As for the dismissal of the trade union leaders, it appears from the Government's statements that the persons concerned have not appealed against these dismissals through individual actions before the labour courts. The Committee notes this information and still awaits the Government's observations on the additional information transmitted by the complainants on 6 December 1984 and 8 January 1985 which were sent to the Government in communications dated 17 December 1984 and 17 January 1985.

18. The Committee examined Case No. 1291 (Colombia) at its November 1984 meeting (see 236th Report, paras. 686 to 697) and noted that the Government had not replied in detail to the outstanding allegation that the undertaking "Industrias Alimenticias Noel S.A." had illegally dismissed 13 unionised workers. In a communication dated 16 January 1985, the Government underlines the necessity of requiring the complainant organisation to submit precise details on the identity, functions and dates of dismissal of the 13 workers in question so that the appropriate investigations can be carried out. The Committee takes note of this and observes that by a communication of 31 January 1985 the ILO requested the complainant to supply the necessary additional information.

19. As regards Case No. 1293 (Dominican Republic), which concerns the dismissal of several trade union leaders and employer interference in the activities of trade unions, the Government sent certain observations in relation to some of the allegations in communications dated 2 November 1984 and 31 January 1985. The Committee still awaits the Government's observations on the allegations to which it has not replied and which appear in communications from the General Central of Workers (Mayoritaria), dated 24 July and 13 November 1984.

URGENT APPEALS

20. The Committee observes that, in spite of the time which has elapsed since the last examination of the following cases and the seriousness of the allegations in some of them, the observations or information requested of the governments concerned have not been received: 1040 (Central African Republic), 1176/1195 and 1215 (Guatemala), 1190 (Peru), 1201 (Morocco) and 1216 and 1271 (Honduras). The Committee draws the attention of the governments concerned to the fact that, in conformity with the procedural rules set out in paragraph 17 of the Committee's 127th Report, approved by the Governing Body, it will present a report at its next meeting on the substance of these cases even if the governments' observations have not been received at that date. The Committee accordingly requests the governments concerned to transmit their observations or information as a matter of urgency.

Direct contacts

21. As regards the cases concerning; El Salvador (Cases Nos. 953, 973, 1016, 1150, 1168, 1233, 1258, 1269, 1273 and 1281) the Committee was informed that the Government is ready to accept a direct contacts mission to examine the various aspects of all the cases. The Committee notes this information with interest. It expresses the hope that, upon receipt of confirmation from the Government, arrangements can be made at an early date for such a mission to take place.

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22. As regards Case No. 1110 (Thailand), the Committee had requested the Government to send it the text of the judgement of the Criminal Court concerning the murder of two trade union leaders of the Saha Farm Labour Union (see 236th Report, para. 400). In a communication dated 7 February 1985, the Government supplies a copy of the judgement in question.

23. As for Case No. 1272 (Chile), the Committee had asked the Government to send it the text of the judgement of the Supreme Court concerning the dismissal of the trade union leader Luigi Salerno (see 236th Report, para. 638). In a communication dated 4 January 1985, the Government states that, at the time of his dismissal, Mr. Salerno was not yet a trade union leader and that the Supreme Court confirmed the decision of the Appeals Court of Rancagua to the effect that the dismissal was unjustified and that Mr. Salerno was entitled to compensation. While noting this information, the Committee considers

it useful to draw the Government's attention to the principle that protection against acts of anti-union discrimination should not only apply to trade union leaders but also to all workers carrying out trade union activities. Moreover, it does not appear that sufficient protection is being afforded against such acts when the legislation permits employers to dismiss a worker on condition that they pay the compensation laid down by law for unjustified dismissal even if the real reason for the dismissal was the worker's trade union membership or activities.

24. The Committee examined Case No. 1283 (Nicaragua) at its November 1984 meeting (see 236th Report, paras. 639 to 650) and requested the Government to send its observations on the allegations concerning the arrest of various trade union leaders, namely: Luis Mora Sánchez, Jorge Ortega Rayo, Antonio Benito Gómez Centeno and Numan Pompilio Calderón Araus. In a communication of January 1985, the Government states that the above-mentioned trade unionists were released under an amnesty decreed by the Council of State. The Committee notes this information. Nevertheless, as the Government has not specified the reasons for the arrest of the latter three trade unionists, the Committee would draw its attention to the principle that measures of detention affecting trade union leaders for activities related to the exercise of trade union rights are contrary to the principles of freedom of association.

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25. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Cases Nos. 1175 (Pakistan), 1261 (United Kingdom), 1295 (UK/Montserrat).

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

26. As regards Case No. 871 (Colombia), the Committee had requested the Government to keep it informed of developments in the trial relating to the murder of the peasant trade union leader, Justiniano Lame, which took place in Cauca Department in 1977. The Higher Military Court had declared null and void the proceedings in the trial and the matter had been re-submitted to the court of first instance. In communications of 16 January and 14 February 1985, the Government states that the Ordinary Council of War re-tried the accused and arrived at a verdict of acquittal which is at present before the Higher Military Court for confirmation. The Committee notes that the Government will keep it informed of the decision to be taken.

27. As regards Case No. 1037 (Sudan), the Committee had requested the Government to keep it informed of the results of the February 1983 elections in the railways trade union. In a communication of 28 November 1984, the Government states that the said elections have been completed and transmits the list of those elected to the central committee of this trade union. The Committee takes note of this information.

28. As regards Case No. 1134 (Cyprus), the Committee had requested the Government to send it a copy of the decision of the Supreme Court in the appeal filed by the Attorney-General contesting the validity of the trade union elections in the Pancyprian Greek Teachers' Organisation. In a communication of 29 October 1984, the Government states that at the request of the Attorney-General of the Republic the Supreme Court granted leave to withdraw the appeal. The Committee takes note of this information and trusts that in these circumstances, the elected workers' representatives are now able to fulfil their duties in full freedom.

29. In Case No. 1155 (Colombia), the Committee had requested the Government to continue to keep it informed of any progress in the inquiry into the circumstances surrounding the death of two trade union leaders, Messrs. Agapito Chagüenda and Eliécer Tamayo, in Cauca Department in September 1982. In communications dated 16 January and 14 February 1985, the Government states that in accordance with the provisions of the Code of Criminal Procedure, in cases in which the information examined at the initial stages of the proceedings has not been such as to allow charges to be brought against anyone, thus preventing the instigation of a trial, the file must be temporarily closed and held at the Examining Magistrate's Court while the specialised security bodies continue investigations in the hope of being able to re-open the judicial process and arrive at a final decision. The Committee notes this information and that the Government will inform it of the results of the investigations if proceedings are initiated.

30. As regards Cases Nos. 1157 and 1192 (Philippines) the Committee had requested the Government to keep it informed of the outcome of the trials concerning several trade union leaders arrested in August and September 1982, of the steps taken to return trade union property, seized in August 1982, to its rightful owners at the conclusion of the trial for which it was being held as evidence, to inform it of the outcome of investigations into the unexplained disappearance of other trade union leaders and members, and to inform it whether the Secretary-General of the Trade Unions of the Philippines and Allied Services (TUPAS) had been permitted to travel outside the country to fulfil trade union committments arising from his organisation's international affiliation. In a communication of 1 December 1984 the TUPAS stated that its Secretary-General had not been permitted to travel, but had presented another request to attend an international trade union conference - this time in India - to the

President of the Philippines, the Chief of Staff of the Military Command, the Chief of Detainee Affairs as well as to the Supreme Court. To its letter of 14 January 1985 the Government attaches a copy of Supreme Court Resolution dated 18 December 1984 granting the TUPAS Secretary-General leave to attend the overseas trade union conference and a copy of the Ministry of Labour's favourable recommendation addressed to the President on this matter. The Committee notes this information with interest and requests the Government to keep it informed of developments in the trial and investigations referred to above.

