acceptance of a compromise, both parties may resort to such measures of direct action as they see fit.

277. In this context, the Ministry of Labour and Social Welfare issued resolution No. 704, dated 30 August, which, in accordance with section 56 of Act No. 23551, instructed its legal department to file action in court for the cancellation of the trade union status of the complainant organisation; this measure takes immediate effect once the corresponding judicial complaint is filed, and the complaint was filed in, and is currently before the Fourth Chamber of the National Labour Appeals Court.

278. The Government adds that contemporaneously with the filing of the above-mentioned legal action, on 31 August 1990, the Ministry of Labour issued resolution No. 711/90, ordering the temporary suspension of the complainant trade union's registration until the conclusion of legal proceedings. This administrative action is based on section 56 of Act No. 23551, which empowers the Ministry of Labour and Social Security to register trade unions; section 23 of the same Act equates trade union registration with trade union status. In addition, section 48 of the Civil Code establishes that: "The administrative decision concerning the withdrawal of trade union status or intervention shall give rise to the remedies provided for in section 45. The judge may order the temporary suspension of the resolution under appeal." In this sense, it is unanimously accepted by legal experts in the country that the recognition of trade union status depends on an administrative action by the competent authority, in the executive or legislative branch; likewise, the withdrawal or cancellation of that status falls within the competence of the same authority responsible for granting it, without prejudice, of course, to the faculties of the judiciary branch. In this case, the Ministry of Labour merely suspended the complainant's trade union registration on a temporary basis, thereby fulfilling the supervision obligation which belongs to an administrative authority responsible for issuing or recognising an association's trade union status, through a preventive measure which, in the end, is subject to the decision of the courts.

279. The Government states that the suspension of trade union registration does not imply a denial of the collective body's existence, citing the following commentary: "A dissolved corporation may yet subsist, not as a legal person, but as a simple association lacking this attribute" (see anotated Civil Code, Jorge Joaquín Llambias, Vol. 1, page 137, 1982 edition). Under the provisions of section 46 of the Civil Code, simple associations may function without the State's authorisation (ibid, page 124), and may therefore acquire rights and contract obligations. It is therefore clear that the arguments submitted by the complainant to the effect that the suspension of trade union registration implies the death of the trade union, or that the administrative authority does not have the power to suspend such registration, are unfounded, since, as has been shown, the effects of the administrative action in question cannot have, and

in practice have not had, such scope as to prevent the survival of the trade union organisation and the maintenance of its regular activities.

280. In addition, the Government states that in spite of the untimely attitude adopted by the complainant organisation, the collective bargaining mentioned above continued with the national federation of telephone workers, and was ultimately concluded to everyone's satisfaction, thereby definitively resolving the differences between the parties. It should be added that the social concertation policy pursued by the national Government has led to the constitution of the Joint Bargaining Committee for the Collective Labour Agreement of Telephone Workers, which was set up to negotiate the agreement which would replace the agreement in force since 1975, with the participation not only of the most representative trade union, but also that of nine new private enterprises which offer telephone services - the successors of the former National Telecommunications Enterprise. This negotiation recently reached a successful conclusion, resulting in the National Collective Labour Agreement for the telephone sector, which will govern the employment conditions of workers in this sector as from 1 May 1991.

281. The Government concludes by stating that this recent development shows that the complaint in this case has become abstract. On this basis, and in the light of the foregoing, the complaint is groundless and should be dismissed.

C. The Committee's conclusions

282. The Committee notes that the complainant withdrew the complaint it had presented in its communication of 16 April 1990. The Committee recalls that it has the authority to decide in this respect taking into account the circumstances of each particular case. In the present case, it accepts the withdrawal of the complaint as regarded the allegations in that communication. The Committee will thus confine its conclusions now to the allegations contained in the complainant's communication of 10 September 1990.

283. The case before the Committee can be summarised as follows: faced with the demands of FOETRA - Buenos Aires Trade Union for a wage increase in view of the hyperinflation in the country, the National Telecommunications Enterprise offered a wage increase which was accepted by the workers, but was subsequently withdrawn when it was not accepted by the Ministry of the Economy; this led FOETRA - Buenos Aires Trade Union to call a strike, even though the legally prescribed period for compulsory conciliation had not expired. The Ministry of Labour responded by issuing resolutions Nos. 704 and 711, of 30 and 31 August 1990, respectively: the former ordered that the courts be requested to cancel the trade union status of FOETRA - Buenos Aires Trade Union and the filing of charges alleging the probable commission of crimes specified in sections 192, 194 and 197 of the Criminal Code

(crimes against safety in transport and communications) and also requested as a preventive measure the temporary suspension of the trade union's executive committee and the appointment of an auditor; the latter temporarily and until the conclusion of the lawsuit suspended the trade union's registration and temporarily suspended its trade union rights, as well as the collection of funds paid by employers as membership dues or for other reasons on behalf of workers belonging to the trade union.

284. In the first place, the Committee wishes to point out that, in accordance with the Committee's principles, telephone services can be considered essential services since their interruption may endanger the life, personal safety or health of the whole or part of the population; consequently, even stringent restrictions on the right to strike of workers in the sector, including the prohibition of the right to strike, could be admissible from the standpoint of the principles of freedom of association. Nevertheless, Argentinian legislation recognises the right to strike of telephone workers, although it subordinates this right to compliance with the time frames established for conciliation. In the present case, FOETRA - Buenos Aires Trade Union failed to comply with these time frames, leading to a series of serious administrative sanctions (temporary suspension of trade union registration and trade union rights, including the right to withhold trade union dues at the source) and to the Ministry of Labour's request that the courts cancel the trade union status of the complainant organisation and its denunciation of the commission of possible crimes.

285. In the Committee's opinion, the consequences of the Ministry of Labour's resolutions are excessively severe if one considers: (1) that the strike called by FOETRA - Buenos Aires Trade Union followed the Ministry of the Economy's refusal to accept ENTEL's proposed wage increase for telephone workers in the context of national hyperinflation; and (2) that the Ministry of Labour's immediate reaction to the strikes, through ministerial resolution No. 704, seems to have brought these strikes to an end, and, in any case, they did not last long. The Committee considers that in these circumstances the Ministry should not have resorted to the most severe sanctions prescribed by legislation, such as the cancellation of trade union status, the suspension of trade union registration and the request that an auditor be appointed to replace the trade union's executive committee. In addition, the Committee considers that the administrative suspension of the trade union's registration (which is a requirement for its legal status) as well as of the trade union rights of FOETRA, is the de jure equivalent of the administrative suspension of FOETRA, and is contrary to Article 4 of Convention No. 87. The Committee also notes that although FOETRA - Buenos Aires Trade Union retained de jure a minimum legal existence, as claimed by the Government, the national federation of telephone workers was able to continue the bargaining process, which culminated in a definitive solution to the collective dispute and led to the signing of a collective agreement which entered into force on 1 May 1991.

286. In the light of the specific details of this case, and in view of the fact that the collective dispute which led to the present complaint has been resolved, as well as the fact that the national federation of telephone workers has concluded a collective agreement, the Committee requests the Government, if this has not already been done, to lift the administrative sanctions against FOETRA - Buenos Aires Trade Union and to withdraw the legal actions it has filed against this trade union and its leaders.

The Committee's recommendations

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

(a) The Committee requests the Government, if this has not been already done, to lift the administrative suspension of the trade union's registration and to lift the suspension of the trade union rights arising from the special status of FOETRA - Buenos Aires Trade Union.

(b) The Committee also requests the Government, if this has not already been done, to withdraw the legal actions it has filed in order to cancel the trade union status of this trade union and to withdraw the legal actions it has filed against its leaders.

Case No. 1545

COMPLAINT AGAINST THE GOVERNMENT OF POLAND PRESENTED BY THE FEDERATION OF MINING UNIONS (FMU)

288. In communications dated 12 June and 31 July 1990, the Federation of Mining Unions (FMU) presented a complaint of violation of freedom of association and of trade union rights against the Government of Poland. In a communication dated 22 June 1990, the Polish National Alliance of Trade Unions (OPZZ) expressed its support of this complaint. The Government sent its observations on the case in a communication dated 28 February 1991.

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

A. Allegations of the complainant federation

290. In its communications of 12 June and 31 July 1990, the Federation of Mining Unions alleges that the Government refused, in spite of the request that had been made of it on 24 February 1990 and in violation of section 41 of the Act of 8 October 1982 as amended in 1985 and in 1989, to participate in conciliation proceedings in order to settle the collective inter-works dispute which has arisen between it and the Federation.

291. Following this refusal, the Federation continued with the proceedings and, in accordance with section 42(1) of the above-mentioned Act, submitted the inter-works dispute to the Social Arbitration Chamber of the Supreme Court; however, the Federation points out that the Government did not make a similar request although in accordance with the Act it was bound to do so, and had therefore not appointed its members of the Arbitration Chamber, thus preventing the conciliation proceedings from taking place before this Chamber.

292. The Federation therefore applied to the Chamber of Labour Administration and Social Security of the Supreme Court. The Court, on the basis of the provisions of paragraph 5(3) of the decision of the Council of Ministers dated 30 December 1982 setting out the rules of procedure for the social arbitration chambers, handed down on 23 May 1990 a decision certifying that it had not been possible to examine the dispute due to the fact that the office of the Council of Ministers, party to the dispute with the Federation of Mining Unions, had not appointed its members of the Arbitration Chamber.

293. According to the complainant, this type of attitude, of refusing to participate in the procedures for settling collective inter-works disputes, in accordance with the legal provisions adopted by the Diet (Parliament) and the Government itself, leads to a situation where no collective disputes can be settled in accordance with the current legislation. The complainant considers this to be a violation of Article 8 of Convention No. 87.

B. The Government's reply

294. In its detailed reply supported by documents arguing its position in this matter, the Government states that in a letter dated 15 January 1990 addressed to the president of the Council of Ministers, the Federation had informed him that it wished to begin a collective inter-works dispute regarding the following claims: the need to fix remuneration levels in the mining industry in an equitable manner in order to (a) ensure appropriate remuneration for mineworkers, with respect to current wages in the processing industry as had been agreed during the "round table"; (b) recognise the true value of the allowance in kind (coal) which is an important part of remuneration in

the mining industry; (c) abolish the supplementary taxation on remuneration earned for Saturday work, a public holiday in the mining industry, on the financial value of allowances in kind and on bonuses paid on Miners' Day. The Federation also asked the Government to fulfil its obligations regarding the mining industry as included in the state budget for 1989 and to include in the budget for 1990 financial measures to ensure a suitable reform of the mining industry. This letter also specified that if there was no reply by 20 January 1990 at the latest, the Federation would institute conciliation proceedings in accordance with the provisions of the Act respecting trade unions.

295. On 20 January 1990, the Minister of Labour and Social Policy addressed to the president of the complainant Federation a letter in which he informed it that these claims did not lend themselves to a solution in accordance with the procedure established for inter-works disputes, because he believed these requests concerned changes in wages and other benefits for mineworkers and that in accordance with the current legislation, these claims should be settled by way of collective wage agreements between the union representatives and the relevant bodies in the enterprises. As for the second aspect of the claims concerning obligations with regard to the mining industry, as outlined in the 1989 state budget, the Minister of Labour stated that the competent department of the Ministry of Industry had been instructed to obtain detailed information in this respect as soon as possible from the Ministry of Finance and to communicate it to the Federation.

296. The Government states that it had agreed to go ahead with negotiations with the Federation. The outcome was recorded in a document provided by the Government, dated 23 January 1990 and entitled "Decisions taken during negotiations on the subject of problems put forward by the Federation of Mining Unions in its letter dated 15 January 1990 addressed to the president of the Council of Ministers and proposals for solutions to the collective dispute".

It appears from this text that:

- the Government repeats its position whereby from the point of view of current legislation problems concerning wages cannot constitute a collective inter-works dispute;

- measures would be taken to improve, from 1990 onwards, the financial situation of mining enterprises so that the drop in wages recorded in 1989 would have no repercussions on the level of wage funds of the mining enterprises;

- proposals aiming to change allowances in kind will from now on be the subject of consultations with the trade union organisations concerned;

- the Minister of Industry will ask the Minister of Finance to amend the legislation in order to exempt from supplementary taxation for 1990 remuneration paid in accordance with decision No. 199/81 handed down by the Council of Ministers for work done on a public holiday;

- regarding the implementation of the 1989 budget, the parties note that the subsidies due in 1989 have been paid and that for 1990 the January instalments will be paid before the end of the month and the February ones at the beginning of the month;

- the Federation declares that it will suspend its action until it receives the decision of its statutory bodies.

