martial law will soon cease to apply thereby enabling it to be lifted in those provinces where it is still in force, so that normal and unrestricted trade union activity may be resumed throughout the country.

(d) As regards the situation of DISK and its leaders, the Committee welcomes the release from detention of the majority of the executive members of DISK and its affiliated organisations including the President of the Confederation, Mr. A. Bastürk; it notes with regret, however, that five of these leaders remain in detention, some on charges relating to the exercise of their previous trade union functions; it hopes that these charges will be speedily dealt with by the courts and that the persons concerned will shortly be released.

(e) As regards the trial of DISK and the effects of the combination of other trials concerning DISK-affiliated organisations, the Committee expresses the firm hope that the outcome of the combined trials will ensure the continued liberty of those concerned and the restoration to the DISK of its capacity to act as a trade union organisation, and of its assets.

(f) The Committee also trusts that, following the combination of the trials, all the information and documents necessary for the proper defence of the accused will be made available to them or their legal representatives, in the interests of ensuring due process and fairness to those involved in the trials.

(g) The Committee again expresses the hope that measures will be taken, or instructions given, to improve the situation as regards access to the remaining detainees by their lawyers and families.

(h) As regards the specific prohibition from engaging in trade union activities by the released leaders of the suspended DISK organisation and its affiliates, contained in section 5 of the transitional provisions attached to Act No. 2821 concerning trade unions, the Committee considers that such provisions are not only a denial of freedom of association but also in direct contradiction with the principle that trade unionists, like everyone else, should benefit from the presumption of innocence until such time as any charges that have been brought against them have been proved; the Committee strongly urges that section 5 of the transitional provisions be repealed without delay, thereby restoring full trade union rights to the trade union leaders affected thereby.

(i) With regard to alleged acts of anti-union discrimination against formerly detained trade union leaders the Committee recalls that Article 1 of Convention No. 98, ratified by Turkey, provides that workers should enjoy adequate protection against all acts of anti-union discrimination; it again draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

(j) As regards the allegation of torture or ill-treatment suffered by the DISK leaders during their detention, the Committee notes the information and assurance given by the Government that measures continue to be taken to eliminate torture and ill-treatment and to punish those found guilty of such acts; the Committee hopes that the authorities will continue to pursue their inquiries into those acts that were formally brought to the attention to the authorities and the court by the previously detained DISK leaders, and that appropriate measures will be taken to punish those responsible for committing such acts.

(k) As regards the assets of DISK and its affiliated organisations the Committee expects that measures will be taken to restore all the assets to these organisations as soon as the measures of suspension against them have been lifted; the Committee meantime expresses the hope that all necessary measures will be taken to maintain and preserve the assets that are in the hands of the trustee.

(l) The Committee recommends that the allegations previously made concerning the MISK organisation, to which trade union rights and its assets appear to have been restored, do not call for further examination.

(m) As regards the legislative aspects of the cases, and more particularly, the provisions of Act No. 2822 concerning collective bargaining, the Committee hopes that the Government, through consultations organised with the representatives of the workers' and employers' organisations, will endeavour to seek, as rapidly as possible, solutions to the problems to which the operation of this legislation has given rise, in particular, as regards the determination of the most representative union for bargaining purposes and the issue of certificates of competence to bargain; the Committee also draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

(n) The Committee notes with interest the introduction of new labour legislation and the resumption of the process of collective bargaining; it would again, however, insist on the need to amend a number of provisions of the new legislation (Acts Nos. 2821 and 2822) concerning the structure of trade unions, and the membership and activities of trade unions, all of which bring into question the extent of conformity of this legislation with ILO principles on freedom of association.

(o) The Committee would point out that the International Labour Office remains at the disposal of the Government for any assistance it may request in connection with the matters raised in the present report.

B. Further information from the WFTU

20. In a communication to the United Nations dated 12 February 1985, which was forwarded to the Office, the WFTU provides recent information on the merger of trials with the DISK trial and points out that the total number of defendants who are facing the death sentence is now 896, including 78 DISK leaders. According to the WFTU, as a result of the mergers, the total number of defendants is 1,565. It also alleged that two new trials had been instituted, on 3 and 5 January before a military tribunal, namely that of 16 officials of the Progressive Metalworkers' Union (Dev-Maden-Sen) and of 13 officials of the Movie Industry Employees' Union (Sine-Sen). These allegations were transmitted to the Government on 9 April 1985.

C. The Government's reply

21. In a communication dated 25 April 1985, the Government made a number of observations concerning the recommendations embodied in the 237th Report of the Committee. In doing so, it drew attention to the importance which it attached to the value of international labour standards in the promotion of economic development and social equilibrium, and for the improvement of the standard of living and working conditions. While it was desirable according to the Government that such standards should be applied uniformly throughout the international community, each country had nevertheless to take account of its own circumstances as well as the objective criticisms formulated by the ILO in order that it could engage in a constructive dialogue with the ILO. It was with such a dialogue in view that the Government had attempted to co-operate fully with the ILO, and that was also the perspective in which it was advancing its observations. In this regard, it welcomed the acknowledgement by the Committee of the spirit of co-operation which formed the basis of its policy towards the ILO.

22. The Government observed that the Committee was already aware of the tragic and difficult period through which the country had gone, and that the basis for a viable and healthy democracy had been established following a period of civil war. The Government, which had been in office since the elections held at the end of 1983, had attempted to improve the situation by maintaining a continuous review of the need for exceptional measures while persisting with its campaign against terrorism and anarchy. The perpetration of terrorist acts had still continued in 1984, and a number of examples were given of situations which had led to several hundred arrests and which indicated that the Government should not relax its vigilance since terrorism was still latent and the premature lifting of provisional measures might result in the revival of anarchy and terror. Nevertheless, the state of siege had been lifted in a total of 33 provinces in three stages during 1984 and, as from 19 March

1985, martial law had been rescinded for 11 provinces. This meant that for 44 out of 67 provinces a state of siege was no longer in force, and that a state of emergency was in force for only 12 of the provinces in which a state of siege had been lifted. (The Government explained that a state of emergency involves an intermediate administration between a state of siege and normal rule, powers being exercised by civil authorities under the direction of the prefect of the province.)

23. The Government further pointed out that the labour legislation (including Act No. 2821 on trade unions and Act No. 2822 on collective bargaining, strikes and lock-outs) was in force throughout the country, its application not being affected by the continuation of states of emergency in certain of the provinces. There was no question of the right to strike or to lock out being restricted by martial law, since the provision in terms of which prior permission had to be obtained for the exercise of these rights had been repealed for all provinces still under a state of siege at the end of November 1984. In those provinces in which there was still a state of emergency, the prefects only had power to delay recourse to strikes and lock-outs for a maximum of one month, so as to facilitate the amicable settlement of labour disputes. By contrast, no authority was competent to intervene in collective negotiations or where a matter had been referred to labour tribunals.

24. All trade unions which had adapted their statutes and held their annual assemblies in accordance with Act No. 2821 had now resumed their activities. There were now more than 100 trade unions and 58 employers' associations in existence and a large number of collective agreements had been concluded: as at 10 March 1985 there was a total of 1,925 such agreements in force (1,396 in the private sector and 529 in the public sector) in the same number of enterprises or places of work and affecting 476,346 workers (258,027 in the public sector and 218,319 in the private sector). There had also been 113 decisions to strike (34 in the public and 79 in the private sector, affecting respectively 18,265 and 11,792 workers) and 19 lock-outs (two in the public sector, affecting 13,987 and 17 in the private sector, covering 3,787 workers). One strike involving 440 workers from six trade unions was taking place at that time.

25. As regards the legal proceedings against certain trade unionists, the Government recalled that no trade unionist in Turkey had been prosecuted for acts which came within the framework of normal trade union activities. Those who had been charged were not accused by reason of their lawful trade union activities, but because of actions contravening long-established laws which had been taken under the cover of their trade union organisations and which involved crimes against the State or the encouragement thereof.

26. Information provided by the Government indicates that the trial of the 52 DISK leaders which commenced in December 1981 was merged with a number of other trials, including those of 30 of the trade unions affiliated to the DISK, as well as those of a former

mayor of Istanbul and the EMAS society. The total number of those charged in these trials is 1,473. On the subject of the DISK trial, the Government stressed that: the penalties requested by the prosecution did not bind the judges, whose independence and impartiality was constitutionally guaranteed and who could not receive instructions from anybody, not even the National Assembly (which also did not have the right to address questions, make statements or stimulate debate relating to the exercise of judicial powers on a matter before the courts). These independent courts decided matters freely on the basis of the charges, and their decisions had to be confirmed by the highest appeal court (the Court of Cassation). Trade unionists who had been detained had been released from prison by order of the courts and, with the release of the seven principal DISK leaders at the end of the summer of 1984, no trade unionist was still imprisoned on charges connected with illegal activities undertaken in the exercise of trade union functions. In the proceedings against the DISK and its affiliates, all the accused were at liberty and had been granted bail. The five trade unionists referred to in the report of the Committee were in detention on charges unrelated to activities undertaken in the name of their trade unions: two (Mustafa Aktolgali and Ozcan Keskec) former members of the Turkish Labour Party had been given sentences of eight years' imprisonment for contravention of section 141 of the Turkish Penal Code and, while awaiting confirmation of these sentences by the Court of Cassation, were in Metris Prison; another two (Mustafa Karadayi and Kamil Deriner) had been charged with smuggling and were in Metris Prison while their trial continued; and Mustafa Orhan was also in that prison as a result of a court's decision following charges that he had participated in activities contrary to the law as a member of an illegal organisation ("Kurtulus").

