B. The Government's reply

89. In its reply of 4 May 1988, the Government denies the allegations concerning the results of the NSP&GWU convention of 29 August 1986 and the granting of a letter of recognition from the Ministry. It states that, while it is true that a convention was held on that date with the Ministry of Labour being invited to monitor it, the meeting was not held in accordance with the union's by-laws and constitution because, as the minutes of the convention show, representatives from only three of the NSP&GWU's 13 membership regions (the counties of Nimba, Grand Bassa and Montserrado) were present and only 30 delegates from the three counties in fact voted at the election. Moreover, certain members of the union had filed a complaint against Mr. Mooney (who was later elected Vice-President for Administration) and others, and this complaint was under investigation when he held the convention in question. Therefore, states the Government, the meeting was void from the beginning.

90. As regards the allegation that the President of the Republic ordered the Ministry of Labour to recognise Mr. Tarbah as president of the union contrary to the election results, the Government denies this, stressing that there was no valid election since the convention was invalid. Moreover, it claims that the Ministry of Labour only received a letter calling its attention to the fact that a complaint had been filed by certain union members against Mr. Mooney and others and the investigation into the complaint should have been completed before any election took place.

91. As for the allegation that the Ministry's letter of recognition had not been revoked by the authorities, the Government states that, since the convention was void from the beginning, the letter of recognition reflecting the election results was also null and void. According to the Government, the legitimate leaders of the union were duly informed after it was discovered that the convention had not respected the required quorum.

92. In conclusion, the Government points out that it has ratified Conventions Nos. 87 and 98 and has given effect to the provisions of these Conventions through its laws and national practice.

C. The Committee's conclusions

93. The Committee notes that the allegations in this case centre on government interference in the internal affairs of the complainant union by refusing to accept the results of the union's 1986 election of officers. The Committee takes note of the Government's denial of interference, based on the fact that the elections in question were void on two grounds: (1) a complaint was being investigated by the presidential legal adviser into one group of the union's members

headed by Mr. Mooney, so he ought not to have convened a meeting; and (2) under the union's by-laws a voting quorum had not been obtained for the election. The Committee observes that an attachment to the complaint refers vaguely to a merger agreement between "the two factions" but that no mention is made of this in the Government's more recent observations, inferring that no merger ever came about.

94. In past cases when the Committee has been presented with situations in which government authorities appear to have interfered in election results by favouring or recognising one internal group over another, the Committee has recalled [See, for example, 243rd Report, Case No. 1271 (Honduras), paras. 435 and 438.] that, in ratifying Convention No. 87, a government undertakes to leave it to workers' organisations themselves to draw up their own constitutions and rules and to elect their representatives in full freedom. In the present case, an examination of the labour legislation in question shows that section 4102 of the Labour Practices Law provides for the supervision by the administrative authorities of trade union elections and the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations has criticised this discrepancy with Article 3 of Convention No. 87 for many years. In its 1988 observation on Liberia's observance of that Convention, the Committee of Experts noted that, according to the Government, a new draft Labour Code had taken account of the Committee's comments and it urged the Government to ensure the adoption of the necessary amendments in the near future. To date, however, it appears that there has been no repeal or amendment of section 4102 of the law.

95. The facts of this case show, however, that the government reaction was of a different kind: Mr. Mooney's group (which lodged this complaint) received a letter of recognition from the Ministry of Labour, but the Ministry subsequently reversed its position after receiving orders from a higher authority. Since neither the complainant nor the Government supplied a copy of the union's by-laws concerning the requirements for convening meetings or election quorums, the Committee is not in a position to comment on the alleged procedural irregularities. In any case, the Committee notes that, since 20 October 1986 when the Ministry executed the President's orders, Mr. G. Tarbah has represented the workers of Liberia at the 75th (1988) Session of the International Labour Conference.

96. It is not for the Committee to decide which group should represent the members of the NSP&GWU but to examine whether there was government interference with the workers' free choice of union officers. The Committee has stated in many cases that it is not competent to make recommendations on internal dissensions within a trade union organisation so long as the Government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organisation. [See, for example, 217th Report, Case No. 1086 (Greece), para. 93.] Moreover, in cases of internal conflict, the Committee has pointed out that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling questions concerning

the representation of the union concerned; another possible means of settlement would be to appoint an independent jointly-agreed-upon arbitrator to seek a joint solution and, if necessary, to hold new elections. [See, for example, 172nd Report, Case No. 865 (Ecuador), para. 75.]

97. In the present case, the Committee notes that procedures exist to settle questionable election results: section 4103(2) and (3) of the Labour Practices Law empower, respectively, any union member to challenge the election of a person convicted of a crime and to complain of violation of the law or the rules of the union concerned as regards the election of officers and that such a complaint can then be submitted by the labour authorities to the ordinary courts for an order to set aside the invalid election and to direct the conduct of a new one. In this connection, the Committee further notes that Mr. G. Tarbah had been convicted in 1984 of theft of property and that, likewise, an unspecified complaint against Mr. Mooney and his group was before the presidential legal adviser in August 1986. Yet, despite the availability of this appeals procedure, no complaint was filed against the Ministry's recognition of Mr. G. Tarbah in October 1986. It therefore appears that the membership has accepted Mr. Tarbah's presidency of the union, even if Mr. Mooney's group did not.

98. In any event, taking a pragmatic approach to this case, the Committee notes from the legislation that national labour organisation elections should take place every three years, so that the next election of officers for the NSP&GWU is due in the second half of 1989. In the next elections, both groups will be able to present candidates and, hopefully, the new Labour Code will then be in force to ensure that the union's elections will not be supervised or interfered with by the authorities. In the meantime, if the internal dissension within the NSP&GWU starts to affect the functioning and effectiveness of the union, the general membership will no doubt seek a settlement along the lines suggested by the Committee above.

The Committee's recommendations

99. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) in line with the request expressed this year by the Committee of Experts on the Application of Conventions and Recommendations, the Committee trusts that the new labour legislation, which will no longer permit government intervention in union elections, will be rapidly adopted;

(b) while noting that the allegations are linked to internal dissension within the union, the Committee considers that it is for the general membership to decide, if necessary, whether to call for the help of an independent arbitrator or for new

elections or to wait for next year's re-elections to vote for whichever group best represents the members' interests.

Case No. 1423

COMPLAINT AGAINST THE GOVERNMENT OF COTE D'IVOIRE PRESENTED BY THE WORLD FEDERATION OF TEACHERS' UNIONS

100. The Committee examined this case at its meeting in May 1988 and submitted an interim report to the Governing Body [see 256th Report, paras. 383-400]. The Government subsequently sent its observations in communications of 25 May, 30 May, 3 June, 2 August and 13 September 1988.

101. The Committee was also informed that the Director-General, accompanied by Mr. Gernigon, Chief of the Freedom of Association Branch, paid a visit to Côte d'Ivoire from 27 to 29 July 1988 in order to examine the questions raised in the present case with the government authorities.

102. Côte d'Ivoire has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

103. The World Federation Of Teachers' Unions (FISE) alleged that the congress of the National Union of Secondary School Teachers of Côte d'Ivoire (SYNESCI) had been suspended; that certain non-paid up elements had gone ahead with an illegal creation of an executive, which had occupied the union's headquarters with the help of the national police; and that SYNESCI's bank accounts had been frozen by order of the Minister for National Education in favour of the unlawful executive committee.

104. The FISE also alleged that three SYNESCI leaders, including the Secretary-General, Mr. Laurent Akoun, had been arrested and subsequently sentenced to terms of imprisonment ranging from four to six months for "misappropriation of union funds". It added that 13 other unionists had been detained in the Séguéla military camp, 18 had had their salaries suspended and six had been suspended from duties.

105. In the light of information available at its meeting in May 1988, the Committee submitted the following interim conclusions to the Governing Body:

- Given the seriousness of the numerous allegations in this case, the Committee would like to hope that the Government will do its utmost to ensure that respect for trade union rights of teachers is guaranteed in Côte d'Ivoire.

- The Committee asks that the National Union of Secondary School Teachers (SYNESCI), which has challenged the unlawful executive purporting to represent secondary school teachers, will have its case soon heard before the courts and requests the Government to inform it of the outcome of the case.

- The Committee requests the Government to supply copies of the December 1987 judgement sentencing three SYNESCI leaders to prison terms for misappropriation of union funds and urges the Government to release or to inform it of the charges brought against the 13 trade union leaders who have apparently been detained without charge or trial in the Séguéla military camp since 31 October 1987 and of their current situation.

- As regards the acts of anti-union discrimination taken by the authorities against SYNESCI activists over the last six months, the Committee requests the Government to inform it of the current situation of those teachers who have been suspended or transferred or have had salaries suspended because of their trade union activities or functions.

B. The Government's reply

106. In its communication of 25 May 1988, the Government explains that prior to its congress the SYNESCI had encountered internal difficulties. There was general disenchantment among the activists, with the exception of a hard core, itself deeply divided. The members were reluctant to pay their contributions. The national executive was glaringly inefficient and its management disastrous. The congress was crucial, since the leadership wanted to maintain its position by all possible means, whereas the vast majority of secondary school teachers wanted a change of leadership if SYNESCI was to be revitalised. Already on the opening day of the congress, two groups clashed and the group supporting the retiring executive left the hall. The other group elected an executive for the duration of the congress and continued its work. The outgoing leadership was summoned to appear and account for its management over the preceding term. On its refusal to do so, a censure motion was passed against it. Four commissions were set up and the congress carried on its work until the end. Mr. Djanwet Kouakou was elected Secretary-General by an absolute majority. The new Secretary-General took possession of the SYNESCI premises on 24 July, accompanied by a bailiff.

107. On 4 August 1987, the new Secretary-General submitted a complaint to the Public Prosecutor of Abidjan against Messrs. Laurent

Akoun, Traoré Yaya and Adoukou Vanga, members of the outgoing SYNESCI executive, for breach of trust and illegal possession of funds (14,700,000 CFA francs) and technical equipment belonging to the union. Following this complaint, information was obtained establishing that the technical equipment had been taken away while the congress was meeting by Mr. Laurent Akoun. Furthermore, between 21 and 23 July 1987, the sum of 14,700,000 CFA francs had been withdrawn from three different banks on cheques signed by the retiring Secretary-General and countersigned by the retiring Treasurer and Assistant Treasurer.

108. When questioned, the accused admitted the facts, but explained that the sums withdrawn from the banks were used to pay the salaries of Mr. Akoun's office staff and various expenses arising from the congress and union activities. As far as the equipment was concerned, they had intended to deposit it in a safe place and restore it to its rightful owners after the congress which they had envisaged calling. On 19 September 1987, appearing before the examining magistrate, Mr. Laurent Akoun declared that he was ready and able to hand over formally SYNESCI's technical equipment and the funds, after deduction of expenses, amounting to 3,850,000 CFA francs (approximately 7,700 French francs) to pay for the union's operating costs. The other two accused signified their agreement with these new statements by Mr. Laurent Akoun. On 1 October 1987, lawyers acting for the accused handed over to the examining magistrate the funds and the technical office equipment misappropriated by their clients.

109. Mr. Laurent Akoun was remanded in custody on 5 September 1987 and the two others on 11 September 1987, and all the accused appeared before the Abidjan Criminal Court on charges of breach of trust and receiving stolen goods. Before the Abidjan Criminal Court, and subsequently before the Appeal Court, to which they had appealed at the same time as the Public Prosecutor, the accused maintained that the restitution which they had made nullified their indictment and that the congress had been dissolved on 21 July 1987 as a result of the disturbances; this meant that Mr. Djanwet Kouakou had not been properly elected and was therefore not qualified to represent SYNESCI.

110. The Abidjan Criminal Court and Appeal Court held that, in the absence of any proof, the alleged election dispute was wholly illusory and that the forced restitution carried out by the accused was no more than an act of repentance which did not erase their fraudulent intent and, at best, constituted extenuating circumstances. On these grounds both courts sentenced Mr. Akoun and Mr. Traoré Yaya to six months' imprisonment without remission and a 100,000 CFA francs' fine and Mr. Adoukou Vanga to four months' imprisonment without remission and a 50,000 CFA francs' fine.

111. On 21 September 1987, Mr. Laurent Akoun and his supporters brought a suit before the Labour Court, which was clearly not competent to deal with the case and which rejected their complaint in a decision of 5 November 1987. The parties then applied to the Abidjan Court of First Instance for the annulment of the July 1987 elections. The Court held, in a judgement handed down on 6 April 1988 (a copy of

which is supplied by the Government), that the opening of the congress had the effect of dissolving all the union's management bodies, automatically terminating their terms of office, and that Mr. Akoun could not act as Secretary-General of SYNESCI since he had lost that position and could only regain it as a result of re-election by the congress. His complaint was therefore declared irreceivable.

112. The Government also states that after the arrest of Mr. Akoun, a massive disinformation and indoctrination campaign was launched by his supporters, with the circulation of seditious, defamatory, tendentious and harmful tracts displaying exceptional violence against certain political personalities, against the law, against the education administration and, above all, against the President of the Republic.

