

20. Alejandro del Cid Hernández
21. Amancio Samuel Villatoro
22. Misquisidet Miranda
23. Sergio Manfredo Peltetón
24. Sergio Aldana Galván
25. Edgar Fernando García
26. Alfredo Aguilar Tzoc
27. Alejandro Hernández González
28. Otto René Estrada
29. Rubén Amilcar Farfán
30. Armando Ramírez Peña

B. Persons whose disappearance has been alleged recently

31. Julio César Pérez Gálvez (24 August 1980)
32. Ileana Minera (24 August 1980)
33. Miguel Guerra Duarte (March 1981)
34. Abner Recinos Alfaro (11 August 1981)
35. Juan José Alvarado (24 December 1981)
36. Marta Lares Huitz (5 August 1982)
37. Carmen Yolanda Mayorga (10 August 1982)
38. Amanda de Díaz (27 September 1983)
39. Julio Cermeño (17 November 1983)
40. Alfonso Alvarado Plascencio (1 February 1983)
41. Víctor Hugo Quintanilla and his wife (19 February 1983)
42. Jerónimo López Díaz (14 August 1983)
43. Edgar Morales Arias (13 January 1985)

44. Carlos Humberto Carballo (17 January 1985)
45. Rita Josefina Pineda Aldana (4 September 1985)

C. Persons who have been assassinated or seriously wounded

46. Máximo Vásquez Melgar (union leader assassinated on 5 May 1980)
47. Gabriel Guzmán (union leader assassinated on 5 November 1981)
48. Israel Rodríguez (union leader assassinated on 5 November 1981)
49. Julio Raúl Calito Ardón (union leader assassinated on 1 January 1982)
50. Edgar López Figueroa (union leader assassinated on 16 January 1982)
51. Rubia Dorina García (trade unionist assassinated on 5 March 1982)
52. Joaquín Darío Sagastume (trade unionist assassinated on 5 August 1982)
53. Vicente Ordóñez (trade unionist assassinated on 13 August 1983)
54. Marcelino Velázquez (trade unionist assassinated on 14 August 1983)
55. Santiago López Aguilar (trade unionist assassinated on 17 February 1984)
56. Alvaro René Sosa Ramos (former union leader who was the victim of an attempted kidnapping and received three bullet wounds on 13 March 1984)
57. Silvio Matricardi (union leader whose body was discovered on 16 March 1984)
58. Aurelio Coto Melgar (trade unionist whose body was discovered on 14 March 1985)
59. Sebastián Quino Guarcas (union leader seriously wounded by government security forces on 23 May 1985)
60. Esaú Barrera Martínez (trade unionist assassinated on 1 September 1985).

Cases Nos. 1204, 1275, 1301, 1328 and 1341

COMPLAINTS AGAINST THE GOVERNMENT OF PARAGUAY PRESENTED BY
THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS,
THE LATIN AMERICAN CENTRAL OF WORKERS AND
THE INTERNATIONAL FEDERATION OF PLANTATION,
AGRICULTURAL AND ALLIED WORKERS

522. The International Confederation of Free Trade Unions presented the complaints corresponding to Cases Nos. 1204 (communications dated 20 and 27 May and 13 and 16 October 1983), 1275 (communication dated 17 April 1984), 1301 (communications dated 6 and 25 September 1984), and 1341 (communication dated 24 June 1985). The Latin American Central of Workers (CLAT) presented the complaint corresponding to Case No. 1328 in a communication dated 6 April 1985.

523. Having received certain observations from the Government, the Committee examined Cases Nos. 1204 and 1275 at its meeting in November 1984, and submitted interim reports to the Governing Body [see 236th Report of the Committee, paras. 426 to 443 and 444 to 458, approved by the Governing Body at its 238th Session (November 1984)].

524. The Government representative at the 71st Session of the International Labour Conference (June 1985) subsequently handed in a number of documents containing certain information relating to Cases Nos. 1204, 1275 and 1301.

525. At the 71st Session (Geneva, 1985) of the International Labour Conference, the Government representative of Paraguay informed the Committee on the Application of Standards that his Government had requested a direct contacts mission to deal specifically with the application of Conventions Nos. 87 and 98 (both ratified by Paraguay).

526. Following the discussion of the case of Paraguay in the Committee on the Application of Standards, the Government presented a communication dated 20 June 1985 to the Office, expressly requesting that the forthcoming direct contacts mission would also examine the cases pending before the Committee on Freedom of Association.

527. The Director-General of the ILO appointed Mr. von Potobsky, a former official of the ILO, as his representative to carry out this mission, which took place from 23 to 27 September 1985 in Asunción, and which also included a visit to Buenos Aires on 21 September for the purpose of contacting and discussing with the Paraguayan Confederation of Workers in Exile (CPTE). The representative of the Director-General was accompanied on the mission by Mr. Alberto Otero, a member of the Freedom of Association Branch of the Department of International Labour Standards, and Mr. Luis Zamudio, Regional Adviser on Standards. The report on the mission is attached.

528. Paraguay 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).

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529. Following the mission, the International Confederation of Free Trade Unions (ICFTU) and the International Federation of Plantation, Agricultural and Allied Workers (IFPAAW), in communications dated respectively 2 and 3 October 1985, presented new allegations in connection with Case No. 1341. These organisations alleged in their communications that Marcelino Corazón Medina, chairman of the Co-ordination Committee of Agricultural Producers, has been detained for over ten days, having been arbitrarily imprisoned in the police station in Asunción, where he is being subjected to physical and psychological torture and deprived of visiting rights. He is now on a hunger strike and, since he is in a fragile state of health, it is feared that his life is in danger. In a communication dated 15 October 1985, the ICFTU states that Mr. Corazón Medina has been transferred, in a serious condition, to the prison hospital. In addition, it alleges that for about 30 days the Government has arbitrarily imprisoned Sebastián Rodríguez (Secretary General of the Drivers' Trade Union of "Asunción-Fernando de la Mora" Line 21) for the sole reason of having organised a musical festival to raise funds for his unemployed colleagues. The Government sent certain information in a communication dated 30 October 1985 in which it states, in particular, that Mr. Marcelino Corazón Medina has been released.

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530. The Committee would first like to thank Mr. Geraldo von Potobsky for having accepted to carry out the direct-contacts mission, and for his detailed report on the cases under consideration, which has enabled the Committee to examine them. The Committee considers that the report of the representative of the Director-General demonstrates the usefulness of missions of this kind in clarifying the issues raised in the allegations of the complainant organisations.

531. Since the contents of the allegations and the information supplied by the Government, as well as the information obtained by the representative of the Director-General during the mission, are covered in the report on the mission, the Committee may proceed directly with its conclusions on each case.

A. General conclusions

532. The Committee takes note of the report of the representative of the Director-General on the mission carried out from 23 to 27 September 1985 in Paraguay. The Committee also notes that, as the report on the mission states, the representative of the Director-General was provided with every facility by the authorities of the Ministry of Justice and Labour to enable him to carry out the mission. The Committee observes in this respect that information was obtained during the mission on all of the cases under consideration. It regrets, however, that it was not possible to arrange an interview between the representative of the Director-General and the Minister of the Interior or a high official of that ministry, in connection with certain specific allegations falling within its sphere of competence which were made in the context of Cases Nos. 1204 and 1341.

B. Conclusions on Case No. 1204

533. Regarding the allegations as to detentions, the Committee observes that all of the persons concerned (nine) have been released. The Committee regrets that the Government has failed to state the specific reasons for the detention of these persons, except in the case of Mr. Aldo Zuccolillo (detained for systematically and cruelly harassing the Government in the publication "ABC Color") and of Mr. Jorge Alvarenga (a doctor detained for acts unrelated to trade unionism, according to the information supplied by the Government). The Committee also observes that the Government denies in every case, either explicitly or implicitly, that the detentions were connected with trade union activities. In these circumstances, in view of the lack of information in most cases on the specific reasons for the detentions, and given the time which has elapsed since the allegations were presented (May and October 1983), and the fact that all of the persons concerned have been released, the Committee draws attention in general terms to the principle that the arrest or detention of trade union leaders and trade unionists for activities connected with the exercise of trade union rights is contrary to the principles of freedom of association [see, for example, 218th Report, Case No. 1129 (Nicaragua), para. 477].

534. As regards the difficulties encountered by the Union of Journalists of Paraguay (SPP) for several years in its attempts to obtain legal personality, the Committee observes that in 1983 the Labour Directorate notified the trade union that it could not be set up because of defects of substance such as the existence of another association for the same purposes. The Committee also notes that there seems to have been a shift in the Government's position since then, since while it states that the SPP has not taken any steps since 1979 for its establishment, it affirms expressly that, from the legal standpoint, there is no reason why it should not be set up. While

the Committee regrets that the present secretary-general of the SPP did not attend the appointment arranged with the representative of the Director-General, it hopes that the Union of Journalists of Paraguay will apply for and be granted legal personality in the near future. In addition, the Committee recalls that the existence of an organisation in a determined occupation should not constitute an obstacle to the establishment of another organisation, if the workers so wish.

535. As regards the allegation of dismissal of workers from the "América Textil" undertaking, the Committee observes that there is a discrepancy between the contents of the allegations and the Government's statements. While both agree that dismissals occurred in this undertaking, the complainant organisation alleged that they had taken place after the presentation of requests in the trade unions' list of claims. The Government, however, stated that the dismissals (affecting 27 workers) had taken place a month before the trade union had applied to the authorities for recognition. The Committee regrets that the América Textil undertaking has refused to meet with the representative of the Director-General of the ILO and that it has not been possible to obtain information which would clarify the facts. In these circumstances, in view of the lack of sufficient information and given the proximity in time between the dismissals and the steps taken to set up a trade union in the undertaking concerned (a trade union which was not recognised because it failed to attain the number of members required by legislation, owing to the dismissals which took place), the Committee merely draws attention to the principle that no worker should be dismissed or subjected to other acts of discrimination in employment for carrying out trade union activities.

536. Finally, the Committee notes that, according to the Government, there is no undertaking called "FRISA S.A." and that Radio Ñanduti was closed down not for the reasons given by the complainant organisation, but for political reasons.

C. Conclusions on Case No. 1275

537. The Committee notes that, according to the mission report, the Labour Appeals Court, by decision of 27 December 1984, decided in favour of the claims of the Union of Employees of the Bank of Brazil on the matters in dispute regarding the renewal of the collective agreement.

538. As regards the dismissal of trade unionists Duarte, Virgili and Cáceres, the Committee notes the information provided in the report of the representative of the Director-General. In view of the fact that this case is pending judgement in court, the Committee adjourns examination of this matter until judgement is pronounced and

requests the Government to transmit a copy of the judgement as soon as it is handed down.

D. Conclusions on Case No. 1301

539. The Committee observes that in this case the complainant organisation has alleged that, between 18 August and 10 September 1984, Melanio Morel, Gregorio Ojedá, Pedro Zárate, Carlos Castillo and Nicasio Guzmán, all of whom are trade union leaders or trade unionists belonging to the National Union of Construction Workers (SINATRAC) were detained while setting up a trade union in the ACEPAR iron and steel plant. The Committee also observes that three of these persons met with the representative of the Director-General and stated the following: (1) they had intended to set up a works committee in the undertaking which was building the ACEPAR plant; (2) on 18 August 1984, as they were preparing for an assembly which they had called at the bus stop near the ACEPAR plant, and after they had been warned by the police that they should not hold the assembly, they were detained by members of the armed forces; and (3) they had not been brought to trial.

540. The Committee notes that, according to the authorities of the Ministry of Justice and Labour with whom the representative of the Director-General met, ACEPAR is a semi-public undertaking located in the military zone and run by military personnel. Moreover, according to the ministry authorities, the assembly which had been called was unauthorised and therefore could not be held. The organisers of the assembly had consequently been detained by the armed forces. They were later released without having been brought to trial.

541. Although the Committee considers the fact that the legislation of a country, in order to prevent disruption of the public order, requires administrative authorisation for the organisation of meetings in public places does not run counter to the principles of freedom of association, it wishes to draw attention to the fact that given the absence of criminal acts in the present case, the mere fact of having organised a trade union assembly should not have resulted in the detention of the trade union leaders and trade unionists involved. Therefore, the Committee regrets the detention of these trade union leaders and trade unionists and draws the attention of the Government to the fact that detention of trade union leaders for activities connected with the exercise of trade union rights is contrary to the principles of freedom of association [see, for example, 218th Report, Case No. 1129 (Nicaragua), para. 477]. Furthermore, in view of the fact that the period of detention lasted more than 20 days, and that none of the trade unionists was brought to trial, the Committee would emphasise the principle that any person who is detained should immediately be brought before the competent court.