27. The Government pointed out that the merger of trials is a matter regulated by law involving a question of jurisdiction, and decisions are made in this regard in order to establish correctly the liability of the accused and to accelerate the proceedings without involving additional charges. No mergers of trials had so far occasioned any infringement of liberty of the accused; the attitude of the defence lawyers had been favourable to them and they had been made in response to requests from the defence. There was no question of the trials being prolonged since, once begun, a trial had to take its course according to the procedures fixed by law. Defence lawyers could have access to all information and documents which they needed for the defence of all accused, and the court had granted their request for access to documents confiscated from DISK and its affiliates.

28. Regarding the question on the restoration to the DISK of its right to operate as a trade union and of its assets, the Government observed that these were matters for the court, and again pointed out that nobody had the right to intervene in these respects.

29. As regards the resumption of trade union activities by the DISK and the operation of transitional section 5 of Act No. 2821, the Government drew attention to the provisions of articles 13 and 52 of the Constitution. The first of these stated that fundamental liberties could be restricted by the law for the purpose, inter alia, of preserving the integrity of the State or the national territory, sovereignty, national security, public order and public safety; while the second stated that trade unions could not act in violation of these restrictions. The transitional section meant that trade union leaders charged with the crimes against the State specified in Chapter 1, Volume II, of the Penal Code were not authorised to undertake trade union activities until they were acquitted, and thus those at present on trial would be able to enjoy full trade union rights and to undertake trade union activities when they were absolved of the charges they faced. This had been the case with the leaders of MISK, who had also been charged with crimes against the State but who were no longer subject to any restrictions following their acquittal. MISK had indeed been re-established and now enjoys full trade union rights and the assets had been returned to it.

30. The assets of suspended trade unions had been placed by the courts in the custody of trustees, in accordance with the Turkish Civil Code, as provided for by section 57 of Act No. 2821 on trade unions. The trustees had the duty of conserving and protecting the assets and could not act in any way contrary to the law; their actions were subject to periodic review by inspectors of finance and penalties would be applied if any offence were committed. The trustees had also to account for their actions to the court and had to obtain approval from the court before the sale of any asset. If the judgement of the court absolved the leaders of the DISK and its affiliates of the crimes with which they were charged, the assets at present in custody of the trustees would, without any doubt, be restored to them as had been the case with MISK. In its communication of 22 May, the Government provided figures concerning the total liquid and other assets of the DISK and 17 trade unions affiliated to it (which, together, amount to T£9,848,425,726 or approximately $19,696,851).

31. The Government drew attention to the fact that on 21 January 1985 19 leaders of the Turkish Writers' Trade Union had been acquitted by Court No. 1 of the Istanbul State of Siege Command.

32. Information was also provided by the Government concerning improvements in prison conditions, particularly as regards the times and frequency of visits to prisoners by their families and their defence counsel.

33. On the question of the use of torture and maltreatment of prisoners, the Government stated that such action was illegal and reprehensible, a crime against the Constitution and the Turkish Penal Code. Excesses on the part of the police could occur in any country and, in Turkey, complaints concerning such matters presented in due form were made the subject of a major inquiry so that those

responsible could be brought to court and punished. Allegations by trade unionists who had earlier been detained were treated in this way and there was no doubt that if these were proved true the culprits would be sentenced in accordance with the law. Up to March 1985, 119 cases of alleged torture or maltreatment had been referred to courts, and 100 civil and military officials had been punished by sentences which ranged up to life imprisonment. A seven-member multi-party committee of the National Assembly had been established in October 1984 to inquire into prison conditions and would visit some 30 prisons (at no more than 24-hour notice); it would meet with prison authorities and would interview detainees in the absence of the officials, would transmit complaints to the prosecutor for action and would report its conclusions to the National Assembly.

34. The Turkish Constitution and labour laws envisaged the protection of workers on recruitment against all forms of anti-union discrimination, in conformity with Article 1 of Convention No. 98. Section 25/B of Act No. 1475 (as amended by Act No. 2869 of 30 July 1983) also provided that every enterprise with more than 50 employees should engage 2 per cent of its workforce from among former detainees. With unemployment running at 16 per cent (2.9 million workers), it was not possible to find employment for all former detainees which corresponded to their training, but employers were free in terms of the law to take on anyone with the requisite qualifications for the positions they had vacant, and the Government had in no case encouraged them not to recruit a person of their choice. Only a limited number of former detainees had not found employment. There was no discrimination against trade union leaders, whose position was really one of "voluntary unemployment", i.e. they had for many years occupied managerial positions within trade unions and now sought similar positions rather than exercising a particular trade.

35. Turning to the legislative provisions concerning collective bargaining and the recognition of workers' organisations, the Government referred to consultations which had taken place over a period of three years before the enactment of Act No. 2822, and in particular of the provision in section 12 thereof which stipulated that an organisation must represent at least 10 per cent of the workers in a branch of activity plus 50 per cent of those at the workplace in order to be accredited for collective bargaining purposes. The object had been to eliminate the influence of employers over trade unions and thus to: facilitate the strong trade unionism desired by the workers; militate against unofficial unions; have trade unions respect the interests of their members notwithstanding rival claims; avoid trade union office being regarded as an opportunity for furthering personal interests; and so that collective bargaining could no longer be envisaged as a process of wearing down employers and upsetting the equilibrium of the economy, thus doing harm to the workers themselves as well as to society as a whole. The application of the law had resulted in a smaller number of unions which were now, however, more powerful than in the past. Any difficulties encountered so far in this regard would be overcome

as more experience was acquired in relation to the system as a whole or, if necessary, through amending legislation - as had been made clear to the representative of the Director-General in 1984. Because the Government acted in co-operation with organisations of workers and employers on matters relating to labour, it had been able to approve certain amendments to the law suggested by the largest trade union centre, i.e. TURK-IS, and had drafted a bill for this purpose. It had also worked on other amendments. Furthermore, the tripartite discussions between the Ministry of Labour, TURK-IS and TISK (the Confederation of Employers' Organisations) presided over by the Prime Minister had given rise to suggestions by the trade unions which were being examined by the Ministry of Labour, and the results of this evaluation would be submitted to the next such meeting.

36. Further, on the question of the legislation, the Government, in its communication dated 13 May 1985, indicates that the Minister of Labour and Social Security has accepted a number of proposals made by TURK-IS to amend various provisions of Acts Nos. 2821 and 2822. These proposed amendments are now being considered by the Council of Ministers and a draft law will thereafter be prepared for submission to Parliament. The Government adds that the legislative texts, once approved by Parliament, will be communicated to the ILO.

37. Finally, the Government was of the view that it was clear in the light of these observations that matters were continuing to evolve positively in the sphere of labour and that the Government was acting in the interests of all concerned in accordance with the democratic mission of the Turkish nation. The Government wished to reiterate its willingness to promote trade union rights and freedoms and to pursue its co-operation with the ILO in all fields of labour.

D. Conclusions of the Committee

38. The Committee takes note of the reply of the Government and expresses its appreciation for the way in which it has provided detailed observations on matters raised in the previous report on these cases, as well as for the spirit of co-operation which the Government has continued to exhibit in response to the concerns of the Committee.

39. The Committee notes that martial law is still in force in Turkey. It observes from the information provided by the Government that this is still the case in respect of at least one-third of the provinces in the country (in the form of either a state of siege or a state of emergency) though it is cognisant of the steps which have been taken during the past year to increase the number of areas to which such regulations no longer apply. In this regard, the Committee can only recall the principle that the existence of martial law is incompatible with the exercise of trade union rights. It notes with interest that since November 1984 it has no longer been

necessary to obtain prior permission for the exercise of the right to strike or to lock-out in areas in which a state of siege is in operation. But it also notes that, where a state of emergency is in force, the power of the prefect to delay recourse to such action for up to a month still exists. The Committee accordingly expresses the hope that this power will not be used in a manner which curtails rights of freedom of association or restricts the opportunities for free collective bargaining. The information supplied by the Government on the extent of activity in both of these fields indicates that the situation is not static, and the Committee hopes that further developments will take place without the limitations arising from martial law. The Committee, accordingly, trusts that martial law will soon be lifted in those provinces where it is still in force.

40. Matters concerning the trials of trade unionists continue to be a major element in the cases under consideration. In this regard, the Committee has taken note of the information provided by the Government concerning the acquittal in January 1985 of 19 leaders of the Turkish Writers' Trade Union at a trial which took place in No. 1 Court of the Istanbul State of Siege Command, and which had not been the subject of remarks in earlier reports of the Committee. At the same time, the Committee notes the further allegations made by one of the complainants concerning two new trials which are said to have also been instituted in January 1985 against the leaders of the Progressive Metalworkers' Union and the Movie Industry Employees' Union. It expresses the hope that the Government will supply information concerning these trials.

41. On the subject of the proceedings in the trial of the leaders of the DISK and its affiliates, the Committee notes the statement of the Government that there is no necessary link between the sentences requested by the prosecution and those which may ultimately be handed down, as well as the information that any sentence must be confirmed by the highest court of appeal (the Court of Cassation) and that the process of merging trials may contribute to more rapid progress towards the conclusion of the trials. In recalling the importance which it attaches generally to ensuring that due process is observed in trials involving trade union leaders, the Committee draws particular attention to the need to avoid unnecessary delays as well as to guarantees of a fair trial. It notes with concern that the trials are now in their fourth year and feels obliged to observe that so long a period is unacceptable and might in itself give rise to suffering on the part of the accused persons and their families, whatever the outcome of the proceedings. In these circumstances, it expresses the hope that every effort will be made to bring the trials to a speedy end.