113. Notwithstanding the extreme gravity of these deeds and actions, which were contrary to the Côte d'Ivoire Public Service Act, their authors, although public servants, were merely questioned and, having admitted their involvement, incurred no greater penalty than assignment to other posts in Côte d'Ivoire. Some had their deferment of military service lifted and, like all citizens of Côte d'Ivoire, were simply sent to serve their legal term at, among others, the Séguéla camp. Finally, those who resigned their posts out of solidarity with their comrades before the courts naturally lost their salaries for the time not worked, while others who had refused to accept their new assignment also, quite legitimately, had their salaries suspended.

114. As regards the SYNESCI congress, the Government considers that the changes in the union leadership are not the responsibility of the Government. In the Government's opinion, it is a result of the rift between the activists and their known opponents before and during the congress, which had been universally anticipated as a chance to change the national leadership which was inefficient in trade union matters, unnecessarily rigid and lacking in any distinct policy. This explains why, before the congress, Mr. Akoun had altered article 24 - which became article 26 of the union's regulations - and furthermore added a new article 3, whereby the means of scrutinising the election of a Secretary-General was changed. Only 82 people would have the legal right to choose the Secretary-General, 82 sure supporters since they were all officials of subsections established by the existing executive. Moreover, profiting from the widespread disenchantment and the refusal of almost all the teaching profession to pay up their union subscriptions (out of a membership of 7,000, only 150 were fully paid up), Mr. Akoun served his own interests by opposing the last-minute move to regularise the situation on the part of all those who he knew had decided to oust him and his team from the leadership of the union. As dedicated teachers, the majority were dissatisfied with the running of their trade union organisation and disgusted by their inability to make their voices heard at their own congress; after exhausting all other avenues of peaceful dialogue, which had led nowhere for several years, they finally imposed their will by weight of numbers.

115. The Government adds that, confident in their capacity and numbers, the members of the congress did not feel concerned by a sine die adjournment of the XVth Congress by a minority whose sole interest was in preserving the status quo. In this matter, the Government confined itself to preventing disorder. The other aspect - the decision as to the legality or illegality of the congress proceedings - is, in this country which respects the separation of powers, the responsibility of the judiciary and a submission to declare the proceedings of the XVth Congress invalid has in fact come before the courts. If the Government had acted differently, not only would the cry of inadmissible interference have gone up, but the Government would actually have been usurping the position of the judiciary. This is an additional reason why, on their request for an audience, the Head of State received the new executive, as he had always done for the outgoing executive.

116. As regards the criminal action taken against the former officials of SYNESCI, the Government states that it was neither based on mere assumption nor was in any sense a political trial. It was a matter of common law, treated as such, with scrupulous respect for the law in force, attended at all times by three representatives of the Paris and Abidjan bars; the plaintiff was Mr. Djanwet Kouakou, the new Secretary-General, whose right to defend the interests of SYNESCI was all the greater since there has been no judicial decision to invalidate his election. Moreover, every citizen has the right to denounce criminal acts and the Public Prosecutor acted on his complaint. In conclusion on this point, the Government declares that in any case it had no hand in the sentences imposed and that, even if it could give orders to a representative of the Public Prosecutor's Office, it would by no means be able to influence the verdict of a court.

117. Finally, the Government considers that the administrative decisions on military service, reassignment and suspension of salaries are trifling in relation to the misdemeanours committed, which all involved violations of the Public Service Act. Section 14 of the Act states that an official is free to hold his own philosophical, political and religious opinions. The expression of such opinions, however, may not challenge the principles laid down in the Constitution of the State. It is not permissible except off duty and may only be indulged with the discretion appropriate to the official's position. It may not be circulated in writing without the authorisation of the minister responsible. No charge has been taken up, or even laid, against the accused in relation to the insults and libels against the Head of State himself, all the attacks on his public and private life and the insults directed at the public authorities, which come under sections 174 and 243 ff. of the Penal Code.

118. The Government considers that, contrary to the allegations of the complainant, there has been no infringement on its part of the relevant provisions of Convention No. 87, Convention No. 98 and Convention No. 151.

119. In its communication of 3 June 1988, the Government states that the three SYNESCI leaders have served their sentences for breach of trust and receiving stolen goods. When released from prison, they proceeded to Séguéla camp to fulfil their legal term of military service. The Government therefore considers that their presence at Séguéla is due not to their lawful exercise of trade union activities, but to reprehensible actions committed in violation of section 14 of the General Public Service Act of Côte d'Ivoire.

120. In a communication of 2 August 1988, sent to the ILO after the Director-General had returned from his mission, the Government points out that the incidents that occurred during the last SYNESCI congress were the outcome of an internal dispute within the organisation between the various trade union factions. These factions had had the opportunity to put forward their views within the organisation and the Government in no way interfered in this internal matter of the SYNESCI. Only the judiciary had had to intervene in a civil trial and in a criminal trial initiated by both factions. The court, to whom the cases were referred by the parties concerned, ruled, on the one hand, on the validity of the elections held during the aforementioned congress and, on the other hand, on the criminal charges brought against the three former SYNESCI officials.

121. As regards the situation of persons who had been called to do their military service in military camps, the Government states that these persons had taken up their civilian teaching activities once again within their legal term of military service. Furthermore, measures are at present being studied so that the suspended salaries might be fully restored to the teachers concerned. Finally, the Government assures the Committee on Freedom of Association that the persons in question were never excluded from Ivorian society since there had been direct contacts with members of the Government on their situation.

122. In a further communication dated 13 September 1988, the Government states that this matter has reached its conclusion with Mr. Akoun and his colleagues regaining unconditionally the positions they had held in the administration before the incidents which gave rise to the present case before the Committee; their salaries have been restored as from July 1988 and the arrears in salary going back to the date of their suspension will be paid. The Government adds that only the results of the XVth SYNESCI Congress remain in place since this was a purely trade union problem in which the Government should not interfere.

C. The Committee's conclusions

123. The Committee notes that in the present case the complainant has submitted allegations concerning interference by the Government in the internal affairs of the National Union of Secondary School

Teachers of Côte d'Ivoire (SYNESCI), the sentencing of three officials from this organisation to terms of imprisonment, the internment of other trade unionists in military camps and discriminatory measures taken against teachers, such as transfers or suspensions of salaries.

124. On the first point, the Committee notes that the matter can be traced back to the disputes that broke out between opposing groups during the SYNESCI congress. After the outgoing leadership had left the deliberations, the congress elected a new trade union executive which took over the premises and funds of the organisation. These elections were contested by the former leadership before the courts which rejected the complaint.

125. The Committee has always considered that it was not competent to make recommendations on internal dissensions within a trade union organisation, so long as the Government did not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organisation. [See, for example, 217th Report, Case No. 1086 (Greece), para. 93.] In cases of this nature when there have been internal dissensions, the Committee has also pointed out that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling the question of the leadership and representation of the organisation concerned. The Government should recognise the leaders designated as legal representatives of the organisation. [See, for example, 172nd Report, Case No. 865 (Ecuador), para. 75.]

126. In the present case, the Committee notes that the group supporting the former trade union leadership left the deliberations of the congress of its own free will and did not therefore take part in the elections of the organisation's executive bodies. From the allegations, it does not appear that the public authorities at any time intervened in the electoral process. Furthermore, the complaint brought before the court by the former leadership was rejected. The Committee therefore considers that this aspect of the case does not call for further examination.

127. As regards the sentencing to terms of imprisonment of three former SYNESCI officials, the Committee notes that the judicial procedures leading to these sentences had been initiated after the new Secretary-General of the organisation had submitted a complaint alleging breach of trust and receipt of stolen goods. Furthermore, the Committee can merely state that from the information provided by the Government, in particular the text of the ruling, it would seem that those concerned benefited from normal judicial proceedings and, in particular, from the right of defence and appeal before the appeal courts.

128. As regards the internment of teachers in military camps - including the three sentenced officials after they had served their term - the Committee notes the Government's explanations that the parties concerned had had their deferment of military service lifted and were sent to these camps to serve their legal term of military

service. According to the Government, these measures were taken following a defamatory and harmful campaign which they had led against certain personalities and, above all, against the President of the Republic.

129. In this respect, the Committee feels bound to recall that the right to express opinions publicly is one of the basic aspects of trade union rights. However, the exercise of trade union activity or the holding of trade union office does not provide immunity as regards the application of ordinary criminal law and the Committee considers in particular that, when making public statements, trade union officials should not exceed the admissible limits of controversy and refrain from extravagances of language. [See, in this respect, 218th Report, Case No. 1102 (Panama), para. 159.] In the present case, the fact nevertheless remains that the measures taken by the authorities to lift the trade unionists' deferment of military service were imposed without, it would seem, any normal judicial or disciplinary proceedings. Whilst noting that the parties concerned have now left the military camps and been reinstated in their teaching posts, the Committee nevertheless feels bound to draw the Government's attention to the importance it attaches to the principle that trade unionists, like all citizens, should benefit from proceedings guaranteeing full independence and impartiality when they are charged with common law or political offences.

130. The Committee takes note of the most recent information supplied by the Government to the effect that Mr. Akoun and his colleagues have regained the positions they had held prior to the incidents which led to this case before the Committee, in particular that their salaries have been restored as from July 1988 and the arrears due since the date of their suspension will be paid to them.

131. Finally, the Committee notes that an examination has being carried out into the situation of teachers whose payments were suspended, with a view to paying their salaries once again. It expresses the firm hope that the teachers concerned may therefore have their rights fully restored.

The Committee's recommendations

132. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee, given that the complainant did not produce any evidence that the public authorities interfered in the electoral process during the SYNESCI congress, considers that this aspect of the case does not call for further examination.

(b) The Committee notes that the trade unionists called up to military camps are now at liberty again and that they have been

reinstated in their teaching posts. It nevertheless recalls the importance it attaches to the principle that trade unionists, like all citizens, should benefit from proceedings guaranteeing full independence and impartiality when they are charged with common law or political offences.

(c) The Committee notes that an examination has been carried out into the situation of those teachers whose salaries were suspended and that the arrears in their salaries are going to be paid to them. It expresses the hope that the teachers concerned will therefore have their rights fully restored.

Case No. 1433

COMPLAINTS AGAINST THE GOVERNMENT OF SPAIN PRESENTED BY - THE WORLD FEDERATION OF INDUSTRY WORKERS (WFIW) - THE TRADE UNION SECTIONS OF THE NATIONAL INTER-TRADE UNION ASSOCIATION OF GALICIAN WORKERS (INTG), THE TRADE UNION CONFEDERATION OF WORKERS' COMMITTEES (CCOO), THE GENERAL UNION OF WORKERS (UGT) AND THE TRADE UNION OF WORKERS (USO) REPRESENTED WITHIN THE ALUMINA ALUMINIO ENTERPRISE

133. In a communication of 9 February 1988, the World Federation of Industry Workers (WFIW) presented a complaint against the Government of Spain alleging violations of freedom of association. In a subsequent communication of 26 February 1988 this Federation sent additional information in support of its complaint, signed by four trade union sections representing the workers of the Alumina Aluminio enterprise, namely, the trade union sections of the National Inter-Trade Union Association of Galician Workers (INTG), the Trade Union Confederation of Workers' Committees (CCOO), the General Union of Workers (UGT) and the Trade Union of Workers (USO). The Government sent a reply to the allegations of the complainant organisations in a letter of 8 July 1988.

134. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

135. The World Federation of Industry Workers (WFIW), itself an affiliate of the World Confederation of Labour (WCL), explained in its communication of 9 February 1988 that, at the request of its affiliate, the Trade Union of Workers (USO), it was presenting

allegations of trade union persecution and serious efforts to undermine freedom of association against the Government of Spain.

136. According to the WFIW, the facts are as follows: following the shipwreck of the "Cason", a Panamanian vessel which ran aground on the coast of Galicia causing the death of 25 seamen, while transporting barrels of toxic and dangerous substances, a wave of panic swept over the region. The inhabitants of entire villages fled; thousands of persons, led by the local authorities, vigorously opposed the transport of these barrels (which continued to surface near the coast of Galicia) for loading and shipment. It was in this climate of panic that a number of barrels containing radioactive substances turned up on the shipping docks of the Alumina Aluminio plant at San Ciprian, near Lugo, in Galicia. Frightened by the presence of these barrels, the workers of this plant abandoned their posts, thus paralysing the enterprise. Their concern was perfectly understandable, especially if one considers the fear and confusion which prevailed at that time.

137. The WFIW admits in its communication that the resumption of the aluminium plant's high-temperature furnaces entailed a cost of billions of pesetas. It explains that the Alumina Aluminio metallurgical plant is a semi-public entity which comes under the National Institute for Industry, as well as the Ministry of Industry and Economy and the Ministry of Finances. It denounces the fact that all members of the works council, in other words 23 persons, were dismissed before an opinion was handed down by the labour authorities, especially since these persons were trade unionists who should have enjoyed trade union immunity. Moreover, according to the WFIW, 109 workers were dismissed and restructuring measures threaten a further 600 jobs. The workers who have been unjustly dismissed were accused of sabotage and held to be exclusively responsible for the events which took place at the plant. However, according to the WFIW, it is management which is responsible for the damage and it is therefore unthinkable that the workers, the trade union organisation and its legitimate representatives should suffer from this series of reprisals.

