

cannot be regarded as an infringement of freedom of association. In these circumstances the Committee considers that the declaration that the strike started on 10 July 1984 by the banana workers was illegal cannot be objected to from the point of view of the principles of freedom of association.

293. As regards the intervention of the civil guard during the strike, the Committee notes that, as stated in the court decisions provided by the Government, the judicial authorities, in accordance with the law in force in respect of illegal strikes, gave orders to the police to guarantee the continuation of work, ensuring the safety of workers who did not wish to join the strike and protecting the property of the Banana Company of Costa Rica.

294. With regard to the alleged consequences of the intervention of the civil guard during the strike which, according to the complainant, caused death and injuries among the strikers, the Committee notes that the Government only supplies information on two of the three workers who, according to the complainant, died (Mr. Franklin Guzman and Mr. Luis Rosales). The Committee also notes that, according to the Government, the exact form or circumstances of these two deaths have not been established and that the civil guards played no part in these deaths. The Committee requests the Government to send its observations on the alleged death of the striking worker, Jesús Rosales, to which it makes no reference in its reply.

295. The Committee also observes that the Government recognises the fact that on the days when the two workers died the police fired shots in the air after having been attacked and having used tear gas. Nevertheless it cannot be established from the Government's statements that there was any connection between the shots fired and the deaths. In the case of Mr. Franklin Guzman, the Government states that he was brought by bus, injured but still alive, to the place where the confrontation had taken place between the strikers and the police on 10 July 1984, an hour after the confrontation had ceased. In the case of Mr. Luis Rosales, who died on the same day as the confrontation between the strikers and police of 15 August 1984, the Government has no concrete information to provide on the death of this worker.

296. In the circumstances, the Committee deeply regrets the death of the workers Franklin Guzman and Luis Rosales, as well as the attacks which took place during the strike of the banana workers in July and August 1984. It requests the Government to supply information on the outcome of the judicial investigations being carried out into the deaths and injuries which occurred.

The Committee's recommendations

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

- (a) The Committee considers that the declaration of illegality concerning the strike which was started on 10 July 1984 by banana workers cannot be objected to from the point of view of the principles of freedom of association since - as the judicial authorities pointed out - the trade union had failed to comply with the legal requirement of prior conciliation and arbitration laid down in the Labour Code;
- (b) The Committee deeply regrets the death of workers Franklin Guzman and Luis Rosales, and the physical attacks that took place during the aforementioned strike. The Committee requests the Government to supply information on the outcome of the judicial inquiries that are under way into the deaths and injuries that took place.
- (c) The Committee requests the Government to send its observations on the alleged death of the striking worker Jesús Rosales to which it makes no reference in its reply.

Case No. 1306

COMPLAINT PRESENTED BY THE INTERNATIONAL CONFEDERATION OF ARAB
TRADE UNIONS AGAINST THE GOVERNMENT OF MAURITANIA

298. By a communication of 20 September 1984, the International Confederation of Arab Trade Unions (ICATU) presented a complaint of violation of trade union rights in Mauritania. The Government sent certain observations in a letter of 10 November 1984.

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

A. The complainant's allegations

300. The International Confederation of Arab Trade Unions refers in its complaint to the acts of repression committed by the authorities of Mauritania against the trade unionists of that

country. It states that the authorities have conducted a large-scale campaign of arrests of officials and trade union activists of the Union of Mauritanian Workers (UTM) which is one of its affiliates.

301. The ICATU lists 17 UTM officials who are alleged to have been arrested, including: El Kouri Ould Hameti, general secretary; Mohamed Ben Djadou, secretary for external relations; Sidi Habib Allah and Abdellah Benchamad, members of the National Bureau. The ICATU also alleges that the general secretary of UTM, El Kouri Ould Hameti, has been taken to the hospital in a very serious condition as a result of the tortures he has said to have suffered. It also fears for the lives of the other imprisoned trade unionists which, it says, have been subjected to torture and other forms of ill-treatment. Finally, the ICATU alleges that a trade unionist, Sidi Mohamed Ben Aiat, who held the post of director of the commercial department of the Fuel Company, died as a result of the tortures he is said to have suffered in prison.

302. The ICATU considers that these actions and measures constitute a violation of Convention No. 87 ratified by Mauritania.

B. The Government's reply

303. In its letter of 10 November 1984, the Government states that the trade unionists mentioned in the complaint of the ICATU were imprisoned on charges of attacks against the security of the State.

304. Like other citizens, says the Government, these trade unionists were found guilty of collusion with a foreign diplomatic mission for the purpose of fomenting disorder of a nature to destabilise the Mauritanian State. The persons concerned have made confessions and incriminating evidence has been found in their possessions.

305. The Government adds that the charges and all the documents seized have been posted up in a public place and disseminated by the press. The trade union confederation has, moreover, been fully informed of the situation.

306. In conclusion, the Government states that these leaders were arrested in their capacity as citizens, even though they used their trade union office to achieve their ends.

C. Conclusions of the Committee

307. The Committee notes that the present case concerns the arrests of officials from the Union of Mauritanian Workers. The complainant also mentions the ill-treatment to which these detained persons were subjected. One is alleged to have died as a result of the tortures he received in prison.

308. The Committee notes that, in its reply, the Government merely points out that the union officials mentioned in the complaint were accused of an offence against the security of the State by having acted in collusion with a foreign diplomatic mission; however, it fails to specify the precise acts which they are said to have committed, or to provide information on their present situation.

309. The Committee has examined many cases in which it has been alleged that trade unionists have been arrested for their trade union activities, and in which the governments have merely stated that the arrests were made on account of subversive activities or for reasons of internal security; it has therefore made it a rule, in these cases, to request the governments concerned to submit as precise information as possible on the arrests in question, especially on the legal action taken and the results thereof, to enable it to examine the allegations in full knowledge of the facts.

310. In view of the fact that, in the present case, the Government's observations are worded in such a vague way that it is unable to pronounce on the substance of the case, the Committee requests the Government to provide detailed information on the specific facts which led to the arrest of the UTM officials, to state whether legal proceedings are being taken against them, and to clarify their present situation. The Committee also requests the Government to reply to the allegations concerning the ill-treatment to which the detained trade unionists were allegedly subjected, and especially on the death of Mr. Sidi Mohamed Ben Aiat.

The Committee's recommendations

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

- (a) The Committee requests the Government to submit detailed information on the specific facts which led to the arrest of the UTM officials, to state if legal proceedings are being taken against them, and to clarify their present situation.

- (b) The Committee also requests the Government to reply to the allegations concerning the ill-treatment to which the detained trade unionists were allegedly subjected, and especially on the death of Mr. Sidi Mohamed Ben Aiat.

Case No. 1307

COMPLAINT SUBMITTED BY THE WORLD FEDERATION
OF TRADE UNIONS AGAINST THE GOVERNMENT OF HONDURAS

312. The complaint is contained in a communication from the World Federation of Trade Unions dated 27 September 1984. The Government replied in communications of 22 October and 22 November 1984.

313. Honduras 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

314. The complainant alleges that on 19 September 1984, 2,500 workers of the National Power and Electricity Undertaking (ENEE) went on strike, demanding a 10 per cent wage increase; they also demanded to know the whereabouts of their leaders and called for the latter's release.

315. The complainant adds that on 20 September 1984, the Minister of Labour declared that the strike was illegal and that all the strikers were dismissed. This meant that the undertaking was not obliged to pay the strikers any seniority-related severance allowance. At the same time, the undertaking decreed the mobilisation by the military of all its employees.

316. The complainant further alleges that the strike was put down by military and para-military units, resulting in the disappearance of a number of trade union officials, including the President of STENEE (Mr. Rolando Vindel) and another trade union official (Mr. Gustavo Morales). [The Committee has already examined the allegation relating to the disappearance of Mr. Vindel under Case No. 1268: see 234th Report, paragraphs 372-384.] According to the complainant, the number of trade union leaders and activists in the country who have disappeared or been murdered as a result of the intervention of the government forces against the workers is 100.

B. The Government's reply

317. The Government states that on 10 June 1981 the National Electricity Undertaking and its Union of Workers signed a collective labour agreement which was to run for a period of three years. Accordingly, both parties, making use of their rights and in accordance with sections 69 and 70 of the Labour Code, denounced the collective agreement before the corresponding authority of the Ministry of Labour with the objective of negotiating a new collective agreement. For this purpose the parties opened discussions with a view to a direct settlement; these discussions ended on 6 December 1983 without a solution to the dispute having been found.

318. The Government adds that the Union of Workers of the National Electricity Undertaking asked the Ministry of Labour to open mediation proceedings, and the Ministry accordingly declared closed the discussions aimed at direct settlement and open the mediation proceedings, appointing mediators in accordance with the provisions of sections 796 and 797 of the Labour Code. During the mediation proceedings, the parties were unable to reconcile their views in order to arrive at a satisfactory agreement, and the Board declared the mediation proceedings closed on 3 September 1984.