542. Finally, the Committee notes that, according to the detainees themselves, they were not dismissed, as they do not work in an employment relationship but as a crew engaged under a contract for services, although since being detained they have been unable to obtain contracts with building enterprises, only with individuals. The Committee also notes that, according to the authorities, the persons concerned do not appear to be actually working in the construction industry.

E. Conclusions of the Committee on Case No. 1328

543. The Committee observes that the complainant organisation mainly objects to the recognition by the Ministry of Labour on 17 October 1984 of the executive committee elected at an assembly to reorganise the National Union of Construction Workers (SINATRAC), held on 13 October 1984 and led by the Secretary-General of that organisation, Milciades Giménez Díaz, a supporter of government policy.

544. The Committee also observes that, some months earlier, on 11 March 1984, a split occurred in the executive committee of SINATRAC, dividing it into two different factions: one headed by Milciades Giménez Díaz, Secretary-General of SINATRAC, and the other by Lino Gómez, Deputy Secretary-General of SINATRAC. Each faction organised an assembly to elect a new executive committee, as the term of office of the existing committee was due to expire on 18 October 1985. Thus, the faction led by Milciades Giménez Díaz called an assembly on 13 October 1984, while the faction led by Lino Gómez called another for 14 October 1984, although the latter was postponed by the police and was held on 21 October 1984.

545. On 17 October 1984, as stated, the Government recognised the executive committee elected at the assembly of 13 October 1984 led by Milciades Giménez Díaz. However, when it was informed of the executive committee elected on 21 October 1984 at the assembly led by Lino Gómez, the competent authority of the Ministry of Justice and Labour notified Lino Gómez on 21 November 1984 of the text of a decision of the legal consultant's office stating that recognition could not be granted since "by Resolution No. 1717 dated 17 October of the current year the Labour Directorate registered the National Union of Construction Workers, whose executive committee is currently in office, and its term of office is due to expire in 1987 according to its statutes". A subsequent decision issued by the legal consultant's office, notified by the Director of Labour on 15 February 1985, stated that an appeal could be lodged through the administrative disputes procedure.

546. The Committee concludes that the authorities of the Ministry of Justice and Labour, aware of the existence of two assemblies to elect a new executive committee, appear to have based their recognition of one of the committees on considerations of time alone,

that is, on the fact that the executive committee elected at the assembly led by Milciades Giménez Díaz was the first to apply for recognition. The Committee observes that the competent authorities of the Ministry of Justice and Labour, referring to the allegations, told the representative of the Director-General that the situation was sometimes confusing, in the general context of the internal disagreement among the members of the executive committee of SINATRAC. According to the ministry authorities, once Lino Gómez had been informed of the decision to recognise the executive committee elected on 13 October 1984, he could have lodged an administrative appeal against that decision.

547. The Committee considers that, irrespective of whether such an appeal was possible (which Lino Gómez's group denies), the decision of 17 October 1984 of the Ministry of Justice and Labour to recognise the executive committee elected by the assembly of 13 October 1984 constitutes a decision that was arbitrary and taken in too great haste. The Ministry was fully aware that another duly convened assembly was to be held a few days later (on 21 October) for the same purpose. The Committee would like to point out that when internal disputes arise in a trade union organisation they should be resolved by the persons concerned, by appointing an independent mediator with the agreement of the parties concerned, or by intervention of the judicial authorities.

F. Conclusions on Case No. 1341

548. The Committee observes that the representative of the Director-General was able to note the police surveillance and shadowing to which Ricardo Esperanza Leiva, former leader of the Liebig Refrigeration Union and leader of the Paraguayan Confederation of Workers in Exile (CPE), is being subjected. The Committee requests the Government to alter what it calls the methods of protecting the life and safety of Mr. Leiva so that, if considered objectively, there can be no confusion with police surveillance.

549. Furthermore, the Committee notes that, according to the Government, Mr. Marcelino Corazón Medina has been released. The Committee requests the Government to send its observations on the alleged torture of this trade union leader indicating what were the concrete facts leading to his detention, as well as on the alleged detention of Sebastián Rodríguez, Secretary-General of the Drivers' Union of Line 21.

The Committee's recommendations

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

The Committee notes that a direct contacts mission visited the country from 23 to 27 September 1985.

Case No. 1204

- (a) The Committee draws attention in general terms to the principle that the arrest or detention of trade union leaders and trade unionists for activities connected with the exercise of trade union rights is contrary to the principles of freedom of association.
- (b) In view of the fact that, according to the Government, there is no reason from the legal standpoint why the Union of Journalists of Paraguay should not be set up, the Committee hopes that this union will apply for and be granted legal personality in the near future.
- (c) The Committee draws attention to the principle that no worker should be dismissed or subjected to other acts of discrimination in employment for carrying out trade union activities.

Case No. 1275

- (a) The Committee notes that, according to the mission report, the Labour Appeals Court, by decision of 27 December 1984, decided in favour of the claims of the Union of Employees of the Bank of Brazil on the matters in dispute regarding the renewal of the collective agreement.
- (b) The Committee notes that the matter of the dismissal of trade unionists Duarte, Virgili and Cáceres is pending judgement in court. The Committee adjourns its examination of this matter until judgement is pronounced, and requests the Government to transmit a copy of the judgement as soon as it is handed down.

Case No. 1301

- (a) The Committee regrets the detention of five trade union leaders and trade unionists of the National Union of Construction Workers.
- (b) The Committee reiterates the principle that the detention of trade union leaders for activities connected with the exercise of

trade union rights is contrary to the principles of freedom of association.

- (c) In view of the fact that the period of detention lasted more than 20 days and that none of the five trade unionists was brought to trial, the Committee stresses the principle that any person who is detained must be brought without delay before the competent court.

Case No. 1328

- (a) The Committee considers that the decision of 17 October 1984 of the Ministry of Justice and Labour to recognise the executive committee of SINATRAC, elected by the assembly held on 13 October 1984, taken in full awareness that another regularly convened assembly was to be held for the same purpose a few days later on 21 October, constitutes an arbitrary and too speedy decision.
- (b) The Committee draws attention to the fact that when internal disputes arise in a trade union organisation, they should be resolved by the persons concerned, by appointing an independent mediator with the agreement of the parties concerned, or by intervention of the judicial authorities.

Case No. 1341

- (a) The Committee requests the Government to change what it calls the methods of protecting the life and safety of Mr. Leiva so that, if objectively considered, there can be no confusion with police surveillance.
- (b) The Committee notes that Mr. Marcelino Corazón Medina has been released. The Committee requests the Government to send its observations on the alleged torture of this trade union leader stating what were the concrete facts leading to his detention, as well as on the detention of Sebastián Rodríguez, Secretary-General of the Drivers' Trade Union of Line 21.

ANNEX

REPORT OF MR. GERALDO VON POTOBOSKY ON THE
DIRECT CONTACTS MISSION CARRIED OUT IN PARAGUAY
(23-27 SEPTEMBER 1985)

1. At the 71st Session of the International Labour Conference (Geneva, 1985), the Government representative of Paraguay informed the Committee on the Application of Conventions and Recommendations that

"his Government has requested a direct contacts mission to deal specifically with the application of Conventions Nos. 87 and 98" (both ratified by Paraguay), and pointed out that "the direct contacts will be carried out with the presence of the three groups (government, employers' organisations and workers' organisations). The Workers' member of Austria (Mr. Maier) "hoped that when the direct contacts mission went to Paraguay it would also deal with the cases pending before the Committee on Freedom of Association".

2. For their part the Workers' members of Uruguay and Argentina expressed their hope that the mission would be able to make contact with the Paraguayan Confederation of Workers in Exile.

3. Following the discussion of the case of Paraguay in the Committee on the Application of Conventions and Recommendations, the Government sent to the Office a communication dated 28 June 1985 in which it expressly requested that the direct contacts mission to be carried out should also examine the cases pending before the Committee on Freedom of Association.

4. The Director-General of the ILO appointed me as his representative to carry out this mission, which took place between 23 and 27 September in Asunción and which also included a visit to Buenos Aires on 21 September with a view to establishing contact and holding discussions with the Paraguayan Confederation of Workers in Exile (CPTE). I was accompanied on the mission by Mr. Alberto Otero, member of the Freedom of Association Branch of the International Labour Standards Department, and by Mr. Luis Zamudio, Regional Adviser on standards.

5. During the mission we met Mr. Eugenio Jacquet, Minister of Justice and Labour, and Mr. Carlos Doldán del Puerto, Director of Labour, and had several meetings with the latter and his collaborators. We also spoke with representatives of the Paraguayan Confederation of Workers (CPT), the Federation of Production, Industry and Commerce (FEPPINCO), the Paraguayan Industrial Union, the Federation of Bank Employees (FETRABAN) and the National Union of Building Workers (SINATRAC) as well as other trade union leaders, trade unionists and interested parties. The list of these persons appears at the end of this report.

6. It was not possible to arrange a meeting with the Minister of the Interior or any other high official of this Ministry, before whom we should have liked to place certain specific allegations falling within their sphere of competence (Cases Nos. 1204 and 1341) in order to obtain information and comments.

7. During the meeting with the Paraguayan Confederation of Workers in Exile (CPTE), its leaders provided us with information on the trade union situation in their country and expressed their surprise that this had been the first time that the ILO was carrying out a mission of this kind in Paraguay. Furthermore, they made a formal observation concerning the time which had elapsed concerning

the examination of the complaints presented. Finally, they requested that the Ministry of Justice and Labour should be informed concerning the imminent return to the country of Mr. Julio Etcheverry Espínola, Secretary-General of the organisation, who hoped to be able to enjoy all his constitutional rights. The Minister of Justice and Labour stated that Mr. Etcheverry would enjoy these rights like any other citizen, provided that he observed the law of the country.

8. I should like to place on record that I was given every assistance by the authorities of the Ministry of Justice and Labour in carrying out the mission for which I am extremely grateful. I should also like to thank all those persons interviewed for the information which they provided.

9. The present report includes various documents which we received during the course of the mission for the purposes of our inquiry.

Cases pending before the Committee on
Freedom of Association

10. At present five complaints against the Government of Paraguay (Cases Nos. 1204, 1275, 1301, 1328 and 1341) are pending before the Committee on Freedom of Association. The Committee examined Cases Nos. 1204 and 1275 at its meeting of November 1984 (see 236th Report of the Committee, paragraphs 426-44 and 448-458) and presented an interim report to the Governing Body since the Government had not responded to certain matters or was requested to provide additional information.

11. The Government representative to the 71st Session of the International Labour Conference handed the Office a series of documents which contained information concerning Cases Nos. 1204, 1275 and 1301. No observations from the Government were received concerning Cases Nos. 1328 and 1341.

12. During the mission we discussed the matters raised in the cases before the Committee on Freedom of Association with officials of the Ministry of Labour and various interested parties.

Case No. 1204

13. This complaint was presented by the International Confederation of Free Trade Unions in communications dated 20 and 27 May, 13 October and 16 December 1983. The Government sent certain observations in a communication dated 14 September 1984. The Committee on Freedom of Association examined the case, as already

noted, at its meeting of November 1984 and made the following recommendations which summarise with sufficient clarity the matters which remained pending (see 236th Report, paragraph 443):

- (a) Regarding the arrest of 19 members of the the Trade Union Solidarity Movement (MSS) as part of a campaign of repression following the setting up of this organisation, the Committee observes that, according to the Government, one of the persons concerned is a fugitive from justice who has not been arrested and 13 others were released without the judicial authorities upholding any charges against them. The Committee deeply regrets that these 13 trade unionists were deprived of their freedom for more than a year in most cases and draws the Government's attention to the fact that the arrest and detention of trade union leaders and trade unionists for trade union reasons constitute a violation of the principles of freedom of association. The Committee requests the Government to send its observations on the arrest of Stella Rufinelli, Margarita Elías, Damián Vera, Juan Carlos Oviedo and María Herminia Feliciangeli following the setting up of the MSS of which they are said to be members.
- (b) The Committee regrets that the Government has not replied to the remaining allegations: the difficulties encountered by the Union of Journalists of Paraguay (SPP) for the past four years in its attempts to obtain legal personality; the threatened exile of the leaders and members of the SPP; the arrest and trial of the leader of the SPP, Alcibiades González del Valle; the arrest of Aldo Zucalillo, director of ABC Color for allowing the publication of matters of trade union interest; the threats against, harassment of and restrictions imposed on this newspaper for publishing the setting up of the MSS; the arrest of Dr. Jorge Alvarenga and Dr. Carlos Cuevas during a round-table discussion on "trade unionism and repression"; the arbitrary dismissal of the workers from the La Americana SA textile company following the submission by the trade unions of a list of demands; the threatened dismissal of 800 workers of the FRISA SA company following the request by the trade unions for payment of unpaid wages; the closing down of Radio Ñandutí for transmitting messages from the Paraguayan Confederation of Workers in Exile and a ban on the commentator and director of the radio station from exercising his profession. The Committee requests the Government to send its observations on this matter without delay.

