above; there would also, after some duration, be an impact on the safety conditions on the installations, and lay-offs of other employees in the oil sector. (An oil strike involves an increased safety risk, because extensive maintenance work is postponed and because corrosion and other damage can occur if the system is out of operation for a long period.) As for the OFS allegation that maintenance work could have been exempted from the strike, the Government states that the employers rather than the authorities are responsible for organising maintenance programmes. The authorities are not in a position to make exemptions of this kind.

105. Observing that the OFS points out that the purpose of industrial action usually is to bring about economic losses, the Government replies that, if it is the third party which suffers the greatest loss from a strike, little pressure is put on the employer. While third parties usually have to endure some inconveniences due to a strike, during the 1990 oil strike the situation was quite the opposite: it was primarily the third party that was hit. The employers suffered small losses compared to those of the State and the society. The workers had minor problems financing the strike, due to the safety crew rules according to which during a strike a number of the oil workers would be on duty as safety crew and get full pay. Contributions from these workers could maintain a strike fund for the members on strike.

106. The Government denies the OFS claims that it continuously neglects freedom of association and the right to lead joint wage negotiations and that "the consistent use of compulsory arbitration in the North Sea proves that the North Sea parties do not have the freedom to negotiate". The Government emphasises that each conflict is examined separately. The previous cases of compulsory arbitration were all mainly due to the general economic situation, the country's dependence on the oil income during the last decade and to the fact that the disputes in question were full-scale strikes leading to a total stoppage of all gas and oil production. There have been other conflicts in the oil sector of more limited extent and consequently less serious effects, with no interference from the authorities. There is in its opinion little basis for the OFS statement that the North Sea parties are deprived their freedom to negotiate; it is the extent of the conflict and the subsequent consequences that are decisive. It notes that the OFS is concerned about Norway not having any permanent legislation prescribing the conditions for intervention in a strike. To the Government, however, the question of intervention in a conflict is so serious that each case must be submitted to the highest legislative authorities of the country, the Storting. It does not wish permanent legislation to delegate authority to the Government in this area because this may make it easier to resort to the compulsory wage board procedure. Moreover, it would be very difficult to establish by law fixed criteria which are both precise and sufficiently flexible. Fixed criteria may, in addition, have the negative consequence that employers' and workers' organisations may count on the intervention by the authorities, thus preventing real negotiations between the two parties.

107. As for the complainant's reference that this conflict should be seen in connection with previous cases against the Government of Norway (Nos. 1255 and 1389), the Government is of the opinion that it is not relevant to do so. It has noted with appreciation that previous comments from the ILO concerning the use of compulsory arbitration in the North Sea have been based on specific cases, and should not be seen as an evaluation of the Norwegian collective bargaining system.

108. Lastly, the Government explains the relationship between ILO standards and Norwegian industrial relations practice. As a basic principle, the employers' and workers' organisations are responsible for wage settlements and industrial peace. However, there is broad consensus in Norway that the Government has the ultimate responsibility for preventing labour conflicts from causing serious damage to the society. In the very few cases where proposals for resorting to compulsory arbitration have been submitted to the Storting, the Storting has adopted the proposed Act by a large majority. In general, the bargaining system functions well; there are very few labour conflicts and awards of the National Wages Board are respected. Only three organisations have presented complaints to the ILO. None of these are members of the General Confederation of Norwegian Trade Unions (LO), which is the most representative workers' organisation. The right to organise is secured through a diversity of organisations and there is a multiplicity of collective agreements. The Labour Disputes Act of 1927 gives equal rights to all workers' organisations irrespective of size. The Government believes that the Norwegian system has great advantages. With no restrictions on the right to collective bargaining, negotiations and cooperation take place at all levels, and most groups have possibilities to influence their working conditions. Cooperation in the labour sector covers a broad range of subjects. Several different cooperation procedures exist which may overlap to some extent; in addition to collective bargaining, there is a well-developed system for co-determination which gives employees a considerable share of influence in the enterprises; there is also extended institutionalised cooperation between the organisations and the authorities (including the whole range of topics within the areas of legislation in general, labour legislation specifically, incomes policy, etc.).

109. The Government strongly emphasises Norwegian compliance with its international obligatons. It states that the fundamental legal principles concerning collective bargaining are fully compatible with the ILO Conventions in question. Still, complaints brought to the ILO have shown that some cases have been at variance with the ILO's interpretation of Conventions Nos. 87, 98 and 154. The ILO interpretation has attached only little importance to the extensive economic effects on society or third parties as a result of a strike. The Norwegian authorities, however, cannot disregard such effects in connection with large-scale labour conflicts in the oil industry. The consequences of a long-lasting and full-scale oil strike like the one in 1990 are so serious that the oil industry has to be accepted as an essential service for the Norwegian society. The Government is

concerned because the ILO has taken a different view in relation to Cases Nos. 1099, 1255 and 1389. Against this background, the Government has recently started to review possible modifications of the system for resolving labour conflicts. The aim is to develop a system which can satisfy both the ILO's and national concerns. As industrial action is a means of putting pressure on the opposite party, a country acknowledging the right to industrial action has to endure the inconveniences entailed by such actions. The limits on how extensive the consequences are to be for society and the general public, as drawn up by the ILO bodies, have been commented on. The Government argues that there are cases where the economic losses for society or third parties are so great that an intervention in the right to strike will be fully in compliance with the Conventions. There are, however, a number of aspects concerning the effects of industrial actions on a modern industrialised country that call for closer reflection. As explained above, it would be almost impossible for any Norwegian Government not to take into account the economic losses that a long-lasting and full-scale oil strike would result for its society. Another important aspect is the broad consensus among the social partners on the Norwegian system and practice, including the use of compulsory arbitration in conflicts of this kind. Corresponding situations also occur in other industrialised countries with a mixed economy, especially where they, like Norway, are highly dependent on one particular industry. The Government feels that the time is right for the ILO to give consideration to these problems and would be prepared to participate in a dialogue on this with other members, as well as with the ILO itself.

110. In conclusion, the Government emphasises again its concern that Norway complies with the Conventions it has ratified. However, there is a broad consensus that the Government has an ultimate responsibility for preventing strikes from causing serious damage to the society and third parties. In the 1990 oil conflict, the Government had to take into consideration the enormous economic losses a full-scale oil strike would bring about for the country, in a severe economic situation and high and growing unemployment. A strike would also have undermined the joint efforts of the other organisations and the whole community in trying to master negative developments. The Government trusts that the information given demonstrates that the Provisional Ordinance imposing compulsory arbitration on the parties in the 1990 oil conflict was in compliance with Conventions Nos. 87 and 98.

## C. The Committee's conclusions

111. The Committee notes that this case concerns the Government's intervention in collective bargaining through the imposition of compulsory arbitration and the adoption of a legislative measure putting an end to a legal strike by the oil workers of the North Sea.

112. The Committee recalls that in the past it has dealt with many cases concerning compulsory arbitration in Norway: Case No. 1099 [217th Report, paras. 449-470, approved by the Governing Body at its 220th Session, May-June 1982]; No. 1255 [234th Report, paras. 171-192, approved by the Governing Body at its 226th Session, May-June 1984]; No. 1389 [251st Report, paras. 191-214, approved by the Governing Body at its 236th Session, May 1987]; and No. 1448 [262nd Report, paras. 93-123, approved by the Governing Body at its 242nd Session, February-March 1989].

113. The legislative intervention which is the subject of the present complaint therefore is not an isolated case. The Committee notes that the situation evolved according to a familiar pattern:

- in 1980, a strike commenced on 3 July; the Government imposed compulsory arbitration by Provisional Ordinance on 18 July 1980;

- in 1981, a strike commenced on 24 August and was ended by order-in-council dated 25 August;

- in 1982, a work stoppage which started on 13 October ended on 18 October, through a Government Bill;

- in 1986, the strike commenced on 6 April and was terminated on 5 May by the Government;

- in the present case, the strike started on 30 June and was ended on 2 July, again through government intervention, 36 hours after the beginning of the work stoppage.

114. The dispute in question took place in the oil sector in the North Sea. To justify its intervention, the Government mainly argued that, on the one hand, the strike caused important losses to the Norwegian economy and, on the other hand, that there would also, after some time, be risks for the safety conditions on the installations. The Committee cannot ignore such arguments advanced by the Government but it is impossible for it to determine whether the dangers caused by this work stoppage were such as to satisfy the criteria which it has established to determine situations in which a strike could be prohibited, that is to say where there exists a clear and imminent threat to the life, personal safety or health of the whole or part of the population. In the Committee's opinion, it would be desirable if, in cases like the one before it, the concerned parties, with the participation of the Government if necessary, could reach an agreement on minimum services that would be strictly necessary in order not to compromise the life, personal safety or health of the whole or part of the population.

115. Taking into account these considerations, the Committee thus has to express doubts as to the compelling need to have had recourse to compulsory arbitration in the dispute in question.

116. More generally, the Committee notes that many complaints have been lodged in recent years concerning the same sort of cases. Therefore it does not appear that the present system of resolving disputes in the oil sector meets with unanimous agreement in the country. In addition, recourse to compulsory arbitration poses problems in this case as regards the implementation of the principles of freedom of association. The Committee considers in this regard that to avoid disputes that are harmful to all the parties concerned, the latter should endeavour to give priority to collective bargaining as the means of determining employment conditions.

117. The Committee notes with interest that the Government has started to review possible modifications of the system for resolving labour disputes. It expresses the hope that during this examination the conclusions adopted by the Committee in the present case, as well as in previous cases concerning Norway, will be duly taken into consideration. It also draws the Government's attention to the fact that the advisory services of the International Labour Office are at its disposal, if it so wishes.

## The Committee's recommendations

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

(a) The Committee expresses doubts as to the compelling need to have had recourse to compulsory arbitration in the present dispute and encourages the concerned parties, with the participation of the Government if necessary, to reach an agreement on the minimum services that would be strictly necessary in order not to compromise the life, personal safety or health of the whole or part of the population during a labour dispute in the oil sector.

(b) The Committee calls on all parties to give priority to collective bargaining as the means of determining employment conditions.

