

FIGUEROA José Substitute President of the Confederation of Building Workers; arrested.

RIVERA José National leader of the Confederation of Building Workers; arrested.

Case No. 1326

COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TEACHERS' UNIONS AND THE SRAMIK KARMACHARI OKKYA PARISHAD AGAINST THE GOVERNMENT OF BANGLADESH

806. The World Federation of Teachers' Unions presented a complaint of violations of trade union rights in a communication dated 3 April 1985. The Sramik Karmachari Okkya Parishad, jointly with the following 14 Bangladeshi trade union federations, presented its complaint on 27 May 1985: Bangladesh Workers Federation, Bangladesh Trade Union Sangha, Bangladesh Federation of Labour, Bangladesh Trade Union Kandra, Jatio Sramik Federation, Ganatantrik Sramik Andolon, Jatio Sramik League, Samaj Tantrik Sramik Federation, Jatio Sramik Jote, Sangukta Sramik Federation, Jatio Sramik League - Bangladesh, Bangla Sramik Federation, Bangladesh Sramik Federation, Jatiotabadi Sramik Dal. The Government replied in a communication dated 29 June 1985.

807. Bangladesh has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No.98); it has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

808. In its communication of 3 April 1985, the World Federation of Teachers' Unions alleges the detention, at the beginning of March, of several teachers including Mr. Shareful Islam and Mr. Ppal Abdul Mannan, President and Secretary-General respectively of the Bangladesh College Teachers' Association (BCTA), an affiliate of this complainant, after the reimposition of martial law on 1 March 1985. The complainant states that they have been sentenced to one month's detention by application of the Special Power Act No. 74. It points out that Mr. Shareful Islam has already suffered, in the past, several months' imprisonment because of his trade union activities. It denounces the Government of Bangladesh for violations of Conventions Nos. 87, 98, 151 and the joint ILO/UNESCO Recommendation on the Status of Teachers of 1966. It fears that the detention will be extended

and requests the cessation of proceedings and the release of the imprisoned teachers.

809. In the communication of 27 May 1985 presented jointly by a total of 15 Bangladeshi trade union federations, it is alleged that the Government has violated Conventions Nos. 87 and 98 by the introduction of martial law on 1 March 1985. According to the federations, under martial law, trade union activities are banned as are the holding of meetings, collective bargaining and strikes.

810. The complainants state that the Government has arrested many trade unionists without giving reasons and has held them in custody over the last few months without trial.

811. More specifically, the complainants refer to the following legislation as infringing freedom of association: the Industrial Relations Ordinance of 1969 (which restricts the right to join trade unions of public servants and management staff and which restricts election to union office to those employed in the particular establishment); Rule 10 of Industrial Relations Regulations of 1977 (which empowers the Registrar of Trade Unions to enter trade union premises and inspect or seize any union record). The complainants also allege that public sector employees and public servants are denied the right to bargain collectively.

B. The Government's reply

812. In its communication of 29 June 1985, the Government states that there is no registered trade union in Bangladesh named the "Bangladesh College Teachers' Association" and that Mr. Shareful Islam and Mr. Abdul Mannan are not known in the trade union sphere as trade union leaders.

813. Moreover, according to the Government, the law prohibits any trade union activity by any organisation which has not been registered under the Industrial Relations Ordinance and such activity would be a penal offence. Nevertheless, no prosecution proceedings have been commenced by the Registrar of Trade Unions against the persons in question. The Government states that it is examining the case very carefully and will furnish detailed information shortly.

C. The Committee's conclusions

814. The Committee notes that this case concerns the re-imposition of martial law in Bangladesh on 1 March 1985 and the alleged consequent arrest of several teachers including two teachers' union leaders, Mr. Shareful Islam and Mr. Abdul Mannan. The

complainants also allege that the current labour legislation infringes the principles of freedom of association.

815. The Committee observes that, although one of the complainants infers that Mr. Shareful Islam was arrested because of his trade union activities, the Government denies that the two named individuals are known in the trade union sphere as trade union leaders and that proceedings have been instituted against them by the Registrar of Trade Unions. It also points out that there is no registered trade union of the name of their organisation, namely the Bangladesh College Teachers' Association. In this respect, the Committee recalls that it has already had occasion to examine similar allegations against the Government of Bangladesh concerning Mr. Shareful Islam when he was Secretary-General of the Bangladesh College Teachers' Association (Case No. 1246 examined in the Committee's 234th Report, paras. 66 to 74, approved by the Governing Body at its 226th Session, May-June 1984). In that case the Government recognised both the existence of the trade union association involved and Mr. Islam's role in it.

816. The Committee regrets that the complainant organisations, despite having opportunities to do so, did not supply more detailed information as to the circumstances surrounding the alleged arrests, in particular the arrest of Mr. Abdul Mannan and Mr. Islam. However, in view of the fact that at least in the case of Mr. Islam, his trade union role and activities have been put forward as the sole basis for the action taken against him, the Committee would stress that, in such cases, it has considered it incumbent upon the Government to show that the measures taken were in no way occasioned by the trade union activities of the individual concerned. [See, for example, 103rd Report, Case No. 536 (Gabon), para. 292.] Given that the Government has undertaken to supply further information, the Committee hopes that details will be forthcoming as to whether any arrests took place (and, if so, for what reasons and on the basis of which legislation, i.e. under the Special Power Act No. 74, under the Industrial Relations Ordinance or other legislation), so as to enable it to reach conclusions on this aspect of the case in full knowledge of the facts.

817. As regards the alleged restrictions on trade union rights consequent on the re-introduction of martial law and the specific restrictions on the freedom of association and collective bargaining rights of public employees contained in the labour legislation, the Committee notes that the ILO Committee of Experts on the Application of Conventions and Recommendations, in its 1985 examination of the Government's compliance with its obligations under Conventions Nos. 87 and 98, pointed to several discrepancies between the rights guaranteed under these Conventions and the present legislation.

