with the bargaining unit. There also appears to be no reason why such workers could not be admitted as members with limited or notional dues so that residual services other than bargaining could be provided. The second provision to which objection is raised in that of advisers to the Government in the development or administration of policies or programmes to be determined by the Labour Relations Board. This subsection, it was agreed, enshrined what had been the practice. It is illustrative of the lack of understanding that both agree on this, yet the trade union has a suspicion that some change was intended. Only an open dialogue can remove such apparent misunderstandings.

213. Most complicated and central to the complaint are the changes made by Bill 59 to the concept of essential employee. The bargaining units concerned include for example, hospitals and air traffic controllers. Although there have been few strikes the Government has sought in the Bill to give added protection to essential services. The trade union in almost all cases has offered "emergency personnel". There is a discrepancy in thinking as to what this should cover which is epitomised by the use of different words - "emergency" and "essential". The process of designating a proportion of each bargaining unit as essential has ground to a halt. The figures suggested by the Government have been made knowing the Labour Relations Board has power of decision. Two difficulties arise. The trade union challenges some of the numbers which, it appears, have been selected with a liberal eye. It fears the Labour Relations Board will be unable to look at such an issue with rigour since the decision, possibly affecting safety and health is an onerous one. That should not be too difficult to resolve.

214. Of much greater concern is the effect designation is likely to have on strikes and it should be remembered that the right to strike is an important feature of the relationships being considered. If more than 50 per cent of a unit are designated as essential then the right to strike is replaced by independent binding arbitration. Neither the Government nor the trade union has a great liking for this mechanism. None the less it is clear that if a substantial proportion of the workers are designated as essential then it becomes more attractive to the trade union than a weak strike. As with so much in the complaint the issue cries out for study and compromise. Unless some relaxation in the rules is made, those sectors where say 33-50 per cent are designated will fall between the two systems and trade unions rights will be restricted unacceptably. The relationship between designation of essential workers and the strike vote is a further point raised. Again there is a different view of how the system will work in practice. There appears to be a chance that designation of a proportion outside the context of a strike, i.e. as a normal procedure, and of individuals after the strike vote might go some way to alleviating the problem.

215. Two strike tactics have been dealt with by Bill 59. Both have arisen from isolated examples in the past and the provisions again appear to have a degree of ambiguity. The prohibition of a

strike where the stated date has passed, for a period of 30 days, and fresh notice could be used to delay a strike by last-minute bargaining. There is no evidence that that is intended, and a simple amendment, or even letter of intent, should remove the genuinely held fear. The provision against so-called rotating strikes does appear to interfere with the trade union's power to determine how it shall conduct a strike in the tactical sense. Again the provision gives rise to a justified fear but unless it is misused cannot be said to be a serious fetter on action.

216. It will be obvious that the Government has looked at past practice and has decided to prevent practices which were felt to be abuses of trade union power that caused potentially difficult management problems in key public sector areas. This has led to a strong reaction and even stronger suspicion. The trade union has suggested, for example, that provisions which appear at first sight to be enshrining useful and common practice (such as section 18 allowing the Minister power to defer the statutory process to introduce a conciliator or mediator) are devices that can be used to defer or delay. There can be no clearer example of the need to clarify attitudes and intentions. A relatively small number of agreements or statements of intent on both sides would ensure that the possible use of the legislation to damage or hamper the proper use of trade union power would be accepted as not being the intention of the legislation.

217. The Committee on Freedom of Association will appreciate that the purpose behind the legislation has been left unclear since it can be used in several instances with differing results. One interpretation would seriously limit the right to strike effectively using normal criteria. If this is to be a possibility the underlying basis of the system could be in jeoparady. It has to be remembered that the usual formula in the public sector is that if the right to strike is withdrawn, the alternative protection in these special cases is access to independent binding arbitration. Where the right to strike exists but is seriously fettered or put in jeoparady, then the workers concerned lack effective protection.

218. It is important that the exact meaning and possible uses of the provisions of Bill 59 are clarified. This will undoubtedly lead to some adjustments - it was pleasing to hear that the 1985 Bill has already started that process, albeit unilaterally. Once this process is complete it will be necessary to see whether the right to strike, with reasonable limitations to protect the health, welfare and safety of the people, exists. Where it does not, alternative protection will be required.

VII. Final remarks

219. Three of the complaints arise as a reaction to recently enacted legislation in Alberta (Case No. 1247) - Bill 44, in Ontario

(Case No. 1172) - Bill 179 and in Newfoundland (Case No. 1260) - Bill 59. The fourth, Alberta (Case No. 1234), is a much narrower point. Although the industrial relations system varies from province to province, in some respects markedly so, and although the three pieces of legislation take differing approaches, there is a strong underlying similarity of policy and aims. It seems appropriate therefore in these concluding remarks to draw the Committee on Freedom of Association's attention to the underlying currents.

220. All three statutes were enacted as a result of the Government's need to combat inflation. All three applied to the public sector, that is to say, direct employees of the Government and others employed by independent bodies largely dependent upon government funding. This special attention had two prime causes. The Government itself was the employer or had a strong influence over the employer and it was felt that control of the public sector was both necessary and would set the level for the private sector. Most of the queries raised on this belong to the economic debate. What concerned the trade unions and must concern the Committee is the damage such legislation has done to industrial relations, in particular of course, in breach of the principles set out in the ILO freedom of association Conventions (i.e. Conventions Nos. 87, 98 and 151).

221. Several major features merit attention. The Canadian industrial relations system has a structure that at first sight mirrors that developed in the United States. That is to say it is fairly closely regulated by legislation. However there is also a strong tradition of informal contacts which have enabled the parties to reach voluntary agreements and to determine a not insignificant part of the relationship. It has been suggested that this consultative process has been damaged. Certainly the use of legislation has given that impression. One major problem is that the Government, when it is using legislation in the public sector is at the same time carrying out two functions. It is the democratic government acting to protect the economy but it is also the employer, altering the balance of its relationship with the trade union. This gives ample opportunity for confusion, misunderstanding and a serious breakdown in internal relationships. It is easy to overestimate this since normal relationships tend to carry on in many spheres, but the fear and suspicion were apparent in all three provinces. Ironically it can be said that the greatest need is the re-establishment of normal industrial relations processes - consultation, conciliation and mutual understanding.

1. Inflation control

222. Whereas inflation control is an important task of government, a distinction has to be made between short-term measures aimed at bringing a situation under control, and a more permanent structure. Action is taken under the first head because a particular problem overshadows the system. This was the position in Alberta

where the economic decline was sudden and serious. It applied with somewhat less force to Ontario and Newfoundland although the economic problems in those provinces were clear. The legislation in Ontario had already lapsed. In all three provinces, however, it is the lasting effects of the legislation, or in the case of Ontario of practices springing from the period of legislation, which have to be measured.

223. In each case there has no doubt been some lasting effect. This involves either changes in the structure of collective bargaining or influences on the independent dispute resolution machinery which is the predominant safeguard in Alberta and Ontario and plays a small part in Newfoundland. It is an assessment of this damage which is crucial to these cases.

2. Consultation

224. Although the Canadian system of industrial relations operates legally regulated bargaining procedures the importance of consultation remains. This is particularly so where a government introduces proposed legislation to amend the rules governing that system and to change the relative position of the parties to the bargaining. It has already been remarked that such consultation is doubly important where the Government seeks to alter bargaining structures in which it acts actually or indirectly as employer. Time available for consultation must be adequate. Obviously it may be limited by the urgency of action in face of economic problems. Its effectiveness can be reduced by the attitude taken by the trade unions concerned. But it is a truism that proposals should be openly discussed, clarified and doubts, fears and misunderstandings resolved before legislation takes its final form. Otherwise suspicion grows and attention is diverted to lengthy and often untimely challenges in the courts.

225. In Alberta the Government took the view that the rapid fall in economic prosperity called for urgent action. Consultation appears to have been limited to a formal presentation of views to the legislature. In Ontario there appears to have been ample opportunity for consultation which does not seem to have been used constructively. In Newfoundland there has been a long-established and strong commitment to consultation which had been a valued feature of the relationship. Unfortunately although there was some consultation the usual relationship appears to have broken down at least temporarily.

3. Public servants - bargaining and the right to strike

226. In most Canadian provinces, but not Newfoundland, the right to strike is withheld and access to independent binding arbitration takes its place. This only occurs in very limited circumstances in

Newfoundland. To ensure the integrity of the system it is essential that the bargaining procedures are unfettered and that there is truly independent machinery to settle disputes of interest that are not agreed in bargaining. Most of the details of the complaints, from all four cases, relate to one or other aspect of this crucial balance. If the balance is seriously destroyed, leaving aside short-term economic intervention in time of emergency, then the ILO principles on freedom of association are called into question.

(a) Collective bargaining

227. It is not necessary to draw the Committee's attention to every complaint made of provisions that were felt to destroy the fair balance of collective bargaining. Equally it is only necessary to underline the common view of governments that it has become important in times of economic stringency to introduce into public sector bargaining factors which correspond to the gloomy information a private employer is able to bring to the bargaining table by way of declining profits and slim order books.

228. Several examples will suffice. In Alberta a considerable number of changes to the machinery of bargaining have been promulgated. In Newfoundland significant limitations in the bargaining units and in the participation of members of those units in strikes have been enacted. It is not an easy task to assess the extent of the damage but trade unions point to flexible provisions which give rise to fear of loss of effectiveness.

(b) Independent dispute resolution

229. This aspect is vital to a proper system. All the provinces have a Labour Relations Board that acts as an independent regulator and decision maker within the system. Although some suspicions of bias were mentioned there is not a great deal of evidence to substantiate this. Of more concern is the position of binding arbitration. Disliked at times by both sides, it remains the crucial keystone to the alternative pattern of no strikes - independent dispute resolution.

230. Arbitrators have a notoriously short professional life, and their decisions often give one side the view, almost invariably erroneous, that the arbitrator lacks independence. There is no doubt that in times of economic stringency the pressures increase. Governments resent a system which passes control of financial decisions to a third party. They naturally tend to attempt to influence the arbitrator. Asking that the economic background be taken into account seems inevitable and sensible. Insisting on conformity to a norm destroys independence. In practice the pressure tends to lie between these extremes. It is essential that care be taken to protect independent arbitration: both the mode of their appointment and their tenure must be carefully regulated. The system

inevitably, however reluctant the parties may be, insists that arbitrators be trusted to act fairly and sensibly.

231. Finally it has to be stressed that a large number of the grounds on which these complaints have been raised could be settled, not easily it is true, by agreement between the governments and the trade unions. Until they are, the tendency will be to use legislation, powers and practices which damage the essential balance enshrined in ILO Conventions. How far that has occurred is not a matter for me: the detailed information above is intended as material on which the Committee on Freedom of Association reach its decisions.

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232. In concluding this report, I wish to express my sincere appreciation to the Government of Canada and to those of the Provinces of Alberta, Ontario and Newfoundland for the efficient and courteous manner in which my mission was received and for the genuine spirit of co-operation in which the discussions with the representatives of the various governments took place. I also wish to thank the Canadian Labour Congress, the National Union of Provincial Government Employees, the Canadian Teachers' Federation and all the provincial unions of public employees whose representatives were of the greatest assistance to me throughout the mission. A special word of thanks is due to Ms. Lucille Caron, of the Federal Ministry of Labour, Mr. Brian Mallon of the Canadian Labour Congress and Mr. Derek Fudge of the National Union of Provincial Government Employees, who accompanied me at various stages of the mission and whose valuable assistance regarding practical arrangements was much appreciated. Thanks is also due to Mr. John R.W. Whitehouse, Director of the ILO Office in Ottawa who, along with his efficient staff, facilitated practical arrangements. Finally, I must express my deep indebtedness to Mr. W.R. Simpson, Chief of the Freedom of Association Branch of the ILO and Mrs. Jane Hodges also of that Branch, who accompanied me during my mission to Canada. Their mastery of ILO principles, deep understanding of industrial relations, combined with their ability to work at speed, were essential to the completion of my mission and this report.

John Wood, LLM, CBE.