31. As regards Case No. 1208 (Nicaragua), at its February 1984 meeting the Committee had requested the Government (see 233rd Report, paras. 214 to 317) to indicate whether the trade union leader Salomón Díaz Fernández was still in detention and to specify the charges brought against him. In a communication of January 1985, the Government states that this trade unionist was released under an amnesty decree in August 1984. The Committee takes note of this information and would draw the Government's attention once again to the principle that the preventive detention of trade union leaders involves a serious risk of interference in the activities of trade union organisations.

32. The Committee examined Case No. 1237 (Brazil) at its May 1984 meeting (see 234th Report, paras. 203 to 214) and asked the Government to supply information on action taken following the charges made against the four persons accused of the murder of the trade union leader, Margarida Maria Alves, and to send it a copy of the judgements once handed down. In a communication dated 21 December 1984, the Government states that the accused are being held in preventive detention and that the trial is in its final stage with the hearing of the prosecution's witnesses. The Committee takes note of this information and requests the Government to send it a copy of the judgements as soon as they are handed down.

33. In Case No. 1239 (Colombia), the Committee had requested the Government to keep it informed of the outcome of the judicial investigation into the death of the trade union leader, Francisco Cristóbal Caro Montoya. In a communication dated 16 January 1985, the Government indicates that the Eighth Superior Judge of Medellín, in reply to a request for information made by the Ministry of Labour, stated that everything possible had been done to identify the author or authors of the crime, but without any positive result. The Government further states that, in conformity with the provisions of the Code of Criminal Procedure, the file has been temporarily closed, but that nevertheless the specialised security bodies will continue investigating; if they come up with something the case will be re-opened and it will inform the ILO immediately. The Committee takes note of this information.

34. The Committee examined Cases Nos. 1240 and 1248 (Colombia) at its November 1984 meeting (see 236th Report, paras. 316 to 342) and requested the Government to inform it of the ruling to be handed down by the Council of State in the case of the granting of legal personality of the Union of Employees of the District Institute for the Protection of Children and Young Persons (SINTRAIDIPRON). In a communication dated 16 January 1985, the Government states that the Council of State decided that the employees of the District Institute (IDIPRON) are public employees and, consequently, are able to set up, if they so wish, a trade union organisation of public employees, but not official workers, with the corresponding legal restrictions aimed at this category of public servants. The Committee takes note of this information.

35. As regards Case No. 1252 (Colombia), the Committee had requested the Government to communicate the results of the judicial investigations under way into the death of the trade union leader Miguel Angel Caro Henao. In a communication dated 14 February 1985, the Government states that the investigation referred to is being carried out by the Examining Magistrates' Criminal Court No. 59 (Santafé de Antioquía), and adds that it will transmit information in this respect as soon as possible. The Committee trusts that the Government will be able to transmit this information within a reasonable time.

36. As regards Case No. 1261 (United Kingdom) the Committee, at its meeting in May 1984 (234th Report, paras. 343-371), had concluded that the unilateral action taken by the Government to deprive the category of public servants concerned of their right to belong to a trade union was not in conformity with Convention No. 87. It recommended that the Government reconsider the matter in the light of the considerations set out in its report and requested the Government to keep it informed of any steps taken in regard to the questions raised in the case. At its meeting in November 1984 (236th Report, para. 33) the Committee, taking note of certain comments made by the Trade Union Congress and by the Government, in particular that the matters referred to in the Committee's report were the subject of proceedings in the United Kingdom courts (the House of Lords), expressed the hope that it would be possible for the Government to hold discussions which might result in a resolution of the dispute and the restoration to the civil servants concerned of their rights of freedom of association as provided for in international instruments. The Committee has received a communication from the Government dated 5 January 1985. It observes that this contains no new factual information which would justify a re-examination of the case, but that it raises certain questions relating to obligations under ratified Conventions, and in particular the relationship between obligations under Conventions Nos. 87 and 151. The Committee notes that the Committee of Experts on the Application of Conventions and Recommendations will be examining aspects of this matter, and that comments have been submitted by the national complainant organisation

in the case (the Trade Union Congress). The Committee accordingly decides that the attention of the Committee of Experts should be drawn to the communication received from the Government, which is not such as to warrant any change in its earlier conclusions.

37. Lastly, the Committee notes that the Governments of Sri Lanka (Cases Nos. 988/1003), Morocco (Case No. 1077), India (Cases Nos. 1100 and 1227), USA (Case No. 1130), Ghana (Case No. 1135), Iraq (Case No. 1146), Peru (Cases Nos. 1181 and 1228), Ecuador (Case No. 1230), Australia (Case No. 1241) and Honduras (Case No. 1268) have not yet responded to the Committee's requests to be kept informed of developments in these cases. The Committee requests these governments to be good enough to communicate this information at an early date.

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38. With regard to Cases Nos. 967 (Peru), 1034 (Brazil), 1075 (Pakistan) and 1121 (Sierra Leone), the Committee regrets that, despite repeated appeals, the respective governments have not replied to the Committee's requests to be kept informed of developments as regards various aspects of the cases. The Committee wishes to recall that:

In Case No. 967 (Peru), it had requested the Government at its May 1981 meeting to carry out a judicial investigation to clarify the facts and determine those responsible for the death of a woman trade unionist during a trade union meeting in Lima in May 1980, and to keep it informed of the results of this investigation. The Committee would repeat that where there is loss of life during a public trade union meeting, an impartial and detailed inquiry should be carried out immediately into the circumstances and normal legal proceedings should be instigated to ascertain the reasons for the action taken by the security forces and to determine responsibilities.

In Case No. 1034 (Brazil), the Committee, at its May 1982 meeting, had requested the Government to keep it informed of the measures adopted to restore legal personality to the teachers' associations of the Province of Rio de Janeiro which had been suspended by administrative authority. The Committee would recall the principle that organisations of workers and employers should not be suspended by administrative authority.

In Case No. 1075 (Pakistan), the Committee, at its November 1982 meeting, had requested the Government to repeal Martial Law Regulation No. 52 of 1981 which banned all trade union activity in the nationalised air lines sector, and to send it a copy of the repealing text. The Committee would stress that the total prohibition of activities in the nationalised air lines sector

contained in this regulation, even though of a temporary nature, constitutes a violation of the principles of freedom of association and, in particular, of Article 2 of Convention No. 87 - ratified by Pakistan - according to which workers without distinction whatsoever shall have the right to establish and join organisations of their own choosing.

In Case No. 1121 (Sierra Leone), the Committee, at its November 1982 meeting, had requested the Government to indicate whether the former Secretary-General of the Sierra Leone Congress of Labour, Mr. James Kabia, who had been prohibited from carrying out trade union activities in March 1982, had been able to recommence his trade union activities. The Committee must point out in this respect that the removal from office of trade union leaders constitutes a serious violation of the free exercise of trade union rights and that, in the present case, Mr. Kabia should be able to recommence the functions for which he had been elected.

The Committee expresses the firm hope that in all these cases the governments concerned will take the necessary measures to give full effect to the recommendations of the Committee and the Governing Body.

CASES NOT CALLING FOR FURTHER EXAMINATION

Case No. 1232

COMPLAINT PRESENTED BY THE BOGL EMPLOYEES' UNITY CENTRE, THE MAMC EMPLOYEES' UNITY CENTRE AND THE SMALL INDUSTRIES WORKERS' UNION AGAINST THE GOVERNMENT OF INDIA

39. On 2 September 1983 the BOGL Employees' Unity Centre, the MAMC Employees' Unity Centre and the Small Industries Workers' Union presented a complaint of infringements of trade union rights against the Government of India. The Government replied in a communication dated 27 October 1984.

40. India 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 complainants' allegations

41. The complainants allege that the management of Bharat Ophthalmic Glass Ltd. - a government undertaking - refuses to negotiate with its employees' registered representative, the BOGL Employees' Unity Centre. They also allege that the management of the Mining and Allied Machinery Corp. - another government undertaking - refuses to negotiate with the four registered unions which represent its employees. Lastly, they state that the Durgapur Small Industries Association - made up of small industry employers - is acting in the same manner.