297. Following these negotiations, the Government confirms that the Presidium of the Federation of Mining Unions did in fact decide to suspend the collective dispute until 22 February 1990. However, adds the Government, after having noted that wages had not reached the level forecast, that the withdrawal of supplementary taxation had not been accepted by the Minister of Finance and that the subsidies corresponding to the real needs of the mining industry had not been paid in full, the Federation had decided, by a letter of 24 February 1990, to institute the conciliation proceedings in accordance with section 41 of the Act respecting trade unions.

298. The Government indicates with regard to the question of supplementary taxation, that on 14 February 1990 it contacted the Ministry of Finance which, in a letter dated 6 March 1990, refused to give a favourable response to this request on the grounds that in the framework of the current taxation reform it was not appropriate to grant this exemption to one particular socio-professional group.

299. Furthermore, the Government states that on 5 and 6 March 1990 the Minister of Industry held discussions with the coalminers' trade unions concerning changes in the components of remuneration, during which it was agreed that the changes would be the subject of consultation with all the trade union organisations concerned. This resulted in the signature on 6 March 1990 of an additional clause to the draft agreement concerning the system of remuneration in the coalmining industries, concluded on 26 March 1985 between the Ministry of Mining and Energy and the Federation of Mining Unions. This additional clause provides for the possibility of increasing the basic wage rates by 30 per cent for surface workers and 40 per cent for underground workers, and provides that remuneration for public holidays should be determined in accordance with the general principles in force regarding supplementary wages in the enterprises, which according to the Government would mean an improvement in the system of wages and wage ratios in the coalmining industry as compared to the processing industry.

300. This being the case, in reply to the letter from the Federation dated 24 February 1990 requesting the opening of conciliation proceedings, the Government addressed to the Federation

on 12 March 1990 a letter in which it reaffirmed that the wage negotiations requested by the Federation could not be the subject of an inter-works settlement. Furthermore, in this communication the Government emphasised that the question concerning remuneration for public holidays was no longer topical following the adoption of the additional clause dated 6 March 1990. It invited the Federation to discuss the new legal situation in the mining industry with the representatives of the ministries concerned once the level of wages in the industry becomes known after the changes have been introduced.

301. The Government also states that on 21 March 1990 the Federation had sent it a letter informing it of the dispatch of the motion requesting the case to be brought before the Social Arbitration Chamber of the Supreme Court in order to institute conciliation proceedings and to resolve all the claims outstanding since 15 January 1990. This letter also mentions the acceptance by the Federation of the government proposal for a meeting to examine the problems concerning wages and collective agreements in the following branches: coal, lignite, ores, chemical and mineral substances, geology and boring.

302. After the decision dated 23 May 1990 handed down by the presiding judge of the Supreme Court recording that it was impossible to examine the dispute due to the Government not having appointed its members of the Arbitration Chamber, the Government states that the negotiations did however take place. In fact, on 27 June 1990 a meeting took place in which the representatives of the Ministry of Industry, the Ministry of Finance and the Federation of Mining Unions participated. The discussions concerned the freeing of the price of coal, the export quotas for coal, the budgetary endowment for the mining industry, the allocation of the fees paid for the exploitation of mining deposits, the structure of wages in the mining industry, the financing of safety measures in the mines and the drawing up of a draft of a new collective agreement in the mining industry.

303. The Government stresses that another meeting between the Minister of Industry and the representatives of the Federation took place on 12 September 1990 during which the parties studied and discussed certain points concerning the coal industry, such as the question of taxation on wage increases and the draft collective agreement for the mining industry. Furthermore they decided that changes in the system of remuneration in the enterprises should take the form of a supplementary clause, in accordance with the provisions of the Act respecting the creation of systems of remuneration in enterprises. The question of the relationship between wages in the mining industry and those in the processing industry was also studied as well as the matter of bonuses on Miners' Day and of the application of the Miners' Charter. Lastly, it was decided that the measures considered during the meeting with the Federation would be the subject of discussions with the other trade union organisations of the mining industry.

304. With regard to the question of the adjustment of allowances in kind, the Government states that there is no legal obstacle to stop part of the wages being paid in the form of remuneration in kind. It is for each enterprise (that is, the trade union organisation and the management) in accordance with Act No. 69 of 1990 amending the Act of 1984 respecting the creation of systems of remuneration in enterprises, to decide upon the levels of the various components of remuneration, including the part to be paid in kind.

305. Lastly, the Government considers that it demonstrated its willingness throughout the discussions held in 1990 to find solutions to the problems caused by the introduction of economic and social reforms. It regrets that with the difficult changes that are taking place whose inevitable and negative consequences must be borne by all sectors of industry, the Federation of Mining Unions did not think it opportune to withdraw its complaint. It declares that it is however prepared to make every possible effort to reach a solution to the dispute.

C. The Committee's conclusions

306. This complaint concerns the alleged refusal of the Government of Poland to take part in proceedings to settle collective inter-works disputes as provided in sections 40, 41 and 42 of the 1982 Act respecting trade unions, as amended in 1985 and 1989.

307. It is acknowledged by the parties that, on 15 January 1990, the Federation addressed to the Government a letter in which it declared the existence of a collective inter-works dispute and requested the Government to give its reply by 20 January at the latest to the list of claims set out in paragraph 7 of this document; that, on 20 January, the Minister of Labour communicated the Government's refusal to consider this dispute as an inter-works dispute and therefore to take action concerning the Federation's request because, according to the Government, the claims concerned changes in the wages and other benefits of mineworkers, matters which could be settled by way of collective agreements at the enterprise level in accordance with the legislation in force.

308. The Government maintained its point of view and the Federation continued with the procedure in conformity with the legislation: it requested the opening of conciliation proceedings, then requested the Supreme Court to pronounce its decision in the Court of Labour Administration and Social Security, which recorded that it was impossible to examine the dispute due to the fact that the office of the Council of Ministers, a party to the dispute with the Federation of Mining Unions, had not appointed its members of the Social Arbitration Chamber.

309. In view of the above and of the information available, the Committee is not in a position to reach a decision on the soundness of the reason that led the Government to refuse to participate in the procedures to settle disputes, established by the decision of the Council of Ministers dated 30 December 1982 setting out the rules of procedure of the social arbitration chambers. Besides, the Supreme Court, in its decision dated 23 May 1990, did not come to a decision on the substance of the dispute concerning the plea of inadmissibility put forward by the Government, but instead handed down a decision "by default" recording the Government's non-respect of the rules of procedure which had made it impossible to examine the dispute.

310. However, in view of sections 40, 41 and 42 of the Act respecting trade unions and the documents provided, the Committee observes that it appears prima facie that the claims presented by the complainant Federation seem to concern more than one establishment, that these claims do not seem to have produced the outcome the Federation had wished, because of the Government's refusal to negotiate the question of altering the wages of mineworkers within the framework of the procedure to settle inter-works disputes.

311. The Committee notes however that, even though the Government has not designated the members of the Social Arbitration Chamber having jurisdiction over inter-works disputes, discussions always continued between the Federation and the Government through the intermediary of the Minister of Labour and Social Policy and the Minister of Industry and Finance; the most recent documents mentioning this dialogue date from the month of September 1990 and also anticipate subsequent meetings. Moreover, the Government has stated once again, in its communication dated 28 February 1991, that it will do everything in its power to reach a solution satisfying the two parties to the dispute.

312. In the light of all the documents provided, the Committee observes that the negotiations that have taken place throughout the year have concerned a wide range of problems, including several aspects of the claims presented by the Federation: supplementary taxation affecting the remuneration for work done on public holidays, budgetary endowments for the mining industry, a draft collective agreement and the wage structure in this industry. Agreements in principle have also been concluded on the remuneration system for the coalmining industry and on the question of changes in the system of remuneration in enterprises. Given the Government's willingness to conduct negotiations in this sector, the Committee considers that there was no violation of Conventions Nos. 87 and 98. However, the Committee hopes that the current negotiations will continue in order to reach a favourable outcome to the problems affecting the mining industry.

313. In the Committee's opinion, the difficulties met in the settlement of the dispute which is the subject-matter of the present case seem to reveal a certain lack of clarity in the existing industrial relations system. The Committee stresses the necessity of

having a stable and efficient industrial relations system, in which all affected parties may participate. It reminds the Government that it may call upon the services of the International Labour Office for any assistance it might deem necessary in this field.

The Committee's recommendations

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

(a) The Committee notes that the Government continued negotiating with the Federation of Mining Unions throughout the whole of 1990, about a number of questions concerning the mining sector, including several aspects of the claims presented by the Federation. The Committee requests the Government to keep it informed of the outcome of the bargaining which is taking place in this sector.

(b) The Committee draws the Government's attention the fact that the services of the ILO are at its disposal for any assistance that it might deem necessary for the establishment of an efficient and stable industrial relations system.

Case No. 1550

COMPLAINT AGAINST THE GOVERNMENT OF INDIA PRESENTED BY THE CENTRE OF INDIAN TRADE UNIONS (CITU)

315. The Centre of Indian Trade Unions (CITU) presented a complaint of violations of trade union rights against the Government of India in a communication dated 25 September 1990.

316. The Government sent its observations on the allegations in communications dated 7 and 13 May 1991.

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

A. The complainant's allegations

318. In its communication of 25 September 1990, the CITU alleges that Convention No. 87 has been violated by certain anti-union practices carried out by the management of the Fluid Control Research Institute (FCRI), a government-owned establishment working under the Ministry of Industry in the State of Kerala.

319. According to the complainant, for many years the FCRI Employees' Association had pressed for restructuring of the Institute as an autonomous body under the central Government of India with a view to improving productivity and breaking the link with another public sector unit, a certain M/s Instrumentation Ltd. The complainant encloses copies of letters written to various authorities in pursuance of this issue. The Government finally agreed to separate the two companies, but the FCRI management was annoyed with both this decision and the Association's role in pressing for it.

320. The complainant alleges that the employer commenced a vindictive campaign against the Assocation using the following measures: management refused to accept registered letters sent by the union and individual employees (a copy of an envelope with the postal markings "refused" is supplied, but not the letters themselves or any indication as to their contents); on 30 August 1990 Mr. C.G. Subramanian, General Secretary of the Association, was suspended on various charges, including the sending of letters to government authorities containing false allegations against the FCRI management. The complainant requests action to persuade the FCRI management to withdraw this unjustified suspension order against the principal officer of the Employee's Association and to force it to abide by the principles of freedom of association.

B. The Government's reply

321. In a letter dated 7 May 1991, the Government reports that the FCRI closed down as of 3 October 1990 due to an indiscipline and agitation programme launched by staff members at the insistence of Mr. Subramanian and others. Subsequently, at a meeting held by the Sub-Collector of Palakkad, both parties agreed to refer the dispute to the District Collector for a decision which would be binding on both parties. The District Collector decided that the suspension order should be revoked, and the Institute reopened as of 1 November 1990. The disciplinary proceedings against Mr. Subramanian are, however, still proceeding. He had earlier moved the High Court of Kerala to issue a writ of prohibition restraining the FCRI management from terminating his services. The High Court dismissed his petition on the ground that the petitioner's apprehension that his services would be terminated was imaginary and observed that "the petitioner cannot prevent the respondents from initiating departmental action in

accordance with the law and in compliance with the principles of natural justice".

322. In a letter dated 13 May 1991, the Government explains that, according to the report received from the FCRI management, Mr. Subramanian joined the Institute as a trainee in January 1985 and was immediately sent abroad for a training period of one year. Upon his return, instead of concentrating on the research assigned to him, he devoted his time to organising employees against the management and behaved in an undisciplined manner. On 15 October 1987 there was an incident which resulted in him being asked to show cause why disciplinary action should not be taken against him for having burst into the office of the Institute's Joint Director without permission and behaving in a manner unbecoming an officer; a copy of the memorandum in question is supplied. He apologised for his misconduct (a copy of his handwritten apology is supplied) and no action was taken against him. He was later promoted to the post of Senior Research Engineer but continued to neglect his duties and indulged in activities detrimental to the maintenance of morale and productivity of the Institute. On 22 February 1990 the management issued a warning to him to improve his performance within two months, failing which action would be taken to dispense with his services. From the copy of the assessment sheet provided with the Government's reply, it appears that Mr. Subramanian's shortcomings included lower than expected performance levels, the bringing of baseless allegations against officials of other departments, wasting time by sending numerous notes on issues that could have been discussed verbally, engaging in unhealthy activities such as inciting other staff members against the Institute's interests.