14. The Government provided the following information during the 71st Session of the International Labour Conference:

- All the persons arrested for infractions of Act No. 209 to which the complainant had referred are now free. María Herminia Feliciangeli was held under arrest between 11 May and 18 September 1983; Margarita Elías Acosta, from 11 May to 18 September 1983; María Estela Rufinelli, from 11 to 30 May 1983; Juan Carlos Oviedo, from 11 to 16 May 1983; and Pedro Damian Vera, from 12 to 24 May 1983.
- The Union of Journalists of Paraguay requested its recognition in 1979. The authorities noted substantial errors in the setting up of the trade union which needed to be remedied; in particular, an association with the same objectives, called the Press Association of Paraguay, already existed and furthermore opposed the establishment of a new trade union; moreover, there was no unanimous agreement between the supporters of the trade union concerning its creation since a group of journalists opposed its establishment. In the circumstances, the Labour Directorate informed the applicants on 6 September 1983 that they would first of all have to resolve their existing internal problems before any decision could be taken concerning the recognition of the union. Since then, none of the necessary formalities has been taken with a view to the registration of the union.
- Carlos Cuevas Miranda, a doctor, was arrested on 4 July 1983. Legal proceedings were initiated against him for infraction of Act No. 209. He was released from prison on 11 July 1983 on the instructions of the Judge of the Penal Court of the First Instance and at the present time is living and exercising his profession near Caaguazú.
- Jorge Alvarenga Galeano, who was born in Buenos Aires, was arrested on 22 June 1983 opposite the Faculty of Engineering, for shouting slogans against the country, the Government and the authorities whilst meeting with a group of students who had been suspended by the rector of the National University. On 5 July 1983 he was deported to Buenos Aires but re-entered Paraguay on 6 February 1984 and left again on his own initiative on 10 February 1984 without any intervention by the Paraguayan authorities.
- In the América Textil undertaking a trade union requested recognition of its occupational status on 26 December 1979. The Labour Inspectorate observed that it did not have the number of members required by law since a large number of the applicants were in fact workers who had been dismissed or who had received advance notice of dismissal. Subsequently, no new steps have been taken with a view to its registration.
- With respect to the allegation concerning the FRISA SA undertaking, no information is available in the Labour Directorate concerning the threats of dismissal alleged by the complainant.

15. During the mission we were able to gather the following information on these various matters.

16. With regard to the alleged detention of Stella Rufinelli and four other persons following the establishment of the MSS, the authorities of the Ministry of Justice and Labour stated that these persons were free (in conformity with the information supplied by the Government representative to the 71st Session of the International Labour Conference), that they had been arrested during an investigation into the "Paraguayan Data Bank" affair and that they were never taken to court. We were informed that the "Paraguayan Data Bank" was an intelligence unit which acted as the headquarters for conspiratorial activities of a Marxist-Leninist nature. Under the cover of its supposed data processing activities, its real function was of a subversive nature.

17. As regards the alleged difficulties of the Union of Journalists of Paraguay (SPP) over the past four years to obtain legal personality, the authorities of the Ministry referred to the information supplied by the Government representative to the 71st Session of the International Labour Conference and stressed that this trade union had taken no new steps with a view to obtaining legal personality and that there was no legal impediment to the establishment of the trade union. We invited Mr. José Gaspar Meaurio, the current Secretary-General of the trade union, to a meeting to discuss these matters, but he did not attend. As regards the arrest and prosecution of Mr. Alcibiades González del Valle, leader of the Union of Journalists of Paraguay, the authorities of the Ministry pointed out that this person is free and freely exercising his professional activity at the present time. In the past he had been arrested on several occasions but never for trade union reasons. It should be noted that Mr. González del Valle, who is no longer the Secretary-General of the Union of Journalists of Paraguay, was invited to meet with the representative of the Director-General of the ILO but did not come.

18. As regards the arrest of Mr. Aldo Zuccolillo, Director of the newspaper ABC Color, for permitting publications on trade union events, the authorities of the Ministry pointed out that the reason for the arrest was not that given by the complainant but rather his systematic and abusive harassment of the Government. Furthermore, they emphasised that Mr. Zuccolillo had never allowed the establishment of any trade union in the undertakings of which he is the owner. Finally, they stated that trade union newspapers which published articles of a critical nature existed in the country and that such publications had never been the subject of any penalties or warnings.

19. As regards the arrest of Messrs. Carlos Cuevas and Jorge Alvarenga Galeano, the authorities of the Ministry stated that they were not trade unionists, that their detention was not related to trade union matters and that they were released without legal proceeding being brought against them.

20. As regards the alleged arbitrary dismissal of workers of the América Textil undertaking following the submission by the trade unions of a list of demands, the authorities of the Ministry stated that 27 workers were dismissed in December 1979. In January 1980 a works union requested recognition in the Ministry but this was refused since of its founding members only 12 were actually employed (the Labour Code stipulates a minimum number of 30). In any event, the dismissed workers accepted the legal indemnities. It should be noted that the América Textil undertaking refused to meet with the representative of the Director-General of the ILO.

21. As regards the allegations concerning the FRISA S.A. undertaking, the authorities of the Ministry stated that no undertaking existed with that name.

22. Finally, with respect to the closing down of the Ñanduti radio station, the authorities of the Ministry denied that the reason for this action was the transmission of messages from the Paraguayan Confederation of Workers in Exile. The radio station was closed for political reasons. They stated that in Paraguay radio stations are not closed down for giving news or messages of a trade union nature.

Case No. 1275

23. This complaint was presented by the International Confederation of Free Trade Unions in a communication dated 17 April 1984. The Government sent certain observations in a communication dated 14 September 1984. The Committee on Freedom of Association examined the case, as noted earlier, at its meeting of November 1984, and made the following recommendations which summarise with sufficient clarity the matters which remained pending (see 236th report, paragraph 458):

- (a) The Committee expresses the hope that the Labour Court will shortly decide the points of contention in connection with the renewal of the collective agreement between the Union of Employees of the Bank of Brazil and this same bank, which expired on 30 January 1983. It draws attention to the obligation on both employers and trade unions to bargain in good faith to reach an agreement and stresses that satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence. The Committee requests the Government to inform it of the Labour Court's decision on this case.
- (b) The Committee requests the Government to inform it of the outcome of the judicial appeal concerning the dismissal of Messrs. Rolando Duarte, Adolfo Virgili y Guillermo and Guillermo Cáceres, members of the Union of Employees of the Bank of Brazil.

24. The Government had sent copies of certain documents concerning the alleged dismissals, but had not sent the text of the judgement. Neither had it sent the text of the judicial decision on the points of contention related to the renewal of the collective agreement.

25. During the mission we were able to gather the following information on these various matters.

26. The authorities of the Ministry of Justice and Labour provided the text of the decision of the Labour Appeal Court dated 27 December 1984 upholding the claims of the Union of Employees of the Bank of Brazil concerning the points of contention regarding the renewal of the collective agreement. The management of the Bank of Brazil and leaders of the Federation of Bank Employees pointed out that the Bank of Brazil and the trade union of this institution had recently signed a new collective agreement.

27. As regards the alleged dismissal of Messrs. Roland Duarte, Adolfo Virgili and Guillermo Cáceres, members of the Union of Employees of the Bank of Brazil, the leaders of the Federation of Bank Employees who were interviewed stated that these dismissals were illegal since they violated the provisions of section 285 of the Labour Code (maintenance of the employment relationship during the settlement of labour disputes procedure). They pointed out that although the undertaking claimed that the dismissals were made in order to reduce costs they were, in fact, due to trade union activities. Messrs. Virgili and Cáceres were very active members of the trade union and Mr. Roland Duarte was its former Deputy Secretary-General. Furthermore, if the argument concerning the reduction of costs were true, the Bank could have dismissed other persons since 20 workers were nearing retirement and their departure from the undertaking would not have prevented them from receiving their legal retirement benefits. In the same way, when the arbitration award was made concerning the points of contention in the new collective agreement, and which upheld the claims of the trade union, the undertaking dismissed two further members.

28. The management of the Bank of Brazil denied that the dismissal of Messrs. Duarte, Virgili and Cáceres was of an anti-trade union nature or related to collective bargaining. All the workers of the Bank were members of the trade union and the dismissed workers were not members of the executive board of the trade union. The dismissal of the workers in question was due to administrative reasons and not to a reduction in costs and the workers concerned received the compensation prescribed by law. Subsequent to these measures there was only one other dismissal, that of a worker in another branch of the Bank, and the departure from the undertaking of a secretary by mutual agreement. The secretary went to work in another banking institution.

29. The authorities of the Ministry stated that no definitive ruling had been issued concerning the dismissals and that the judiciary had indicated that such a ruling was imminent.

Cases Nos. 1328 and 1301

30. It appears appropriate to treat these two cases together and in the above-mentioned order because of the close relationship which exists between specific aspects of these cases and a full understanding of the matters in question.

Case No. 1328

31. The complaint appears in a communication from the Latin American Central of Workers (CLAT) dated 6 April 1985. The Government has still not furnished a reply.

32. The CLAT alleges in particular that the authorities have limited the right of the National Union of Building Workers (SINATRAC) to elect its representatives in full freedom.

33. More precisely, the CLAT alleges that the Labour Directorate stated in a communication of September 1984 that the extraordinary assembly held on 11 March 1984 to replace the Secretary-General of SINATRAC, Mr. Milciades Giménez Díaz for failure to fulfil his duties, was null and void for procedural reasons. According to the complainant, the real reason for this measure was that the above-mentioned trade union leader supported the anti-trade union policy of the Government. CLAT encloses a copy of the communication from the Labour Directorate (dated 19 June 1984) in which it is stated that SINATRAC "should have justified previously that it had observed the provision of Article 6 of its by-laws. Thus the copy of the ABC newspaper presented contains only information of a journalistic nature which cannot be considered as the convocation of an assembly of its members which would have legal force".

34. CLAT adds that the ordinary general assembly of SINATRAC which had been called by the trade union executive for 14 October 1984 was suspended by the authorities. CLAT includes a copy of a communication from the Labour Directorate dated 31 October 1984 stating that those who called the assembly "were not accredited members of the trade union and thus are not empowered to call an assembly".

35. CLAT adds that the ordinary general assembly was then convened for 21 October 1984; it took place in normal conditions with the members of the union and presented in good time its request to the Labour Directorate for recognition of the executive committee. However, this request was rejected on the grounds that "an executive

committee had already been recognised on the same date" when in fact - the complainant goes on - this had occurred without the convening of an assembly or the observance of any of the necessary requirements and within a period of 24 hours. As a consequence, a complaint was lodged which was not answered, thus preventing a discussion of the matter in other bodies, including in the courts (it should be noted that CLAT sends as an annexure a communication from the Labour Directorate which implicitly refers to the possibility of lodging an administrative appeal).

36. CLAT concludes by pointing out that the leader recognised by the authorities does not represent the working classes and has always acted like a vigilante against the interests of his trade union comrades.

37. In order to obtain information on this complaint, which basically deals with the rift which occurred in the executive committee of SINATRAC and its consequences, we consulted the representatives of both groups as well as the competent authorities of the Ministry of Justice and Labour.

38. We met with Messrs. Lino Gómez, Gregorio Ojeda and Melanio Morel, who stated that they were respectively Secretary-General, Assistant Secretary-General and Financial Secretary of SINATRAC. These persons belong to the group which presented the complaint to the ILO. They furnished us with various documents to support and supplement their oral statements.