(c) Noting with interest that the Government has started to examine possible modifications to the existing system, the Committee expresses hope that the conclusions adopted in the present case, as well as in previous cases concerning Norway, will be duly taken into consideration. It draws the Government's attention to the fact that the advisory services of the International Labour Office are at its disposal, if it so wishes.

## Case No. 1585

## COMPLAINT AGAINST THE GOVERNMENT OF THE PHILIPPINES PRESENTED BY THE FEDERATION OF FREE FARMERS (FFF)

119. The Federation of Free Farmers (FFF) presented a complaint of violation of trade union rights against the Government of the Philippines in communications dated 29 May and 3 July 1991.

120. The Government supplied its comments in a communication dated 12 August 1991.

121. The Philippines have 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 Rural Workers' Organisations Convention, 1975 (No. 141).

### A. The complainant's allegations

122. In its communication of 29 May 1991, the FFF alleges that various provisions of the Philippine Labor Code violate Conventions Nos. 87 and 141. The provisions in question are:

- sections 241(c) and (p) which require that local and national officers be elected directly by secret ballot;

- section 241(j) which provides for the automatic cancellation of union registration for non-submission of financial reports; and

- section 3, paragraph (d), Rule II, Book V, which requires federations and national unions to organise direct members into locals or chapters.

123. As regards the first issue, sections 241(c) and (p) of the Labor Code read as follows:

> (c) The members shall directly elect their officers in the local union, as well as their national officers in the national union or federation to which they or their local union is affiliated, by secret ballot at intervals of five (5) years. No qualification requirements for candidacy to any position shall be imposed other than membership in good standing in subject labor organizations. The secretary or any other responsible union officer shall furnish the Secretary of Labor and Employment with a list of the newly elected officers, together with the appointive officers or agents who are entrusted with the handling of funds within

thirty (30) calendar days after the election of officers or from the occurrence of any change in the list of officers of the labor organization.

...

(p) Any violation of the above rights and conditions of membership shall be a ground for cancellation of union registration or expulsion of an officer from office, whichever is appropriate.

124. The complainant alleges that these provisions constitute an abridgement of the right of freedom of association and violate Articles 2, 3, 4 and 8(2) of Convention No. 87 and Articles 3, 4 and 5 of Convention No. 141. It quotes the 1983 General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Freedom of Association and Collective Bargaining:

> The Committee considers that legislation which regulates in detail the internal election procedures of trade unions is incompatible with the rights of trade unions recognised by Convention No. 87. There is reason to believe that detailed regulation of trade union elections, by legislation which prescribes specific rules on the subject, limits the right of organisations to elect their representatives in full freedom and may constitute a kind of *a priori* supervision of the electoral procedure, making it easier for the public authorities to intervene in the voting process (para. 172).

125. The FFF is a duly registered national labour organisation whose members are rural workers located in numerous villages in many provinces of the Philippines archipelago, consisting of more than 7,000 islands. The FFF's subdivisions are the village locals, the provincial associations, regional offices and, finally, the national office. Since most villages are located kilometres away from the towns, and municipalities and provinces are often hundreds of kilometres away from each other, it is physically and morally impossible to hold direct elections by its thousands of members of all officers on various levels, especially the provincial, regional and national, on any single day or period, particularly if the elections have to be by secret ballot. Most of the FFF's members are self-employed (tenants, sellers, owner-cultivators, fishermen) and farm employees, including the shifting landless farmworkers, who live and work in the villages. They are widely scattered because they work on lands that are distant from each other. They cannot sufficiently know their provincial, regional and national officers or candidates. It is impossible to assemble the thousands of members hundreds of kilometres distant from each other in one place to hold elections, especially on a provincial, regional or national level, due to severe difficulties in rural communication and transportation, exacerbated by periodic natural calamities such as typhoons.

126. Assuming that such elections were to be held in different places within a given date or period, such a process would be very costly, cumbersome and impossible to supervise and coordinate. In addition, there are the problems of accreditation, authentication and canvassing of votes in all the units simultaneously. If elections are held on different dates, there is the added problem of meeting the deadline of 30 days within which to report the newly elected and appointed officers to the Secretary of Labor and Employment.

127. It is for the foregoing reasons that elections in the FFF beyond the village level are conducted through delegates, as provided for in the FFF's constitution and by-laws. However, adherence to this constitutional policy runs counter to the direct election clause in the Labor Code; hence, any election by delegates would, in all likelihood, be deemed illegal and invalid. Clearly, then, the effect of the direct election provision of the Philippine Labor Code is to put the FFF and many similarly situated labour organisations in a legal dilemma, leading to their paralysis and ultimate extinction.

128. Concerning the second issue, section 241(j) of the Labor Code reads as follows:

> Every income or revenue of the organization shall be evidenced by a record showing its source, and every expenditure of its funds shall be evidenced by a receipt from the person to whom the payment is made, which shall state the date, place and purpose of such payment. Such record or receipt shall form part of the financial records of the organization.
>
> Any action involving the funds of the organization shall prescribe after three (3) years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted as required by law, whichever comes earlier: Provided, that this provision shall apply only to a legitimate labor organization which has submitted the financial report requirements under this Code; Provided, further, that failure of any labor organization to comply with the periodic financial reports required by law and such rules and regulations promulgated thereunder six (6) months after the effectivity of this Act shall automatically result in the cancellation of union registration of such labor organization.

129. The FFF alleges that these detailed prescriptions regarding the financial operation of labour organisations are an undue interference in the internal affairs of labour groups and violate Article 3 of ILO Convention No. 87, affirming the right of organisations to draw up their rules and to run their affairs without interference from the public authorities. Furthermore, the provision for the automatic cancellation of the registration of a labour organisation for failure to submit required financial reports goes against due process and violates Article 4 of ILO Convention No. 87, which provides that workers' organisations should not be liable to be dissolved by administrative authority.

130. As regards the third issue, the FFF points out that section 3, paragraph (d) of Rule II, Book V, of the Philippine Labor Code requires existing labour federations or national unions with direct members to organise said members into locals or chapters in their respective companies or establishments within 60 days from the coming into force of the rules.

131. According to the FFF, this violates Article 3 of Convention No. 87, which provides that workers' organisations shall have the right to draw up their constitutions and rules and to organise their administration and activities, without any interference from public authorities. It also goes against Article 3, paragraph 2, of ILO Convention No. 141, which provides that the principles of freedom of association shall be fully respected and that rural workers' organisations shall remain free from all interference. In addition, this regulation runs counter to Articles 5 and 6 of Convention No. 141, which both call for the elimination of legislative and administrative impediments to the establishment and growth of rural workers' organisations.

132. There are various and valid reasons for labour federations or national unions to maintain direct individual membership, which policy is well within the rights of the unions and their membership to decide. Moreover, this regulation may be more readily applicable to labour organisations in the non-agricultural sector, whose members are employees and can be more easily grouped according to their company or place of work. In the case of the FFF and other organisations with a mixed or predominantly self-employed membership, the organisational structure would vary according to geographical affinity rather than identity of employers, since it would be a more important consideration in forming members into specific chapters or organisational units. In any case, the labour organisation directly concerned is in the best position to know the appropriate structure for it.

133. In its further communication of 3 July, the FFF indicates that, during its 8 June 1991 meeting in Quezon City, the National Policy Board of the FFF, citing the physical impossibility of complying with the direct election requirement of the Labor Code, unanimously approved a resolution postponing indefinitely the FFF National Convention until the law is amended to enable the organisation to comply with it. During the same meeting, which was attended by FFF regional and provincial leaders from all over the Philippines, the chapters represented reported the difficulties which also made it impossible to observe the "direct election" rule at the provincial level, including the following: the huge costs and administrative burden of informing hundreds/thousands of widely dispersed rural worker members, then assembling and processing them in one or several central locations throughout a province; poor or non-existent communication, transportation and other facilities; unstable peace and order conditions; and natural calamities in many areas.

134. The Board as well as the national and local officers of the FFF present agreed that the entire organisation has been placed in a

general state of uncertainty and paralysis brought about by the aforementioned provision. Moreover, an informal survey conducted by the FFF among other national unions and federations during the past two years revealed that these organisations (mostly commercial, industrial and service-based) foresaw tremendous difficulty, if not impossibility, in following the direct election requirement. The only group that managed to have a direct election was a national union of hotel and restaurant workers. According to its president, the union still experienced severe financial and administrative problems despite the fact that most of its locals are based in Manila.

135. In summary, the FFF alleges that there is a permanent "Damocles' sword" over labour organisations (especially those that may be deemed less friendly to an incumbent administration) since the legitimacy of conventions/elections can always be questioned and their results likely to be nullified, which is confirmed by the statement of the Labor Department Legal Services in the letter dated 3 November 1989 addressed to the FFF.

## B. The Government's reply

136. In its communication of 12 August 1991, the Government states its firm belief that the concerns expressed by the FFF are unfounded. It points out that the provisions in question are applicable to and intended to cover only trade unions - unions with specific employers or unions of workers in the formal sector - and not to organisations of rural workers and of itinerant, ambulant and self-employed workers such as the members of the complainant federation. According to the Government, this flows particularly from section 212(g) of the Labor Code, which reads as follows: "'Labor organization' means any union or association, which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment" (emphasis added).

137. In addition, the Government points out that in actual implementation section 241(c) is treated as a directive and is not mandatory. Neither is the cancellation of union registration for non-submission of financial reports treated as automatic. The Bureau of Labor Relations (the agency of the Department of Labor and Employment directly in charge with matters relating to labour organisations) institutes cancellation proceedings only after at least two reminders have been sent to the unions and they still fail to comply with the requirement. In the cancellation proceedings, unions are given the right to explain and defend themselves. The same is also true with section 3(d) of Rule II, Book V, of the Code which is merely directive.

138. The Government points out in conclusion that the foregoing provisions are the product of tripartite consultations, but that it is mindful of the deficiencies noted by the Committee of Experts and of

its obligation to take steps to ensure that future amendments meet the requirements of Convention No. 87.