42. According to the complainants, the statutory conciliation authority of West Bengal favours employers and does not take the initiative to redress workers' grievances although it is authorised to do so under the Industrial Disputes Act of 1947. The complainants add that this state of affairs was brought to the attention of the various ministers of West Bengal concerned and the central Government, but no favourable action has yet been taken.

B. The Government's reply

43. In its communication of 27 October 1984, the Government states that the joint complaint is vague and too general. According to the State Government of West Bengal, the allegation has been denied by the two public sector managements as well as by the employers' associations. In addition, it appears that none of the complainant unions has taken its grievance to the appropriate industrial relations authority under the Industrial Disputes Act before approaching the ILO. The Government points out that the state Labour Directorates have not been approached by the unions, and that no specific instances of denial of trade union rights by the managements have been cited by the complainant unions.

44. The Government concludes that, given the lack of factual evidence and given that the available machinery for settlement of grievances has not been utilised, no worth while purpose would be served by pursuing the case further.

C. The Committee's conclusions

45. The Committee regrets that it has not received from the complainants the detailed and precise information that was requested from them in support of their complaint. It has also taken note of the Government's reply to the complaint that was transmitted to it.

46. The Committee would recall in general terms, as it has done in past cases concerning the alleged refusal of an employer to bargain collectively with particular recognised workers' organisations, that collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining. [See, for example, 211th Report, Cases Nos. 1035 and 1050 (India), paragraph 110.] It accordingly considers that this aspect of the case does not call for further examination.

47. As regards the allegations that the statutory conciliation authority of West Bengal has not taken initiatives to settle workers' grievances, the Committee can only conclude that, in the absence of detailed information on this aspect of the case, it is not in a position to pursue its examination thereof.

The Committee's recommendation

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

Case No. 1249

COMPLAINT PRESENTED BY THE FEDERATION OF ASSOCIATIONS OF SENIOR PUBLIC SERVANTS' BODIES AGAINST THE GOVERNMENT OF SPAIN

49. The complaint is contained in a communication from the Federation of Associations of Senior Public Servants' Bodies (FEDECA) dated 18 November 1983. FEDECA sent additional information in a communication dated 2 January 1984. The Government supplied its observations in a communication dated 6 April 1984.

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

A. The complainant's allegations

51. The Federation of Associations of Senior Public Servants' Bodies (FEDECA) alleges that in January 1983 the Ministry of the Presidency of the Government (which is responsible for matters relating to the public service) opened a round of negotiations on public servants' hours of work and wages to which were invited the trade union organisations FSP (UGT), CCOO and CSIF, but not FEDECA. At this stage a written request was made for FEDECA to attend. The executive committee of FEDECA was summoned several times to the Ministry of the Presidency of the Government (on one occasion for an informal audience with the Minister, at other times for conversations with the Secretary of State for the Public Service or with the Director-General of the Public Service) to try to resolve the matter of FEDECA's participation in the round of negotiations. Finally, at the end of January FEDECA was verbally informed of the refusal of the Ministry of the Presidency of the Government to allow it to participate in the negotiations, which alleged that "the other three trade union organisations with which the Ministry of the Presidency of the Government has been negotiating were opposed to its presence".

52. According to the complainant, in June 1983, the Minister of the Presidency of the Government who still refused to negotiate with FEDECA, provided the Federation with a copy of the preliminary draft of a bill to reform the public service and a copy of the bill regulating trade union membership and the right of officials to strike and requested the organisation "as early as possible" to report on the texts, stating verbally that this should be done within a period of five days. FEDECA points out that it has not received any reply to the report which it transmitted within the required time limit or had any conversation on this matter. It is clear that the fact of requesting a report without following up the matter once it had been received cannot be considered a genuine negotiation process.

53. The complainant also alleges that the Minister of the Presidency of the Government and the Secretary of State for the Public Service summoned the executive committee of FEDECA to an audience on 6 October 1983, during the course of which it was promised that FEDECA would be allowed to participate in the negotiations because they concerned matters relating to the reform of the public administration. The complainant points out that it discovered to its surprise, and without it having been so far invited to any kind of negotiation, that some of the items for discussion such as the application of specific wage concepts, the new preliminary draft of a

bill to reform the public service and the bill regulating trade union membership and the right of officials to strike had been resolved and that the first of these had already been sent by the Government to Parliament. Since these matters - as well as that respecting the incompatibility of interests of public officials (upon which FEDECA was not even consulted) - are matters normally covered by collective bargaining (Article 2 of ILO Convention No. 154), the complainant considers that it is clear that the line of action followed by the Minister of the Presidency of the Government and the Secretary of State for the Public Service is a continued infringement of Articles 5, 7 and 8 of Convention No. 154.

54. Furthermore, the complainant alleges that the official information media (official press, radio, television, etc.) distorted reality by depicting the trade union which supports the Government, and is an offshoot of its political party (FSP-UGT), as a "protagonist and champion of benefits" gained for officials during the course of the negotiations which the complainant was not permitted to attend. In addition, the complainant alleges that although the number of public servants who are members of the FSP-UGT is very small, a very high proportion of them have been granted leave of absence for trade union duties. This means that they receive their emoluments as officials and provide their services to the above-mentioned trade union and not to the State which constitute "measures which tend to strengthen workers' organisations dominated by an employer". In the case of public officials the employer is the State, which is directed by the Government. Hence the circumstances denounced above may be considered as an infringement of Article 2 of ILO Convention No. 98.

55. The complainant also alleges that the participation framework to be established under the "preliminary draft of a bill to reform the public service" clearly contradicts the spirit and letter of Article 5 of Convention No. 151 by prescribing, in section 6, that the participation of staff employed of the public administration must be channelled through an institutional body (the Superior Council of the Public Service), in which the representatives of the employers (Government, autonomous regional and local authorities) are three times as numerous as workers' representatives and which, moreover, lacks any real decision making powers. The complainant adds that this situation must be taken in conjunction with section 6 of the bill regulating freedom of association which reads as follows:

"Section 6.

1. The most representative status recognised to specific trade unions confers upon them a unique legal position with regard to both institutional participation and trade union action.

2. The most representative trade unions at the national level shall be:

(a) Those which cater to a special audience, as expressed through the attainment at the national level of 10 per cent or more of the total number of staff delegates, of the members of the works' councils or the corresponding bodies of the public administration.

(b) Trade unions or trade union bodies which are affiliated to or are a federation or confederation of a national trade union organisation enjoying the most representative status as defined in paragraph (a).

3. Organisations enjoying the most representative status as defined above shall enjoy this status at all territorial and functional levels as regards:

(a) Institutional representation before public administration bodies or other bodies and agencies of the State or autonomous regional authorities endowed with such representation.

(b) Collective bargaining in the terms provided by the Worker's Statute through their participation in the committees which negotiate the agreements.

(c) Participation in the determination of conditions of employment in the public administration through the appropriate consultation or negotiation procedures.

(d) The establishment of trade union branches and the development of trade union action in the work centres in the framework of and with the guarantees provided by this Act and the Workers' Statute, without prejudice to the provisions contained in collective agreements.

(e) The collective exercise of the right to strike as well as the adoption of collective dispute measures within the legally established framework.

(f) Participation in the non-juridictional machinery for the settlement of labour disputes.

(g) The holding of elections for staff delegates and works councils and the corresponding bodies of the public administration.

(h) Any other representative function as may be established."

The complainant organisation believes that both these provisions will result in the representation of public officials on the Superior Council of the Public Service being systematically denied to the democratically elected representatives of the officials and being

assumed by persons appointed by trade union organisations which had obtained practically no votes from the workers concerned. This situation is particularly serious when the State is the employer and where there exists, as is the case in Spain, a powerful trade union which maintains political links with the party in power.

56. Finally, the complainant points out that the bill regulating freedom of association excludes the establishment of trade unions for workers employed on their own account who do not have other workers in their service.