138. In a subsequent communication of 26 February 1988, signed by the four trade union sections representing the plant's workers, the WFIW supplies additional information in support of its complaint, stating that the barrels unloaded from the shipwrecked vessel at Finisterre were transported over 200 km by land to be shipped from the Alumina Aluminio complex, whereas they could have been shipped from a number of other ports in closer proximity, such as Corcubion, Cee or Muros.

139. The WFIW states that the public authorities had proceeded to evacuate the civilian population along the entire land itinerary of these barrels (although they claimed that the shipment posed no danger). It should be emphasised that the general public was given no information concerning the contents of these barrels. Their arrival at the Alumina Aluminio plant therefore provoked a perfectly understandable concern and commotion, as had been the case wherever the barrels had been stored or moved. Nor had the authorities given

any advance notice of the arrival of the barrels (even to the workers' representatives). The WFIW views as extremely serious the bad faith shown by the authorities in supplying the workers of the plant in question with this "gift", especially since the same authorities had ordered and assisted in the evacuation of the entire population living in the area where the ship had run aground (since there had been 25 deaths among the members of its crew).

140. The WFIW communication adds that the public authorities were at fault in this matter, inasmuch as the labour authorities failed even to inspect the site and never opposed the decision taken by workers' representatives to recommend the staff's evacuation. According to the WFIW, this recommendation was made in full knowledge of the facts and with full responsibility, in the face of an exceptional situation. The WFIW vigorously condemns the representative of the Spanish authorities who now describes the workers' representatives as reckless revolutionaries (while the matter is still sub judice); they were acting in full knowledge of their responsibilities when they decided that it was incumbent on them to recommend the plant's evacuation in the same manner as the authorities themselves had ordered the evacuation of the areas through which the dangerous barrels had been transported.

141. The outcome of this affair was the massive dismissal of 110 workers and 24 workers' representatives. The WFIW adds that these measures are not consistent with the principles espoused by the International Labour Organisation and Spain, as one of its member States.

B. The Government's reply

142. In its letter of 8 July 1988, the Government explains that a distinction should be made between (a) the disciplinary measures adopted by the Alumina Aluminio enterprise against 111 workers and 23 members of the works council, and (b) the suspension of the employment contracts of 574 workers within the framework of an employment restructuring programme authorised by the labour authorities.

143. As regards the first point, the Government states that it had nothing to do with the decisions taken; as regards the second point, the competent agencies of the Ministry of Labour and Social Security duly authorised the suspension of the contracts, which had been requested in accordance with proper procedures.

144. In connection with the first point concerning the disciplinary measures, the Government states that these measures were taken by the management of the Aluminio Español-Alumina Española Company, which owns the plant, as the employer of the workers in question. According to the Government, the legal status of this enterprise renders it completely autonomous from the National

Institute for Industry, and thus from the Government. Therefore, the charges of trade union persecution and serious efforts to undermine freedom of association presented by the complainants against the Government are inaccurate, erroneous and legally unfounded. The Government claims that it has nothing to do with these measures, and that any complaint or charge should be filed against the enterprise which imposed these disciplinary sanctions. According to the Government, any decision on the legality of these measures falls under the jurisdiction of the labour courts (section 55 ff. of the National Charter, and section 97 ff. of the Act concerning labour courts). Moreover, the Government states that the Labour Court has already handed down two decisions concerning the appeals filed by the 111 workers and the members of the works council dismissed by the enterprise. The Government encloses copies of these decisions.

145. The Government refutes the allegation that members of the works council were dismissed before the labour authorities had handed down a decision, although as trade unionists they supposedly enjoyed trade union immunity, on the ground that the legislation does not provide that the public authorities have the right to intervene in connection with such measures. It does, however, admit that there are special provisions governing the dismissal of workers' representatives, in the sense that procedures for appeal are guaranteed in the event of disciplinary sanctions, and that the persons in question have priority to remain within the enterprise if their dismissal is considered unfounded. In this case, according to the Government, the disciplinary measures were taken by the employer and were submitted to a judicial procedure which provided both parties with full access to appeal machinery to guarantee the defence of their interests.

146. As regards the second point concerning the labour authorities' authorisation of the suspension of the employment contracts of 574 workers, the Government explains that by virtue of section 45(1) of the Workers' Charter, temporary instances of force majeure as well as economic and technological conditions which make the performance of work impossible are valid grounds for the suspension of employment contracts. According to the Government, no one has contested the fact that, following the events of 14 and 15 December 1987, the plant's two electrolysis units were paralysed for a certain time (in theory, for several months), making it impossible for the workers in this branch of the enterprise to perform their work. The Government attaches to its communication copies of resolutions on this matter issued by the Provincial Office of Labour and Social Security of Lugo, and by the Central Labour Office. According to the Government, the paralysis of these electrolysis units is an undisputable fact which was established by the Labour Court of Lugo in its above-mentioned decision.

147. Therefore, the suspension of the employment contracts in question was an inevitable consequence which the labour authorities duly authorised; moreover, although the works council in its appeal discussed the fate of workers who had been dismissed and the manner in which the work should be organised while the employment contracts

remained suspended, it never challenged the legality of the suspension of the employment contracts, which is at the heart of this matter. Thus, the labour authorities merely authorised the suspension of the employment contracts pursuant to section 47 of the Charter, and neither of the parties has called this decision into question.

148. Lastly, concerning the failure of the labour authorities to intervene to bring an end to the paralysis of operations which resulted from the works council's decision, the Government states that this aspect of the case was addressed in sections 12 and 13 of the decision handed down by the Second Labour Court of Lugo on 23 March 1988, concerning the dismissal of members of the works council. The Government attaches copies of these items to its reply.

149. In these sections of the court decision in question, the judge states that the parties support diametrically opposed positions in this matter concerning section 19(5) of the Charter, which states that where there is imminent danger of an accident, a decision to stop work may be taken by the competent safety authorities within the undertaking or by all the workers' representatives, in the case of an undertaking engaged in a continuous process. It further provides that any such decision shall be immediately communicated to the enterprise and to the labour authority, which shall, within 24 hours, cancel or confirm the decision taken. The judge considers that the conditions required by this text were not met: it is true that the plaintiffs and the defendants had initially agreed to halt the plant's equipment; that the labour delegate of the province of Galicia attended the meeting between the parties, thus fulfilling the requirement concerning communication to the labour authority; and that the labour authority had full knowledge of the events since its delegate was present in the plant and held meetings with the interested parties. However, the judge noted that the first requirement established by the legislation for the implementation of this provision, is the imminent risk of accident. According to the judge, while the risk of accident may have been imminent early on, given the concern which the shipment had caused, it was no longer such when the barrels had been loaded aboard the "Galerno" and when this ship was at a sufficiently safe distance from the plant (some 1,000 or 2,000 nautical miles), and when the enterprise requested the members of the works council to ensure the provision of a minimum service on the grounds that the situation of the electrolysis units was critical and might well lead to the plant's paralysis. The works council failed to take action, although the enterprise merely wanted to avoid the paralysis of 256 electrolysis tanks (which is precisely what happened subsequently). In the opinion of the judge, it was no longer possible to maintain that there was an imminent danger or risk of accident; the works council, however, refused to comply with the enterprise's requests to resume operations.

150. In his written opinion, the judge also states that the behaviour of the plantiffs, as from the moment when the "Galerno" sailed from the port of San Ciprian, and at least from the moment when the vessel dropped anchor in the area known as "Las Farralones", was completely unfounded from a legal standpoint since the alleged danger

or risk to the physical safety of the workers had disappeared, and the civil protection authorities had issued a certificate of safety for the plant. Moreover, as regards the conditions laid down by the works council on 15 December concerning the payment of hours not worked, and as regards the works council's demand that the management give a signed undertaking to the effect that the vessel would not return to the port, the judge considers that these questions could have been discussed after the workers had returned to their posts, thus avoiding the subsequent damage to the tanks. The judge notes that the employer next urged the works council to have the workers return to their posts immediately in order to save the B unit, as well as the rest of the plant, but that this request went unheeded; since the causes which might have justified the works council's attitude, at least in part, had disappeared, the judge finds it difficult to understand the works council's decision to maintain the work stoppage, unless it was intended exclusively to force the enterprise to pay for the hours not worked.

C. The Committee's conclusions

151. The Committee notes that the allegations in this case concern measures of dismissal which the complainants consider as discriminatory. These measures have affected 23 workers' representatives of a works council, as well as 111 workers who participated in an interruption of work, and subsequently, 574 workers whose contracts were suspended owing to the paralysis of equipment as a result of the work stoppage in an aluminium plant in December 1987.

152. According to the complainants, these dismissals constitute measures of trade union persecution and serious efforts to undermine freedom of association. The Government, on the other hand, draws a distinction between (1) disciplinary measures against striking workers' representatives and workers, taken by the employer and not by the Government, which the persons concerned have the right to challenge and have indeed appealed, and (2) the suspension of employment contracts on economic grounds which the public authorities have authorised owing to temporary force majeure and economic and technological conditions which prevent the performance of work, inasmuch as the initial paralysis of work led to the shut-down of two electrolysis units, which, in theory, should last for several months.

153. The complainants do not contest the shut-down of the electroylsis units, but consider that responsibility for the shut-down lies with the other party.

154. The Committee has reviewed the substantial documentation sent by the Government and by the complainants, and in particular the texts of court decisions which uphold the dismissals of members of the works council, but which overturn those of the 111 workers accused of

having refused to maintain a minimum service, and the text of a sworn document supplied by the complainants.

155. According to the judgement of 23 March 1988, which upheld the dismissal of 23 members of the works council, without compensation or wages, and absolved the employer, the facts are as follows: on the morning of 5 December 1987, the "Cason", a vessel flying the Panamanian flag, ran aground near the fishing port of Finisterre; several members of the crew were found dead, and several explosions took place on board the ship. Subsequently, on 11 December at 9.15 p.m., the General Secretary of the Civil Government of Lugo informed the manager of the Alumina Aluminio SA plant in San Ciprian that a restricted shipment was travelling by lorry to the plant's port for loading onto a ship which would dock at midnight. The lorries failed to arrive at the specified time. However, on the following day, at 8.45 a.m., a convoy of three lorries hauling the containers and barrels rescued from the "Cason" arrived at the plant's main gate and stopped near the beach at Aro, near the site known as Portiño de Moras, by the auxiliary port which had been utilised during the plant's construction. This port is at some distance from the more recently built port which is now in full use. The convoy was escorted by 20 or so police officers.

156. On 12 December, around 10.50 a.m., the works council held a meeting with the plant's general manager to find out what the general manager knew about the shipment. The general manager merely stated that he had met the day before with the General Secretary of the Civil Government of Lugo. The works council noted with regret the decision of the Civil Government and stated that it considered that this decision posed a threat to the plant's workers. The works council proposed that the barrels should be evacuated, and the general manager communicated this message to the authorities in Lugo. The authorities then informed the general manager that they would send the provincial head of civil protection to the plant for the purpose of describing the contents of the shipment. In a meeting with the plant's general manager, the works council and the local authorities, the official in question explained that the shipment was to be evacuated through San Ciprian, and that it contained aromatic compound organic substances such as aniline (a benzene derivative used in synthetic colouring agents) and orthocresol (an extract of coal tar). He stated that although these substances were flammable, they could be handled without danger. After a number of statements by several persons attending the meeting, the works council announced that all the workers and their families would hold a meeting at the plant at 4 p.m. The general manager and the authorities received a telex stating that the decision to evacuate the "Cason's" shipment through the port of San Ciprian had provoked a strong reaction among the staff, that there was a risk that the plant's operations might be interrupted, and that owing to the nature of the plant, such an interruption might have serious and irreversible consequences. The telex therefore requested that the decision be reconsidered and pledged the writers' collaboration in the search for solutions to avoid these risks.