## C. The Committee's conclusions

139. The Committee notes that the complainant in the present case criticises the provisions in the Philippines Labour Code which: require that local and national officers of labour organisations be elected directly by secret ballot (sections 241(c) and (p)); require that federations and national unions organise their direct members into local chapters (Book V, Rule II, section 3(d)); and provide for the automatic cancellation of union registration for non-submission of financial reports (section 241(j)). The complainant alleges that the first provision mentioned above, as applied to the particular circumstances, prevents the FFF from functioning in practice since all elections held through delegates may be nullified; it further argues that the other two provisions constitute undue interference in the internal affairs of the Federation.

140. In its brief comments of 12 August 1991, the Government does not really take issue with the substance of the complainant's allegations but replies in very general terms that: (a) it does not consider the FFF as being a labour organisation within the meaning of the Code, which implies that said provisions would not be applicable to it; and (b) all these provisions, in any event, are directive and not mandatory.

141. The Committee notes from a general point of view that the FFF has a mixed membership, most of whom, according to the complainant's own statements, are self-employed. The Committee recalls that they are not only covered by Conventions Nos. 87 and 98, but also are entitled to the guarantees provided for in Convention No. 141, since Article 2 of that instrument defines rural workers as "any person engaged in agriculture, whether as a wage earner or ... (subject to certain restrictions) as a self-employed person".

142. As to the indicative nature of the provisions challenged by the complainant, the Committee notes that three of them are clearly worded in mandatory terms and that the consequences can be very drastic under section 241(p), namely cancellation of union registration or expulsion of an officer from office. Therefore, there exists a risk that the above-mentioned provisions be construed as mandatory by the administrative or judicial authorities, as evidenced by the example below.

143. As regards the direct election requirement, the Committee notes that, whilst the Government states that the provisions in question are only intended to cover trade unions in the formal sector and not organisations such as the complainant federation, the Director of Legal Services of the Department of Labor and Employment implicitly

considered that the FFF was subject to sections 241(c) and (p) since, in his letter of 3 November 1989 to the FFF, he expressly stated: "... union officers must be directly elected by the members thereof, inasmuch as the framers of R.A. 6715 believe that this would broaden the democratisation of labour unions. As such, you cannot deviate from this manner of electing officers as this will result in a void election" (emphasis added). The Government now affirms that the FFF is not covered by this provision, which it says is only indicative. The Committee notes, nevertheless, the reasons why the executive of the FFF unanimously decided, in June 1991, to postpone its national convention until the law was amended and the uncertainty removed.

144. The complainant organisation has explained why the direct election requirement raises insurmountable problems in practice, due to geographic and climatic conditions, transport and communication difficulties, as well as huge costs and administrative obstacles. The Committee appreciates that the legislator might want to make the electoral process in trade unions as democratic as possible but, as applied to the particular circumstances, this otherwise legitimate objective in fact denies the right of FFF members to elect their representatives and to draw up their constitution and rules in full freedom, both of which are fundamental principles of freedom of association.

145. As the Committee pointed out on many earlier occasions, the right of workers' organisations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining conditions of eligibility of leaders or in the conduct of the elections themselves. [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 295.] The Committee therefore concludes that, in view of the particular circumstances of this case where in particular there are difficulties in transport, the impugned provisions are not compatible with the principles on freedom of association.

146. Concerning the second issue, the Committee considers that legislative provisions requiring, for instance, that financial reports be submitted annually to the authorities do not per se constitute an infringement on trade union autonomy; these measures are useful where employed only to prevent abuses and to protect union members themselves against fraud or mismanagement of their funds. In the present case, section 241(j) goes further, by requiring that every income, revenue or expense be evidenced by a record or receipt indicating the date, place and purpose of payment.

147. The Government has also stated that cancellation proceedings are not automatic, despite the clear wording of section 241(j); in practice, says the Government, they are instituted only after two reminders have been sent to the trade unions concerned and they still

fail to comply; in addition, the trade unions have the right to explain and defend themselves during these proceedings.

148. The Committee notes that while section 241(j) provides that these records and receipts form part of the financial records of the organisation, it does not require that they be produced along with the annual financial report. The Committee is however unable, from the information provided, to evaluate precisely the extent of control by the authorities, let alone know which authorities ultimately exercise that supervision. Therefore, it recalls that a guarantee exists against interference by the authorities in the internal financial administration of trade unions when the official appointed to exercise supervision enjoys some degree of independence from the administrative authorities and when he is himself subject to the control of the judicial authorities. [Digest, paras. 327-337.] This is particularly important when the registration and existence of the organisation is at stake, as in the present case. The Committee therefore calls on the Government to apply this criterion.

149. As regards the third issue, namely the requirement in Rule II(3)(d) that labour federations or national unions organise their direct members into locals or chapters, the Committee recalls that, as a matter of principle workers' organisations have the right to organise their administration without any interference by the public authorities. This encompasses the right to choose, in full freedom, the organisational structure the FFF deems more appropriate, taking into account the particular circumstances of its membership and the geographic factors. The Government has indicated that this provision is only indicative. Nevertheless, Rule II(3)(d) of Book V as it presently stands is incompatible with the principles of freedom of association.

## The Committee's recommendations

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

(a) The Committee considers that, given the difficulties facing rural workers' organisations in assembling their members, the provisions concerning the election of union leaders by direct ballot and on the internal functioning of federations and their direct affiliates, are not compatible with the principles of freedom of association. It requests the Government to amend them and draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

(b) The Committee draws the attention of the Government to the fact that a guarantee exists against interference by the authorities in the internal financial administration of trade unions when the official appointed to exercise supervision enjoys some degree of

independence from the administrative authorities and when he is himself subject to the control of the judicial authorities; it calls on the Government to apply this criterion.

## Case No. 1592

## COMPLAINT AGAINST THE GOVERNMENT OF CHAD PRESENTED BY THE NATIONAL CONFEDERATION OF TRADE UNIONS OF CHAD (UNST)

151. The complaint of the UNST appears in a communication of 29 May 1991. The Government sent its observations on the allegations in a communication of 30 September 1991. Subsequently, the complainant sent complementary information in a communication of 8 October 1991.

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

### A. The complainant's allegations

153. The UNST alleges in its complaint that the Government of Chad has violated Convention No. 87 by dissolving the complainant trade union confederation through a decision of the Council of Ministers of 23 May 1991.

154. The complainant states that the Government has justified its action by making reference to Decision No. 001/PR/CE/MPS/90 of the National Salvation Movement (MPS), which was taken after the MPS came to power on 1 December 1990. This Decision of 3 December 1990 suspends the Constitution, dissolves the Government, the National Assembly and the National Union for Independence and Revolution (UNIR) (the single party which had previously held power), as well as its affiliate bodies.

155. The complainant notes that until the date of the complaint, the MPS had not interfered in the activities of the UNST; although the UNST had adopted a resolution by which it affiliated itself to the UNIR during its constitutive Congress of November 1988, unlike other organisations it nevertheless remained an occupational organisation. However, on 17 December 1990, the Government orally communicated to the Confederation that it was dissolved in accordance with Decision No. 001/PR/CE/MPS/90.

156. The complainant states that, in addition to the provisions of international labour standards which prohibit the administrative

dissolution of trade union organisations, Chad has internal regulations, such as section 40 of Act No. 7/66 (the Labour Code), which stipulates that trade union organisations may be dissolved only by means of judicial proceedings. Thus, the dissolution of a workers' organisation by decision of a political party or movement is illegal and arbitrary.

157. Nevertheless, according to the complainant, in a spirit of compromise and with a view to removing any grounds for the Government's action, the UNST convened a congress from 29 April to 2 May 1991 which adopted two resolutions: the first rescinded the Confederation's affiliation to the UNIR, and the second reaffirmed the UNST's independence with respect to any political party or movement. In so doing, the Confederation sought to comply with the provisions of section 40 of Act No. 7/66 which stipulates that "it shall be the duty of the public attorney and of the labour inspector either on their own initiative or at the request of the Minister of the Interior or the Minister of Labour and Social Welfare to require the directors of trade unions to rescind or amend any unlawful provisions in the rules ... of a trade union", even though the Confederation's affiliation to the UNIR was not mentioned in its rules.

158. Following this congress, the Confederation's rules and the names of its officers were filed with the office of the Prefecture, in accordance with the provisions of section 38 and following of Act No. 7/66. The Prefecture acknowledged receipt of these documents; according to section 49 of Act No. 7/66 this acknowledgement suffices for trade unions to enjoy legal personality.

159. The complainant states that the Government considers that trade unions are governed by Regulation No. 27/INT/SUR of 28 July 1962 concerning associations, and under which such associations may not enjoy legal personality unless they obtain an authorisation to operate from the Ministry of the Interior. The complainant contends that this is an abuse of power, on the grounds that this regulation does not apply to trade unions inasmuch as the legislature has adopted a specific Act in respect of trade unions. In any situation involving two legal texts which the Government pretends to apply to a given organisation, it should be recognised, in accordance with general legal principles, that the most recent text prevails.

160. The complainant attaches to its communication a lengthy list of documents, including the legal texts to which it has made reference and a copy of its rules.

161. In its communication of 8 October 1991 the complainant reports that the Government has recognised a new trade union confederation (the Federation of Trade Unions of Chad (UST)), authorising it to operate in accordance with Regulation No. 27/INT/SUR concerning associations. Nevertheless, the complainant alleges that this authorisation should have been given under Act No. 7/66 (Labour and Social Welfare Code), and not on the basis of the above-mentioned regulation.

B. The Government's reply

162. In a communication of 30 September 1991, the Government states that the list of documents submitted by the complainant does not include the original rules of the UNST, but merely the amended rules adopted by an extraordinary congress which was held after the Confederation's dissolution.

163. The Government explains that the former UNST was set up in November 1988 as a result of the merger of two trade union confederations: the National Union of Chadian Workers (UNATRAT) and the Chadian Trade Union Confederation. Article 1 of the original rules of the UNST recognised that the organisation was governed by Regulation No. 27/INT/SUR of 28 July 1962, which governs associations in Chad, and by Act No. 7/66 of 4 March 1966 which constitutes the Labour and Social Welfare Code.

164. In accordance with section 3 of Regulation No. 27/INT/SUR, registration and authorisation are required for creating an association, but associations acquire legal personality only if they specifically request it. In the case of the UNST, the Ministry of the Interior and Territorial Administration at that time received no application for registration or request for authorisation. Moreover, the organisation's leaders never requested legal personality for their organisation.