42. In its last report concerning these cases, the Committee was able to note with interest the fact that nearly all of the accused were no longer in detention, although it also observed that five of the DISK leaders originally detained were still in custody. The information provided by the Government in its reply concerning these five detainees is to the effect that they are either serving sentences

or awaiting trial in respect of offences other than those with which they are charged in the DISK trial, and in all cases as a result of judicial decisions (one of which, involving a sentence of eight years' imprisonment, is before the Court of Cassation for confirmation). The Committee recalls that the representative of the Director-General was informed during his visit to Turkey in 1984 that two of those in custody on charges of smuggling were being held in relation to their activities in connection with trade union property, and it notes that in the case of the fifth person still in detention there is a lack of detail in the information supplied by the Government as to the nature of the organisation in respect of whose illegal activities he is said to have been charged. In the light of these facts, the Committee trusts that the Government will be able to provide more specific information concerning all five detainees, including the texts of any relevant documents emanating from the courts, so that a conclusion can be reached as to the connection, if any, between the imprisonment of these persons and their trade union activities.

43. The Committee has noted with interest the information concerning improvements in relation to visits to prisoners by their families and their legal respresentatives, and has also taken note of the decision of the National Assembly to set up a multi-party commission to investigate prison conditions. It expresses the hope that the Government will keep it informed of the outcome of this procedure and that it will provide it with the text of any report produced by the commission.

44. Similarly, the Committee hopes that the Government will continue to keep it informed of the outcome of any proceedings against civil or military personnel who are alleged to have participated in the torture or maltreatment of imprisoned trade unionists.

45. One consequence of the DISK trials to which attention has already been drawn is the statutory prohibition (in transitional section 5 of Act No. 2821 on trade unions) on the leaders of DISK from resuming or participating in trade union activities. The effect of this has, of course, been considerably exacerbated by the long duration of the trial proceedings, thus depriving the individuals concerned not only of their rights as trade union leaders and activists but also of their means of livelihood. The information provided by the Government in this connection concerning the terms of two articles in the Constitution has not led the Committee to alter its view that provisions such as that contained in transitional section 5 of Act No. 2821 are not only a denial of freedom of association but are also in direct contradiction of the principle that trade unionists, like everyone else, should benefit from the presumption of innocence until such charges as have been brought against them have been proved. In other words, the Committee is of the view that, especially because of the length of the trial, the accused should not have to wait until they are acquitted before having their trade union rights restored to them, and it therefore reiterates its previous recommendation strongly urging the Government to repeal transitional section 5 without delay.

46. The question of the conservation and protection of the assets of the DISK and its affiliates also assumes additional importance with the continued suspension of these organisations over a lengthy period. The Committee, while noting with interest the measures which exist in regard to the accountability of the trustees appointed for this purpose by the courts, must again express the wish that steps will be taken to restore all the assets to the organisations as soon as the suspension has been lifted. The Committee notes that the information concerning the assets of the DISK and its affiliates does not specify the date(s) in respect of which this information is provided, and accordingly requests the Government to let it have the relevant figures for each of the years since the assets were placed under trusteeship.

47. As regards opportunities for re-employment of former trade union prisoners and detainees, the Committee has taken note of the observations of the Government and of the statutory measures which have been taken in this connection. It expresses the hope that the Government will ensure that employers of more than 50 persons carry out their statutory duty to engage a minimum of 2 per cent of former detainees and that, in the public sector, the Government will itself vigorously pursue such a goal. The position of trade union leaders ought to receive special attention so as to avoid any possibility of anti-union discrimination of the kind which might conflict with the Government's obligations in terms of Article 1 of Convention No. 98.

48. On the subject of the provisions in Acts Nos. 2821 and 2822 concerning trade unions and collective bargaining, strikes and lock-outs, the Committee has taken note with interest of the fact that the Government has prepared amending legislation and that, following further negotiations with the organisations of workers and employers, it is giving consideration to other suggestions from the trade unions for the alteration of these laws. It trusts that the introduction of these measures will result in a greater degree of conformity with the principles of freedom of association and free collective bargaining, and that any new legislation will take full account of the comments made by the Committee [See 237th Report, para. 33.] and by the Committee of Experts on the Application of Conventions and Recommendations on those provisions of the two laws which are not in accordance with ILO principles on freedom of association or with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ratified by Turkey. The Committee requests the Government to keep it informed of developments in this regard, particularly in so far as these relate to the determination of the most representative union for collective bargaining purposes and any limitations which might be placed on the right of workers' organisations to participate freely in the process of collective bargaining. It again draws this aspect of the cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Recommendations of the Committee

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

(a) The Committee expresses its appreciation for the way in which the Government of Turkey has provided detailed observations on the matters raised in the previous report on these cases, as well as for the co-operation which the Government has continued to exhibit in response to the concerns of the Committee.

(b) The Committee notes that martial law is still in force in at least one-third of the provinces of Turkey (in the form of either a state of siege or a state of emergency). Recalling the principle that the existence of martial law is incompatible with the exercise of trade union rights, the Committee hopes that further developments will take place without the limitations arising from martial law. The Committee, accordingly, trusts that martial law will soon be lifted in those provinces where it is still in force.

(c) As regards the allegations received concerning the commencement of two new trials in January 1985 involving leaders of the Progressive Metalworkers' Union and the Movie Industry Employees' Union, the Committee requests the Government to supply information concerning this matter.

(d) Regarding the trial of the leaders of the DISK and its affiliates, the Committee notes with concern that these proceedings are now in their fourth year and feels obliged to observe that so long a period might in itself give rise to suffering on the part of the accused persons and their families, whatever the outcome of the proceedings.

(e) The Committee expresses the hope that every effort will be made to bring the trials of the DISK leaders to a speedy end and that the Government will provide more specific information concerning the five accused in the DISK trial who are still in detention.

(f) The Committee expresses the hope that the Government will keep it informed of the outcome of the appointment of a multi-party commission by the Turkish National Assembly to investigate prison conditions and that it will provide it with the text of any report produced by the commission.

(g) The Committee reiterates its previous recommendation strongly urging the Government to repeal transitional section 5 of Act No. 2821 on trade unions, which has had the effect of prohibiting the DISK leaders from resuming or participating in trade union activities and has thus deprived them over a long period not only

of their rights as trade union leaders but also of their means of livelihood.

(h) The Committee notes that the information concerning the assets of the DISK and its affiliates does not specify the date(s) in respect of which this information is provided, and accordingly requests the Government to let it have the relevant figures for each of the years since the assets were placed under trusteeship. The Committee again expresses the wish that steps will be taken to restore the assets of the DISK and its affiliates to the organisations as soon as their suspension has been lifted.

(i) The Committee requests the Government to keep it informed of developments regarding the introduction of amendments to Act No. 2821 on trade unions and Act No. 2822 on collective bargaining, strikes and lock-outs, particularly in so far as these relate to the determination of the most representative union for collective bargaining purposes and any limitations which might be placed on the right of workers' organisations to participate freely in the process of collective bargaining; it trusts that the introduction of such measures will result in a greater degree of conformity with the principles of freedom of association and free collective bargaining, and that any new legislation will take full account of the comments previously made by the Committee and by the Committee of Experts on the Application of Conventions and Recommendations; it again draws this aspect of the cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Case No. 1303

REPRESENTATION PRESENTED BY THE GENERAL CONFEDERATION OF PORTUGUESE WORKERS-NATIONAL INTER-UNION UNDER ARTICLE 24 OF THE CONSTITUTION CONCERNING NON-OBSERVANCE BY THE GOVERNMENT OF PORTUGAL OF THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (No. 87), THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (No. 98) AND THE WORKERS' REPRESENTATIVES CONVENTION, 1979 (No. 135)

50. By letter dated 1 March 1984, the General Confederation of Portuguese Workers-National Inter-Union (CGTP-IN), referring to article 24 of the ILO Constitution, presented a representation alleging failure by Portugal to implement a number of international labour Conventions which it had ratified, namely the Forced Labour Convention, 1930 (No. 29), the Labour Inspection Convention, 1947 (No. 81), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), the Right to Organise and Collective

Bargaining Convention, 1949 (No. 98), the Abolition of Forced Labour Convention, 1957 (No. 105), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Holidays with Pay Convention (Revised), 1970 (No. 132), and the Workers' Representatives Convention, 1979 (No. 135).

51. At its 226th Session (Geneva, May 1984), the Governing Body of the International Labour Office, which had before it a report by its officers relating to the CGTP-IN representation, decided that the representation was receivable, appointed a committee to examine it with respect to the Conventions that did not deal with freedom of association, and decided to refer the aspects of the representation relating to failure to implement Conventions Nos. 87, 98 and 135 to the Committee on Freedom of Association.

52. The complainant Confederation sent additional information in support of its representation on 9 August 1984. The Government sent information and observations on the aspects of the representation concerning freedom of association in communications of 10 December 1984 and 15 February 1985.

A. Allegations of the complainant Confederation

53. The General Confederation of Portuguese Workers-National Inter-Union (CGTP-IN) alleges failure by the Government of Portugal to implement Conventions Nos. 87, 98 and 135. More specifically, the CGTP-IN states that the situation in Portugal is taking a dramatic turn resulting in the non-payment of wages or delays in their payment beyond the date on which they are due, despite the fact that in many cases the work has effectively been performed and that undertakings are continuing to operate. With reference to the freedom of association Conventions, the complainant states that this is aggravated by the fact that in many cases employers are unlawfully retaining the workers' trade union dues, which under Act No. 57/77 of 5 August 1977 they are obliged to deduct from wages and remit to the unions concerned.