ANNEX

Meetings in Ottawa (12-13 September 1985)

Mr. M. Dorais, Director-General, Policy and Liaison, Department of Labour of Canada together with Mrs. L. Caron, Mr. B. de Laat, Mr. A. Torobin, Mr. P. Sorokan, Ms. C. Racine, Mrs. J. Godon, Mr. J. Lynch, Mr. P. Hewson and Mr. Beaupré Bérard of the Federal Ministry;

from the Alberta Ministry of Labour and Education Department, respectively: Mr. A. Kennedy (Assistant Deputy Minister of Labour) and Ms. C. Mead; from the Ontario Ministry of Labor and Treasury, respectively: Ms. M. Kenny and Ms. J. Bass; from the Newfoundland Ministry of Labour, Treasury Board and Department of Justice, respectively: Mr. H. Noseworthy, Mr. L. Powell and Ms. D. Fry. From the Union side, Ms. S. Carr, Secretary-Treasurer of the Canadian Labor Congress (CLC), Mr. J. Fryer, President of the National Union of Provincial Government Employees (NUPGE) and representatives of their affiliated organisations: Mr. F. March, Mr. J. Shields, Ms. M. Hedley, Mr. A. Kube, Mr. D. Bean, Mr. D. Fudge, Ms. L. Nicholson, Ms. N. Riche and Mr. F. Moorgen. Meetings were also held with representatives of the Canadian Teachers' Federation (CTF), namely, President Mr. F. Garritty, Mr. S. McDowell, Mr. R. Barkar, Ms. E. McMurphy, Mr. D. Yorke and Mrs. S. Hanley.

In Edmonton (16-17 September 1985)

Assistant Deputy Minister Mr. A. Kennedy, Ms. C. Mead, Mr. R. Maybank, Mr. W. Sawadsky, Mr. P. Whittaker and Ms. D. Gares; and representatives of the Alberta Union of Provincial Employees (AUPE), namely President Mr. J. Booth, Mr. T. Christian, Mr. G. Bourgeois, Mr. F. McRae, Mr. F. Moorgen, Ms. M. Sykes, Mr. S. Nymchuk, Ms. P. Wocknitz and Ms. K. Lilly as well as several other witnessess including Mr. B. Olien, Mr. D. Andersen, Mr. W. Leeson, Professor J. Robb and Mr. D. Werlin. Meetings were also held with representatives of the Confederation of Alberta Faculty Associations: Professor R. Heron, Mr. G. Unger, Mr. A. Mandelbaum and Professor M. Sandilands.

In Toronto (18-20 September 1985)

Mr. D. Gilbert, Director of Policy Branch and Ms. J. Bass, Ms. K. Boney, Ms. M. Kenny, Mr. R. Peebles, Mr. Q. Silk and Mr. R. Huston; and representatives of the Service Enployees International Union (SEIU), namely President Mr. T. Roscoe and Mr. J. van Beek together with legal counsel Mr. J. Sack, Mr. S. Barrett and Mr. Poskranzer; the Ontario Public Service Employees Union (OPSEU), namely President Mr. J. Clancy, Mr. C. Paliare, Mr. A. Todd, Ms. J. Gates, Ms. S. Vallance, Mr. J. Bernard, Ms. R. Lees and Mr. R. Martin; the Canadian Union of Public Employees (CUPE), namely President Ms. L. Nicholson, Mr. L. Kovacsi, Mr. D. Macleod, Mr. G. Williams, Mr. D. Foley; as well as the Ontario Teachers' Federations, namely, President Mr. G.Matte, Ms. S. Hildreth, Mr. D. McAndless, Mr. K. Kennedy, Mr. M. Buchanan, Mrs. M. Wilson, Mr. M. Green, Mr. J. Carey and Mr. D. Halesworth.

In St. Johns (23-24 September 1985)

Assistant Deputy Minister Mr. H. Noseworthy, Ms. D. Fry, Mr. L. Powell, Mr. A. Andrews and Mr. J. O'Neill; and representatives of the Newfoundland Association of Public Employees (NAPE), namely President

Mr. F. March, Mr. E. Seward, Ms. M. Fleming, Mr. P. Ivany, Mr. E. Hogan, Ms. E. Price, Mr. D. Curtis and Mr. D. Harnett.

Case No. 1285

COMPLAINT PRESENTED BY THE NATIONAL TRADE UNION CO-ORDINATING BODY AGAINST THE GOVERNMENT OF CHILE

156. The complaint is set forth in a communication from the National Trade Union Co-ordinating Body dated 7 May 1984. The Government replied by a communication dated 24 January 1985.

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

1. Physical attack on a trade union leader

(a) The complainant's allegations

158. The complainant alleges that Mr. Clotario Blest, the founder of the National Association of Public Employees (ANEF) and of the Unitary Confederation of Workers (CUT), was the victim of a physical attack in May 1983. The attack was perpetrated the day after the leader had participated in the meeting at which the National Command of Workers was formed, bringing together the principal national trade union organisations of the country.

(b) The Government's reply

159. The Government states that at the time it deeply regretted the physical attack made on Mr. Clotario Blest, the founder of the National Association of Public Employees (ANEF). The aide-de-camp of the President of the Republic had therefore visited Mr. Blest's home in order to convey to him the personal feelings of the President of the Republic and his interest in the victim's health.

(c) The Committee's conclusion

160. The Committee observes that neither the complainant nor the Government has indicated who is thought to be responsible for the alleged attack or what form it took. In these circumstances, the Committee does not consider that it is in possession of sufficient information to express an opinion on the matter.

2. Allegations concerning detention

(a) The complainant's allegations

161. The complainant organisation makes the following allegations:

- On 9 June 1983 Mr. Roberto Arredondo, the national leader of the Bahía Employees' Federation and Chairman of the Regional Council of the Democratic Union of Workers (UDT) at Concepción, was detained for several hours by carabineros and accused of carrying invitations to the protest called by the National Command of Workers.

- On 10 June 1983 officials of the Police Department detained at Rancagua Marcos Molina, first director of the El Teniente area organisation and treasurer of the Caletones Industrial Trade Union, and Arturo Vera, first director of the Sewel y Mina Trade Union.

- Eduardo Sepúlveda, national leader of the "Peasant Triumph" National Confederation of Agricultural Workers, and José Morales, President of the Talca Provincial Federation of that organisation, were detained at Talca. Both arrests took place on 11 June 1983.

- In July 1983 Mr. Diego Lebitum, the secretary of Establecimientos Savory Trade Union No. 2, and Mr. Guillermo Saavedra Pinto, a member of the Union, were arrested while they were holding a peaceful public demonstration in the course of a legal strike called by their union.

- In October 1983 Rodolfo Seguel, Eugenio López, Manuel Rodríguez, Eduardo Díaz, Juan Meneses and Enés Zepeda, the trade union leaders of the "El Teniente" copper mine, were detained for several hours for holding a peaceful demonstration.

- Three workers were detained in October 1983 for carrying placards at a peaceful demonstration by 40 persons who were protesting at having been dismissed en bloc from their work at the Club de la Unión.

- In December 1983 Hernol Flores, the President of the ANEF, was detained for distributing leaflets on the public highway.

- In December 1983 three leaders of the Youth Department of the National Trade Union Co-ordinating Body were detained for reading a greeting to Raúl Alfonsín, the President of Argentina, in front of that country's Embassy in the capital.

- In March 1984 Manuel Bustos, the President of the National Trade Union Co-ordinating Body, and Sergio Troncoso, President of the Confederation of Building Workers, together with other persons,

were detained for heading a peaceful protest march demanding the release of José Ruiz Di Giorgio.

(b) The Government's reply

162. With reference to the alleged detention of Mr. Roberto Arredondo, the trade union leader, the Government states that it has no information on this matter. From the tenor of the complaint, the detention would appear to have been due to the carriage of pamphlets bearing instructions for one of the so-called "peaceful protests" called by sectors in opposition to the Government. According to the complainants, however, the person in question was then released. The Government stresses the need for complainants to furnish more information so that an answer may be given, for complaints made in that way are lacking in seriousness.

163. With reference to the alleged detention of Mr. Marcos Molina Catalán and Mr. Arturo Vera Mauro, the Government states that at about 2.20 p.m. on 11 June 1983, as those persons were approaching a taxi loaded with leaflets inviting participation in actions directed against the Government, they were intercepted by officers of the Rancagua Police Department, who arrested them and took them to the police station. After interrogation at the police station, where they spent six hours, they were released. There are no legal proceedings in progress against them at the present time and both are at liberty.

164. With regard to the alleged detention of Eduardo Sepúlveda and José Morales, the Government states that, "owing to the time that has elapsed, it has not been possible to confirm these complaints".

165. With reference to the detention of Mr. Diego Lebitum and Mr. Guillermo Saavedra Pinto, the Government states that, owing to the time that has elapsed, it has not been possible to check the accuracy of this complaint. If it was accurate, the matter was purely one for the police and obviously, as has been explained in other cases, detainees are released once the police have checked their identity and address.

166. With reference to the detentions which occurred in October 1983, the Government states that, when a breach of public order is attempted, the police, in discharge of their obligation to ensure the maintenance of order and civic peace, proceed to arrest the perpetrators in order to check their identify and address and, if the situation so warrants, summon them to appear before the local police court which deals with offences of this kind. The cases mentioned by the complainant organisation did not reach the stage of being heard by the competent local police court.

167. With reference to the detention of Mr. Hernol Flores, the Government states that there is no record of his detention and that, since neither the date nor the place of detention nor the authority which ordered it are mentioned, the information is insufficient for

the purpose of verifying the complaint. As to the alleged detention of three leaders of the Youth Department of the National Trade Union Co-ordinating Body, the Government states that this complaint is based on a routine police operation. A group of persons obstructed the free movement of pedestrians and access to the Embassy of the Argentine Republic at Santiago. The police, in the performance of their duty to maintain public order, disbanded this unauthorised public meeting and, when the identity and addresses of those responsible had been checked, they were released. Consequently, the Government continues, this complaint has nothing to do with freedom of association.

168. The Government states further that Mr. Manuel Bustos and Mr. Sergio Troncoso were detained, together with five other persons, by carabineros on duty on the public highway on 22 March 1984 and taken to the First Carabineros Station. The grounds for their detention were that, together with a group of 50 persons, they went on a march through central streets with the Lawcourts Building as their goal. This procession was held without permission from the authorities and in such a way as to cause obstructions to pedestrian and vehicular traffic. These persons were released immediately after their identity and addresses had been checked and they had been summoned to appear before the local police court for the offence presumed to have been committed.

(c) The Committee's conclusions

169. The Committee observes that, with reference to some of the alleged detentions, the Government states that the lack of data from the complainant or the lapse of time has made it impossible to verify the facts. With reference to other detentions, the Government has indicated that the facts had nothing to do with freedom of association or that the persons concerned had been held for several hours for the purpose of checking their identity and addresses, questioning them and, where appropriate, summoning them to appear before the local police court.

170. The Committee concludes that it is not in possession of sufficient information to express a separate opinion on each of the alleged detentions. The Committee wishes to point out, however, that the number of instances in which trade union leaders and trade unionists are alleged to have been detained and summonsed or questioned runs to about a score. In these circumstances, while observing that the allegations date back in most cases to 1983 and that the persons in question are at liberty, the Committee considers it useful to repeat that measures depriving trade union leaders and trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights.

3. Allegations concerning demonstrations

(a) The complainant's allegations

171. The complainant organisation makes the following allegations:

- In October 1983 a public demonstration by 70 trade union organisations in the Plaza 11 de Septiembre at Valparaiso was violently prevented. The repressive measures left several persons injured and 42 in detention.

- In November 1983 the Administration at Rancagua withheld permission for marches preparatory to an action proposed by the Workers' Provincial Command of Cachapoal. Similarly the Administration withheld permission for an action by the same organisation in the place it had chosen.