323. According to the Government, Mr. Subramanian did not mend his ways. He formed an association and presented a charter of demands. He wrote letters to the ministry officials making allegations against the FCRI management. On 26 April 1990 he was served with another memorandum conveying the management's displeasure with his lack of interest in research, negligence of duty and pursuance of activities detrimental to the Institute's interests; he was warned that if he failed to correct his behaviour he would be given notice to seek other employment in the next three months. If, however, he expressed his regret over his past actions, the employer would be happy to continue its association with him. He then unsuccessfully petitioned the High Court of Kerala, following which, on 30 August 1990, the Institute issued the charge sheet commencing internal disciplinary proceedings and suspended him during the inquiry into the charges, since his presence would have been likely to jeopardise the conduct of the inquiry.

324. Protesting against this action on the part of the management, 15 engineers and four administrative staff - all members of the Employees' Association - started a sit-in strike in the Institute as of 1 October 1990, shouting slogans and threatening non-striking workers. The situation became unruly when a scientist, Mr. Prabhakaran Nair, and a senior clerk, Mr. Bahuleya Menon demanded

payment during the strike period from accounts and personnel officers. Mr. B. Menon was suspended and the Institute closed on 3 October for an indefinite period so as to avoid such incidents. On 18 October an agreement to investigate the events that led to the lockout was signed between the management and the striking employees before the Sub-Collector of Palakkad, and his report to the District Collector recommended that both suspension orders be revoked. This was done and the Institute reopened on 1 November 1990.

C. The Committee's conclusions

325. The Committee notes that this case involves alleged anti-union measures on the part of the management of the Fluid Control Research Institute, a government-owned research body in the State of Kerala following certain successes achieved by the FCRI Employees' Association in relation to the Institute's structure.

326. The specific incident in question was the suspension on 30 August 1990, after many written warnings, of the General Secretary of the FCRI Employees' Association on the grounds, inter alia, of neglect of duty, writing baseless complaints to ministry officials about the FCRI management and "unhealthy" activities with the employees detrimental to the interests of the Institute. Although no details appear on the charge sheet as to what might be these "unhealthy" activities, the Committee notes that following an inquiry agreed to by the parties after 17 days of industrial action (a sit-in strike and a lockout over the period 1 to 18 October 1990), the suspension measures have been rescinded, the union leader involved has apparently returned to work and the FCRI is functioning normally.

327. It thus appears to the Committee that the matter was settled to the parties' satisfaction some weeks after the CITU filed the present complaint, i.e. by late October 1990 and, in other circumstances, this case might not have merited any further in-depth examination. Given, however, the coincidence of the disciplinary inquiry and suspension measure against Mr. Subramanian coming around the time he had organised an employees' association in the Institute, and the vagueness of the management's dissatisfaction with his employee-related activities, the Committee would recall in general that no person should be prejudiced in his or her employment by reason of his or her trade union membership or legitimate trade union activities [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 538].

328. The Committee notes that the internal disciplinary proceedings are continuing against this trade union leader. It hopes that the above principle will be kept in mind in the final decision and requests the Government to verify that the proceedings clarify whether the measure in question was anti-union in nature. It asks the Government to keep it informed of the outcome of the internal inquiry.

The Committee's recommendations

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

(a) Noting that internal disciplinary proceedings are continuing against Mr. Subramanian, General Secretary of the FCRI Employees' Association, the Committee asks the Government to verify that the proceedings clarify whether the measure in question was anti-union in nature and hopes that the principle that no one should be prejudiced in employment because of his or her union membership or activities will be taken into account in those proceedings. It asks the Government to keep it informed of the outcome.

(b) The Committee notes that the suspension order affecting Mr. Subramanian has been lifted and that the sit-in strike and lockout instigated because of this measure have ceased so that operations at the Fluid Control Research Institute are continuing normally.

Case No. 1555

COMPLAINTS AGAINST THE GOVERNMENT OF COLOMBIA PRESENTED BY
- THE WORKERS' CENTRAL ORGANISATION OF COLOMBIA (CUT)
- THE NATIONAL FEDERATION OF BANKING WORKERS' TRADE UNIONS OF COLOMBIA (FENASIBANCOL) AND
- THE NATIONAL ASSOCIATION OF EMPLOYEES OF THE BANK OF THE REPUBLIC (ANEBRE)

330. The complaint was presented in a joint communication from the Workers' Central Organisation of Colombia (CUT), the National Federation of Banking Workers' Trade Unions of Colombia (FENASIBANCOL) and the National Association of Employees of the Bank of the Republic (ANEBRE), dated 18 September 1990. The Government replied in a communication dated 9 September 1991.

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

A. The complainants' allegations

332. The complainants alleged, in their communication dated 18 September 1990, that the Bank of the Republic dismissed the following leaders of the National Association of Employees of the Bank of the Republic: Jaime Dávila Suárez (1989), Rafael Ruiz Torregloza (1987), Freddy del Valle Espinoza (1987), Humberto Ballesteros Lancheros (1987), Dagoberto Gavalo Hernández (1987), Jesús María Guzmán Sánchez (1987), Helmer E. Sánchez Castillo (1987), Offir Justinico de Escobar (1988), Elías Ruiz de la Victoria (1989), Wilmar Jiménez Rosado (1989), Rosé Rodrigo Chavéz Benavides (1989), Luis Evert Gómez Tinoco (1989), Arnoldo Chica López (1989), Mario Sandoval Rodríguez (1989), Luis Ernesto Maldonado (1989), Sor Teresa García Vda. de Ramírez (1990), Hernán Jésus Salazar Morales (1990), Jesús Alberto Rivera Jiménez (1990), Danny Esther Ayala Castro (1990), and Reinaldo Jaimes (1990).

333. The complainant organisations added that the systematic, repeated, continuous and massive dismissal of the leaders was a violation of agreements on freedom of association.

B. The Government's reply

334. In its communication dated 19 September 1991 the Government stated that by way of an official telegram dated 9 July 1991, signed by an official from the Division of Vigilance and Control, addressed to the chairman of the National Association of Employees of the Bank of the Republic (ANEBRE), he was requested to appear on 15 July at 9 a.m. before the Division in order to fulfil the administrative formalities regarding the complaint lodged. On 15 July 1991 a lawyer from the Division confirmed in writing that the chairman of ANEBRE did not appear at the time or on the date specified and that therefore the administrative labour proceedings had not been able to be carried out. That lawyer, in a memorandum sent to the head of the above Division, indicated that the Division had made a second appointment and that it had been possible to speak to the chairman of the trade union who agreed to present a document outlining their complaint. On 2 September 1991, the head of the Division of Vigilance and Control filed the proceedings, taking note of the report submitted by the official reflecting the trade union's knowledge of, but lack of interest in, the matter.

335. Furthermore, the Government transmitted the comments of the Bank of the Republic (dated 6 December 1990) on the complaint presented to the Committee on Freedom of Association, indicating clearly that the comments were the opinion of the Bank of the Republic and not of the Government.

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336. In its comments regarding the complaint before the Committee, the Bank of the Republic declares that it is not part of the national Government nor of any of the branches of public authority, nor does it constitute one of the bodies of the nation's public administration. It is the Bank of issue as provided for in Colombia's national Constitution and it is a body of economic public law, is the only one of its kind and enjoys special administrative autonomy. Labour relations between the Bank of the Republic and its workers are of a contractual nature and are governed by the Labour Code, with the following particularities:

- The legal relationships arising from the contract of employment are determined by the standards in the Code mentioned, by the Bank's statutes, its in-house employment regulations, collective agreements and decisions taken by the board of management concerning labour matters.

- Given the functions of the Bank of the Republic and their incidence within the public and private economic sectors of the country, all its workers, for legal purposes, occupy positions of trust. This legal qualification covering the workers of the Bank is ratified in the in-house employment regulations and in the statutes of the institution approved by the President of the Republic of Colombia.

Bearing in mind that section 409 of the Labour Code provides as an exception that, among other workers and employees, those who occupy positions of trust shall not enjoy trade union immunity, the privilege of trade union immunity does not exist for the workers in the Bank of the Republic.

337. The Bank of the Republic added that the termination of the employment contracts of the persons mentioned in the complaint was carried out for justified reasons solely linked to the workers' failure to comply with the rules set out in their employment contracts, the in-house employment regulations or the law. In those cases where the Bank considered that in the case of a possible trial justified reasons could be proven, they were included in the letters of dismissal. Where this was not the case, the Bank paid the corresponding compensation granted in accordance with collective agreements, this being, moreover, a clear discretional attribution granted by Colombian law to the contracting parties of an employment agreement. The Bank of the Republic went on to state succinctly the reason for the termination of each employment contract:

- Jaime Dávila Suárez: Due to wrongful participation in partisan politics, contrary to his contract and the employment regulations. However, on the request of the ex-worker, an employment agreement was later reached with him.

- Rafael Ruiz Torreglosa: Compensation granted in accordance with collective agreements.

- Freddy del Valle Espinoza: Compensation granted in accordance with collective agreements.

- Humberto Ballesteros L.: For using bad language with managers of the Bank.

- Dagoberto Gavalo H.: Compensation granted in accordance with collective agreements. Later, an employment agreement was signed with the ex-worker.

- Jesús María Guzmán S.: For not organising the regulation security rounds and for wrongfully opening the clock.

- Helmer Sánchez Castillo: Compensation in accordance with collective agreements. The Bank reconsidered the decision and as the result of an employment agreement the ex-worker was reinstated to his tasks.

- Offir Justinico de E.: His fixed-term contract was not extended.

- Elías Ruiz de la Victoria: For presenting adulterated documents to obtain wrongfully an illegal social benefit.

- Wilmar Jiménez Rosado: For brandishing a gun and threatening colleagues during a social gathering.

- José Rodrigo Chávez: For negligently firing his watchman's gun unjustifiably in the ladies' toilets.

- Luis Evert Gómez Tinoco: Due to lack of respect for and bad treatment of the manager of one of the Bank's branches in a public place.

- Arnoldo Chica López: Compensation in accordance with collective agreements.

- Mario Sandoval Rodríguez: For having allowed himself to acquire obligations over and above his capacity to pay with colleagues from work without the Bank's authorisation. Compensation in accordance with collective agreements.

- Luis Ernesto Maldonado: For verbal and written rudeness against both chiefs and colleagues at work, which constitutes serious indiscipline.

- Sor Teresa García: For indelicacy in handling money delivered as advance payments on travel allowances and for refusing to draw up the regulation report on expenses.

- Hernán Jesús Salazar M.: For indiscipline at work, bad treatment of and physical aggression towards colleagues at work.

- Jesús Alberto Rivera: For not returning to work at the end of his holidays and presenting an untrue excuse.

- Danny Esther Ayala: For having participated in the wrongful handling of a savings account.

- Reinaldo Jaimes: For using bad language when referring to colleagues and superiors at work and for having meddled with the register of security patrols.

338. According to the Bank of the Republic the termination of the contracts mentioned had nothing to do with the fact that those persons were workers' representatives nor with their trade union activities but exclusively with the non-fulfilment of the Bank's own standards, either contained in the employment contracts or in the in-house employment regulations.

C. The Committee's conclusions

339. The Committee observes that this complaint refers to the dismissal of 20 trade union leaders belonging to the National Association of Employees of the Bank of the Republic (six in 1987, one in 1988, eight in 1989, and five in 1990). The Committee notes that the Government emphasises the lack of interest shown by the chairman of the above-mentioned National Association, who did not appear on 15 July 1990 at the Ministry of Labour in spite of having been requested to come to discuss the present complaint. However, the Committee underlines the fact that the complaint in question was presented by the complainant organisations on 18 September 1990 and therefore regrets the Government's delayed reply and the delay in action taken to resolve the matter. The Committee observes that the Bank of the Republic in its comments (that the Government does not put forward as its own) denies that the dismissals were due to the trade union activities of the people concerned and declares that all the workers of the Bank occupy positions of trust (in virtue of the statutes of the institution and the in-house employment regulations) and as a result of section 409 of the Labour Code they do not enjoy trade union immunity.

340. In the Committee's view the reasons used by the Bank of the Republic with regard to some of the dismissals (falsification of documents, firing a gun at the workplace, etc.) could give rise, if they were properly proven (which is not clear for the moment from the documentation the Committee has before it), to the termination of the employment relationship. However, the Committee considers that the other cases could be linked to the trade union activities and functions of the people concerned as: (1) the Bank of the Republic declares that it considered in six cases that the justified reasons for dismissing six trade union leaders could not be proven and it paid the corresponding compensation (two of the people affected were later

reinstated); (2) in one case a fixed-term contract was not extended; (3) in three cases there is a generic mention of lack of respect for chiefs or managers; (4) in two cases no professional faults are referred to but instead the threatening of colleagues at a social gathering or the collecting of financial obligations over the worker's ability to pay with his colleagues.