818. In particular, the Committee of Experts in its observation concerning Convention No. 87 noted that, under section 2(xxviii)(b) of the Industrial Relations Ordinance, the definition of a worker excludes a person who is employed in a managerial or administrative

capacity. It noted the Government's statement that it is not possible to determine the nature of the employment covered by this provision or the number of persons concerned. The Committee of Experts pointed out that, by virtue of Article 9 of Convention No. 87, only the armed forces and the police may be excluded from the scope of the Convention and that the rights it sets forth must, therefore, also be recognised to public servants and managerial staff. It requested the Government to adopt appropriate measures to guarantee the application of the principles of the Convention to these categories of workers. The Committee of Experts also observed that section 7A(1)(a)(ii) and (b) of the Industrial Relations Ordinance limits the right to be a member or officer of a trade union to persons actually employed in an establishment or group of establishments concerned. It considered that a provision of this kind restricts the right of workers to establish and to join organisations of their own choosing (Article 2 of Convention No. 87), to elect their representatives in full freedom and to organise their administration and activities (Article 3). It noted with interest the Government's statement that it was prepared to examine these provisions and that measures to ease them are under study, and pointed out that the free exercise of the right to establish and to join unions implies the free determination of the structure and composition of unions. It also considered that restrictive conditions attached to trade union office constitute interference in the internal affairs of the unions. The Committee of Experts, therefore, hoped that these provisions would be repealed in the near future. In addition, the Committee of Experts noted that, under Rule 10 of the Industrial Relations Regulations, 1977, the Registrar or any other officer authorised by him may enter the premises of a trade union or federation of trade unions and inspect and seize any record, register or other document. This procedure, under which an administrative authority has wide powers of supervision over the internal affairs of a trade union, is, according to the Committee of Experts, incompatible with the right of workers to organise their administration (Article 3 of Convention No. 87). The Committee again requested the Government to reconsider this provision.

819. In its 1985 observation concerning Bangladesh's observance of Convention No. 98, the Committee of Experts emphasised that, under Article 4 of this Convention, it is the responsibility of the Government to take appropriate measures to encourage and promote the full development and utilisation of machinery for voluntary negotiation, and noted that it had previously observed that, under the State-Owned Manufacturing Industries Act, No. X of 1974, the Government may determine wages and other conditions of employment (leave) for any worker employed in this sector. Referring to its General Survey submitted to the 69th (1983) Session of the International Labour Conference, particularly paragraph 311, the Committee of Experts pointed out that the right to negotiate wages and conditions of employment freely with the employers and their organisations is a fundamental aspect of freedom of association and that if, for compelling reasons of national economic interest, a government considers that wage rates cannot be fixed freely through collective agreements, such a restriction should be imposed as an

exceptional measure and only so far as is necessary, without exceeding a reasonable period and should be accompanied by adequate safeguards to protect the living standards of the workers. It accordingly requested the Government to reconsider the situation in the light of these comments, with a view to restoring voluntary bargaining in the sector concerned.

820. Despite the lack of a specific reply from the Government on the legislative aspect of the case, the Committee can only recall the Committee of Experts' request that the Government reconsider the legislative situation with a view to bringing the legislation into conformity with the principles of freedom of association. It reaches this decision in particular since, in past cases [See 235th and 238th Reports, Cases Nos. 997, 999 and 1029 (Turkey), paras. 33 and 36], the Committee has stressed that martial law is incompatible with the full exercise of trade union rights.

The Committee's recommendations

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

- (a) in view of the lack of information from both the complainants and the Government concerning the alleged arrest of two named teachers' union leaders, the Committee hopes that the further reply promised by the Government will shed light on the circumstances so as to enable it to reach conclusions on this aspect of the case in full knowledge of the facts;
- (b) the Committee recalls the Committee of Experts' request - made in the context of its 1985 examination of the Government's application of Conventions Nos. 87 and 98 - that the Government reconsider the legislative situation regarding the right to organise of managerial and administrative employees, election to trade union office, administrative powers of supervision over the internal affairs of unions and collective bargaining in State-owned manufacturing industries, so as to bring the legislation into conformity with the principles of freedom of association.

Case No. 1330

COMPLAINT PRESENTED BY THE NATIONAL ASSOCIATION OF
AGRICULTURAL, COMMERCIAL AND INDUSTRIAL EMPLOYEES
AND FIVE OTHER TRADE UNIONS
AGAINST THE GOVERNMENT OF GUYANA

822. The complaint is contained in a communication from the National Association of Agricultural, Commercial and Industrial Employees (NAACIE) dated 9 April 1985. The Government replied in a communication dated 31 July 1985.

823. Guyana 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). It has also ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

824. The complainants allege that fundamental norms and principles proclaimed in accepted international labour practice are being deliberately and systematically flouted as a result of government policy; that freedom of association and trade union rights have come under assault as a result of deliberate government action, including the concurrent holding of public office and of positions of responsibility within the Trade Union Congress by government ministers and senior public officials and through the employment of intimidation to prevent the recognition of freely chosen trade unions. In addition it is alleged that the right of collective bargaining has been directly attacked through the Government's imposition of a negotiating partner for public sector employees, and by the removal of contractual rights through the Labour Amendment Act.

825. In a memorandum contained in its communication, the complainant sets out details concerning a number of industrial disputes which it alleges involved discriminatory and or intimidatory action against workers and trade union officials who had been engaged in strikes which had occurred in March and May 1983 respectively in government-owned enterprises in the packaging and the mining industries; and provides instances of such action which it alleges was taken against trade union members and officials in other state-owned enterprises. It also provides information relating to events which took place in March 1984 in relation to the sugar industry concerning workers employed by the Guyana Sugar Corporation, which it alleges gave rise to the passage of the Labour Amendment Act and elaborates its objections to this legislation which it claims, inter alia, altered the fundamental rights clause of the Constitution

in relation to property; reversed a Court of Appeal decision upholding the contractual rights of workers in the sugar industry; and interfered with free collective bargaining by making an agreement entered into in 1977 between the Guyana Trades Union Congress (GTUC) and the Government, and any other such agreement entered into in future, binding on all public sector employees.

826. In relation to the last of these matters, the complainant states that there can be no genuine or proper collective bargaining between the Government and the GTUC because two Ministers and a Parliamentary Secretary are members of the GTUC executive and are privy to all decisions taken at executive level; as the ministers are said to accept the doctrine of paramountcy of the party and are bound by oath to Cabinet secrecy, it is the Government that benefits from their presence on the GTUC executive.

827. Concerning the action taken against trade union members and officials in the mining industry, the complainant alleges that 1,721 workers at Guyana Mining Enterprises Limited were dismissed under the guise of retrenchment in July 1983, following a general strike in the bauxite industry which had resulted from the imposition by the employers of a three-day week in retaliation for a one-day-per-week strike decided in May 1983 by the Guyana Mine Workers Union (GMWU) and the Guyana Bauxite Supervisors Union (GBSU). Among those affected were a number of trade union officials, including the President of the GBSU, the Treasurer of the GMWU and all the shop stewards. Efforts by the GTUC to secure reinstatement of the workers had been unsuccessful.