- On 14 December 1983 300 self-employed workers (itinerant vendors) were subjected to brutal repressive action in the centre of Santiago and had to seek refuge in Santiago Cathedral. These workers, organised in the Itinerant Vendors' Trade Union, in addition to suffering physical acts of oppression, were subjected to an illegal scrutiny of their merchandise and prevented from working in the streets of Santiago by a security force composed of special squads of carabineros and civilians reinforced by dogs specially trained to attack human beings.

- In January 1984 a demonstration called by the National Trade Union Co-ordinating Body was violently put down. Carabineros arrested 27 persons and left about 10 injured.

(b) The Government's reply

172. With reference to the allegations concerning the demonstration in the Plaza 11 de Septiembre at Valparaiso, the Government states that this accusation suffers from vagueness and cannot be verified owing to the time which has elapsed. Generally speaking, the Government points out that the police force has the inescapable duty of maintaining public order and keeping the civic peace and that, if a breach of public order has been attempted, the police obviously has to intervene. In such cases the persons presumed to have been arrested, whose names are not given, are released after their identity and addresses have been checked, unless they are summoned to appear before the competent local police court.

173. The Government states further that the Regional Administration at Rancagua withheld permission for marches owing to the problems they create for pedestrian and vehicular traffic. Furthermore the Workers' Provincial Command of Cachapoal is not a trade union organisation and has no legal personality, legal existence or known address. Its presumed leaders are not registered and it is not known who elected them or for how long. It is a de facto body accountable to no one.

174. With reference to the alleged oppression of itinerant vendors, the Government states that it has not been possible to confirm this complaint. The Government points out that the police periodically dislodge and clear out of the central streets of the city of Santiago a group of itinerant vendors who set themselves up in the roadway and obstruct passers-by, because these itinerant vendors hold no municipal permit or licence and pay no taxes and because the goods they offer for sale are faulty and harmful to the health and hygiene of the population. For these reasons the police expel them from the central area of the city.

175. With reference to the alleged violent suppression of the demonstration called by the National Trade Union Co-ordinating Body, the Government states that this complaint cannot be answered because the exact date and place of the occurrence and the names of the persons presumed to have been arrested are not given. With regard to the presumed detention of persons, the Government states in general terms that, in the exercise of the inalienable duty that vests in every authority in any country to maintain public order, the police are empowered to arrest any persons who on the public highway, in defiance of laws and regulations, proceed to perform acts and deeds which may constitute some offence or punishable act.

(c) The Committee's conclusions

176. The Committee observes that, with reference to two of the allegations, the Government states that the complainants have not furnished enough information. The Committee likewise notes that, according to the Government, the Administration at Rancagua withheld permission for marches preparatory to an action proposed by the Workers' Provincial Command of Cachapoal owing to the problems they would create for pedestrian and vehicular traffic. Lastly the Committee observes that the Government has been unable to confirm the alleged oppression of street vendors in the centre of Santiago, although it states that these workers are periodically expelled from the central area by the police for non-compliance with the administrative rules concerning safety, hygiene, taxes, etc. In these circumstances the Committee reiterates in general terms that trade union rights include the right to organise public demonstrations. Although the prohibition of demonstrations on the public highway in the busiest parts of a city, when it is feared that disturbances might occur, does not constitute an infringement of trade union rights, the authorities should strive to reach agreement with the organisers of the demonstration to enable it to be held in some other place where there would be no fear of disturbances.

4. Allegations concerning violations of the internal autonomy of trade union organisations

(a) The complainant's allegations

177. The complainant organisation makes the following allegations:

- In June 1983 the Provincial Inspectorate of Labour at Santiago removed Ricardo Lecaros, the Vice-President of the Metallurgical Confederation (CONSTRAMET), from office for having been tried under the Act on the Internal Security of the State.

- In October 1983 the Provincial Directorate of Labour at Rancagua prevented Rodemil Aranda and Marcos Molina, the present leaders, whose dismissal is under review by the courts, from standing for election in the Caletones Industrial Trade Union. The same Provincial Directorate also suspended the record of the election held in the Caletones Industrial Trade Union.

- In October 1983 the Provincial Director of Labour at Rancagua requisitioned the record books of the Caletones Industrial and Professional Trade Unions and the Sewel y Minas Industrial and Professional Trade Unions in order to place them at the disposal of the undertaking for use in support of its case in the proceedings against Rodolfo Seguel.

(b) The Government's reply

178. The Government states that Mr. Lecaros was sentenced for incitement to illegal paralysis of national activities, an offence defined in the State Security Act. This meant that he did not meet the legal requirements for appointment as a trade union leader, since section 21 of Legislative Decree No. 2756 on the organisation of trade unions requires inter alia that in order to be a trade union leader he should "not have been sentenced for a crime or an offence punishable by a severe penalty or for an offence relating to the administration of trade union property, or be currently accused of one". In these circumstances Mr. Lecaros was disqualified for the performance of trade union functions.

179. The Government adds that, in virtue of the aforementioned law, a person placed under a disqualification by decision of the Directorate of Labour may appeal to the courts within a time-limit of five days. According to the Government, the information furnished in the complaint is insufficient and it is necessary to know in what court and on what date the person concerned appealed against the order of disqualification, so that more information may be supplied.

180. With reference to the allegations concerning Mr. Rodemil Aranda and Mr. Marcos Molina, the Government states that these workers could not stand for election as trade union leaders beeause they were not workers of the undertaking and proceedings brought by the same persons were pending before the Second Court at Rancagua petitioning that the measure discontinuing their contracts of employment adopted by the "El Teniente" Division of CODELCO-Chile should be declared null and void.

181. With reference to the suspension of the record of the election held in the Caletones Industrial Trade Union, the Government states that the labour inspectors, in their capacity as authenticating

officers, were checking the election on the premises of the trade union when they were notified of a decision of the Court of Appeals at Rancagua directing that the election record should be suspended for such time as the proceedings against three leaders were pending. The election eventually took effect on 29 January 1984 after this had been authorised by the Court of Appeals at Rancagua.

182. Furthermore the Government states that it is not true that the record books of the Caletones Industrial and Professional Trade Unions and the Sewel y Minas Industrial and Professional Trade Unions were requisitioned. In reality the labour inspector placed a copy of the Unions' records at the disposal of the court for use as evidence in the interests of a better decision in the proceedings.

(c) The Committee's conclusions

183. The Committee takes note that, according to the Government, the record books of the Caletones and Sewel y Minas Industrial and Professional Trade Unions were not requisitioned but that the labour inspector placed a copy of their records at the court's disposal for use as evidence in the interests of a better decision in the proceedings against the leader Rodolfo Seguel.

184. The Committee observes that the other facts alleged arose as a result of failure to meet the requirements laid down by law for appointment as a trade union leader. One case concerns the disqualification of a trade union leader who was sentenced for illegally paralysing national activities; in another case two leaders could not stand for election because they were not workers of the undertaking, and in a third case the judicial authority ordered the trade union elections suspended for such time as proceedings were pending against three leaders. The Committee wishes to point out in this connection that, when national legislation provides that all trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities, the principles of freedom of association may be impaired. In fact, in such cases, the dismissal of a worker who is a trade union leader may, by causing him to lose his status as a trade union officer, infringe the freedom of activity of the organisation and its right to elect representatives in freedom, and may even leave the way open for acts of interference by the employer [see Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts, Report III (Part 4 B), ILC, 69th Session, 1983, para. 158]. Similarly, a law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association, when the activity condemned is not prejudicial to exercising trade union office with integrity.

5. Allegations concerning raids on trade union premises

(a) The complainant's allegations

185. The complainant organisation makes the following allegations:

- Arturo Martínez, the President of the National Graphic Confederation, made an early application for amparo (enforcement of constitutional rights) on 13 June 1983 as a result of a visit which carabineros paid to the Confederation's headquarters, without producing a judicial warrant, for the purpose of questioning the caretaker about the activities carried on by that leader.

- In June 1983 the headquarters of the National Federation of Petroleum Trade Unions at Santiago was raided.

- In November 1983 carabineros made an illegal and violent raid on the headquarters of the Independent Building Workers' Trade Union No. 2 of Maipú while the members and their families were holding a celebration there. Gerardo Rodríguez, a member of the Union, was arrested in the raid and later released without charges. The carabineros threatened to interrupt any other activity of the trade union in the same way.

- In March 1984 a group of five persons armed with bludgeons and chains made a night attack on the headquarters of the National Association of Public Employees (ANEF). This was the third attack on the headquarters.

(b) The Government's reply

186. The Government states that it fails to see what connection the facts alleged concerning the National Graphic Confederation can have with freedom of association. According to the Government, the fact that the person presumed to be affected - who has never been arrested - has made an early application to the courts for amparo shows that his rights are being properly protected.

187. With reference to the alleged raid on the headquarters of the National Federation of Petroleum Trade Unions, the Government states that it has no information as to its having happened, and notes that there is no indication as to who made the search, or why.

188. With reference to the alleged raid on the headquarters of the Independent Building Workers' Trade Union No. 2 of Maipú, the Government states that this trade union applied to the Court of Appeals at Santiago for protection. On 9 December 1983 the Court ruled denying the application. Those concerned lodged an appeal with the Supreme Court, which also rejected it, and the dossier was accordingly closed.

189. With reference to the alleged night attack on the headquarters of the ANEF, the Government states that this is "purely a police matter outside the Government's control". In order to provide more information it would have been necessary to know the date and, if applicable, the court before which the charge was laid.

(c) The Committee's conclusions

190. The Committee takes note of the Government's reply that it has no information concerning the alleged raid on the National Federation of Petroleum Trade Unions and that the Supreme Court rejected the appeal lodged in connection with the alleged raid on the headquarters of the Independent Building Workers' Trade Union No. 2 of Maipú.

191. The Committee observes, on the other hand, that the Government has not expressly denied that the visit paid by carabineros to the headquarters of the National Graphic Confederation was effected without producing a judicial warrant, and that it has confirmed that an application was made to the court in that connection.

192. In these circumstances, although it observes that neither the complainant nor the Government has furnished sufficiently detailed information, the Committee reiterates the principle that the right of the inviolability of union premises also necessarily implies that the public authorities cannot enter such premises without prior authorisation or without having obtained a legal warrant to do so [see for example 230th Report, Case No. 1200 (Chile), para. 610, and 238th Report, Case No. 1169 (Nicaragua), para. 227].

6. Allegations concerning acts of anti-trade union discrimination

(a) The complainant's allegations

193. The complainant organisation makes the following allegations:

- In July 1983 the firm of Vercovich Ltda. took reprisals against the workers who had participated in a legal strike, and the workers were unable to induce the competent authority to correct the situation. Twenty-five per cent of the workers involved in the collective bargaining were dismissed and the wages of the remainder were arbitrarily reduced.

- In August 1983 eight leaders of the Industria Hucke at Valparaiso were dismissed from that undertaking in virtue of section 13, clause (f), of Legislative Decree No. 2200 under which staff may be dismissed if the undertaking's needs so dictate. The leaders affected were: Luis Palma Romero, José Márquez, Carlos Carreño Castro, Oscar Bonilla, Manuel Cárdenas, Pedro Cortés Fredes, José Villalón Tapia and Santiago Rubio Sepúlveda.

- In September 1983 the City Hotel threatened to dismiss workers who did not give up the trade union and actually dismissed two workers without the competent authority intervening to correct that situation.

- The Hotel Carrera dismissed Juana Santos, chief telephone operator, for her prominent participation in a legal strike.

- Abraham Santángel was dismissed 48 hours after being elected President of Industria Hucke Trade Union No. 1.

- In November 1983 the Empresa Nacional del Carbón (ENACAR) dismissed the trade union leaders of Schwager Trade Union No. 5: Luis Badilla, Víctor Jaramillo and Juan Flores. Furthermore the Union was dissolved by court order.

- In December 1983 the Hotel Galerías dismissed 12 persons on the pretext of staff cuts, while at the same time offering pay improvements to all who gave up the Union.

- In January 1984 the firm of Parro, Alvariño y Cía. dismissed two trade union leaders for presenting draft collective agreements.

- The firm of Goodyear dismissed Juan Carlos Martínez, the leader of Trade Union No. 2, in January 1984.