B. The Government's reply

57. As regards the allegation concerning the non-participation of the complainant in negotiations on the reform of the public service which took place in the Ministry of the Presidency of the Government - Secretariat of State for the Public Service (bill to reform the public service, bill regulating trade union membership and the right to strike of officials, etc.), the Government states that given the small number of existing standards governing the freedom of association of public employees, recognised in article 28 of the Spanish Constitution, and which is only explicable in terms of the well known circumstances which until very recently characterised trade union life in general in Spain and in particular that of public officials, it must be pointed out first that general trade union elections have not yet been held in the Spanish public service. Nevertheless, and in a clearly temporary manner, pursuant to the provisions of existing legislation (Act 19/1977 on the right to trade union membership; Decree 873/1977 on the registration of the statutes of trade union organisations; Decree 1522/1977 on the right of public officials to trade union membership and the Order of the Secretariat of State for the Public Service dated 7 June 1979), since March 1982 the superior bodies of the state administration have comprised representatives of the major central trade union organisations which group together public officials. These are, in particular, the Independent Trade Union Confederation of Officials (CSIF), the Federation of Public Services of the General Trade Union of Workers (FSP-UGT) and the Trade Union Confederation of Workers' Committees (CCOO), which have given ample proof of their representative nature in various sectoral elections held in the public administration, in which all three have invariably appeared in a prominent position and obtained relatively homogenous and significant results.

58. The Government continues that it is logical to conclude from these results that these three central organisations are those which today best represent the interests of public officials vis-à-vis the public administration, and have clearly global and widespread capacities as compared with the other associations of officials which

have achieved significant electoral results in specific administrative bodies, which shows once again their particular sectoral character and which results in their participation in important rounds of negotiations being held in the various ministerial departments (in particular, in Education and Science, and in Transport and Communications).

59. The Government points out that there exist approximately 1,000 associations of public servants. It is easy to single out those in which membership is based on groups of officials or specific sectors of activity from those trade unions of a more general nature with a national membership which covers both the public and private sectors . In addition to the 1,000 associations, there exist 36 federations of public servant associations, without including the Independent Trade Union Confederation of Officials (CSIF), which is one of the three central trade union organisations having general membership; the CSIF groups together 50 other bodies. For its part, the Federation of Associations of Senior Public Servants' Bodies (FEDECA) is composed of 26 associations at least five of which belong also to the CSIF; as defined in its own statutes, its scope covers bodies of public servants who must hold higher university qualifications, which is not the case with the CSIF. The Government concludes that it would be clearly impractical to organise general negotiations with all these associations and that it has had to limit such negotiations, until general trade union elections are held in the public service, to the representative central trade union organisations indicated above; this has not proved an obstacle to maintaining open dialogue and formal consultations with various associations of officials, including FEDECA itself, in addition to the above-mentioned sectoral negotiations being held in various ministries.

60. The Government also refers to the special meaning of the expression "negotiation of conditions of employment" in the legislative framework of the public service and points out that Article 7 of Convention No. 151 provides that measures which take account of national conditions should be adopted to encourage and promote the development and use of bargaining procedures between the public authorities concerning conditions of employment, or any other methods which allow public employees to participate in the determination of such conditions, all of which illustrate the variety of possible procedures.

61. For all these reasons, the Government concludes that there has clearly been no infringement of Convention No. 154, independently of the fact that this Convention has not yet been ratified by Spain, and that in the same way there has been no infringement of any of the provisions of Convention No. 151.

62. With regard to the allegation that the official information media distorted reality by presenting the trade union which supports the Government, and is an offshoot of its political party (FSP-UGT),

as a "protagonist and champion of benefits" gained for officials during negotiations which FEDECA was not allowed to attend, the Government states that the Spanish Constitution recognises and guarantees freedom of information (article 20), but that it also establishes that "the law shall regulate the organisation and parliamentary control of the social communications media dependent upon the State or upon any public agency and shall guarantee access to such media by significant social and political groups, respecting the pluralism of society and of the various languages of Spain" (article 20.3). In 1980 the Spanish Parliament passed legislation (Act 4/1980) which defined the public agency "Radio and Television of Spain" and set up a council of 12 members, elected by the Parliament itself and not by the Government, to control the body. To refer to it therefore as "... the official information media (official press, radio, television, etc.)" does not accurately reflect the real situation in Spain today. Furthermore, no other documentation has been received from FEDECA to support such a categorical statement.

63. The Government adds that with regard to the three central trade union organisations mentioned, the facilities granted to their representatives fully conform with the provisions of Article 6 of Convention No. 151 and section 9 of the bill regulating freedom of association, which was sent to Parliament on 30 November 1983. Furthemore, in any case Convention No. 98 refers to workers and expressly excludes public officials (Article 6 of the Convention), thus making it once again inappropriate to speak in this connection of infringement of Article 2 of Convention No. 98.

64. The Government adds that independently of all these points, it is inadmissible to accuse the Federation of Public Services of the General Union of Workers (FSP-UGT) of being a trade union federation in the pay of the Government. It should be pointed out that the UGT is a trade union organisation which was founded nearly 100 years ago (in 1888), a member of the International Conferation of Free Trade Unions and that, as is well known, even during those periods when trade union activity in Spain required the utmost secrecy, it represented, along with a small number of specific trade unions in Spain, the interests of the Spanish workers vis-à-vis the ILO. At the present time, amongst officials of the state administration, the UGT enjoys the most representative status (in the 1983 trade union elections in the administration: of a total of 3,537 staff delegates elected, 45.4 per cent were from the UGT and 31 per cent from the CCOO).

65. As regards the bill to reform the public service, which was sent by the Government to Parliament on 2 November 1983, and section 5 of which establishes that the Superior Council of the Public Service, as a collegiate body for discussion between the different public administrations and the staff, whether public servants or not, in their service, the Government states that this body is a deliberative and advisory agency without decision-making powers and that it is

responsible for co-ordination between public administrations. In no way is it a body empowered to negotiate in the sense used in Article 5 of Convention No. 151.

66. The Government also states that the second additional provision contained in the bill regulating freedom of association which was sent by the Government Parliament on 30 November 1983 provides the following: "1. The terms of office of staff delegates, members of the works councils and those persons who are members of the representative bodies established in the public administration will be four years and members may be re-elected for successive electoral periods. 2. Without prejudice to the provisions of article 103.3 of the Constitution ('the law shall regulate the status of public servants ..., the special features of the exercise of their right to associate ...'), the Government shall issue as many provisions as may be necessary regarding elections to the representative bodies of staff in the public administration". That is, the subsequent instruments for the implementation of this provision shall determine which bodies shall represent the staff in the public administration and the procedure regarding trade union elections for staff representatives in such bodies. Therefore FEDECA's allegation concerning the infringement of Article 5 of Convention No. 151 by the bill to reform the public service is unjustified since, in any event, it will be the legislation to implement the bill regulating freedom of association which will establish the representative bodies of the public administration and this legislation will take into account the provisions of Convention No. 151.

C. The Committee's conclusions

67. As regards the exclusion of FEDECA from the negotiations on the reform of the public service (dealing, inter alia, with hours of work and remuneration of officials; the preliminary draft of a bill to reform the public service; bill regulating trade union membership and the right of officials to strike; and incompatibility of interests of officials), the Committee notes that according to the Government, since March 1982 the principal central trade union organisations which cover public servants (CSIF, FSP-UGT and CCOO), have been representing officials vis-à-vis the executive bodies of the state administration. These organisations always appear well placed, with relatively homogenous and significant results in various sectoral elections held in the public administration and have clearly global and widespread capacities as compared with the other associations of officials which figure prominently in electoral results for specific administrative bodies, which shows once again their sectoral and specific character. The Committee also notes that in the 1983 trade union elections in the public administration, 45.4 per cent of the 3,537 staff representatives elected came from the UGT, whereas 31 per cent came from the CCOO.