828. Actions relating to workers employed at Seals and Packaging Industry Limited (in which a majority of the shares are said to be owned by the Government) which are the subject of the complaint are alleged to have arisen after workers in the industry had requested the complainant to act as their sole bargaining agent in February 1983; its application was referred by the company to the Ministry of Labour for advice following a request for bargaining rights on behalf of the workers by the Guyana Labour Union (GLU), which, the complainant alleges, is government-backed. The complainant states that the Ministry sought the guidance of the GTUC which it alleges was supporting and had been controlled by the Government. It further alleges that pressure was brought to bear on workers to join the GLU, which it claims they refused to do (it attaches a petition signed by 27 workers and addressed to the GTUC, inter alia supporting the GTUC's advice that a poll be held and pledging their support to the complainant). It states that shortly thereafter two of its militant members were retrenched although they were skilled workers, and casual workers were retained; that this gave rise to a protest strike by the entire workforce, which was only called off after two days, following an agreement between the complainant's General Secretary and the Chief Labour Officer. On reporting for duty following the ending of the strike, all workers were, according to the complainant, refused entry and served with letters stating that, as a result of the strike action, management had concluded that they had of their own volition

and by design terminated their employment. The complainant states that subsequently it advised workers to accept offers of re-employment despite the company's indication to some workers that this would happen only if they stopped union agitation. Seven of the workers were not re-employed. The complainant concludes this aspect of its allegations by stating that the workers at the company are still insisting that it be recognised as sole bargaining agent, but that the Government will not allow an independent union to make inroads into the public sector and is guilty of fostering "company unionism".

829. Other allegations of anti-union discrimination by the complainants concern: (a) the dismissal, by the General Secretary of the General Workers Union of one of the union's field officers and the Treasurer, both of whom are said to have applied to the courts for redress, though this process is said to be tardy, and the retrenchment of another field officer following his reversion to service with the Guyana Rice Board. These dismissals are said to have taken place because the individuals involved voted in GTUC elections against the wishes of the ruling party; (b) under the same heading, the complainant refers to the dismissal of two employees of the Guyana Co-operative Mortgage Finance Bank.

B. The Government's reply

830. In its communication of 31 July the Government denies the complainant's general allegation concerning the flouting of international labour standards; it points out that no evidence is adduced in this regard and that, although it also denies that there have been departures from good industrial relations, it is of the view that the complainants have been unable to show that alleged defects of this kind have been deliberately occasioned by the Government or its policies. It also denies that freedom of association and other trade union rights are under assault by the Government as alleged.

831. It states that the two Ministers and the Parliamentary Secretary who are on the executive of the GTUC were elected to that body prior to their appointment to government office, and that they continue to serve the TUC, having been re-elected to their positions; that there is nothing in the Constitution of the GTUC to disqualify them from holding such positions while holding ministerial office; and it cites precedents from other countries in the West Indies where public personalities have occupied ministerial posts at the same time as high trade union office.

832. On the question of the use of intimidation to prevent the recognition of freely chosen trade unions, the Government states that the party in power does not use intimidatory tactics, and that recognition issues are processed in accordance with accepted procedures. Where such issues involve trade unions which are members of the GTUC they are submitted to that body, which is independent and

whose deliberations the party in office cannot and does not direct, and which thereafter submits its advice to the Ministry of Manpower and Co-operatives for further action.

833. According to the Government the right to collective bargaining is not being attacked. It points out in this regard that it has recently ratified Convention No. 154 on the Right to Collective Bargaining and that it fully respects its obligations thereunder. It further points out that the complainant unions are part of a GTUC delegation which is presently negotiating wage increases in the public sector, and that all the unions in that sector form part of the GTUC's team which negotiates with the Government.

834. As regards the allegations relating to the mining industry, an annexure attached to the Government's communication states that, although Guyana Mining Enterprises Limited is wholly owned by the Government, it would be wrong to assume that any breach by the company of accepted labour relations practices indicates a breach by the Government of its obligations under international labour instruments. It adds that the complainants' allegations are wholly lacking in merit; that the company's initial reduction of the working week during the course of the one-day-per-week stoppage was not retaliation but the result of economic considerations, i.e. considerable losses which were being sustained since 1982 and which would in any event have led to a reduction in the workforce; that the sudden and unstructured reduction in the effective strength of the workforce by that stoppage made matters worse so that the only alternative to shutting down operations completely was a reduction in the working week; and that the general strike in the industry had further exacerbated the situation. The ending of the strike had been preceded by an agreement that the company and the union would meet for the purpose of recommending measures for the reduction in operating costs and ensuring the continued viability of the enterprise; such meetings had taken place, but no agreement had been reached and as a result the company had been obliged to proceed with an exercise involving limited retrenchment, details of which had been disclosed at a meeting with the GTUC and the unions, at which the Minister of Manpower and Co-operatives had presided, and which are outlined in the Government's communication. These relate, inter alia, to the fact that 1,428 (not 1,721 as alleged) employees had been retrenched, with a further 330 being reinstated later; and to the categories of workers to be involved (according to age or length of service) as well as the procedures to be followed by managers. The Government acknowledges that the entire branch executive of the union was retrenched at one plant, along with other workers, and all union officers but two had been retrenched at another plant, but it states that in the first of these instances the plant had not operated as a production unit for more than a year, and as regards the second the number by which the workforce was reduced was decided without references to names or union positions held. It confirms that a number of union officials, including some but not all shop stewards, were among those who have been retrenched, but strongly denies any victimisation and states that the cause was economic necessity and the

process took full account of the applicable criteria. It points out furthermore that a number of the retrenched union officials were among those who were reinstated and that this in its view corroborates the absence of victimisation.

835. As regards the recognition aspects of the events at Seals and Packaging Industry Limited, the Government refers to the fact that two unions had requested sole bargaining rights, and that the company had asked for the Ministry's assistance, following which it had sought the advice of the GTUC in keeping with recognised and accepted industrial relations practice. It had subsequently received a copy of a letter from 27 workers urging the GTUC to advise the Ministry to conduct a poll in order to resolve the dispute. Up to the present, the GTUC had not tendered advice though it had informed the Ministry in August 1983 that one of its committees had been asked to expedite its report on the union recognition dispute. The Government adds that in the meantime the workers had decided against being represented by either of the unions seeking sole bargaining rights and were represented by a staff association; there had been no agitation for recognition of either union.