165. It is clear that the UNST had only a de facto existence, and that the predominant political movement at the time, the National Union for Independence and Revolution (UNIR), was its benefactor.

166. The Government's communication adds that the leaders of the former UNST maintain that the organisation's rules and the names of its leaders were filed with the Prefecture, which issued an acknowledgement of receipt, but deliberately overlook the genuine legal meaning of such a receipt, which is no more than the Prefecture's administrative acknowledgement of having received the statement of association of the former UNST. It is incorrect to assume that this simple receipt can confer a certain legitimacy to a trade union organisation. Moreover, the Government points to the fact that the very leaders of the former UNST failed to mention the Service Note No. 481/PCB/91 of 17 May 1991 which annulled the above-mentioned receipt on procedural grounds.

167. In addition, as regards the founding of a trade union, the Government states that it should be recalled that section 38 of the Labour and Social Welfare Code requires the founders of any trade union to register the rules and the names of their leaders in the Prefecture or Subprefecture where the trade union is formed. As regards associations set up in the capital city, section 1(2) of Decree No. 165/INT/SUR of 25 August 1962 on the application of the regulation concerning associations, provides that as regards the city of Fort-Lamy (now N'Djaména) statements of association must be filed

with the National Safety Office, while the Prefect of Chari-Baguirmi is competent for the remainder of the circumscription. In accordance with this provision, a number of organisations, including the Chadian Employers' National Council (CNPT), complied with this procedure and were therefore given authorisation to operate by the Ministry of the Interior and Territorial Administration. The leaders of the former UNST, however, failed to respect this procedure and thus did not comply with the above-mentioned legal texts.

168. Section 42 of the Labour and Social Welfare Code lays down certain conditions of eligibility for leaders of trade union organisations. In accordance with this provision, the leaders of a trade union organisation must submit to a background check by the Ministry of the Interior and the Department of Justice. The leaders of the former UNST never complied with this formality, assuming that their affiliation to the UNIR exempted from any administrative formality in this connection. Some of these leaders did not even belong to one of the confederation's affiliated trade unions.

169. The Government adds that the leaders of the former UNST violated not only national legislation, but also international standards concerning freedom of association, inasmuch as Convention No. 87 recognises the right of all employers and workers to organise without prior authorisation, but requires them to respect the law. Thus, the attempt of these trade union leaders to select a posteriori the legal texts which govern their association, constitutes in itself a violation of the law. Moreover, contrary to the Convention's provisions, the leaders of the former UNST affiliated to the UNIR, thereby forfeiting the confederation's freedom and independence. Not only were the rules of the former UNST drafted under the supervision of the UNIR's officer for orientation, information and mass organisation, but following its establishment, the organisation affiliated to the UNIR by means of resolution No. 5 of 17 November 1988. Some of its leaders were appointed to the Central Committee and Executive Board of the UNIR.

170. The leaders of the former UNST claim to have rescinded this affiliation after the MPS succeeded the previous regime. It should be recalled that by means of Decision No. 001/PCE/MPS/90 of 3 December 1990, the president of the Executive Committee of the MPS dissolved the UNIR and its affiliate bodies: inasmuch as the former UNST was an affiliate body of the UNIR, it undoubtedly comes under the scope of this decision. In addition, the Government wonders how can one speak of disaffiliation from a political movement which no longer exists? The decision of the MPS was an act aimed at saving the country; it not only dissolved the previous political movement, but also the Constitution and all related institutions. Thus, the controversy on this issue is pointless.

171. The Government of Chad declares that, in accordance with the National Charter, it is committed to respecting international conventions and agreements, and to guaranteeing freedom of association in the country. It was in this spirit that, faced with the vacuum

left by the dissolution of the UNST, it authorised an extraordinary congress of neutral trade unions and federations for the purpose of creating a new trade union confederation. However, trade union leaders failed to keep their word, and their debates on the items on the agenda resulted in an endorsement of the UNST, as a form of protest and criticism aimed at the Government.

172. In conclusion, the Government states that it is not bound by the resolutions adopted by the above-mentioned second congress of the former UNST. The evidence suggests that efforts are being made to reconstitute an association which has been officially dissolved; such efforts are therefore subject to the corresponding sanctions prescribed by national regulation. The Ministry of the Public Service and Labour emphasises that in spite of the UNST's dissolution, first-level trade unions continue to carry out their activities; some of them have joined in setting up an organisation known as the Free Confederation of Chadian Workers (CLTT), which has been authorised to operate by the Ministry of the Interior. Following this authorisation, the former leaders of the dissolved trade union organisation met in an extraordinary congress on 23 June 1991 to create the Union of Chadian Trade Unions (UST), made up of former UNST federations. In accordance with the provisions of the Labour and Social Welfare Code, and Regulation No. 27/INT/SUR, the new trade union organisation submitted to the competent agencies a request for authorisation to operate.

173. Lastly, the Government states that it is committed to a democratic approach to social dialogue, and that this implies the maintenance of cooperative relations with all social partners. In addition, the Government gives high priority to the continued independence of trade union organisations with a view to promoting the harmonious development of national institutions.

## C. The Committee's conclusions

174. The Committee notes that the allegations in this case concern the dissolution by administrative decision of the UNST, together with a suspension of the Constitution, the dissolution of the Government, the National Assembly and the UNIR political movement to which the UNST was affiliated.

175. The Committee first recalls the importance it attaches to the right of workers to establish organisations of their own choosing. It notes that, according to the Government's observations, the UNST had only a de facto existence during the previous regime, owing to its failure to comply with certain legal requirements for obtaining legal personality, namely, the filing of a statement or request with the Ministry of the Interior. Likewise, its leaders failed to comply with certain legal requirements (section 42 of the Labour Code) for trade union leaders in Chad, such as background investigations by the Ministry of the Interior and the Department of Justice.

176. In addition, the Committee notes that the Government does not recognise the UNST's repudiation of the UNIR political movement, and argues that the UNST, as an affiliate of the UNIR, was dissolved at the same time as the UNIR. Likewise, it notes that the former leaders of the UNST have set up a new organisation, the UST, and have filed for authorisation to operate.

177. As regards the dissolution of the UNST by executive decision, the Committee wishes to remind the Government that the administrative dissolution of trade union organisations constitutes a clear violation of Article 4 of Convention No. 87, ratified by Chad. In addition, the Committee considers that the dissolution of a trade union organisation is a measure which should only be taken in extremely serious cases; consequently, such a dissolution should occur only following a judicial decision, so that the rights of defence are fully guaranteed.

178. In addition, the Committee wishes to point out that in the interest of the normal development of the trade union movement it would be desirable for the parties concerned to have regard to the principles enunciated in the resolution concerning the independence of the trade union movement adopted by the International Labour Conference at its 35th (1952) Session, to the effect that "the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers and that when trade unions, in accordance with the national law and practice of their respective countries and at the decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social or economic functions irrespective of political changes in the country".

179. As regards the provisions of section 42 of the Labour and Social Welfare Code, according to which trade union leaders must be subject to a background investigation conducted by the Ministry of the Interior and the Department of Justice, the Committee considers that this measure amounts to prior approval by the authorities of candidates to the executive committee of a trade union; therefore this constitutes an interference in the activities of trade union organisations incompatible with Article 3 of Convention No. 87, which recognises the right of workers freely to elect their representatives.

180. As regards the new organisation, the UST, set up by the former members of the UNST, and its request for authorisation to engage in trade union activities, the Committee notes that this authorisation was granted under Regulation No. 27/INT/SUR, and not on the basis of Act No. 7/66 (Labour Code), as it should have been, according to the complainant. The Committee has examined the text of Regulation No. 27/INT/SUR, which according to the Government, governs the activities of trade union organisations. The Committee has noted that several provisions of the regulation are incompatible with Convention No. 87

such as section 5 (concerning the competence of the Ministry of the Interior to grant or refuse authorisation to associations), section 8 (the immediate administrative dissolution of a trade union by decision of the Ministry of the Interior) and section 11 (the right of administrative authorities to oversee an association which they have subsidised). Consequently, the Committee requests the Government to review the legislative texts and regulations applicable to trade union organisations with a view to ensuring that they are consistent with the Convention. The Committee refers this aspect of the case to the Committee of Experts.

## The Committee's recommendations

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

(a) The Committee recalls the importance it attaches to the right of workers to establish organisations of their own choosing.

(b) As regards the dissolution of the UNST by means of an executive decision, the Committee points out that the administrative dissolution of trade union organisations constitutes a clear violation of Article 4 of Convention No. 87, ratified by Chad. The Committee considers that the dissolution of a trade union organisation is a measure which should only occur in extremely serious cases; consequently, such a dissolution should only take place following a judicial decision, so that the rights of defence are fully guaranteed.

(c) As regards the requirement according to which candidates to trade union office are subject to a background investigation, the Committee draws the Government's attention to the fact that this measure amounts to prior approval by the authorities of candidates to the executive committee of a trade union; this constitutes an interference in the activities of trade union organisations, which is incompatible with Article 3 of Convention No. 87.

(d) As regards the new organisation, the UST, and its request for authorisation to engage in trade union activities, the Committee notes that this authorisation was granted under Regulation No. 27/INT/SUR, which, according to the Government, governs the activities of trade union organisations. The Committee has noted that several provisions of the regulation are incompatible with Convention No. 87, and requests the Government to review the legislative texts and regulations applicable to trade union organisations with a view to ensuring that they are consistent with the Convention.

(e) The Committee refers this aspect of the case to the Committee of Experts on the Application of Conventions and Recommendations.

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

### Case No. 1499

### COMPLAINT AGAINST THE GOVERNMENT OF MOROCCO PRESENTED BY THE DEMOCRATIC CONFEDERATION OF LABOUR (CDT)

182. The Committee examined this case at its meeting of May 1990, when it submitted interim conclusions which appear in its 272nd Report (paras. 445 to 474), approved by the Governing Body at its 246th Session (May-June 1990).