(b) The Government's reply

194. With reference to the allegations concerning the firm of Vercovich Ltda., the Government states that it cannot answer these because the necessary information (date, names, etc.) has not been supplied. The Government also reports that there is no record to show that the persons presumed to have been affected have made use of the statutory remedies.

195. With reference to the dismissal of eight trade union leaders from the Industria Hucke at Valparaiso, the Government states that on 10 August 1983 the contracts of the trade union leaders of Trade Union No. 1 of the firm of Hucke at Valparaiso (Mr. Carlos Carreño Castro, Mr. Oscar Bonilla, Mr. Luis Palma Romero, Mr. José Marquez and Mr. Manuel Cárdenas) were terminated by agreement; these persons signed discharges before the Labour Inspectorate stating that the employer owed them nothing and that they had no complaint to make. The leaders of Trade Union No. 2 (Mr. Pedro Cortés Fredes, Mr. Santiago Rubio Sepúlveda and Mr. José Villalón Tapia) were dismissed and proceeded to lay before the courts judicial complaints against the undertaking. The Labour Inspectorate at Valparaiso applied to the firm an administrative fine of 20 Development Units in cash on 12 August 1983.

196. With reference to the allegations concerning the City Hotel, the Government states that this firm has reported that the trade union is fully operative and its leadership is functioning.

197. With reference to the dismissal of the trade unionist Juana Santos the Government explains that, during the legal strike called by the workers' trade union at the Hotel Carrera, the firm temporarily engaged a few persons to do the essential jobs needed to keep the hotel in operation. The person mentioned, who holds no trade union office and who was working as a telephonist, sabotaged the use of the telephone equipment by obstructing the work of her temporary replacement, and for this the firm dismissed her. The person concerned complained of the firm to the courts, which sentenced the employer to pay compensation.

198. With reference to the allegations concerning the firm of ENACAR, the Government states that Trade Union No. 5 was declared dissolved for lack of members by a judicial decision dated 2 November 1983. The firm of ENACAR offered each of the union's leaders, Mr. Luis Badilla, Mr. Víctor Jaramillo and Mr. Juan Flores, a post because when they were leaders of the trade union they did no work. However, they did not accept the work which the firm offered them and their contracts were withdrawn from them on 25 November 1983.

199. With reference to the dismissal of workers of the Hotel Galerías, the Government states that these dismissals were due to economic mismanagement of the undertaking. It is not true that workers were dismissed to induce them to give up the trade union. The fact of the matter was that four persons were dismissed at that time for reasons of expense, and that this did not affect the existence of the trade union at all.

200. With reference to the allegations concerning the firm of Parro, the Government states that the two persons dismissed as reported in the complaint were dismissed before the collective bargaining session, so that when the draft collective agreement was presented those persons were not workers of the undertaking. They signed a discharge before the Labour Inspectorate and were paid everything due to them. The collective bargaining was concluded successfully with the signing of a collective agreement for two years ending in January 1986.

201. With reference to the firm of Goodyear, the Government states that Mr. Juan Carlos Martínez was President of Operatives' Trade Union No. 1 and that when he was dismissed he was not a trade union leader. In 1982 proceedings were taken to remove him from office on the grounds that he had misappropriated money intended for the maintenance of the ambulance and for staff recreational activities. The court removed him from office and the Court of Appeals confirmed the removal.

(c) The Committee's conclusions

202. The Committee takes note that the Government states that it cannot answer the allegations concerning dismissals from the firm of Vercovich because the complainant organisation has not supplied sufficient information. The Committee takes note further that,

according to the Government, the three leaders of the firm of ENACAR to whom the complainant refers did not accept an offer of work in the undertaking and that five trade union leaders of the Hucke Company at Valparaiso terminated their contracts by agreement with the undertaking. The Committee also notes that, according to the Government, the dismissals that took place in the Hotel Galerías were only four in number, did not affect the existence of the trade union at all and were due to economic mismanagement of the undertaking. Lastly the Committee notes that, according to the Government, the persons dismissed from the firm of Parro were dismissed before the draft collective agreement was presented and that Juan Carlos Martínez (of the firm of Goodyear) was not a trade union leader when he was dismissed because the judicial authority had removed him from office for misappropriation of funds.

203. The Committee observes, on the other hand, that the legitimacy of other cases of dismissal alleged by the complainant has not been substantiated by the Government: namely, the dismissal of Abraham Santángel (which is said to have taken place 48 hours after his election as President of Industria Hucke Trade Union No. 1) and the two alleged dismissals from the City Hotel. The Government acknowledges, on the other hand, that the Labour Inspectorate of Valparaiso applied an administrative fine to the Hucke Company because of the dismissal of three leaders of Trade Union No. 2 and that in the case of the dismissal of the trade unionist Juana Santos the courts sentenced the Hotel Carrera to pay compensation.

204. In these circumstances, the Committee draws the Government's attention to the principle that no worker should be subjected to discrimination in employment on the grounds of his trade union membership or activity, whether past or present [see, for example, 235th Report, Cases Nos. 997, 999 and 1029 (Turkey), para. 38]. In this connection the Committee has indicated on previous occasions that one way of protecting trade union leaders is to provide that they cannot be dismissed either during the performance of their duties or for a certain period of time after the expiry of their mandate except, of course, where a serious offence has been committed [see, for example, 217th Report, Case No. 1063 (Costa Rica), para. 151].

7. Other allegations

(a) The complainant's allegations

205. The complainant organisation makes the following allegations:

- In August 1983 Rodolfo Seguel was prevented from leaving the country to attend the Congress of the International Confederation of Free Trade Unions (ICFTU). The ban was imposed by Judge Hernán Cereceda.

- In October 1983 the Military Junta approved an Act under which the liability for any act of violence perpetrated on the occasion

of public protests or demonstrations automatically vests in those who call for such acts. The Act provides penalties of imprisonment, restricted residence or exile. It is perfectly obvious that this Act is directed specifically against the National Command of Workers and any other dissident organisation which calls for the expression of opposition to the regime.

- In January 1984 the Chuquicamata Mining Division prevented Rodolfo Seguel, the President of the Confederation of Copper Workers, from entering that mine.

- The workers of the Minimum Employment Programme (PEM) and the Employment Programme for Heads of Households (POJH) do not enjoy the right to organise themselves in trade unions and to present petitions.

(b) The Government's reply

206. The Government states that the Code of Penal Procedure allows a judge who is trying a person for the presumed commission of an offence to fix bail for him on condition that he does not leave the country and thus flout the course of justice. The courts and judges are entirely independent in administering justice in Chile. Consequently the fact that Mr. Hernán Cereceda Bravo, Judge of the Court of Appeals at Santiago, has forbidden Mr. Rodolfo Seguel to leave the country is a matter within his sole jurisdiction.

207. The Government also states that the allegation that Mr. Rodolfo Seguel, the trade union leader, was prevented from entering the Chuquicamata Mining Division could not be verified owing to the vagueness of the information supplied. There is no indication of the exact date, the place of occurrence, the authority which denied him entry, etc., particulars which are needed for a conclusive reply.

208. Furthermore the Government states that the Act objected to by the complainant is Act No. 18256, published in the Diario Oficial of 27 October 1983, which made some changes in Act No. 12927 of 1958 on State Security. The purpose of the Act in question is to punish those who promote or incite to demonstrations designed to disturb public order, incite demonstrations designed to overthrow the constituted Government, incite demonstrations designed to paralyse the country or promote a breach of order and public peace. The Act does not punish protest or public expression of opinion in opposition to the economic, social security or housing policy of the Government. The offence defined by this Act consists not in "protesting" but in promoting or inciting acts which violate the public peace. The text reads verbatim as follows: "(i) Any person who, without permission, promotes or calls for collective public acts in streets, squares and other places in public use and who promotes or incites demonstrations of any other kind that allow or facilitate a breach of the public peace." These offences are to be punishable by penalties of rigorous imprisonment, restricted residence or exile for the medium term in any of its degrees, i.e. deprivation of liberty for not less than 61 days

and not more than five years. Without prejudice to the foregoing, the perpetrators of these offences will be jointly and severally liable for any damage caused by reason or on the occasion of the aforementioned acts, irrespective of such liability also laying with the material perpetrators of those acts.

209. The Government adds that there is not the slightest doubt that there is a relationship of cause and effect between a "protest call" of the kind defined by the Act and the consequences that may arise from it. Since May 1983, when the first "protests" began, they have steadily grown more violent and have accounted for a great many dead and injured. Those who "call for protests" cannot be ignorant of the consequences those calls will have. The judge who investigates the facts will weigh the evidence and the judgement in these proceedings conscientiously as provided by section 27 of the State Security Act.

210. Lastly the Government states that PEM and POJH are a form of unemployment benefit, and that their beneficiaries consequently cannot organise themselves in trade unions. The right to organise in Chile, as under all the systems of legislation in the world, vests only in workers who have an employment relationship with their employer.

(c) The Committee's conclusions

211. The Committee takes note that, according to the Government, the prohibition on leaving the country which was imposed on Mr. Rodolfo Seguel, the trade union leader, was ordered by a judge of the Court of Appeals in virtue of the Code of Penal Procedure which allows a person sub judice for the presumed commission of an offence to be prevented from leaving the country. The Committee also notes that the Government states that, for lack of information and details from the complainant, it has been unable to verify the allegation that Mr. Rodolfo Seguel, the trade union leader, was prevented from entering the Chuquicamata Mining Division.

212. With reference to Act No. 18256, published in the Diario Oficial of 27 October 1983, which punishes "any person who, without permission, promotes or calls for collective public acts in streets, squares and other places in public use and who promotes or incites demonstrations of any other kind that allow or facilitate a breach of the public peace", the Committee wishes to point out in this connection that the requirement of administrative permission to hold public meetings and demonstrations is not objectionable per se from the standpoint of the principles of freedom of association. The maintenance of public order is not incompatible with the right to hold demonstrations so long as the authorities responsible for public order reach agreement with the organisers of a demonstration concerning the place where it will be held and the manner in which it will take place.

213. Lastly, with reference to the denial to the workers of the Minimum Employment Programme (PEM) and the Employment Programme for Heads of Households (POJH) of the right to organise themselves in

trade unions and to present petitions, the Committee takes note that, according to the Government, PEM and POJH are a form of unemployment benefit, with the result that their beneficiaries cannot organise because in Chile the right to organise vests only in workers who have an employment relationship with their employer. In this connection, the Committee points out to the Government that, in virtue of the principles of freedom of association, all workers - with the sole exception of members of the armed forces and police - should have the right to establish and to join organisations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship with an employer, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those who practise liberal professions and who should nevertheless enjoy the right to organise. Consequently the Committee requests the Government to take measures with a view to recognising the right of the workers of PEM and POJH to organise.

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214. Lastly the complainant organisation presents a series of allegations which have already been examined by the Committee in connection with other cases, or which do not relate to specific breaches of freedom of association.

The Committee's recommendations

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

In view of the gravity of the allegations in this case the Committee deeply regrets that the Government has not supplied sufficiently detailed replies to all the allegations. It therefore reminds the Government of the importance which it attaches to the following principles:

(a) Measures depriving trade union leaders and trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights.

(b) Trade Union rights include the right to organise public demonstrations. The maintenance of public order is not incompatible with the right to hold demonstrations so long as the authorities responsible for public order reach agreement with the organisers of a demonstration concerning the place where it will be held and the manner in which it will take place.

(c) According to the latest General Survey of the Committee of Experts, national legislation which provides that all trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities may impair the principles of freedom of association. In such a case, the dismissal of a worker who is a trade union leader causes him to lose his status as a trade union officer, and impedes the freedom of activity of the organisation and its right to elect its representatives in freedom. By placing a trade union leader in this situation the employer interferes in trade union activity.

(d) Similarly, a law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association, when the activity condemned is not prejudicial to exercising trade union office with integrity.

(e) The inviolability of union premises implies that the public authorities should not enter such premises without prior authorisation or without having obtained a legal warrant to do so.