319. The Government further states that, in the light of the report presented by the Mediation Commission to the Ministry pronouncing the closure of the mediation proceedings in connection with the negotiation of the new collective labour contract to be signed between the National Electricity Undertaking and its Union of Workers, the Ministry was concerned at the outcome of this disagreement, and attempted to find a point of convergence between the parties so as to enable the dispute to be settled peacefully. Accordingly, by official decision of 6 September 1984 the Ministry ordered the opening of conciliation proceedings and for this purpose required the undertaking and the trade union each to present a list of three candidates to form a Special Conciliation Board, with the proviso that if the parties failed to execute its order the Ministry would appoint the Board itself. The undertaking and the union presented their lists in conformity with the above-mentioned decision. The Ministry of Labour, by a decision dated 13 September 1984, declared the conciliation proceedings open, designating the members of the Special Conciliation Board which was officially established on 14 September 1984. In conformity with the procedure laid down in section 804 of the Labour Code the Special Conciliation Board called a hearing of both parties on 17 September at 4 p.m. Both parties appeared at the hearing, which took place in accordance with the established public order, and agreement was reached on four out of the five clauses in dispute that had remained pending from the mediation proceedings. The clause on which no agreement was reached was the wage clause. The hearing was suspended at 6.30 a.m. on 18 September 1984 and was resumed at the appointed time on the same

day, namely 4 p.m. The hearing began with an exchange of views, but no agreement was reached on the disputed clause. The hearing lasted until 3.30 a.m. on 19 September 1984, and it was agreed to resume it at 4 p.m. on the same day, when it was decided that the Special Conciliation Board would present a final proposal to help the parties reach an agreement which would put an end to the dispute. This proposal could not be formulated because at 12 p.m., before the appointed time of 4 p.m., the union issued a call to strike, and the discussions thus remained at the conciliation stage.

320. The Government claims that, in calling the strike, the union was contravening the provisions of section 569 of the Labour Code, which provides that a collective stoppage of work shall be unlawful "when the preliminary procedure for a direct settlement or for mediation, conciliation and arbitration has not been followed as laid down by law". An aggravating factor in this case was that the undertaking was a state undertaking providing public or essential services, in which case the parties are obliged, under section 820 of the Labour Code, to submit the dispute for compulsory arbitration if no agreement can be reached through conciliation proceedings. In virtue of the infringement of the law by the trade union in failing to exhaust the procedures provided for thereunder, the undertaking applied to the Ministry of Labour to have the strike declared illegal, and the Ministry granted this application. In pursuance of section 571 of the Labour Code, as amended by Decree No. 760 of 25 May 1979, the undertaking further applied to the competent court for suspension of the legal personality of the trade union organisation; this application was granted by the court and the suspension of the legal personality of the trade union was ordered for a period of six months. According to the Government it is nevertheless false that the military mobilised the employees of the undertaking and that military groups had repressed the strike movement.

321. According to the Government, notwithstanding the facts related above and the efforts which it had had to make to find a just and definitive solution which would satisfy both parties and at the same time be in the national interest, it decided to appoint a high-level commission composed of the Minister of Labour and Social Welfare, the Minister of the Cabinet, the Director of the National Electricity Undertaking, two representatives of the General Central of Workers (CGT), the General Secretary of the Confederation of Workers of Honduras (CTH) and the President of the Federation of Workers of Honduras (FESITRANH); this commission reached the following conclusions, which are regarded as having provided a definitive solution to the problem in question: "1. Once all acts of work stoppage have ceased and work has resumed normally, the National Electricity Undertaking shall honour each and every one of the clauses negotiated up to the date on which the negotiation proceedings were interrupted. 2. In connection with clause 55-33, the undertaking shall grant a 6 per cent wage increase every year in the manner proposed by the undertaking on the date on which the conciliation

proceedings were interrupted. 3. Notwithstanding the declaration of illegality of the strike adopted by the Ministry of Labour, the undertaking shall undertake to refrain from reprisals or dismissals of workers who have given their moral or material support to the strike. 4. The time lost during the strike shall be made up in a manner to be agreed on between the parties, which shall endeavour to find a just solution. 5. The suspension of the legal personality of STENEE is the responsibility of the competent courts, which have the sole power to apply the law, passing and executing judgements in concrete cases. In order to reach a definitive solution to the dispute, the commissions shall undertake to expedite the relevant procedure. 6. At the suggestion of the legally organised trade union committee, the ENEE shall allow the legal representative of the STENEE provisionally to represent the trade union for the signing of the present document and the collective labour agreement and in other relevant matters. 7. The undertaking shall allow the sectoral and subsectoral managing committees to continue to represent the workers in all internal labour questions arising in the undertaking. 8. Once the present document has been signed by the parties, the work stoppage called by the Union of Workers of the National Electricity Undertaking shall be deemed to be terminated. Tegucigalpa, DC, 26 September 1984. (Signed) Government Commission: Ubodoro Arriaga Iraheta. Amado H. Núñez V. Raúl Flores Guillén. Trade Union Commission: Francisco Guerrero. Andrés Víctor Artiles. Felcito Avila. Marco Tulio Cruz. Elpidio Duarte Herrera. Legal representative of STENEE: Germán Leitzelar Vidaurreta."

322. In addition, the Government states that the disappearance of the PANI trade union leader, Mr. Gustavo Morales, occurred many months prior to the strike which commenced on 19 September 1984 and that the competent authorities are investigating the matter.

C. The Committee's conclusions

323. The Committee notes that in the present complaint the complainant alleges that the strike of the workers of the National Power and Electricity Undertaking (ENEE), called on 19 September 1984 to demand wage increases, was declared illegal and that, as a consequence, the dismissal of all the strikers was announced, the military mobilisation of the employees of the undertaking was decreed and the strike was put down by military and para-military units, as a result of which the trade union leader, Gustavo Morales, disappeared.

324. As regards the declaration of illegality of the strike, the Committee notes that Honduran legislation recognises the right to strike for workers in the electricity sector (section 555 of the Labour Code), although its exercise is subject to the fulfilment of certain requirements; in particular, the obligation to make available

the necessary personnel to ensure that a suspension of the services provided does not result in serious and immediate danger to public health or safety or to the economy in general (section 555 of the Labour Code) and to exhaust the possibilities offered for the direct settlement of disputes and for mediation, conciliation and arbitration (section 553 of the Labour Code), such arbitration being compulsory in the case of the electricity sector as in other public services (section 820 of the Labour Code).

325. In this connection the Committee wishes to recall that a strike may be subject to major restrictions such as compulsory arbitration in essential services in the strict sense of the term (i.e. those whose interruption might endanger the lives, safety or health of all or part of the population). [See, for example, 208th Report of the Committee, Case No. 958 (Brazil), paragraph 305.] The Committee considers that the services rendered throughout the country by the National Electricity Undertaking would appear to fall within the concept of essential services.

326. In these circumstances, and noting that the Union of Workers of the National Electricity Undertaking called the strike on 19 September 1984 four hours before the appointed time for the final meeting under the statutory conciliation procedure and without submitting to the compulsory arbitration procedure (a restriction which, as has been seen, is admissible in the case of essential services in the strict sense, as is the case of the electricity services), the Committee concludes that the declaration of illegality of the strike begun on 19 September 1984 by the trade union does not infringe the principles of freedom of association.

327. As regards the alleged consequences of the declaration of illegality of the strike in question (repression of the strike, dismissals of strikers and military mobilisation of workers), the Committee notes that the Government denies any repression of the strike or mobilisation by the military of the workers. It also notes that a high-level tripartite commission, including representatives of the central Honduran confederations, reached definitive conclusions in which the undertaking undertakes to refrain from dismissals of workers who took part in the strike. The Committee also notes that, according to the Government, the National Electricity Undertaking obtained the suspension of the legal personality of the union for six months from the judicial authority by virtue of section 571 of the Labour Code, amended by Decree No. 760 of 25 May 1979. The Committee requests the Government to provide detailed information on the conclusions reached by the said commission on this last point.

328. Lastly, as regards the the allegation concerning the disappearance of the trade union leader, Gustavo Morales, the Committee notes that this disappearance had nothing to do with the strike which took place in the ENEE undertaking on 19 September 1984 since it occurred many months prior to the events. It expresses its

serious concern over this allegation and requests the Government to send the results of the investigation which is being carried out by the authorities as a matter of urgency.

The Committee's recommendations

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

- (a) The Committee notes that a high-level tripartite commission, including representatives of the central Honduran confederations, reached definitive conclusions when examining the dispute in question in which the National Electricity Undertaking undertakes to refrain from dismissals of workers who took part in the strike.
- (b) The Committee requests the Government to supply detailed information on the conclusions reached by the above-mentioned commission as regards the decision taken by the judicial authority to suspend the legal personality of the trade union for six months in consequence of the illegality of the strike called by the union.
- (c) The Committee expresses its serious concern over the allegation concerning the disappearance of the trade union leader, Gustavo Morales, and requests the Government to communicate the results of the investigation being carried out by the authorities as a matter of urgency.

Case No. 1309

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

330. These complaints and the supplementary information presented by the complainants are contained in the following communications: International Confederation of Free Trade Unions (ICFTU): 3, 10 and 16 October 1984; 9, 13, 16 and 30 November 1984; National Confederation of Peasants and Indigenous Persons El Surco (jointly with four other Chilean trade union organisations): 12 November and 6 December 1984; World Federation of Trade Unions (WFTU): 13 November 1984; the Permanent Congress of Trade Union Unity of Latin American Workers (CPUSTAL): 14 November 1984; Trade Unions International of

Miners and Workers in Energy: 15 November 1984; National Trade Union Co-ordinating Body (CNS) (jointly with ten other Chilean trade union organisations): 15 and 29 November 1984. The Government supplied its observations in communications dated 26 November 1984 and 4 January 1985.

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

A. The complainants' allegations

332. In its initial complaint the ICFTU explains that the National Group of Workers, together with other organisations, had called on the Chilean people to assemble on 4 September 1984 at the Plaza de Armas in Santiago. Thousands of persons gathered on the square and when they sang the national anthem the carabineers of the special forces armed with bludgeons burst into the square to disperse the demonstrators. When the latter closed ranks, the police used dogs and tear-gas. During the course of this police action, the President of the National Group of Workers, Rodolfo Seguel, was beaten in the lower part of the abdomen and the testicles.