341. The Committee expresses its concern over the number of dismissals - amounting to 20 - which have affected trade union leaders from the Bank of the Republic between 1987 and 1990 which suggests that there could have been cases of anti-union dismissals. It also is concerned over the Bank's argument that, unlike other institutions, no trade union leaders from the Bank enjoy adequate protection against acts of anti-union discrimination because all the workers of the Bank occupy positions of trust and thus are excluded from the guarantees provided in section 409 of the Labour Code.

342. In these circumstances, the Committee requests the Government to take immediate measures: (1) so that the labour inspectorate carries out an in-depth investigation into the reasons for the dismissal of the 20 trade union leaders mentioned in this case and so as to ensure that all of those workers whose dismissal was in connection with the conducting of trade union activities are offered the possibility to be reinstated; and (2) to guarantee adequate protection against acts of anti-union discrimination for union leaders of the Bank of the Republic and to ensure that they are not discriminated against on this point with respect to other Colombian trade union leaders.

The Committee's recommendations

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

(a) The Committee, concerned by the number of trade union leaders - 20 - that were dismissed from the Bank of the Republic between 1987 and 1990, requests the Government to take immediate measures so that the labour inspectorate carries out an in-depth investigation into the reasons for the dismissal of the 20 trade union leaders mentioned in this case and so as to ensure that all those whose dismissals were due to carrying out trade union activities are offered the possibility of being reinstated.

(b) The Committee also requests the Government to grant to trade union leaders in the Bank of the Republic adequate protection against acts of anti-union discrimination.

(c) The Committee requests the Government to keep it informed in this respect.

Case No. 1563

COMPLAINTS AGAINST THE GOVERNMENT OF ICELAND PRESENTED BY - THE ALLIANCE OF GRADUATE CIVIL SERVANTS (BHMR) AND - THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION (WCOTP)

344. The Alliance of Graduate Civil Servants (Bandalag Haskolamenntadra Rikisstarfsmanna/BHMR) presented a complaint of violations of trade union rights against the Government of Iceland in a communication received on 29 November 1990, and further information in a communication received on 20 December 1990. The World Confederation of Organisations of the Teaching Profession (WCOTP) lodged its complaint on behalf of its affiliated organisation in Iceland - the Hid islendska kennarafeleg (HIK) - in a communication dated 14 December 1990.

345. The Government sent its observations on the allegations in a communication dated 26 April 1991.

346. Iceland 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

347. In its communication received on 29 November 1990, the BHMR alleges that Conventions Nos. 87 and 98 have been violated by the promulgation, on 3 August 1990, of Provisory Act No. 89/1990 on Wages (a copy of which is supplied) which deprives BHMR members of the wage increase they had been awarded following a Labour Court decision and restricts the implementation of other clauses of the current collective agreement signed with the government authorities on 18 May 1989. According to the complainant, the Provisory Act renders the collective agreement invalid after 31 August 1991 although it was in force until 31 December 1994 and suspends the Association's right to negotiate.

348. The BHMR explains that it is a federation of unions covering university graduates employed by the Icelandic State, by local authorities and by other institutions which are publicly funded. It has 23 affiliated unions covering 4,000 members. Act No. 94/1986 recognised the right to bargain and to strike of the constituent unions of the BHMR and empowered the Minister of Finance to represent the Treasury in negotiating and implementing wages and terms agreements with these associations. A first series of such negotiations culminated in the signature of agreements which expired on 31 December 1988. The constituent associations (with the exception of only two)

formed a joint negotiating committee - called the BHMR Group - for negotiating the next series of agreements and when talks broke down, 12 of them exercised their right to strike on 6 April 1989.

349. On two occasions during the dispute, the Minister of Finance invited the BHMR Group to conclude an agreement similar to those reached in the meantime by two other civil servants' groups which had negotiated outside the BHMR Group. However, despite continuing talks, the invitations were declined because these other agreements did not address the bargaining issue pursued by the BHMR Group, namely the alignment of graduate civil servants' wages with those of private sector graduate employees. By mid-May 1989 a more active approach was taken by the ministerial bargaining committee (which now included the Prime Minister and other Ministers from all political parties) and an agreement covering, inter alia, the alignment issue was signed on 18 May 1989. Its conclusion also ended the six-week old strike. Because of the breakdown in trust between the negotiating committee of the BHMR Group and the Minister of Finance, the Prime Minister himself gave the assurance that the entire Government supported the agreement and took the unusual measure of having the agreement made the subject of a government protocol. The agreement was to be in force until 31 December 1994. It included details for small wage increases over the period 1 May 1989 to 30 June 1990 (section 2); for further comparable increases if widespread changes were made to the wages of other wage-earners after 30 November 1989 so that they rose above a certain level (section 15), as well as for further increases in stages over the period 1 July 1990 to 1 July 1994 so as to bring their wages up to the level received by graduates in the private sector. The agreement could be renounced after 30 September 1990 with one month's notice.

350. The complainant explains that well after the signing of its agreement, in February 1990, framework agreements were concluded in the private sector between the Icelandic Federation of Labour (ASI) and the Confederation of Icelandic Employers (VSI). Many individual constituent unions of the ASI negotiated wages and terms agreements on the basis of this framework. These wages and terms agreements contained only small wage increases but, at the time they were being drawn up, other accords had been reached (e.g. with the farmers to limit increases in the price of agricultural produce) to bring down inflation. All these measures have been described as the "National Reconciliation". Private sector employer representatives complained to the Government that the BHMR Group agreement contained increases that were higher than those in the National Reconciliation agreements and urged the Government to open negotiations with the BHMR so as to avoid this.

351. On 12 June 1990 the acting Prime Minister wrote to the BHMR announcing the Government's unilateral decision to postpone the implementation of the agreed new wages system. He justified this move by reference to section 1 of the agreement (which states that amendments were to be made to the wages system in such a way as not to cause disruption to the general wages system in the country). The letter - a copy of which is supplied - states that the increases would

be at variance with the National Reconciliation and would jeopardise it. The BHMR vigorously opposed this unilateral suspension and many meetings took place, but were unsuccessful. On 5 July one of the BHMR constituent unions, the Union of Icelandic Natural Scientists, brought a test case before the Labour Court, demanding that the Court order the payment of the agreed increase as of 1 July 1990. On 23 July 1990 the Court delivered its decision that the Government had acted without authority in suspending the agreement, irrespective of what the effect of the increases might be. According to the judgement (a copy of which is supplied), if the Government had considered that the increase due on 1 July would have disrupted the general wage system in the country, it ought to have tried to reach an agreement with the BHMR Group on how to react to such a situation. The Court ordered the payment of the increase to the Union of Icelandic Natural Scientists and they were accordingly paid.

352. The Government reacted strongly to the judgement, saying it had set in motion "an infernal mechanism of raging inflation". Yet according to the complainant, this assertion is not supported by any economic studies of the effects of wage increases on inflation. (To the complainant's letter of December 1990, it attaches two independent studies on the inflationary effects.) The Government opened talks with the BHMR demanding the abolition of the increase in question and of section 15 of the collective agreement. As the BHMR was not mandated to renegotiate the wage increase which the Court had confirmed, it agreed to discuss just the amendment of section 15. No consensus could be reached and the complainant believes that the Government entered into discussions merely for the sake of appearances. Thus 11 days after the judgement, on 3 August 1990, the President - using her constitutional right to issue temporary legislation in an emergency when Parliament is not sitting - introduced the Provisory Act No. 89/1990 on Wages.

353. Section 2(1) of the Provisory Act states that wage increases shall be the same as apply under the National Reconciliation accords; section 2(4) states "If wages ... have increased between 30 June and 1 September 1990 then that increase shall be withdrawn as from and including 1 September 1990 and the wage increases according to subsection 1 shall replace them". Thus the increase awarded by the Labour Court was invalidated. Section 4(1) of the Provisory Act declares void sections 5 and 15 of the collective agreement; section 4(2) declares the continuance of the agreements of BHMR constituent associations, with their radical change of content, until 31 August 1991 and they then expire without notice of termination.

354. Not only does the complainant contend that the Government should not have given in to pressure from the employers and other trade unions who were not party to its collective agreement, but also that the Government had a duty to protect the BHMR and its agreement from such pressure. A member of the Union of Icelandic Natural Scientists has brought a test case before the Reykjavik Civil Court challenging the constitutionality of the Provisory Act on the grounds

of protection of freedom of association and of the right of ownership (arguing that the paid increases may not now be reclaimed).

355. The complainant summarises its arguments as follows: (1) the Government has once again (many other interventions have occurred over the last ten years) legislated to alter the contents of valid collective agreements, at the same time effectively suspending the right to negotiate of the unions involved; (2) the Provisory Act aims at a restricted group of wage-earners (although its wording may give the impression that it is of a general nature); (3) this legislative intervention overturns a court decision handed down only 11 days previously and ignores what the Court said about the obligation to honour the agreement; (4) it was the Government's duty to protect the BHMR Group against pressure from various other unions to withdraw the wage increase ruled by the Labour Court; (5) there was no reason for such a measure since the increase itself had only a negligible inflationary effect which would have disappeared in a few months and because the Government had other measures available to check inflation. The complainant also considers that such government intervention weakens freedom of association because workers become less interested in belonging to trade unions as a means of improving their wages when rights negotiated or awarded by courts can be removed simply by temporary legislation; such intervention can also lead to disillusionment with bargaining "and possibly a move to violence or individual agreements".

356. Lastly, the complainant refers to the Government's apparent attitude that there is nothing to prevent it from intervening in already concluded agreements whenever it wishes: for example, despite the fact that the ASI had lodged a complaint on this very type of intervention (Case No. 1458, examined by the Committee at its February 1989 meeting), in 1988 the Government introduced two further Provisory Acts (No. 14/1988 and No. 74/1988) which interfered in the contents of valid agreements.

357. In its letter of 14 December 1990, the WCOTP, on behalf of the Icelandic Teachers' Union, describes the six-week strike which ended with the signing of the collective agreement on 18 May 1989, as well as the Government's 12 June 1990 letter purporting to postpone the introduction of the new wage system and the Labour Court's decision criticising the Government's action. The WCOTP alleges that the subsequent adoption by the Government of Provisory Act No. 89/1990 annulled a freely negotiated agreement and thus violated Convention No. 98.

358. The BHMR, in its letter received on 20 December 1990, adds details to its allegation that the Government gave in to pressure from other groups on the issue of intervening. According to the complainant, the Government gave an undertaking to the ASI and the VSI in which it promised not to abide by the BHMR Group agreement. In a television interview the Chairman of the VSI apparently made a statement to this effect: "... That was their gentleman's agreement, and we urged very strongly that this promise should be honoured".

B. The Government's observations

359. The Government, in its detailed letter of 26 April 1991, discusses matters relating to the economy and employment relevant to the complaint, and gives an account of the wages and terms agreements which have been concluded over the last two years. The Government explains the signature of the agreement between the Ministry of Finance and the BHMR Group in May 1989 and why it later requested that certain provisions of the agreement be amended due to changed circumstances. It stresses the great number of meetings held with BHMR representatives which, unfortunately, did not lead to amendment. Lastly, the Government describes why it was compelled to introduce Provisory Act No. 89 of 3 August 1990 in order to protect the unique success which had been achieved in controlling the economy and so as to ensure coordinated development of wages in the Icelandic labour market.

360. The Government firstly explains the importance of fisheries and foreign trade to the nation's prosperity. Both catch totals and seafood export prices are subject to large fluctuations which in turn have led to a decline in Gross Domestic Product no fewer than eight times since Iceland was founded in 1944. Although these fluctuations have been declining, they impose very narrow restrictions on the country's economy; cutbacks in national expenditure due to this have been effected either by devaluing the currency or by exerting direct influence on the real wage costs of business sectors. The Government adds that collective agreements have always been made with the participation of the national organisations of workers and employers so that unions can, and do, take economic factors into account when formulating their wages and terms policies; another consequence of this centralised bargaining tradition is that the Government has had more opportunities to include in national-level agreements important issues such as pensions, welfare and taxation.