157. A further meeting between the general manager and the works council was held on the same day, during which the general manager stated that the Governor himself was prepared to come to the plant to furnish explanations. The works council continued to object to the loading of the barrels at the San Ciprian port; although it did not object to the Governor's visit, it stated that if the Governor persisted in his decision to load the barrels at this port, or to have the ship in question enter the port, the workers would leave their posts and block the entrance to the plant, owing to the fact that they did not know what the barrels contained, and that the presence of the barrels had led to the evacuation of the port of Finisterre and given rise to several incidents and a general panic. The plant's general manager agreed to the barricades and authorised workers to use the plant's lorries to transport the materials needed to block the entrances to the plant. The Governor arrived at the plant around 9.30 p.m. and explained the reasons for his decision to the general manager and the works council. The works council explained its opposition to the shipment. No agreement was reached at the meeting. On 13 December the general manager again met with the works council to explain that the shipment did not contain hazardous materials. The works council replied that no worker would load the barrels. This meeting was followed by lengthy discussions between the management and the local authorities. However, on 14 December at 12.30 p.m., the general manager notified the works council in writing that he considered the strike to be illegal and formally requested that the works council designate the staff that would maintain a minimum service. The works council replied in writing at 5 p.m., requesting the immediate evacuation of all workers from the plant. On 15 December, after another enterprise had loaded the barrels on the "Galerno" on 14 December at 9.30 p.m., and after this vessel had left the port and reached the area known as "Las Farallones", some 2,000 nautical miles from the port, the enterprise's general manager at 10 p.m. again requested the members of the works council to guarantee a minimum service so that the paralysis of the plant might be avoided, given the serious situation of the tanks. The works council refused, arguing that the situation of the electrolysis tanks was not critical, and stated that workers were taking care of the tanks and that the management only had to schedule rest-breaks for the supervisory staff who had volunteered to maintain the equipment. At 1.45 a.m., management sent the works council a written order to return to work; the works council refused to accept this communication on the grounds that management had failed to reply to the points which the works council had raised. At 6.30 a.m., and again at 8 a.m., the works council was again requested to set up a minimum service, and calls were sent out to workers at 9 a.m. by radio. At 10 a.m., the A unit automatically shut down when its safety system cut off the intake of gas in order to slow down the cooling of the tanks. News of this shut-down was communicated in writing to the works council and to the public authorities. At 12.45 p.m., 14 of the 18 persons working on the unit were requested to take a break for medical reasons, leaving only four persons who could continue to work for at most one hour or two. At 3 p.m., the B unit was ordered evacuated and its automatic safety system came into action; news of these events was also

communicated to the works council and the authorities. From 3 p.m. to 5.30 p.m., a delegate from the labour directorate sought to mediate between the works council and management. Management reported to the delegate that it was necessary for the crew to return to work immediately in order to save the B unit, since the A unit was already hopelessly lost. Management proposed: (1) an immediate return to work; (2) to regard the works council's actions as serious, rather than as very serious; (3) that the sanctions concerning the works council be submitted for arbitration by the labour directorate's delegate; (4) that the dispute concerning the payment for hours not worked be submitted to the general director of the province of Galicia for arbitration. The works council replied through the delegate that it agreed with two of the four proposals, but that it would not accept the loss of wages for hours not worked, and it demanded a written commitment that the ship would not come back to the port. Following further discussions, management announced that the B unit had automatically shut off at 5 p.m., and that the only offer it could still make was that workers immediately return to work to save whatever could be saved. The works council agreed to allow the workers to enter the plant and reconnect the units with a view to starting them up, but management took exception to this proposal, stating that it was impossible to connect either unit without endangering the power plant, and therefore that it was no longer possible to start up the equipment in the normal fashion. At 10 p.m., the electrolysis units were beyond rescue by normal means.

158. The complainants contest this version of the facts. They state that as early as 7.30 p.m. on 15 December, the members of the works council had proposed to management to return to work and postpone negotiations; however, management refused to grant them access to the plant. On 16 December, when management allowed certain workers to enter the plant, they noted that the electrolysis tanks were still in good working order, and that the aluminium had not solidified, but was still liquid (which is normal), at a temperature of 735° Celsius in the A unit, and at 760° Celsius in the B unit (the normal operating temperature is 960° Celsius). In this connection, they attach a sworn document dated 17 December 1987, in which a notary attests to their report of the above-mentioned temperatures, adding that he saw the workers introduce a metallic rod into the tanks to show him that the rod would penetrate some 30 or 40 cm into the liquid, although he could not see the direction in which the rod was penetrating.

159. Referring to the judgement of the Second Labour Court of Lugo, the Committee considers that, in the particular circumstances of this case, the dismissal of the members of the works committee does not infringe freedom of association.

160. As regards the 111 dismissed workers, the Committee notes that in a decision of 9 March 1988, the court invalidated these dismissals and ordered the Aluminio Español-Aluminia Española Company immediately to reinstate the persons concerned and to pay back wages from the time of their dismissal until that of their reinstatement, on

the grounds that the enterprise had failed to comply with procedural requirements before dismissal, and that the enterprise had failed to inform workers individually that they would be dismissed. The judge therefore concluded that the enterprise had adopted an arbitrary attitude in singling out 111 of the 240 workers in this plant for dismissal, while all workers had participated in the work stoppage.

161. Concerning the dismissal of these 111 workers, the Committee notes with interest that the court cancelled their dismissal and ordered their reinstatement owing to the arbitrary attitude adopted by the enterprise in dismissing certain workers rather than others, and in failing to notify each worker individually that he would be dismissed. Consequently, the Committee considers that this aspect of the case does not call for further examination.

The Committee's recommendations

162. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Referrring to the judgement of the Second Labour Court of Lugo, the Committee considers that, in the particular circumstances of the case, the dismissal of the members of the works council does not infringe freedom of association.

(b) The Committee notes with interest that the dismissal of 111 workers was cancelled by a court decision and that the persons concerned have been reinstated in their jobs.

Case No. 1443

COMPLAINT AGAINST THE GOVERNMENT OF DENMARK PRESENTED BY THE DANISH COMPUTER WORKERS' TRADE UNION

163. In a communication dated 10 March 1988, the Danish Computer Workers' Trade Union (known by its Danish acronym, PROSA) presented allegations of violations of trade union rights against the Government of Denmark. It supplied further information on 29 August 1988. The Government supplied its observations on the case in communications dated 14 July and 11 October 1988.

164. Denmark 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

165. In its communication of 10 March 1988, PROSA alleges violation of Conventions Nos. 87 and 98 by the adoption by the Danish Parliament on 20 August 1987 of Act No. 542 on the renewal of certain collective agreements for computer workers. According to the Act, a copy of which is supplied, PROSA's collective agreements with the government-owned "Computer Corporation of 1959" and the Ministry of Finance are renewed until 1 June 1989 and 1 April 1989, respectively.

166. In addition, the terms and conditions of the average weekly working period and wage adjustment are renewed until 1 April 1991; the Agreement with "Computer Corporation of 1959" concerning the continuation of vital computer services during industrial action is prolonged until 1 June 1989; the original wage indexation scheme is annulled in the renewed agreements; questions concerning the distribution of wage increases during the renewal period shall be determined by a committee set up by the Minister of Finance and, if the committee fails to reach a solution, the Minister shall appoint an arbitrator who is empowered to settle the matter with binding effect; all industrial action shall be discontinued during the operation of the Act.

167. The complainant alleges that this Act was introduced in order to discontinue an ongoing lawful dispute between the union and the public sector employers: strike notice had been duly notified in accordance with the law and the Conciliation Board had had time to negotiate; the Board failed to arrive at a solution acceptable to both sides and PROSA decided to exercise its rights and took appropriate industrial action. The complainant explains that it had entered into negotiations with its public and private counterparts at the beginning of 1987 with a view to concluding new two-year agreements, but despite giving considerable concessions, negotiations with "Computer Corporation of 1959" - 100 per cent publicly owned with a government majority on its board of directors - ran into difficulties. PROSA explains that a salary gap between private and public computer workers had grown enormously and it was trying to negotiate an alleviation of this gap with the public employer.

168. According to the complainant, it was forced to call a strike on 17 April 1987 in seven different public institutions, such as university administrations and the State Statistics Bureau, involving 125 workers of the 600 covered by the previous collective agreement with the Minister of Finance. The strike at "Computer Corporation of 1959" started on 25 June 1987 with 130 of the 900 workers covered by the collective agreement. PROSA stresses that the two strikes did not affect vital community functions or the security or safety of individuals; the strikes adhered strictly to the terms of the Agreement on the continuation of vital computer services (copy enclosed). On 25 May, "Computer Corporation of 1959" gave notice to lock out 480 workers not covered by the strike notice for June. The lock-out was delayed until 1 July 1987 because PROSA immediately

contested its validity. The Arbitration Court passed an award on 29 June 1987 finding that the intended lock-out was legal only for approximately 400 computer workers. PROSA alleges that the lock-out affected certain services which threatened to create considerable inconvenience to the general public and thereby served to aggravate the situation in the public opinion.

169. According to the complainant, the Government never tried to enter into real negotiations. For example, when asked in the Parliamentary Committee on the labour market whether the Government had been willing to accept the proposed settlement of the Conciliation Board, the Minister of Labour declined to answer by referring to the secrecy of the conciliation procedure.

170. In addition, according to the complainant, it had the right to expand the industrial action as from 25 August 1987 so as to involve computer workers who were carrying out functions covered by the Agreement on continuation of vital computer services. PROSA had, however, already on 12 August 1987 notified the Government that it would not make use of its rights under the Agreement and that no industrial action would take place within the functions covered by the Agreement. This fact was acknowledged by the Minister of Labour during question time in the Parliamentary Committe on the labour market. PROSA alleges that the Government, however, gave Parliament the impression that PROSA would draw upon its rights under the Agreement and used this to push Parliament into legislative intervention. This is clearly demonstrated in the Minister of Labour's presentation of the Bill which was later enacted as the above-mentioned Act No. 542. He stated that "as from 25 August there is, finally, the risk important to society, that the industrial disputes will be extended to fields that are of particular importance for society such as the Parliament, the defence and the police where the crime prevention in that case will be endangered".

171. The complainant explains that its industrial action was only intended to affect the computerised registration and payment of tariffs and taxes, but did not affect the payment of salaries, pensions, etc. When questioned in Parliament the Minister for Finance acknowledged, inter alia, that "the computer conflict will not have any consequences for payments between the Government and the municipal authorities" and that "the Government will not lose its legal claims to payments on tariff and VAT".

172. It was against this background, states the complainant, that the Government chose to end the lawful strikes by measures in contravention of ILO obligations. The intervention cannot be said to be justified on account of the need for continuation of vital social functions since these were never affected by the strikes. By intervening in the industrial dispute, the Government took away all possibilities for PROSA to improve the salary level by means of lawful labour rights, in spite of the fact that PROSA at all times had agreed to pay due regard to the public interest and to uphold all emergency and other vital functions.

173. In addition, the complainant alleges that the forced renewal and prolongation of the collective agreements mentioned above constitute an intervention in the right of collective bargaining. PROSA thus had no real opportunities to exercise its right to negotiate to the full extent possible.

174. It points out that the Government has a long record of intervening in the collective bargaining process. This tendency has now turned into an established practice which, it claims, means that the right of free collective bargaining is virtually annulled within large segments of the Danish labour market. It refers to the complaints lodged in 1985 by the Danish Federation of Trade Unions (LO) and the Danish Salaried Employees' and Civil Servants' Confederation (FTF) against the Government of Denmark (Case No. 1338) which gave rise to criticism of the Government's conduct with respect to its international obligations under ratified ILO Conventions. The complainant cites the Committee on Freedom of Association's 243rd Report, which was approved by the Governing Body in March 1986 (paragraph 246):

> The Committee hopes that in the future, no similar measures will be taken to interfere with free collective bargaining or to restrict the right of workers to defend their economic and social interests through industrial action.

175. According to PROSA, this strongly worded disapproval of the conduct of the Danish Government apparently had no effect on its decision to intervene in the computer workers' dispute, although the facts of the case are similar, and although PROSA had argued with the Minister of Labour that the intervention would be contrary to ILO Conventions Nos. 87 and 98. It accordingly requests direct contacts with the social partners and the Government and the opportunity to be heard by the Committee.

176. In its communication of 29 August 1988, PROSA - to which the Government had sent a copy of its reply - contests the Government's explanations. In particular, it disagrees with (1) the Government's description of the Act which does not address its compatability or non-compatibility with Conventions Nos. 87 and 98 and the decision in Case No. 1418 against the Government of Denmark [which recently (254th Report, paras. 200-227, February 1988) criticised the renewal of a collective agreement covering seamen for a four-year period]; (2) the argument concerning the serious consequences of the industrial disputes; (3) the contention that the union had merely promised not to extend the industrial action (PROSA adds that, according to the law, strike notice would have had to be given if it had intended to extend the action, and this was not done so the Government clearly knew that there would be no extension); (4) the contention that the Government was obliged to treat all public sector agreements in the same manner, i.e. the principle in Danish administrative law of "equality".

B. The Government's reply

177. In its communication of 14 July 1988, the Government explains generally that in Denmark the collective bargaining process normally takes place every second year as the majority of collective agreements are renewed as of 1 March or 1 April in odd years. The social partners have intentionally aimed at ensuring that collective agreements are concluded more or less at the same time in all sectors, partly in order to obtain a parallel development in the negotiations in the individual occupational fields, and partly to avoid the risk of industrial disputes in connection with the bargaining process in one or another occupational field.

178. As regards the background to the present case, the Government states that the renewal of private sector collective agreements in the spring of 1987 took place without industrial disputes on any major scale and, in some of the important fields, the parties even reached agreement without having to resort to the assistance of the public conciliator. It was the social partners themselves who decided that the collective agreements were - as an innovation - concluded for a four-year period in 1987. It was further agreed to reduce the normal weekly working time by two hours per week by steps during this period and that it should be possible to negotiate increases in wage rates in 1989.

179. As regards the public sector, the Government explains that in early 1987 collective agreements were renewed - also for four years - for the majority of public employees following negotiations between the parties without any assistance from the public conciliator and covered about 220,000 public servants, about 25,000 academic staff covered by the joint bargaining unit called the Central Organisation of Academic Staff and about 55,000 employees covered by the joint bargaining unit called CO-Stat. The Government admits that in some minor areas it was not possible to reach agreement on the renewal of the collective agreements by direct negotiations but that agreement was reached following negotiations within the framework of the public conciliation service, in some cases by the adoption of a compromise worked out by the public conciliator. It adds that in these fields, the general trend was for the renewal of the collective agreements on the same conditions as those applying in the other sectors of the labour market.