39. According to the information provided, during the extraordinary assembly of 11 March 1984 the question was implicitly raised of unionising the workers of the Yaciretá dam and the private firm which was constructing the future plant of ACEPAR (Paraguayan Steelworks). All those present supported this action by the trade union although the Secretary-General, Mr. Melcíades Giménez Díaz, opposed it. The latter, having refused to read a document which was given to him concerning this matter, decided to leave the meeting accompanied by the Clerk, Mr. Sixto Fleitas. In the circumstances, the participants decided to elect Mr. Lino Gómez (who until then had been the Assistant Secretary-General) as the new Secretary-General. He was to exercise his mandate until the month of October 1984, when the term of the executive committee was due to expire. At the same time, the assembly reorganised the executive committee and sent the corresponding notice to the Labour Directorate with a view to obtaining recognition of this committee.

40. In reply, they were informed in a note of 19 June 1984 of the legal ruling of 7 June concerning the need to fulfil, before the holding of the assembly, the statutory regulations concerning the publication of the convocation in a newspaper. In a note of 3 July 1984, issued by the new executive committee, it was explained to the authorities of the Ministry of Justice and Labour that it had not been possible to publish the convocation due to lack of money but that the news item which had appeared in the ABC Color newspaper compensated

for this shortcoming. Furthermore, approximately 80 members of the trade union out of a total of 120 had attended the assembly, which was well beyond the required quorum. Despite these explanations, the Labour Directorate issued a resolution dated 6 September 1984 which rejected the recognition of the executive committee and based its decision on the failure to observe the above-mentioned statutory provision.

41. In these circumstances, the complainants add, the failure to recognise this new Committee implied that the previous committee remained in existence. Seven members of this committee (out of a total of 11), including Messrs. Lino Gómez and Gregorio Ojeda, decided to convene an ordinary assembly of the trade union for 14 October 1984. This decision was communicated to the Ministry on 26 September and the convocation was published in a newspaper in accordance with the union's by-laws. In the same way notification was sent to the police which replied that the assembly would have to be postponed until 21 October. For its part, the Legal Department of the Labour Directorate decided that the applicants were not accredited members (of the executive committee) of the trade union, and thus could not convene the assembly. This decision was communicated to them on 31 October. The assembly took place on 21 October and recognition of the elected executive committee was requested in a note dated 24 October 1984. The competent authority of the Ministry replied by providing the text of another legal opinion which stated that, by Resolution No. 1717 dated 17 October 1984, recognition had already been granted to another executive committee of the trade union and that for this reason the applicants' request could not be accepted.

42. According to the complainants, what had in fact happened was that without their knowledge, another assembly had been held on 13 October 1984 which had been called by the members of the original executive committee who had remained in a minority. In the extraordinarily short period of four days, which is unprecedented, this new committee was recognised whereas normally such a process requires more than one month. This would also explain the instructions from the police to postpone the date of the assembly from 14 to 21 October.

43. The complainants state that they have never been able to obtain a copy of the text of the formal resolution which rejects their request for recognition of the executive committee elected at the assembly of 21 October 1984. They have presented and verified before the Ministry the request for recognition of this executive committee and the request for the annulment of the recognition granted to the committee elected on 13 October 1984 (notes dated 28 November and 23 January 1985). In the note dated 28 November it is stated that the so-called assembly of 13 October did not legally take place, that those who convened it did not have the power to do so, that they did not publish the convocation notice as required, that they did not have rosters available, were not up to date in their contributions and had not distributed circulars concerning the convocation.

44. In reply, the Ministry confirmed that the only legal recourse against the resolution to deny recognition in this case is the administrative procedure for disputes, in accordance with section 297 of the Labour Code (note dated 15 February 1985). According to the complainants, the initiation of this procedure requires access to the text of the formal resolution which they have unsuccessfully requested.

45. At the meeting held with Mr. Milcíades Giménez Díaz, who claimed to be the Secretary-General of SINATRAC, he referred to various aspects of the assembly of 11 March 1984. First of all, the resignation presented in February by Mr. Gregorio Ojeda, who was a member of the executive committee elected in 1982, was accepted. During the same assembly Mr. Pedro Zárate also presented his resignation. During the discussions a written note of accusation against Mr. Giménez was presented by the complainants requesting his resignation as Secretary-General. It was suggested that he should read this note publicly but Mr. Gimenez refused to do so since the matter was not included on the agenda of the assembly. The text of the agenda was shown to us by Mr. Giménez; it reads as follows: "(1) Report and appraisal of the financial situation by the Secretary of Finances for the 1983 exercise. (2) Election of a Deputy Secretary of Records and Relations, a Deputy Secretary of Finance and a Secretary responsible for the organisation of activities. (3) Election of four substitute members." Those who were insistent that the note should be read included in particular Mr. Carlos Castillo, former Secretary-General, who had ceased to be a member of the trade union following his failure to pay trade union dues.

46. As a result of the rising tempers of the persons present and the resulting confusion, Mr. Gimenez Díaz decided to withdraw from the assembly, accompanied by the Clerk and the two inspectors of the Ministry of Justice and Labour who had been invited by the executive committee. The two latter officials informed the members that the assembly was suspended and that any decision taken by those present would have no legal effect. Approximately 50 persons remained in the meeting out of a total of 61 participants. The membership of the trade union at that time was 120. In the meeting which continued it was not possible to adopt any decision respecting the election of a new Secretary-General and the reorganisaion of the executive committee since these items were not included on the agenda.

47. Furthermore, Mr. Gimenez continued, it cannot be said that seven members out of a total of 11 of the executive committee elected in 1982 had remained as members of one of the two factions. In fact two of the seven had resigned or abandoned their functions before the assembly of 11 March 1984 (Florencio Benítez, Secretary of Records and Relations, Eustaquio Portillo, Deputy Secretary of Finances). The following therefore remained as members of the dissident group: Lino Gómez, Gregorio Ojeda, Justo Pastor Sosa, Pedro Zárate and Martín Chamorro. In Mr. Gimenez Díaz's group there remained, in addition to the latter, Sixto Fleitas, Antonio de la Cruz Benítez and Efigenio Fernández. According to Mr. Gimenez, this proves that the dissidents

did not have the support of the majority of the members of the original executive committee to convene a subsequent extraordinary assembly of the trade union.

48. After the division occurred, Mr. Gimenez Díaz adds, that the premises of SINATRAC - an office in the headquarters of the Paraguayan Confederation of Workers - continued to be occupied by his group, which continued its trade union activities. With a view to normalising the situation, it was decided to hold an assembly for the reorganisation of the trade union, which took place in Villa Hayes on 13 October 1984. This city was selected since most of the members were employed there in the construction of the future ACEPAR plant. More than 200 members participated in the assembly. Circulars announcing the convocation were pinned up and distributed at the worksite. The assembly elected a new executive committee of which Mr. Gimenez Díaz is the Secretary-General. This committee was recognised by the Ministry of Justice and Labour.

49. In our conversations with the competent authorities of this Ministry we received documentation and we were given the following information on the events which had occurred. It was stressed that the situation was a confused one concerning an internal dispute between the members of the executive committee of SINATRAC.

50. On 11 March 1984 an extraordinary general assembly convened by the executive committee was held in the headquarters of the Paraguayan Confederation of Workers to examine the financial balance sheet presented by the Financial Secretary and to fill certain vacant posts on the committee. After the approval of the balance sheet and as the chairman was introducing the second item on the agenda (appointment to vacant posts), a group headed by Carlos Castillo, Gregorio Ojeda and Pedro Zárate provoked the incidents in question, disregarding the warnings made by the labour inspectors to keep to the items on the agenda. As the situation deteriorated, the inspectors withdrew from the premises, as did the president and secretary of the meeting, and the delegates of the CPT.

51. Later the group directed by Carlos Castillo, Gregorio Ojeda and Pedro Zárate held a so-called extraordinary general assembly, set up a so-called executive committee and requested its recognition before the Labour Directorate. This request was denied by Resolution No. 1502 dated 6 September 1984. Since that date the trade union had been without leadership. In these circumstances and with a view to the legal reorganisation of the trade union, a SINATRAC reorganisation committee was set up whose members were Milcíades Gimenez Díaz, Sixto Fleitas and Antonio de la Cruz Benítez, who had been members of the executive committee elected in January 1982. This reorganisation committee, with the collaboration of the CPT, called a general assembly on 1 October 1984 for the reorganisation of the trade union, to be held on 13 October in Villa Hayes. The convocation was not published in a newspaper for lack of money but notification was given in circulars, as verified by the labour inspectors. The assembly was monitored by officials of the Labour Directorate and proceeded to

elect a new executive committee of the trade union which was duly recognised by the authorities by Resolution No. 1717 dated 17 October 1985.

52. As regards certain specific points, the labour authorities provided the following information. The executive committee elected in the assembly of 11 March 1984 was not recognised because it had not complied with the provisions of Article 6 of the SINATRAC by-laws, which read as follows: "The convocation of an assembly of members shall be communicated to members by means of circulars distributed at the workplaces and in the work committees and by publication in a newspaper of the capital at least eight days beforehand." As regards the request for recognition of the executive committee resulting from the assembly of 21 October 1984 and the annulment of the recognition granted to the committee elected at the assembly of 13 October 1984, the Labour Directorate considers that this is an appeal for annulment requiring the Directorate to annul a decision which it had previously taken. This kind of appeal is not applicable in such cases and is not included in any regulation for these purposes. What is applicable under the established procedure (Decree No. 3696 dated 24 March 1964) is a direct appeal to the courts through the administrative procedure for disputes. The Ministry of Justice and Labour communicated the legal decisions to which the complainants refer in the same way as resolutions against which appeals can be lodged through the administrative procedure for disputes. Furthermore, mention is made in one of these decisions of Resolution No. 1717 which recognises the executive committee, elected on 13 October 1984, which means that the complainants had been informed of the existence of this resolution and could have lodged an appeal through the administrative procedure for disputes.

53. Finally, the Labour Directorate stressed that it is not certain that Messrs. Ojeda, Zárate, Castillo and other complainants actually work in the building industry. On the other hand, it was clear from the work roster of the Benito Roggio and Sons SA., construction firm that Mr. Milciades Gimenez Diaz is an employee of this firm.

Case No. 1301

54. This complaint is contained in communications from the International Confederation of Free Trade Unions (ICFTU) dated 6 and 25 September 1984. The Government representative of Paraguay to the 71st Session of the International Labour Conference personally delivered certain information concerning this complaint.

55. In its communication dated 6 September 1985, the ICFTU alleges that on 18 August 1984, when steps were being taken for the establishment of a trade union, Messrs. Melanio Morel, Gregorio Ojeda, Pedro Zárate, Carlos Castillo and Nicasio Guzmán, leaders of the National Union of Building Workers (SINATRAC) were arrested in the ACEPAR iron and steel works by military officials. In its

communication of 25 September 1984, the ICFTU adds that these leaders were released on 10 September, but that they have been dismissed on the express instructions of the Ministry of Justice and Labour.

56. The documentation presented by the Government representative of Paraguay to the 71st Session of the International Labour Conference indicates that the persons mentioned by the ICFTU do not appear as members of SINATRAC, nor are they employed in any undertaking.

57. Information on this case was obtained from Messrs. Lino Gómez, Gregorio Ojeda and Melanio Morel, as well as from the competent authorities of the Ministry of Justice and Labour. It should be noted that the events occurred in August 1984, that is, after the executive committee of SINATRAC had split into two factions during the assembly of 11 March of that year.

58. According to Messrs. Gómez, Ojeda and Morel, who were members of the executive committee elected at that assembly, as well as Pedro Zárate, their objective was to set up a works committee in the undertaking which was building the ACEPAR plant. A similar committee had previously been set up in the Yaciretá worksite. On 18 August 1984, they convened a assembly of workers in this plant which was to be held at the nearest bus stop to the plant. On that day, as they were preparing for the meeting, they were warned by the police that the meeting should not be held. Shortly afterwards they were arrested by members of the army and remained under arrest until 4 September 1984 when they were released without any proceedings having been brought against them. They were not informed of the reason for their detention but were warned not to proceed further with their activities.