361. It states that inflation has been a persistent problem in Iceland linked, according to some economists, to the one-sidedness of its economy: in 1976, after extensive anti-inflation measures (including a limit on the payment of indexation adjustments to wages) it stood at 30 per cent. Collective agreements negotiated in 1977 fueled inflation by providing for a 25 per cent general increase plus full indexation and on top of this came various separate agreements adding substantial increases to the general one. Inflation rose again to 50-60 per cent in the early 1980s, necessitating measures in 1983 such as the abolition for two years of wage indexation and a devaluation. The sensitivity of national labour organisations to inflation is evidenced by the 1986 consultative agreement and the February 1990 National Reconciliation. Over 1986-89 inflation fell to 20-25 per cent and measured 7.3 per cent at the end of 1990. At the same time, however, the Government explains that 1988 - when demand for labour was high - saw wage increase agreements in some sectors giving rise to claims for equal increases in others, a piggy-backing which forced the Government to the "desperate solution" of enacting Provisory Act No. 14/1988 on Economic Measures. This Act prevented

wage increases being forced through for certain groups over and above those which the majority of wage-earners had agreed to. After the expiry of that Act in February 1989, two general wages and terms agreements were negotiated for the majority of wage-earners: that signed between the ASI, the Association of Cooperative Employers and the VSI on 1 May 1989, and the subsequent one of 1 February 1990 which contained moderate wage increases on the basis of certain premises, such as developments in the cost-of-living index, the exchange rate and the understanding that developments in the wages of other workers were to be the same as provided in the agreement. Special accords were also reached at that time with the banks and the Icelandic Farmers' Union. Other unions too (including the Federation of State and Municipal Employees) entered into agreements which in most respects were identical to the general agreement. Thus, this National Reconciliation had come to cover about 90 per cent of wage-earners. The Government describes this consensus as being unique in the history of wages and terms matters in Iceland.

362. Referring to the May 1989 BHMR Group agreement, the Government points out that according to its section 1:

> ... graduate employees shall enjoy wages and terms similar to those who occupy similar positions or have comparable or similar educational qualifications ... who are not paid according to the wage system of civil servants, and taking into account in this comparison benefits and other matters that affect wages and terms. The amendments referred to shall be carried out in such a way as not to cause disruption of the general wage system in the country. Temporary fluctuations and special circumstances on the labour market shall not affect this revision.

The revision of pay scales was to be completed within three years and on the basis of the work of special committees. The Government describes the work of the Wages and Terms Comparison Committee which, after 22 meetings, has still not completed its task so that it is still not clear whether there is a difference between the wages of graduate employees in the civil service and private sector university graduates. According to section 5 of the collective agreement, if this task was not completed by 1 July 1990, an advance payment would be paid in respect of the expected increase; but those involved in the National Reconciliation felt that any advance payment in the absence of terminated work would disrupt the general wage system in the country. After the unsuccessful discussions with the BHMR, the Government decided to postpone implementation of the agreement on the basis of above-quoted section 1.

363. When the BHMR disputed this decision, the Government requested that, in accordance with section 9 of the agreement, the dispute be referred for adjudication to a three-man committee. The committee was never appointed because the BHMR requested that the matters in dispute be better defined, and at the same time referred the issue of the non-payment of the section 5 increase to the Labour Court through the Union of Icelandic Natural Scientists. According to

the Government this referral came as a surprise since the agreement itself - in section 9 - explicitly made provision for disputes settlement. After the Court judgement, which found against the Government unilaterally postponing the increase due, the Government again negotiated with the BHMR to have the agreement amended, but without success.

364. According to the Government, the BHMR had been invited to take part in the broad-based consensus leading to the National Reconciliation at a January 1990 meeting with the ASI, but was the only wage-earners' organisation to refuse. The ASI repeatedly stated that it would not allow its members to be left in a worse position than other groups of workers even if that meant that premises in the lead-up to the February general agreement were to be disrupted. Thus after the Labour Court judgement, the ASI demanded from the employer signatories to the general agreement that its members should receive the same increase as BHMR Group members. The employers' reply (a copy of which is supplied) noted that the consensus had aimed at all wage-earners receiving the same treatment, so it was recognised that if the increase confirmed by the Court decision went through, the employers would have to guarantee a similar development of wages. The Government ordered from the National Economic Institute an estimate of the effect on prices if all wages in the country were to rise by the amount in question (4.5 per cent) and, despite certain statistical reservations, the three scenarios presented by the Institute were seen to have "a frightening effect on the economy". On this point the Government contests the two studies submitted by the complainant and cites yet other declarations from specialist bodies concerning the potential negative influence on wages and prices. The Government concludes that when talks could not persuade the BHMR to amend the agreement, it had no alternative but to enact the Provisory Act to protect the success of the February 1990 general agreement between the ASI and the VSI and to avoid economic chaos and unemployment.

365. The Government states that the Provisory Act is not aimed only at the BHMR Group. Although a reference is made to the breakdown in talks with BHMR in the Act's introduction, section 1 states that it covers agreements in force at the date of entry into force of the Act; in fact provisions in other agreements which provided for larger wage increases were also not implemented, e.g. in the Seamen's Union agreement.

366. As for the passage of the Provisory Act under article 28 of the Constitution, the Government explains that such Acts must be presented to the next session of Parliament for confirmation, which was done in this case on 17 October 1990. The confirming Bill received thorough discussion with a majority supporting enactment to avoid a wage-price spiral and relying on the drafting of the BHMR Group agreement itself which addressed the specific issue of disruption of the general wage system in the country. The Bill was finally passed after a vote in both the Lower and Upper Chambers, and became law as Act No. 4 of 1991. As for the challenge to the legality of the Act presented by the Union of Icelandic Natural Scientists, the

Government describes the pleadings before the Reykjavik Civil Court where the Minister of Finance, as defendant, argued that the legislature had the indisputable right to amend current law as determined by the courts. The Civil Court, in a judgement dated 13 March 1991, held that the Provisory Act did not violate the cited articles of the Constitution. It found, inter alia, that such an Act was needed to prevent a wage spiral which would have led to the collapse of the National Reconciliation, and that the Government's interests in having freedom to manoeuvre to pursue a particular economic policy were so great as to justify the drastic measures involved. An appeal against this judgement has been lodged with the Supreme Court, which is expected to render judgement in 1992.

367. In conclusion, the Government denies that the Act violates the right to establish and operate workers' associations as set out in Convention No. 87 and stresses that freedom of association is guaranteed in the Icelandic Constitution and statutes. The BHMR's fear that workers will lose interest in joining unions is, according to the Government, not supported by the positive attitude to unionism in Iceland, where almost 50 per cent of unionised workers belong to the ASI but only 3 per cent belong to the BHMR. The Government states that it cannot be countenanced that a small group jeopardise the agreements reached by all other social partners and the authorities; it thus sees the Provisory Act as an emergency protective measure to save major interests at the expense of minor. It also rejects any alleged violation of Article 4 of Convention No. 98 since comprehensive discussions took place before the Act was introduced and since this is only a temporary intervention in already concluded agreements due to the national economic situation.

C. The Committee's conclusions

368. The Committee notes that this case involves alleged violations of Conventions Nos. 87 and 98 by the adoption on 3 August 1990 of Provisory Act No. 89/1990 on Wages. The Act suspends certain wage increases due under a collective agreement signed between the complainant organisation (the BHMR) and the government authorities some 15 months earlier and confirmed by a Labour Court decision 11 days earlier.

369. The Committee observes that the complainants' and the Government's versions of the events leading up to the adoption of the Act are not contradictory. They differ, however, in the interpretation of the necessity for such government intervention (particularly as regards the alleged inflationary effects of wage increases) and in regard to the conformity of this measure with the relevant ILO standards, in particular Conventions Nos. 87 and 98.

370. On the one hand, the complainants stress: the difficulties (including strike action) which preceded the signing of the collective

agreement in question; the arbitrary manner in which the Government proposed to suspend it when pressured by the parties to the National Reconciliation to disallow special wages treatment for small groups; the Labour Court decision upholding the payment of the increase; and the fact that the Government systematically turns to legislative intervention whenever it cannot persuade the parties to agreements to modify their contents. It believes that such behaviour dissuades workers from joining unions and undermines collective bargaining.

371. On the other hand, the Government argues that: the Act was necessitated by the threat of a wage spiral which would ruin the National Reconciliation; it undertook strenuous negotiations to try and achieve its aim before being forced to intervene in the previously concluded collective agreement; its actions were confirmed by both Chambers of Parliament and survived a constitutional challenge before the Reykjavik Civil Court (although an appeal against this is pending); and the wage increase ought not to have been argued before the Labour Court at all since the collective agreement itself contained a provision for disputes settlement by a tripartite arbitration committee. It considers that the positive attitude to unionism in general refutes the complainant's fear that the right to join unions will suffer, and that its action concords with the ILO supervisory bodies' views on what is acceptable intervention since it is temporary.

372. In the present case, the Committee notes that the problem mainly concerns the application of Article 4 of Convention No. 98 which obliges ratifying States to encourage and promote [...] voluntary negotiation [...] with a view to the regulation of terms and conditions of employment by means of collective agreements. It is on the basis of this provision that the Committee, as has the Committee of Experts on the Application of Conventions and Recommendations, has considered that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association.

373. The ILO supervisory bodies have recognised that where, for compelling reasons of national economic interest and as part of its stabilisation policy, a government considers that it is not possible for wage rates to be fixed freely by means of such agreements, any restrictions should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period and should be accompanied by adequate safeguards to protect workers' living standards. [See Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 641.]

374. The Committee used these four criteria in examining the provisions of Provisory Act No. 89/1990. In the light of the information before it, the Committee finds it difficult to determine whether the Provisory Act was only adopted for the necessary time period and whether it was imposed only to the extent necessary, particularly given the complexity of the provisions in question. In fact it appears that by virtue of the Act adopted on 3 August 1990 wage fixation will be controlled for most of the collective agreements

involved until September 1991. However, certain aspects of the BHMR Group agreement will be suspended until August 1994.

375. As regards the adequate safeguards to protect the workers' living standards, the Committee notes that increases will be granted under the general agreement signed between the ASI and the VSI, although they will be less than the increases provided for in the BHMR Group agreement.

376. The Committee cannot but note that, over the past years, the Government has on several occasions had recourse to measures of intervention in collective bargaining. Indeed, in a previous case concerning Iceland [see 262nd Report, Case No. 1458, paras. 124 to 153, in particular para. 148], the Committee had observed that there had been general legislative intervention in the bargaining process on no less than nine occasions in the last ten years. These interventions manifestly show the existence of difficulties in the industrial relations system.

377. The Committee must also note that Act No. 89/1990 does not limit itself to controlling wage fixing for the future, but moreover amends an agreement that the Government itself signed with the BHMR Group some 15 months earlier, an agreement containing wage increases confirmed by a Labour Court decision.

378. Taking account of these observations, the Committee considers that, so as to avoid in the future disputes harmful to all the parties, they should endeavour to give priority to collective bargaining as a means of determining employment conditions. In the circumstances of the present case, the Committee is of the view that it should appeal to the parties involved to negotiate in good faith with a view to reaching an agreement. As the Committee has already pointed out [Digest, para. 590] satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence.

379. The Committee notes that an appeal has been lodged before the Supreme Court against the Rejkjavik Civil Court's decision concerning the constitutionality of Provisory Act No. 89/1990. It asks the Government to keep it informed of the outcome of this appeal.

The Committee's recommendations

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

(a) In view of the importance of voluntary negotiations and the autonomy of the parties, the Committee appeals to all the parties involved to endeavour to give priority to collective bargaining as a means of determining employment conditions.

(b) The Committee also asks the parties involved to negotiate in good faith with a view to reaching an agreement.

(c) The Committee asks the Government to keep it informed of the outcome of the appeal lodged against the Reykjavik Civil Court's decision concerning the constitutionality of Provisory Act No. 89/1990.

Case No. 1565

COMPLAINT AGAINST THE GOVERNMENT OF GREECE PRESENTED BY THE INTERNATIONAL UNION OF FOOD AND ALLIED WORKERS' ASSOCIATIONS (IUF)

381. The International Union of Food and Allied Workers' Associations (IUF) presented a complaint against the Government of Greece alleging violations of freedom of association in a communication received on 4 December 1990. It presented additional information in letters dated 7 January and 22 April 1991.