333. The ICFTU adds that that the police forces also acted with brutality in the working class suburbs and in the various cities of the country. According to the ICFTU these operations resulted in ten deaths, with 248 persons injured and 1,754 arrests. The complainant organisation includes in the annex to its communication the names of the persons killed and gives details on the number and circumstances of the arrests in the various provinces of the country. The ICFTU also alleges that at the request of the Ministry of the Interior, the following persons were indicted for having organised peaceful protest days of action: the trade union leaders Manuel Bustos, President of the National Trade Union Co-ordinating Body (CNS), José Ruiz Di Giorgio, President of the petroleum workers and Raúl Montecinos, national leader of the copperworkers.

334. Subsequently, in its communication of 10 October 1984, the ICFTU points out that Manuel Bustos and José Ruiz Di Giorgio were arrested and are being held at the Santiago prison. The order for their arrest was allegedly made immediately after the National Group of Workers had called for a national strike to be held on 30 October 1984. The ICFTU points out that the situation of some trade unionists is even more serious since they are not entitled to bail because of their previous convictions.

335. In its communication of 16 October 1984, the ICFTU refers to the situation of Juan Antonio Aguirre Ballesteros, a baker's assistant, who was allegedly arrested on 4 September 1984 by the central carabineer station of Pudahuel and who has since disappeared. The ICFTU points out that Antonio Aguirre Ballesteros was arrested early on the day of the national protest along with Elias Huaquimil Catril as they were going to their places of work. They were beaten in the police van and then taken to the Pudahuel central police station where they were tortured and interrogated about the protest day of action. Other persons were also taken to this place. They were all released unconditionally on 10 September 1984, on the orders of the military prosecutor with the exception of Antonio Aguirre Ballesteros. On 5 September 1984 "an appeal for protection" was made to the courts. Both the carabineers and the National Central of Information Agency denied his arrest and, on two occasions, the Seventh Chamber of the Appeal Court refused to send a magistrate to the Pudahuel police station to verify if the person in question was detained there. However several witnesses have been able to confirm his presence in this police station.

336. In the same communication, the ICFTU also mentions the case of Darío Ibanez Díaz, a trade unionist in the building sector who was arrested on 4 September 1984 along with his two sons following a search of his home without warrant by carabineers and civilians armed with sub-machine guns. Darío Ibanez Díaz was taken to the Pudahuel police station and then put into solitary confinement and tortured. On 7 September 1984 he was abandoned in the street. The carabineers do not officially recognise his arrest. The ICFTU also refers to the case of Sergio Tapia Contreras, a carpenter's assistant, who was also arrested at his home and then tortured in the Pudahuel police station. He was released on 10 September 1984.

337. According to information supplied by the ICFTU in its communication of 9 November 1984, the legal adviser of the National Trade Union Co-ordinating Body (CNS) and of the National Group of Workers, Jorge Donoso, was allegedly arrested on 7 November 1984 by the security services in the presence of various witnesses. The Government allegedly denies his arrest.

338. The complaints of the National Confederation of Peasants and Indigenous Workers El Surco, the World Federation of Trade Unions and CPUSTAL, the Trade Unions International of Miners and Workers in Energy and the National Trade Union Co-ordinating Body (CNS), as well as the communications from the ICFTU dated 13 and 16 November 1984 refer to the storming of certain trade union premises by the security forces on 9, 12 and 13 November 1984 and the alleged arrests of trade union leaders during these police operations. The complainants point out that the organisations affected by these measures were the National Confederation of Peasants and Indigenous Workers El Surco, the Chilean Mining Federation, the National Confederation of Building Workers, the 'Peasant Triumph' Confederation, the Nehuen Peasant

Confederation and the Federation of Agricultural Workers Trade Unions of Santiago. According to the complainants, the searches were carried out without a warrant and the police officials seized material, documents and money and destroyed furniture and property.

339. The National Confederation of Peasants and Indigenous Workers El Surco, in its communication dated 6 December 1984, gives details concerning the search made of its headquarters. It points out, in particular, that the operation was led by ten armed persons in civilian clothing and that all its documents were examined. The persons present, totalling 14, were searched and individually interrogated and files were established on them. Some were beaten during the course of the interrogations and seven were taken away blindfolded in police vans, and one of them was handcuffed. All the documents of the Confederation as well as miscellaneous items of property were transported in another vehicle. The arrested leaders were taken to a station of the National Central Information Agency where they were once again beaten and subjected to psychological pressure and interrogation. The complainant confederation mentions the case of its Secretary-General, Luis Peña Robles, who had to receive medical assistance during the course of his detention. Following the release of these leaders, the members of their families had to sign a document certifying that they had returned home in good physical condition.

340. The complainants have communicated a list of trade union leaders arrested during the searches (see annex to the present case). They are members of the El Surco Confederation, the Confederation of Metallurgical Workers, the Confederation of Building Workers, the Chilean Mining Federation as well as the National Association of Retired Workers. The ICFTU adds that 375 workers were held in a prison camp in the far north of the country at Pisagua and that an unspecified number of trade unionists were taken to the San Eugenio football stadium following police operations carried out in the La Victoria suburb of Santiago.

341. The National Trade Union Co-ordinating Body (CNS) and the ICFTU, in their communications of 29 and 30 November 1984, have also denounced the banishment to the Pisagua camp of Ernesto Vasquez, Victor Meneses and Pablo Poblete, trade union leaders of the city of Arica.

342. The complaint of the National Trade Union Co-ordinating Body (CNS) and the letter of the ICFTU of 30 November 1984 also refer to the proclamation on 5 November 1984 by the Government of the state of siege throughout the national territory for a period of three months. This period may, under the provisions of the national Constitution, be prolonged indefinitely. As a result of the state of siege, the Government adopted Decree No. 1216 of 7 November 1984 which restricted the right of assembly. On 8 November 1984, the Labour Directorate issued Circular No. 0083 which covers trade union

assemblies, meetings and elections and the establishment of organisations during the period of the state of siege.

343. Decree No. 1216 stipulates in sections 1 and 4 that all meetings must be authorised in advance by the regional administrator. For such an authorisation to be granted, the written request must stipulate the object or agenda of the meeting, the list of possible participants and the place and date of the meeting. This request must be signed by at least two persons who guarantee the satisfactory conduct of the meeting. Furthermore, section 5 of the Decree stipulates that meetings which, because of their nature, object or participants, cover the entire country or concern more than one region must be authorised by the Ministry of the Interior. Under section 3, derogations from this provision are granted to organisations enjoying legal personality, provided that the meetings are held in the premises or headquarters of the organisations and are exclusively devoted to matters considered by the law to be consistent with their proper objectives. Even in these cases, an advance notice of five days must be given to the provincial governor's office. According to the complainants, these provisions imply in practice that trade unions, federations and confederations must, in addition to the legislation currently in force, conform to standards which seriously hinder their activities.

344. As regards the freedom of persons, the state of siege implies that the authorities may detain persons without giving reasons during the entire period of the state of siege. The persons concerned may not be detained in the prisons used for common-law prisoners but are placed under house arrest or held in special places. The National Central Information Agency may make arrests and detain the persons concerned in its public places of detention. It is also possible to banish persons for the duration of the state of siege, which may be prolonged indefinitely. The authorities may restrict freedom of movement from one point to another within the national territory. The "appeals for protection" (amparo) which may be made to the courts are also subject to restrictions during the state of siege as regards rights and guarantees, which may be limited or suspended during the period of emergency.

B. The Government's reply

345. In its communication of 26 November 1984, the Government states that the allegations made in the present case consist of a lengthy account of events and situations which have occurred in Chile and which have nothing to do with freedom of association. It adds that this account is drawn from periodical reports made by de facto organisations existing in the country and sent to the bodies of the United Nations system to justify their illegal existence and to

receive the financial aid which enables them to continue their action. The Government believes that the present case does not concern matters of freedom of association and does not therefore fall within the competence of the Committee. It therefore notes with concern that this kind of allegation is being treated as a case. The Government also observes that it is increasingly difficult to give replies to accusations which are vague, imprecise and repetitive and which have nothing to do with freedom of association.

346. However, the Government states that it is providing certain information in the spirit of co-operation which it has always maintained with the ILO. Thus the Government refers to the indictment of Messrs. Bustos, Ruiz Di Giorgio and Montecinos. The examining magistrate in this case has opened an inquiry into the alleged infractions of the Act respecting the security of the State during the events which occurred on 4 and 5 September 1984 which resulted in serious damage to private property and during which several persons were killed. In addition to the three persons mentioned, charges were brought against principal leaders of the political parties. These persons were considered guilty since it was proven that the offence had been committed and that they had participated in it. However the Government has halted the proceedings and the inquiry is therefore closed. All the persons concerned were released without being tried.

347. As regards the allegations concerning Mr. Juan Antonio Aguirre Ballesteros, the Government points out that he has not been arrested by the police. The "appeals for protection" made on his behalf were rejected by the Appeals Court and he was given legal advice at every moment. He was subsequently found dead for reasons which have not yet been established.

348. As regards the alleged physical mistreatment of Mr. Rodolfo Seguel, the Government points out that he has not undertaken any criminal proceedings against those responsible for his mistreatment and points out that Mr. Seguel constantly seeks publicity.

349. In its communication of 4 January 1985, the Government states that as a result of the troubled internal situation existing in the country which was basically due to repeated terrorist attacks against carabineer stations, and which resulted in the death of several carabineers, the President of the Republic, with the agreement of the Junta, and in accordance with section 40.2 of the Constitution, declared the state of siege throughout the national territory on 7 November 1984 up to 4 February 1985.

350. The Government explains that the state of siege is a constitutional state of emergency which affects certain constitutional rights and guarantees when the internal situation of the country is disrupted. The state of siege can be proclaimed for only a period of 90 days. The President of the Republic is then invested with the

following rights: transfer of persons from one point of the national territory to another; their detention in their own homes or in places which are not prisons or places which are not used for the detention of common prisoners; their expulsion from the national territory. He may also restrict freedom of movement and prohibit entry into or departure from the national territory, suspend or restrict the right of assembly and freedom of information and opinion, restrict the exercise of the right of association and trade unions rights and censure correspondence and communications. All these measures apply, under the provisions of the Constitution, in so far as they are necessary.