59. According to these interlocutors, they had organised works committees on previous occasions without having requested permission from the authorities. On such occasions the meetings had been held in the premises of the Paraguayan Confederation of Workers, which was impossible on this occasion because of the large number of interested workers (approximately, 2,700). They had believed that the ACEPAR plant, an undertaking which is directed by military staff, was not situated in a military zone and there was no information or notice indicating that it was. Finally, they stated that they were not dismissed as a result of these events because they were not recruited individually under separate contracts, but collectively as a team on the basis of labour-leasing contracts. What is certain that since their arrest they have not been able to obtain contracts with building undertakings as before but only with individual employers.

60. According to the authorities of the Ministry of Justice and Labour, the ACEPAR undertaking is a para-public undertaking, located in a military zone and is directed by military staff. The assembly to which the complaints refer was not authorised and for this reason could not be held. As a result they were arrested by the military forces, without charges being brought against them, and subsequently released. The Ministry never intervened with a view to obtaining

their possible dismissal. In point of fact the matter is a problem which should be examined in the context of the rivalry existing between the two trade union factions to which reference has been made, and the action carried out by the complainants was designed to obtain new supporters because of the forthcoming trade union elections.

Case No. 1341

61. This complaint is contained in a communication from the ICFTU dated 24 June 1985. The Government had not replied.

62. The ICFTU alleges that Paraguayan citizens who were offered the possibility of returning to their country after a long period of forced exile are being submitted to a strict control by the authorities. The complainant refers in particular to the case of Mr. Ricardo Esperanza Leiva, former trade union leader who returned to the country after many years of exile and who has since been the victim of thorough and constant police supervision in Asunción, including supervision by motorised police whenever he travels to any part of the city.

63. The ICFTU states that this type of government measure severely limits the individual and trade union freedoms of Mr. Esperanza Leiva and even prevents him from seeking work, which is an indispensable condition to be able to live and to remain in the country.

64. Finally, the ICFTU requests that steps be taken with a view to the definitive lifting by the Government of the restrictions affecting exiled citizens who have returned to the country, in particular, Mr. Esperanza Leiva.

65. During the mission we were able to gather the following information on this case.

66. Mr. Ricardo Esperanza Leiva stated that under the pretext of guaranteeing his personal safety he was the victim of constant supervision by the police who followed him on motor cycles whenever he moved from one place to another. We were able to confirm the presence of a police motor cycle opposite the place where we met with Mr. Leiva. According to the latter, the fact that he is followed everywhere by the police, who also request documentation from those persons with whom he has contact, makes it impossible for him to find work, earn his living and therefore makes it difficult for him to remain in the country. Mr. Leiva said that he had been in exile since 1959, that he was sentenced to four years of prison in 1961 when he clandestinely entered the country and joined the Epifanismo political movement. He also pointed out that he was a member of the Paraguayan Confederation of Workers in Exile, acting as its Deputy Secretary-General, and that he had been a leader of the Frigorífico Liebig trade union.

67. The authorities of the Ministry stated that the police surveillance of Mr. Leiva was designed to guarantee his safety and protect his life, since he had been a member of the Epifanismo movement, which is a specific, dissident sector of the Colorado Party headed in 1954 by Epifanio Méndez Fleitas, Chief of Police responsible for a number of atrocities. The authorities of the Ministry also pointed out that Mr. Leiva could present his problem to the Ministry of Labour and that other trade unionists in exile had returned to the country and were now working.

68. During the meeting with the Minister of Justice and Labour I expressed the concern felt at the international level and, in particular, within the ILO at the situation of Mr. Leiva and requested that this situation should be made known to the Minister of the Interior.

Geraldo von Potobsky.

PERSONS INTERVIEWED

Ministry of Justice and Labour

Mr. Eugenio Jacquet, Minister of Justice and Labour

Mr. Carlos Doldán del Puerto, Director of Labour

Mr. Luciano Mendoza, Chief of the Department of International Standards

Mr. Arsenio Riveros Delgado, Deputy Adviser of the Legal Department of the Labour Directorate

Mrs. Ilse de Riveros, Regional Director of the Department of Itapúa, Social Information Branch

Paraguayan Confederation of Workers in Exile (CPTE)

Mr. Julio Etcheverry Espinola, Secretary-General of the CPTE

Mr. Basilio González Hermosilla, Secretary-General of the CPTE

Mr. Pablo E. Aquino, Secretary of International Relations, CPTE

Mr. Eulogio Alvarenga, Secretary responsible for Peasant Affairs, CPTE

Mr. Julián Garay, Secretary responsible for Organisation, CPTE

Mr. Carlos L. Garay González, Secretary responsible for Youth Affairs, CPTE

Mr. Ricardo Esperanza Leiva, Deputy Secretary-General, CPTE (interviewed in Asunción)

Mr. Marcelino Notario Bernal, Secretary responsible for Organisation, CPTE (interviewed in Asunción)

Paraguayan Confederation of Workers (CPT)

Mr. Sotero Ledesma, Secretary-General of the CPT

Mr. Porfirio Giménez, Secretary of Records and Correspondence, CPT

Mr. Salvador Vera, Secretary of International Affairs, CPT

Mr. Enrique Benítez, Secretary of Culture and Trade Union Education, CPT

Various other leaders of the CPT.

Federation of Production, Industry and Commerce (FEPRINCO) and the Paraguayan Industrial Union

Mr. Alirio W. Ugarte Díaz, President of FEPRINCO and other members of the executive committee

Mr. Gustavo Díaz de Vivar, Representative of the Paraguayan Industrial Union

National Union of Building Workers (SINATRAC)

Mr. Milciades Giménez Díaz, Secretary-General of SINATRAC (executive committee recognised by the Ministry of Justice and Labour)

Mr. Lino Gómez, Secretary-General of SINATRAC

Mr. Gregorio Ojeda, Assistant Secretary-General of SINATRAC

Mr. Melanio Morel, Financial Secretary of SINATRAC

Federation of Bank Employees (FETRABAN)

Mr. Víctor Báez Mosquera, Secretary-General of FETRABAN

Mr. Humberto Ayala, Secretary of Organisation of FETRABAN

Mr. Carlos Veron, Secretary of Relations of FETRABAN

Mr. Víctor Manuel Rodríguez, Press Secretary of the Trade Union of the Banco de Brasil and Adviser to the Executive Committee of FETRABAN

Inter-Trade Union Movement of Workers (MIT-Paraguay)

Mr. José Martínez, Organisation and Action Committee of the Inter-Trade Union Movement of Workers (MIT) Paraguay)

Mr. Gustavo Benítez, Legal Adviser of MIT and the National Co-ordinating Committee of Workers

Others

Mr. Hugo Roberto Cabrera Alemán, Under-Manager of the Banco de Brasil

Mr. Panulfo Jara Casco, President of Línea de Autobuses 21

Case No. 1219

COMPLAINT PRESENTED BY THE NATIONAL AGRICULTURE AND
ALLIED WORKERS' UNION AGAINST THE
GOVERNMENT OF LIBERIA

551. The Committee examined this case in February 1984 and again in May 1984, when it submitted interim reports to the Governing Body [see 233rd Report, paras. 628-658, approved by the Governing Body at its 225th Session (February-March 1984); and 234th Report, paras. 585-611, approved by the Governing Body at its 226th Session (May-June 1984)]. Subsequently, the Government sent further information in a communication dated 15 May 1985.

552. Liberia 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

553. When the Committee examined this case at its May 1984 Session, it made the following recommendations:

- (a) as regards the suspension of the National Agriculture and Allied Workers' Union of Liberia, the Committee recalls the importance it attaches to the principle that workers' organisations must not be subject to suspension by administrative decision. It again urges the Government to lift without delay the suspension order affecting the union since 15 November 1982 and to keep it informed of any decision taken in this respect;
- (b) as regards the labour dispute with the Firestone Plantations Company, the suspension of the union and the dismissal of 1,200 union members employed by the company, the Committee requests the Government to indicate whether the dispute has been settled and, if so, whether an agreement has been signed between the union and the employer. It also requests the Government to send its observations and detailed information on the alleged dismissal of NAAWUL members employed by the Firestone Plantations Company;
- (c) as regards the general ban on strikes introduced by Decree No. 12 of 30 June 1980, which abolished the right to strike and stipulated that labour disputes must be arbitrated solely by the Ministry of Labour and Youth and Sports, the Committee urges the Government to lift the ban which has been in effect for nearly four years, and which constitutes in itself a serious violation of trade union rights. It again draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case;
- (d) finally, as regards the union funds originating from the World Confederation of Labour and, specifically, the charge of embezzlement against the union's General Secretary, the Committee considers that, in order to reach a decision in full possession of the facts, it needs to examine the findings of the audit of the union's accounts and requests the Government to send it a copy of the report.

B. The Government's reply

554. In its communication of 15 May 1985, the Government states that the principle that workers' organisations must not be suspended by administrative decision is being observed in law and in practice, and refers the Committee to section 4103 of the Labour Practices Law. It further states that the suspension of NAAWUL was requested by its members who alleged that the union's funds were being embezzled and who wished the union's accounts to be audited; that the suspension was a prerequisite for the audit; and that it was lifted on 3 October 1984 after completion of the audit.

555. With regard to the labour dispute between NAAWUL and the Firestone Plantations Company and the dismissal of 1,200 union members, the Government refers to its awareness of the deadlock in negotiations between the company and NAAWUL which was resolved by the Firestone Employees' Council before concluding a collective agreement now in force and which will expire in November 1985. It denies awareness of any mass dismissal of Firestone employees for being members of NAAWUL, and points out that section 4600(2) of the Labour Practices Law prohibits discrimination against employees because of membership of a labour organisation.

556. On the subject of the general ban on strikes introduced by Decree No. 12 of 30 June 1980, the Government states that the measure was passed to temporarily prevent workers from going on strike following a variety of strikes (involving, inter alia, the destruction of property) which took place in the aftermath of the Popular Revolution of April 1980. It goes on to state that, as emphasised in its previous response, the right to strike is available under section 4503 of the Labour Practices Law, but that the country is currently passing through a transitory period so that the measure is necessary to maintain law and order while workers' education is being introduced by the ILO. The temporary ban on strikes will be lifted as soon as the workers' education being introduced starts to bear fruit.

557. Lastly, the Government denies awareness of any pending case against any member of NAAWUL for the violation of section 4111 of the Labour Practices Law or embezzlement of the union's funds, and states that all efforts will be made to make a copy of the audit available to the Committee in response to its request.

C. The conclusions of the Committee

558. The Committee notes with interest the Government's statement that the principle that workers' organisations must not be suspended by administrative decision is being observed in law and in practice, and also that the suspension of NAAWUL was lifted on 3 October 1984. It observes that the suspension of NAAWUL none the less lasted for a period of nearly one year and 11 months, and that the courts do not appear to have been involved in this regard. While the lifting of the suspension leads the Committee to the view that this aspect of the case does not call for further examination, it takes the opportunity to draw attention to the importance it attaches to the principle established in Article 4 of Convention No. 87 that workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

559. With regard to the dispute at the Firestone Plantations Company, the Committee regrets that the Government did not supply detailed information relating to the allegation concerning the dismissal of 1,200 union members, but notes the Government's denial of

any awareness of a mass dismissal of NAAWUL members as well as the assurance contained in its statement that discrimination against employees because of membership of a labour organisation is prohibited.

560. The Committee also takes note of the Government's indication that the dispute has been resolved as a result of an agreement concluded with the Firestone Company's Employees' Council which is at present in force and which expires in November 1985. In this regard, it notes that there is no reference to the part, if any, played by NAAWUL in any negotiations leading to the agreement, nor is there an indication as to when the agreement was concluded or to the date of its commencement. In the circumstances, the Committee requests the Government to supply it with information on these matters.

561. On the subject of the general ban on strikes introduced by decree in June 1980, the Committee reiterates its view that this in itself constitutes a serious violation of trade union rights, and takes note of the observations made on this subject by the Committee of Experts on the Application of Conventions and Recommendations in 1984 and again in 1985, and of the discussions which took place on this subject in the Committee on the Application of Conventions and Recommendations at the 70th and 71st Sessions of the International Labour Conference. While noting the statement of the Government's representative on the latter occasion that the decree was to be repealed with the introduction of the new Labour Code, the Committee draws attention to the principle that a general prohibition of strikes can only be justified in the event of an acute national emergency and for a limited period of time [204th Report, Case No. 952 (Spain), para. 161, Case No. 976 (Greece), para. 202; 214th Report, Case No. 1021 (Greece), para. 123; 234th Report, Case No. 1201 (Morocco), para. 550]. It shares the hope expressed by the Conference Committee in 1985 that the Government will be led in the near future to adopt the Labour Code and other necessary measures so as to take due account of the divergencies noted by the Committee of Experts between the provision containing the ban on strikes and the Government's obligations in terms of Convention No. 87, especially as regards the rights of trade unions to defend the interests of their members and to organise their activities.