180. As regards the two agreements to which this case relates, the Government gives the following information: the negotiations for renewal of the collective agreement between the Ministry of Finance and PROSA started within the framework of the public conciliation service on 30 March 1987. Industrial action was taken in this field from 17 April. The dispute affected about 130 persons out of the total number of about 600 persons (corresponding to 400 full-time employees) covered by this collective agreement. Eight meetings were held - presided over by the public conciliator - between 30 March and 12 June when the public conciliator declared the negotiations terminated

without result. The negotiations for the renewal of the collective agreement between "Computer Corporation of 1959" and PROSA started within the framework of the public conciliation service on 5 June 1987. Six meetings were held - presided over by the public conciliator - until 22 June when the public conciliator declared the negotiations terminated without result. In this field, which covers about 900 full-time employees, a strike started on 25 June 1987 affecting about 150 employees and a lock-out started on 1 July 1987 affecting about 400 employees. The industrial disputes in these two fields continued until the two collective agreements were renewed by the passing of Act No. 542 on 20 August 1987.

181. According to the Government, under this Act the two collective agreements were renewed on terms which correspond to the terms agreed upon by other parties in both the public and the private sectors through voluntary bargaining, i.e. renewal for a four-year period, with a possibility of negotiating wage increases in 1989 and a reduction of the normal weekly working time by two hours per week in the course of this period. The Act further provides that the sums fixed in the Act for wage increases should be distributed by a joint board set up in each of the two fields. Questions on which the board could not obtain majority by 1 October 1987 should be settled by an arbitrator appointed by the board, and if the board fails to agree on such appointment, the arbitrator is to be appointed by the public conciliation service.

182. It explains that the Government and Parliament found it necessary to terminate these industrial disputes by passing legislation to this effect because their consequences for excise duties and taxes were so serious that the impact on the state finances was unforeseeable; they were also a nuisance to the general public. In the longer term it was to be expected that it would not be possible to restore fully certain electronic data processing systems and the introduction of a planned tax reform would be impeded. In the state sector, especially for the National Statistical Service, continued industrial action would lead to significant deficiencies in the statistical data needed for decisions of the Government and Parliament concerning, for instance, economic policy. Moreover, the Government points out that PROSA had merely indicated that, in spite of the lapse of the Agreement concerning exemption of vital computer functions from strikes, the union would not take industrial action in the fields which had been excluded. However, there was no firm agreement to this effect and therefore, under the law, there was nothing to prevent PROSA from taking industrial action in the fields originally exempted at a later stage.

183. As regards the principles in this case, the Government states that it is correct that the same rules apply to collective bargaining in the public sector as to collective bargaining in the private sector. This also covers the right to take industrial action if it is not possible to reach agreement concerning the renewal of collective agreements. However, the complainant's impression that the Government always intervenes - and at an early stage - in public sector disputes

resulting from failure to reach agreement about renewals is not correct. For example, during negotiations for renewal of the collective agreements between the public employer and the National Union of Watchmen and Security Officers, the strikes - of which due notice had been given - started on 1 April and continued until mid-August when they stopped without any statutory intervention. In the present case, the disputes continued for a long period of time before the Government and Parliament found it necessary to take legislative action to stop them.

184. In this connection, the Government stresses that the right of a union to take collective action to support its claims in a bargaining situation does not confer any obligation on the employer to meet such claims. The basis - in both the private and public labour markets - must be that the right of an employees' organisation to raise claims, to stick to them and to take industrial action in support of such claims has its counterpart in the employer's right to make offers in a bargaining situation, to stick to them and to use a lock-out in support of them. As regards public employers, a further rule applies: when the public employers have concluded voluntary agreements with employees' organisations representing the majority of the employees in the public sector, they should not accept claims which go much further than these voluntarily concluded agreements, especially when such claims are made by organisations which represent a small - although vital - group of employees. The Government argues that otherwise it could be claimed that if the public employers meet such claims, they not only violate the equality principle of administrative law, but also their obligations in relation to those employees' organisations with whom they have already concluded new collective agreements and who are justified in expecting that the State will not subsequently conclude collective agreements with other employees' organisations which place the latter's members in a significantly better position.

185. As regards PROSA's allegations concerning the wage indexation scheme (section 7 of Act No. 542), the Government states that this provision is a consequence of Act No. 297 of 4 June 1986 on the lapse of automatic indexation of remuneration, etc., on the basis of the cost-of-living index. The Committee had been informed about this Act on an earlier occasion. According to the Government, Act No. 542 ensures (sections 1(2) and 2(2)) that employees covered by the Act are subject to the special wage adjustment agreed on in 1987 between the Minister of Finance and the Central Organisation of Public Servants (which in practice covers the whole public sector) under which adjustments may take place as of 1 April 1987, 1988, 1989 and 1990 on the basis of the development in wages in the private labour market. In this connection, it points out that the special wage adjustment as of 1 April 1988 resulted in a general increase in the wages of public employees corresponding to 1.86 per cent of their earnings.

186. Lastly, as concerns the possibility of sending a direct contacts mission to examine the situation, the Government is of the opinion that there is no need for this since sufficient elucidation has been given by the available written documentation.

187. In its communication of 11 October 1988, the Government replies to the complainant's criticisms of its initial reply of 14 July 1988 (which the Government had copied to PROSA). In particular, it stresses that it objected to the Committee's decision in the previous Case No. 1418 and that it had no influence on the bargaining partners' 1987 agreements (often reached with the assistance of the Public Conciliator) to renew collective agreements for four years. On the question of a potential extension of the disputes, the Government maintains that notice could have been given by the union to do so, and this possibility had necessitated intervention. As regards the complainant's reference to parliamentary questions throwing light on the consequences of the disputes, the Government points out that the questions were put on 17 July and replied to on 24 July, whereas the Bill to which the complaint relates was only introduced on 18 August 1987. On the issue of equality of treatment, the Government admits that the public authorities may conclude different agreements with different groups. It adds that the right of a trade union to take industrial action in support of its claims in a collective bargaining situation does not imply a duty on the part of the employer to comply with such claims. If industrial action is taken to support claims in a central and vital field, so that the society is taken hostage, the situation - in the Government's view - may necessitate legislative intervention, in such a situation it would be natural to use as the basis for such intervention the negotiation results obtained in most other fields in the labour market. It notes, however, that in the other fields where the Public Conciliator proposed a settlement, the basis for legislation has been that very proposed settlement.

C. The Committee's conclusions

188. This case involves allegations that the Government's unilateral intervention by legislative measures in order to stop two lawful strikes, the prolongation and renewal of two public sector collective agreements and the imposition of involuntary dispute settlement procedures constitute an infringement of the obligations undertaken by the Government of Denmark in ratifying Conventions Nos. 87 and 98.

189. The Committee takes note of the detailed information provided by both the complainant and the Government as to the background of the adoption, on 20 August 1987, of Act No. 542 and notes that the facts of this case are not in dispute. It observes from the translation of the Act supplied by the complainant that the PROSA/"Computer Corporation of 1959" agreement is renewed (section 1) until 1 June 1989 with certain provisions on working hours and adjustment clauses extended until 1 June 1991; likewise, the PROSA/Ministry of Finance agreement is renewed (section 2) until 1 April 1989 with similar provisions extended to 1 April 1991, including the special wage regulation agreed upon; for each of the two agreement areas a committee shall be set up (section 8) having equal representation of the parties to determine

the partition of certain wage increases over the two-year renewal periods and failing agreement, the committee (not the Minister of Finance as alleged) or the Conciliation Board shall appoint an arbitrator; section 9 terminates work stoppages started in relation to the agreements.

190. The Committee notes that there is disagreement, however, as to the necessity for government action. For example, the complainant alleges that the strikes of April and June 1987 only affected part of the workforce in the undertakings involved and did not affect vital services. The Government justifies its action because of the unforeseeable impact on state taxes, the nuisance to the general public and the long-term problems for certain electronic data processing systems and statistical data collection, as well as the potential spread of the strikes to vital services listed in a formal agreement as being exempt from computer employees' industrial action, such as defence work and crime prevention.

191. Another area of disagreement concerns the conduct of negotiations: on the one hand, the complainant describes the difficulties in bargaining, despite the attempts to find a mutually agreeable settlement by the conciliation service, including the lock-out which only led to an aggravation of the situation. The Government, on the other hand, stresses the number of meetings held in an attempt to reach agreement and the fact that, in most other public sectors, agreements had been reached voluntarily or with conciliation help for four-year renewals and that it had an obligation not to give in to more favourable claims proposed by one group after it had signed agreements with other public employees' organisations.

192. On the issue of the ban on industrial action, the Committee points out, as it has in past cases, that the right to strike may be restricted or even prohibited in the civil service (i.e. where public servants act as agents of the public authority) or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population [see, for example, 236th Report, Case No. 1140 (Colombia), para. 144]. Under this criterion, the Committee is of the opinion that the computer workers who interrupted services for the collection of excise duties and taxes from 17 April and 25 June 1987, respectively, until 20 August (when the Act in question was passed) were not civil servants or engaged in essential services. The unilateral termination of their strikes was therefore in contravention of the principles on freedom of association.

193. The second aspect of this complaint centres on the allegation that Act No. 542 is yet another example of government intervention in voluntary collective bargaining. The Committee observes - as does the complainant - that this is not the first time in recent years that it has been called on to examine the Danish Government's intervention through legislation in both private and public sector collective bargaining processes. Although the pieces of legislation at issue in the earlier cases [see 243rd Report, Case No. 1338, paras. 209 to 247,

approved by the Governing Body in March 1986, followed up in the 1987 observation on Denmark's observance of Convention No. 98 made by the Committee of Experts on the Application of Conventions and Recommendations; and 254th Report, Case No. 1418, paras. 200 to 227, approved in February-March 1988, also referred to the Committee of Experts] are not called into question here, the legislation in Case No. 1338 contained very similar provisions. The Committee is therefore bound to refer the Government to the same fundamental principles upon which it based its criticism of the Government's earlier intervention. These are that a basic aspect of freedom of association is the right of workers' organisations to negotiate wages and conditions of employment freely with employers and their organisations, and that any restriction on the free fixing of wage rates should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period; such restrictions should be accompanied by adequate safeguards to protect the living standards of the workers.

194. In addition, the Committee recalls that Article 6 of Convention No. 98 permits the exclusion from this basic right to bargain collectively of "public servants engaged in the administration of the State", a term which the ILO supervisory bodies have looked at in the light of the distinction to be drawn between civil servants employed in various capacities in government ministries or comparable bodies and other persons employed by the Government, by public undertakings or by independent public organisations [see, for example, 236th Report, Case No. 1267 (Papua New Guinea), para. 596.]. In this case, therefore, the Committee considers that the Danish Computer Workers' Trade Union (PROSA) legitimately had enjoyed the right to negotiate the terms and conditions of employment of computer workers employed in the areas in question in the present case by means of collective agreements until Act No. 542 put an end to all possibility of negotiations for the life of the extended agreements.

195. Given the facts of the present case, it appears to the Committee, for the following reasons, that the Government's intervention went beyond the criteria set out in the preceding paragraphs concerning acceptable restrictions on the voluntary fixing of conditions of employment. The method used was not exceptional especially in view of the fact that the Government's earlier two-year statutory renewal of collective agreements (between April 1985 and April 1987) has already been criticised in a past case by both the Committee of Experts and this Committee. The Committee also notes that no evidence was put forward to show that the Danish economy as a whole or the administrative sectors serviced by computer workers were faced with an emergency situation such as to justify intervention in voluntary collective bargaining; in fact, the Government only put forward financial justifications and equality of treatment arguments.

196. Finally, as regards the statutory imposition of involuntary disputes settlement procedures, the Committee notes that there has traditionally been a "peace obligation" during the life of collective agreements in the Danish industrial relations system. In addition, it observes that Act No. 542 sets up a joint committee for each of the

two areas involved, to determine certain items open to discussion during the extended periods for the two agreements, so that there is the opportunity for the complainant to share in the practical implementation of the new agreements. Likewise, the Act (section 10) provides that "questions in relation to the interpretation or violation of the renewed agreements shall be settled in accordance with the usual industrial relations rules for the area" concerned. The Committee considers that the Act therefore provides adequate and impartial disputes settlement procedure to safeguard the interests of the workers who are obliged to maintain industrial peace under the legislation.

The Committee's recommendations

197. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee considers that the statutory renewal and extension of collective agreements covering computer workers which put an end to their strikes in certain public institutions (such as university administrations and the National Statistics Bureau) infringed the ILO principles on the right to strike.

(b) The Committee considers that this legislative intervention also infringed the principle of free collective bargaining with a view to the regulation of terms and conditions of employment by means of collective agreements set out in Article 4 of Convention No. 98, ratified by Denmark.

(c) The Committee draws this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations in the context of Conventions Nos. 87 and 98.