183. Morocco has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has, however, ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### A. Previous examination of the case

184. The case centres on three issues: the refusal of the authorities to negotiate with the Democratic Confederation of Labour (CDT), through the intermediary of the National Union of Sugar and Tea (SNST), the employment conditions and the wage scales of workers in sugar refineries; the Government's non-respect of a collective agreement; and the dismissals of staff representatives and trade union leaders owing to their participation in trade union activities in the SUTA and SUCRAFOR sugar refineries.

185. The Committee had noted that, on 1 May 1975, a collective agreement had been concluded between the Moroccan Federation of Labour (UMT) and the Moroccan sugar refineries for an unspecified period of time. Subsequently the CDT, through its affiliate the SNST, became a party to the agreement on 13 July 1987, thus acquiring the right to participate in its revision, a right of which it availed itself by addressing to the competent authorities a request to participate in negotiations. However, according to the CDT, the responsible Minister did not respond to this request and on 20 October 1987 concluded with the Minister of Finance an agreement unilaterally fixing the conditions of employment and wages of workers in the national sugar refineries.

186. The Government did not deny the SNST's adherence to the collective agreement, nor the request which was addressed to it by this trade union to participate in the revision of the conditions of employment and wages of workers in the sugar refineries. The Government merely stated that the agreement signed in October 1987 did

not undermine the rights established in the earlier collective agreement, but instead conferred additional advantages in several areas to workers in this sector.

187. In describing the background to this matter, the CDT explained that the trade union representing the SUTA workers had submitted a list of claims in March 1986, but that management had refused to negotiate, thereby precipitating a one-day strike that took place on 20 May 1986. The competent authority called a management-union meeting which resulted in a draft agreement in which management agreed to accept several items on the list of claims, and the trade union agreed to end the strike. Nevertheless, management later refused to respect its part of the bargain. It threatened to dismiss workers who continued to press their claims and did in fact dismiss one of them. In August 1986 the trade union denounced these events in a detailed report addressed to the Minister of Commerce and Industry and to the government of the Province of Beni Mellal in which it outlined the true causes of the losses incurred by the company, namely, the company's mismanagement. Management responded in October 1986 by dismissing those who had signed the report, namely, the General Secretary of SUTA's trade union, Mr. El Yamani, and the staff delegate and member of the SNST administrative committee, Mr. Saïd Mesnaoui.

188. Subsequently, in June 1987, five unionists identified by name, including Mr. Bouighjd Miloud, were dismissed for having refused to denounce two articles published in a newspaper concerning misappropriation and mismanagement at SUTA. The dismissed workers went to court to obtain their reinstatement. SUTA, however, has refused to comply with the court orders won for their reinstatement. On this aspect of the complaint, the Government merely indicated that according to the employer's statements, disciplinary measures were used in view of the serious errors committed by the employees in question, namely, revealing professional secrets, damaging tools and working instruments, committing acts of sabotage and being absent for no valid reason.

189. For its part, the Committee had studied the contents of the judgements handed down by the Court of Beni Mellal on 9 April 1987 and 28 July 1988, which were attached to the documentation supplied by the complainant. It noted that both judgements ordered the reinstatement of the workers concerned, as the court had found no evidence to support the arguments presented by SUTA, and owing to the employer's failure to respect legal procedures relating to the dismissal of staff representatives.

190. At its May 1990 Session, the Governing Body had approved the Committee's following recommendations:

(a) Noting that in 1987 the competent authorities drew up an agreement regulating the employment conditions of workers in the national sugar refineries without consulting or negotiating with the representatives of the workers concerned, in this case the SNST, whereas a collective agreement concluded in 1975 still

covered the workers belonging to the SNST, the Committee draws the Government's attention to the fact that this procedure constitutes a violation of the principle of free collective bargaining of employment conditions and wages.

(b) Considering furthermore that the agreement seems to rule out the use of collective bargaining in the future as a way of setting the conditions of employment and wages of the workers concerned, the Committee requests the Government to adopt measures to re-establish, in the future, voluntary negotiation procedures for establishing employment conditions and wages in the national sugar refineries, in accordance with the principle of voluntary negotiation set out in Article 4 of Convention No. 98. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of this case.

(c) As regards the cases of dismissal of workers of the SUTA and SUCRAFOR enterprises, the Committee, in the light of the judgements handed down ordering the reinstatement of staff representatives, namely Messrs. Mesnaoui Saïd and Bouighjd Miloud, requests the Government to keep it informed of the steps taken to ensure that these decisions are implemented, particularly in view of the CDT's allegations, which were not denied by the Government, concerning the refusal by the management of these enterprises to execute these judgements.

(d) Moreover, the Committee deplores the lack of detailed information on the other cases of dismissal of staff representatives in these enterprises. It requests the Government to provide information on the conclusions reached by the labour inspection official who, in accordance with national legislation, must make a recommendation, indicating the grounds on which his recommendation is based, in the event of the dismissal of workers' representatives from an enterprise and on all steps taken by the competent authorities to settle conflicts, in particular by using the services of the minister responsible for the sugar refineries.

(e) The Committee recalls the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers, in accordance with Article 1 of Convention No. 98; in the absence of such provisions in the national legislation, the Committee urges the Government to adopt legislative or other measures in the near future to ensure the application of this provision in Convention No. 98. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of this case.

## B. The Government's reply

191. In its reply of 24 May 1991, the Government confirms, first, that relations between the workers and management of sugar refineries in Morocco are governed by the collective agreement concluded in 1975 between the Sugar Association (UPS) and the Moroccan Federation of Labour (UMT). It adds that discussions were held in 1980 at the request of Democratic Confederation of Labour (CDT) to revise this agreement, but that these efforts proved fruitless owing to the rivalry between the CDT and the UMT. Given the differences of opinion between the two trade union organisations which prevented them from reaching an agreement, the management of sugar refineries, with a view to enhancing the financial situation of workers in these enterprises, most of whom, according to the Government, do not belong to either of these federations, concluded an agreement with the Ministry of Finance for the purpose of providing financial incentives to workers, until such time as the two trade union federations reached an agreement concerning the revision of the 1975 collective agreement.

192. Secondly, contrary to what is said in the Committee's interim recommendations, the 1987 draft agreement does not rule out collective bargaining as a means of negotiating conditions of employment in sugar refineries. Moroccan legislation, and in particular the Dahir of 17 April 1957 concerning collective labour agreements, enshrines the principle of collective bargaining, considering it to be an undeniable right of the social partners and a means of promoting equitable industrial relations in vital economic sectors, including the sugar sector. Organisations of employers and workers, for their part, are expected to contribute to the development of industrial relations, so that workers may enjoy their rights in fair and favourable working conditions, and so that negotiation may be maintained and encouraged. It should be noted that, within the framework of the promotion of collective bargaining as provided for by law, a meeting was to have been held on 26 July 1989 at the Ministry of Commerce and Industry with the CDT in order to examine the problems of workers in these enterprises who belong to this federation, but this meeting did not take place owing to the absence of CDT representatives. In addition, tripartite committees were set up in order to discuss the problems concerning work, employment and social welfare. These committees include the Industrial Relations Committee which, in addition to workers' and employers' representatives, is made up of delegates from various ministries and administrative sectors. This committee is responsible for examining a number of questions, including the situation which developed following the dispute which arose in the sugar refineries. That committee set up a working party, known as the Working Party on Collective Bargaining, which is currently studying the collective agreement signed by the sugar refineries, as well as the financial consequences which worker demands may entail for these refineries. The Government undertakes to keep the Committee on Freedom of Association informed of the results of this working party's deliberations.

193. Thirdly, concerning the dismissals of Messrs. Mesnaoui Saïd and Bouighjd Miloud, the Government states that the former was dismissed for having engaged in acts of sabotage and revealed professional secrets; his case is currently before the courts. As regards Mr. Bouighjd Miloud, he was held under arrest for eight days as from 16 July 1987 for having insulted government officials. Upon his release he refused to report for work, in spite of correspondence addressed to him by the Clerk of the Court of First Instance of Beni Mellal. The management of the enterprise then dismissed him owing to his unexcused absence. His case is also still before the courts.

194. Fourthly, the Government continues, the labour inspectorate formulated a number of conclusions in reply to questions addressed to it by the management of sugar refineries concerning the application of disciplinary measures against workers' representatives, in the light of section 12 of the Dahir of 29 October 1962 concerning the representation of workers in enterprises. It should be noted that if the enterprise fails to take into consideration the opinion of the labour inspector, the workers' representative concerned has the right to appeal to the courts. In this connection, the Court of Appeal has already ruled that certain measures were arbitrary since they were taken without prior consultation with the labour inspector. The Government adds that all labour problems, including the dismissal of workers' representatives, are examined by the Industrial Relations Committee, which was set up as part of a policy aimed at promoting social dialogue between the social partners.

195. Fifthly, the Government concludes by stating that Moroccan legislation is, in its opinion, entirely in conformity with the provisions of the Right to Organise and Collective Bargaining Convention (No. 98). It states that, although no provision of the Convention requires the country to take punitive measures when a worker is subject to discrimination due to his or her trade union activities, the draft Labour Code, in accordance with the wishes expressed by the Committee of Experts on the Application of Conventions and Recommendations, prohibits, under pain of imprisonment or fine, any discriminatory practice against workers belonging to a union or engaged in trade union activities.

## C. The Committee's conclusions

196. The Committee takes note of the information supplied by the Government according to which industrial relations in the national sugar enterprises are governed by a draft agreement drawn up by management and the Ministry of Finance, owing to the rivalry between the CDT and the UNT.

197. In this connection, the Committee deeply regrets that the Government has not given effect to the Committee's earlier recommendation of November 1990 that it adopt measures to re-establish

procedures for the voluntary negotiation of conditions of employment and wages in the national sugar refineries, in accordance with Article 4 of Convention No. 98, which Morocco has ratified.

198. The Committee recalls the importance of the principle which it has emphasised on several occasions, namely, that employers, including governmental authorities in the capacity of employers, should recognise for collective bargaining purposes the organisations representative of the workers employed by them [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 617]. In view of the fact that tripartite committees have been set up, one of which will be in charge of examining the situation arising from the dispute in the sugar refineries, the Committee expresses the firm hope that a solution will soon be found to the problem of industrial relations in this industry, through voluntary negotiation towards the revision of the collective agreement.