68. On previous occasions, the Committee has stated that the mere fact that legislation or practice in a country draws a distinction between the most representative trade union organisations and other organisations for the purposes of granting certain privileges or advantages to the former, for example, regarding representation or consultation, is not in itself a matter for criticism, nor does it give rise to objections from the viewpoint of the principles of freedom of association, provided that such a distinction is based on objective criteria, such as majority of members, and that the fundamental rights and guarantees of the less representative organisations are not brought into question [see 217th Report, Case No. 1061 (Spain), para. 133]. In this respect, the Committee notes that according to the annexes sent by the complainant organisation (FEDECA), this organisation represents approximately 7,500 of the almost 12,000 public servants employed in 26 senior administrative bodies (state lawyers, career diplomats, highway engineers, technicians of the state civil administration, etc.). The Government has pointed out moreover that the scope of FEDECA, as defined by its own statutes, covers those public servants who must hold advanced university qualifications.

69. In these circumstances, in view of the number of public servants affiliated to the member associations of FEDECA (7,500, a very small number when compared with the total number of Spanish public servants), and since the organisation, apart from stating without further detail that FSP-UGT has a very small number of public servant members, has not produced any proof to contradict the Government's statement that the three organisations invited to participate in the negotiations on matters relating to the public service (CSIF, FSP-UGT and CCOO) are the principal central trade union organisations covering public servants and which have, in comparison with the other public servants' associations, clearly global and widespread capacities, the Committee considers that the non-participation of FEDECA in the above-mentioned negotiations does not appear to infringe the principle in question.

70. With regard to the complainant's allegation that the official information media presented the FSP-UGT as a "protagonist and champion of benefits" gained for officials during the negotiations, the Committee observes that the complainant has not supplied examples of the information which it criticises and that the trade union organisation to which it refers was in fact one of the negotiating organisations. In these circumstances, and noting the information supplied by the Government, the Committee concludes that there are no grounds enabling it to conclude that there has been any infringement of the principles of freedom of association.

71. As regards the allegation that despite the small number of officials who are members of FSP, a very high proportion of them have been granted leave of absence for trade union duties, the Committee notes that the Government has not replied to this. However, since

the complainant has not indicated what proportion of members and trade union leaders enjoy such leave of absence within FSP-UGT and other organisations, the Committee is not in a position to come to any conclusion on this allegation.

72. Finally, as regards the provisions of the bills referred to by the complainant, the Committee notes that according to the Government, the Superior Council of the Public Service, provision for which is made in section 6 of the bill to reform the public service, is a deliberative and advisory body without decision-making powers responsible for co-ordination between the public administration, and that it is not a body empowered to negotiate in the sense used in Article 7 of Convention No. 151. The Committee also notes that the Government states that the legislation to implement the bill regulating freedom of association will establish the representative bodies of the public administration and that this legislation will take into account the provisions of Convention No. 151. In the light of the explanations given by the Government, the Committee considers that the fact that under section 6 of the bill to reform the public service, the representatives of the Government, the autonomous regional and local authorities are several times more numerous than the representatives of the workers does not bring into question the principles of freedom of association. In the same way the Committee considers that the text of section 6 of the bill regulating freedom of association does not infringe the above-mentioned principle as regards the privileges or advantages concerning representation or consultation.

73. As regards section 3(1) of the bill regulating freedom of association ("persons employed for their own account who do not have workers in their service may become members of trade union organisations established in accordance with the provisions of the present Act, but may not establish trade unions which are specifically designed to protect their individual interests"), the Committee notes that this section recognises in any case the right of this category of workers "to establish associations under this specific legislation". In these circumstances, the Committee considers that this provision does not infringe the principles contained in Convention No. 87.

The Committee's recommendation

74. In the circumtances, the Committee recommends the Governing Body to decide that this case does not call for further examination.

Case No. 1286

COMPLAINT PRESENTED BY THE COMMITTEE OF TRADE UNION UNITY OF EL SALVADOR AGAINST THE GOVERNMENT OF EL SALVADOR

75. The complaint is contained in a communication from the Committee of Trade Union Unity of El Salvador, dated 11 June 1984. The Government replied in a communication of 4 December 1984.

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

A. The complainant's allegations

77. In its communication of 11 June 1984, the complainant alleges that the Judge of the Court of the First Instance in the district of Metapán (Department of Santa Ana) had declared illegal the strike carried out by the workers of the "Cemento de El Salvador, S.A." undertaking (CESSA), ordering an end to the strike by 10 June and the massive dismissal of workers.

B. The Government's reply

78. In its communication of 4 December 1984, the Government transmits a copy of a full and detailed report drawn up by the General Director of Labour of the Ministry of Labour and Social Affairs on the collective dispute which had arisen in the undertaking "Cemento de El Salvador, S.A." (CESSA). The following information is contained in this report:

- On 21 May 1984, the workers in the undertaking "Cemento de El Salvador, S.A." decided to down tools as from seven o'clock because of the various labour problems existing in the undertaking; at a meeting between the representatives of the Trade Union of the El Salvador Cement Industry and the legal representative of the undertaking "Cemento de El Salvador, S.A.", held on the same day at 2 p.m. at the General Labour Directorate, the workers referred to these problems and requested the following: (a) the reinstatement of the worker Santos Humberto Aldana; (b) negotiations on wage increases; (c) the dismissal

of the plant Superintendent, the engineer Miguel Peralta, and the Head of the Administration, David Pérez Vanegas; (d) strike pay; and (e) that there should be no reprisals for having taken part in the present strike. At this same meeting, the undertaking's legal adviser explained that the decision to dismiss the worker Santos Humberto Aldana was being upheld, as he had infringed the relevant provisions by not obeying orders to carry out a job; furthermore, in accordance with agreements signed by the undertaking and trade union on 11 April of the current year, the former is entitled to dismiss persons for infringing the legal provisions laid down in the Labour Code, in the internal regulations or in the collective labour agreement; this is a right conferred by law upon the undertaking that may not be waived.

- On 5 June 1984, the Judge of the First Instance of Metapán declared that the strike was illegal because the trade union had not brought the "collective dispute of an economic nature" before the General Labour Directorate, as laid down in the Labour Code, to request that the collective labour agreement between the trade union and the CESSA undertaking should be reviewed.

- After several meetings between representatives of the Trade Union of the El Salvador Cement Industry and the CESSA undertaking (which, on 30 May 1984, had guaranteed that no reprisals would be taken against the workers on strike), a meeting was held on 8 June 1984 in the office of the Ministry of Labour, attended by members of the Union's bargaining committee, members of the undertaking's Board of Management and - representing the Secretary of State of Labour - the Minister and Vice-Minister of Labour, the General Director of Labour and the General Labour Inspector; this meeting gave the following results: "both parties agreed to come to a total and final agreement on the present dispute, on the following terms: first, David Pérez Vanegas, Head of the Administration, would be temporarily transferred to the plant in Metapán and a tripartite committee (undertaking, workers and Ministry of Labour) would carry out an inquiry into his conduct and submit its conclusions at a later date. Second, with respect to strike pay, the undertaking offered to pay each worker an incentive equivalent to five days' wages. It will also, if the worker wishes, grant a loan up to a maximum of 14 days' wages, which is interest-free and repayable every 14 days up to a maximum period of three months. Third, the undertaking formally agreed not to take any reprisals, either de facto or de jure, against the workers who had taken part in the present dispute. Fourth, both parties agreed to meet on 15 June, to discuss the case of the worker José Santos Aldana and to continue wage negotiations in accordance with the schedule of meetings already agreed upon. Similarly, on the eleventh of this month, they agreed to inform the Ministry of Labour of the persons who will make up the committee of inquiry, to which the

first point of the agreement refers. Fifth, the trade union representatives undertook to call off the strike immediately and inform all those workers outside the plant, so that work would be normally resumed at seven o'clock on 9 June of the current year. At 11.30 on 11 June 1984, the trade union appeared before the court to fulfil the first part of the agreement; on 12 June 1984, the undertaking did the same, by means of a statement it submitted."

C. The Committee's conclusions

79. The Committee notes that in the present case, the complainant alleges that, on 21 May 1984, the legal authorities declared illegal the strike called by the workers in the undertaking "Cemento de El Salvador, S.A." (CESSA) and ordered the massive dismissal of the workers.