351. As regards the right to assembly, Supreme Decree No. 1216 of the Ministry of the Interior published in the Official Gazette on 8 November 1984, stipulates that meetings must, during the period of the state of siege, be authorised in advance by the administrator of the region. However, this prior authorisation is not required for meetings of organisations enjoying legal personality and which are held in their premises or headquarters and which deal with matters which are proper to their objectives. In this case, only an advance notice of five days to the provincial government is required. The Government adds that this is the case of trade unions, federations and confederations of workers and employers.

352. Furthermore, the Department of trade union organisations of the Labour Directorate, in Circular No. 83 of 8 November 1984, issued instructions concerning the holding of trade union assemblies, meetings and votes as well as the establishment of trade union organisations during the period of the state of siege. This circular stipulates that the assemblies of trade union organisations enjoying legal personality are subject only to the advanced notice of five days provided that the conditions set forth in the previous paragraph are respected. As regards assemblies for the establishment of trade union organisations, the inspection authorities verify, before appointing a ministerial officer to attend the meeting, that authorisation has been given by the regional governor. The authorisation is granted following receipt of a written request, signed by at least two persons who guarantee that the meeting will take place in normal conditions of order. Furthermore, the document must also stipulate the object of the meeting, the list of possible participants and the date and time of the meeting. As regards meetings which concern more than one region, it is the Ministry of the Interior which is responsible for giving authorisation.

353. The Legal department of the Labour Directorate, in Circular No. 19 of 22 November 1984, also issued instructions concerning the meetings, assemblies and votes of trade unions and workers' groups during the collective bargaining negotiations. As regards negotiations held by a trade union, the meetings and votes are subject to an advance notice of five days and must be held in the trade union premises (trade union premises are understood in this connection to

mean any place in the undertaking where the union usually meets). When negotiations are held by a group of workers which is not endowed with legal personality, prior authorisation must be requested from the regional administrator's office or, if the negotiations concern workers from more than one region, from the Ministry of the Interior.

354. As regards the persons mentioned in the complaints, the Government points out that under Decree No. 4918 of 13 November 1984, the Minister of the Interior ordered the house arrest of the following persons for a period of 90 days: Messrs. Humberto Arcos Vera, Heriaifs Castaneda Moreno and Segundo Cancino Fernández at Quenchi; Messrs. Luis Peña Robles, Carlos Opazo Bascuñan and Valentín Osorno Badilla at Achao; Messrs. Luis Avendaño Atenas, Enrique Bucherenich Canales and Segio Dastres González at Curaco de Vélez, Messrs. Ariel Urrutia Villalobos and Carlos Araya Velasco at Dalcahue and Messrs. Juan Valencia Vera, Luis Suarez Zegarra and Moisés Labraña Mena at Puqueldón. These persons were arrested during the search carried out of the premises of the "Popular Democratic Movement" (MDP) and the "Socialist Bloc", extreme left organisations, which are sympathetic to terrorist activities and which do not carry on any trade union activity. The Government adds that Messrs. Rigoberto Lillo Torres, Juan Antinas Antinao, Alamiro Guzmán Ordenes, Lucía Morales Alvarez and Esperanza Guerrero Ceballos are not being detained. As regards Mr. Jorge Donoso, the Government points out that he was arrested in the premises of the "Socialist Bloc" and released the same day. The Government adds that it is not true that he was the legal adviser of trade unions. He is the director of a newspaper called Fortín Mapocho and has not disappeared since he is free.

C. The Committee's conclusions

355. The Committee notes that the present case concerns various events which have occurred in Chile since September 1984. Before examining each of the questions raised by the complainants, the Committee considers it must express its concern at the serious nature of the allegations made by the numerous complainant organisations, both national and international, and which concern important aspects of freedom of association and human rights and their relation to trade union rights. The Committee notes in particular that according to the complainants extremely serious measures have been taken in recent months by the authorities against some trade union organisations and their leaders and active members: the death of workers during clashes with the police forces, the arrest and banishment of trade unionists and their ill-treatment, the assault of trade union premises, restrictions on the right of assembly.

356. The Committee must first of all stress in this connection that, as stated in the Resolution concerning trade union rights and their relation to civil liberties adopted by the International Labour Conference in 1970, the absence of civil liberties removes all meaning from the concept of trade union rights and that the rights conferred upon workers' and employers' organisations must be based on respect for these civil liberties.

357. The allegations refer to the intervention of the police during the day of protest organised on 4 September 1984 and which allegedly resulted in the death of ten persons, with many injured and more than 1,000 arrests. The complainants mention in particular the case of Juan Antonio Aguirre Ballesteros who was allegedly arrested and tortured and whose body was later found abandoned.

358. Although it recognises that the trade union organisations have not given any details on the nature and objectives of the day of protest of 4 September 1984, the Committee must note with regret that the Government has furnished no information on the circumstances of the deaths of the ten persons killed during this day. The Committee believes that such serious events should lead the authorities to take effective measures to establish the facts and punish those responsible. The Committee therefore requests the Government to indicate whether an impartial and in-depth inquiry has been carried out into these events and, if so, to inform it of the outcome.

359. As regards the case of Mr. Juan Antonio Aguirre Ballesteros, the Committee notes that the complainants have given very detailed information on the circumstances in which he was allegedly arrested and have specified the place of his detention. The Committee cannot, therefore, accept the general statement of the Government which simply indicates that Mr. Aguirre was not arrested by the police and that he was found dead from causes not yet established. Given the extremely serious nature of these allegations, the Committee requests the Government to take all the necessary measures to clarify the circumstances of his death and to determine responsibilities. It requests the Government to furnish information on any inquiry taken in this matter and to inform it of the outcome.

360. As regards the arrest of Messrs. Bustos, Ruiz Di Giorgio and Montecinos and the action taken against them, the Committee notes that although they were found guilty by the examining magistrate, the Government has halted the proceedings and the judicial proceedings are therefore closed and the persons concerned are now free. The Committee notes, however, that the Government has not indicated what charges were brought against these trade union leaders. The complainants, for their part, had indicated that the charges were related to the call for a general strike on 30 October 1984. The Committee considers it useful to recall that trade union organisations should have the opportunity to call for protest strikes particularly

with a view to exercising criticism of the social and economic policy of governments.

361. It appears, in the light of the allegations made, that the headquarters of certain trade union organisations were attacked by the police and that material was allegedly destroyed and documentation confiscated. The Government does not furnish any information in its reply on the reasons for these searches. In this respect the Committee calls to the attention of the Government that the protection of trade union property is one of the basic civil liberties required for the normal exercise of trade union rights. Whilst trade unions cannot claim immunity from a search of their premises, such a search should only be made following the issue of a warrant by the ordinary judicial authority, after that authority has been satisfied that reasonable grounds exist for supposing that evidence exists on the said premises material to a prosecution for an offence under the ordinary law and provided that the search be restricted to the purposes in respect of which the warrant was issued. The Committee therefore requests the Government to furnish information on the circumstances of the operations carried out against the trade union premises and in particular to indicate their purpose and reason.

362. According to the complainants, arrests were allegedly made during these operations and the persons concerned were allegedly mistreated during their detention. It is alleged that they were subsequently banished. In this connection the Government has provided information on some of the persons mentioned by the complainants and pointed out that some of them were free or that others had been arrested during searches made of the premises of extreme left political organisations (see annex to the present report). The Committee must note on this point that there is an obvious contradiction between this statement and that of the complainants since the latter stated that arrests had been made during the attacks on the trade union premises of the El Surco Confederation and the Chilean Mining Federation and furnished written testimony in support of their complaint from the persons arrested. The Committee considers it necessary to stress in this connection that the banishment of trade union leaders or trade unionists because of their trade union activities is incompatible with the principles of freedom of association. The Committee must furthermore note that the Government has supplied no information on certain persons allegedly arrested according to the complaints (see annex to the present report) or on the allegations made concerning the ill-treatment of the persons arrested. The Committee therefore requests the Government to furnish its observations in this respect.

363. As regards the allegations concerning the state of siege and its resulting consequences on the exercise of trade union rights, the Committee notes the information supplied by the Government. It notes in particular that, according to the Government, the state of siege was declared because of terrorist attacks which have been committed in

the country. Whether the declaration of this exceptional state was justified or not, the Committee must note that it results in extremely serious consequences for the operation of trade union organisations, in particular as regards their right to hold meetings. In the circumstances, the Committee must therefore stress the importance of the right for trade unions to hold meetings freely without control by the public authorities. The Committee thus expresses the firm hope that the restrictions concerning the right of trade union organisations to hold meetings will be lifted in the very near future and it requests the Government to inform it of any measures taken to this end.

The Committee's recommendations

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

- (a) The Committee expresses its concern at the serious nature of the allegations made by the complainants. It stresses that the absence of civil liberties removes all meaning from the concept of trade union rights and that the rights conferred on workers' and employers' organisations must be based on respect of these civil liberties.
- (b) As regards the deaths which occurred during the protest day of 4 September 1984, the Committee believes that such serious events should lead the authorities to take effective measures with a view to establishing the facts and punishing the guilty parties. It requests the Government to indicate whether an impartial and in-depth inquiry has been carried out into these events and, if so, to inform it of the outcome.
- (c) As regards the death of Mr. Juan Antonio Aguirre Ballesteros which allegedly occurred following his arrest, the Committee requests the Government to take all the necessary measures to clarify the circumstances of his death and to determine responsibilities. It requests the Government to furnish information on any inquiry taken and to inform it of the outcome.
- (d) As regards the action taken against Messrs. Bustos, Ruiz Di Giorgio and Montecinos, the Committee notes that the proceedings having now been halted by the Government and that the persons concerned are free. Since however the complainants have linked this action to the holding of a general strike, the Committee recalls that the trade union organisations should be able to have recourse to protest strikes, particularly with a view to criticising the social and economic policy of governments.