(f) No worker should be subjected to discrimination in employment on the grounds of his trade union membership or activity, whether past or present. The Committee has indicated on previous occasions that the protection of trade union leaders can only be properly ensured if they cannot be dismissed either during the performance of their functions or for a certain period of time after the expiry of their mandate, except in cases where a serious fault has been committed.

(g) The Committee requests the Government to take measures with a view to recognising the right of the workers of the Minimum Employment Programme (PEM) and the Employment Programme for Heads of Households (POJH) to organise.

Case No. 1287

COMPLAINT PRESENTED BY THE NATIONAL FEDERATION OF ELECTRICAL AND POSTAL COMMUNICATIONS EMPLOYEES AGAINST THE GOVERNMENT OF COSTA RICA

216. The complaint is made in a communication from the National Federation of Electrical and Postal Communications Employees dated 16 May 1984. The Government replied by a communication dated 24 June 1985.

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

A. Allegations of the complainant

218. The complainant alleges in its communication of 16 May 1984 that, in violation of the collective agreement, Mr. Guido Núñez Román, General Secretary of the Industrial Union of Electrical and Telecommunications Workers, was dismissed in May 1981 for having denounced cases of discrimination in the National Power and Light Company and corruption in certain quarters in the use of that company's property. The complainant states that the First Labour Court ruled in Mr. Núñez Román's favour, observing that the collective agreement had been violated by failure to follow the prescribed procedure. The Company appealed to the superior Labour Court which, in 1984, delivered judgement on the same lines as the Court of First Instance. In April 1984 the Company filed an application for cassation.

219. The complainant further alleges that the collective agreement in force is repeatedly violated in the National Power and Light Company, specifically in the following instances:

(a) wage adjustment of 20 per cent for certain workers (section 11);

(b) seniority adjustment of 7.5 per cent in accordance with the collective agreement (section 69);

(c) appointment of staff at foreman level without holding a competition (section 88);

(d) refusal to give the Savings and Loan Fund to the workers, leaving it in the Company's name (section 89);

(e) refusal to grant other rights established for all workers in the collective agreement (sections 61, 54, 25, 26 and others).

220. Lastly the complainant makes a series of allegations which go back many years or which do not refer to violations of freedom of association.

B. The Government's reply

221. The Government states in its communication of 24 June 1985 that, in the case of the dismissal of Guido Núñez Román, the procedure of dismissal without employer's liability was applied to him for having insulted, libelled and defamed the management and high officials of the undertaking in various documents which were signed or authorised by Guido Núñez and which were circulated not only within the Company but also among the public. Although the case was, relatively speaking, won by Guido Núñez at first instance, the Court stated: "There is no claim to lost wages under section 82 of the

Labour Code because, although the offence with which the plaintiff was charged was not sufficiently serious to warrant dismissal, the fact is that, in the opinion of the undersigned, there was always a disrespect for the employer's representatives ...". Later in the same judgement, the Court explained that the plaintiff had uttered his expressions with "animus defendendi" and not with "animus injuriandi", and on that ground it declared the dismissal null and void. Both parties appealed against the judgement delivered at first instance inasmuch as the plaintiff, among other petitions, asked for reinstatement, which had been refused at first instance; then the Superior Labour Court declared: "And there is no doubt that, in view of the foregoing, the conclusion reached is that the grounds for dismissal were not met because the "intention to insult" was lacking, since the expression was framed in general terms, without specifying persons ...". For these reasons the Court considered that, although the offence had been committed, dismissal was not the right penalty in view of the circumstances surrounding the case.

222. The Government adds that, on 16 April 1984, Guido Núñez and the Company appealed against the judgement of the Superior Labour Court. The Second Chamber of the Supreme Court of Justice concluded on 3 October 1984 that "in view of the phrases which occur repeatedly in the dossier - and which therefore need not be repeated - if we take into account this background, the plaintiff's position in defence of the workers and what he said in this letter in, perhaps, rather rough phrases, the truth is that he did not address them to a particular person or persons but in general terms to those running the Company. In these circumstances, there were insufficient grounds for punishing the plaintiff with dismissal rather than a disciplinary penalty of another magnitude, because the truth is that he did not use those phrases in his personal capacity ... . Therefore he must be excused payment of the costs because, although he committed the offence, it was not of such gravity as to warrant his removal from his post, in this case owing to the circumstances surrounding the events". Guido Núñez was again refused reinstatement by this Court, so that the only thing he was granted by the aforementioned courts at the conclusion of the proceedings was the award of costs.

223. Lastly, with regard to the alleged violations of certain provisions of the collective agreement in force in the National Power and Light Company, the Government states that the instances referred to by the complainant are being discussed and clarified before the courts.

C. Conclusions of the Committee

224. With regard to the alleged dismissal of Mr. Guido Núñez Román, the trade union leader, in May 1981 for having denounced cases of discrimination and corruption in the National Power and Light Company, the Committee notes that that Company applied to him the

procedure of dismissal without employer's liability for having insulted, libelled and defamed the management and high officials of the undertaking.

225. The Committee observes that, on 3 October 1984, the Second Chamber of the Supreme Court of Justice concluded at last instance that Mr. Guido Núñez Román's conduct constituted "insufficient grounds for punishing the plaintiff with dismissal rather than a disciplinary penalty of another magnitude, because the truth is that he did not use those phrases in his personal capacity ..."; later, furthermore, the Supreme Court states that the offence was not of such gravity as to warrant his removal from his post. The Committee further observes that, although the aforementioned judicial decision recognised Mr. Núñez Román's right to payment of his costs, it denied him reinstatement in his employment.

226. In these circumstances, the Committee can only conclude that the dismissal of Mr. Guido Núñez Román, the trade union leader, was motivated by his trade union activities, and constituted anti-trade union discrimination contrary to Convention No. 98. The Committee consequently requests the Government to take steps with a view to the reinstatement of this trade union leader in his employment.

227. More generally the Committee wishes to point out that section 82 of the Labour Code of Costa Rica provides in its second subsection that: "If a dispute arises subsequent to the dismissal and due proof of the reason is not forthcoming, the employee shall be entitled to payment of the wages due in lieu of notice and to any leaving grant which may be due to him and, by way of damages, to the wages which he would have earned from the date of the termination of the contract to the date on which a final judgment is given against the employer". In this connection, the Committee draws the Government's attention to the principle that it does not appear that sufficient protection against acts of anti-union discrimination - as set out in Convention No. 98 - is accorded by legislation which, in practice, enables employers, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, to get rid of any worker when the true reason for the dismissal is his trade union membership or activity. This in fact means that an employer, by paying compensation, can dismiss any member of his staff, for trade union or other activities, the public authorities being powerless to prevent him from doing so. Protection is particularly desirable in the case of trade union officials who, in order to be able to carry out their duties in full independence, must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. This guarantee is also necessary to secure respect for the principle that workers' organisations have the right to elect their representatives in full freedom [see, for example, 211th Report, Case No. 1053 (Dominican Republic), para. 163]. Furthermore the Committee observes that the Committee of Experts on the Application of Conventions and Recommendations has been emphasising to the Government for some years the importance of adopting specific provisions to establish remedies

and sanctions for acts of anti-union discrimination. The Committee requests the Government to take steps in that direction.

228. Lastly, with regard to the allegation concerning violations of certain provisions of the collective agreement in force in the Power and Light Company, the Committee wishes to recall that the relevant principle is that disputes arising over the interpretation or application of the provisions of collective agreements should be settled by bodies independent of the parties [see, for example, 236th Report, Case No. 1206 (Peru), para. 509]. In this connection the Committee observes that the alleged violations are being clarified before the courts.

Recommendations of the Committee

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

(a) The Committee considers that the dismissal of Mr. Guido Núñez Román, the trade union leader, having been motivated by his trade union activities, constituted an act of anti-trade union discrimination contrary to Convention No. 98. The Committee consequently requests the Government to take steps with a view to the reinstatement of this trade union leader in his employment.

(b) The Committee points out to the Government that it does not appear that sufficient protection against acts of anti-union discrimination is accorded by legislation which, in practice, enables employers, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, to get rid of any worker when the true reason for dismissal is his trade union membership or activity.

(c) The Committee requests the Government to take steps with a view to punishing acts of anti-union discrimination and to making appeal procedures available to the victims of such acts.

Case No. 1310

COMPLAINT SUBMITTED BY THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION AGAINST THE GOVERNMENT OF COSTA RICA

230. The World Confederation of Organisations of the Teaching Profession submitted a complaint of infringement of trade union rights

in Costa Rica in communications dated 16 and 17 October 1984. The Government replied on the matter in a letter dated 9 September 1985.

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

A. Allegations made by the complainant

232. The World Confederation of Organisations of the Teaching Profession alleges that the premises of a member organisation, the National Association of Teachers, were searched and that the members of the Association were prosecuted in breach of an agreement signed by the Government and the unions of teachers represented by the Teachers' Front.

233. The Confederation explains that on 27 July 1984 an agreement was signed between the above-mentioned parties putting an end to the strike organised by the Teachers' Front. This agreement made provision for negotiations on a list of claims in support of which the teachers had gone on strike. The list related to salaries, the cost of school transport, the prices of certain goods and services (electricity, telephones, fuel, drinking water, transport) and the adjustment of increases in the salaries of public servants. Section 8 of the agreement provided that the Government undertook to take no measure of reprisal against workers of the Ministry of National Education, or against teacher-leaders or students because of the activities of the Teachers' Front. Lastly, in accordance with the agreement, the Government committed itself to negotiating with the Teachers' Front or alternatively to taking the measures provided for in the said agreement.

234. However, according to the complainant Confederation, the premises of the National Association of Teachers in the town of Cartago were searched, documents were removed by the judicial authorities, and subsequently 800 teachers were taken to court for having - according to the National Association of Teachers - claimed improvements in social conditions and increases in salaries which the Government had been owing them for over two years.

B. The Government's reply

235. In respect of the searching of trade union premises and the court action taken against a number of unionised teachers, the Government replies that the executive authorities were not involved in these activities. They were carried out by the Office of the State

Prosecutor, coming under the judicial authorities and therefore totally independent of the executive authorities.

236. The Government explains that in Costa Rica strikes in the public sector and in public education, which is considered to be a high priority public service, are illegal since they infringe article 78 of the Constitution which provides for the right to education, which is compulsory. Furthermore, the Government states, book II, title XV of the Penal Code (section 333) provides that an official or public servant who abandons his post without having legally terminated his functions, to the detriment of his service, shall be liable to a fine of 20 to 70 days' pay. Likewise, section 334, dealing with incitement to a collective abandonment of work in the public service, provides that any person inciting public servants or employees in the public service to abandon their work shall be liable to imprisonment of six months to two years and to a fine of 70 to 120 days' pay. Lastly, article 61 of the Constitution recognises the right to strike except in the case of workers in the public service.

237. The Government maintains that the provisions in question are designed to ensure the normal running of public services for the population since, in its view, a strike in these services would undermine the very existence of the State.

238. With its reply the Government encloses the text of a letter sent to the Ministry of Labour by the Head of the State Prosecutor's Office, stating that the Office in question comes under the judicial authorities and acts in complete independence as regards penal action. Consequently, the executive authorities played no part whatsoever in the proceedings taken against the teachers who took part in a strike that had been declared illegal. The letter admits that a number of trade union premises were searched, with a legal warrant, at the request of a representative of the State Prosecutor's Office since the law was looking for written proof of the connection between the trade union and the offence covered by article 333 of the Penal Code. The searches were carried out in accordance with the provisions of the Code of Penal Procedure and the trade union representatives in question have so far not proved that any administrative irregularities or abuse of power by the authorities occurred. The letter also refers to the statements made by the Government concerning the illegal nature of the strike in the public services, and points out that article 333 of the Penal Code, in respect of the collective abandonment of work by public servants or employees, causing prejudice to their service, is similar to article 330 of the Italian Penal Code.