382. The Government sent its observations on the allegations in a communication dated 12 June 1991.

383. Greece has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

384. In its letter received on 4 December 1990, the IUF alleges violations of Conventions Nos. 87 and 98, ratified by Greece, in the form of illegal actions taken against its affiliate, the Panhellenic Federation of Catering and Tourist Industry Employees, by the employer Olympic Catering, a subsidiary of the state-owned enterprise Olympic Airlines. This involved the mass dismissal of 950 employees including the entire executive committee of the Olympic Catering workers' union. It states that the Government is directly involved in the ownership and management of the enterprise and is responsible for making the decisions which are the subject of this complaint.

385. The complainant explains that the employer, until recently, employed 2,067 staff operating bars and restaurants as well as auxiliary services at all Greek airports. In October 1990, the employer claimed major losses, dismissed 950 employees and announced

plans to sell 66 per cent of its shares. The union believes that the management was pursuing a policy leading to privatisation and sale of the company, while publicly assuring the workers and Parliament that it had no such intention. According to the complainant, the company could have been a profitable one and the union therefore submitted proposals for its necessary modernisation and reorganisation. These were ignored by management. The union then offered to contribute salaries worth 1.2 billion drachmas to take responsibility for running the company. When plans went ahead for sale of the company, the employees made a legal offer to buy it, a timely bid higher than any other bidder. The company has not answered the union's proposal, but indicated through third parties that it would be sold to others.

386. According to the complainant, various actions were then taken against the union: management refused to meet and conduct substantial negotiations with the union as required by Act No. 1264 of 1982 and the competent government ministries also refused to meet with it; false charges were filed against the union's executive committee and its ten members were illegally dismissed; Mr. Stelios Koletsis, the Federation president, was also dismissed; the union's office at the workplace was closed and sealed contrary to Act No. 1264.

387. The complainant claims that the 950 dismissals were illegal because Act No. 1876 of 1990 requires that public sector staff declared surplus must be transferred elsewhere in the public sector. Although a committee to discuss such a possibility did meet once, the employer went ahead with the dismissals of employees who have permanent contracts and had been working five to seven years with the company. A number of new staff have been hired to replace them.

388. In its letter of 7 January 1991, the IUF explains further why the dismissals were contrary to freedom of association and the national labour legislation. After only one meeting of the committee formed under section 34 of Act No. 1876 of 1990 to discuss the transfer of surplus staff elsewhere in the public sector, the management stopped participating in the committee and simply sent notices of dismissal to the 950 involved. This action was justified by incorrectly calling Olympic Catering a "private sector" company. In any case the IUF points out that Greek law (Act No. 1387 of 1983) prohibits massive dismissals in the private sector as well. It adds that when the dismissed workers reported to their workplaces, they were forcibly ejected by the police and barbed wire was put up around the workplaces, thus prohibiting the union access to its office in the workplace. It states that neither the union nor the dismissed workers were told why these particular workers were chosen for dismissal. It believes that the entire climate for orderly and effective resolution of disputes through collective negotiations has been poisoned by the arbitrary acts of management in this public sector enterprise. The Government has thus interfered with trade union rights and free collective bargaining, and has refused the protection and facilities to be afforded to workers' representatives in accordance with Convention No. 135 also ratified by Greece.

389. In its letters of 22 April 1991, the IUF provides documentation explaining the ongoing legal proceedings arising from this case, as well as a letter of support for the IUF's complaint from the Greek General Confederation of Labour (GCGT). One of the attachments, a letter of 23 August 1990 from the management to the union, explains why some dismissals would be necessary, given the very poor financial situation of the company and the disproportionately high level of new hirings; it invites the union to a meeting on 27 August to discuss the proposed dismissals in accordance with Act No. 1387 of 1983. Another attachment is a copy of Decision No. 2401 of 1991 of the Athens Court of First Instance rejecting the appeal of Olympic Catering against an earlier temporary injunction ordering the reinstatement of certain dismissed staff members, who had apparently been dismissed for their union activities as members of the executive committee of the concerned union.

B. The Government's reply

390. In its letter of 12 June 1991, the Government states that as regards the dismissals, after obtaining details from the competent authorities the procedure set out in Act No. 1387 of 1983 for monitoring collective dismissals was followed. The company was seeking to dismiss 950 surplus employees as it was facing a deficit of 7,200 million drachmas, due in particular to the excess number of personnel. The Government points out that the criterion used in the dismissals was seniority: recently employed persons were laid off and they were not replaced by other persons afterwards.

391. According to the Government, the cancellation of the employment contracts of union committee members was in accordance with the law because they had committed offences against the company, namely the illegal use of force and major damage to the property of others.

392. As for the complaints concerning the sale of the company, the Government replies that the company's poor financial situation led to the conclusion that it had to be sold off to another company having international prestige and having the relevant specialisation so that it would be able to continue functioning (Olympic Catering did retain some of the shares) and to upgrade the level of services offered.

393. As for the allegation concerning the transfer of the premises made available to the union at the workplace, the Government points out that this was necessary because of the needs of the company and stresses that at the same time other convenient premises suitable for the carrying out of union activities were offered so as to permit the union to have contact with its members while respecting the company's output. It notes that under section 16(8) of Act No. 1264 of 1982 where there is disagreement over the suitability of agreed premises, the competent labour inspector shall decide the matter within ten days of the filing of a complaint relating thereto.

However, according to the information at the Government's disposal, no such complaint was ever lodged by the union in question.

C. The Committee's conclusions

394. The Committee notes that this case concerns alleged anti-union mass dismissals and other anti-union acts, such as the dismissal of the whole of the union executive, withdrawal of the use of some company premises for union work and refusal to bargain, following the partial privatisation of the Olympic Catering company. It notes the Government's explanations that the 950 dismissals were economically necessary, that the dismissal of the ten union officers was for their illegal acts against the company and that the premises made available for union work were changed rather than withdrawn.

395. As regards the 950 dismissals, the Committee notes that the procedure under section 34 of Act No. 1876 of 1990 concerning transfers of surplus staff among enterprises in the public sector did not develop in the present case beyond one meeting of the required tripartite committee. Despite this lack of willingness to meet at the national level which might have shed light on the current situation of the so-called surplus staff, the Committee considers that there was an anti-union motive behind several of the dismissals. In particular, it notes that although the Government specifically relies on the economic nature of the October 1990 dismissals and refers to the seniority criterion used by the employer, it does not deny that other persons were hired to replace some of the permanent unionised staff so dismissed. Neither does it supply details to explain the fact that the timing of the dismissals followed closely on the union's agitation towards avoiding a sale of the company. In addition, the timing left little chance for the discussions referred to above which had been called for in the company's letter to the union dated 23 August 1990 suggesting a meeting on the afternoon of the 27th. Moreover, there are allegations that the competent government ministers refused even to meet with the union on the proposed dismissals which remain unanswered by the Government.

396. The Committee recalls that in situations such as this, where it is often difficult for the workers concerned to furnish proof that the dismissal of which they have been victim had an anti-union motive, it has suggested that one of the possible means of forestalling abusive dismissals would be to make it compulsory for the employer to prove that its dismissal was not connected with the workers' union membership or activities [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, paras. 567 and 569].

397. As regards the dismissal in particular of the ten executive committee members of the union at Olympic Catering, the Committee takes note of the document dated 11 February 1991 supplied by the

complainant recording the decision of the Athens Court of First Instance in favour of their reinstatement, on the ground that their dismissals had been unfairly based on their trade union activities. Faced with this clear contradiction of the Government's assertion that they were dismissed for offences relating to the illegal use of force and damage to property, the Committee draws the Government's attention to the principle that no person should be prejudiced in his or her employment by reason of his or her trade union membership or legitimate trade union activities [Digest, para. 538]. It requests the Government to keep it informed of the implementation of the Athens Court decision concerning the reinstatement of the union officers in question.

398. The Committee notes that the complainant and the Government give directly contradictory statements concerning the provision of workplace premises at Olympic Catering for the union's work. On the one hand, the allegations indicate that the union's office was closed and sealed and that there are no premises currently made available; on the other hand, the Government stresses that there was merely a change in premises and that the union still has the possibility of access to its members through suitable premises, has facilities to allow it to function, and has not used the legislative procedures available to complain about this matter at the national level. The Committee would accordingly recall in general that Convention No. 135, ratified by Greece, calls on ratifying member States to supply such facilities in the undertaking as may be appropriate in order to enable workers' representatives to carry out their functions promptly and efficiently, and in a manner as not to impair the efficient operation of the undertaking concerned. It asks the Government to keep it informed of the type of facilities made available to the union at Olympic Catering.

The Committee's recommendations

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

(a) Given the anti-union bias behind some of the dismissals at Olympic Catering following its partial privatisation, the Committee asks the Government to take measures to review this situation and to keep it informed of the union's position under the new ownership of Olympic Catering.

(b) The Committee requests the Government to keep it informed of the implementation of the Athens Court decision confirming the reinstatement order applying to the officers of the Olympic Catering company workers' union.

(c) Recalling in general that Convention No. 135 calls on ratifying member States to supply such facilities in the undertaking as may be appropriate in order to enable workers' representatives to

carry out their functions promptly and efficiently, and in a manner as not to impair the efficient operation of the undertaking concerned, the Committee asks the Government to keep it informed of the type of facilities made available under the new ownership to the union at Olympic Catering.

Case No. 1571

COMPLAINT AGAINST THE GOVERNMENT OF ROMANIA PRESENTED BY THE INTERNATIONAL UNION OF FOOD AND ALLIED WORKERS' ASSOCIATIONS (IUF)

400. The Committee already examined this case at its May 1991 meeting, when it submitted an interim report [see 278th Report, paras. 530-555] approved by the Governing Body at its 250th Session (May-June 1991). Since then, the Government has sent its comments and observations on this case in a communication dated 19 September 1991.

401. Romania 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

402. The complaint concerned measures of anti-union discrimination allegedly taken by the managers of the Intercontinental Hotel in Bucharest against officials and activists belonging to the Free and Independent Trade Union, set up at the beginning of 1990 at the Intercontinental Hotel, a public enterprise administered by the State, with a view to preventing employees from belonging to this trade union and obliging them to join the trade union backed by the management.

403. The Committee had noted, from the information available, that there were two trade unions at the Intercontinental Hotel: the Free and Independent Trade Union of the Intercontinental Hotel, created the beginning of 1990; and a parallel trade union that had set itself up on 27 November 1990. According to the complainant, this parallel trade union had been set up as a result of pressure from the management; its president was a former member of the official trade unions and fulfilled leading functions within the hotel management; he was supposed to have used his authority to encourage employees to belong to his trade union. The Government had not provided any information on this aspect of the case, and particularly on the circumstances and procedures leading up to the creation of the parallel trade union.

404. As concerns the allegations of anti-trade union discrimination (threats, salary cuts, downgradings, transfers from the Intercontinental Hotel to the Continental Hotel), the Committee had noted from the information provided by the Government that, following the Government's mediation, a specifically named person had been reinstated in her previous post at the Intercontinental Hotel; this was confirmed by the Confederation of Independent Trade Unions (FRATIA). However, the Government had not provided any information concerning the case of other employees who, according to the complainant, had also been subject to transfers and other acts of anti-union discrimination, including Mrs. Andrei, Mrs. Nedelciu, Mr. Carianopol, Mr. Mihaescu, Mr. Porumb and Mr. Radulescu.

405. As regards the attempt of the officials of the Free and Independent Trade Union to change the employment conditions of the employees concerned at the Intercontinental Hotel, the Government had pointed out that the board of directors of the Intercontinental Hotel had cooperated with the Free and Independent Trade Union in finding a solution to the dispute, but that it had been impossible to meet the trade union's claims because they did not have a legal basis.

406. The Committee drew the Government's attention to the fact that the main objective of trade union organisations was to defend the economic and occupational interests of their members. In order that these objectives might be attained and that harmonious occupational relations prevail, measures should be taken to encourage and promote the widest possible development and use of procedures of voluntary negotiation of collective agreements between social partners, and that the latter participate in good faith. While noting that the Government had mediated between both parties, the Committee expressed the hope that negotiations between the board of directors of the Intercontinental Hotel and the Free and Independent Trade Union could be resumed so as to settle, by these means, the wages and employment conditions of the employees in question.

407. At its May 1991 Session, the Governing Body approved the following conclusions of the Committee:

(a) The Committee notes with interest that, following the Government's mediation, Mrs. Popescu was reinstated in her former post at the Intercontinental Hotel and that today her case has been settled.

(b) The Committee regrets the Government did not provide information on the other cases in which, according to the complainant organisation, persons were transferred for trade union activities, including Mrs. Andrei, Mrs. Nedelciu, Mr. Carianopol, Mr. Mihaescu, Mr. Porumb and Mr. Radulescu; the Committee requests the Government to provide information in this respect.