836. As regards dismissal of workers at Seals and Packaging Industry Limited, the Government states that it was informed by the company that there had been an unofficial strike involving 22 casual workers, over a period of approximately one month in June and July 1983. Three of those who had been on strike returned to work at its conclusion and, although 19 had been given notices of termination, all but seven (who had not responded to the company's invitation to return) were re-employed without break of service. The dismissal of the seven was, the Government states, totally unrelated to their trade union activities. The Government further states that the retrenchment of the two union activists referred to by the complainant came about because the special project on which they had been working came to an end and they had consequently become redundant.

837. As regards the other allegations of dismissals, the Government states that it was not requested to mediate in the case of the two officials of the General Workers Union (GWU) who were dismissed and have sought redress through the courts, although it regards the complainant's remark about the tardiness of the process as unfair and irresponsible, especially in view of the reference in another part of the complaint to the role of the courts in upholding claims by workers. As to the GWU official who had been retrenched after re-employment by the Guyana Rice Board, this person had previously had no guaranteed post but had been employed seasonally; he had been made redundant after the plant at which he had been employed had been to a large extent destroyed by fire, which resulted in the laying off of other employees there as well. The Government denies any impropriety on its part as regards the dismissal of the two employees of the Guyana Co-operative Mortgage Finance Bank, in respect of whom no representations had been made by the staff association of the bank and whom the Government was advised had been dismissed, after warnings, for late arrivals at work.

838. Finally, as regards the Labour Amendment Act, the Government points out that the matter is sub judice as the validity and constitutionality of the entire Act are being challenged following the hearing of an extremely complicated case in respect of which judgement had not yet been rendered; it does, however, deny that the Act in any way violates the Constitution or accepted labour relations practices and requirements.

C. The conclusions of the Committee

839. The Committee observes that there appear to be four principal aspects to the complainant's allegations. These are: (a) those relating to the dual governmental and trade union functions of members of the GTUC executive; (b) those relating to the deliberate policy which the Government is following and which are said to amount to an assault on trade union rights and a flouting of fundamental norms and practices of international labour practice; (c) specified action in relation to industrial disputes or concerning trade union activists which, it is claimed, involves the violation of trade union rights; and (d) the effects of the Labour Amendment Act on collective bargaining and collective agreements.

840. With regard to the last of these, the Committee notes that the matter is sub judice, as the result of a challenge to the validity and the constitutionality of the Labour Amendment Act before the courts by three workers through their union (the principal complainant in this case). It requests the Government to supply it with a copy of the judgement of the court as soon as this is available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information. At the same time, it draws the matter to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

841. As regards the dual governmental and trade union functions of members of the GTUC executive, the Committee asks the complainants to supply details on this allegation and, in particular, to indicate what consequences this has on the exercise of trade union rights.

842. As regards the allegations relating to the Government's deliberate policy of violations of trade union rights, their generalised character and range lead the Committee to the conclusion that, in the absence of more detailed information relating the alleged policy to a particular course of conduct involving the infringement of rights of freedom of association, this aspect of the case does not call for further examination.

843. Concerning the specific allegations of dismissals of workers and trade union leaders, the Committee observes that the information supplied by the complainants and by the Government are

contradictory. It is consequently of the view that it is not in a position to arrive at conclusions on this aspect of the case.

844. On the subject of the recognition of sole bargaining rights at Seals and Packaging Industry Limited, the Committee notes that the Government chose to refer the matter for advice to the Guyana Trades Union Congress, but that such advice has not been forthcoming despite the lapse of more than two years since the question was first raised; and the information supplied by the Government to the effect that, in the meantime, the workers have decided against being represented by a sole bargaining agent and are represented by a staff association. The Committee recalls its earlier decisions that it is not necessarily incompatible with Convention No. 87 to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent, but that in such cases there is a need to provide certain safeguards, which include (a) certification by an independent body, and (b) the choice of the representative organisation by a majority vote of the employees in the unit concerned. [See, for example, the 121st Report of the Committee, Case No. 624 (UK/British Honduras), para. 56; 187th Report, Case No. 796 (Bahamas), para. 173; 222nd Report, Case No. 1163 (Cyprus), para. 313.] The Committee is of the view that these principles are appropriate to the situation and expresses the hope that the Government will find it possible to give effect to them.

The Committee's recommendations

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

- (a) The Committee requests the Government to supply it with a copy of the judgement of the court concerning the validity and the constitutionality of the Labour Amendment Act as soon as this becomes available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information.
- (b) The Committee asks the complainant organisations to supply details on their allegation concerning the dual governmental and trade union functions of members of the GTUC executive and, in particular, to indicate what consequences this has on the exercise of trade union rights.
- (c) The Committee draws aspects of the case relating to the Labour Amendment Act to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

- (d) The Committee expresses the hope that, in relation to the recognition of sole bargaining rights, the Government will find it possible to give effect to the principle that it is not necessarily incompatible with Convention No. 87 to provide for certification of the most representative union in a given bargaining unit as the exclusive bargaining agent, but that in such cases there is a need to provide for certain safeguards which include (a) certification by an independent body and (b) the choice of the representative organisation by a majority vote of the employees in the unit concerned.

Case No. 1333

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

846. The World Federation of Trade Unions (WFTU) submitted a complaint of violations of trade union rights against the Government of Jordan on 30 April 1985. The Government sent its observations in a communication dated 28 May 1985.

847. Jordan has not ratified the Freedom of Association and the Right to Organise Convention, 1948 (No. 87); it has ratified the Protection of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

848. In its communication of 30 April 1985, the WFTU states that, on 14 February 1985, government forces arrested Mohammad Hussein Qasem, President of the General Federation of Commercial, Shops and Professional Trades Unions. It also alleges that, on 13 April 1984, government forces arrested Abdul Razzaq Said Issa, the General-Secretary of the Trade Union of Workers in Banks and Insurance, for trade union activities. According to the WFTU, the case of Mr. Said Issa has not been referred to the courts.

849. The complainant states that these acts constitute grave violations of trade union rights as enshrined in Conventions Nos. 87 and 98 and requests action towards their unconditional release and full respect of fundamental trade union rights in Jordan.