199. Concerning the allegations of anti-union reprisals which have affected staff delegates, the Committee regrets that the Government has not given any information on the conclusions reached by the Department of Labour Inspection. The Committee also regrets that Mr. Mesnaoui Saïd and Mr. Bouighjd Miloud were not reinstated in their functions. Indeed, the documentation sent by the complainant federation indicates that the Court of Beni Mellal considered the dismissal of Mr. Mesnaoui Saïd to have been arbitrary. The Court in fact ordered, on 9 April 1987, that he be reinstated retroactively to the date of his dismissal. The Committee recalls that, according to the CDT, this trade unionist was dismissed after the trade union executive alleged in a 1986 communication addressed to the Ministry of Commerce and Industry that the true cause of the losses incurred by the company was the enterprise's mismanagement.

200. The documentation submitted by the complainant federation shows that on 28 July 1988 the Court of Beni Mellal ordered the reinstatement of Mr. Bouighjd Miloud with retroactive effect to the date of his dismissal because the enterprise had failed to comply with the legal procedures concerning the dismissal of workers' representatives. The Committee recalls that, according to the CDT, this worker had been dismissed in 1987 following the publication of two articles in newspapers denouncing the misappropriation of SUTA assets and the mismanagement of the enterprise, and the refusal of staff delegates, including Mr. Bouighjd Miloud, to denounce the contents of these articles.

201. The Committee draws the Government's attention to the principle according to which no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities. It recalls that it has already stated in a previous case that, in the case of national public enterprises, the national authorities have responsibility in preventing any acts of this nature and should take appropriate measures to this effect, such as a clear policy statement accompanied by specific instructions to be implemented at all levels of management [Digest, paras. 538 and 546].

202. Noting that, according to the Government, both cases are now before the courts, the Committee requests the Government to ensure that the above-mentioned principles are respected, and to keep it informed in this connection.

The Committee's recommendations

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

(a) The Committee deeply regrets that the Government has not given effect to its earlier recommendation that it adopt measures to re-establish procedures for the voluntary negotiation of conditions of employment and wages in the sugar refineries.

(b) The Committee recalls the principle according to which employers, including governmental authorities in the capacity of employers, should recognise for collective bargaining purposes the organisations representative of the workers employed by them. Consequently, it requests the Government to keep it informed of the progress of industrial relations in this industry and, in particular, to forward to it the text of any revised collective agreement.

(c) Concerning the allegations of anti-trade union reprisals which have affected staff delegates during the dispute in the sugar refineries and, in particular, concerning the failure to execute court rulings ordering the reinstatement of two named trade unionists, the Committee regrets that the Government has not provided information on the conclusions reached by the Labour Inspection Department. It recalls that in the case of national public enterprises, the authorities have an additional responsibility in preventing any acts of this nature and should take appropriate measures to this effect. Consequently, it requests the Government to ensure the respect of these principles and to keep it informed in this connection.

Case No. 1520

COMPLAINTS AGAINST THE GOVERNMENT OF HAITI
PRESENTED BY
- THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU) AND
- THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION (WCOTP)

204. The Committee examined this case at its meeting of November 1990 when it presented an interim report to the Governing Body which

appears in paragraphs 401 to 420 of its 275th Report. This report was approved by the Governing Body at its 248th Session (November 1990). To date the Government has not sent its observations on the allegations made, and thus in its 278th Report [approved by the Governing Body at its 250th Session (May-June 1991)] the Committee drew the attention of the Government to the fact that, in accordance with the procedure established in paragraph 17 of its 127th Report, approved by the Governing Body at its 184th Session (November 1971), it would present at its next meeting a report on the substance of the case, even if the information or observations from the Government had not been received in time.

205. Haiti 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

206. The allegations pending from the Committee's examination of this case in November 1990 refer to the violent arrest on 1 November 1989 of the trade union officials, Messrs. Jean Auguste Mesyeux, of the Autonomous Central of Haitian Workers (CATH), Evans Paul de la Kid, an official of the Democratic Unity Confederation (CUD) and Etienne Marineau, a member of the "17 September" People's Organisation; attacks against the CATH headquarters and destruction of its furniture on 6 November 1989 by individuals wearing military uniforms and against the premises of the Haitian Workers' Confederation (CTH) on 15 January 1990; the detention and subsequent disappearance on 12 January 1990 of the President of the Trade Union Confederation of Public Transport (CSTP), Mr. Nally Bauharnais; the break-in into the home of the deputy secretary-general of the National Confederation of Haitian Teachers (CNEH) Mr. André L. Joseph, who is allegedly under constant surveillance and against whom death threats have been made and death threats against other officials of this organisation: Lourdes Edith Joseph, Evelyne Margron Bertoni, Guy Alexandre and Guy Lochard.

## B. The Committee's conclusions

207. The Committee notes with deep regret that after a previous examination of the case without the Government's response, and in spite of the time which has elapsed since the complaint was presented and the repeated requests addressed to the Government that it furnish its comments and observations in this matter, the Government has failed to reply to the allegations of the complainant confederations.

208. In these circumstances, and in accordance with the corresponding rule of procedure [see para. 17 of the Committee's 127th

Report, approved by the Governing Body at its 184th Session (November 1971)], the Committee must again submit a report on the substance of the matter, even in the absence of information which it had hoped to receive from the Government.

209. First of all, the Committee reiterates to the Government that the purpose of the whole procedure set up in the ILO for the examination of violations of freedom of association is to promote respect for trade union rights in law and in fact. If the procedure protects governments against unreasonable accusations, governments on their side should recognise the importance of formulating, so as to allow objective examination, detailed replies to the allegations brought against them. [See the Committee's First Report, para. 31.]

210. The Committee notes that the allegations in the present case concern: (1) the arrest and detention of three trade unionists, and the ill-treatment to which they were subjected (Messrs. Mesyeux, Evans Paul de la Kid and Marineau); (2) the assault and sacking of the premises of the CATH; (3) the arrest and disappearance of a trade union leader, Mr. Bauharnais; (4) the sacking of the premises of the CTH; (5) the intimidation and threats to the lives of CNEH officials.

211. In these circumstances the Committee wishes to stress that a genuinely free and independent trade union movement can only develop where fundamental human rights are fully respected and guaranteed. As stated in the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference in 1970, the absence of civil liberties removes all meaning from the concept of trade union rights, and the rights conferred upon workers' and employers' organisations must be based on respect for those civil liberties. [See Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, paras. 68 and 72.]

212. As regards the allegations, which the Government has not refuted, according to which three trade union leaders were arrested and subjected to torture and ill-treatment while they were preparing to exercise their trade union functions, and are detained under the false accusation of conspiring against the Government, the Committee recalls that the arrest and detention of trade unionists and trade union leaders in the exercise of their activities or trade union rights constitutes a violation of the principles of freedom of association, and that such actions may create a climate of fear and intimidation which hampers the normal development of such activities.

213. While workers and their trade unions should, in accordance with Article 8 of Convention No. 87, respect the law of the land like other persons or organised collectivities (this Article also provides that the law of the land should not impair the guarantees provided for in the Convention), they must also benefit, as any other person, from proper legal procedures which conform with the principles contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In particular, this means that they have the right: to be informed, at the time of arrest, of

the reasons for the same; to be informed as soon as possible of the accusations brought against them; to be brought promptly before a competent judge; to be held in preventive custody for the shortest possible period in order to facilitate a judicial inquiry; to have the time and facilities necessary for the preparation of their defence; to communicate without hindrance with the legal counsel of their choice and to be promptly judged by an impartial and independent judicial authority. These guarantees of proper judicial procedures should not only be expressed in legislation, but also, and especially, be applied in practice.

214. Moreover, the Committee has often pointed out that governments should give the necessary instructions to ensure that no detainee is subject to ill-treatment, and that any person deprived of his liberty must be treated with humanity and with respect for the inherent dignity of the human person. When there is evidence of such ill-treatment in spite of these instructions, governments should carry out inquiries to identify and punish the parties responsible for the same and impose effective and sufficiently dissuasive sanctions to prevent its recurrence, and take such measures as may be necessary to compensate the damages suffered by the victims. [See Digest, paras. 83-86.]

215. As regards the acts of intimidation and the threats made against the officials of the CNEH, the break-in into the home of its deputy general secretary and the surveillance to which he has been subjected, the anonymous threats to the lives of CTH officials, the assault and sacking of CATH premises by individuals wearing military uniforms, as well as the sacking of the CTH headquarters, the Committee notes that these are serious acts which reveal a general climate of violence and intimidation which is far from conducive to the normal exercise of trade union rights, and which call for energetic measures by the Government. In situations of this kind an independent judicial inquiry constitutes an appropriate means for clarifying the facts, identifying responsible parties, punishing the guilty parties and preventing the recurrence of such actions.

216. Such a judicial inquiry is particularly called for in the event of the death or disappearance of an individual, as in the case of Mr. Bauharnais, whose whereabouts are still unknown since his arrest on 12 January 1990.

## The Committee's recommendations

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

(a) The Committee deeply regrets that the Government has not furnished its comments or observations on the serious allegations in this matter.

(b) The Committee deplores the failure of the Government to take the necessary measures to ensure that trade unions, their leaders and members, may exercise their activities in a climate of respect for civil liberties and fundamental human rights.

(c) The Committee requests the Government to keep it informed of the accusations that have been brought against these persons, to release immediately those against whom no charges have been brought, to ensure that the others are judged promptly by an independent and impartial tribunal, and that they enjoy all judicial guarantees, and to communicate as soon as possible to the Committee the complete text of the judgements.

(d) The Committee notes with deep concern that the Government has not yet furnished information concerning the acts of intimidation and violence denounced by the complainants. It urgently requests the Government to institute independent judicial inquiries to determine the facts, to punish the guilty parties and to prevent the repetition of such actions, and to keep it informed of the results of inquiries into:

- the arrest and disappearance, on 12 January 1990, of Nally Bauharnais;

- the attack on the premises of CATH and CTH;

- the threats to the lives of, and the measures of surveillance and harassment against, the leaders of the CATH, CTH and CNEH.