(c) The Committee requests the Government to guarantee all workers covered by Convention No. 98, and not only trade union officials, adequate protection against acts of anti-union discrimination, both at the time of recruitment and during their employment

relationship, accompanied by sufficiently effective and dissuasive penalties. In this respect, the Committee notes that legislation on trade unions is to be adopted in the near future and that it contains, according to the Government, provisions to this effect. The Committee expressed the hope that this legislation will be in conformity with the principles of freedom of association and that it will be fully applied in practice. The Committee also draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.

(d) The Committee draws the Government's attention to the need to provide adequate protection against acts of interference by employers in workers' organisations. The Committee requests the Government to inform it of the measures taken at the Intercontinental Hotel to guarantee the respect of this right.

(e) The Committee requests the Government to provide information concerning negotiations between the management of the Intercontinental Hotel and the Free and Independent Trade Union affiliated to the Confederation of Independent Trade Unions (FRATIA).

B. The Government's reply

408. In its reply of 19 September 1991, the Government explains that two trade unions were set up within the Intercontinental Company private enterprise:

- the Free and Independent Trade Union of the Intercontinental enterprise; and

- the Free Intertourist Trade Union of Employees of the Intercontinental enterprise.

409. At its extraordinary general assembly on 27 November 1990, the majority of members of the first-mentioned trade union decided to affiliate to the Confederation of Independent Trade Unions (FRATIA). As at 30 March 1991, it had 360 members. The Government explains, however, that this trade union has never replied to the requests - both written and verbal - made by the Ministry of Labour and Social Welfare for information on developments in the dispute with the management of the Intercontinental enterprise. Similarly, the Government adds that in the letter sent to the Ministry on 19 August 1991, the Confederation of Independent Trade Unions (FRATIA) points out that: "Given the situation prevailing at the Intercontinental Hotel and the situation existing at the Ministry of Trade and Tourism, we are unable to provide you with specific information to send to the International Labour Office. We hope that the situation will be straightened out so that we might send you exact details in due course."

410. Furthermore, the Government explains that the second trade union, named Intertourist, was created as a result of a split within the initial trade union - which occurred when there were discussions about the first trade union's membership of the Confederation FRATIA. The Government adds that on 12 April 1991 the Intertourist Trade Union had 381 members according to figures communicated to the Ministry of Labour, and that today it is affiliated to the Federation of Trade Unions in the Tourism Industry, a Federation that it completely independent and not affiliated to the National Confederation of Free Trade Unions of Romania (CNSLR), contrary to information submitted to the ILO.

411. As regards the individual cases mentioned in the complaint, the Government provides the following information:

(1) The waiters Dumitru Porumb and Marin Mihaescu have remained at the Intercontinental Hotel and there was no longer any question of transferring them to the Continental enterprise; indeed, this company had pointed out that it had recruited all the staff that it needed. In their written statements of 24 August 1991, both these waiters stressed, moreover, that they had not submitted any complaint concerning a possible change in their posts when the two private enterprises - the Intercontinental and Continental - were set up following the governmental decision No. 1041 of 1990.

(2) Maria Nedelciu and Angela Andrei, still employed at the Intercontinental Hotel, refuse to accept a change of post within this enterprise and have appealed against the management. The Government states that it will inform the ILO of the outcome of these appeals.

(3) Valentin Carianopol has accepted his transfer to the Continental enterprise where he is presently employed. He benefits from the same wage and working conditions as at the Intercontinental Hotel. Moreover, the Government points out that under the labour legislation in force in Romania, an employee may not be transferred from one enterprise to another unless he has given his agreement.

(4) Valeriu Radulescu, along with 61 other employees, was transferred to the Continental enterprise, in accordance with the draft agreement drawn up following governmental decision No. 1041 of 1990, concerning the division of the Intercontinental Hotel into two separate entities. Today the person concerned is no longer working at the Continental as he has set up his own small undertaking.

412. As regards developments in collective bargaining, the Government points out that on 5 June 1991 a collective agreement was concluded at the Intercontinental Hotel between the management and the employees, represented by the Free and Independent Trade Union, the Intertourist Trade Union and duly elected workers' representatives not belonging to a trade union, in accordance with Act No. 13 of

8 February 1991 on collective labour agreements. The collective agreement in question is valid for one year from the date upon which it was signed. The final clause No. 50 of this agreement stipulates:

> The collective agreement shall be binding for both parties. In the event of failure to comply with obligations under the agreement, the guilty party shall be considered as responsible. If a new situation arises that is not covered by the collective agreement, the parties shall adopt the necessary measures to find a solution by means of agreement within 30 days. When a solution has been found it shall be included in a rider and incorporated in the collective agreement.

After the agreement had been concluded, the management and representatives of the Free Independent Trade Union had still not found a solution to two problems; according to the Government, both parties agreed to submit these matters to the arbitration committee, in accordance with the law. That committee decided that:

(1) in the case of work carried out during days of rest or public holidays during a working week, in accordance with a pre-established work schedule, the basic normal wage shall be paid even if a compensatory weekly day of rest has been granted; and when the work schedule has been established, every employee shall be entitled to his statutory compensatory weekly day of rest at least once every two months, in accordance with section 124(2) of the Labour Code;

(2) as regards the Free and Independent Trade Union's request that every quarter, 15 per cent of the individual basic wage, index-linked to the work carried out, should be paid in strong currency according to the official rate of exchange, the Committee refused this request by abiding by the Romanian legislation in force.

413. Furthermore, the Government points out that the Act on trade unions of 1 August 1991 has been promulgated. It explains that section 1 of the Act states:

> (1) Trade unions are organisations that do not have a political nature; they are established with a view to promoting the occupational, economic, social, cultural and sporting interests of their members, as well as their own rights, as provided for under labour legislation and collective labour agreements.
>
> (2) Trade unions are independent from state bodies, political parties and any organisation whatsoever. All wage-earners shall be entitled to establish trade unions without any restrictions and without previous authorisation. Nobody may be forced to belong or not to belong to a trade union or to leave a trade union.

Section 10 stipulates:

> Members elected to the executive of a trade union shall be protected by the law against any constraints or restrictions whatsoever in the exercise of their duties.

Section 11 stipulates:

> (1) No representative elected to the executive of a trade union, or any person having carried out similar duties, may, during the year following the end of his term of office, have his or her labour contract amended or annulled on grounds not ascribable to him or her - grounds which the law leaves up to the person who recruited him or her to define - unless agreement is given by the executive elected by the trade unions.
>
> (2) The annulment of a labour contract by the person who recruited the worker concerned shall be forbidden if the grounds raised are connected with his or her trade union activity.
>
> (3) Any persons removed from trade union office because they have infringed statutory provisions shall be excluded from the scope of paragraph 1.

In Chapter V, concerning penalties, section 48 stipulates:

> The following are considered a breach of the law and are subject to six months' to two years' imprisonment or to a fine of 5,000 to 25,000 lei:
>
> (a) an attempt to prevent freedom of association or the right to join a trade union, which has been set up in compliance with the objectives and within the confines laid down in this Act;
>
> (b) any form of constraint aimed at restricting the exercise of these prerogatives by the elected members of the trade union executive.

The Government also points out that section 41 of Act No. 15 of 7 August 1990, concerning the reorganisation of state economic agencies as state-controlled companies or private enterprises stipulates:

> The staff of state-controlled companies and private enterprises shall be recruited by the general management or management, respectively.

Section 99 of Act No. 31 of 17 November 1990 on private enterprises states:

Appointments and recruitments shall be made by the management, provided that the collective agreement or regulations of the enterprise do not stipulate otherwise.

414. In concluding, the Government expresses the hope that it has replied to all the recommendations of the Committee on Freedom of Association approved by the Governing Body at its 250th Session.

C. The Committee's conclusions

415. The Committee notes the detailed observations and information provided by the Government on all its previous recommendations.

416. Concerning the trade union situation inside the Intercontinental Hotel, the Committee notes the information that workers in this enterprise are represented by two trade unions. The first, named "free and independent" and affiliated to FRATIA, had 360 members on 30 March 1991; the second, named "free Intertourist" affiliated to the Federation of Trade Unions in the Tourist Industry - and allegedly independent of the National Confederation of Free Trade Unions of Romania (CNSLR) - had 381 members on 12 April 1991.

417. As regards developments in collective bargaining between the management of the Intercontinental Hotel and workers' representatives, the Committee notes, still according to the Government, that the representatives of both these trade unions, as well as workers not belonging to a trade union, signed a collective agreement valid for one year with the management, in accordance with the provisions of Act No. 13 of 8 February 1991 on collective labour agreements. The Committee notes that section 7 of this Act states:

1. The collective labour agreement shall be concluded between an employer and the employees at the level of the unit.

2. When collective labour agreements are concluded, the wage-earners shall be represented by the trade unions. In units in which there are no trade union organisations or in which, although there is a trade union organisation, all the employees do not belong to it, workers' representatives shall be elected by the workers from a list, by secret ballot.

Section 8 stipulates:

3. Employers' representatives shall be appointed by the Chamber of Commerce and Industry.

And section 9 stipulates:

(1) Collective labour agreements shall be concluded for a specific period that may not be less than one year, or for the duration of specific tasks.

418. The Committee also notes that two matters of dispute remained unresolved but that, according to the Government, the management and the Free and Independent Trade Union had agreed to refer them to the arbitration committee which upheld one of trade union requests and not the other. In this respect, the Committee is of the opinion that since arbitration was requested by both parties, this system is compatible with the principles of voluntary collective bargaining.

419. However, the Committee notes that in pursuance of section 10 of Act No. 14 of 8 February 1991 on wages, it is stipulated that if, during wage negotiations for 1991, differences are not settled within 30 days they may be referred to arbitration, as provided for under the legislation for the settlement of collective labour disputes. On this point, the Committee is of the opinion that if, during a dispute, arbitration is imposed on both parties and no appeal may be made against the arbitration award, this is not a system which attempts to promote and encourage the voluntary bargaining of employment conditions.

420. As regards the individual cases of allegations of anti-trade union measures allegedly taken by the management to encourage workers to belong to a certain trade union rather than another, the Committee notes, from information provided by the Government, that a solution has been found to all the cases except for two: those of Mrs. Nedelciu and Mrs. Andrei. These two persons appealed against their employer's decision to transfer them but meanwhile, since they have refused to change their posts, they are still employed at the Intercontinental Hotel. The Committee requests the Government to keep it informed of the outcome of the appeals in question, in accordance with the memorandum of agreement concluded following the Government's Decision No. 1041 of 1990 concerning the breakdown of Hotel Intercontinental SA in two different entities.

421. The Committee nevertheless recalls the necessity to adopt measures to ensure adequate protection against acts of interference by employers in workers' organisations.

The Committee's recommendations

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

(a) In accordance with its previous recommendations, the Committee notes with interest that section 48 of the Act on trade unions provides for dissuasive penalties against anyone preventing the exercise of freedom of association or the right to join a trade

union, which has been set up in compliance with the objectives and within the confines laid down in the Act.

(b) The Committee requests the Government to keep it informed of the outcome of the appeals made by the two workers involved in the cases of transfer that have not yet been resolved.

(c) The Committee notes with interest the significant legislative improvements contained in the new Acts of 1991 on collective agreements, on the settlement of collective disputes and on trade unions.

(d) However, noting that arbitration may be imposed during wage negotiations in 1991, the Committee invites the Government to guarantee that there may only be recourse to binding arbitration to settle a conflict at the express request of both parties, or in essential services in the strict sense of the term.

(e) The Committee also reiterates its previous recommendation on the necessity to ensure adequate protection against acts of interference by employers in workers' organisations and requests the Government to adopt legislative provisions to that effect.

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

Case No. 1577

COMPLAINT AGAINST THE GOVERNMENT OF TURKEY PRESENTED BY THE EDUCATION AND SCIENCE WORKERS' UNION (EGIT-SEN)

423. This complaint is contained in a communication from the Education and Science Workers' Union (EGIT-SEN) dated 13 April 1991. The Government replied in a communication dated 30 September 1991.

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

A. The complainant's allegations

425. In its communication of 13 April 1991, the Education and Science Workers' Union (EGIT-SEN) alleges that the Turkish Government

is denying teachers the right to establish trade union organisations and engage in trade union activities. Secondly, the EGIT-SEN alleges that teachers have suffered verbal harassment from the Turkish authorities and that a variety of punitive measures have been taken against them.