80. The Committee notes that, according to the Government, the strike was declared illegal because the trade union had not brought what it calls a "collective dispute of an economic nature" before the General Labour Director, thus failing to comply with the provisions contained in the Labour Code. The Committee also notes that on 8 June 1984, thanks to the intervention of the authorities of the Ministry of Labour and Social Affairs, the parties to the dispute reached an agreement putting an end to the dispute and that, in particular, the undertaking agreed not to take reprisals against the workers who had taken part in the strike and the trade union undertook to call off the strike. The Committee also notes from the Government's account of these events that it appears that the undertaking did not dismiss any workers during the strike.

81. In these circumstances, since the collective dispute has been settled in a manner satisfactory to both parties, the Committee considers that this case does not call for further examination.

The Committee's recommendation

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

Case No. 1312

COMPLAINT PRESENTED BY THE INTERNATIONAL TRANSPORT WORKERS' FEDERATION AGAINST THE GOVERNMENT OF GREECE

83. The complaint from the International Transport Workers' Federation against the Government of Greece is contained in a communication dated 17 October 1984. The Government replied in a communication of 1 December 1984.

84. 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 Federation's allegations

85. The complaint from the International Transport Workers' Federation concerns a labour dispute between the Association of Flight Engineers (OSPA), one of its member organisations, and the airline Olympic Airways. The complainants allege that, in the present case, Greece violated Conventions Nos. 87 and 98, especially Article 3 of Convention No. 87, by preventing the Association of Flight Engineers from bargaining collectively as long as this category of workers was mobilised; the complainant further alleges that Greece violated Article 1 of Convention No. 98, by preventing the members of the trade union in question from exercising their trade union activities although Greece is not in a state of war, that it violated Article 2 of Convention No. 98, as the Greek Government interfered in trade union matters, and that it violated Article 3 of Convention No. 98, concerning the establishment of machinery for the purpose of ensuring respect for the right to organise, as the Minister of Labour has the authority to mediate at the national level.

86. The complainant explains that the Association of Flight Engineers had submitted a 72-hour strike notice to its employer, Olympic Airways, on 19 June 1984, as negotiations on the renewal of the 1984 collective agreement had been broken off. At the request of Olympic Airways, the Minister of Transport decreed that the Olympic Airways flight engineers should be mobilised as from 19 June 1984 and it authorised the director of the Civil Aviation Department of the Ministry of Transport to requisition individual workers (Decision No. 3219 of 18 June 1984). Those flight engineers who became ill after the date of the requisition order were forced to undergo a medical examination at the military hospital and the said hospital was instructed to inform the employer of the measures he should take. Individual requisition orders were also issued to those who were on

sick leave and one of the persons in question went to work although he was ill. According to the complainant, a worker refusing to obey the requisition order would have been liable to 12 months' imprisonment.

B. The Government's reply

87. The Government explains that the trade union in question had failed to abide by the legal procedure with respect to the renewal of collective agreements; requisitioning had taken place following the said federation's decision not to respect the legal procedure and to refuse to comply with the procedure for settling collective agreements laid down in Act No. 3239 of 1955.

88. The Government explains that, under this legislation, the parties (employers and workers) may settle labour disputes themselves but, if it proves impossible to reach an understanding, they may apply to the Ministry of Labour for its mediation (section 2(4) of Act No. 3239 of 1955).

89. It adds that, in this case, the Minister's role is restricted to finding a solution of conciliation and, if this fails, the parties are bound to submit the matter for arbitration. If the dispute is referred to the arbitration tribunal, any attempt by the parties to force a settlement of the dispute in their favour by a stoppage or evident slow-down of work is prohibited for a period of 45 days, or 60 days where an appeal has been made (section 18(2)).

90. Not only had the trade union in question (OSPA) failed to respect the procedure, it also stated that it would not abide by the law. The Government therefore states that, at the initial stage, the workers' contracts were terminated as they had infringed the law (section 18(3), subparagraph 1) and penal actions were brought against the authors of the strike (section 18(2), (3) and (4)). However, the Government states that, at a later stage, it acted with leniency and did not impose penalties. It even ruled that strikes of this nature should no longer be subject to penalties, by repealing the provisions contained in section 18(3), subparagraphs 2, 3 and 4 of Act No. 3239 of 1955. Furthermore, the dialogue between Olympic Airways and the OSPA has been resumed and a collective agreement has been signed and promulgated by the Order YPA 49 527/1699 of the Minister of Transport, putting an end to the requisitioning.

C. The Committee's conclusions

91. The Committee notes that this case concerns a labour dispute which occurred between the management of Olympic Airways and the Association of Flight Engineers (OSPA) concerning the renewal of the collective agreement in this sector for 1984 and that, according to the Government, a collective agreement has now been signed, thereby putting an end to the dispute. The Committee also notes with interest that the provisions of Act No. 3239 of 1955, which enabled penal action to be brought against workers who went on strike while conciliation and arbitration procedures were in process, have been repealed by Act No. 1483 of 1984 (section 21).

92. In view of the above and especially taking into account that this labour dispute has been settled by the signing of a collective agreement for this occupational category and that the striking workers have not been penalised, the Committee considers that this case does not call for further examination.

The Committee's recommendation

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

CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

Case No. 1007

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

94. The Committee has examined this case on various occasions [see 208th Report of the Committee, paras. 371 to 391; 218th Report, paras. 437 to 466; and 233rd Report, paras. 214 to 317, approved by the Governing Body at its 216th, 221st and 225th Sessions in May-June 1981, November 1982 and February-March 1984 respectively], most recently at its May 1984 meeting [see 234th Report of the Committee, paras. 418 to 431, approved by the Governing Body at its 226th Session in May-June 1984], when it presented an interim report. The Government sent certain information by a communication of January 1985.

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

A. Previous examination of the case

96. When the Committee examined the case at its May 1984 meeting it made the following recommendations in respect of the allegation that remained pending (relating to the death of Mr. Jorge Salazar Argüello, Vice-President of the Managing Board of Private Enterprises (COSEP)):

(a) The Committee expresses its surprise at the contradiction between the judgement of 1 March 1982 (according to which the Vice-President of COSEP, Mr. Jorge Salazar, fired first against the state security patrol and died in the ensuing exchange of fire) and the Government's two communications, dated respectively before and after this judgement (in which it is explicitly and implicitly recognised that Mr. Salazar was unarmed at the time of the events); this all the more so since the judgement was only transmitted by the Government nearly two years after being handed down. It urges the Government to explain this contradiction and this delay.

(b) The Committee requests the Government to indicate whether the judgement of 1 March 1982 is considered final and whether there was a possibility to appeal this decision or whether it was subject to automatic review.

B. The Government's reply

97. As regards the contradiction referred to by the Committee in paragraph (a) of the recommendations which it made at its May 1984 meeting, the Government states that the remarks of a government official, even of a minister, cannot be regarded as incontrovertible evidence; still less can they be compared with the legal force of a judgement handed down by a court containing a statement made by one of the principal protagonists in the events concerned. Only those who were present at the place at which the facts occurred can attest to what took place there. According to the Government, Mr. Moncada Lau, Mr. Salazar's chief accomplice, clearly establishes in his statement that the latter was armed and that, out of an instinct of self-preservation (according to the words used by Mr. Moncada Lau himself) he opened fire on the patrol under the impression that it belonged to the State Security Services, undoubtedly motivated by the

full knowledge of the offence which he was committing at that moment, namely the illicit transport of arms.

98. The Government nevertheless observes that the fact of Mr. Salazar's being armed or unarmed is a detail which it is not for the Committee to examine; this is a penal matter whose constituent elements have to be analysed by the courts of law of the land for the purpose of passing judgement.

99. The Government also states that the judgement passed in the case of Mr. Salazar clearly proves that the case involves problems of the country's internal policy, and that a group of individuals led by Jorge Salazar were organising a conspiracy against the Government and its authorities. In no country could Mr. Salazar's activities at that time have been described as activities in defence of occupational interests. To admit that the illicit transport of arms and conspiring against the Government are aims of either workers' or employers' organisations would lead one onto very dangerous ground, would totally vitiate the spirit of Convention No. 87 and would consequently enable organisations to depart from their basic aims. The Government considers that the facts referred to in no way constitute a violation of its undertakings regarding freedom of association.