Case No. 1450

COMPLAINTS AGAINST THE GOVERNMENT OF PERU PRESENTED BY - THE GENERAL CONFEDERATION OF WORKERS OF PERU - THE UNITED TEXTILE FRONT

198. The complaints are contained in a joint communication from the General Confederation of Workers of Peru and the United Textile Front dated 28 March 1988. The Government replied in a communication dated 26 September 1988.

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

A. The complainants' allegations

200. The General Confederation of Workers of Peru (CGTP) and the United Textile Front allege in their communication of 28 March 1988 that certain provisions in the law seriously restrict collective bargaining between workers and employers in the textile industry. Section 7 of Supreme Decree No. 5 D.T. of 17 August 1956, for example, reads: "The negotiation of wage claims in the textile industry is henceforth suspended except in so far as they are justified by a fundamental change in the system of work". Supreme Decree No. 12 D.T. of 13 December 1960 subsequently added to that provision the following criteria governing the exception provided for therein, by virtue of which there are only three circumstances in which collective bargaining on wages is possible:

(a) when the place of work concerned has not concluded a collective agreement or has not settled a collective wage demand;

(b) when the workers are employed in places of work set up after 17 August 1956, in so far as the corresponding wage scales have not been determined by agreement or by judicial or administrative award;

(c) when after 17 August 1956 new machinery is installed, existing machinery is modernised or working conditions are introduced that make greater demands on the workers or give them more responsibility, without the corresponding wage scales being fixed.

There is therefore no possibility of negotiating new collective agreements embodying wage increases other than in the above circumstances. In practice, the legislation in force requires trade unions to submit their demands to their employers before collective bargaining can begin, with a copy to the Ministry of Labour which then initiates the collective bargaining procedure so that the direct negotiations stage can start. In the case of collective bargaining for the textile industry, the labour authority has exceeded its powers and has engaged in undue interference in direct negotiations by concurring with the employers' view that negotiations should not be allowed to begin until it has been established that the demands conform to Supreme Decree No. 12 D.T. referred to above.

201. The complainant organisations cite a number of examples to illustrate the attitude adopted by the authorities for more than ten years:

- Subdirectorial Ruling No. 162-75-911000 of 16 December 1975, concerning the collective bargaining engaged in by the "Remo" Textile Workers' Union, denies the possibility of negotiating either conditions of employment and work or wages on the grounds that such negotiations are "inappropriate in so far as they do not conform to any of the exceptions set out in Supreme Decree No. 12 D.T. of 13 December 1960";

- Divisional Decision No. 04-84-2DV-NEC of 20 January 1984, concerning the negotiations which the Union of Spinners and Weavers of Manufacturas Tres Ele S.A. were seeking to initiate, recalls that the presentation of wage claims in the textile industry is prohibited in so far as wages are automatically readjusted;

- Subdirectorial Decision No. 116-87-2SD-NEC of 14 October 1987 declared a list of workers' demands to be irreceivable on the grounds that, although new machinery had indeed been installed and the demands therefore came within the terms of Supreme Decree No. 12 D.T., the machinery had been purchased and installed after the presentation of the demands; and the enterprise's refusal to negotiate the demands was therefore justified, though the claimants were entitled to submit a new list of demands with respect to the new machinery. In practice, this has meant that the trade union has wasted a year and has had to initiate proceedings again which, as in the previous instance, have been formally rejected by the enterprise.

202. The complainant organisations add that, in addition to the provisions referred to, the restrictions on wage claims are based on section 5 of the Supreme Decree of 29 March 1945 which stipulates that "no wage claims related to cost-of-living increases shall in future be admitted", following the introduction of a system of automatic readjustment of remuneration under an agreement which, as will be seen below, has been suspended unilaterally by the Government yet is still supposed to apply to collective demands.

203. According to the complainants, this restriction which initially concerned only conditions of remuneration was subsequently extended, in the case of works unions, to working conditions. Thus, at first the restriction was taken as referring solely to wages, and works committees were able to negotiate conditions of work and employment. Subsequently, when collective bargaining was introduced at the federal level, this right was reserved exclusively for the national federation and was denied to the works unions, which are the most active part of the country's trade union movement. Subdirectorial Decision No. 116-87-2SD-NEC accordingly states that, "by virtue of the constant and repeated rulings of the labour administration, ... demands relating to working conditions submitted by employees in the textile industry ... shall be negotiated at the level of the federal trade union". Conversely, the Textile Federation is recognised as being empowered to negotiate only working conditions and not wages. However, the complainants point out that Peruvian legislation contains no provision

for denying such a right, which should be left entirely to the discretion of the social partners. Hence the paradoxical situation in which a large number of textile unions are unable to negotiate wage conditions because they do not meet the requirements of Supreme Decree No. 12 D.T. and are unable to negotiate working conditions because the labour authorities have decided that such negotiations are possible only at the sectoral level.

204. The complainants allege further that in 1976 the existing systems of automatic wage readjustment were suspended by Legislative Decree No. 21531 (section 10) for a specified period of time which was successively extended. Previously, workers in the textile industry had benefited from an automatic wage readjustment by virtue of a collective agreement concluded on 21 March 1945 and legalised by the Supreme Decree of 29 March 1945. In 1981 the Peruvian Government endeavoured to correct the injustice by reintroducing an automatic wage readjustment scheme devised by the Ministry of Labour itself, although the new scheme is not the same as that of the 1945 collective agreement, which has been suspended indefinitely. The new readjustment scheme was implemented by means of the creation by Ministerial Ruling No. 079-81-TR of "standard scales" which were regularly updated and which have now been replaced by "conversion scales" introduced by Ministerial Ruling No. 100-87-TR. As indicated in its preamble, the latter originated in a decision to devise a wage system for the textile industry that would entail the disappearance of the standard scales so as to bring them in line with the scope and objectives of the Supreme Decree of 29 March 1945. However, none of the formulas devised so far by the Peruvian Government corresponds to what the workers and employers voluntarily agreed upon. Although the labour authority is quite aware that the indefinite suspension of the 1945 collective agreement - merely because it wishes to help employers in the textile industry by introducing a system that sets wages lower than they should be under the agreement - is completely arbitrary, it persists in doing so. It no longer has the excuse initially advanced that the country was going through an industrial recession, as this is now not the case in the textile industry. Nor is there any possible justification for prolonging indefinitely - in one way or another - a 12-year-old measure which by its very nature was supposed to be exceptional. In a communication to the Minister of Labour and Social Advancement dated 2 October 1987 the Peruvian Parliament itself informed the executive that the Chamber of Deputies had decided to draw its attention to this state of affairs "so that it might take the necessary steps to enforce the collective labour agreement of 21 March 1945, legalised by the Supreme Decree of 29 March of the same year, which provides for the automatic readjustment of remuneration in the textile sector, the latter being mandatory for the parties concerned in accordance with article 54 of the Constitution". This request was ignored by the Government which maintained its unilateral decision to suspend the agreement.

205. Finally, the complainant organisations state that all the claims presented by the Textile Federation since 1981 in its negotiations by branch of industry at the national level have been dealt with unilaterally by the Ministry of Labour itself, since the

employers have not the slightest interest in reaching any kind of agreement as it is much easier for them to wait for the Ministry (where they have a powerful lobby) to come up with a solution which is bound to be in their favour. This, they allege, is a patently disloyal attitude that reflects the bad faith with which they approach negotiations in the sector.

B. The Government's reply

206. In its communication dated 26 September 1988, the Government states that, in accordance with the collective agreement concluded on 21 March 1945 and the provisions of the Supreme Decree of 29 March of the same year, all textile workers throughout the country benefit from the automatic monthly readjustment of their remuneration based on the cost of living. In other words, this is the option that has been chosen to readjust wages instead of periodically submitting a list of demands. Given the existence of this automatic adjustment scheme, Supreme Decree No. 5 D.T. of 17 August 1956 announced the suspension of negotiations over wage demands in the textile industry except in so far as the system of work is changed. Supreme Decree No. 12 of 13 December 1960 subsequently amended section 7 of that Decree by adding that, without prejudice to the automatic readjustment of remuneration based on the cost of living, wage increases may be requested in the following specific cases:

(a) when the place of work concerned has not concluded a collective agreement or has not settled a collective wage demand;

(b) when the workers are employed in places of work set up after 17 August 1956, in so far as the corresponding wage scales have not been determined by agreement or by judicial or administrative award;

(c) when after 17 August 1956 new machinery is installed, existing machinery is modernised or working conditions are introduced that make greater demands on the workers or give them more responsibility, without the corresponding wage scale being fixed.

207. The Government adds that article 54 of the Constitution of Peru promulgated by the Constituent Assembly in 1979 provides that "collective labour agreements between workers and employers have force of law". Thus, in so far as a system of automatic readjustment of remuneration based on the cost of living was established for textile workers pursuant to the 1945 collective agreement, this is the system that has been chosen to maintain the level of real incomes and to avoid a decline in purchasing power. Consequently, the Government cannot accept the position of the complainant confederations that it should be possible at the same time to submit wage claims, since this would mean that there would simultaneously be two methods or channels for achieving the same objective, whereas they are mutually

exclusive. As indicated in the previous paragraph, however, textile workers are entitled to negotiate wage increases collectively at the level of each workplace in the exceptional circumstances set out in Supreme Decree No. 12 D.T. of 13 December 1960, in which case the demands are taken up and discussed once the existence of such exceptional circumstances has been established by expert appraisal.

208. The Government concludes by stating that the State has not limited or restricted collective bargaining for textile workers since the parties concerned opted freely for the system in force, and that only they can decide to abandon the automatic readjustment of wages based on the cost of living and, instead, discuss wage increases on an annual basis. In any case, the two systems cannot exist side by side. At present, collective bargaining applies only to the exceptional circumstances set out in the Supreme Decree referred to above. The textile workers benefiting from the automatic readjustment of their remuneration are in fact in a privileged position compared to other workers, who regularly demand to be allowed to benefit from the same system as the textile workers. Since the latter are already in this advantageous position, they have the non-exclusive second option of having their wages increased by virtue of the exceptions to the legal norm already referred to. They are now claiming as a third option to be able to submit freely an annual list of demands to have their income readjusted.

209. As to the alleged unilateral imposition of the level at which negotiations can take place, the complainant organisations claim that the Government does not allow wage increases to be discussed at the level of the federation but only at the level of each workplace. The Government states that, as it has already pointed out, the existence of a system of automatic readjustment of remuneration based on the cost of living means that wage claims cannot as a general rule be submitted either by a trade union or by a federation as there would then be two systems of readjustment operating side by side. A special provision exists, however, whereby collective claims can be put forward in so far as they relate to the exceptional circumstances set out in Supreme Decree No. 12 D.T. of 13 December 1960. Since these exceptional circumstances arise in specific workplaces, then it is for the workers concerned in each case to request an increase in the wage scale and not for the higher-level trade union organisation, since the particular circumstances do not affect all the workers in the textile industry or national federation. The situation is quite different with grievances concerning conditions of work which do concern all textile workers at the national level, and these are submitted by the National Federation of Textile Workers of Peru. In other words, there has been no unilateral decision but merely the implementation of a system for which the workers and employers themselves opted.

210. As regards the alleged suspension of the collective agreements by the Government between 1976 and 1981 (it was during this period that the agreement of 21 March 1945 concerning the automatic readjustment of remuneration in accordance with the increase in the cost of living was suspended), the Government stresses that the

suspensions occurred while the country was under military rule and during part of the presidency of Fernando Belaunde Terry and not under the Government of President Alan García Pérez. President García Pérez has not only fully enforced the system of automatic readjustment of remuneration but, in addition, has adopted the following concrete measures in favour of the textile workers:

- Ministerial Ruling No. 451-86-TR of 17 September 1986 formally established that as from 1 May 1986 the standard scale for the cost of living in the textile industry would be updated each month on the basis of the general consumer price index for the Province of Lima. The Ruling also provided for the creation of a tripartite committee to look into the standardisation of the system of wages in the textile industry so as gradually to do away with the so-called "standard scales", which tended to distort the proper operation of the automatic readjustment system, and to bring that system into line with the scope and objectives of the 1945 agreement.

- Ministerial Ruling No. 471-86-TR of 3 October 1986 determined that, while the tripartite technical committee was engaged in this task, the textile workers of the entire country should be granted a 6 per cent increase as from 1 May 1986 over and above the standard scale for the cost of living in the textile industry for the previous month, irrespective of the automatic monthly cost-of-living increase; in this way the Government not only applied the existing system but actually increased the real income of the workers concerned.

- Ministerial Ruling No. 100-87-TR of 26 March 1987, which was issued after the tripartite technical committee had submitted its report, contained a number of important decisions, namely:

  (a) the standard scales for the cost of living in the textile industry which had listed over 3,000 items up to 31 December 1986 ceased to exist as from 1 January 1987 (this decision thus went beyond the intention expressed in Ministerial Ruling No. 471-86-TR that their elimination should be "gradual");

  (b) the wage rates expressed in "soles" at 1945 prices which were applicable on 31 December 1986, whether relating to fixed or to variable remuneration, were to be brought up to date as from 1 January 1987 and converted into "intis" units, based in each case on the cost of living in the textile industry corresponding to the basic wage for each post and job in each workplace;

  (c) the amounts reached by the foregoing method of calculation were to be increased by a further 6 per cent, plus a fixed sum of I/.17 per day.