## Case No. 1526

## COMPLAINTS AGAINST THE GOVERNMENT OF CANADA (QUEBEC) PRESENTED BY - THE CONFEDERATION OF NATIONAL TRADE UNIONS (CNTU) AND - THE FEDERATION OF QUEBEC PROFESSIONAL UNIONS OF NURSES (FQPUN)

218. The Confederation of National Trade Unions (CNTU) and the Federation of Quebec Professional Unions of Nurses (FQPUN) presented a complaint in communications dated respectively 12 March and 16 October 1990. The federal Government, in a communication dated 6 June 1991, transmitted the observations and information from the Government of Quebec.

219. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) or the Labour Relations (Public Service) Convention, 1978 (No. 151).

## A. The complainants' allegations

220. In its communication of 12 March 1990, the CNTU alleges that the Act respecting the maintenance of essential services in the health and social services sector (the so-called "Act No. 160"), adopted on 11 November 1986 by the Government of Quebec, is a serious infringment of trade union rights and international Conventions ratified by Canada. This Act, adopted following a 24-hour strike by trade unions in the health services and social services, and which ordered employees in these sectors to return to work, prevents them from freely negotiating their working conditions, denies them the right to strike and imposes heavy sanctions in the event of infringements. According to the CNTU, this essentially repressive Act is solely intended to penalise non-respect of the Act on the negotiation of collective agreements in the public and parapublic sectors (the so-called "Act No. 37"). This Act has already been the subject of a complaint to the Committee on Freedom of Association. [See 248th Report, Case No. 1356, paras. 67-147.]

221. Furthermore, the obligations and prohibitions provided by Act No. 160 are subject to heavy cumulative penalties:

- unilateral modifications of working conditions respecting the organisation of work (section 9);

- heavy fines up to $10,000 for an employee, $60,000 for a trade union official and $100,000 for an association of employees per day or part of day for each infraction (sections 10 to 17);

- suspension of the obligatory check-off of union dues for a period of 12 weeks for each day or part of a day of work stoppage (sections 18 and 19);

- reduction in salary, in respect of the work carried out after the infringement, of an amount equal to the salary which an employee would have received for each period of work stoppage if he had been at work (sections 20 to 22);

- loss of one year's seniority for each day or part of a day of work stoppage (section 23);

- reversal of the burden of proof in penal and civil matters;

- presumption of guilt of employees unless proved otherwise.

These sanctions are in addition to those already prescribed by the Labour Code of Quebec.

222. In the spring and summer of 1989, employees in the health and social services sectors tried to negotiate their working conditions by using the mediation procedure prescribed by the Labour Code, but without success. In September they launched a strike in

support of their claims. The affiliated members of the CNTU went on strike for three to six days and some 40,000 nurses were on strike for seven days. During this period union members provided the essential services prescribed by the code of trade union ethics of the Social Affairs Federation/CNTU. A truce was subsequently established to facilitate the resumption of negotiations.

223. The penalties prescribed by Act No. 160 (challenged since 1986 in the courts on constitutional grounds) were applied only in September 1989 following the strike of trade unions affiliated to the CNTU. The complainants asked the courts to order the Government to defer the application of this Act until a ruling had been issued on its constitutionality. This decision is currently pending in the Appeals Court of Quebec.

224. The complainants maintain that Act No. 160 infringes the judicial guarantees established by the Canadian and Quebec Charters of Rights and Freedoms in that it makes the employer the judge of the application of sanctions prescribed by the law, creates a presumption of guilt against employees and provides for an unfair mechanism of penalties which infringes the most elementary principles of justice.

225. Furthermore, the penal and the disciplinary sanctions prescribed by Act No. 160 in the event of a strike are not consonant with the provisions of Convention No. 87, particularly since this Act imposes multiple penalties for the same action, such as loss of seniority, the imposition of a fine for each day or part of a day of strike and the suspension of the obligatory check-off of union dues. This last mentioned penalty deprives trade union organisations of the necessary funds for carrying out their obligations. Furthermore, employees who are members of trade unions affiliated to the complainant organisations and the trade unions themselves are treated differently from all the other groups in the private sector and the public sector covered by the Labour Code of Quebec. For a strike which is identical to that carried out by the complainants, these other groups are not subject to such severe penalties.

226. This case is a repetition of an infringement by the Government of Quebec which was also the subject of similar complaints to the Committee of Freedom of Association in Cases Nos. 1171 and 1356. In the latter case, which concerned Act No. 37, the Committee in particular asked the Government to allow the parties to have recourse to an independent arbitrator to resolve disputes. However, the Government chose, by means of Act No. 160 to impose sanctions which make the provisions of Act No. 37 even harsher.

227. In its communication of 16 October 1990, the Federation of Quebec Professional Unions of Nurses reiterates the substance of the information provided by the CNTU on Acts Nos. 160 and 37 and gives the following clarifications on the effects and consequences of these Acts which affect more particularly the approximately 40,000 nurses of Quebec affiliated to the FQPUN.

228. After long and fruitless negotiations, the trade unions affiliated to the FQPUN went on strike between 5 and 12 September 1989, although sufficient essential services were provided so as not to jeopardise the health and safety of the public. On 6 September 1989, the Government issued, under the provisions of Act No. 160, three Decrees (Nos. 1473, 1474 and 1475) concerning the FQPUN and its affiliated unions. Decree No. 1473 stipulates that the deductions made from the salaries of employees will be paid to the charitable institutions listed in the annex (in application of section 20 of Act No. 160); Decree No. 1474 makes provision for the replacement, amendment or suppression of some provisions of the collective agreements (in application of section 9 of Act No. 160); Decree No. 1475 stipulates that any employee will lose one year's seniority for each day or part of a day of absence from work as from 8 September 1989, as a result of the strike.

229. Almost 30,000 nurses, members of the FQPUN, were and are still subject to the penalties prescribed by sections 20 to 23 of Act No. 160, and some of them have lost up to four years' seniority. The application of these penalties is causing them serious and irreparable prejudice, since seniority is the decisive criterion for the right to paid leave, obtaining a post, replacement possibilities and the choice of certain work shifts, as well as considerable financial loss. The FQPUN and its affiliated unions have suffered and are still suffering from the consequences of the automatic suspension of the obligatory check-off of union dues, totalling a period of 96 weeks. This sanction is an infringement of freedom of association in that it deprives trade unions of their source of financing and union members of the services to which they are entitled.

230. Act No. 37 which already substantially restricted the provisions of the Labour Code as regards collective bargaining in the public and parapublic sectors practically eliminates the right to strike in hospital sector installations by establishing very high percentages of employees who must ensure essential services and who therefore may not go on strike (90 per cent in the establishments providing long-term care; 80 per cent in the other hospital centres; 60 per cent in the local community service centres; 55 per cent in the social service centres). Act No. 160 strengthens Act No. 37 by the inclusion of extremely severe penalties; workers in the health and social services sector and in particular nurses have no compensatory mechanism available for the settlement of disputes, such as an impartial procedure for compulsory conciliation and arbitration.

231. In conclusion, the complainants believe that the Government is jeopardising the right to freedom of association, attempting to weaken the trade union organisations of Quebec, hindering free collective bargaining and seriously disrupting the health and social affairs network. Finally the CNTU expresses the hope that an ILO mission should be sent to Quebec to meet the CNTU and the other trade union organisations which are subject to the effects of Act No. 160.

## B. The Government's reply

232. In its communication of 6 June 1991, the Government of Quebec outlines the history of labour relations in the health sector from 1960 to 1991. It describes the legislative framework currently in force, the dispute and illegal strikes of 1989 as well as their effects on establishments in the health sector. Since the CNTU and the FQPUN have lodged an appeal before the Superior Court of Quebec requesting a ruling on the unconstitutionality of Act No. 160 because of its incompatibility with the Canadian and Quebec Charters of Rights and Freedoms (in particular article 3 of the Quebec Charter which establishes, inter alia, freedom of association), the Government requests the Committee to postpone its examination of the case pending the above-mentioned ruling which, it believes, will provide additional information. Furthermore, the Government provides the following observations in the event that the Committee considers it appropriate to proceed forthwith with an examination of the complaint.

233. The legal framework of occupational relations currently in force in Quebec was drawn up after a long series of difficult collective negotiations following major and repeated disruptions which had occurred between 1960 and 1985 in the public services, including certain essential services, in particular in the health sector. Various advisory committees were set up during these years and several Acts, of a general nature or in response to particular circumstances were adopted on the basis of their reports.

234. The general rules governing occupational relations in Quebec are set forth in the Labour Code, which comprises the following main characteristics: the monopoly system for trade union representation, under which only one association which represents the absolute majority of employees of a bargaining unit is recognised; deduction of trade union dues at the source; obligation for the parties to negotiate with diligence and in good faith; dispute settlement machinery (conciliation, arbitration); prohibition of strikes or lockouts during the duration of collective agreements; prohibition on the employer recruiting persons or using the services of other employees of the enterprise for the purposes of replacing workers who are inactive due to a lawful strike or lockout; final and executory arbitration of disputes on the interpretation or application of collective agreements. The provisions of the Code apply to occupational relations in the public and parapublic sectors, subject to certain adaptations. For example, negotiations in these sectors are held on a sectoral basis, in derogation of the general system of negotiations at the level of the undertaking.

235. Furthermore, the Code establishes machinery designed to ensure the maintenance of essential services during a work dispute in public services, such as the gas or electricity services and the services provided by public or parapublic sectors (this concerns in particular the health and social services sector). The Essential Services Council (ESC) was set up in 1982 to oversee the application

of this machinery, in particular by helping the parties to identify the services to be maintained during a dispute. The ESC is composed of eight members: a president and a vice-president, two members from the ranks of the most representative workers' associations in the areas of public and health services and the social services, two members from the most representative employers' associations in these same areas and two additional members who are chosen after consultations with the Human Rights Commission, the Quebec Office for Disabled Persons, the Ombudsman and other persons or bodies.