- (e) As regards the attack by the police on certain trade union premises, the Committee draws to the attention of the Government that the protection of trade union property is one of the basic civil liberties required for the normal exercise of trade union rights. It recalls that the search by the police of trade union premises should only be made following the issue of a warrant by the ordinary judicial authority. The Committee requests the Government to furnish information on the circumstances of the operations carried out against the trade union premises and in particular to indicate their purpose and reason.
- (f) As regards the arrests and banishment of trade union leaders, the Committee notes that some of the persons mentioned in the complaints are free but that others have been banished. It stresses that the banishment of trade union leaders or trade unionists because of their trade union activities is incompatible with the principles of freedom of association. The Committee notes furthermore that the Government has not furnished any information on some of the persons mentioned in the complaints as having been arrested (see annex to the present case) or on the allegations made concerning the ill-treatment of the persons arrested. It requests the Government to furnish its observations on these matters.
- (g) The Committee expresses the firm hope that the restrictions concerning the right of trade union organisations to hold meetings will be lifted in the very near future and it requests the Government to inform it of any measures taken to this end.

ANNEXList of persons mentioned by the complainants as having
been arrested and the Government's replies to the complaints

AGUIRRE BALLESTEROS Juan Antonio	Not arrested by the police.	Deceased.
ANTINAO Juan Antonio	Free	
ARAYA Carlos	Banished	
ARCOS Humberto	Banished	
AVENDAÑO ATENAS Luis Enrique	Banished	
BUCHERENICK Enrique Humberto	Banished	
BUSTOS Manuel	Free	
CANCINO FERNANDEZ Segundo	Banished	
CASTAÑEDA Hernán Fernando	Banished	
DASTRE Sergio Alberto	Banished	
DONOSO Jorge	Free	
GUERRERO Esperanza de la Luz	Free	
GUZMAN Alamiro	Free	
LABRAÑA Moisés	Banished	
ILLO Rigoberto	Free	
MONTECINOS Raúl	Free	
MORALES Lucía	Free	
OPAZO Carlos	Banished	
OSORNO Valentín	Banished	
PEÑA Luis	Banished	
RUIZ DI GIORGIO José	Free	
SILVA Luis	Banished	
SUAREZ ZEGARRA Luis	Banished	
URRUTIA Ariel	Banished	
VALENCIA Juan	Banished	

List of persons mentioned by the complainants as
having been arrested and allegations made upon
which the Government has given no information

CATRIL Alejo	Textile leader arrested 15.11
COLUMBANO Renato	Arrested (CPUSTAL allegation)
FERNANDEZ Humberto	Concepción trade unionist arrested 28.11
FUENTES Adrían	Concepción trade unionist arrested 28.11
LACAMBRETT Marta	Arrested (CPUSTAL allegation)
MENESES Victor	Arica trade union leader banished 28.11
NUÑEZ Enrique	Trade unionist of the Metallurgy Confederation arrested 7.11
PEDRIN Jorge	Concepción trade unionist arrested 28.11
POBLETE Pablo	Arica trade union leader banished 28.11
RODRIGUEZ Jorge	Mining Federation trade unionist banished to Dalcahue
SALFATE Boris	Arrested (ICFTU allegation)
SANTIBAÑEZ Hector	Leader of the National Association of Retired Workers, arrested 9.11
SOTO Hernán	Arrested (CPUSTAL allegation)
VASQUEZ Ernesto	Arica trade union leader banished 28.11
VIDAL Raúl	Concepción trade unionist arrested 28.11

Geneva, 21 February 1985.

Roberto Ago,
Chairman.

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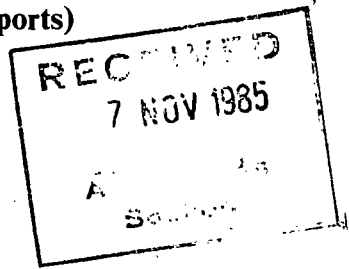
OFFICIAL BULLETIN

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

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

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Reports of the Committee on Freedom of Association

239th 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 27, 28 and 30 May 1985 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The member of the Committee of Spanish nationality was not present during the examination of the case relating to Spain (Case No. 1292).

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3. The Committee is currently seized of 98² cases in which the complaints have been submitted to the governments concerned for observations. At its present meeting it examined 26 cases in substance, reaching definitive conclusions in 12 cases and interim

¹ The 239th and 240th Reports were examined and approved by the Governing Body at its 230th Session (May-June 1985).

² This figure includes the cases relating to Turkey (Cases Nos. 997, 999 and 1029), Portugal (Case No. 1303) and Costa Rica (Case No. 1304) which are examined in the 240th Report.

conclusions in 14 cases; the remaining cases were adjourned for various reasons set out in the following paragraphs.

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4. First adjournments: The Committee adjourned until its next meetings the cases relating to Peru (Case No. 1321), the Dominican Republic (Case No. 1322), the Philippines (Case No. 1323), Australia (Case No. 1324), Sudan (Case No. 1325), Bangladesh (Case No. 1326), Paraguay (Case No. 1328), Canada/British Columbia (Case No. 1329), Guyana (Case No. 1330), Brazil (Case No. 1331), Pakistan (Case No. 1332), Jordan (Case No. 1333), New Zealand (Case No. 1334), Malta (Case No. 1335), Mauritius (Case No. 1336) and Nepal (Case No. 1337) concerning which it is still awaiting information or observations from the governments concerned. All these cases concern complaints brought since the last meeting of the Committee.

5. Second and subsequent adjournments: The Committee awaits observations or information concerning the cases relating to Peru (Case No. 1199), Argentina (Case No. 1220), Guatemala (Cases Nos. 1262 and 1311), Brazil (Cases Nos. 1270 and 1313), Colombia (Case No. 1291), the Dominican Republic (Case No. 1293), Antigua and Barbuda (Case No. 1296) and Honduras (Case No. 1307). It again adjourned these cases and requests the governments concerned to transmit their observations.

6. As regards the cases relating to Kenya (Case No. 1189), Paraguay (Cases Nos. 1204 and 1275), Costa Rica (Cases Nos. 1287, 1300 and 1310), Spain (Case No. 1320) and Tunisia (Case No. 1327) the governments concerned have indicated recently that they will send their observations shortly.

7. As for the cases relating to the United States (Case No. 1130), Morocco (Case No. 1282), Chile (Case No. 1285) and the Federal Republic of Germany (Case No. 1318), the Committee has received the governments' observations and intends to examine these cases in substance at its next meeting. As regards the cases concerning the Central African Republic (Case No. 1040), Morocco (Case No. 1054) and Nicaragua (Cases Nos. 1129, 1169, 1185, 1298 and 1317), the Committee regrets that since the replies in these cases were received either just before or during its meeting, it will only be able to examine these cases in substance at its next meeting.

8. As regards the case relating to Mauritania (Case No. 1306), the Government, in telegrams dated 28 April and 12 May 1985, states that all the imprisoned trade unionists have been released by virtue of a political amnesty granted on 2 December 1984 and that the trade union leader of the Fuel Company, Mr. Sidi Mohamed Ben Aiat (who, according to the complainant, died as a result of torture while in prison), died following an illness. The Committee notes these statements and urges the Government to supply additional details on

the circumstances surrounding this death and to indicate whether an independent inquiry into it took place.

9. As regards the cases concerning certain provinces of Canada, the Committee notes that arrangements are being made for the ILO study and information mission to visit the country and expresses the hope that it will have before it, at its next meeting, the report of the representative of the Director-General appointed to carry out this mission.

10. Case No. 1250 concerns a complaint against the Government of Belgium presented by the National Federation of Independent Trade Unions almost two years ago on 18 June 1983. It relates to the difficulties encountered by the Federation, which is organised at the interoccupational and national level and which claims to be representative and therefore entitled to a seat on the National Labour Council. The Government sent a very detailed reply on 2 and 11 May 1984. Under Belgian legislation, the terms of office of the members of the National Labour Council are for four years and were to be renewed in December 1984. At its November 1984 meeting, the Committee agreed to postpone its examination of the case in response to a request sent by the Government on 12 October 1984. In its request, the Government asked for consideration of the case to be postponed to the Committee's February 1985 meeting on the grounds that the decisions concerning the renewal of the terms of office of the members of the National Labour Council were not due to be taken until the end of the year (236th Report, para. 6). In the absence of further information from the Government, the Committee was again obliged to adjourn the matter at its February 1985 meeting (238th Report, para. 5). In a communication dated 19 April 1985, the Government merely indicates that the terms of office of the members of the National Labour Council have not yet been renewed and that the matter is still under discussion. The Committee again adjourned its examination of this case to await the result of the negotiations that are taking place concerning the composition of the National Labour Council. It would point out to the Government that, since the complaint was submitted two years ago, it will be obliged to examine this case in substance at its November 1985 meeting even if it has not received a detailed reply from the Government.

11. As regards the cases relating to Uruguay (Cases Nos. 1254, 1257, 1290, 1299 and 1316), a representative of the Government told the Committee that the Government of Uruguay had taken a series of measures with a view to guaranteeing fully respect of the freedom of association and collective bargaining Conventions: the repeal of Acts and decrees which restricted trade union freedoms, adopted when the de facto Government had been in power; access of previously dissolved organisations to trade union activities; the adoption of an amnesty law for political and trade union offences; the authorisation of exiled persons to return to the country, etc. The Government representative stressed the willingness of the new Government to supply information on the pending cases and pointed out that the adoption of legislation on trade union matters was being discussed.