239. The Government adds that the examining magistrate of Puntarenas, who dealt with the initial stages of the case in November 1984, ruled that the case should be withdrawn and subsequently, and as an exceptional measure, adjourned the proceedings for one year. Furthermore, the examining magistrate of Cartago, who was also seized of the affair, likewise ruled that the case be dismissed but the State Prosecutor's Office appealed against this ruling and won its appeal

before the Higher Penal Court (second chamber). However, the Government goes on, the judge of Cartago, who once again judged the substance of the case, acquitted the teachers on the grounds that the stoppage of their classes caused no prejudice to the teaching system and that, although the strike had been declared illegal by the Higher Civil Court, a large nummber of pupils had stayed away from school. The Government includes copies of the above-mentioned court rulings in its reply.

240. Regarding the conversations with the Teachers' Front, the Government agrees that these did not take place but explains that this was because of divergencies within the organisation itself. It adds that it reached agreements in February and July 1985 with the National Association of Teachers and includes in its reply a copy of the said agreements relating to increases in the salaries of public servants and the setting up of a joint committee to determine the increase in the number of articles to be added to the "housewife's basket".

241. Furthermore, the Government furnishes the text of a Decree dated 20 June 1985 to revise the said "housewife's basket", to which 14 articles have been added as compared with 1984 in compliance with the agreement of 19 February 1985 between the Government and representatives of the National Association of Teachers. The Government also forwards the text of another agreement whereby the manual describing classes and teaching jobs, drawn up by the General Directorate of the Civil Service in agreement with the union, is to be submitted to the Chairman and General Secretary of the National Association of Teachers; the manual is to be included in the draft budget for 1986 as soon as its financial implications have been studied.

242. In conclusion, the Government considers that, contrary to what the complainants alleged, it has acted responsibly in this case vis-à-vis the teachers of Costa Rica.

C. The Committee's conclusions

243. The present case relates to reprisals said to have been taken against unionised teachers following a strike they had called to secure acceptance of claims of an essentially economic and occupational nature. The trade unionists in question were prosecuted under Costa Rican law for having taken part in a strike and the premises of their trade union were searched to discover the link between the trade union and the strike. The Government does not deny the facts, but explains that in accordance with Costa Rican law, teachers are public sector employees who do not enjoy the right to strike. Consequently the strike was declared illegal by the judicial authorities and, on the orders of the said judicial authorities, the trade union premises were searched and the teachers prosecuted. However, they were acquitted by the courts. The Government further

maintains that agreements were reached with the persons concerned to bring this labour dispute to an end.

244. The Committee notes with interest that, according to the Government, the trade unionists who had been prosecuted were acquitted and that agreements were reached with the National Association of Teachers to bring the dispute to an end.

245. Nevertheless the Committee is obliged to draw the Government's attention to the importance it has always attached to the right to strike as a legitimate means of defending the economic and social interests of workers and their organisations. [See, in particular, Fourth Report, Case No. 5 (India), para. 27.]

246. Although the Committee has recognised the principle that there may be restrictions on the right to strike, or even that strikes may be prohibited in the public service or in essential services (whether public, semi-public or private), it has frequently stated that this principle would become meaningless if the legislation defined the public service or essential services too broadly. Consequently the Committee, like the Committee of Experts on the Application of Conventions and Recommendations, considers that any prohibition or restriction should be confined to public servants acting in their capacity as agents of the public authority or to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population. [See 230th Report, Case No. 1173, (Canada/British Columbia), para. 577, and Case No. 1225 (Brazil), para. 668.] The Committee considers that the teachers do not come under this category. [See, for example, 221st Report, Case No. 1097 (Poland), para. 84; 226th Report, Case No. 1164 (Honduras), para. 343; and 230th Report, Case No. 1173 (Canada/British Columbia), para. 577, already cited.]

247. The Committee therefore invites the Government to re-examine its legislation and, in particular, the provisions of the Labour Code (article 369 (a)) and of the Penal Code (sections 333 and 334) so that the list of activities in which strikes are prohibited is confined to the public service and to essential services in the strict sense of the term.

The Committee's recommendations

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

(a) The Committee notes with interest that in the present case the unionised teachers who had been prosecuted for having taken part in a strike were acquitted and that agreements were reached with

the National Association of Teachers putting an end to this dispute.

(c) The Committee invites the Government to re-examine its legislation so that the list of activities in which strikes are prohibited is confined to public servants acting in their capacity as agents of the public authority or to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

Case No. 1291

COMPLAINT SUBMITTED BY THE TRADE UNION CONFEDERATION OF COLOMBIAN WORKERS (CSTC) AGAINST THE GOVERNMENT OF COLOMBIA

249. The Committee examined this case at its meeting in November 1984, when it submitted an interim report to the Governing Body. [See 236th Report, paras. 686 to 697, approved by the Governing Body at its 228th Session (November 1984).]

250. Since then the CSTC furnished further information in support of its complaint in a communication dated 23 April 1985. The Government sent its observations on the outstanding allegations in communications of 29 May, 10 July and 13 August 1985.

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

A. Previous examination of the case

252. The outstanding allegation in this case concerns the dismissal of 13 unionised workers from the enterprise "Industrías Alimenticias Noël SA". According to the complainant, this measure, which occurred when a list of grievances had been submitted to the employer, was designed to weaken the works union. The measure is also said to be contrary to section 25 of Legislative Decree No. 2351 which states that employers may not dismiss workers when a list of grievances has been submitted.

253. At its meeting in November 1984, the Committee, noting that the Government had not furnished a detailed reply to this allegation, requested the Government to send its observations on the matter.

B. Subsequent developments

254. In response to a request from the Committee, the complainant organisation supplied the names of 15 dismissed workers on 23 April 1985.

255. In its communication of 29 May 1985, the Government states that the Labour Code permits the unilateral termination of the contract of employment, without the grounds being stated but with compensation being paid for the prejudice suffered. The parties are free to follow this procedure at any time without the administrative labour authority having the possibility of demanding explanations as to the grounds for the termination. Dismissed workers are entitled to appeal to the labour courts for the restitution of their rights, which is what happened in the present case.

256. In its communications of 10 July and 13 August 1985, the Government provides information on progress in the court proceedings. Thirteen workers lodged appeals with the social chambers of the Medellín courts. Rulings were handed down in three cases, in two of which the employer was acquitted.

257. The Government specifies that the contracts of employment were broken unilaterally by the employer on the basis of section 64 of the Labour Code, and of section 8 of Legislative Decree No. 2351 of 1965. This provision enables the parties to terminate the contract without stating the grounds for so doing. However it goes on to provide that the employer must pay the worker compensation corresponding to the pay he would have received during the rest of his contract or, if the contract was of unlimited duration, 45 days' pay plus supplementary benefits varying according to the worker's length of service. It is further provided that where a worker who has completed ten years' continuous service has been dismissed without justification, the labour court may, at the worker's request, order his reinstatement under the same conditions of employment and with payment of his salary or of compensation for loss of earnings. The Government maintains that Colombian labour law embodies the principle of autonomy of the parties in unilaterally terminating a contract of employment, requiring however that the party responsible for breaking the contract should make reparation. The Government states that if an employer breaks a contract of employment because he considers that a worker has not fulfilled his contract - and proves this before a court - this should not be construed as infringing trade union rights.

258. The Government also states that it is not the place of the administrative labour authority to intervene in cases before the courts. Nor is the Ministry empowered by law to determine the grounds on which a contract of employment was terminated, this being a function entrusted by the Labour Code to the labour courts. According to the Government, the rights of employers and of workers are safeguarded perfectly by the law since the latter gives both parties the possibility of unilaterally terminating a contract of

employment where they consider that this has not been fulfilled and enables them to take appropriate legal action if they believe their rights have been infringed. In the Government's opinion, the law may not forbid employers or workers to terminate a contract of employment unilaterally since this would mean infringing the personal freedoms embodied in the national Constitution. The dismissals which occurred at the "Industrías Alimenticias Noël SA" enterprise are therefore normal lawful occurrences which, in accordance with the law, may be brought before the ordinary labour courts if they are considered to be illegal and/or unjust.

C. The Committee's conclusions

259. The Committee has taken note of the explanations furnished by the Government concerning the dismissals which took place in "Industrías Alimenticias Noël SA". In particular it notes that, in accordance with the Colombian Labour Code, employers may unilaterally terminate a contract of employment, even without justification, by paying the workers concerned the compensation provided for by law.

260. In this connection the Committee must point out to the Government that it does not appear that sufficient protection against acts of anti-union discrimination - as set out in Convention No. 98 - is accorded by legislation which, in practice, enables employers, on condition they pay the compensation prescribed by law in all cases of unjustified dismissal, to get rid of any worker, when the true reason for dismissal is his trade union membership or activity. [See, for example, 211th Report, Case No. 1053 (Dominican Republic), para. 163.]

261. In the present case, the Committee must point out that the dismissals of members of the Noël SA works union took place at a time when the union had submitted a list of grievances to the employer on which the latter refused to negotiate. The Committee is of the view that in such a case the authorities should recognise that a presumption of acts of anti-union discrimination is involved, should rapidly undertake the necessary inquiries and, where necessary, take measures to avoid the recurrence of acts of this kind. The Committee therefore requests the Government to consider the adoption of texts providing effective protection against acts of anti-union discrimination, both in law and in practice, in accordance with Article 1 of Convention No. 98, ratified by Colombia. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this case.

The Committee's recommendations

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

(a) The Committee points out to the Government that it does not appear that sufficient protection against acts of anti-union discrimination is accorded by legislation which, in practice, enables employers, on condition they pay the compensation prescribed by law for cases of unjustified dismissal, to get rid of any worker when the true reason for dismissal is his trade union membership or activity.

(b) The Committee is of the view that, in cases such as that of the Noël SA enterprise, the authorities should recognise that a presumption of anti-union discrimination is involved, should rapidly undertake the necessary inquiries and should, if necessary, adopt measures to avoid a recurrence of dismissals of this kind.

(c) The Committee requests the Government to consider the adoption of texts providing effective protection against acts of anti-union discrimination both in law and in practice. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this case.

Case No. 1293

COMPLAINTS PRESENTED BY THE UNIFIED WORKERS' CONFEDERATION AND THE GENERAL CONFEDERATION OF WORKERS AGAINST THE GOVERNMENT OF THE DOMINICAN REPUBLIC

263. The complaints are contained in communications from the Unified Workers' Confederation (CUT) and the General Confederation of Workers (CGT) dated respectively 5 July and 4 October 1984. The CUT presented additional information in a communication dated 24 July 1984, and the CGT in communications dated 13 and 17 November 1984. The Government replied in communications dated 2 November 1984 and 31 January and 23 May 1985.

264. The Dominican Republic has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

265. The CUT alleges that the following persons were dismissed in connection with trade union activities: Marcelino Manuel Uribe (a trade unionist in the heavy equipment undertaking of the Dominican Cement Works, dismissed without reason on 1 June 1984), Elías Adames Boyer and Alfonso Sánchez (both trade union leaders, dismissed on 16 June 1984 from the Río Haina state sugar plantation as part of an operation carried out against the CUT).

266. The CGT alleges in its first communication that the management of the "Porvenir" state sugar plantation pressured trade union leaders to leave the trade union or give up their jobs; the management also stopped the check off deduction of trade union dues in violation of the current collective agreement in force. In its later communication, the CGT states that the trade union in question has reached a satisfactory agreement on these matters with the management of the plantation.

267. The CGT adds that the National Office of Land Transportation (ONATRATE) unfairly dismissed a number of its employees, starting on 8 October 1984. This occurred during trade union elections, which ended on 19 October. According to the CGT, four of the persons concerned featured on one of the two lists of candidates for nomination to the executive committee of the trade union.

B. The Government's reply

268. Referring to the dismissal of Marcelino Manuel Uribe, the Government forwarded a letter from the undertaking where he worked, stating that the reason for the dismissal was undisciplined behaviour in the undertaking, to the extent that "as regards the incidents occurring in April and the would be strike of May 1984, this person was one of the instigators of that strike ... the said person is not a member of any trade union organisation". According to the Government, Mr. Uribe was dismissed under section 69 of the Labour Code.

269. The Government also states that the management of the "Porvenir" sugar plantation and the CGT reached satisfactory agreements on the matters referred to in the complaints.