562. The Committee notes the Government's statement that it is unaware of any pending charge against any member of NAAWUL for violation of section 4111 of the Labour Practices Law or embezzlement of union funds. It requests the Government to supply it with all relevant information, including the records of any judicial determinations, relating to the outcome of the proceedings referred to in earlier reports on this case involving a criminal charge of embezzlement which had been brought against the General Secretary of NAAWUL. It regrets that the Government has not so far made a copy of the audit of the union's accounts available, in response to the Committee's request and a reminder sent in July 1985, and in the circumstances renews its request in order that it may reach a decision in full possession of the facts concerning the allegation relating to union funds originating from the World Confederation of Labour.

The Committee's recommendations

563. The Committee recommends the Governing Body to approve this interim report and, in particular, the following recommendations:

- (a) The Committee notes with interest the Government's statement that the principle that workers' organisations must not be suspended by administrative decision is being observed in law and in practice, and that the suspension of NAAWUL was lifted in October 1984. In the circumstances, it considers that this aspect of the case does not call for further examination.
- (b) The Committee notes, however, that the suspension was in effect for nearly one year and 11 months, and that the courts do not appear to have been involved in this regard; it accordingly draws attention to the importance it attaches to the principle established in Article 4 of Convention No. 87, namely that workers' and employers' organisations shall not be liable to be suspended or dissolved by administrative authority.
- (c) The Committee regrets that the Government did not supply detailed information regarding the allegation concerning the dismissal of 1,200 union members at the Firestone Plantations Company.
- (d) The Committee requests the Government to supply it with information concerning the part, if any, played by NAAWUL in the negotiations leading to the conclusion of a collective agreement with the Firestone Company's Employees' Council and as to the dates on which the agreement was concluded and entered into force.
- (e) With regard to the general ban on strikes introduced by decree in June 1980, the Committee reiterates its view that this constitutes a serious violation of trade union rights, and draws attention to the principle that such a prohibition can only be justified in the event of an acute national emergency and for a limited period of time; it shares the hope of the Conference Committee on the Application of Conventions and Recommendations in 1985 that the Government will in the near future adopt the Labour Code and other necessary measures which will enable due account to be taken of the divergencies between the provision containing the ban on strikes and the Government's obligations in terms of Convention No. 87, especially as regards the rights of trade unions to defend the interests of their members and to organise their activities.
- (f) The Committee requests the Government to supply it with the audit of the union's accounts and all relevant information (including the record of any judicial determinations) relating to the outcome of proceedings referred to in earlier reports on this case involving a criminal charge of embezzlement which had been brought against the General Secretary of NAAWUL, so that it may reach a decision in full possession of the facts concerning the

allegation of misuse of union funds originating from the World Confederation of Labour.

Case No. 1250

COMPLAINT PRESENTED BY THE NATIONAL FEDERATION
OF INDEPENDENT TRADE UNIONS AGAINST
THE GOVERNMENT OF BELGIUM

564. The National Federation of Independent Trade Unions (UNSI) submitted a complaint of infringement of trade union rights in Belgium in a communication dated 18 June 1983. The complainant organisation sent additional information in a communication dated 13 December 1983. In addition, it sent a telegram to the Chairman of the Governing Body of the ILO during the 70th Session of the International Labour Conference on 19 June 1984. Finally, the complainant presented further allegations in a communication dated 8 November 1984.

565. The Government sent very detailed information in letters dated 2 and 11 May 1984. Subsequently, in communications dated October 1984 and April 1985, it requested the Committee to adjourn examination of this case on the grounds that the decisions concerning the renewal of the terms of office of the members of the National Labour Council were due to be taken later.

566. At its November 1984 meeting, the Committee on Freedom of Association decided to adjourn examination of the case, as indicated in paragraph 6 of its 236th Report, approved by the Governing Body at its 228th Session (Geneva, November 1984). Since no reply had been received from the Government, the Committee again adjourned examination of the case in February and in May 1985 [238th Report, paragraph 5 and 239th Report, paragraph 10]. However, given the time which had elapsed since the complaint had been lodged, the Committee pointed out to the Government in May 1985 that it would have to examine the substance of the case at its November 1985 meeting even if no detailed reply had been received from the Government. Since then, the Government sent its observations in a communication dated 24 September 1985.

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

A. The complainant's allegations

568. The National Federation of Independent Trade Unions (UNSI), in its letter of 18 June 1983, had alleged that the Government of Belgium granted powers of monopoly to "political" trade unions and was seeking to paralyse the independent union organisations. The latter therefore together had decided to form the National Federation of Independent Trade Unions in October 1982. This Federation grouped the following nine unions: (1) the Cartel of Independent Trade Unions; (2) the United Union of Finance Personnel; (3) the Belgian General Union of Sales Representatives; (4) the General Association of Flemish Trade Unions; (5) the General Federation of Teachers; (6) the National Confederation of Executive Staff (CNC); (7) the Independent General Trade Unions; (8) the National Belgian Police Union; (9) the Independent Union of Railwaymen.

569. The UNSI submitted a complaint of infringement of Conventions Nos. 87 and 98 against the Government of Belgium in respect of both the public and private sectors.

570. With regard to the private sector, the complainant alleged that the Government was refusing to allow its representatives to sit on the National Labour Council, and that the trade union allowances paid in this sector constituted a means of pressurising workers to induce them to join unions close to the Government since, in many cases, the allowances amount to more than half the trade union dues.

571. The complainant organisation had explained that trade union life in the private sector was completely dominated by the National Labour Council since its members obtained the status of most representative organisation. They could then take part in trade union elections and joint consultations with management, pay unemployment allowances, and obtain subsidies and the right to trade union allowances for their affiliated members. Admission to the Council - which is regulated by the Act of 29 May 1952 - was subject only to two criteria: that the organisation be established at the national level and that it be inter-occupational. The complainant organisation believed that it was entitled to admission as it satisfied both requirements.

572. The UNSI had stated that since the Act provided for a maximum of 24 seats on the National Labour Council and only 22 of these seats had been allocated by 25 November 1980 (as could be seen from the Royal Order of 10 November 1980), it had submitted an application to the Minister of Employment and Labour in view of the possibility of the two remaining seats being allocated by Royal Order. This application had been rejected on the grounds that the current members' term of office was due to be renewed in December 1984.

573. Furthermore, according to the UNSI, the Belgian authorities were not complying with the principle established by the Committee on Freedom of Association according to which, by placing one organisation

at an advantage or at a disadvantage in relation to the others, a government might either directly or indirectly influence the choice of workers regarding the organisation to which they intended to belong, since they would undeniably be inclined to join the union best able to serve them, even if their natural preference would have led them to join another organisation for occupational, religious, political or other reasons. The freedom to choose was a right expressly laid down in Convention No. 87.

574. According to the complainant organisation, the system of trade union allowances in the private sector was really a means of pressurising the workers since in many cases these allowances represented more than half the trade union dues. The system was thus, the UNSI maintained, contrary to the Committee's recommendations in Case No. 981, where it had drawn the Government's attention to the importance which it attached to the fact that any advantage granted by law to workers who belonged to a particular trade union must not exceed a symbolic level, so as to ensure that in no case could an advantage be of such a nature as to influence unduly the workers' choice as regards the organisation to which they intended to belong.

575. As regards the public sector, the complainant organisation recalled that, in accordance with the Act of 19 December 1974 concerning relations between the public authorities and the unions of employees coming under these authorities, this sector was also subject to representation on the National Labour Council. According to the complainant organisation, this Act, which had already been the subject of complaints [Cases Nos. 655 and 981] was still not being applied because of the reluctance of the political trade unions to accept the system of counting. The Cartel of Independent Trade Unions of Belgium had itself, moreover, contested the system of counting.

576. A Bill, No. 371, aimed at amending the Act of 19 December 1974 concerning relations between the public authorities and the unions of employees coming under these authorities, had been introduced. It would deprive trade unions which were not members of the National Labour Council of any possibility of belonging to the three general bargaining committees, whereas formerly this exclusion applied only to the highest committee, that is to say the Joint Committee for the Public Services as a whole.

577. The UNSI considered that this Bill thus demonstrated the determination of the Belgian Government to paralyse the functioning of an independent union, contrary to an opinion previously expressed by the Committee on Freedom of Association in Case No. 655 [143rd Report, paragraph 42], in which the Committee considered that a system such as that set up by the Act of 19 December 1974 might mean that sufficiently representative organisations, and even the most representative organisation, in the public sector might be excluded from the general bargaining committees on the grounds that they were not affiliated to a trade union organisation represented on the National Labour Council, a body which was not, however, competent with respect to the public sector.

578. The complainant organisation had also criticised the fact that, according to official statistics on the trade union allowance in the public sector, the three unions considered to be the most representative in fact represented only about 30 per cent of the staff in this sector. Moreover, it believed that the Act of 19 December 1974 would not be applied, since the three recognised political unions would not agree to their membership being counted. Consequently, the Act of 1 September 1980 in respect of the payment of a trade union allowance by the public services would not be applied either, which meant that the relative payments would still be made in accordance with transitional provisions.

579. Moreover, according to the complainant organisation, Bill No. 371 - even more than the 1974 Act - would deprive organisations which are not members of the National Labour Council of their means of action. These organisations would not have access to any of the bodies in which important decisions are taken. Furthermore, sections 16 and 17 of the Act of 19 December 1974 established a discriminatory system to the detriment of trade unions not affiliated to an organisation represented on the National Labour Council as regards the exercise of the most elementary rights in the field of freedom of association; for example, they could neither hold meetings on departmental premises, collect trade union dues during working hours, nor monitor examinations.

580. In conclusion, the complainant organisation stated that no objective and clearly defined criterion was applied for the recognition of an independent trade union; recognition depended solely on the political good will of the Government - that is to say the Minister of Employment and Labour - and the Belgian Government did not wish to accept organisations that were not politically oriented. The complainant organisation regretted that the uniting of all the independent unions, from both the public and the private sector, in a federation - the UNSI - had not had the desired influence on developments in the trade union situation, although the independent unions had made a point of complying with the wishes of the Government which was willing to negotiate only with unions that are inter-occupational.

581. In a subsequent communication dated 13 December 1983, the complainant organisation added that the Minister of Posts and Telecommunications decided, on 28 October 1983, to deprive the Postal Workers' Federation (POSTBOND), a trade union organisation representing the workers of this sector on the administrative council of the Post Office Social Service, of its right of representation as from 1 January 1984, replacing it by a liberal trade union which was allegedly not representative.

582. Furthermore, in a communication dated 8 November 1984, the UNSI referred to measures to implement the Act of 19 December 1974 concerning relations between the public authorities and the unions of employees coming under these authorities which had been adopted in the

Royal Order of 28 September 1984 published in the Official Gazette No. 105 (Moniteur Belge) dated 20 October 1984.

583. According to the UNSI, it was clear from this text that:

- (1) as far as the three higher committees were concerned, only trade unions with at least one seat on the National Labour Council were entitled to participate therein. Other organisations might sit only on the sectoral or special committees, whose importance was extremely limited since major decisions concerning staff were negotiated in the three higher committees;
- (2) as regards the membership count, it did not appear to be mandatory inasmuch as it had to be requested by the chairman of the committee - generally the Minister.

584. Furthermore, the UNSI had observed that its section representing railwaymen was unable to defend its members effectively since, under the trade union rules of the Belgian National Railway Company, only organisations represented on the National Labour Council were empowered to do so and the Minister of Employment and Labour was not prepared to grant it a seat on the Council.

B. The Government's reply

585. In its communication of 2 May 1984, the Government confirmed, in respect of its refusal to allow representatives of the complainant organisation to sit on the National Labour Council, that during the first quarter of 1983, the UNSI had submitted an application to the Minister of Employment and Labour to be represented on the Council. On 5 May 1983, the general administration of the Collective Labour Relations Department of the Ministry of Employment and Labour had informed the General Secretary of the UNSI that its application to be represented on the National Labour Council was premature since the membership of the Council could not be changed before 12 December 1984, when its members' term of office was to be renewed. Moreover, in a letter of 26 September 1983 addressed to the Vice-President of the UNSI, the Minister of Employment and Labour had confirmed that the organisation's application to be represented on the National Labour Council would be considered when the membership of the Council was being renewed, the procedure for which was to begin in June 1984.