54. The complainant states that, upon verification of the serious allegations concerning the non-payment of wages, which constitute a violation of the workers' basic rights as set out in various ratified Conventions, it would like the Committee on Freedom of Association to examine the case at a later stage in order to give a ruling as to whether this situation in practice amounts to a serious violation of the standards on freedom of association. In the opinion of the CGTP-IN the non-payment of wages has in practice given rise to a situation in which the most basic trade union rights are being totally flouted. This question is therefore important and serious enough for the Committee of Association to state unequivocally that such behaviour is directed against trade unions.

55. The CGTP-IN attaches to its complaint a large volume of documentation and states that in December 1983 it had recorded 456 undertakings owing wages to 143,190 wage earners, which means that, out of a total number of wage earners of about 2,181,000 in June 1983, 5.2 per cent were suffering a delay in the payment of their wages. This illustrates the seriousness of the problem. According to the CGTP-IN, the State is directly responsible for the non-payment of wages to a large number of workers in public undertakings or undertakings financed out of public funds. The Confederation communicates a list of public-sector undertakings with wage debts, recording 21 undertakings with 265,474 wage earners (annex XI to document No. 1). In addition, in document No. 2, the CGTP-IN mentions an article published in the trade union weekly Semanário of 23 December 1983, entitled "Undertakings are retaining trade union dues". This weekly was, however, not enclosed with the documentation.

B. The Government's reply

56. In its communication of 10 December 1984, addressed to the ILO in response to the allegations relating to the Conventions other than those concerning freedom of association, the Government states that the allegation relating to the unlawful retention of trade union dues by employers is unfounded. It recalls that under Act No. 55/77 of 5 August 1977 the system for the collection of trade union dues by deductions from wages is always the result of an agreement freely concluded between the parties and may not be applied without the express consent of the worker. If these conditions are fulfilled, the trade union association may take the employer to court to obtain payment of the sum corresponding to the dues when this is not paid voluntarily, the Government explains. It also points out that the Secretary of State for Labour adopted a decision on 28 February 1984, the text of which the Government annexes to its communication, on the action of the labour inspectorate in this connection. According to this text the Government, through its labour inspectors, reminds any undertakings which unilaterally cease to collect the trade union dues of their workers on the grounds that they have computerised their management, that they are acting unlawfully. The text states: "accordingly, the general labour inspectorate must make a report of any offences it has noted, in accordance with section 5 of Act No. 55/77".

57. In addition, in its reply of 15 February 1985, the Government states that Conventions Nos. 87, 98 and 135 have been ratified by Portugal and that they are applied either by law and practice or by the adoption of measures to sanction and apply these standards. It refers to the information contained in the reports sent to the ILO under article 22 of the ILO Constitution on the application of the Conventions concerned.

58. The Government also observes that the complainant organisation has not mentioned the Articles of the Conventions that are said to have been violated and, above all, that it has not referred to the concrete facts that might be regarded as violations of these Conventions. However, the Government, although contesting the figures provided by the CGTP-IN, acknowledges that there has been a delay in the payment of wages due in many undertakings. According to it, this delay is due to the unfavourable economic situation, and it cites figures of the debts paid by the undertakings in respect of the workers' wages, social security and the unemployment fund. It does not, however, supply any figures on any debts that it might have with regard to the trade unions.

C. The Committee's conclusions

59. The present case concerns an allegation that employers are unlawfully retaining the trade union dues of their workers by not paying them the wages that are due to them, whereas under Portuguese legislation they are under the obligation to deduct the dues from the wages and remit them to the trade unions concerned.

60. The Committe has examined Act No. 57/77 of 5 August 1977 on the collection of trade union dues. This Act provides for freedom to choose a method of collecting trade union dues, and, in the event that a worker agrees to the method of deducting dues from his wages, the protection of the worker concerned. The Committee of Experts on the Application of Conventions and Recommendations, which examined this text when Portugal ratified Convention No. 87, considered that the provisions of Act No. 57/77 were in conformity with the Convention. Moreover, the Committee observes that the Government, by its decision of 28 February 1984, made it clear to any undertakings which unilaterally ceased to collect the trade union dues of their employees on the pretext that they had computerised their management, that they were acting unlawfully, and that the general inspectorate of labour must make a report of any offences noted when a worker has requested the deduction of his dues and this has not been done.

61. The Committee also observes that, although the complainant confederation has provided copious documentation on the undertakings which are in arrears with the payment of their employees' wages, it has not designated the public- or private-sector undertakings which have allegedly not paid the unions concerned the trade union dues which they allegedly deducted from workers' wages, or which have allegedly delayed in paying them.

62. The Committee has nevertheless taken note of the report of the committee set up to examine the representation of the CGTP-IN on the failure by Portugal to implement various Conventions, in particular the Protection of Wages Convention, 1949 (No. 95). The Committee observes that this committee, in paragraph 40 of its report,

remarks that "the Committee, though it notes the measures taken or envisaged by the Government to assess and remedy the situation, is bound to conclude that the Government has not secured the effective observance of the relevant provisions of the Convention".

63. Consequently, the Committee, although it is lacking precise information on this matter, nevertheless regrets that the delay in the payment of workers' wages may in its turn have caused delays in remitting the workers' trade union dues to the unions to which they belong. The Committee recognises that the Government, by its decision of 28 February 1984, has reminded undertakings of their obligations to collect trade union dues, but nevertheless considers that the Government should strengthen the supervision exercised by the labour inspectorate so as to ensure that, when a worker has chosen to request the direct deduction of his trade union dues from his wage for payment to a trade union which he has designated, these dues should in effect be paid to the union concerned. The Committee requests the Government, in the light of its acknowledgement that there have been delays in the payment of wages and other benefits and contributions in several undertakings, to keep it informed of the measures taken by the authorities to strengthen this supervision.

The Committee's recommendations

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

(a) The Committee considers that the Government should strengthen the supervision exercised by the labour inspectorate so as to ensure that, when a worker has chosen to request the direct deduction of his trade union dues from his wage for payment to a union which he has designated, these dues should in effect be paid to the union concerned.

(b) The Committee therefore requests the Government, in the light of its acknowledgement that there have been delays in the payment of wages and other benefits and contributions in several undertakings, to keep it informed of the measures taken by the authorities to strengthen this supervision.

Case No. 1304

REPRESENTATION MADE BY THE CONFEDERATION OF COSTA RICAN WORKERS (CTC), THE AUTHENTIC CONFEDERATION OF DEMOCRATIC WORKERS (CATD), THE UNITY CONFEDERATION OF WORKERS (CUT), THE COSTA RICAN CONFEDERATION OF DEMOCRATIC WORKERS (CCTD) AND THE NATIONAL CONFEDERATION OF WORKERS (CNT), UNDER ARTICLE 24 OF THE ILO CONSTITUTION, ALLEGING THE FAILURE BY COSTA RICA TO IMPLEMENT SEVERAL INTERNATIONAL LABOUR CONVENTIONS INCLUDING CONVENTIONS NOS. 11, 87, 98 AND 135

65. By a communication dated 16 April 1984, which was received in Geneva on 16 May, the above-mentioned trade union organisations presented a representation to the Office alleging failure by the Government of Costa Rica to implement various Conventions, including the Right of Association (Agriculture) Convention, 1921 (No. 11), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

66. The above-mentioned Conventions have been ratified by Costa Rica.

67. The representation was also directed against the International Monetary Fund, which the complainants state acts with the Government in the measures concerned.

68. At its 227th Session (June 1984) the Governing Body [see document GB.227/205], in accordance with the recommendation of its officers, declared the representation presented against Costa Rica receivable, particularly as concerns Conventions Nos. 11, 87, 98 and 135; declared irreceivable the representation against the International Monetary Fund; and referred the aspects of the representation relating to the implementation of Conventions Nos. 11, 87, 98 and 135 to the Committee on Freedom of Association.

69. By letters of 8 October, 22 November and 18 December 1984, the Government sent its observations on the allegations presented by the complainant organisations. The complainant organisations, for their part, supplied a series of documents in support of their allegations, which were received on 25 October 1984 and communicated to the Government on 5 November 1984.

A. The complainants' allegations

70. The complainants allege that, as a consequence of negotiations and undertakings between the Government and the

International Monetary Fund (IMF) a series of measures have been taken which violate the ILO Conventions on freedom of association and collective bargaining ratified by Costa Rica (among other documents, the complainants sent copy of a letter of intent sent by the Government to the IMF, which to judge from its contents, was written in 1984). In particular, the complainants refer to the following facts and measures:

- a wage freeze as from January 1984, and a wage increase in the private sector of only 5 per cent. The latter increase neither covered the loss in the workers' purchasing power when compared to 1983, nor did it allow them to recover their purchasing power in the face of the inflation rate escalation since January 1984;

- the presentation by the Government to the Legislative Assembly of a Bill to create the Collective Bargaining Commission for the Public Sector. The complainants take exception to the composition of this Commission and to its jurisdiction as regards the discussion or solution of disputes, as well as to the fact that the Bill removes labour disputes from the jurisdiction of the labour courts; under the Bill they will be heard under administrative litigious procedure, with all the disadvantages that this entails for the workers;

- presentation by the Government to the Legislative Assembly of a Bill to consolidate the solidarity associations as a movement supported by the employers and parallel to the trade union movement. In particular, the permanent committees established by the Bill would promote the signature of direct settlements replacing any form of negotiation;

- a proposal, made by the Government, for the complete reform of the part of the Labour Code concerning collective rights would restrict freedom of association, the right to strike and collective bargaining (the complainants send the text of the reform Bill);