100. Lastly, in response to the Committee's request for information, the Government states that the possibility of an appeal existed, as was established in the judgement of 1 March 1984. Nevertheless, since the defendant did not have recourse to this means of redress within the legal time-limit, the judicial authority ruled that the judgement was final; it thus had the authority of a decided case. In any case, the Nicaraguan system does not provide for automatic review before a higher instance.

C. The Committee's conclusions

101. The Committee notes that the Government, in its reply of January 1985, fully endorses the version of the circumstances surrounding the death of Mr. Jorge Salazar Argüello, Vice-President of COSEP, accepted by the judicial authority in its judgement of 1 March 1982, namely that Mr. Salazar was the first to fire against the state security patrol following which he lost his life. The Committee also observes that the Government gives a contradictory version of the facts originally given by it, according to which Mr. Salazar was unarmed at the time the events took place, stating that the comments of a government official, even a minister, cannot be regarded as incontrovertible evidence, still less be compared with the legal force of a judgement handed down by a court.

102. As regards the Government's statement that it is not for the Committee to examine whether Mr. Salazar was armed or unarmed, the Committee must stress that an examination of the circumstances surrounding this death is, on the contrary, essential in determining the facts with precision and in reaching a fully informed decision on the allegations made.

103. The Committee notes and expresses its surprise that the Government has retracted its statements which had been previously made by the Minister of the Interior, regarding the circumstances surrounding the death of Mr. Salazar Argüello. At the same time it deplores that the Government has not given any reasons for the long delay in sending the judgement of 1 March 1982 concerning the death of Mr. Salazar, which the Government only transmitted almost two years after it was handed down. In these circumstances the Committee considers that the continuing climate of uncertainty and doubt regarding the circumstances surrounding the death of Mr. Salazar cannot but have a detrimental influence on labour relations and on the trust which must prevail in occupational organisations if freedom of association is to be exercised.

104. Lastly, the Committee notes that the possibility of appealing against the judgement of 1 March 1982 existed, but that since the defendant made no use of this possibility the judgement remained final.

The Committee's recommendations

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

(a) The Committee deplores that the Government has not given any reasons for the long delay in sending the judgement of 1 March 1982 respecting the death of Mr. Salazar Argüello, Vice-President of COSEP, which the Government only transmitted almost two years after it was handed down.

(b) The Committee notes and expresses it surprise that the Government has retracted its statements previously made by the Minister of the Interior regarding the circumstances surrounding the death of Mr. Salazar.

(c) In these circumstances the Committee considers that the continuing climate of uncertainty and doubt regarding the circumstances surrounding the death of Mr. Salazar cannot but have detrimental influence on labour relations and on the trust which must prevail among occupational organisations if freedom of association is to be exercised.

Case No. 1276

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

106. The complaint is contained in a communication from the World Federation of Trade Unions dated 20 April 1984. The Government replied in a communication of 7 November 1984.

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

A. The complainant's allegations

108. The complainant alleges that the Chilean regime declared a state of emergency on 24 March 1984, a few days before the massive mobilisation of the people which had been called by the National Command of Workers in the form of a national day of protest which was held on Tuesday, 27 March, and the meeting of a National Assembly of Leaders of first-level trade unions on Saturday, 14 April, which was to fix a date for a national strike.

109. The complainant alleges that, as a preventive measure, their comrades Benedicto Altamirano Flores, Pedro Ahumada Pizarro, Mauricio Arriagada Figuroa, Luis Gatica Hernández, Macimiliano Guriérrez Ponce, José Rodríguez Vidal, Javier Zúñiga Seguel, Mauricio Candia Yáñez, Pablo Candia Yáñez, Pedro Gutiérrez Reyes, Gustavo Meneses Seguel, José Rivera Carrión, Javier Rodríguez Irabuco, Alejo Catril and Dimas Galaz Segovia were arrested by the security services on Friday, 23 March, at 12.30 a.m. and banished on Thursday, 29 March, having been accused by the Ministry of the Interior of participating in the protest of 27 March.

110. Furthermore, the complainant alleges that, since 24 March 1984, the security services have been looking for José Figueroa, head of the International Relations Department of the National Federation of Workers of the Building, Timber, Building Materials and Related Activities, who has been obliged to go into hiding. Other trade union leaders are in a similar situation.

B. The Government's reply

111. The Government states that in pursuance of Extraordinary Decree No. 4514 dated 29 March 1984 of the Ministry of the Interior, the persons mentioned by the complainant were banished for 90 days to various regions in the northern zone of the country. The measure was made in pursuance of the extraordinary powers granted under Article 24 (transitory provision) of the Political Constitution of the Republic in the event of a disturbance of the public order and peace. The Government adds that under Extraordinary Decrees Nos. 4566 dated 18 April 1984, 4571 dated 24 April 1984 and 4615 dated 31 May 1984, the measures which had been imposed on Messrs. Mauricio Candia Yáñez, Pablo Candia Yáñez, Alejo Catril Licanqueo and Dimas Galaz Segovia were lifted before the end of 90 days. As regards the other persons concerned, the period of 90 days has long since elapsed and they are now once again in full possession of their freedom of movement.

112. The Government also states that the measure adopted was not designed to restrict freedom of association and was in no way related to trade union activities.

113. Finally, as regards the clandestine activities allegedly pursued by Mr. José Figueroa, the Government states that it has no information on this matter precisely because of the clandestine nature of these activities.

C. The Committee's conclusions

114. As regards the alleged detention and subsequent banishment of 15 persons, the Committee observes that, according to the complainant, these persons were temporarily arrested as a preventive measure on 23 March 1984 and were subsequently banished (29 March) having been accused of participating in the national day of protest held on 27 March 1984. The Government, however, makes no reference to the arrest and points out that the measure of banishment to various regions in the north of the country (under a Decree dated 29 March 1984) was based on Article 24 (transitional provision) of the Constitution following the disturbance of public order and peace and was in no way related to trade union activities.

115. In this respect, the Committee notes that the complainant has given no details concerning the nature and purpose of the national day of protest of 27 March 1984 called by the National Command of Workers or concerning the manner in which the 15 banished persons participated in the protest (in particular, whether they acted peacefully or not). It also observes that the complainant, in its reference to these persons, does not use the term trade union leader

or trade unionist but "comrades". It must nevertheless regret the fact that the Government has not indicated the specific acts which led to the banishment of these persons and that it has simply confined itself to stating generally that this measure was in no way related to trade union activities and that it was taken because of a disturbance of public order and peace.

116. In these circumstances, in the absence of any detailed information from the complainant and the Government as to the circumstances which resulted in 15 persons being banished, and having regard to the fact that several months have now elapsed since the measures in question ceased to apply, the Committee would point out that the banishment of trade union leaders or trade unionists on account of their trade union activities is incompatible with the principles of freedom of association.

117. As regards the allegation that the security services have been looking for the trade union leader José Figueroa since 24 March 1984 and that as a result he has been obliged to go into hiding, the Committee notes the Government's statement that it has no information on this matter because of the clandestine nature of the activities of the leader in question. In these circumstances, since the complainant has given no information on the reasons why a search is being made for this trade union leader, the Committee considers that this allegation does not require further examination.

The Committee's recommendation

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

(a) The Committee notes that the Government makes no reference to the alleged temporary arrest of 15 persons who were subsequently banished.

(b) The Committee draws the Government's attention to the fact that the banishment of trade union leaders or trade unionists on account of their trade union activities is incompatible with the principles of freedom of association.

Case No. 1279

COMPLAINT PRESENTED BY THE UNION OF WORKERS IN THE MANUFACTURING ESTABLISHMENTS OF THE ARMED FORCES AGAINST THE GOVERNMENT OF PORTUGAL

119. By a communication dated 2 May 1984, the Union of Workers in the Manufacturing Establishments of the Armed Forces presented a complaint of violation of trade union rights in Portugal. On 8 June 1984 the complainant organisation transmitted certain additional information. The Government sent its observations in a communication of 19 October 1984.