211. The Government observed that it is abundantly clear that it has adopted a series of decisions which, far from entailing the suspension of the system of automatic adjustment of wages for textile workers, are designed to enforce that system, to do away with features that distorted its proper application and, by making allowance for more than the rate of inflation and thereby improving on the system itself, to raise the real income of the workers by the payment of amounts over and above those corresponding to the automatic readjustment of their wages. The Government is somewhat surprised that, during the period when the system of automatic readjustment really was suspended, the General Confederation of Workers of Peru never lodged a complaint and that it should do so now when the system is once again fully operational and when very important decisions have been taken to improve it. The explanation is possibly that the CGTP has not examined the problem in sufficient detail, especially as it is a very complex matter and concerns a special system that calls for expert analysis.

C. The Committee's conclusions

212. The Committee observes that, in answer to the allegation that Decree No. 5 of 1956 and No. 12 of 1960 prohibit wage negotiations in the textile sector at the level of the branch of activity and permit such negotiation in textile enterprises only in three exceptional sets of circumstances whose common denominator is the non-fixing of the relevant wages, the Government states that the 1945 collective agreement, which is still applicable, established a system of automatic readjustment of remuneration for textile workers based on the cost of living which places these workers in a privileged position compared to all other workers, but excludes the possibility of their submitting any wage claims. Although the Committee notes that in the 1945 collective agreement the signatories stipulated that "there shall in future be no wage claims with respect to increases in the cost of living", it wishes to point out that, although the clause specifically excludes wage claims "with respect to increases in the cost of living", it does not exclude the possibility of claims being submitted on other grounds such as the level of productivity and profits in the textile sector.

213. The Committee further considers that the legislative provisions prohibiting the negotiation of wage increases beyond the level of the increase in the cost of living are contrary to the principle of voluntary collective bargaining embodied in Convention No. 98. Such a limitation would be admissible only if it remained within the context of an economic stabilisation policy, and even then only as an exceptional measure restricted to what is absolutely necessary and limited to a reasonable period of time.

214. With regard to the alleged suspension of the provisions of the 1945 collective agreement concerning the automatic readjustment of remuneration and their replacement initially by a system of "standard scales" and currently by a system of "conversion scales" pursuant to a

ministerial ruling of 1987, the Committee notes the Government's claim not only that it is respecting the automatic readjustment system in full, but also that it has adopted a series of measures in favour of textile workers that go further than that system in terms of real income. Although it does not have sufficient facts at its disposal to determine which automatic readjustment system (that provided for in the 1945 collective agreement or that which currently applies) is more advantageous to the workers, the Committee must draw attention to the fact that the present system was introduced by ministerial rulings, that it does not correspond to what was agreed upon in the 1945 collective agreement and that it is objected to by the complainant organisations in this present case. The Committee therefore calls on the Government to take, as soon as possible, the necessary steps to ensure that the system of automatic readjustment of remuneration provided for in the 1945 collective agreement, which is still in force, is fully applied.

215. As to the allegation that, according to the case law of the administrative labour authority, the negotiation of working conditions other than wages is prohibited at the level of the enterprise in the textile industry, the Committee notes the Government's assertion that the National Federation of Textile Workers of Peru is able to submit claims concerning conditions of work - which cover all textile workers at the national level - not by virtue of a unilateral decision of the Government but because it is in keeping with a system for which the workers and employers themselves opted.

216. Drawing attention to the contradiction between the explanations given by the complainants and by the Government regarding the impossibility of negotiating working conditions other than wages at the level of the enterprise, the Committee emphasises that, according to the principle of free and voluntary collective bargaining embodied in Article 4 of Convention No. 98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties [see 202nd Report, Case No. 915 (Spain), para. 53] and that, consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the case law of the administrative labour authority.

217. Finally, the Committee observes that the Government has not replied to the allegation that since 1981 all claims presented at the national level by the Textile Federation have been settled unilaterally by the Ministry of Labour since the employers have not the slightest interest in reaching any kind of agreement through direct negotiations. In this connection, the Committee recalls that on another occasion [see 248th Report, Case No. 1367 (Peru), para. 169] it reached the conclusion that section 13 of Supreme Decree No. 009-86-TR establishes unilaterally a system of compulsory arbitration by the administrative authority following the failure of the negotiation and conciliation stages, which in practice prevents the declaration or continuation of a strike. The Committee reiterates, as it did on that occasion, that provisions which establish that failing agreement between the parties the points at issue in collective bargaining must be settled by

of voluntary negotiation contained in Article 4 of Convention No. 98 [see 116th Report, Case No. 541 (Argentina), para. 72].

The Committee's recommendations

218. In the light of the foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) With reference to Decrees No. 5 of 1956 and No. 12 of 1960 which prohibit in principle the negotiation of wage increases in the textile sector beyond the level of the increase in the cost of living, the Committee recalls that such a limitation would be admissible only if it remained within the context of an economic stabilisation policy, and even then only as an exceptional measure restricted to what is absolutely necessary and limited to a reasonable period of time. The Committee calls on the Government to take, as soon as possible, the necessary steps to ensure that in the textile industry the system of automatic readjustment of remuneration provided for in the 1945 collective agreement, which is still in force, is fully applied.

(b) The Committee stresses that the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and that the level of negotiations should not be imposed by law, by administrative decision or by the case law of the administrative labour authority.

(c) Bearing in mind that the system of compulsory arbitration established unilaterally by Supreme Decree No. 009-86-TR does not conform to the principle of voluntary negotiation embodied in Article 4 of Convention No. 98, the Committee once again requests the Government to take steps to have the Decree amended.

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

IV. CASES IN WHICH THE COMMITTEE REQUESTS TO BE INFORMED OF DEVELOPMENTS

Case No. 1420

COMPLAINT AGAINST THE GOVERNMENT OF THE UNITED STATES/PUERTO RICO PRESENTED BY
- THE COMMITTEE OF TRADE UNION ORGANISATIONS
- THE WORLD CONFEDERATION OF LABOUR

219. The Committee of Trade Union Organisations (CTUO) presented a complaint of violations of trade union rights in a communication dated 13 August 1987. On 4 October 1987 the World Confederation of Labour (WCL) communicated its support of the complaint. The Government supplied certain comments on the complaint in communications dated 9 February and 30 September 1988.

220. The United States has not ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

221. In its letter of 13 August 1987, the CTUO states that it is a united body of more than 50 unions with different trade union and political views whose aim is to fulfil certain tasks and handle common problems. It alleges that from newspaper articles (copies of which are attached) it is clear that the Government - through the Division of Police Intelligence - has prepared and is maintaining lists of, and files on, both individuals and unions which are described therein as "Separatists and Subversives". According to the complainant union, about 40 trade union leaders, four workers' organisations, the Labour Lobbyist, four CTUO officials and 20 union lawyers have been included in these lists.

222. This description would not be important, states the CTUO, if it were only used for internal analysis or as political reference material for the Government; however, it has been and is being used to discriminate and unjustly and unconstitutionally influence the ability to get and keep jobs and other benefits that could be gained from employment. It alleges that in the case of trade union organisations, this description represents them as being outside the law, leading to malicious and tendentious inquiries and systematic persecution and coercion. All this violates the freedom of association that the ILO has enshrined in its Conventions.

223. The complainant explains that many individuals and organisations in Puerto Rico have been claiming the right they have to self-determination in face of the prevailing colonial situation. This has given rise to activities and efforts in international bodies with a view to correcting the situation. The Government of the United States and the Government of Puerto Rico call these activities subversive, despite the fact that the Constitutions of both countries recognise the legitimate right to them and prohibit the above-mentioned discriminatory practices. The complainant alleges that as a result of the repressive apparatus of the United States Government, such as the Federal Bureau of Investigations and the Intelligence Division of the Puerto Rico Police, an operation has developed involving many types of repression. These range from the infiltration of unions by secret police agents to the carrying out of sabotage and attributing it to unions, as well as the kidnapping and killing of trade union leaders and/or activists.

224. According to the CTUO, this persecution against trade unionism and the eagerness to describe as criminal the workers' lawful actions has escalated to such an extent that recently it became known that there is a so-called "worker-employer unit" in the Puerto Rico police whose purpose - as admitted by its members during public hearings before the Puerto Rico Civil Liberties Commission - is to prosecute and control the activities of the trade union movement.

B. The Government's reply

225. In its letter of 9 February 1988, the Government states that the authorities of the Commonwealth of Puerto Rico have supplied the following initial comments: a civil lawsuit is currently pending before the Supreme Court of the Commonwealth concerning the lists of separatists and subversives mentioned in the ILO case, thus observations cannot be transmitted while the case is sub judice. The lists in question have been sealed, by Supreme Court order, until such time as the lawsuit is resolved and therefore they are not open to public inspection.

226. In its communication of 30 September 1988, the Government supplies information on the pending Supreme Court case. It was initiated by, on the one hand, a member of the Puerto Rican Parliament (the Hon. David Noriega Rodríguez) who requested an order to the Police Superintendent of Puerto Rico to take measures to seal certain files on individuals and organisations in the possession of the police and which allegedly were created because of the political beliefs of those concerned. On the other hand, a citizen (Graciani Miranda Marchand) requested an order declaring unconstitutional the practice of maintaining lists and files on individuals who are not undergoing bona fide criminal investigation and the handing over of all documents concerning him. The Government of the Commonwealth is the defendant in both actions which were joined on 20 July 1987.

227. According to the communication, the Commonwealth admitted the unconstitutionality of such practices and the Governor of Puerto Rico, on 21 July 1987, issued Executive Order No. 4920-A setting up a council to protect the citizens' right to privacy with a view to preventing in the future the collection and compilation of such information based purely on political reasons and establishing a procedure for returning to the individuals or groups concerned the information obtained about them. From a copy of the Order supplied by the Government, it appears that the council shall be a permanent body chaired by the Secretary of Justice and consisting of the Superintendent of Police and three retired Supreme Court judges (section 1). The council shall be responsible for, among other things, (a) establishing specific guidelines to be followed in the internal security programme so as to meet the aims of the council; (b) examining the files held by the police and the Special Investigations Bureau of the Department of Justice and, where there is a violation of the guidelines, notifying the persons concerned and offering them the opportunity to see their file, which can eventually lead to the final disposal of the offending file; and (c) establishing adequate co-ordination with whichever federal agencies could provide means to strengthen the aims of the programme such as the secret service, the coast guard, the customs service and the Federal Bureau of Investigations. As a consequence of this Order, the file concerning Mr. Miranda Marchand was ordered to be handed over to the council which now had initial jurisdiction in such matters.

228. On 31 July 1987 the High Court of Puerto Rico handed down its partial decision on the case (which was finalised on 14 September 1987), clarifying four issues: (1) that the practice of compiling files on individuals and organisations exclusively by reason of their political and ideological beliefs without there being any real proof to link the persons to the commission or attempted commission of crimes is illegal and unconstitutional; (2) that the State must return to Mr. Miranda Marchand and to the various persons concerned, including groups of persons not parties to this case, every document in the possession of the police found in files opened solely on the basis of the political and ideological beliefs of these other persons; (3) that any provisions in Executive Order No. 4920-A in conflict with this decision shall be repealed; and (4) that the set of rules laid down in the judgement be used for the handing over of the files in question to the persons concerned not involved in the case. In the meantime the list of named persons and organisations should be handed in to the court in a sealed envelope. On 14 October 1987, the State appealed this decision in so far as it extended to third persons foreign to the case, and challenged the procedure drawn up concerning them and the declaration of partial unconstitutionality of the Executive Order. On 5 November 1987, the Supreme Court handed down a resolution admitting the appeal and on 10 December - at the appellant's request for an injunction - it ordered the suspension of the measures contained in the judgement of the High Court. Copies of all these documents are supplied by the Government.

229. The Government goes on to describe the series of legal procedures attempted by the Hon. Noriega Rodríguez which led the Supreme Court, on 10 February 1988, to reconsider its earlier decision of 10 December. The Supreme Court in effect ordered the authorities of the Commonwealth to take measures to protect the files in question and to hand over to the High Court a sealed envelope containing the lists of persons and organisations mentioned in the police files in question. This was done on 25 February 1988; it appears that in fact four sealed boxes containing a summary 4,570 pages long of the persons and organisations involved were deposited. The State presented its final pleadings before the Supreme Court on 11 March 1988 and the case is awaiting a final decision.

C. The Committee's conclusions

230. The Committee notes that this case concerns serious allegations that the police in Puerto Rico are preparing and maintaining lists concerning unionists and workers' organisations, not for use in any criminal investigation, but for use in anti-union discriminatory practices. The complainant gives no further details on these practices which allegedly include impossibility of listed unionists to get and keep jobs, systematic persecution, as well as kidnapping and killing of trade union leaders and activists, nor has it produced any evidence to show that the lists were in fact used against unionists. The Committee is aware, however, from the voluminous documentation supplied by the Government that the existence of such illegal police lists and files was admitted by the public authorities, and that there are thousands of names on the lists.