426. As regards the first allegation, the EGIT-SEN states that on 30 November 1990, its central committee which comprises 333 founder members, submitted the documents required by law to the Governor of Istanbul, with a view to setting itself up as a trade union. The Governor noted this request as No. 2946, immediately approved the establishment of the EGIT-SEN and sent off the receipt for the documents submitted. The very day the EGIT-SEN was set up, its president and general secretary were remanded in custody for two days after an order was issued by the Governor of Istanbul. The following day, on 14 November 1990, the authorities tried to force the EGIT-SEN administrators to accept the withdrawal of official recognition, which it refused to do and then sought legal help from the union's lawyers. A trial is still pending. Following these incidents, the EGIT-SEN continued its membership campaign and on 18 May 1991, its membership stood at more than 10,000. The EGIT-SEN has been refused authorisation to publish an official monthly magazine. The Governor of Istanbul turned down the request from the EGIT-SEN, pointing out that it was not an established trade union. Despite this, two editions of the magazine have been published. On 28 February 1991, the Governor of Domestic Affairs ordered the closure of the EGIT-SEN's central office (Order No. 052 334). On 18 March 1991, the Governor of Istanbul ordered that the office be sealed.

427. In addition to the Government's refusal to recognise the EGIT-SEN's right to establish a trade union organisation or to take part in collective negotiations without prior authorisation, the complainant also alleges that the teachers, members of the EGIT-SEN, have been subjected to detention, interrogation, verbal harassment, arbitrary treatment by the police, wage cuts and other punitive measures by the Turkish authorities, in particular the Ministry of Education. The EGIT-SEN provides a list of persons who have been so treated: Barbaros Aksu, teacher and founder member of the EGIT-SEN, arrested in Kars on 3 January 1991 and detained for two days (trial pending); Selanattin Sen, teacher and founder member, arrested in Kars on 2 January 1991 and detained for two days (trial pending); Hasan Kaya, teacher and founder member, arrested in Kars on 2 January 1991 and detained for two days (trial pending); Zeynel Yildiz, teacher and founder member, arrested in Kars-Igdir on 2 January 1991 and detained for two days (trial pending); Saim Gultekin, teacher and founder member, arrested in Corum on 25 December 1990 and detained for two days; Osman Ilkme, teacher and founder member, arrested in Corum on 25 December 1990 and detained for two days; Mehmet Umal, teacher and founder member, arrested in Corum on 25 December 1990 and detained for two days; Sait, teacher and founder member, arrested in Corum on 25 December 1990 and detained for two days; Yuksel Serej, teacher and founder member, arrested on 9 January 1991 in Alasekir and freed the same day; Omer Osmanogullari, teacher and founder member, arrested at

Marisa on 11 December 1990. The EGIT-SEN also includes on its list the teachers and founder members Ali Haydar Polat, Fesih Celik and Abdarrahman Onen.

428. The complainant explains that the Government of Turkey is violating the provisions of Conventions Nos. 87 and 98. The complainant concludes by saying that as employees in the education and science sectors, members of the EGIT-SEN have the right to enjoy the protection afforded by these and other similar European conventions.

B. The Government's reply

429. In its reply, the Government states that teachers are employed both in the public and the private sectors in Turkey. Those in the public sector are, for the most part, public officials. Their terms and conditions of employment are governed by law and do not form part of a labour contract. Given that they exercise and represent state authority to varying degrees, there is no distinction between public officials who are engaged in the administration of the State and those who are not, in whatever branch they may be employed. Another category of teachers working in the public sector is made up of contract employees working for an education department belonging to a public enterprise, and their status is similar to that of public officials. In the private sector, teachers are employed in private educational institutions.

430. The Government points out that no mention is made of public officials or contract employees, including teachers in state schools or state enterprises, in either articles 51, 53 and 54 of the Constitution which enshrine the principle of the right of association, or the first sections of Acts Nos. 2821 and 2822 of 1983 on trade unions, collective agreements, strikes and lockouts, guarantees covering the right to establish and join trade unions, engage in collective bargaining and go on strike for employers and workers in the public sector and state enterprises. In addition, section 27 of the Act on public officials (Act No. 657) denies all the afore-mentioned categories of staff the right to strike. Section 21(5) of Act No. 2821 on trade unions, forbids teachers in the private sector to establish or join a workers' trade union organisation.

431. The Government informs the Committee that this legislation forms the legal basis for the refusal of the Governors of Ankara and Istanbul to follow through the official submission made by the EGIT-SEN of the documents required by law, with a view to setting up a trade union for education and science workers. Following the EGIT-SEN's insistence on the documents being submitted to the two Governors by registered post, the Governor of Ankara decided to hand the case over to the Public Prosecutor, who initiated proceedings against the EGIT-SEN before Ankara's second labour tribunal which rejected the Prosecutor's complaint. The Governor of Ankara and the Ministry of

Employment and Social Security then lodged an appeal with the Supreme Court of Appeal which overruled the decision made by Ankara's labour tribunal and sent the case to the civil courts on the grounds that teachers are public officials who do not have the right to establish or join trade union organisations (Act No. 2821 on trade unions) and also on the grounds that labour tribunals are not competent to make rulings on cases which are outside the Act on trade unions.

432. The Government concludes that Turkish legislation does conform with the relevant international standards and that the measures taken by the Ministry of Education against the EGIT-SEN are legislative rather than purely administrative, and have been decided in accordance with the decisions made by the courts.

433. The Government comments on the general policy of Turkey concerning freedom of association. It lays particular emphasis on the independence of the judiciary in Turkey and on the fact that the legislative and administrative powers abide by decisions made by the courts. As regards policy on freedom of association, the Government points out that the Turkish authorities have no intention of restricting trade union rights. They are making every effort to guarantee the vital needs of society, while taking into account the concept of "national circumstances" recognised by the International Labour Organisation. The Government confirms that the national education sector constitutes such a vital need, given the role it plays in the country's economic and social development, making use of human resources in the shape of the young Turkish population. With a view to increasing the efficiency of the national labour system, the Turkish authorities were forced to broaden the domain of freedoms, and especially freedom of association, in line with the country's economic and social development.

434. The Government states that in this context, a high-level tripartite meeting took place in May 1991, which resulted in three decisions: to establish a committee with a mandate to finalise various bills relating to working conditions; to organise regular tripartite meetings which would include participation from workers' and employers' confederations; and to set up permanent machinery to develop social dialogue and settle current social problems in a peaceful manner.

C. The Committee's conclusions

435. The Committee notes that the allegations focus on four areas: (1) denial of the right of association to teachers in the private sector and teachers with the status of public officials or contract employees; (2) denial of the right of collective bargaining for these three categories of workers; (3) anti-union behaviour on the part of the authorities against teacher members of the EGIT-SEN, shown through various punitive measures including arrests and detentions; and (4)

an attack on the part of the authorities on the right of the EGIT-SEN to organise its trade union activities.

436. As regards the first aspect of the complaint, the Committee notes that under article 51 of the Turkish Constitution, only "workers" enjoy the right to establish trade union organisations to defend and develop social and economic rights and defend the interests of their members, thus excluding public officials and persons working in public enterprises with the status of contract employee from this constitutional right. The Government does not deny this allegation and, in its reply, implies that the categories of public officials mentioned do not have the right to set up or join trade union organisations. The Committee also understands from the information sent by the Government, that teachers in the private sector are outside the scope of Act No. 2821 on trade unions, section 21(5) of which states that it is forbidden for teaching staff to set up or join a workers' or employers' trade union. Under these circumstances, the Committee recalls the importance it attaches to the principle of freedom of association according to which all workers, without distinction whatsoever and regardless of their legal status, including public officials and contract employees, have the right to set up and join organisations of their own choosing [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 215]. The Committee therefore requests the Government to amend the provisions of current legislation which contravene this principle in order to guarantee teachers in both the public and private sectors the right to establish and join organisations of their own choosing, and to inform the Committee of developments in this respect.

437. As regards the second aspect of the allegations, the Committee, in the light of the information available to it, notes that teachers having the status of public servant or contract employee and teachers in the private sector are excluded from the scope of collective bargaining since they are not "workers" within the meaning of section 1 of Act No. 2822 of 5 May 1983, and that teachers in the private sector do not have the right to establish or join unions of their own choosing. The Committee firstly draws the Government's attention to the fact that no provision of Convention No. 98 authorises the exclusion of persons with the status of contract employees from its scope. As regards teachers with the status of public official, the Committee recalls that Convention No. 98 (Article 6) permits the exclusion of public officials engaged in the administration of the State. However, the Committee points out, as did the Committee of Experts on the Application of Conventions and Recommendations, that whilst admitting that the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of persons employed by the State or in the public sector, who do not act as agents of the public authority (even though they may be granted a status identical with that of public officials engaged in the administration of the State) is contrary to the requirements of the Convention. Therefore, a distinction must be made 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 corporations [Digest, para. 598]. With regard to teachers in the private sector, the Committee notes, from the provisions of section 21(5) of the Act on trade unions of 5 May 1983 (the ban on establishing or joining a union), that this category of teachers is also denied the right to bargain collectively. The Committee requests the Government to amend the provisions of the legislation in force and, in particular, those of Act No. 2822 on collective labour agreements, strikes and lockouts of 5 May 1983, with a view to granting teachers in the public sector, whether they have the status of public official or contract employee, and teachers in the private sector, the right to collective bargaining in accordance with Article 4 of Convention No. 98.

438. As regards the third allegation, under which the Turkish authorities allegedly engaged in anti-union behaviour against the EGIT-SEN, such as arresting and detaining some of its founding members, the Committee recalls that the arrest of trade union leaders against whom no criminal charges are laid involves restrictions on the exercise of trade union rights [Digest, para. 89]. The Committee stresses that the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights, unless attended by appropriate judicial safeguards; it requests the Government to inform it of the charges laid against the members of the EGIT-SEN arrested and detained during December 1990 and January 1991 and of the outcome of the pending trials. The Committee also calls upon the Government to indicate whether the members of the EGIT-SEN, Ali Haydar Polat, Fesih Celik, Abdarrahman Onen and Omer Osmanogullari have been freed following their arrest and detention and whether proceedings have been instituted with a view to shedding light on these cases. As regards the allegations concerning other punitive measures taken against the members of the EGIT-SEN, the Committee emphasises the importance it attaches to the right of trade unionists, like all other persons, to enjoy the guarantees afforded by due process of law in accordance with the principles enunciated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights. [Digest, para. 82.]

439. As regards the final allegation according to which the publication of an official magazine has been prohibited and the central office of the EGIT-SEN has been closed and sealed off, the Committee - whilst recalling that under Article 8 of Convention No. 87, workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land, provided that the law of the land does not impair the guarantees provided for in the Convention - has nevertheless expressed the opinion that a free trade union movement can develop only under a regime which guarantees fundamental rights including the right of trade unionists to hold meetings in trade union premises, and freedom of opinion expressed through speech and the press [Digest, para. 73]. The Committee requests the Government to indicate whether its refusal to allow the publication of an official magazine and its orders to close and seal off the central office have been revoked and, if this

is not the case, to take the necessary measures to revoke these impediments to freedom of association.

The Committee's recommendations

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

(a) The Committee recalls the importance it attaches to the freedom of association principle according to which all workers without distinction whatsoever, regardless of their legal status, including public officials and contract employees, have the right to establish and join organisations of their choosing. The Committee therefore requests the Government to amend the provisions of current legislation which contravene these principles, with a view to guaranteeing all teachers the right to establish and join organisations of their choosing, regardless of whether they have the status of public official, contract employee or are employed in the private sector, and to keep it informed of developments in this regard.

(b) Recalling that only public officials employed in the administration of the State are not covered by Convention No. 98, the Committee requests the Government to amend the provisions of national legislation in force with a view to authorising teachers having the status of public official, teachers working in public enterprises and those in the private sector to negotiate collectively their terms and conditions of employment in accordance with Article 4 of Convention No. 98.

(c) Recalling also that the arrest of trade union leaders against whom no criminal charges are laid involves restrictions on the exercise of trade union rights and that the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards, the Committee requests the Government to inform it of the charges laid against the members of the EGIT-SEN arrested and detained in December 1990 and January 1991 and of the outcome of the pending trials. The Committee also calls upon the Government to indicate whether the members Ali Haydar Polat, Fesih Celik, Abdarrahman Onen and Omer Osmanogullari have been freed following their arrest, and whether proceedings have been instigated with a view to shedding light on these cases.

(d) Stressing that a trade union movement can develop only under a regime which guarantees fundamental rights including the right of trade unionists to hold meetings in trade union premises, freedom of opinion expressed through speech and the press, the Committee