- the proposal by the Government to the Legislative Assembly of a Bill for the financial equilibrium of the public sector (Emergency Act) which later became law; this is evidence of failure to respect the established negotiations which were signed and in force with the workers' organisations;

- the Government, through the Minister of the Presidency, circulated an official communication to all ministries and public and administrative agencies in which the basic information was set out to permit the creation of blacklists of workers who had demonstrated against the policies adopted at the instigation of the International Monetary Fund (the complainants attach an official circular dated August 1983);

- as from October 1980 the Government published directives according to which collective agreements were not to be

negotiated and already negotiated agreements were not to be amended, renegotiated or extended without the agreement of the Attorney-General's Department of the Republic (the complainants attach copies of some directives adopted by the Government Council on 2 October 1980); according to the complainants there has been a sharp decline in the number of collective agreements concluded over the past four or five years;

- as part of the anti-union policy pursued by the Government, penal sanctions are applied for the development of activities of trade union organisations and threats to apply them are used as a means of persecuting the trade union leadership. This procedure was initiated against the Association of Employees of the Costa Rican Electricity Board, and is now being pursued against the Trade Union of Medical Science Professionals of the Costa Rican Social Insurance Fund, the Medical Union, the workers and leaders of the Trade Union of the National Bank of Costa Rica, the leaders of the Trade Union of Water and Sewerage Workers, the National Childhood Welfare Society, and also against the leaders of the Costa Rican Christian Peasants' Federation (the complainants attach a judgement of 27 March 1984 sentencing ten leaders of the Trade Union of the National Bank of Costa Rica, in particular for incitement to the collective abandonment of public duty).

B. The Government's reply

71. The Government begins by stating that many of the allegations are of a general and abstract nature, and do not cite concrete and specific cases of presumed violations of ILO Conventions. The Government also points out that the complainant organisations did not bring their claims before the courts, although they might have made use of the various judicial means of redress offered by the law, such as a plea for protection of constitutional rights (amparo), an appeal based on unconstitutionality and ordinary litigious administrative proceedings. These judicial means of redress offer the appropriate guarantees, particularly when it is borne in mind that Conventions rank higher than laws in accordance with article 7 of the Political Constitution, and that the courts of justice are competent to deal with disputes arising out of the violation or non-observance of Conventions. After citing a series of constitutional provisions, which in the Government's view coincide with those contained in the ratified ILO Conventions, the Government states that the laws which apply the relevant rights and principles recognised by the Constitution and to which the complaint refers do not violate ILO Conventions; if this were the case, the Government would not be able to ratify such Conventions validly, since this would imply an amendment to the Constitution with each ratification.

72. The Government points out that what the complainants referred to as a "letter of intent" which was sent to the International Monetary Fund is merely a rough draft designed to obtain a "contingency settlement" for one year to enable the stabilisation of the country's economic and fiscal situation.

73. The Government also states that, in order to work towards the restoration of the real wage, the Executive created a sliding wage-scale system by Decree No. 13827-TSS of 19 August 1982, which enabled wages in the public and private sectors to be adjusted in accordance with biannual variations in a basic wage basket; this is the sole wage policy mechanism. This project was accepted and complied with by the trade unions. In January 1984 the time came for the second wage adjustment. A basic adjustment of 450 colones had already been decreed, corresponding to the biannual variation (December 1982-June 1983) in the basic wage basket; during the second half of 1983, however, the consumer price index rose less rapidly, so that during the second half of the year this indicator showed a rise of barely 0.8 per cent, whereas the rise during the first half of the year had been 9.8 per cent. This levelling-off had the effect of raising the basic wage basket by only 31.04 colones during the period, so that there was nothing to warrant a wage adjustment.

74. As for the approval of a 5 per cent wage increase for the private sector as of January 1984, continues the Government, this was granted for the purpose of compensating for the loss in real value of minimum wages during 1981 and 1982, since the 12.6 per cent increase decreed in August 1983 (in accordance with the estimated biannual growth of the basic wage basket) exceeded the increase in the retail price index during the year, which was 10.7 per cent; this legal measure thus resulted in an increase in purchasing power. Nor can it be affirmed that galloping inflation began in January 1984, since the consumer price index shows a rise of only 7.9 per cent for the first half of that year. Nevertheless, the Government decreed a further 10 per cent adjustment to minimum wages in July 1984, which raise the real minimum wage to a level higher than that of 1980.

75. As for the Bill known as the Act to create the Collective Bargaining Commission for the Public Sector, the Government states that it was shelved, and there are accordingly no prospects that it will be discussed. As regards the Act for the financial equilibrium of the public sector, the Government remarks that it was neither proposed nor approved at the instigation of the IMF, as the complainants affirm, nor does it imply failure to meet the Government's commmitments to the trade union organisations.

76. As for the Government's proposal for the complete reform of the part of the Labour Code concerning collective rights, the Government states that this proposal did not aim at restricting the rights of either of the social partners (the employers or the workers), since the tripartite meeting was organised for the purpose of examining a Bill for the complete reform of the current Labour Code and it was presented to the Legislative Assembly in order to hear the

views of the parties concerned on the text. At an earlier stage, however, all existing federations, confederations and trade unions of workers, as well as the employers' organisations (known as chambers), were asked to submit proposals only for the reform of the part of the current Labour Code concerning collective rights; they also submitted their criticisms of the Bill. This was done sufficiently in advance to enable the tripartite meeting to be held. The above-mentioned documentation (the Government's proposal, the employers' and workers' proposals, the criticisms of the draft Labour Code presented to the Legislative Assembly) was to serve as a basis for examination by the subcommittees to be set up to deal with different subjects relating to the collective part, and which were to be tripartite; at the end of the examinations and discussions a proposal agreed upon by the parties concerned was to be presented. Lastly, the outcome of the work of the subcommittees was to be collated in a single document for submission to the Legislative Assembly as a Bill for the reform of the National Labour Code prepared in consultation with the parties concerned and approved by them. It is obvious from the foregoing that with these arrangements, with which all concerned were familiar, particularly those who closely followed the tripartite meeting organised and promoted by the Government, the latter's proposal would not be the only one to be examined by the legislative body to the exclusion of all others. Nor did the Government at any time claim to enlist support for it; on the contrary, it wanted a basis for unity between the parties and the discussion with a view to reaching an agreed final decision and a uniform criterion.

77. As regards the Bill to consolidate the solidarity associations and the trade unions' objections to it, the Government states that these objections are being discussed in the plenary of the Legislative Assembly and that they have developed into a debate in which different political ideologies are expressing their points of view, some of which coincide with the objections expressed in the representation. In reality, however, it may be said that the right of association is a right conferred by the Political Constitution, article 25 of which stipulates: "Persons living in the Republic shall have the right of association for lawful purposes. No one may be forced to join any association." This being so, the Bill has nothing to do with any kind of anti-union policy and involves only rights which the State may not deny its citizens.

78. The Government also states that it has no knowledge of any kind of blacklist of workers, and that it would take the necessary disciplinary measures if the complainants produced any evidence of this.

79. As regards the allegation relating to the reduction in the number of collective labour agreements concluded, the Government states that, although it is correct that there has been a falling-off in the conclusion of such legal instruments during the last five years, this has at no time been attributable to the action of the Government or of the administrative authorities. In order to promote the harmonious and orderly development of the trade union movement a

Workers' Education Commission has been set up as part of the Ministry of Labour. This is resulting in the training of trade union leaders who, within their respective bodies, may freely choose the established constitutional right to conclude collective labour agreements (article 62 of the Political Constitution of Costa Rica and sections 54ff. and 361 of the Labour Code). Moreover, the Government has taken various steps to strengthen the safeguarding of freedom of association and with it the right to conclude collective agreements or other kinds of instruments; one of the means by which it is doing this is the amendment to section 54 of the Labour Code, in which the introductory paragraph of subsection 3 reads as follows: "Any collective agreement must include at least all the standards relating to trade union safeguards laid down in the Conventions of the International Labour Organisation (ILO), ratified by our country". Since it is clear that the reduction in the number of collective agreements concluded cannot be attributed to the Government, it might be explained by the fact that the workers themselves have joined in non-trade-union type associations to voluntarily conclude with their employers other legal instruments to regulate labour relations, such as direct settlements which are also permitted by law. The number of such direct settlements has increased, particularly in the Atlantic Zone (Guápiles, Siquirres) in the banana-growing sectors, where conditions were formerly governed by collective labour agreements. The Ministry has not participated in the conclusion of these agreements, confining itself to ratification and receipt of the texts for deposit; some of the texts have had to be rejected by the General Inspectorate of Labour because they have not been in conformity with the law. This, however, was not the work of the Government or of its authorities but of the parties themselves - employers and workers - who voluntarily preferred direct settlements to collective agreements. The only difference between the two types of agreements is that the signatories of the direct settlements are not the trade unions but associations of workers democratically elected by the workers of an undertaking to represent them and negotiate the conditions of the agreement. In any case, collective agreements are continuing to be negotiated, not only in the private sector but also in the public sector, obviously within the legal limitations imposed in each case.