231. The Committee also notes that the Government's reply centres on a Puerto Rican High Court case, decided partially on 31 July and finally on 14 September 1987 and appealed against by the Commonwealth of Puerto Rico on 14 October 1987. Final pleadings were presented to the Supreme Court in this appeal in March 1988 and its decision is awaited.

232. While recognising that the Supreme Court's decision will be useful in adding extra detail to this case, the Committee observes from the documents supplied that the appeal does not concern the central issue of the High Court case, namely its declaration that the police practice of gathering information and compiling lists and files when there is no criminal investigation is illegal and unconstitutional. The appeal, in fact, challenges the lower court's attempt to regulate the handing over of the files in question even to persons not involved in the original petition - which, it should be pointed out, was not a class action on behalf of all the individuals and organisations listed in the police files - and its partial nullification of the Executive Order which had been issued by the Governor. (It appears that only section 3(b) was purportedly repealed by the High Court decision.) Stated in other words, the appeal attacks the remedies - and the way

they were delivered using the separation of powers argument - put forward by the lower court to protect all victims of the police department's illegal and unconstitutional practices, not the declaration of illegality itself.

233. The Committee has reviewed the substantial documentation sent by the Government and by the complainant, and in particular the texts of the various court decisions and documents which uphold the illegality of the police practices complained of by the CTUO in this case, but which are pending a Supreme Court decision as to how to dispose of the offending files and related material. In such circumstances the Committee notes with interest the condemnation of the police practices in question. In the past it has stated that all practices involving the "blacklisting" of trade union officials constitute a serious threat to the free exercise of trade union rights, and, in general, governments should take stringent measures to combat such practices. [See, for example, 177th Report, Case No. 844 (El Salvador), para. 276.]

234. In line with the general principle of freedom of association that no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, the Committee recalls in particular that where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment. [See 14th Report, Case No. 105 (Greece), para. 137.] In the present case, the Committee welcomes the fact that the offending files and lists are sealed, under the judiciary's protection, for the moment. On the basis of the documentation before it, it considers that an appropriate remedy to the wrong committed will be forthcoming from the Puerto Rican Supreme Court and requests the Government to keep it informed of the decision to be handed down shortly by that Court, and to supply a copy of it.

The Committee's recommendations

235. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee notes with interest that the national courts have condemned the Puerto Rican police practice of compiling blacklists including unionists and workers' organisations which have no link whatsoever to criminal investigations. It recalls that the practice of "blacklisting" of trade union officials constitutes a serious threat to the free exercise of trade union rights.

(b) While awaiting from the Government a copy of the final decision in the civil case before the Puerto Rican Supreme Court concerning

the methods of remedying this illegal and unconstitutional practice, the Committee trusts that an appropriate remedy will be found which will guarantee effectively to Puerto Rican unionists protection against anti-union measures of this kind.

Case No. 1449

COMPLAINT AGAINST THE GOVERNMENT OF MALI PRESENTED BY SECTION III OF THE NATIONAL TRADE UNION OF EDUCATION AND CULTURE (SNEC)

236. The complaint alleging violations of freedom of association in Mali was submitted in communications dated 22 March and 19 April 1988 by section III of the National Trade Union of Education and Culture (SNEC). The Government sent its observations and information on this case in a communication dated 10 August 1988.

237. Mali 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

238. In their communications of 22 March and 19 April 1988 and in the documentation they enclose on this case, the Secretary-General of section III of the SNEC in the Bamako district, Mr. Modibo Diara, and the Acting Secretary-General of the section, Mr. Youssouf Ganaba, allege that the Government infringed their trade union rights following a strike by their trade union section, which was held from 15 to 20 February 1988.

239. Giving an outline of the trade union legislation in Mali, they explain that strike action is authorised under the Constitution and in regulations made under the Act of 7 July 1987 (Act No. 87-47/AN-RM). They denounce the reprisals to which they were subjected for having gone out on strike because their salaries were at least three months in arrears.

240. Going into more detail, they point out that under a decision of 9 December 1986, the Ministry of Labour transferred 84 teachers in the middle of the school year. They submit, as an enclosure, decision No. 25/60 MEN-DNEF which includes the names of the transferred teachers and the places to which they were appointed. The two signatories of the complaint are included in this list of teachers. The complainants explain that the teachers transferred were already having to cope with

the deprivation caused by the three months' overdue payment of their salaries, when they received the order to transfer to schools where their colleagues had not been paid any salary for four or five months. The complainants add that these transfers were arbitrary in so far as they did not take into account the social conditions of the persons transferred (separation of families, disruption of children's studies, transfer of pregnant women). Furthermore, the transferred teachers allegedly did not receive any compensation or salary advances to enable them to take up their posts, whereas advances of this kind were provided for by law.

241. Furthermore, the two signatories of the complaint add that they themselves were dismissed for having allegedly deserted their posts. However, they allege that the competent national authorities, i.e. the Transit Service, considered that the decision of 9 December 1986 transferring them to another post was null and void. This Service had requested that the said decision of transfer be updated so that those concerned might be given a transport voucher enabling them to take up their posts. However, the Ministry of Labour allegedly refused to update the decision of transfer and insisted on the fact that it was still valid. The two signatories of the complaint admit that they did not take up their posts but explained that they could not do so because they had to cope with the problem of their families' survival.

242. The complainants also allege the dismissal and disappearance of Issa N'Diaye, teacher of philosophy at the Higher Teacher Training Institute (Ecole normale supérieure) and the detention of Charles Danioko and Komaka Keita, teachers of history and geography and sociology, respectively, in this same school, at the Gendarmerie barracks No. 1. According to the complainants, these teachers had been accused of calling the students' march in their school in support of the teachers.

243. Finally, it would seem from the documentation enclosed with the complaint that the executive of the National Trade Union of Education and Culture did not back the striking unionists' claims for the payment of arrears on their salaries; on the contrary, by means of a decision of 10 March 1988 sent on 14 March by the Secretary-General of SNEC, Mr. Simaga, it suspended one of the complainants in this case, i.e. Modibo Diara, Secretary-General of section III, from any trade union and semi-official trade union activity.

244. In an open letter sent to the Secretary-General of SNEC, enclosed with the complaint, Modibo Diara protested against his suspension from "any trade union and semi-official trade union activity" with the formal order to "refrain from any SNEC trade union work throughout the country until the next ordinary congress of the organisation", proclaimed by the SNEC Executive. He pointed out that this suspension was contrary to the procedure laid down in the statutes and regulations of the SNEC. Indeed, according to this open letter, although the executive or any other body might suspend one of its members, the national body cannot individually suspend the members

of another body (section, division, subdivision or committee) because it did not elect the members of the other level bodies.

245. Turning to the facts in this open letter, the complainant points out that whilst he was Secretary-General of section III of the SNEC, in the Bamako district, the only fault committed by his section was to remain faithful to the legitimate aspirations of its activists concerning the chronic delay in the payment of teachers' salaries and benefits as well as in their promotions and reclassifications. In this respect, the complainant quotes the resolution of the congress which "urges the national executive of the National Trade Union of Education and Culture to engage, in co-operation with the other national trade unions and the National Union of Workers of Mali, in the struggle to obtain rights that have been undermined (salaries and benefits, promotions, reclassifications); failing this, the congress will undertake the struggle alone". The complainant goes on to say in the open letter that as part of its campaign, section III, acting in a democratic and legal way, took steps in November 1986 - given that salaries were three months overdue - to persuade the executive to take joint action, as most of the divisions and sections were calling upon the executive to do something other than engage in eternal and unsuccessful negotiations. However, the Secretary-General and several members of the executive riposted by doing everything they could to break this lawful strike, acting worse than the employer, with a view to isolating section III from the other sections in Bamako which none the less had the same problem. Section III's strike of November 1986 nevertheless succeeded and the other sections understood that the struggle was necessary; it is for this reason that the national strike of December 1986 was held.

246. According to this open letter, in October 1987, the same problem of salaries in arrears occurred again and, in December 1987, section III wanted to give notice of a strike; this failed when the SNEC executive decided to take action. Indeed, after many hesitations, the SNEC executive decided to lodge a strike notice but this was lifted less than 48 hours later. Section III was therefore obliged to lift its own notice of strike action.

247. The complainant points out that in February 1988 the situation remained the same and that section III, faithful to the aspirations of its activists, once again gave notice of a five-day strike, from 15 to 20 February; on Wednesday, 10 February, all the representatives from committees in the city of Bamako, convened by the district co-ordination committee, backed section III's plan to carry out the strike, although the representatives of the committees feared that the executive would change its mind. However, according to the open letter, the strike was a success because more than 90 per cent of teachers participated in it. As an immediate consequence of the strike, 71 teachers, three workers from the National School of Teachers and the Secretary-General and Acting Secretary-General of section III were transferred. In the case of the two latter officials, their transfer was ordered under the earlier decision of 9 December 1986 to which was attached a transfer application form for use in any updating.

However, this document had been declared illegal by the Transit Service and those concerned were unable to procure a transport voucher.

248. According to the open letter, the reprisals taken in the form of transfers were aimed at discouraging any other strike and therefore any claims or action from the employees. It is for this reason that section III asked the teachers to stay where they were - not out of bravado but because of the significance of what was at stake. A choice had to be made between taking a firm stand so that the law would be respected in the future or foregoing acquired rights and bending to the employers' illegal and arbitrary action - with all the extremely negative repercussions this would have had on trade unionism. Disagreement arose because of differences of opinion between section III, which wanted to take a firm stand, and the Secretary-General of SNEC who, according to this letter, had acted as a strike breaker amongst the teachers who had been transferred, resorting to threats, intimidation and even corruption - not in the interest of the trade union movement but in collaboration with the employer.

B. The Government's reply

249. In its communication of 10 August 1988, the Government acknowledges that the texts regulating freedom of association and the right to strike are indeed the Constitution of 2 June 1974 and its article 13, which guarantees all citizens within the law the right to establish organisations of their own choosing to defend their occupational interests, and Act No. 87-47/AN-RM of 10 August 1987, which establishes the legal framework of the right to strike in the public services, as well as Conventions Nos. 87 and 98 ratified by Mali. The Government nevertheless notes that Article 8 of Convention No. 87, whilst recognising the trade union rights of workers' and employers' organisations, obliges them to respect the law of the land, like other persons or organised collectivities.

250. The Government explains that as regards strikes, Act No. 87-47/AN-RM is the basic law in the country. The said Act determines the circumstances in which the right to strike may be exercised. In this context, it stipulates that strikers must clear the premises and not infringe the right to work (section 11).

251. The Government goes on to say that in the case in point, several strikers, including the complainants, entered educational establishments and openly sought to prevent non-striking officials from working. Correspondence from the headmasters bears witness to this fact. By acting in this way, the strikers were no longer covered by the legal guarantees and regulations to which they might lay claim because they infringed not only the provisions of section 11 of Act No. 87-47/AN-RM but also those of Article 8 of Convention No. 87.

252. As regards the transfer of 84 teachers, including the complainants, the Government explains that under the general regulations of the public service, a public servant may be transferred at any time throughout his career. In the case in point, the transfer of the teaching staff decreed in decision No. 2560/MEN-DNEF of 9 December 1986 was aimed at redeploying the staff within the department to make up for the lack of teachers in the interior of the country. However, after the trade union federation had intervened, a successful solution was found for those in social need.

253. However, the Government adds that several teachers, including precisely the complainants, did not take up the posts to which they were appointed before the strike of 15 to 20 February 1988, in spite of the various formal warnings issued during the period preceding the strike. In such a case, the legislation and regulations in force are clear. Under section 12 of Act No. 84-45/AN-RM of 9 July 1984, amending and supplementing Ordinance No. 77-71/CMLN of 26 December 1977 regulating the public service, "the public servant shall occupy the post to which he is assigned". He is bound to be punctual in his working hours and to accomplish personally and attentively all obligations incumbent upon him in the course of his duties. The same Act, in section 2, adds to article 122 of the public service regulations a paragraph which reads as follows: "a public servant deserting his post shall also be automatically dismissed", as this is an infringement of the provisions of section 12 above. Furthermore, Circular No. 7/MT-FP-CAB of 28 July 1984 concerning methods to enforce dismissal when an official has deserted his post, as defined under the above-mentioned Act, deems that the public servant deserts his post if he does not take up the appointment to which he has been assigned or does not come back to work after a period of leave and, generally speaking, if the public servant takes unauthorised leave - unless he provides justification for his unauthorised absence.

254. The Government points out that if a public servant finds himself in one of the situations listed in the Circular, he is automatically dismissed without any disciplinary proceedings, apart from a warning allowing the official an opportunity to state his case and informing him of the penalties to which he is liable. The warning notice is a preliminary step before a dismissal for desertion of post; it was therefore sent to the two complainants and contained details on the consequences that might arise from failing to respect the order. The complainants, by refusing to comply with their transfer order, voluntarily put themselves at variance with the legislation in force.

255. More generally, the Government stresses that binding decisions must be applied immediately because they are presumed to be in conformity with the law; even if the citizen is persuaded that they are illegal, he must comply with them until they have been examined by the courts. It is only after having carried out an order that he might refer the matter to the courts if he challenges the rights of the administrative authority.