B. The Government's reply

850. In its communication of 28 May 1985, the Government states that Mr. Mohammad Hussein Qasem ceased to be a trade union representative on 12 January 1984 both as regards the Trade Union Committee of Workers in Furniture and Household Appliances Industries and the Board of the General Union of Workers in Commercial, Personal and Private Handicraft Shops to which he had previously been affiliated. The Government points out that the General Union of Workers in Commercial, Personal and Private Handicraft Shops is composed of three trade union committees (the Trade Union Committee of Workers in Furniture and Household Appliances Industries, the Trade Union Committee of Workers in Footwear Industries and Leather Industries, and the Trade Union Committee of Workers in Sewing Industries) all of which nominate three members to the nine-man board of the general union. According to the Government, on 19 November 1983 the Ministry of Labour and Social Development received a memorandum from the Trade Union Committee of Workers in Furniture and Household Appliances Industries stating that the number of candidates for membership of that trade union committee was nine and that they had been elected without a vote. Mr. Qasem, not having presented himself as a candidate, was consequently not a member of that committee. Moreover, on 12 January 1984, the Ministry received a memorandum from the same trade union committee stating that Mr. Qasem was excluded from the board of the union for various defamatory acts and the circulation of false rumours. The Government therefore concludes that, since the arrest of Mr. Qasem took place in February 1985, it could not have been related to his trade union activities in which he ceased to play any role sometime before.

851. According to the Government, information from competent security sources states that the arrest of Mr. Qasem was due to his activities as a leader of the underground Popular Front/Jordan Branch which, according to its rules was aimed at overthrowing the Jordanian regime by use of force. Mr. Qasem was brought before the competent tribunal, given the possibility of defending himself, found guilty and sentenced to five years' imprisonment. The Government states that the Ministry of Labour and Social Development is no longer responsible for the follow-up of his case.

852. As regards Mr. Said Issa, the Government states that he is a member of the board of the Union of Workers in Banks, Insurance Companies and Accounting to which he was elected in 1983. On 18 April 1985, the Ministry of Labour and Social Development was informed by that union of his arrest on 14 April, without mentioning the reasons for his arrest. According to authorised security sources, Mr. Said Issa was arrested for being a member of the underground Popular Front/Jordan Branch. He was brought before the competent tribunal, given the possibility of defending himself, found guilty and sentenced to five years' imprisonment. The Ministry of Labour and Social Development is no longer responsible for following up his case.

C. The Committee's conclusions

853. The Committee notes that this case concerns the arrest - in April 1984 and February 1985 - of two trade union leaders and their subsequent sentencing to five years' imprisonment. It notes, in particular, that the reasons given for the arrests and imprisonment are directly contradictory: the complainant organisation alleges that they were due to the trade union activities of the persons concerned, and the Government states that they were due to their membership of an underground organisation aimed at overthrowing the Government by force. Although the complainant itself gives no further details concerning the link between these persons' trade union activities and their arrests, the Government also does not give sufficient detail concerning the charges brought against them and does not supply a copy of the judgement handed down by the courts involved.

854. Given the conflicting nature of the complainant's allegation and the Government's reply, and while regretting the absence of more detailed information, the Committee would recall in general that in cases such as this involving the arrest, detention and sentencing of trade union officials, it has always taken the view that individuals have the right to be presumed innocent until found guilty. Moreover, it has considered that it is incumbent upon the Government to show that the measures involved were no way occasioned by the trade union activities of the individuals concerned [see, for example, 112th Report, Case No. 569 (Chad), para. 185 and 234th Report, Case No. 1246 (Bangladesh), para. 71].

855. The Committee further notes that the Government denies that one of the persons mentioned by the complainant organisation - Mr. Qasem - held trade union office at the time of his arrest in February 1985. The Committee would recall in this connection that protection against anti-union discrimination applies equally to trade union members and former trade union officials as to current trade union leaders. Nevertheless, in accordance with its normal practice in cases where complainants allege that trade union leaders or workers have been arrested for trade union activities and the government's reply amounts to general denials of the allegation or is simply to the effect that the arrests were for subversive activities, for reasons of internal security or for common law crimes, the Committee requests the Government to supply further and as precise information as possible concerning the arrests, the legal proceedings that took place and the court judgement which resulted in sentences of five years' imprisonment for both Mr. Qasem and Mr. Said Issa. [See, for example, 93rd Report, Cases Nos. 409 and 457 (Bolivia), para. 230.] Once in possession of this information, the Committee will be in a position to reach a decision in this case.

The Committee's recommendations

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

- (a) the Committee notes the contradictory nature of the complainant's allegations and the Government's reply concerning the arrest of two trade union leaders in April 1984 and February 1985 respectively; it recalls that it is incumbent upon the Government to show that the measures taken were in no way occasioned by the trade union activities of the individuals concerned;
- (b) given the lack of information concerning the reasons for the arrest and subsequent sentencing to five years' imprisonment of the trade union leaders concerned, the Committee requests the Government to submit further and as precise information as possible on the incidents which led to the arrests and a copy of the judgement handed down in the subsequent proceedings, so as to enable it to reach a decision in this case.

Geneva, 7 November 1985.

Roberto Ago,
Chairman.

242nd REPORT¹

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 1, 2, 4 and 7 November 1985 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it various complaints of infringements of trade union rights in Turkey presented by a number of trade union organisations (Cases Nos. 997, 999 and 1029), as well as a representation concerning the non-observance by Turkey of the Right of Association (Agriculture) Convention, 1921 (No. 11), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by the General Confederation of Trade Unions of Norway under article 24 of the Constitution of the ILO.

3. At its 230th Session (May-June 1985) the Governing Body adopted the interim conclusions on Cases Nos. 997, 999 and 1029 submitted to it by the Committee in its 240th Report.

4. Since then, the Government sent its observations in four communications dated 19 September and 5, 18 and 23 October 1985.

Cases Nos. 997, 999 and 1029

COMPLAINTS PRESENTED BY THE WORLD CONFEDERATION OF LABOUR, THE WORLD FEDERATION OF TRADE UNIONS, THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND SEVERAL OTHER TRADE UNION ORGANISATIONS AGAINST THE GOVERNMENT OF TURKEY

REPRESENTATION SUBMITTED BY THE GENERAL CONFEDERATION OF NORWEGIAN TRADE UNIONS UNDER ARTICLE 24 OF THE CONSTITUTION, CONCERNING NON-OBSERVANCE OF THE RIGHT OF ASSOCIATION (AGRICULTURE) CONVENTION, 1921 (NO. 11), AND THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (NO. 98) BY TURKEY

5. The Committee has been examining these cases since February 1981 and has submitted 12 interim reports thereon to the Governing

¹ See page 1, footnote 1.