80. The Government also denies having published directives to the effect that collective agreements are not to be negotiated. Parties in the private sector are absolutely free to negotiate and conclude such agreements, provided that they do not violate or restrict the rights recognised by law. In this field legal supervision is exercised essentially for the prevention of the workers and their representatives. In the public sector, with the entry into force in 1978 of the General Public Administration Act, which lays down administrative principles that are still followed by the Attorney-General's Department today, the conclusion of collective agreements was to some extent restricted. Thanks to the action of the labour administration authorities, and despite the provisions of the General Public Administration Act and the position of the Attorney-General's Department, the Government Council published a series of directives to permit the conclusion of collective agreements

with the State and its institutions. These directives were approved by the Government Council at its Sessions Nos. 135 of 2 October 1980 and 169 of 21 May 1981, and by the so-called Budgetary Authority at its Session No. 71-82 of 3 March 1982; the directives provide for the extension of the period of validity of collective agreements concluded in state bodies before the enactment of the Public Administration Act (26 April 1979) until such time as a new civil service statute has been promulgated. Thanks to the action of the Government and the policy of the labour authorities, collective agreements continue to be concluded in the public sector, without any restriction other than the need to conform to the law. This has been recognised by the ILO itself. As for the Ministry of Labour, its authorities have given every support to the negotiation of collective labour agreements, providing installations and officials to serve as mediators and conciliators, despite the limited resources available to it. In addition, and specifically in the public sector, it has been enough merely to review agreements, without any formalities other than the approval of the budgetary expenditures by the authorities of the Comptroller-General's Office of the Republic and the Budgetary Authority as required by law; the Ministry ratifies them and receives them for deposit in accordance with the provisions of the law. It must be concluded that at no time has the Government of the Republic engaged in any kind of action to restrict the conclusion of collective labour agreements. On the contrary, and despite the position of the Attorney-General's Office of the Republic, the Budgetary Authority and the General Directorate of the Civil Service, measures and decisions have been taken to guarantee the right enshrined in the Constitution. The least the Government can do is supervise the legality of agreements as a means of safeguarding the workers' rights.

81. Regarding the alleged application of penal sanctions or threats to apply them for trade union activities, the Government states that the case is being investigated to ascertain whether situations of this kind have indeed arisen in the trade union organisations to which the complainants refer. In general, the Government recalls that article 39 of the Political Constitution stipulates that: "No one shall suffer penalty unless he has committed a crime, quasi-crime or act of negligence for which he is punished under an existing law by a final judgement pronounced by a competent authority after the accused has been given an opportunity of exercising his right of defence and the necessary proof of guilt has been furnished".

C. The Committee's conclusions

82. The Committee notes that the Governing Body, at its 227th Session (June 1984), declared irreceivable the representation against the International Monetary Fund.

83. The Committee notes that in the present complaint the complainants have objected to a series of measures taken by the authorities which they consider to have been adopted as a direct or indirect consequence of negotiations by the Government with the International Monetary Fund or commitments made by it to that body.

84. The Committee has noted the documentation sent by the complainants, and in particular that the letter of intent sent by the Government to the International Monetary Fund - which to judge from its contents was written in 1984 - makes the following remarks in connection with the public sector: "On the expenditure side, the Government has committed itself to a policy of restrictions for 1984 and the following years. The Government has decided on an employment freeze and has delayed certain wage adjustments and the introduction of a new scale of remuneration for the public sector". Further on, the letter adds, "during the remainder of 1984, wage adjustments in the public sector will be maintained within the limit already established. Minimum wages in the private sector will be increased by absolute amounts based on the rise in the cost of the basic basket of goods and services." The Committee also notes that, according to the Government, what the complainants refer to as "a letter of intent" is merely a rough draft of a project sent to the IMF in order to obtain a contingency settlement for one year to enable the stabilisation of the economic and fiscal situation in the country.

85. In general, before dealing in detail with the various questions raised by the complainants, the Committee wishes to recall that all governments are obliged to respect fully the commitments undertaken by ratification of ILO Conventions and that a State cannot use the argument that other commitments or agreements can justify the non-application of ratified Conventions.

86. More specifically, with respect to the alleged wage freeze in the private sector as from January 1985 and the approval of a wage increase of only 5 per cent, the Committee notes that, according to the Government, the sliding wage-scale system instituted by Decree No. 13827-TSS of 19 August 1982, which is the sole wage policy mechanism and which enables the wages of the public and private sectors to be adjusted in line with biannual variations in a basic wage basket, was accepted and complied with by the unions. According to the Govenment, the 5 per cent wage increase in the private sector as of January 1984 was granted for the purpose of compensating for the loss in the real value of minimum wages.

87. Bearing in mind that the Government states in its reply that the sliding wage scale instituted by Decree No. 13827-TSS is the sole mechanism of wage policy, the Committee wishes to draw the Government's attention to the fact that, even under a stabilisation policy, the right to regulate conditions of employment, including wages, by means of collective agreements, should be restricted with respect to wage negotiations only under certain conditions; in particular, such restrictions should be imposed as an exceptional measure and only to the extent necessary, without exceeding a

reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards. [See, for example, 233rd Report of the Committee, Cases Nos. 1183 and 1205 (Chile), para. 482, and Freedom of Association and Collective Bargaining, General Survey of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labour Conference, 69th Session, 1983, para. 315.] In this respect the Committee wishes to stress that the legislation serving as a basis for restricting wage negotiations dates from August 1982.

88. The Committee also notes the Government's explanations of the reduction in the number of collective labour agreements concluded.

89. As regards the alleged directives of the authorities to the effect that no collective agreements are to be concluded in the public sector, the Committee observes that the complainants refer to directives of the Government Council adopted on 2 October 1980, in which it is explicitly stated that "since the coming into force of the General Public Administration Act (Act No. 6227 of 2 May 1978) no collective labour agreements may be concluded by the State, its institutions and the respective civil servants' unions". The directives subsequently fix the conditions for the extension of the period of validity of collective agreements already concluded, providing in particular that "if wage increases are granted, these may not exceed the annual increase authorised by the Executive for its officials". For its part, the Government also refers to later directives of the Government Council adopted at its Session No. 169 of 21 May 1981, and of the Budgetary Authority, adopted at its Session No. 71-82 of 3 March 1982, allowing the period of validity of collective agreements concluded before the enactment of the Public Administration Act (26 April 1979) to be extended. It states that collective agreements continue to be concluded in the public sector and that the Government has not engaged in any kind of action designed to limit the conclusion of such collective agreements.

90. The Committee considers it imperative that the legislation contain specific provisions clearly and explicitly recognising the right of organisations of public employees and officials who are not acting in the capacity of agents of the state administration to conclude collective agreements. From the point of view of the principles laid down by the supervisory bodies of the ILO in connection with Convention No. 98, this right could only be denied to officials working in the ministries and other comparable government bodies but not, for example, to persons working in public undertakings or autonomous public institutions. The Committee also wishes to point out that, in so far as the mobile wage-scale system referred to in connection with the examination of the restrictions on wage negotiations in the private sector is applicable to the public sector, the principles indicated for the private sector are equally applicable to the rights of public officials not acting in the capacity of agents of the administration of the State.

91. As regards the Bill to create the Collective Bargaining Commission for the Public Sector, the Committee notes the Government's statement that the Bill has been shelved and that there are no prospects of its discussion by the Legislative Assembly.

92. As regards the Act for the financial equilibrium of the public sector, which according to the complainants constitutes evidence of failure to respect the established negotiations which were signed and in force with the workers' organisations, the Committee observes that, although the complainants have supplied the text of the Act, they have not objected to any of its provisions in particular. In these circumstances, and since the Act does not appear to affect trade union rights, the Committee considers that this aspect of the case does not call for further examination.

93. As regards the proposal by the Government for the complete reform of the part of the Labour Code concerning collective rights, the Committee has examined the draft sent by the complainant organisations. Although in the Committee's view some of the provisions of the draft might pose problems of compatibility with the principles of freedom of association, it does not seem opportune to pronounce on the matter, since the Government has stated that it intends to consult all the parties concerned and obtain their approval and that a series of tripartite subcommittees are to collate the results of their work in a single document. Nevertheless, bearing in mind the importance of the work undertaken in the area of collective labour relations, the Committee wishes to point out that the technical assistance of the International Labour Office might contribute effectively to the drafting of a proposed text for the reform of the Labour Code in which the rights enshrined in the freedom of association and collective bargaining Conventions are fully safeguarded.

94. As regards the Bill to consolidate the solidarity associations, which according to the complainants are a movement supported by the employers and parallel to the trade union movement, the Committee notes that, according to the Government, the complainants' objections are under discussion in the plenary of the Legislative Assembly. The Committee observes that the Bill governs a series of associations pursuing social objectives that are not specifically of a trade union nature. In particular, in section 4, the Bill provides that solidarity associations shall be bodies set up for an indefinite period, with their own legal personality, which, in order to achieve their objectives, may acquire all kinds of property, conclude all types of contracts and engage in all kinds of lawful operations for the purpose of improving the socio-economic conditions of their members in an endeavour to bring dignity to their lives and raise their standard of living by means of thrift, credit, investment and other profit-making operations and the development of housing, scientific, sports, artistic, educational, recreational, cultural, spiritual, social and economic programmes and any other kind of lawful activity designed to strengthen the bonds of unity and co-operation among employees, and between employees and their employers.

Nevertheless, in view of the concern expressed by the complainants at the use made by these associations of the possibility provided for in the law for any group of workers to conclude direct settlements regulating conditions of work independently of trade union organisations, the Committee considers that, in the event of the Bill becoming law, the provisions governing solidarity associations should respect the activities of trade unions guaranteed by Convention No. 98.