Finally, he stated that there were no persons detained in Uruguay for trade union reasons. The Committee wishes to express its appreciation to the Government for providing this information through its representative. It hopes that the information requested as regards these cases will be supplied at an early date.

12. As regards the case concerning Burkina Faso (Case No. 1266), a Government representative has indicated that detailed information on the outstanding allegations in this case will shortly be provided. The Committee, accordingly, hopes that a detailed reply will be received in the near future.

13. As regards the case concerning Papua New Guinea (Case No. 1267), which the Committee examined at its meeting in November 1984, in a communication received on 4 April 1985 the Government states that the legislation which confers upon the Government power to disallow at its own discretion and at any time awards or determinations relating to employees in the public service and the teaching service will be amended in order to be consistent with the obligations established by Article 4 of Convention No. 98, ratified by Papua New Guinea. The Committee requests the Government to keep it informed of the outcome of the review of the legislation and the texts of any amendments that may be enacted.

14. As regards the cases relating to the Dominican Republic (Cases Nos. 1277 and 1288), the Committee adopted interim conclusions at its November 1984 meeting (236th Report, paras. 651 to 685) and requested the Government to supply information on the outcome of the judicial investigations under way into the deaths and injuries which occurred during demonstrations in April-May 1984. Since this additional information has not been received, the Committee requests the Government to send it shortly.

URGENT APPEALS

15. The Committee observes that, in spite of the time which has elapsed since the last examination of the following cases and the seriousness of the allegations in some of them, the observations or information requested of the governments concerned have not been received: Cases Nos. 1219 (Liberia), 1294 (Brazil), 1301 (Paraguay) and 1308 (Grenada). The Committee draws the attention of the governments concerned to the fact that, in conformity with the procedural rules set out in paragraph 17 of the Committee's 127th Report, approved by the Governing Body, it may present a report at its next meeting on the substance of these cases even if the governments' observations have not been received at that date. The Committee accordingly requests the governments concerned to transmit their observations or information as a matter of urgency.

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16. During the examination of the cases before it, the Committee noted with concern the attitude of non-cooperation with the procedures shown by certain governments which do not supply replies to the allegations made against them, or which delay in sending them, sometimes until just before, or even during, the Committee's meeting. It would point out that such an attitude prejudices the examination of the substance of cases since the Committee is obliged to examine them in the absence of information from the governments concerned or to adjourn them. The Committee, accordingly, appeals to governments involved in cases to supply the observations and information requested of them in good time so as to enable the Committee to examine the cases at the meeting for which the replies are requested. In this connection, the Committee refers to certain cases mentioned in the foregoing paragraphs concerning Liberia, Brazil, Paraguay, Grenada, Guatemala, Central African Republic, Morocco and Nicaragua.

Direct contacts

17. As regards the cases relating to El Salvador (Cases Nos. 953, 973, 1150, 1168, 1233, 1258, 1269, 1273 and 1281), the Committee notes that following an official visit by the Director-General to the country the Government is willing to accept a direct contacts mission with a view to examining the various aspects of these cases. The Committee hopes that the necessary arrangements will be able to be made shortly so that this mission can take place as soon as possible.

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18. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Cases Nos. 997, 999 and 1029 (Turkey), 1190 (Peru) and 1304 (Costa Rica).

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

19. As regards the cases relating to Sri Lanka (Cases Nos. 988 and 1003), which the Committee last examined at its November 1983 meeting (see 230th Report, paras. 351 to 375), and which concerned, primarily, repercussions following the general strike of July 1980 (in particular: the closure of trade union offices which had been housed in government premises; the continued unemployment of thousands of workers dismissed after the strike; and the ongoing trial of five named trade union leaders before the High Court of Colombo), the Committee takes note of the Government's communication of 22 February

1985. According to the Government, 15 of the 25 unions listed by the complainants are functioning normally in new offices although their previous offices in government premises have not been released to them for security reasons, four of the unions referred to are not registered under the Trade Unions Ordinance, two have had their registrations cancelled for failure to furnish the annual returns as required by the Trade Unions Ordinance and the remaining four are branch unions which are not required to be registered and whose parent organisations continue to function. The Government stresses that those workers who were deemed to have vacated their posts and are still without employment continue to be re-employed by the Government as and when suitable vacancies occur and that almost all have been re-employed. As regards the legal proceedings against five trade unionists, the Government states that the Attorney-General, after examining the proceedings of the preliminary inquiry, has referred the case record back to the original magistrate since it appeared to him that there were additional persons who should be committed to trial in the light of the evidence recorded. The magistrate concerned has not yet concluded proceedings and the Attorney-General has reported that all necessary steps are being taken to complete the legal process without undue delay. The Committee takes note of all this information; it would, nevertheless, urge the Government to continue to do its utmost to reinstate those workers who have been without employment for almost five years for having exercised a legitimate means of defending and promoting their occupational interests in the strike of July 1980. Finally, the Committee would again draw the Government's attention to the importance of independent and rapid judicial proceedings and hopes that the trial of the five trade union leaders - who were charged in connection with the general strike in late 1980 - is concluded as soon as possible. Moreover, in a communication dated 29 April 1985, one of the complainant organisations, the Trade Unions International of Public and Allied Employees, alleges that the Government continues its reprisals against those public servants who took part in the 1980 strike through such measures as restricting promotions and refusing to pay arrears of salaries (Public Administration Circulars Nos. 254 and 262). The Committee requests the Government to transmit its observations on these points as soon as possible.

20. As regards the case relating to Morocco (Case No. 1077), the Committee, at its May 1982 meeting (217th Report, paras. 414 to 430), requested the Government to keep it informed of the outcome of the appeals lodged by members of the executive committee of the trade union of the AETCO LEVER undertaking who had been dismissed for having participated in a strike in June 1981. In a communication received on 8 May 1985, the Government states that the AETCO LEVER company appealed against the decision of the Court of First Instance of Casablanca and that the Appeals Court of Casablanca has commenced its deliberations. The Committee notes this information and requests the Government to keep it informed of the decision to be handed down by the Appeals Court of Casablanca.

21. As regards the case relating to Costa Rica (Case No. 1122), the Committee had requested the Government to keep it informed of the outcome of the trial against the Costa Rican Institute of Water and Sewerage for the dismissal of two leaders of the Trade Union Association of Water and Sewerage Workers (ASTRAA) as well as on the cancellation of the authorisation to use the trade union premises located in the Institute. In a communication dated 25 April 1985, the Government sends copies of the judgements handed down by the First Criminal Court following a complaint lodged against the management of the undertaking by the National Directorate of Labour. The Court considered that the trade union leaders had shown an improper attitude towards the management in threatening it, and consequently found the management not guilty. While noting that the behaviour of the trade union leaders went beyond the framework of what could be considered as lawful trade union activities, the Committee considers that the penalties imposed should have affected only the individuals responsible for those acts and not the trade union organisation as a whole. It therefore expresses the hope that the Government will take the measures necessary to restore the use of the trade union premises to ASTRAA.

22. As regards the cases relating to the Philippines (Cases Nos. 1157 and 1192) which the Committee last examined at its November 1984 meeting (236th Report, paras. 286 to 302) and February 1985 meeting (238th Report, para. 30), the Committee notes the information contained in a communication from the Government dated 9 May 1985. According to the Government, on 31 January 1985, the court hearing Criminal Case No. Q-21905 decided that it would be unconstitutional for the trial to proceed without the presence of the accused, Mr. Crispin Beltran, Secretary-General of the Kilusang Mayo Uno, who had escaped from military custody. The trial was accordingly suspended and a warrant for his arrest was issued. The trial concerning Criminal Case No. Q-21741 (which concerns the indictment of several labour leaders on charges of crimes against public order and tending to endanger national security) was postponed at the request of the defence counsel until 22 May 1985. As regards the alleged travel restrictions on Mr. Bonifacio Tupaz, Secretary-General of the Trade Unions of the Philippines and Allied Services, the Government confirms that he was able to travel and attend an overseas trade union conference earlier this year. The Committee takes note of this information and requests the Government to continue to keep it informed of progress in the trials against the trade union leaders concerned.

23. As regards the case relating to Peru (Case No. 1181), the Committee had asked the Government to keep it informed of any progress towards the adoption of a Bill to govern the legal and labour situation of the employees of the Banco de la Nación. In a communication dated 22 February 1985, the Government states that Legislative Decree No. 276 - Act on administrative careers and remuneration - was adopted on 6 March 1984. According to the Government, section 2 of this Decree provides that workers in state undertakings are deemed to fall within the juridical system of the

private sector. The situation of the workers concerned, whose organisation had been refused registration because they were considered to be public employees, has thus been defined. The Committee takes note of this information with interest.

24. As regards the case relating to Chile (Case No. 1212), the Committee, at its February 1985 meeting (238th Report, paras. 191 to 204), requested the Government to keep it informed of the outcome of the judicial proceedings still under way concerning the ineligibility for office of four trade union leaders, and also to inform it of any measure taken to reinstate the five trade unionists dismissed in June 1983 from the CODELCO-Chile undertaking. In communications dated 22 April and 2 and 9 May 1985, the Government, with reference to the five dismissed trade unionists, explains the background to the contacts and negotiations which took place between the undertaking and those concerned. It concludes that the company had not violated any agreement on the reinstatement of these workers since they themselves had refrained from implementing their part of the agreement. As for the procedure for ineligibility still outstanding, the Government states that CODELCO-Chile and the four workers involved have abandoned their petition before the Court of First Instance of Calana which means that these persons face no obstacle to carrying out any trade union activity. While noting this information, the Committee would recall that the five workers were dismissed for participating in work stoppages in June 1983. It would accordingly draw the Government's attention to the fact that when workers are dismissed for striking, there is reason to believe that they are being penalised for exercising legitimate trade union activities and are thus subjected to anti-union discrimination contrary to the principles of freedom of association. The Committee therefore expresses the firm hope that the Government will take the measures necessary to comply fully with the Committee's recommendation concerning the reinstatement of the workers concerned.