586. The Government explained that section 2(2) of the Act of 29 May 1952 to establish a National Labour Council read as follows:

The members shall be appointed by the Crown. They shall comprise representatives in equal numbers of the most representative organisations of employers and of the most representative organisations of workers ...

The members representing the most representative organisations of workers shall be selected from among candidates nominated on a double list by the inter-occupational organisations federated at the national level.

It also pointed out that section 5 of the same Act of 29 May 1952 provided that members of the National Labour Council were appointed for a period of four years and that the present members of the National Labour Council had been appointed by Royal Order of 10 November 1980, effective as from 12 December 1980. The renewal of their term of office was due to take place on 12 December 1984.

587. The Government confirmed that only 22 seats had been allocated out of the 24 provided for in the relevant regulations; however, the two vacant seats could be allocated only in accordance with the principle of parity between delegates of employers' organisations and delegates of workers' organisations, as laid down in section 2(2) of the afore-mentioned Act of 29 May 1952. Thus, according to the Government, before allowing a workers' organisation to be represented on the National Labour Council, it was indispensable not only to investigate the representativity of that organisation but also, in view of the principle of parity on the National Labour Council and of the required balance between representatives of the two sides, to carry out a fresh study of the representativity of all the organisations of employers and the workers. The Minister of Employment and Labour had therefore rightly considered that in view of the scope of this study it should be undertaken as part of the normal procedure for the renewal of the term of office of the members of the Council. He had therefore informed the UNSI of his intention to consider this organisation's application in June 1984.

588. As regards the system of trade union allowances, the Government stated that the principle and conditions underlying the granting of a trade union allowance or any other advantage to unionised workers were matters, in the private sector, for consultation and collective bargaining. There were no laws or regulations establishing principles in this respect. One or more trade union organisations might conclude, with the employers' representatives or with one particular employer, a collective labour agreement containing a clause providing for the grant of a trade union allowance only to workers who were members of the organisations which were parties to the agreement. This clause, which laid down an obligation on the employer, was the counterpart of an obligation for the signatory unions to maintain industrial peace at the level of the sector of activity or of the undertaking. The role of the public authorities in this area was extremely limited, being confined to accepting to register a collective agreement with the Collective Labour Relations Department of the Ministry of Employment and Labour, and accepting to render binding by Royal Order a collective labour agreement reached by a joint body.

589. The Government disputed the argument put forward by the complainant organisation when it referred to recommendations made by

the Committee on Freedom of Association in Case No. 981. According to the Government, Belgium law confers no special advantage on the workers of a particular union. The Royal Orders rendering collective labour agreements binding were submitted to the courts for verification of their legal implications and might be quashed by the Council of State. Moreover, collective labour agreements that were not rendered binding might also be challenged in the courts of law.

590. The Government explained that Belgian jurisprudence had on several occasions upheld the legality of the system of advantages reserved for unionised workers or for the members of certain unions and that the judicial and administrative jurisdictions had specified the conditions in which such advantages could be considered legal. These conditions might be summarised as follows: the advantages must be in proportion to the contributions paid by the unionised workers; it was generally considered that the amount of the allowances should in no case exceed that of the contribution paid by the worker as a member of a union (that is to say, the annual dues paid by members to their organisation). The granting of advantages only to unionised workers could not undermine the rights acquired by the workers as a whole. An employer could not reserve solely for unionised workers what previously belonged to the workers as a whole. Lastly, the advantages must be the counterpart of the participation by workers belonging to the organisations which had signed the agreement, in the development of the socio-economic life of the undertaking or of the sector, and were generally granted in exchange for the expressed or tacit undertaking by the union to commit itself for a specific period to a policy of higher productivity or a policy of industrial peace.

591. The Government therefore considered that the system of trade union allowances granted in compliance with conditions laid down by jurisprudence was not contrary to article 20 of the Belgian Constitution which established freedom of association, nor to the provisions of the Act of 24 May 1921 which guaranteed this freedom of association since it protected the right of the individual to join or not to join a particular association.

592. The Government had recalled that the Committee on Freedom of Association had always recognised that the principle of freedom of choice did not prevent making a distinction between the most representative trade union and other trade unions or according special rights to the majority trade union, provided the distinction was made on the basis of objective criteria. According to the Government, the trade union organisations sitting on joint committees were workers' organisations which, on the basis of objective criteria laid down by Belgian law, had been recognised as the most representative in the sector concerned. It therefore followed that the criterion of representativity enabled the system of trade union allowances to satisfy one of the conditions on which Belgian jurisprudence had made the legality of this system depend, namely that the trade union allowance was a counterpart to the obligation to ensure growth of productivity or maintenance of industrial peace, since only organisations that were representative of the workers could achieve

the objectives of productivity and industrial peace in any particular sector.

593. In the case of the public sector, the Government, in reply to the allegation that Bill No. 371 was of such a nature as to deprive trade union organisations which were not members of the National Labour Council of any possibility of participating in the three general bargaining committees, whereas those organisations had previously been excluded only from the highest committee, i.e. the Committee for the Public Services as a whole, pointed out that Bill No. 371 had become law on 19 July 1983. It explained that the purpose of that legislation was to adopt the Act of 19 December 1974 to the new system of organisation of the State resulting from the 1980 constitutional reform and to amend provisions in respect of which certain difficulties in their implementation had become apparent.

594. Consequently, section 7 of the Act of 19 December 1974 laying down the criteria for representativity of trade union organisations sitting on the general bargaining committees had been modified. The former section 7 read as follows:

Section 7

Paragraph 1. Any trade union organisation which:

- (1) operates at the national level;
- (2) defends the interest of all categories of public sector staff;
- (3) is affiliated to a trade union organisation represented on the National Labour Council

shall be deemed representative and hence entitled to sit on the Joint Committee for the Public Services as a whole referred to in section 3, paragraph 1, subparagraph (3).

Paragraph 2. Any trade union organisation which:

- (1) satisfies the requirements of paragraph 1;
- (2) has a paid-up membership representing at least 10 per cent of the total staff employed in the public services referred to in section 1, paragraph 1, subparagraphs (1) and (2), to the members of whose staff the present Act has been made applicable

shall be deemed representative and hence entitled to sit on the national public services committee referred to in section 3, paragraph 1, subparagraph (1).

Paragraph 3. Any trade union which:

- (1) satisfies the requirements of paragraph 1; and
- (2) has a paid-up membership representing at least 10 per cent of the total staff employed in the public services referred to section 1, paragraph 1, subparagraphs (3), (4) and (5), to the members of whose staff the present Act has been made applicable

shall be deemed representative and hence entitled to sit on the provincial and local public services committee referred to in section 3, paragraph 1, subparagraph (2).

The new section 7 reads as follows:

Section 7

Any trade union organisation which:

- (1) operates at the national level;
- (2) defends the interests of all categories of public service staff;
- (3) is affiliated to a trade union organisation represented on the National Labour Council

shall be deemed representative and hence entitled to sit on the Joint Committee for the Public Services as a whole, on the national community and regional public services committees and on the provincial and local public services committees.

The Government explained that the representativity requirements had therefore been standardised, since a minimum number of paid-up members was no longer required for an organisation to be deemed representative and thus entitled to sit on the national, community and regional public services committees (formerly the "national public service committees"), and on the provincial and local public services committees. As a result, the conditions for access to these committees were now more easily met.

595. The Government considered that there was no basis for the complainant's statement that organisations which did not belong to the National Labour Council were no longer able to sit on the three general bargaining committees, whereas previously this applied only to the Joint Committee for the Public Services as a whole, because the standardisation of the requirements had made access to the other two committees easier and because these requirements (operation at the national level, defence of the interest of all categories of public service staff, affiliation to a trade union organisation represented on the National Labour Council) had already existed in the original text of the Act of 19 December 1974 for access to the Joint Committee

for the Public Services as a whole (former section 7, paragraph 1), the national public services committee (former section 7, paragraph 2, subparagraph 1) and the provincial and local public service committees (former section 7, paragraph 3, subparagraph 3).

596. The Government pointed out that, since no conditions for access to the general committees had been added by the new Act, the complainant's grievance must be interpreted as referring to the three above-mentioned requirements (which existed before the entry into force of the Act of 19 July 1983 and which had been maintained in force by that Act), in particular the requirement of affiliation to a trade union organisation represented on the National Labour Council. The Government indicated that this requirement had been previously submitted to the Committee on Freedom of Association for consideration in Case No. 655 and that the Committee then noted that the Government had pointed out "that the requirement that the union must be affiliated to a trade union organisation represented on the National Labour Council to be entitled to sit on the general bargaining committees is intended to prevent precedence being given to organisations of public service employees which might tend to concern themselves purely with the interests of their own members, without taking into account those of employees as a whole, and the solidarity to be shown towards the latter" and "that in view of the multiplicity of unions in the Belgian public sector it was necessary for a selection to be made for the purposes of bargaining and consultation". According to the Government, the Committee had recommended that this selection should continue to be based on an evaluation of representativity, determined objectively, which, it stated, continued to be the practice. It refuted the allegation that the legislation criticised by the complainant showed a determination on the part of the Government to paralyse the functioning of an independent trade union, thus ignoring an earlier opinion expressed by the ILO.

597. On this point, the Government considered it had been established that the new Act was primarily of a technical nature and that the amendment of section 7 of the Act of 19 December 1974 (concerning the representativity required for entitlement to sit on the general bargaining committees) had had the effect of reducing the Act's requirements by standardising them. The Government considered that there were no grounds for the allegation: (1) first, because the independent trade unions were offered the possibility of sitting on the various bargaining and consultation committees referred to in sections 3, 4 and 10 of the Act of 19 December 1974 if they met the representativity requirements set out in sections 7 and 8 of the Act. While it was true that the complainant organisation was not currently affiliated to a trade union organisation represented on the National Labour Council and therefore could not be deemed representative and hence entitled to sit on the general bargaining committees (section 7 of the Act of 19 December 1974), it was nevertheless possible for it, upon the forthcoming entry into force of the said Act, to establish that it had the largest paid-up membership of any of the trade union organisations not affiliated to a trade

union organisation represented on the National Labour Council. This membership, which amounted to at least 10 per cent of the staff of the services coming under a sectoral committee or a special committee referred to in section 4 of the Act, would thus allow it to sit on these committees (section 8 of the Act); (2) second, because the Committee on Freedom of Association recognised in Case No. 655 (158th Report, paragraph 57) that "the fact that the trade union organisation was debarred from membership of joint committees did not necessarily imply infringement of the trade union rights of that organisation; but for there to be no infringement two conditions must be met". The first condition was that the question whether or not a union was sufficiently representative to sit on such bodies must be determined by objective criteria. This aspect had already been submitted for consideration to the Committee on Freedom of Association. The Government had pointed out at the time, as regards Case No. 655 (158th Report, paragraph 66) that objective and pre-determined criteria were applicable to trade unions by virtue of sections 7 and 8 of the Act. The second condition was the guarantee granted to trade union organisations deemed non-representative enabling them to further and defend the interests of their members, within the meaning of Article 10 of Convention No. 87, through the activities which they could undertake in other fields and the other rights which they enjoyed. This guarantee, which was independent of any condition of representativity, was provided by the approval arrangements set out in section 15 of the Act of 19 December 1974. An organisation obtained such approval by sending a copy of its rules and a list of its officers to the authority which, in this respect, was the body with competence in such matters. Approval conferred on the organisation concerned the prerogatives referred to in section 16 of the Act of 19 December 1974 (right to intervene with the authorities on behalf of employees, to assist an employee who has been required to justify his actions, to post notices on the premises of the department concerned and to receive documentation concerning staff administration).

598. The Government also refuted the allegation that sections 16 and 17 of the Act of 19 December 1974 established a system which discriminated against trade union organisations which were not represented on the National Labour Council with respect to the exercise of the most elementary rights in the field of freedom of association, namely that it was impossible for the complainant to hold meetings and to collect union dues on departmental premises and to monitor examinations.

599. The Government indicated that sections 16 and 17 read as follows:

Section 16

Approved trade union organisations may, under conditions laid down by the Crown:

- (1) intercede with the authorities on behalf of all the staff whom they represent or on behalf of any individual employee;

- (2) at his request, assist an employee summoned to justify his actions before the administrative authority;
- (3) post notices on the premises of the department concerned;
- (4) receive general documentation concerning the administration of the staff whom they represent.