95. As regards the alleged measures taken by the Minister of the Presidency to establish a basis for the creation of blacklists of workers, the Committee notes that the complainants have sent an official circular addressed to Ministers and Executive Chairmen of autonomous institutions in August 1983, which reads as follows:

> On the precise instructions of the President of the Republic, and in the face of strike threats in the public sector, I should be obliged if you would observe the following instructions:
>
> Each Minister or Executive Chairman must forthwith organise an Emergency Group, which must make the necessary arrangements for essential services of the institution to continue in the event of a strike. This will require:
>
> - The sending out of a circular to all staff, urging them to remain at their posts and warning them that the relevant legal provisions will be strictly applied to those who abandon their work without justification. Without prejudice to any other penalties to which they may be liable under the law, their wages will be automatically reduced in proportion to the length of their absence.
>
> - As of this date the preparation by the Emergency Group of a plan for the maintenance of the essential services of the institution. For this purpose all holidays or leave of absence for personnel must be cancelled.
>
> - The moment the strike begins, the Legal Department of the Ministry or autonomous institution concerned must request the intervention of the Labour Courts to have the strike declared illegal.
>
> - At the same time a list must be drawn up of the instigators of the strike movement or those responsible for it. A list must also be made of persons who remain at work and persons who wish to remain at work but have been subjected to pressure in order to stay away.
>
> - Once the Courts have declared the strike illegal, the Department of Personnel shall proceed to the dismissal of the striking employees, without any responsibility being incurred by the employer, in accordance with the provisions of the Labour Code.

- The Legal Department must at the same time request the Ministry of Justice to take steps with the Public Ministry for the institution of legal proceedings against the instigators of the illegal strike movement and those responsible for it.

- You are requested to inform the President's Office of any abnormal movement or situation connected with the matters referred to in this Official Circular.

96. With regard to this official circular of August 1983 concerning the illegality of any strike in the public sector, the Committee considers that such matters are not within the competence of the administrative authority.

97. As regards the alleged application of penal sanctions for trade union activities, the Committee observes that the complainants have supplied specific information on only one case. This is a judgement of 27 March 1984 sentencing ten leaders of the Trade Union of the National Bank to six months' and one day's imprisonment (deferred for three years) and a fine of 1,200 colones each, in particular for abandonment of duty and incitement to collective abandonment of public duty.

98. From the reasons adduced for this judgement it may be inferred: (1) that the strike was declared as a consequence of the refusal of the budgetary authorities to approve the budgetary implications of a wage adjustment agreement to reflect the rise in the cost of living, concluded between the Union and the Bank; (2) that the strike lasted three days (from 26 to 28 September 1983) and was followed by 90 per cent of the workers; (3) that the legislation does not authorise strikes in state public service bodies such as the National Bank of Costa Rica and that this was the reason for the imposition of the penalties mentioned in the previous paragraph.

99. In this respect the Committee wishes to recall that the right to strike may be prohibited or largely restricted with respect to public servants acting in their capacity as agents of the public authorities (among whom those performing bank services can obviously not be counted) or with respect to workers in essential services in the strict sense of the term (those whose interruption would endanger the life, personal safety or health of the whole or part of the population). [See, for example, 233rd Report, Case No. 1225 (Brazil), para. 668.] The Committee has considered that the banking sector is not an essential service in the sense mentioned [See 233rd Report, Case No. 1225 (Brazil), para. 668] and that nobody should be deprived of his liberty or subjected to penal sanctions for the mere fact of organising or participating in a peaceful strike. [See 230th Report, Case No. 1184 (Chile), para. 282.] In addition, the Committee has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. [See,

for example 234th Report, Case No. 1173 (Canada/British Columbia), para. 87.] The Committee requests the Government to take measures to guarantee the exercise of the right to strike of the workers of the National Bank of Costa Rica.

100. In this connection, the Committee observed that the September 1983 strike at the National Bank of Costa Rica, although prohibited, took place as a result of the Government's failure to respect its commitment to approve the budgetary implications of a wage adjustment agreement concluded between the Bank and the Union. This, in turn, led to the sentencing of ten members of the executive committee of the Union for having organised the strike. The Committee considers that both the prohibition of the strike and the application of penal sanctions were incompatible with the principles of freedom of association.

101. In general, the Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the various Bills or Acts posing problems of conformity with Conventions Nos. 87 and 98.

The Committee's recommendations

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

(a) In general the Committee recalls that all governments are obliged to respect fully the commitments undertaken by ratification of ILO Conventions and that a State cannot use the argument that other commitments or agreements can justify the non-application of ratified Conventions.

(b) The Committee draws the attention of the Government to the fact that, even under a stabilisation policy, the right to regulate conditions of employment, including wages, by means of collective agreements, may be restricted with respect to wage negotiations only under certain conditions; in particular, such restrictions should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards.

(c) The Committee observes that the legislation serving as the basis for restrictions on wage negotiation dates from August 1982 (Decree No. 13827-TSS). In this connection, it requests the Government to indicate the measures it envisages with a view to removing the restrictions imposed by the legislation thereby enabling a return to free collective bargaining on wages.

(d) The Committee considers it imperative that the legislation contain specific provisions explicitly and clearly recognising the right of organisations of public employees and officials not acting in the capacity of agents of the state administration to negotiate collectively, a right which, in accordance with the principles, can only be denied to officials working in ministries and other comparable government bodies but not, for example, to persons working in public undertakings or autonomous public institutions.

(e) As regards the Bill to consolidate the solidarity associations, which according to the complainants are a movement supported by the employers and parallel to the trade union movement, the Committee observes that the Bill governs a series of associations pursuing social objectives that are not specifically of a trade union nature. Nevertheless, bearing in mind the concern expressed by the complainants, the Committee considers that, in the event of the Bill becoming law, the provisions governing the solidarity associations should respect the activities of trade unions guaranteed by Convention No. 98.

(f) With regard to the official circular of August 1983 concerning the illegality of any strike in the public sector, the Committee considers that such matters are not within the competence of the administrative authority.

(g) As regards the strike of workers of the National Bank of Costa Rica the Committee would recall that the right to strike may be restricted or even prohibited in the civil service - civil servants being those who act on behalf of the public authorities - or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that the banking sector is not a service that is essential in the strict sense of the term. In addition, it has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. The Committee considers that both the prohibition of the strike and the application of penal sanctions to the ten members of the executive committee of the Union were incompatible with the principles of freedom of association.

(h) The Committee requests the Government to take measures to guarantee the exercise of the right to strike of the workers of the National Bank of Costa Rica.

(i) The Committee wishes to point out that the technical assistance of the International Labour Office might contribute effectively to the drafting of a proposed text for the reform of the Labour Code in which the rights enshrined in the freedom of association

and collective bargaining Conventions are fully safeguarded. The Committee wishes to draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to the various Bills or Acts which raise problems of conformity with Conventions Nos. 87 and 98.

Geneva, 30 May 1985.

Roberto Ago,
Chairman.

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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. LXVIII, 1985 — *Series B, No. 3*

Reports of the Committee on Freedom of Association (241st and 242nd Reports)

241st 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
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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
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134-138	LVI	1973	S
139-145	LVII	1974	S
146-148	LVIII	1975	Series B, Nos. 1-2
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153-155	LIX	1976	Series B, No. 1
156-157	LIX	1976	Series B, No. 2
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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. LXVIII *1985* *Series B, No. 3*

Reports of the Committee on Freedom of Association

241st 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 1, 2, 4 and 7 November 1985 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The members of the Committee of Australian and New Zealand nationality were not present during the examination of the cases relating to Australia/NT (Case No. 1324) and New Zealand (Case No. 1334), respectively.

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3. The Committee is currently seized of 101[2] cases [this figure includes the cases relating to Turkey (Cases Nos. 997, 999 and 1029) which are examined in the 242nd Report] in which the complaints have been submitted to the governments concerned for observations. At its present meeting it examined 55 cases in substance, reaching

[1] The 241st and 242nd Reports were examined and approved by the Governing Body at its 231st Session (November 1985).

[2] These include the cases relating to Turkey (Cases Nos. 997, 999 and 1029) which are examined in the 242nd Report.

definitive conclusions in 32 cases and interim conclusions in 23 cases; the remaining cases were adjourned for various reasons set out in the following paragraphs.

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4. New cases: The Committee adjourned until its next meeting the cases relating to the Dominican Republic (Case No. 1339), Morocco (Case No. 1340), Spain (Case No. 1342), Nicaragua (Case No. 1344), Australia (Case No. 1345), India (Case No. 1346), Ecuador (Case No. 1348), Malta (Case No. 1349), Canada/British Columbia (Case No. 1350), Nicaragua (Case No. 1351) and Israel (Case No. 1352), 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. Adjournments: The Committee awaits observations and information concerning the cases relating to Argentina (Case No. 1220), Peru (Case No. 1321), Canada/British Columbia (Case No. 1329), Brazil (Case No. 1331), Pakistan (Case No. 1332) and Nepal (Case No. 1337). The Committee again adjourned these cases and requests the governments concerned to transmit their observations.

6. As regards the cases relating to USA (Case No. 1130), Costa Rica (Case No. 1304), Spain (Case No. 1320), the Dominican Republic (Case No. 1322), Tunisia (Case No. 1327), Malta (Case No. 1335), Denmark (Case No. 1338), Colombia (Case No. 1343) and Bolivia (Case No. 1347), the Committee has received the governments' observations only recently or in circumstances which did not allow it to examine them in substance. It intends to examine these cases in substance at its next meeting.

7. As regards the case concerning New Zealand (Case No. 1334), involving a complaint submitted by the New Zealand Employers' Federation, the Committee took note of a communication containing comments on the case by the New Zealand Federation of Labour. The Committee considered that, in accordance with its usual procedure, it could only take account, in its examination of the case, of communications transmitted by the complainant organisation and of those submitted by, or through, the government concerned. It accordingly decided to inform the New Zealand Federation of Labour that its comments can only be taken into account if they are transmitted by, or through, the Government. Since the Government's reply to the complaint has already been received, the Committee decided to examine this case at its next meeting.