Body, the last one being submitted in May-June 1985 [see 240th Report of the Committee, approved by the Governing Body at its 230th Session, May-June 1985].

6. Further allegations were contained in a communication dated 26 June 1985 from the World Federation of Trade Unions and 29 July 1985 from the Automotive Production, Assembly, Iron, Machinery and Metal Goods Workers' Union of Turkey (Otomobil-Is).

7. Further information was received from the Government in communications dated 19 September 5, 18 and 23 October 1985.

8. Turkey has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the cases

9. When the Committee last examined these cases in May 1985, it had received a communication from the Government which dealt in detail with the following matters: the martial law situation, including the lifting of the state of siege in various parts of the country, and the lifting of restrictions on the right to strike and lock-out thereunder; the trials of trade unionists, including those of the leaders of the DISK and its affiliates; the position relating to five of the DISK accused who were in custody; the question of the treatment of prisoners while in custody; a statutory prohibition (in terms of transitional section 5 of Act No. 2821) on the resumption by trade union leaders of their activities while they are on trial; the conservation and preservation of the assets of the trade union organisations, including DISK, which had been suspended; opportunities for re-employment of trade unionists who had been detained; and matters concerning the legislation on trade unions, collective bargaining, strikes and lock-outs (Acts Nos. 2821 and 2822).

10. The Committee also had before it further information communicated by the World Federation of Trade Unions concerning the number of persons on trial and facing a possible death sentence, as well as two new trials which were alleged to have been instituted in January 1985 involving officials of the Progressive Metalworkers' Union (Dev-Mad-Sen) and the Movie Industry Employees' Union (Sine-Sen).

11. In these circumstances, the Committee made the following recommendations to the Governing Body:

- (a) The Committee expresses its appreciation for the way in which the Government of Turkey has provided detailed observations on the matters raised in the previous report on these cases, as well as

for the co-operation which the Government has continued to exhibit in response to the concerns of the Committee.

- (b) The Committee notes that martial law is still in force in at least one-third of the provinces of Turkey (in the form of either a state of siege or a state of emergency). Recalling the principle that the existence of martial law is incompatible with the exercise of trade union rights, the Committee hopes that further developments will take place without the limitations arising from martial law. The Committee, accordingly, trusts that martial law will soon be lifted in those provinces where it is still in force.
- (c) As regards the allegations received concerning the commencement of two new trials in January 1985 involving leaders of the Progressive Metalworkers' Union and the Movie Industry Employees' Union, the Committee requests the Government to supply information concerning this matter.
- (d) Regarding the trial of the leaders of the DISK and its affiliates, the Committee notes with concern that these proceedings are now in their fourth year and feels obliged to observe that so long a period might in itself give rise to suffering on the part of the accused persons and their families, whatever the outcome of the proceedings.
- (e) The Committee expresses the hope that every effort will be made to bring the trials of the DISK leaders to a speedy end and that the Government will provide more specific information concerning the five accused in the DISK trial who are still in detention.
- (f) The Committee expresses the hope that the Government will keep it informed of the outcome of the appointment of a multi-party commission by the Turkish National Assembly to investigate prison conditions and that it will provide it with the text of any report produced by the commission.
- (g) The Committee reiterates its previous recommendation strongly urging the Government to repeal transitional section 5 of Act No. 2821 on trade unions, which has had the effect of prohibiting the DISK leaders from resuming or participating in trade union activities and has thus deprived them over a long period not only of their rights as trade union leaders but also of their means of livelihood.
- (h) The Committee notes that the information concerning the assets of the DISK and its affiliates does not specify the date(s) in respect of which this information is provided, and accordingly requests the Government to let it have the relevant figures for each of the years since the assets were placed under trusteeship. The Committee again expresses the wish that steps will be taken to restore the assets of the DISK and its

affiliates to the organisations as soon as their suspension has been lifted.

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

B. Additional allegations

12. In its communication of 26 June 1985, the WFTU alleges (1) that a statement by the Prime Minister of Turkey contained in an interview published on 8-9 June 1985 in the International Herald Tribune violated decisions concerning freedom of association as well as section 138 of the Turkish Constitution in claiming that the DISK, while posing as a social-democrat organisation, had been financed by communists, thus influencing the proceedings at present before the courts; and (2) the enactment of new legislation on 16 June conferring additional repressive powers on the police which affect trade union rights and democratic freedoms by giving power to the administrative authorities and the police to suspend and/or close down trade union offices.

13. In a communication dated 29 July 1985, Otomobil-Is (the Automotive Production, Assembly, Iron, Steel, Machinery and Metal Goods Workers' Union of Turkey) alleges the infringement of the exercise of trade union rights through the refusal by the Ministry of Labour and Social Security to accord it a certificate of competence for the purposes of collective bargaining in terms of Act No. 2822 on collective bargaining, strikes and lock-outs, in particular through a Decree of 9 July 1985 extending the operation of a collective agreement at the Ereğli Iron and Steel Factory (ERDEMİR).

14. Otomobil-Is states that official statistics published as recently as 17 July 1985 show that it is the second largest union in the metal products industry and that it is one of five independent unions representing at least 10 per cent of insured workers in a given branch of activity; that the requirement concerning representation of

at least 10 per cent of the workers in a given branch of activity is contrary to free trade unionism, is anti-democratic and is to the disadvantage of trade unions which, like it, lack good relations with those exercising political power; that it represents a majority of the workers of ERDEMIR; and that the Extension Decree reflects this hostile attitude on the part of the Government while also leaving thousands of workers at ERDEMIR who are its members unorganised.

C. The Government's replies

15. In its communication of 19 September 1985, the Government, after again expressing its satisfaction that the Committee had recognised the spirit of co-operation it had displayed, provided further information relating to the states of siege. It pointed out that these could be proclaimed only for a period not exceeding six months, and that decisions relating to their proclamation, prolongation, shortening or lifting were required to be submitted to the Parliament for approval. It also stated that the state of siege had been lifted in a further six provinces (including Ankara and Izmir) on 19 July 1985, so that it applied now to only 17 provinces of the total of 67 in Turkey. The reply went on to state again that it was the policy of the Government to proceed progressively with the lifting of states of siege to the extent that circumstances permit and, adding once more information to the effect that the requirement of permission for strikes and lock-outs had been lifted since November 1984.