270. The Government states in addition that Elías Adames Boyer and Alfonso Sánchez were not dismissed due to trade union activities. The former was dismissed for failing to discharge satisfactorily the duties for which he had been engaged. The latter was reinstated when it was determined that the reason for his dismissal was not sufficiently valid.

271. As regards the dismissals in the ONATRATE, the Government states that some dismissals did in fact take place owing to the change in management, as a result of the administrative reorganisation of the office, but in no case did they relate to trade union activities, as is proved by the fact that most of the persons dismissed did not belong to the trade union operating in ONATRATE.

C. The Committee's conclusions

272. The Committee notes that the parties to the collective dispute which occurred in the "Porvenir" sugar plantation have reached an agreement which is satisfactory to both parties. The Committee also notes that trade union leader Alfonso Sánchez has been reinstated in the Río Haina sugar plantation. Lastly, the Committee takes note of the Government's explanations concerning the dismissals which took place in the ONATRATE.

273. On the other hand, the Committee observes that, according to the Government, the trade union leader Elías Adames Boyer was dismissed for failing to discharge satisfactorily the duties for which he had been engaged. In this respect, the Committee regrets that the Government has not provided more precise information on the specific reasons why the work of this trade union leader was considered unsatisfactory. In addition, the Committee observes that, as regards the dismissal of Marcelino Manuel Uribe, the Government has forwarded a letter from the undertaking where this person worked, indicating that his dismissal was directly linked to "the incidents occurring in April and the would-be strike of May 1984", of which he was "one of the instigators". The Committee also observes that Mr. Uribe was dismissed under section 69 of the Labour Code, that is, without a reason being given. In these circumstances, the Committee regrets that Mr. Uribe was dismissed for carrying out trade union activities, thereby infringing Article 1 of Convention No. 98. It draws the attention of the Government to the principle that it does not appear that sufficient protection against acts of anti-union discrimination - as set out in Convention No. 98 - is accorded by legislation which, in practice, enables employers, on condition that they pay the compensation prescribed by law in cases of unjustified dismissal, to get rid of any worker when the true reason for dismissal is his trade union membership or activities. [See, for example, 211th Report, Case No. 1053 (Dominican Republic), para. 163.] The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this case.

The Committee's recommendations

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

(a) The Committee notes that Marcelino Manuel Uribe was dismissed for carrying out trade union activities, thereby infringing Article 1 of Convention No. 98.

(b) The Committee draws the attention of the Government to the principle that it does not appear that sufficient protection against acts of anti-union discrimination is accorded by legislation which, in practice, enables employers, on condition that they pay the compensation prescribed by law in cases of unjustified dismissal, to get rid of any worker when the true reason for the dismissal is his trade union membership or activities.

(c) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this case.

Case No. 1306

COMPLAINT SUBMITTED BY THE INTERNATONAL CONFEDERATION OF ARAB TRADE UNIONS AGAINST THE GOVERNMENT OF MAURITANIA

275. The Committe has already examined this case at its meeting in February 1985 when it submitted an interim report which was approved by the Governing Body. [See 238th Report, paras. 298-311, February-March 1985.] Since then, the Government has sent the ILO 1985 a certain amount of information on the case in two telegrams, dated 28 April and 13 May. At its May 1985 meeting, the Committee adjourned its examination of the case and requested the Government to supply additional details.

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

A. Previous examination of the case

277. The International Confederation of Arab Trade Unions (ICATU) submitted allegations concerning the arrest of officials and trade union activists of one of its affiliates, the Union of Mauritanian

Workers (UTM), including that of the organisation's General Secretary El Kory Ould Hmeity, and the death as a result of ill-treatment and torture of Sidi Mohamed Ben Aiat, who held the post of director of the commercial department of the Fuel Company.

278. The Government replied that the trade unionists cited in the complaint were accused of undermining the security of the State by having acted in collusion with a foreign diplomatic mission but failed to specify the precise acts with which they were charged. The Government did not reply to the allegation concerning the death of Sidi Mohamed Ben Aiat as a result of ill-treatment.

279. In these circumstances, the Committee requested the Government at its February 1985 meeting to submit detailed information on the specific facts which led to the arrest of the UTM officials and to state if legal proceedings were being taken against them. It also requested the Government to reply to the allegations concerning the death of a union official as a result of ill-treatment.

280. In a later communication dated 20 February 1985, the General Secretary of the UTM, El Kory Ould Hmeity, thanked the ILO on behalf of the Mauritanian trade unionists for its defence of members of trade unions subjected to ill-treatment of every kind.

281. In telegrams sent on 28 April and 13 May 1985, the Government stated that all the imprisoned trade unionists had been released under a political amnesty granted on 2 December 1984 and that Sidi Mohamed Ben Aiat had died from an illness.

282. At its May 1985 meeting, the Committee decided to postpone its examination of the case as the Government's observations had reached it very late. However, in view of the seriousness of the allegation concerning the death under torture of a trade union official, it urged the Government to supply additional details on the circumstances surrounding the death of Sidi Mohamed Ben Aiat and to indicate whether an independent inquiry into the matter had taken place. In accordance with normal procedure, the Office transmitted the Committee's request to the Government.

283. In a communication dated 13 June 1985 the Office informed the International Confederation of Arab Trade Unions that consideration of the case had been postponed and notified it that the Government claimed in a telegram sent on 13 May 1985 that Sidi Mohamed Ben Aiat had died from an illness. The Office therefore asked the complainant for further details in this regard. There has since been no reply from the complainant.

284. On 22 August 1985 the Office sent a telegram to the Government of Mauritania requesting it again to comment on the case, but no reply has yet been received.

B. The Committee's conclusions

285. The Committee notes that the officials of the Union of Mauritanian Workers arrested in March 1984 were released in December 1984 after being held in custody for eight months without having been tried by an independent and impartial court.

286. The Committee notes from the complainant's allegations that 17 trade union activists and officials suffered from anti-union repression and that one of them died under torture.

287. The complainant has not indicated the grounds for the arrest of the trade unionists. The Government, for its part, states that they were imprisoned on a charge of undermining the security of the State but has not specified the precise acts which they were said to have committed.

288. The complainant has not commented on the Government's claim that Sidi Mohamed Ben Aiat died from an illness even though the Office has specifically invited it to do so.

289. Regarding the large number of trade union activists and officials held in custody without any charges being brought against them, the Committee notes with interest that they have now been released. It nevertheless condemns the imprisonment of union officials for eight months in violation of the fundamental right of trade unionists, like any other person, not to be held in custody unless convicted by an independent and impartial court.

290. Regarding the alleged death of a trade union official under torture, the Committee can only note the Government's reply to the effect that the person concerned died from an illness and the complainant's silence on the matter even though it was invited to comment. The Committee finds itself confronted by two contradictory statements neither of which is supported by evidence. In view of the lack of detail regarding the complainant's allegations and of the clear statement made by the Government, and since the complainant organisation has not taken advantage of its right to submit further information in support of its complaint, the Committee considers that the complainant has not substantiated its allegations. This aspect of the case does not therefore require further examination.

The Committee's recommendations

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

(a) The Committee notes that the trade union officials and activists who had been arrested have now been released. It nevertheless condemns the holding of union officials in custody for eight months without their having been convicted by an independent and impartial court.

(b) In view of the contradictory versions concerning the circumstances of the death of a trade union official submitted by the complainant and by the Government, the Committee considers that this aspect of the case does not, therefore, require further examination.

Case No. 1317

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

292. The complaint is set forth in a communication from the International Organisation of Employers (IOE) dated 19 December 1984. The IOE transmitted additional information in a communication dated 27 December 1984. The Government replied by a communication dated 27 May 1985.

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

A. The complainant's allegations

294. The complainant states that the ILO convened in Mexico, from 3 to 7 December 1984, an important seminar to which representatives of employers' organisations in Latin America were invited in order to discuss in particular the role of employers' organisations in the creation of jobs. Mr. Enrique Bolaños Geyer, the Chairman of the Supreme Council of Private Enterprise in Nicaragua (COSEP), announced that he would participate.

295. According to the complainant, Mr. Bolaños, taking his passport which, as a precaution, he had photocopied and which two Managua notaries had reported intact, presented himself at the passport checking window of Managua airport on 17 November 1984, i.e. 16 days before the opening of the seminar. He was forbidden to leave the country because a page was missing from his passport; a page had in fact been torn out of the document.

296. The complainant states that, at the request of the other participants who had announced that they would participate in the seminar, the Director-General of the ILO addressed to the Minister for Foreign Affairs, on 20 November 1984, a telegram asking the Minister to intervene in order to facilitate the departure of Mr. Enrique Bolaños Geyer, the Chairman of the COSEP, from Nicaragua so as to enable him to participate in the seminar in question. According to the complainant, this message remained unanswered. Hence Mr. Bolaños Geyer was unable to obtain a new passport, in place of the one which had been mutilated, in time to attend the ILO meeting in Mexico.

297. The complainant adds that on 3 December 1984 the International Organisation of Employers and approximately 40 participants in the seminar addressed a telegram to the Co-ordinator of the Sandinist Junta regretting with consternation that, despite the message from the Director-General of the ILO, Mr. Bolaños had been forbidden to leave the country in order to attend the seminar, protesting at the violation of freedom of association and of fundamental rights which this entails, and requesting as a matter of urgency that Mr. Bolaños be permitted to participate in the seminar. This telegram too remained unanswered.

298. In support of its allegations the IOE transmits a letter it received from Mr. Bolaños in which he stated that, on 17 November 1984, migration officials removed pages 11 and 12 and pages 21 and 22 from his passport and then proceeded to cancel the passport. Attached to the letter is a photocopy of all the pages of Mr. Bolaños's passport, taken the day before he presented himself to the migration services and bearing, at the foot of the page, a note to the effect that on 16 November 1984 all pages of the passport were complete and properly bound.

299. Furthermore the complainant adds a statement signed by 23 persons at variance with the Sandinist regime and calling themselves "captive dissidents", in which they report that the Sandinist Government has denied them the right to leave the country freely, and arbitrarily prevented them from doing so although there is no legal impediment to warrant such a course. According to the statement, the improper and illegal procedures used to the detriment of the persons referred to include refusal to issue exist visas on the pretext of non-production of documents not required by law, loss of the passport, the existence of higher orders and inclusion in a special list, and invalidation of the passport either by removing or tearing a page from it or by making laterations in it.

300. The statement in question mentions, in addition to the case of Mr. Bolaños and of certain employers' leaders and members of various political parties, the cases of the following persons in particular:

NICOLAS BOLAÑOS GEYER:	President of UNCAFENIC, Director of Upanica and delegate to the COSEP. He was refused a visa on the grounds that there was a backlog of work.
JUAN RAMON AVILES:	Executive Secretary of the COSEP. He was refused a visa at the migration offices on the grounds that his date of birth was wrong.
FRANCISCO CALDERA:	Executive Secretary of Conapro. He was denied the issue of a passport at the migration offices on the grounds that it had been sent to Special Zone No. 1 by unintentional error.
ORESTES ROMERO ROJAS:	Executive Secretary of the Chamber of Commerce of Nicaragua. His passport was delivered to him without an exit visa on the grounds that one could not be granted to him.
FRANK LEY:	Director of the Chamber of Commerce. His passport was not delivered to him; he was made to go repeatedly to the migration office and was not given any reply.
CARLOS NOGUERA:	Delegate of the Nicaraguan Development Institute (INDE) to the Nicaraguan Democratic Co-ordination Body. His passport was held at the migration office on the grounds that there were restrictions on the issue of visas to certain persons.

301. Lastly the IOE reminds the ILO that in 1982 it filed a complaint with the Committee on Freedom of Association alleging that the Government was obstructing the participation of leaders of the COSEP in international meetings (Case No. 1114) and that the Committee felt bound to recall that "representatives of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require".