25. As regards Case No. 1225 (Brazil), the Committee, at its November 1984 meeting (236th Report, paras. 303 to 315), requested the Government, in particular, to keep it informed of developments in the situation regarding the proposed amendments to the trade union legislation, the continuing supervision of one trade union and the decision that several trade union leaders were ineligible to hold trade union office. In a communication dated 2 April 1985, the Government transmits the text of the decision taken by the Minister of Labour and published in the Official Gazette according to which all the trade union leaders who had been impeded in the exercise of trade union activities had been rehabilitated. The Committee takes note of this decision with interest. It recalls, however, that it would like to receive from the Government its observations on the situation of the Trade Union of Metallurgical, Mechanical and Electrical Workers of Sao Bernardo and Diadema which had been placed under supervision, as well as on the draft amendments to the trade union laws.

26. As regards Case No. 1227 (India), examined at its meeting in May 1984, the Committee had requested the Government to inform it of

the outcome of the case pending before the Industrial Tribunal concerning the legality of the retrenchments in February 1983 in the J.K. Synthetics Ltd. factory. In communications of 5 March and 24 May 1985, the Government states that the award of the Special Industrial Tribunal is still awaited and that out of the 55 workers retrenched the company re-employed 34 workers, terminated the service of one after conducting a domestic inquiry and three workers resigned; thus 17 workmen remain suspended. The Committee takes note of this information and requests the Government to inform it of the decision of the Special Industrial Tribunal when handed down and the situation regarding the reinstatement of the remaining suspended workers.

27. Lastly, as regards the United States (Case No. 1074), Chile (Case No. 1191), Peru (Case No. 1228), Ecuador (Case No. 1230), Australia (Case No. 1241), Barbados (Case No. 1264) and Honduras (Case No. 1268) the Committee again requests the Governments concerned to keep it informed of developments in these cases. As regards the case concerning India (Case No. 1100), the Committee at its May 1983 meeting requested the Government to transmit the text of the judgement to be handed down in the case pending before the Supreme Court concerning the change in conditions of service in the insurance sector following amendments to the General Insurance Business (Nationalisation) Act. In communications dated 23 and 24 May 1985, the Government states that the matter is still pending before the Supreme Court and full details regarding developments will be sent as soon as possible. The Committee trusts that it will receive this information shortly.

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

29. In these circumstances, the Committee recalls those requests made some time ago and which remain without response. At its May 1984 meeting, the Committee invited the Government of Ghana (Case No. 1135) to inform it of any measures which might be taken to terminate the freeze on the bank accounts of trade unionists who were in exile. At its May 1984 meeting, it also requested the Government of

Iraq (Case No. 1146) to send it the text of the judgement sentencing to death the leaders of the General Federation of Trade Unions in Iraq, Messrs. Mohamed Ayesh and Baden Fadel. Again its May 1984 meeting, the Committee requested the Government of Brazil (Case No. 1237) to communicate a copy of the judgements, together with the reasons adduced therefor, handed down against those responsible for the death of the trade union leader Margarita Maria Alves in August 1983. Not having received the replies and information requested from the governments on these various points, the Committee invites the Director-General to bring these matters to the attention of the governments concerned and request them to send their replies urgently so as to enable the Committee, at its next meeting, to make a further assessment of the situation in each case.

CASES NOT CALLING FOR FURTHER EXAMINATION

Case No. 1292

COMPLAINT PRESENTED BY THE PROFESSIONAL ASSOCIATION OF
MUNICIPAL HEALTH AND WELFARE EMPLOYEES
AGAINST THE GOVERNMENT OF SPAIN

30. By a communication dated 11 July 1984, the Professional Association of Municipal Health and Welfare Employees presented a complaint of violation of trade union rights in Spain. On 4 August 1984 the complainant organisation transmitted additional information in support of its complaint. The Government sent its observations in communications of 1 and 4 February and 26 April 1985.

31. Spain has ratified the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

32. In its complaint the Professional Association of Municipal Health and Welfare Employees explains that it is a lawfully constituted trade union organisation with legal personality. On 15 March 1984, in accordance with the provisions of the Spanish Constitution, Act No. 8/80 of 10 March 1980 concerning the Workers' Statute, Royal Legislative Decree No. 17/77 of 4 March 1977 and Royal Legislative Decree No. 156/79 of 2 February 1979, the Association gave notice that it would call a strike in the District of the Madrid Municipality for the period 29 March to 2 April 1984.

33. On 5 May 1984, a list of services regarded as constituting the minimum - which, in the health sector, covered the services of physicians in their entirety - was established by Municipal Order. In the view of the complainant organisation the Municipality of Madrid had thus denied the right to strike by voiding it of its substance. Furthermore, the Association claims, this decision is in contempt of a Constitutional Court ruling of 8 April 1981 and a judgement handed down by the Madrid Territorial Court on 21 November 1983.

34. The complainant organisation attaches to its communication of 4 August 1984 the bulletin of the Municipality of Madrid containing the Order, which lays down that the entire personnel of "health and surgery centres" are deemed to be providing essential services in the health sector. The complainant explains that there are 18 health centres in Madrid, each with a physician, a medical assistant and two surgical teams, each consisting of three surgeons and three medical assistants. In four of these centres the number of personnel has been doubled to deal with emergency cases. A maternity home, a centre for specialist treatment and a preventive medicine centre are also operating.

35. Finally, the complainant organisation considers that, although the right to strike in the health sector should be subject to restrictions, it is difficult to justify the claim that the full staff complement of a preventive medicine centre represents an essential service.

B. The Government's reply

36. In its communication of 1 February 1985, the Government states that health services regarded as minimum services are those whose interruption would cause serious harm to citizens. According to the Government, only 207 physicians of the 378 employed in the four sectors of the medical and health services of the Municipality of Madrid were affected by this measure.

37. In its communication of 4 February 1985, the Government encloses the observations of the Municipality of Madrid on the allegations made in the complaint. According to this communication, the general criterion followed by the Municipality, in accordance with the Constitutional Court ruling of 8 April 1981, has been to respect the right of workers to defend their interests through the use of a means of pressure; this right must, however, be restricted when its exercise prevents or seriously impedes the functioning of what the Constitution refers to as "essential community services". In such cases the right of the population to benefit from these vital services takes precedence over the right to strike. In the present case, the Municipality defined minimum services with reference to the accident statistics, the need for emergency surgery and the care to be given to

persons who do not enjoy the protection of the social security system or other health facilities.

38. The Municipality of Madrid states that, contrary to the assertions of the complainant, no special order was published in connection with the strike called by the Professional Association of Municipal Health and Welfare Employees. Minimum services are regulated by two Municipal Orders of 16 March and 5 April 1984. In accordance with these Orders, the number of persons liable to provide minimum services was 354 out of 480 in emergency health services and 153 out of 285 in secondary services. No member of the staff of the preventive medicine and social welfare and advancement sections was affected.

39. The Municipality observes that the effect of the strike was nil, since no absences from work were noted, and the workers responsible for ensuring the minimum service showed no sign of working to rule, as had been recommended by the complainant association.

40. Finally, in a communication of 26 April 1985, the Government states that according to the Constitution and Act on local statutes, the municipalities enjoy full autonomy. The measures taken by the Municipality of Madrid fall within its own responsibility.

C. The Committee's conclusions

41. The Committee observes that the present case relates to the definition of minimum services to be ensured in the event of a strike in the health and welfare services of the Municipality of Madrid. The complainant organisation considers that it was unable to exercise its right to strike because the Municipality regarded the entire staff of these services as being being under the obligation to provide minimum services. On the other hand, the statistics provided by the Government show that only part of the medical staff were compelled to provide them. In particular, it is clear from these figures that no member of the staff of the preventive medicine and social welfare sections was obliged to work.

42. In cases involving restrictions on the right to strike, the Committee has considered that recourse to strike action is a legitimate means that must be available to workers and their organisations for the promotion of their economic and social interests. However, the Committee is of the opinion that recourse to strike action may be restricted - or even prohibited - in essential services in the strict sense of the term, namely services whose interruption would endanger the life, personal safety or health of the population. [See, for example, 238th Report, Case No. 1295 (United Kingdom/Montserrat), para. 168.] Restrictions in such services should be offset by adequate, impartial and speedy conciliation and

arbitration procedures in which the parties concerned can take part at every stage.

43. The Committee has examined the Spanish legislation relating to the right to strike. It notes that section 10 of Royal Legislative Decree No. 17/1977 allows the authorities to take the necessary steps to ensure the operation of services in undertakings responsible for providing public or recognised essential services or services of immediate necessity when the attendant circumstances are particularly serious. In a ruling of 8 April 1981, the Constitutional Court, in interpreting section 10, held that the services to be maintained are essential services and that the provision empowers the government authorities to take the necessary steps to ensure the operation of minimum services. Moreover, the Royal Legislative Decree contains provisions - in sections 17 to 26 - for the possibility of resorting to conciliation and arbitration procedures in the event of collective labour disputes.

44. Since the restrictions imposed on the right to strike in the present case relate to the hospital sector, which it has always regarded as essential [see, in particular, 199th Report, Case No. 910 (Greece), para. 117], the Committee considers that the principles of freedom of association have not been infringed in this instance. The Committee also observes that if the complainant organisation considered that the Municipal Order laying down the minimum services to be ensured conflicted with the Constitution and the law of the land it could have appealed to the national courts. However, from the information in the Committee's possession, it does not appear that any appeal was presented. The Committee accordingly considers that this case does not call for further examination.