16. As regards the allegations relating to further trials said to have been commenced in January 1985, the Government stated that the trial of the Movie Industry Employees' Union (Sine-Sen) had been instituted at the end of 1983 by the martial law prosecutor of Istanbul on a charge of breaching section 141 of the Penal Code by conducting illegal activities with the object of establishing the hegemony of one social class over another, under cover of the trade union.

17. On the subject of the DISK trial(s), the Government indicated that these were at the stage where evidence was being examined and would shortly be entering the phase during which supplementary information would be considered; and that, as previously stated, there was no way in which a trial could be prolonged once the set procedures had been completed.

18. On the subject of the five trade unionists still in detention, the Government provided the following information: Mustafa Aktulgali and Ozcan Kesgeç (of the Turkish Workers' Party) had been sentenced to eight years' imprisonment for contravention of article 141 of the Turkish Penal Code; Mustafa Orhan was still on trial for contravening various articles of the Penal Code as a member of an illegal organisation (THKP-C/Kurtulus); Mustafa Karadayi and Kamil

Deriner's files had been referred to the Assize Court at Ankara on 21 May 1985, after the martial law court had been found incompetent to deal with the charge of smuggling which they faced.

19. The parliamentary committee whose establishment, for the purpose of inquiring into conditions in civil and military prisons, had been notified to the Committee by the Government previously, has, the Government states, recently decided to extend its programme of visits to include police stations and places of detention. The Committee's request for a copy of the report of the parliamentary committee had been passed on to the President of the Council, and the outcome would be communicated to the Committee in due course.

20. After restating information to the effect that no trade unionist in Turkey had been put on trial for legal trade union activities and that the Constitution forbids any interference with the course of justice, the Government goes on to indicate the origin and basis for transitional section 5 of Act No. 2821 as being articles 13 and 52 of the Constitution; and states that should the accused persons be acquitted they may resume their trade union activities. It refers to the fact that the MISK leaders who were also accused of crimes against the State and who were acquitted thereof today enjoy all the trade union rights recognised under the Turkish Constitution and laws.

21. Concerning the assets of the DISK and its affiliates, the Government provides figures relating to the liquid and other assets of each of 41 trade union organisations listed in its communication, which together total approximately TL7.75 billion (or approximately US\$15 million). It states that if the judgement of the courts permit the re-establishment of the trade union on trial, the assets will be returned to them by the curators who at present have the responsibility for conserving and preserving them.

22. In its reply of 23 October 1985, the Government states that the passages from the Prime Minister's interview in the International Herald Tribune cited by the WFTU deliberately omitted a sentence at the end which read: "But this is for the courts to decide", and again states that courts and judges cannot receive instructions from any organ, office, agency or individual.

23. After describing the objects of the laws on industrial relations and collective bargaining as well as reaffirming its attachment to international labour standards, the reply of the Government also indicates that there is regular co-operation between the Government and employers' and workers' organisations and that the continuing work on the formulation of amendments to Acts Nos. 2821 and 2822 takes account of the views of these organisations and of the universities.

24. Concerning the allegation by the WFTU regarding the introduction of new powers for the police in terms of legislation enacted in June 1985, the Government, in its communication of

23 October, states that the pre-existing law (Act No. 2559, dating from 1934) was inadequate to deal with developments over the last 50 years. It confirms that the new law, Act No. 3233 of 16 June 1985, refers in section 8E to the premises of trade unions as among those which may be closed down or withdrawn from use after more than one written warning by the police where they are not being operated in accordance with their stated purpose. It adds that the new law retains safeguards which were in the previous legislation (the requirement that the police should act on the basis of evidence; that they should act on the instructions of the highest local administrative authority, i.e. governors and district governors; and that, if the reasons for the police action could give rise to legal proceedings, the judicial authorities must be informed immediately), while introducing the following additional elements: reducing the time for which premises can be closed down in circumstances involving legal proceedings from an unlimited period to a maximum of three months; guaranteeing the right of appeal to the Council of State at any stage of administrative and judicial proceedings related to action by the police in terms of the provision.

25. In its communication of 18 October 1985 relating to the allegations of Otomobil-Is, the Government explains that the collective agreement was extended by decree in order not to deprive the workers at ERDEMIR of its benefits and to avoid the unfortunate effects which this might have on productivity in an enterprise of considerable importance within the national economy. This had become necessary because it had become clear that none of the three unions which are engaged in activities at ERDEMIR (i.e., Celik-Is, Otomobil-Is and Turk Metal) could obtain the required majority at the place of work, since, in terms of sections 22 and 25 of Act No. 2821 on trade unions, new members of one union could only be acquired as a result of resignations from either of the other two; and that even if this were to occur, the process would take considerable time. The Government also indicates that at the time of their respective applications for certificates of competence, both Celik-Is and Otomobil-Is were adjudged to have less than the required number of members at the workplace (1,053 out of 7,693 in the case of the former, and 1,687 out of 7,888 for the latter); and that these judgements had been confirmed on appeal by the Labour Court of Zongulak in both instances and, so far as Otomobil-Is is concerned, also by the Court of Cassation.

D. The conclusions of the Committee

26. The Committee notes the detailed information supplied by the Government in response to the recommendations it made in its previous report. It feels bound, however, to observe that although developments are to be noted in regard to some of the matters on which it has made recommendations, it is a matter of regret that it is still necessary to address a significant number of the issues with which the

cases have been concerned over a period of nearly five years. The process of arriving at conclusions on some of the outstanding problems might be aided if additional new information were available, especially as regards a number of specific matters to which attention has been directed.

27. The Committee notes with interest that the Government has taken further steps to lift the state of siege in a number of provinces. It notes, however, that martial law still operates in this form in 17 of Turkey's 67 provinces. It once again expresses the firm hope that steps will be taken to remove martial law completely since its continued existence is, in the opinion of the Committee, incompatible with the exercise of trade union rights.

28. The Committee is also of the view that the continuation of the trial of the leaders of the DISK and its affiliates remains a matter for disquiet, and it expresses the hope that every effort will be made to bring it to a speedy end.