Section 17

Under conditions laid down by the Crown and without prejudice to the other prerogatives conferred upon them by the present Act, representative trade union organisations may:

- (1) exercise the prerogatives of approved trade union organisations;
- (2) collect trade union dues on departmental premises during working hours;
- (3) attend the competitive examinations and tests organised for employees, without prejudice to the prerogatives of the examiners;
- (4) hold meetings on departmental premises.

600. The Government explained that sections 16 and 17 of the Act reserved for trade union organisations prerogatives which varied according to whether the organisation concerned was approved or was deemed representative. However, this was not considered by the Government to constitute discrimination against the former type of organisation, since the Committee on Freedom of Association had recognised (158th Report, Case No. 655, para. 57) that certain advantages, especially with regard to representation, might, in certain circumstances, be accorded to trade unions by reason of the extent of their representativity. The Government contended that the withholding of certain prerogatives from trade union organisations which were not deemed representative within the meaning of the Act of 19 December 1974 must be regarded as justified.

601. The Government disputed the allegation that, according to official statistics of trade union allowances paid in the public sector, the three trade unions considered the most representative represented only about 30 per cent of staff in the sector. It had pointed out that the Prime Minister himself had stated that 620,391 allowances had been paid during the reference years 1977 and 1978. It had been established that the total number of staff members to whom the Act respecting the trade union allowance was applicable was equal, for the reference years 1977 and 1978 combined, to 1,336,610 units. According to the Government, the number of staff to whom a trade union allowance had been paid represented 46.42 per cent of the total. However, this percentage (which did not correspond to that indicated by the complainant organisation), must not be regarded as representing

the level of membership of the three trade union organisations deemed to be the most representative. In the first place, figures for later reference periods were not yet available and might reveal a percentage exceeding that mentioned above, owing to an amendment of the regulations concerning the trade union allowance which had had the effect of increasing the number of beneficiaries (section 4(3) of the Royal Order of 30 September 1980, introduced by Royal Order of 18 April 1982); in the second place, many employees who satisfied the legal and regulatory requirements for entitlement to this allowance had chosen not to claim it by refraining from completing the application form which had to be addressed to the payment bodies set up by the trade union organisations concerned. According to the Government, the percentage which the complainant organisation had given as corresponding to the trade union allowance was incorrect as it did not correspond to the figure communicated by the Prime Minister.

602. Regarding the allegation that the three recognised political unions refused a membership count, the Government pointed out that a Royal Order to implement the Act of 19 December 1974 that would shortly come into force would have the effect of removing the transitional arrangements and instituting a comprehensive union allowance scheme.

603. In a subsequent communication dated 11 May 1984, the Government stated in connection with that part of the complaint concerning the representation of the Postal Workers' Federation on the administration council of the Post Office Social Service that three appeals lodged by the Federation were before the Council of State of Belgium: a request for the repeal of section 13 of Royal Order No. 182 of 30 December 1982 respecting the restructuring of the Post Office, which provided for the creation of a supervisory body; a request for the repeal of the Ministerial Order of 30 September 1983, which provided for the establishment of a contact committee at the headquarters of each postal region and at the general and central administration of the postal service; and a request for the repeal of the Ministerial Order of 28 October 1983 approving the association referred to in the National Federation of Independent Trade Union's complaint, which was an association engaged in social assistance activities for post office staff. The Government considered that it had to await the outcome of these internal appeals before taking a stand on an international appeal.

604. In its communication of 12 October 1984, the Government had requested that examination of the case be adjourned on the grounds that the decisions concerning the renewal of the terms of office of the members of the National Labour Council were due to be taken at the end of the year. It renewed its request for adjournment on several occasions, the last being in May 1985.

605. Since then, the Government sent a reply dated 24 September 1985. It points out that the renewal of the terms of office of the members of the National Labour Council had been due in December 1984 but that some difficulties had arisen concerning distribution in the

employers' group and that it was only in the month of August 1985 that the latter had been able to adopt a final stand. Under the provisions of the Royal Decree of 18 July 1985, it increased the number of members of the National Labour Council from 22 to 24, as permitted by the Act of 19 May 1952, and, by Royal Decree of 26 July 1985, it appointed eight representatives of the Federation of Belgian Enterprises, three representatives of the Higher Council of Employers in small enterprises and self-employed persons and one representative of a farmers' occupational organisation, as delegates of employers' associations, as well as six representatives of the Belgian General Federation of Labour, five representatives of the Confederation of Christian Trade Unions and one representative of the Federation of Liberal Trade Unions of Belgium as delegates of workers' associations.

606. The Government states that no seat has been attributed to the National Federation of Independent Trade Unions (UNSI) because, in its view, this organisation cannot at the present time be considered as one of the most representative workers' organisations since, after examination of the documents presented by the complainant organisation, the associations which comprise it have a total of less than 100,000 members, a very large proportion of whom is in the public sector. Furthermore, it has not been shown that the number of members belonging to the private sector justifies recognition of the UNSI as a workers' organisation amongst the most representative of the private sector: some of the details concerning the number of affiliates show only 28,430 members in the private sector and UNSI does not give any information on the 23,485 members which it assigns to one of its component organisations, the Cartel of Independent Unions of Belgium. The request for further details in this respect has remained unanswered.

607. The Government recalls that the 1952 legislation deliberately excluded numerical criteria concerning the representativity of workers' organisations so as not to limit the discretionary power of the Crown, as head of the executive. It therefore believes that there are no grounds for reference to section 3 of the Act of 15 December 1968 concerning collective bargaining and the committees which requires, in particular, that workers' organisations comprise approximately 50,000 members. This criterion, according to the Government, is only an absolute minimum since the sphere of action of the National Labour Council is necessarily much greater than that of a single branch of activity. It recalls that the number of affiliates is not the only criterion which should guide the choice of the Government and that according to the parliamentary proceedings of 1952, the legislation requires that an organisation be stable for it to be recognised as representative, so that it is in a position to ensure the respect of the agreements which it signs. According to the Government, since the National Union of Independent Trade Unions was established only on 9 November 1982, it has not yet been able to give proof of such stability.

608. As regards the consequences of non-participation in the National Labour Council, the Government explains that in accordance

with the provisions of the Act of 5 December 1968, the signing of a collective labour agreement is reserved to the representative organisations. These agreements have a binding and direct effect on third parties. This in no way means that the other organisations may not conclude collective agreements but that their effect will remain limited to only the contracting parties, in accordance with the provisions of common law.

609. In the same way, the Government adds, the advantages which are accorded under collective agreements to only unionised workers may not be considered as contrary to freedom of association since they are much less than the cost of union dues given the jurisprudential rules established, in particular, by the Council of State.

610. The Government furthermore constantly ensures that the advantages are related to the degree of representativity, as can be seen by the reform which the Act of 22 January 1985 introduced as regards organisations which can present candidates to the Electoral College of executive staff of the works council. Provision was made in this Act that in addition to the occupational organisations of executive staff represented in the National Labour Council, the specific organisations of executive staff with at least 10,000 members and the individual lists of executive staff supported by 10 per cent of the electors will be allowed to present candidates. This decision shows the concern of the Government to base the criteria of representativity on real situations, excluding any type of discrimination.

611. As regards labour relations in the public sector, the Government states that the Act of 19 December 1974 concerning relations between the public authorities and the unions of employees coming under these authorities was recently implemented by Royal Order dated 28 September 1984 in pursuance of which certain changes were made to the labour relations system in the public sector.

612. The Government admits that the UNSI is not at the present time affiliated to a trade union organisation represented on the National Labour Council and therefore cannot, for the time being, be considered as representative to sit on the general bargaining committees (section 7 of the Act of 19 December 1974). It adds that the UNSI may, however, under the provisions of section 8, paragraph 1(2), and paragraph 2(2) of the 1974 Act and sections 53-65 of the Royal Decree of 28 September 1984 implementing this Act, be considered as representative to sit on the sectoral committees and specific committees.

613. The Government points out that the UNSI has, to this end, and in pursuance of section 53 of the Royal Decree of 28 September 1984, presented its candidacy in letters dated 26 and 27 December 1984 to the competent authorities, and that the latter immediately proceeded to verify whether this organisation satisfied the conditions established by the law. This examination, carried out along with

that requested by other organisations seeking admission, is currently under way.

614. As regards the approval arrangements contained in sections 15 and 16 of the Act of 19 December 1974 implemented by Royal Decree of 28 September 1984, the complainant organisation, like the other trade union organisations, as early as 1 December 1984, requested and obtained its approval. It exercises the prerogatives conferred upon it by section 16 of the 1974 Act and letters of official recognition have been delivered to the trade union leaders of UNSI.

615. As regards the trade union allowance, the Government explains that, since the Act of 19 December 1974 was recently implemented by the Royal Decree of 28 September 1984, the non-implementation of the Act of 19 December 1974 to which UNSI referred will no longer constitute an obstacle to the comprehensive application of the Act on the trade union allowance. Such a comprehensive union allowance scheme presupposes, however, that the trade union organisations considered as representative to sit on the sectoral committees and the specific committees for which provision is made in this Act should be determined beforehand by a membership count. The results of this count will be available only during the course of 1985. It is for this reason that the Act of 22 January 1985 extended the transitory application of the Act respecting the trade union allowance for the reference years 1983, 1984 and 1985; this extension does not compromise the rights of the UNSI. If its representativity is established in 1985, it will be able to benefit from the system of the trade union allowance from 1986.

616. As regards the representativity of the UNSI - in the public sector, in the bargaining committees established by or under the Act of 19 December 1974 - an examination of this representativity is under way: it was decided on 13 May 1985, as regards the general bargaining committees (section 7 of the 1974 Act) that, since the complainant organisation is not affiliated to a trade union organisation represented on the National Labour Council, it is not considered as representative to sit on the general bargaining committees and, as regards the sectoral committees (section 8 of the 1974 Act), that UNSI satisfies the requirements of representativity to present its candidacy.

617. An examination of the criteria of representativity is thus now being carried out by an independent commission enjoying autonomous decision-making powers and composed of three judicial magistrates. The purpose of this examination is to verify whether the UNSI has a sufficient number of paid-up members to be considered as representative to sit on the different sectoral committees to which the complainant organisation has requested admission. The results are expected before the end of 1985; the work involves the examination and comparison of staff lists and paid-up membership lists of the trade union organisations.

618. In conclusion, the Belgian Government believes that it has satisfied the request of the UNSI as regards the examination the conditions of representativity and has done everything possible to ensure that this examination is carried out in conditions which respect freedom of association, by entrusting the examination to an autonomous commission composed of independent magistrates and ensuring that the criteria established do not infringe the rights of trade union organisations.

C. The Committee's conclusions

619. This complaint, presented by a trade union federation organised at the inter-occupational and national level and which claims to be representative, concerns the difficulties it is encountering in its efforts to gain a seat on the National Labour Council. It also deals with the obstacles to its normal functioning and the discriminatory treatment that results from its inability to take part in the work of the Council.

620. At the Government's request, the Committee adjourned examination of this case in November 1984 and in February and May 1985.

621. Before giving any opinion on the issues involved in this case, certain aspects of which have already been raised in connection with a number of similar cases brought before the Committee on Freedom of Association [69th and 93rd Reports, Case No. 281 (Belgium); 92nd Report, Case No. 376 (Belgium); 130th, 143rd and 158th Reports, Case No. 655 (Belgium); 197th Report, Case No. 918 (Belgium); 208th Report, Case No. 981 (Belgium)], the Committee believes that they should be looked at in the framework of its past observations on the question of trade union representativity.

622. In general terms, the Committee has recognised that certain advantages might be accorded to trade unions by reason of the extent of their representativity, but has taken the view that the intervention of the public authorities with regard to advantages should not be of such a nature as to influence unduly the choice of the workers in respect of the organisation to which they wish to belong. The Committee has also taken the view that the fact that a trade union organisation is debarred from membership of joint committees does not necessarily imply an infringement of the trade union rights of that organisation, provided two conditions are met: first, the reason for which a union is debarred from participation in a joint committee must lie in its non-representative character, determined by objective criteria; second, in spite of such non-participation, the other rights which it enjoys and the activities it can undertake in other fields must enable it effectively "to further and defend the interests" of its members within the meaning of Article 10 of the Freedom of Association and the Protection of the