B. The Government's reply

302. The Government states in its communication of 27 May 1985 that, according to information from the Migration and Aliens Directorate, section 16 of the Migration Act, reading as follows, was in fact applied to Mr. Bolaños Geyer: "No passport or identity and travel document which exhibits alterations or corrections and from which pages or covers are missing shall be valid ..." In this connection the Government states that the only restrictions in

existence in the country on travel abroad are those expressly laid down in the provisions of law. Furthermore the Government states that it has not imposed gratuitous restrictions on any employer. As evidence of the foregoing it may be reported that, according to the migration registers, the same Mr. Bolaños Geyer has made 14 trips abroad without any obstacle between January 1983 and February 1985 (the Government transmits official certification from the Migration and Aliens Directorate showing 18 departures from the country by Mr. Bolaños between 1981 and 1985).

303. The Government adds that neither have any gratuitous restrictions been imposed on the self-styled "captive dissidents" referred to in the complaint from the complainant organisation. As proof of its assertion, the Government transmits official certification recording the various departures from the country effected in recent years by Mr. Juan Ramón Avilés, Mr. Orestes Romero Rojas and eight more "captive dissidents".

C. The Committee's conclusions

304. The Committee observes that in the present case the complainant organisation has alleged the existence of arbitrary restrictions on the right to leave Nicaragua freely. In particular the complainant has referred, firstly, to the case of Mr. Bolaños Geyer, the Chairman of the COSEP, who was unable to attend a seminar organised by the ILO owing to the removal of some pages from his passport and secondly to the case of 23 persons calling themselves "captive dissidents", among whom it refers especially to six leaders of employers' organisations.

305. The Committee further observes that the complainant has not indicated the dates on which these six leaders of employers' organisations were prevented from leaving the country, nor whether such restrictions have obstructed or prevented the pursuit of activities by those persons in their capacity as leaders of employers' organisations.

306. The Committee takes note of the Government's statement that it has imposed no gratuitous restrictions on any employer for travel abroad and that the only restrictions in existence in Nicaragua in that connection are those expressly laid down in the provisions of law.

307. More specifically, with reference to Mr. Bolaños Geyer, the Chairman of the COSEP, the Committee notes that, according to the Government, section 16 of the Migration Act was applied to this employers' leader - who has left the country 18 times between 1981 and 1985 - and that this section provides that "No passport or identity and travel document which exhibits alterations or corrections and from which pages or covers are missing shall be valid ..." In this connection, the Committee regrets that the Government has confined

itself to mentioning section 16 of the Migration Act, omitting to comment on the complainant organisation's assertion that migration officials removed the sheet bearing pages 11 and 12 and that bearing pages 21 and 22 from the passport on 17 November 1984 and then cancelled it. The Committee also observes that the Government has not referred either to the complainant's assertion that on 16 November 1984, the day before that on which Mr. Bolaños proposed to leave the country, two notaries were able to report that his passport was intact.

308. The Committee strongly deplores the fact that, after the incident affecting Mr. Bolaños had occurred on 17 November 1984, the authorities did not act on the request made by the Director-General of the ILO on 20 November 1984 that Mr. Bolaños's departure from the country should be facilitated in order to enable him to participate in the seminar organised by the ILO which was to be held in Mexico from 3 to 7 December, that is to say a sufficient number of days after the date on which the incident in question occurred.

309. Having regard to the foregoing considerations, the Committee concludes that the Government has not justified the illegal measures, involving the removal of pages from Mr. Bolaños' passport, which prevented him once again from leaving Nicaragua to attend the seminar organised by the ILO in Mexico. In these circumstances, and having regard also to the fact that the Government has not referred specifically to other leaders of employers' organisations having been forbidden to leave the country or obstructed in doing so - although the complainant has not emphasised that these cases were connected with the pursuit of activities in their capacity as leaders of employers' organisations - the Committee is bound to draw the Government's attention as it has done in the past on several occasions, and particularly in 1983 regarding Mr. Bolaños, to the principle that representatives of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require [see 222nd Report, Case No. 1114 (Nicaragua), para. 71], and that the free movement of these representatives should be ensured by the authorities.

310. The Committee also requests the Government to take steps to ensure that the appropriate authorities do not hinder the participation by leaders of workers' or employers' organisations in activities designed to promote and defend the interests of their members.

The Committee's recommendations

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

(a) The Committee concludes that the Government has not justified the illegal measures, involving the removal of pages from Mr. Bolaños' passport, which once again prevented Mr. Bolaños, the Chairman of the COSEP, from leaving Nicaragua to attend a seminar organised by the ILO in Mexico from 3 to 7 December 1984.

(b) In addition, the Committee strongly deplores the fact that the Nicaraguan authorities did not act on the request made by the Director-General of the ILO on 20 November 1984 that Mr. Bolaños's departure from the country should be facilitated in order to enable him to participate in the seminar in question.

(c) The Committee draws the Government's attention as it has done in the past on several occasions, particularly in 1983 regarding Mr. Bolaños, to the principle that representatives of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require, and that the free movement of these representatives should be ensured by the authorities.

(d) The Committee requests the Government to take steps to ensure that the appropriate authorities do not hinder the participation by leaders of workers' or employers' organisations in activities designed to promote and defend the interests of their members.

Case No. 1318

COMPLAINT PRESENTED BY THE GERMAN WORKERS' CONFEDERATION AGAINST THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

312. On 21 December 1984, the German Workers' Confederation (Deutscher Arbeitnehmerverband - DAV) lodged a complaint against the Government of the Federal Republic of Germany. On 6 February 1985, the complainant submitted additional information in support of its complaint. The Government presented its observations on this complaint in communications dated 23 April and 3 May 1985.

313. The Federal Republic of Germany has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Allegations of the complainant

314. In its communication of 21 December 1984, the DAV complains of the withdrawal of its capacity to bargain collectively by decisions of several German courts, which resulted in its being deprived of the right to enjoy the special privileges recognised by legislation for trade unions in the labour courts and in the management of enterprises.

315. The complainant, which has approximately 15,000 members, also states that it appeals against the decision of the European Commission on Human Rights of Strasbourg of 3 October 1983, which nonsuited its complaint of alleged violations of Articles 11 (on freedom of association) and 14 (on non-discrimination) of the European Convention on Human Rights.

316. Reviewing the background of the lawsuit which brought it into conflict with the Federation of Workers in Mining and Energy (IG Bergbau-Energie) and the German Confederation of Trade Unions (Deutscher Gewerkschaftsbund - DGB) and several German courts for over ten years, the complainant explains that in 1972 several trade unions affiliated to the DGB brought a lawsuit before the labour courts of Herne for the withdrawal of its capacity to conclude collective agreements, although this capacity had been granted it on 20 March 1962 as a miners' trade union (Bergarbeiterverband - BAV) by the same labour court in Herne. The DAV, then called the BAV, lost this suit. The decision was confirmed by the labour court of the Land of Hann in 1975 on the grounds that the criterion for a trade union organisation to be able to bargain collectively should be that the said organisation should be in a position to apply pressure within the limits of the legal order, i.e. that it should be in a position to make the other party accept collective bargaining. The Federal Labour Court in 1978, then the Federal Constitutional Court in 1981, rejected the appeals lodged by the DAV to regain recognition of its capacity to conclude collective agreements. Specifically, the decision of the Federal Constitutional Court stated that the decision of the Federal Labour Court was constitutional, since the DAV did not fulfil the minimum requirements for obtaining the capacity to conclude collective agreements, and it decided that, as the request only referred to recognition of the capacity to conclude collective agreements, it was not necessary to rule on the question whether "the right of an association to be recognised" guaranteed by article 9 of the Constitution authorised a uniform interpretation of the concept of "trade union" in the Collective Agreements Act and the Works Constitution Act. The DAV considers that this argument of the court is surprising, for it disregards the fact that DAV had expressly requested a ruling on whether it "possessed the status of trade union" in all respects. According to the complainant, this decision resulted in the loss of its status as a trade union under the terms of the Works Constitution Act of 1972.

317. The complainant considers that the negative decision of the Federal Constitutional Court is unjust, since the DAV should possess

the status of trade union in all respects. It therefore appealed to the European Commission on Human Rights, which stated that its complaint was ill-founded. However, according to the complainant, the withdrawal of recognition of its status as a trade union, under the terms of the Works Constitution Act, which resulted in the loss of all its trade union rights and the capacity to act, violates the principles of freedom of association.

318. According to the complainant, the members of the DAV are defenceless and exposed to the arbitrary action of the works councils held by the DGB. They are at a disadvantage as regards nomination, transfer, promotion, etc. and as the DAV is not a trade union under the terms of the Works Constitution Act, it is not in a position to protect its members before the labour courts against this kind of discrimination. Neither is it in a position to represent them before the labour courts at the Länder level.

319. The complainant supplied voluminous documentation in support of its complaint, including the following: a pamphlet giving an account of its establishment in the mining sector in 1952; the 1962 court decision granting it the right to bargain collectively in the mining sector; its rules stating that it covers workers in industry, commerce and handicrafts, as well as those employed in the services, both in the public and private sectors; opinions of German jurists supporting its request; a letter prohibiting the DAV from posting notices inside the Volkswagen enterprise in Wolfsburg in 1980 on the grounds that it is not authorised to post notices in the said establishment as it is not recognised as a trade union (this letter informs the DAV representative who posted a notice that, if he continues to post notices and disturb the peace in the enterprise, he will be dismissed without notice); a letter sent in 1976 by a certain Helmut Homan of the Federation of Workers in Mining and Energy (IG Bergbau-Energie), forwarding to the DAV five letters of resignation by workers from the complainant (these resignations are drawn up on printed forms) and another letter of resignation written by a certain Herbert Frase, dated 1983, in which he informed the DAV that it had come to his knowledge that, contrary to the latter's claim, the complainant was no longer a trade union by decision of the Federal Constitutional Court and that he was therefore resigning.

320. The complainant concludes by appealing to the ILO for recognition as a trade union under the terms of the Works Constitution Act of 1972.

B. The Government's reply

321. The Government confirms in its reply that the Federal Labour Court, in March 1978, rejected the appeal lodged by the DAV to be granted the status of trade union and the capacity to bargain collectively on the grounds that, for a workers' association to enjoy

the status of a trade union and the capacity to bargain collectively, it must carry sufficient weight to put pressure on, and resist pressure from, the opposing party so that negotiations may generally result in a collective agreement (criterion of the capacity of a trade union to obtain the acceptance of its claims). The Government also confirms that the Federal Constitutional Court rejected the appeal of unconstitutionality lodged by the DAV against the decision of the Federal Labour Court in October 1981.

322. According to the Government, the DAV is a workers' association whose purpose is to guarantee and improve the economic and working conditions of its constituents enshrined in section 9(3) of the Basic Law. Therefore, the DAV is free to act as a workers' association and, as such, is free to submit complaints, elect its leadership, lodge appeals and recruit new members, in conformity with the requirements of Convention No. 87.

323. Concerning the compaint that the members of the DAV are subjected to discrimination, the Government explains that section 75 of the Works Constitution Act obliges employers and works councils to ensure that every person employed in the enterprise is treated in conformity with the principles of law and equity and that there is no discrimination against any person, in particular on account of their political or trade union activities or convictions. According to the Government, if a works council neglects its duties or infringes its principles it renders itself liable, under section 23(1) of the Works Constitution Act, to dissolution; likewise an individual member guilty of such acts is liable to removal.

324. As regards the criteria for determining the representativity of a trade union in order to grant it the capacity to bargain collectively, the Government explains that such capacity is only conferred on associations which fulfil the following conditions: they must be autonomous in the negotiation of wage rates and must consequently be in a position to regulate conditions of employment by means of collective agreements and to maintain industrial peace. It is therefore necessary for the association concerned to be able to win acceptance for its claims from the opposing party by reason of the number of its members or by its position of strength in the enterprise. It must also carry enough weight to put pressure on, and resist pressure from, the opposing party so that negotiations can generally lead to the conclusion of collective agreements.

325. The Government recalls that the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations have considered that legislation requiring that a trade union be representative or competent in order to be able to bargain collectively is not contrary to the principle of freedom of association if the determination of the trade union in question is based on objective and pre-established criteria. According to the Government, German legislation fulfils these conditions. It adds that the decision to grant an association the capacity to bargain collectively is a matter for the labour courts and