The Committee's recommendation

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

Case No. 1302

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

46. The World Federation of Trade Unions (WFTU) presented a complaint of alleged violations of trade union rights in a communication dated 12 September 1984. The Government replied in a communication dated 4 February 1985.

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

A. The complainant's allegations

48. In its communication of 12 September 1984, the WFTU refers to the situation of the Colombian Trade Union of Workers of the National Federation of Coffee Growers (SINTRAFEC). It alleges that this Union - which represents 5,500 employees of the undertakings "National Federation of Coffee Growers of Colombia" and "Almacafe" - presented the employer with a list of demands on 9 February 1984 and attempted, in vain, direct settlement and conciliation. At its National Assembly the SINTRAFEC voted for the setting up of an arbitration board, since it does not cover the required number of workers to call a strike. Both parties were summoned to compulsory arbitration but the employer lodged an appeal (recurso de reposición) for the recommencement of proceedings and against the summons on the grounds that (a) the SINTRAFEC membership did amount to 51 per cent of the employees and (b) under section 31 of Legislative Decree No. 2351 of 1965, the decision to go to arbitration should have been taken by a meeting of all workers and not only by the unionised employees. At the time of the complaint, the employer's appeal had not been settled.

49. According to the complainant, if the decision goes against the union, a series of negative effects would ensue such as the denial of the right of unions to approach the arbitration boards voluntarily. In any case, it claims that the arbitration boards were set up to restrict the right to strike and that their composition is unfair since both parties to a dispute nominate an arbitrator and if they cannot agree on the third arbitrator, the State appoints one. Another negative repercussion would be that unions would be obliged to hold regional meetings of all workers which would not only be costly, but would also run the risk of employer influence on the non-unionised workers (for example, through non-attendance, leaving meetings early) and would have to be attended by a representative of the Ministry of Labour since they would not be trade union meetings. In addition, this kind of meeting could be objected to by the employer, at first instance before the Ministry and then before the Council of State which could take over a year to decide the matter.

50. In conclusion, the complainant points out that in 1967 and 1970 SINTRAFEC accepted arbitration awards in the same circumstances as the present affair, namely when it only represented over a third of the employees but not 51 per cent. It states that the union has always presented claims and signed collective agreements for all the workers concerned whether or not members of SINTRAFEC; in the present case, the non-unionised workers sent their requests to the union so as to fit in with the formal list of claims.

B. The Government's reply

51. In its communication of 4 February 1985, the Government describes the background to the dispute and explains that a request was made for the setting up of an arbitration board in conformity with section 34 (b) of Legislative Decree No. 2351 of 1965. According to the Government, the Minister convened the arbitration board on 28 June 1984, but the employer contested this on the grounds of the trade union's membership number. The Minister of Labour managed to bring the parties together for effective dialogue which resulted in the signature of a collective agreement and a final solution of the matter.

C. The Committee's conclusions

52. The Committee notes that this case concerns a dispute over a trade union's representativity during negotiations over a list of demands presented to the employer in February 1984. It also notes that, according to the Government, the dispute was finally settled with the signature of a collective agreement between the union concerned and the employer after intervention by the Minister of Labour.

53. As regards the complainant's reference to the composition of arbitration boards, the Committee notes that under Legislative Decree No. 2351 of 1965, sections 35 and 36, these boards are formed by the appointment of three members - one by each of the parties and one by the Ministry of Labour - who shall be chosen from the tripartite list of nominees which is established every two years. The Committee observes that the nominees on the government list shall be "Colombian citizens who are registered lawyers or specialists in economic and social questions and who are of recognised integrity". It therefore considers that the impartiality and objectivity of the arbitration boards is guaranteed by the legislation and does not call into question the principles of freedom of association.

54. In view of the above and especially taking into account that the labour dispute in question would appear to have been settled by the signing of a collective agreement for the workers concerned, the Committee considers that this case does not call for further examination.

The recommendation of the Committee

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

Case No. 1315

COMPLAINT SUBMITTED BY THE NATIONAL
FEDERATION OF PUBLIC EMPLOYEES' TRADE UNIONS
AGAINST THE GOVERNMENT OF PORTUGAL

56. The complaint of the National Federation of Public Employees' Trade Unions is contained in a communication of 7 November 1984. Subsequently, the complainant organisation supplied further information in a cable dated 29 November 1984 and documents in support of its complaint on 3 December 1984. The Government replied in a letter dated 26 April 1985.

57. Portugal has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. Allegation of the complainant federation

58. The National Federation of Public Employees' Trade Unions alleges the infringement of trade union rights in Portugal in connection with the bargaining procedure for the review of public service wages for the year 1985.

59. According to the Federation, the following irregularities have been committed by the Government: after the bargaining procedure had commenced on 28 September 1984 and it had been mutually agreed that the second meeting would take place on 11 October, the Government was not represented at that meeting by the persons who, in accordance with the law, are qualified to undertake the negotiations; it thus infringed the provisions of section 3 of Legislative Decree No. 45-A/84 of 3 February 1984. Consequently, the date of the subsequent meeting was not determined at the second meeting and the programme that had previously been established and the deadlines for the bargaining procedure could not be respected.

60. The complainant Federation refers to a letter of 23 October from the State Secretariat for Public Administration, stating that the bargaining procedure was not considered to be suspended and would be resumed as soon as the Secretary of State for Public Administration and other government members had received more specific instructions to be elaborated in the Council of Ministers concerning the budgetary policy to be applied; the Federation maintains that this letter served only to disguise the obvious illegality of the Government's behaviour towards bargaining. The Government is thus said to have infringed section 3(1) of the above-mentioned Legislative Decree No. 45-A/84. The Federation concludes that the Government broke off the

negotiations unilaterally and without justification, adopting in their respect an attitude which amounted - in practice - to denying the trade unions of public employees' their right to bargain.

61. The complainant subsequently added that, despite repeated efforts on its part to get the Government to resume bargaining, the Government refused to do so and, on 28 November 1984, nearly 20,000 workers in the public service demonstrated in the streets of Lisbon for the negotiations to be resumed.

62. However, according to the complainant, Portuguese legislation on the right to bargain in the public service provides no means of obliging the Government to resume bargaining. In this connection the Federation recalls that it had strongly criticised the Bill on the right to bargain of public employees and encloses a document which it published on 7 October 1983 in which it set out its grievances in respect of the Bill.

63. According to this document, the Bill in question constituted an attack on the unalienable right of public employees to bargain collectively since the term "collective bargaining" used therein actually referred only to the "consultation of trade unions" on the determination by legislative means, of conditions of work in the public service. According to the document from the complainant, section 5(2) of the Bill provided that collective bargaining consisted in the appraisal and discussion, by trade union associations and the administration, of questions relating to conditions of work in order to resolve them by mutual agreement and section 5(3) accorded the agreement resulting from the said appraisal and discussion merely the character of recommendations without any executory force or legal effect.

64. Consequently, according to the complainant Federation, the "participation" referred to in the Bill was confined to recognising the right of trade union associations to issue reports on the elaboration or modification of laws and regulations applicable to the general or special system governing the public service, and the Bill contained no machinery for resolving disputes.

B. The Government's reply

65. In its reply of 26 April 1985, the Government observes that the complainant Federation bases its complaint first of all on the lack of representativity of the government members who attended the meeting on 11 October 1984, considering that the nature of the proceedings was thereby irremediably altered, which jeopardised the exercise of the right to bargain of the unions of public employees.

66. The Government maintains that this statement does not correspond to the truth since the Head of Cabinet of the Secretary of

State for Public Administration, the Directors-General of Administration and the Public Service and of the department which assists public employees in the event of sickness as well as other directors and officials belonging to these departments attended the meeting on 11 October and represented the Government.

67. The Government explains that the Secretary of State for Public Administration, acting on the authority of the Minister of State and in accordance with the Act respecting the organisation of the Government (see Legislative Decree No. 344-A/83), is responsible for co-ordinating activities connected with the reform of the public administration and that this Secretary of State is represented by his Head of Cabinet in matters not strictly relating to personnel questions (see Legislative Decree No. 267/77). Moreover, the Government adds, the functions of the General Directorate of Administration and the Public Service of the Secretariat of State for Public Administration include promoting the improvement and modernisation of the public administration and taking part in defining the strategies and policies of administrative reform (see Decree No. 80/82). The General Directorate in question, as a body for co-ordination and technical assistance, is entrusted with ensuring the establishment of relations with trade union associations of workers in the public administration and of organising the procedure for collective bargaining and participation in the drafting of legislation concerning the general or special system governing the public service.

68. Furthermore, the Government continues, the Minister of Finance and Planning was represented, in negotiations with the General Directorate of Administration and the Public Service by the Director-General of the department for assistance to public employees in the event of sickness, in view of the nature and scope of the matters under discussion with this general directorate.

69. The Government therefore considers that there have been no irregularities as regards its representation at the meeting of 11 October, in view of the presence at this meeting of the legal representatives of the Secretary of State for the Public Administration, the Director-General of the department for assistance to public employees in the event of sickness (representing the Ministry of Finance and Planning), and of the Director-General of Administration and the Public Service.

70. As regards the complainant's allegation that the bargaining procedure was suspended by the Government, which would be contrary to section 3(2) of Legislative Decree No. 45-A/84, mentioned above, and paragraph 1 of the same section, the Government considers that this allegation also is unfounded.

71. According to the Government, in actual fact there was no interruption or even suspension of the bargaining procedure but merely a postponement of the original deadlines as a result of an unexpected delay in the discussions on the general budget of the State, on the adoption of which the new public service salaries necessarily