URGENT APPEALS

8. 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: Cases Nos. 1190 and 1199 (Peru), 1296 (Antigua and Barbuda), 1300 (Costa Rica), 1308 (Grenada), 1311 (Guatemala), 1313 (Brazil) and 1325 (Sudan). 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 may present a report at its next meeting on the substance of these cases even if the governments' observations have not been received in time for that meeting. The Committee accordingly requests the governments concerned to transmit their observations or information as a matter of urgency.

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9. 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. 997, 999 and 1029 (Turkey); 1040 (Central African Republic); 1098, 1132, 1254, 1257, 1290, 1299 and 1316 (Uruguay); 1266 (Burkina Faso); 1291 (Colombia); 1293 (Dominican Republic); 1323 (Philippines); 1330 (Guyana).

Direct contacts

10. As regards the cases relating to El Salvador (Cases Nos. 953, 973, 1150, 1168, 1233, 1258, 1269, 1273 and 1281), the Committee at its May 1985 meeting noted that, following an official visit by the Director-General to the country, the Government was willing to accept a direct contacts mission with a view to examining the various aspects of these cases. Not having received confirmation from the Government to enable this mission to take place, the Committee urges the Government to reply as rapidly as possible so that the Committee will have before it, at its February 1986 meeting, information obtained on the spot on these cases.

11. As regards the cases relating to Honduras (Cases Nos. 1216 and 1271), a Government representative during the 71st Session of the Interntional Labour Conference (June 1985) agreed that a direct contacts mission take place with a view to overcoming the divergences existing between Conventions Nos. 87 and 98 and Honduran legislation, as well as to obtain information on, and to discuss, the above cases. Since the Committee has not received confirmation from the

Government to enable this mission to take place, it urges the Government of Honduras to reply as rapidly as possible so that the Committee will have before it, at its February 1986 meeting, information obtained on the spot concerning these cases.

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

12. As regards Case No. 1074 (USA), examined by the Committee at its November 1981 meeting, information was requested from the Government on the results of the pending appeals lodged by dismissed air traffic controllers. In a communication dated 23 August 1985, the Government states that, as at 1 August 1985, the Full Merit Systems Protection Board (MSPB) has sustained the dismissal in 4,659 cases and ordered reinstatement in 94 cases; in 70 cases the appeal was withdrawn and the remaining 239 appeals before that instance are pending. At the US Court of Appeals level, despite a decision in favour of the employer in ten lead cases, 2,690 controllers renewed their appeals, 289 of which were subsequently withdrawn voluntarily by the appellants and 27 of which were dismissed by the Court. In 104 of these appeals, the Court has reaffirmed the dismissal. Thus, 2,270 of those cases are still pending. As this is the sixth communication from the Government concerning the status of the appeals, the Committee observes that it would now appear from all the information submitted that, of the 11,065 dismissed controllers who initially lodged appeals, a total of 444 reinstatements have been ordered. The Committee notes the information supplied by the Government and requests it to continue to inform it of the outcome of the pending appeals.

13. As regards Case No. 1100 (India), the Committee had requested the Government to keep it informed of the outcome of the case pending before the Supreme Court concerning the amendments introduced to the General Insurance Business (Nationalisation) Act which allegedly modify the conditions of service of the employees in the insurance sector without the consent of the unions concerned. In a communication of 9 July 1985, the Government states that the Supreme Court quashed the scheme of 1980 and left the option of amendment of the Act to the Government. The President of India promulgated, on 17 September 1984, an ordinance amending the General Insurance Business (Nationalisation) Act, 1972. This ordinance was challenged in the Supreme Court by the employees of the General Insurance Corporation. In the meantime, the General Insurance Business (Nationalisation) Amendment Bill was introduced and passed by both Houses of Parliament. This Act has also been challenged in the Supreme Court. The matter is, therefore, sub judice. The Committee takes note of this information and that the Government will communicate further developments regarding this case.

14. As regards the case concerning Chile (Case No. 1191), the Government states in a communication dated 14 August 1985 that the Second Chamber of the Supreme Court granted the appeal lodged in this case and overturned the decision to stay proceedings which had been handed down by the Military Court and the courts martial in complaints relating to allegations of torture and ill-treatment of trade union leaders. The Committee takes note of this information and requests the Government to keep it informed of developments in this matter.

15. As regards the case concerning Peru (Case No. 1228), the Committee had requested the Government to carry out an investigation into the alleged confiscation of mail addressed abroad by the Union of Peruvian Educational Workers and to inform it of the outcome of this inquiry. In a communication dated 15 July 1985, the Government states that, since 1980 when the democratic regime was instituted, all forms of control of mail have been eliminated; thus there is not, nor could there be, any supposed confiscation of mail in any circumstances. The Committee takes note of this reply.

16. As regards Case No. 1241 (Australia), examined by the Committee at its May 1984 meeting, information was requested from the Government on any measures taken to grant facilities to the Northern Territory Public Service Association, such as access to its members and distribution of trade union literature at the workplace. In a communication dated 20 August 1985, the Government states that, on 8 October 1984, the Northern Territory Public Service Commissioner circulated an instruction to all Departmental Heads and Prescribed Authorities indicating that the union in question be granted the same rights of access to its members and the use of notice boards as is accorded other registered unions. The Committee takes note of this information with interest.

17. As regards the case concerning Chile (Case No. 1297) which the Committee examined at its May 1985 meeting, it regretted that the Government had not supplied more detailed information on the persons who, according to the complainants, had been exiled for their trade union functions or activities and informed both the Government and the complainants that it would appreciate receiving any additional information available in this respect. In a communication dated 12 August 1985, the Government states that for humanitarian reasons it has authorised the return to the country of Héctor Cuevas Salvador. The Committee takes note of this information with interest and urges the Government to continue to keep it informed of any similar measure taken in favour of those persons still in exile.

18. Lastly, as regards Sri Lanka (Cases Nos. 988/1003), Morocco (Case No. 1077), Pakistan (Case No. 1175), India (Case No. 1227) and the United Kingdom (Case No. 1261), the Committee again requests the governments concerned to keep it informed of developments in these cases. The Committee hopes that these governments will communicate this information at an early date.

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19. In addition, the Committee notes with concern that, despite the time which has elapsed since the Governing Body requested certain governments to keep it informed of measures taken to give effect to its recommendations, these governments' replies have not been received. In this respect, the Committee would point out that, in accordance with the procedural rules set out in paragraphs 27 and 28 of its 127th Report, approved by the Governing Body, if there is no reply or if the reply given is partly or entirely unsatisfactory, the matter should be followed up periodically through invitations to the Director-General at suitable intervals, according to the nature of each case, to remind the government concerned of the matter and to request it to supply information as to the action taken on the recommendations approved by the Governing Body. The Committee itself will, from time to time, report on the situation.

20. In these circumstances, the Committee recalls those requests made some time ago and which remain without response. At its November 1984 meeting, the Committee invited the Government of Ecuador (Case No. 1230) to inform it of the outcome of the trial before the Second Criminal Court of Chimborazo concerning the circumstances surrounding the death, on 17 June 1983, of two Culluctuc trade unionists, Mr. Pedro Cuji and Mrs. Felipa Pucha, and the wounding of three peasants who were members of the Culluctuc Indigenous Community. At its November 1984 meeting, it also requested the Government of Barbados (Case No. 1264) to keep it informed of the outcome of the measures taken by the Chief Labour Officer towards recognition of the National Union of Public Workers for the purposes of collective bargaining. Lastly, at its May 1984 meeting, the Committee expressed its serious concern in the case of Honduras (Case No. 1268) at the lack of information on the circumstances surrounding the disappearance of the trade union leader, Rolando Vindel González, and requested the Government to keep it informed of the outcome of the court inquiries underway. Not having received the replies and information requested from the governments on these various points, the Committee invites the Director-General to bring these matters to the attention of the governments concerned and request them to send their replies urgently so as to enable the Committee, at its next meeting, to make a further assessment of the situation in each case.

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21. With regard to Cases Nos. 1135 (Ghana), 1146 (Iraq) and 1237 (Brazil), the Committee regrets that, despite repeated appeals, the respective governments have not replied to the Committee's requests to be kept informed of developments in the various cases. The Committee wishes to recall that:

In Case No. 1135 (Ghana), it had requested the Government to inform it of any measures which might be taken to terminate the freeze on the bank accounts of the trade unionists who were in exile. In this respect the Committee repeats its conclusion that, if, following investigation, no evidence is found to prove

any misappropriation of trade union funds, it would be unreasonable to continue the freeze of the unionists' accounts whether they are in the country or not;

In Case No. 1146 (Iraq), the Committee requested the Government to send it the text of the judgement sentencing to death the leaders of the General Federation of Trade Unions in Iraq, Messrs. Mohamed Ayesh and Baden Fadel, who, according to the Government, had ceased to be union leaders well before being tried and sentenced to death for espionage and conspiracy against the security of the State. The Committee once again expresses its regret that the Government has not transmitted the text of the judgement handed down in this matter;

In Case No. 1237 (Brazil), the Committee requested the Government to communicate a copy of the judgements, together with the reasons adduced therefor, handed down against those responsible for the death of the trade union leader, Margarita Maria Alves, in August 1983. In this respect the Committee would once again recall that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists, and that it is for governments to ensure that this principle is respected.

22. 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.

IRRECEIVABLE COMPLAINT

23. By a communication dated 28 June 1985 the Staff Union of the European Patent Organisation presented a complaint of alleged violation of trade union rights against that organisation. By virtue of the procedure in force, the Committee can only examine complaints presented against States. The Committee, accordingly, recommends the Governing Body to decide that the complaint in question is irreceivable.