120. 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

121. The Union of Workers in the Manufacturing Establishments of the Armed Forces explains in its complaint that, in accordance with the trade union legislation instituted by Legislative Decree No. 215-B/75 of 30 April 1975, an assembly of workers in the manufacturing establishments of the armed forces was convened to set up a trade union association, to approve the union's by-laws and regulations and to elect a provisional management committee. All this procedure was followed, according to the complainant organisation, in strict accordance for the relevant provisions of the law.

122. On completion of the procedure, the assembly took care to submit to the Ministry of Labour on 23 June 1983 the names of the elected members of the provisional management committee and the by-laws of the union with a view to its registration. However, adds the complainant, at the time of writing the complaint, the by-laws of the trade union have still not been published although the union was regularly constituted, and this, it says, is preventing it from embarking on its normal activities.

123. The complainant adds that on 4 November 1983 the Office of the Secretary of State for Labour informed it that the union's by-laws had not been published, since it was not clear whether a trade union could be set up within the manufacturing establishments of the armed forces.

124. According to the complainant this attitude constitutes a violation of Convention No. 87 ratified by Portugal, and the National Legislation of Portugal, no provision of which, in its opinion, allows the workers concerned to be deprived of the right to establish trade union associations.

125. The complainant attaches to its communication of 8 June 1984 various documents in support of its complaint. It also transmits a note from the Council of Directors of the Manufacturing Establishments of the Armed Forces, which expressly recognises the legitimate right of the workers to form a union, an opinion given by the Public Prosecutor of the Republic, dated 9 February 1984, according to which the examination of by-laws by the Ministry of Labour is to be limited to ascertaining the regularity of the procedure as to form and to satisfying itself that the by-laws mention the subjects to be covered in virtue of section 14 of Legislative Decree No. 215-B/75. The complainant also supplies a copy of an order of the Constitutional Court dated 17 April 1984, which recognises the constitutional right of the workers of the manufacturing establishments of the armed forces to establish trade union associations and states that any provision seeking to deny or limit this right would be unconstitutional.

B. The Government's reply

126. In its reply, the Government confirms that a procedure to register the Union of Workers in the Manufacturing Establishments of the Armed Forces was initiated with the Ministry of Labour and Social Security on 24 June 1983. After verification of the formal legality of the by-laws, the latter were registered and sent for publication.

127. Subsequently, on 8 November 1983, the Vice Prime Minister and the Minister of National Defence notified the Minister of Labour that, following a more detailed analysis of the procedure, the establishment of this union was to be deemed unlawful.

128. On 4 November 1983 the Secretary of State for Labour requested an opinion of the Public Prosecutor of the Republic on the legality of a trade union association of this nature and on the procedure followed by the Ministry of Labour. This opinion, which was sent to the Secretariat of State for approval on 14 June 1984, concludes that "neither the Constitution nor the legislation place any obstacles in the way of establishing trade union associations representing exclusively the civilian workers in the manufacturing establishments of the armed forces".

129. By an Order of 7 July 1984 the Secretariat of State for Labour decided that the analysis of the Public Prosecutor's opinion by the Ministry of National Defence should be awaited before a ruling was

made. Finally, the Vice Prime Minister and the Minister of National Defence, by Order No. 62/MDN/84, refused to endorse the opinion of the Public Prosecutor of the Republic and confirmed the illegality of the establishment of the Union of Workers in the Manufacturing Establishments of the Armed Forces. The act of registration was accordingly annulled.

130. The Government explained its decision by stating that the exercise of the right of association in the armed forces is necessarily subject to special regulations which ensue from the organisation and operation of an institution whose mission is the military defence of the Republic. It points out that civilian personnel, although different from military personnel, are quite obviously concerned in the accomplishment of the specific missions of the armed forces, of which they are an integral part. Civilian personnel are therefore subjected to military organisation, in particular to lines of command, cohesion and discipline.

131. The establishment of a trade union of such personnel, therefore, requires a legal basis, both from the point of view of ordinary legislation and from that of the direct application of the constitutional provisions. The latter should not be considered separately, but should be read in conjunction with the provisions concerning national defence and the armed forces. In particular, the establishment of such an organisation cannot be subject to the general principles governing trade unionism. It should therefore not be registered, and its by-laws should not be published, since Legislative Decree No. 215-B/75 does not apply to it; even if it did apply, registry and publication could not be granted since the administration cannot commit illegal acts.

132. In fact, continues the Government, any vertical trade union structure of the civilian personnel of the armed forces is inadmissible, since it would conflict with the unified command which is inherent in the function of the armed forces, whose task is to ensure the military defence of the Republic (article 275 of the Constitution). The establishment of a trade union of this type would therefore be unlawful, and its consequences might even be very serious.

133. Furthermore, states the Government, under the Regulations Governing the Organisation and Operation of Workers' Committees of Manufacturing Establishments in the Armed Forces, trade union activities which might compete with the functions of workers' committees, and activities which might be prejudicial to military organisation or to the preservation of the values of which the latter is the embodiment, are not authorised within the armed forces.

134. In conclusion, the Government considers that its attitude in this case violates neither Convention No. 87, nor the Constitution, nor Portuguese legislation.

C. The Committee's conclusions

135. The Committee notes that the present case concerns the refusal by the Portuguese Government to register a trade union of civilian workers in the manufacturing establishments of the armed forces. For the complainant this measure constitutes a violation of Convention No. 87, whereas for the Government the personnel concerned are involved in the accomplishment of the specific missions of the armed forces, and the registration of such a union would be illegal and would have serious consequences.

136. The Committee is called upon to give its opinion on the allegations formulated in the present case in the light of the provisions of Convention No. 87, ratified by Portugal, and in particular Article 2 under which workers without distinction whatsoever have the right to establish organisations of their own choosing without previous authorisation, and Article 9 which allows States to determine the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police.

137. The question which arises is, therefore, to determine whether the personnel who were to have joined the union of workers in the manufacturing establishments of the armed forces can be assimilated to members of the armed forces covered by Article 9 of Convention No. 87. In the view of the Committee the members of the armed forces who can be excluded from the application of Convention No. 87 should be defined in a restrictive manner.

138. The documentation provided by the complainant shows that the workers in question perform functions of a civilian nature. This is not denied by the Government.

139. In these circumstances, the Committee considers that the civilian workers in the manufacturing establishments of the armed forces are covered by the provisions of Convention No. 87, and that consequently they should have the right to establish organisations of their own choosing without previous authorisation. The Committee therefore requests the Government to take steps as early as possible to enable the union of civilian workers in the manufacturing establishments of the armed forces to be duly registered, in accordance with Portuguese legislation, thereby enabling it to perform in a normal and lawful manner its activities for the defence and promotion of the interests of its members.

The Committee's recommendations

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

(a) the Committee considers that the civilian workers in the manufacturing establishments of the armed forces should have the right to establish organisations of their own choosing without previous authorisation, in conformity with Convention No. 87 ratified by Portugal;

(b) the Committee accordingly requests the Government to take steps as early as possible to enable the complainant union to be duly registered thereby enabling it to perform in a normal and lawful manner its activities for the defence and promotion of the interests of its members.

Case No. 1289

COMPLAINT PRESENTED BY THE EMPLOYEES' UNION OF ESPERANZA DEL PERU S.A. - CLINICA SAN BORJA AGAINST THE GOVERNMENT OF PERU

141. The Employees' Union of Esperanza del Peru S.A. - Clinica San Borja submitted a complaint in a communication dated 4 June 1984. The Government replied in a communication dated 5 October 1984.

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

A. The complainant's allegations

143. In its communication dated 4 June 1984, the complainant alleges that the undertaking known as Esperanza del Peru S.A. has, with the approval of the Ministry of Labour, been engaging in a series of delaying tactics designed to prevent the registration of the Employees' Union of Esperanza del Peru S.A. - Clinica San Borja, which was set up on 23 April 1984. The appropriate authorities and the undertaking were immediately informed of the setting up of this organisation.