29. As regards those trade unionists who are in detention, the Committee notes that the trial of two of these has been referred from a military to a civil court, and requests the Government to keep it informed of developments in these proceedings so that it may satisfy itself that the offences with which they are charged do not relate to the trade union activities of these persons. Similarly, it requests the Government to supply it with copies of the judgements in respect of the other three persons who have received sentences of imprisonment for the purpose of arriving at a conclusion on their cases in full possession of all relevant information.

30. The Committee takes note of the Government's statement that no new trial was instituted in January 1985 in respect of leaders of the Movie Industry Employees' Union, but that this was in fact commenced at the end of 1983. It trusts that it will be kept informed of developments in this respect, as in the case of other trials involving trade unionists and trade union leaders. At the same time the Committee notes that no reference was made in the reply of the Government to allegations concerning the trial of 16 leaders of the Progressive Metalworkers' Union (Dev-Maden-Is), and requests the Government to supply it with information on this matter.

31. The Committee notes with interest that the parliamentary committee of inquiry into conditions in civil and military prisons is extending its investigations to cover police stations and other places of detention under the supervision of the police; it expresses the hope that the Government will make available to it a copy of the report presented on these and other aspects of allegations relating to the torture and ill-treatment of prisoners.

32. The Committee remains of the view that the prohibition contained in transitional section 5 of Act No. 2821 involves an infringement of freedom of association by depriving trade unionists and trade union leaders of the right to participate in trade union

activities while they are on trial and in the absence of conviction of any offence. It expresses the hope that the necessary steps will be taken to repeal the provision and to ensure that the trade unionists and trade union leaders involved will be able to enjoy all the rights to which they are entitled in accordance with the principles of freedom of association.

33. The Committee notes the information provided by the Government concerning the assets of the DISK and its affiliates. In this regard it must point out that, although this contains more detail as to the position of individual unions, it still does not indicate a basis on which an assessment can be made as to the extent to which the assets have been preserved, as no comparative figures are given for the dates on which possession was taken by the curators or in respect of subsequent years. Compared with information made available to the Committee by the Government at the time of its last report, the totals of the sums involved as referred to in the information provided in its communication of 19 September 1985 indicate that there may have been a substantial diminution in the value of the assets. The Committee must, in the circumstances, urge the Government to supply it with complete and comprehensive information on the position so that it may reach a conclusion on this aspect of the case in full possession of all the relevant facts.

34. The Committee takes note of the allegation concerning statements by the Prime Minister which might influence the proceedings of the court and of the information provided by the Government to the effect that this was qualified by specific mention of the fact that it was for the courts to decide on the matters referred to, as well as its affirmation that courts and judges may not receive orders and instructions from any organ, office, agency or individual. In the circumstances, it is of the view that this question does not require further examination.

35. On the subject of the allegations concerning the powers accorded to the police in terms of Act No. 3233, the Committee takes note of the information supplied by the Government. At the same time it notes that no specific allegations have been made concerning the use of these powers against trade unions or trade union premises. The Committee nevertheless expresses the hope that they will not be so used or otherwise employed in a manner which would involve an infringement of the principles of freedom of association.

36. The Committee takes note of the Government's explanation of the reasons for the refusal of a certificate of competence to Otomobil-Is in terms of Act No. 2822 on collective bargaining, strikes and lock-outs. It also notes, however, that the legislative provisions restricting recognition to unions which have a minimum of 50 per cent of workers in a bargaining unit have been the subject of criticism by the Committee of Experts on the Application of Conventions and Recommendations, which pointed out that if there is no union covering more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in a particular

unit, at least on behalf of their own members. The Committee therefore once again draws the legislative aspect of the case to the attention of the Committee of Experts.

37. The Committee notes from the reply of the Government that the process of formulating amendments to Acts Nos. 2821 and 2822 on industrial relations and collective bargaining is still continuing and trusts that in this regard account will be taken of the previous comments made by the Committee on these matters. It requests the Government to keep it informed of developments in this regard, and draws the matter to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

The Committee's recommendations

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

- (a) The Committee notes the information supplied by the Government in response to its previous recommendations; it expresses regret, however, that it is still necessary to address a significant number of the issues with which the cases have been concerned over a period of nearly five years.
- (b) The Committee notes with interest that the Government has taken further measures to lift the state of siege in a number of provinces and expresses the firm hope that steps will be taken to remove martial law completely since its continued existence is, in its opinion, incompatible with the exercise of trade union rights.
- (c) The Committee is also of the view that the continuation of the trial of the leaders of the DISK and its affiliates remains a matter for disquiet and expresses the hope that every effort will be made to bring it to a speedy end.
- (d) The Committee requests the Government to keep it informed of developments concerning the proceedings against two of the trade union leaders under detention whose trial has been transferred from a military to a civil court so that it may be satisfied that the offences with which they are charged do not relate to the trade union activities of those persons.
- (e) The Committee also requests the Government to supply it with copies of the judgements in respect of the other three trade unionists who have been sentenced to periods of imprisonment, for the purpose of arriving at a conclusion on their cases in full possession of all relevant information.

- (f) The Committee requests the Government to supply it with information relating to the trial of 16 officials of the Progressive Metalworkers' Union (Dev-Maden-Is).
- (g) The Committee requests the Government to make available to it a copy of the report presented by the parliamentary committee of inquiry relating to conditions in civil and military prisons and other aspects of allegations relating to the torture and ill-treatment of prisoners.
- (h) The Committee urges the Government to supply it with complete and comprehensive information relating to the assets of the DISK and its affiliates, and in particular repeats its request that the relevant figures be made available in respect of each of the years since the assets were placed under trusteeship.
- (i) The Committee expresses the hope that the new powers accorded to the police in terms of Act No. 3233 of 16 June 1985 will not be used against trade unions or trade union premises or in any other way which would involve an infringement of the principles of freedom of association.
- (j) The Committee expresses the hope that the necessary steps will be taken to repeal transitional section 5 of Act No. 2821 and to ensure that the trade unionists and trade union leaders who have been deprived of the right to participate in trade union activities while they are on trial and who have not been convicted of any offence are thereby afforded the rights to which they are entitled in accordance with the principles of freedom of association.
- (k) The Committee requests the Government to keep it informed of developments concerning the formulation of amendments to Acts Nos. 2821 and 2822 and trusts that, in this regard, account will be taken of the previous comments made by the Committee on these matters. It draws this aspect of the cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Geneva, 7 November 1985.

Roberto Ago,
Chairman.

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