236. The Act respecting the negotiation of collective agreements in the public and parapublic sectors (Act No. 37), adopted in June 1985 after Parliament had consulted all the interested parties, instituted new machinery in response to the particular characteristics of the public sector. This Act makes provision in particular for the creation of the Institute of Research and Information on Remuneration (the Institute) and establishes the possibility for a party to request the intervention of an mediator. The provisions of the collective agreement respecting wages are negotiated at the national level for a period of one year. For each of the two following years, wages are, failing agreement between the parties, determined by regulation, after publication of the Institute's report. In no case may salaries be lower than those of the preceding year and these salaries are part of the collective agreement. Negotiations may be held at the local level on the matters defined by the parties during the national negotiations. As regards establishment of the network, they may make local arrangements on certain matters stipulated in an annex of the Act. Finally, the right to strike is maintained, subject to the negotiation of an agreement on essential services or, failing that, the depositing of a list providing for the maintenance of a minimum percentage of services, which must be approved by the ESC, which has the power to intervene in the event of failure to respect these obligations.

237. The Government makes a preliminary objection regarding the complainants' allegations concerning Act No. 37, arguing that the Committee already examined these provisions during its examination of Case No. 1356 and that it has considered them as a whole to be in accordance with international standards. It thus concludes that the complainants' arguments on this subject are not receivable since the Committee has already dealt with the matter and should not reopen the case.

238. In November 1986, following illegal strikes, the National Assembly adopted the Act on the maintenance of essential services in the health and social services sector (Act No. 160) in compliance with the provisions of Act No. 37. To this end, Act No. 160 prescribes severe measures (suspension of the deduction of trade union dues at the source, loss of wages, loss of seniority, amendment of collective agreements) which reflect the serious attitude taken by the authorities towards illegal strikes in this sector. The Government emphasises that Act No. 160 is not intended to establish a special system of negotiations in the health and social services sector. It merely prescribes measures designed to ensure the respect of the

essential services in this sector in the event of an unlawful strike. In order for this Act to be applied, a strike or a work stoppage must be initiated which is contrary to the sections of the Labour Code stipulating that advance notice of a strike must be given to the Minister of Labour and that the ESC must have approved the agreement between the parties on the essential services or, failing that, a list of essential services must be maintained during the strike. These are reasonable and acceptable requirements which conform with international labour standards. If the provisions of the Labour Code are respected and essential services maintained, there is no absolute and general prohibition of the right to strike in the health and social services sector.

239. In 1988-89, collective negotiations in the health and social services sector were held within the same legal framework. They were accompanied by major illegal strikes the length of which varied between one and eight days, and which resulted in the application of the measures provided by Act No. 160. The pressure brought to bear and the illegal strikes occurred in the following way:

- from 25 April to 15 May 1989: refusal of employees represented by the FQPUN to work overtime;

- from 15 May to 22 June 1988: failure to respect, by these same employees, the lists of workers on call as set forth on the reserve lists (the ESC issued rulings equating these two methods of pressure with illegal strikes);

- from 23 June to 7 August 1989: consultation with, and rejection by, members of the FQPUN of a basic agreement concluded in June;

- from 7 August to 5 September 1989: continuation of pressure by the FQPUN;

- from 5 to 12 September 1989: illegal strike by the FQPUN;

- from 12 to 17 September 1989, illegal strike of employees represented by the Confederation of National Trade Unions;

- 13 to 14 September 1989: illegal strike by the employees represented by the Quebec Central Teachers' Union (CEQ);

- 20 September 1989, illegal strike of employees represented by the Association of Professional Health Workers (CPS).

240. These strikes had serious repercussions throughout the network:

- the large majority of local community service centres which provide everyday medical, nursing and psychosocial services, home visits and services for risk groups had to close their doors because of staff shortages;

- in the social service centres only emergency social services (protection of youth, family violence) were maintained;

- in residential homes and long-term care hospital centres, 377 and 72 establishments respectively, whose patients are very old (over 82 years on average) and increasingly dependent on others, the strike was followed by the majority of workers, which resulted amongst other things in the cancellation of bathing services for periods of up to three days, and delays in the meals services, sometimes of two or three hours, and with only cold meals being provided. Voluntary workers and members of the families of patients who came to some establishments to offer patients basic services were denied access by union workers who had formed picket lines;

- in 140 rehabilitation centres (providing rehabilitation and re-education services to a wide variety of patients: young offenders and maladjusted persons with social and behavioural problems; persons with intellectual, physical or sensory deficiencies; alcoholics or drug addicts; young mothers with difficulties of adaptation), very few services were maintained. The sectors most affected were the catering, maintenance and psychosocial services. The maintenance of essential services was in no way respected in the rehabiliation centres, and most of the tasks were performed by the supervisory staff of each establishment;

- the 143 hospital centres accept patients for the purposes of prevention, diagnosis, medical treatment and physical or mental rehabilitation. They are divided into three groups: general and specialised hospital centres, hospital centres and university institutes and psychiatric hospital centres. This category of establishments was the most affected by the industrial action and strikes of 1989. With a view to limiting the effects of these work stoppages on patients and to preserving a minimum level of quality in the care provided, each administration had to make reductions in voluntary admissions, i.e. patients waiting to be admitted to the hospital centre to receive treatment. This measures resulted in the closing down of a certain number of "short period" beds (beds used for hospitalisation periods of less than 60 days).

The Government includes in an annex a complete description of the development of the situation regarding the closing down of beds and other consequences of the staff shortages (closing of operating theatres, situation in the emergency units etc.).

241. During the 1989 strikes, the trade union organisations infringed all the provisions respecting essential services. Thus, instead of negotiating an agreement with employers on the services to be maintained in the event of a strike and submitting this agreement to the Essential Services Council for approval, in accordance with the law, or, in the absence of such an agreement, submitting for approval

their list of services to be maintained in such cases, the trade unions unilaterally determined which essential services would be maintained. The trade unions controlled the entire exercise: they determined which employees would work and in which workplace, without even allowing the employer to express its views on the matter. If the employer believed the services to be insufficient, with account being taken of the applicable legislative provisions and the actual situation of the establishment, he was obliged to ask the trade unions to add these essential services and the trade unions would then decide what action, if any, was to be given. In some cases the trade unions did not necessarily assign workers to their usual workplaces. For example, in one of the largest psychiatric hospitals, no worker was authorised by the trade union to work in the kitchens or in the household maintenance. Furthermore, in the laundry where 12,000 tonnes of washing is done each day by 100 workers, the trade union assigned only 12 persons to carry out all the work.

242. Some trade unions refused to accept the mediation process established by Act No. 37, which is a prerequisite to the acquisition of the strikes. Furthermore, trade unions did not give advance notice of strikes. As a consequence the ESC intervened on several occasions to ensure the maintenance of essential services in the health and social services sector. The Government appends six of these decisions to its reply.

243. In accordance with the jurisprudence of the Committee on Freedom of Association, it is well-established that the right to strike may be limited or even prohibited "in respect of essential services in the strict sense of the term (i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population)". On several occasions the Committee has recognised that the health and social services sector was an essential service in this sense. It has also pointed out in a recent decision [265th Report, Case No. 1421 (Denmark), para. 95] that all the essential services should be maintained during a strike. The situation in the present case was all the more serious in that the trade unions made no attempt to use the negotiation procedures established by Act No. 37; they thus decided, contrary to the provisions of Article 8 of Convention No. 87, to disregard the legal framework by launching a strike without maintaining the services essential to the public and without giving the necessary advance notice. They thus exposed themselves to the full consequences of Act No. 160, which the Government describes in the following terms.

244. As regards the suspension of the obligatory check-off of union dues, this was a temporary measure (12 weeks for each day or part of a day of strike) taken following an illegal strike which did not prevent the trade unions from collecting dues themselves directly from their members. The Government is surprised that a trade union which claims it is acting in the best interests of the persons which it represents and in accordance with their wishes should feel threatened financially if it must itself collect from its members the money used to finance its activities and that it should lay claim to

benefits which are provided by the Labour Code when it places itself in an illegal situation as regards other provisions of this same Code. The Government decided to make trade union organisations aware of their responsibilities and the consequences of the action taken by themselves and their members.

245. As regards the salary cuts, domestic labour relations jurisprudence recognises that it is appropriate to suspend and even dismiss, in certain circumstances, a worker who participates in an illegal strike. These are, in fact, the disciplinary measures customarily used. In the health and social services sector, because of the essential character of the services provided by this network, the authorities have retained the pecuniary aspect of suspension without, however, making use of the second, i.e. the absence of the worker from his workplace. Furthermore, in this sector, measures such as suspension or dismissal are impractical when a very large number of workers are absent, since the remedy would then be worse than the absence which it seeks to prevent or redress. It was in fact unthinkable to suspend the 110,849 workers of the network for a period equal to that of the illegal strike. The Government preferred to use a measure which was adapted to the situation in the establishments concerned and proportional to the absence in question; employees were not paid for the periods of illegal strike and a reduction was furthermore made from their salary equal to the salary which they would have received for the period of the illegal strike. Any disagreement on the application of this measure may be submitted to an arbitration tribunal. If the measure is confirmed, the sums deducted will be donated to a charity designated by government decree. In practice, the decrees of 6 and 13 December designated bodies which work on behalf of the beneficiaries of the health and social services sector. The Government believes that when placed in this context these salary cuts are not a violation of freedom of association. They constitute a measure which is less severe than dismissal for participation in an illegal strike, which the Committee has already accepted in the case of the strike of the American air traffic controllers, even if it believed that such an extreme measure was not conducive to the strengthening of harmonious industrial relations.

246. As regards loss of seniority, section 23 of Act No. 160 stipulates that a worker shall lose one year's seniority for each day or part of a day of illegal strike. This measure is not automatic in the sense that it is applicable only from a date determined by government decree. In this way Parliament authorised the Government to evaluate the situation and determine the appropriate time for the measure to come into force, thus ensuring a degree of progression in the application of the measures. In the present case the Government decided to apply the measure respecting seniority when it became clear, after a few days of illegal strike, that is as from 6 and 13 September 1989 respectively, for the members of the FQPUN and the CNTU, that the other measures (suspension of the obligatory check-off of union dues, salary reductions and even the possibility of penal sanctions) would not be sufficient in themselves, that the illegal strike movement was becoming prolonged and even extending and drawing

in other trade union organisations and their members. Parliament thus showed caution by establishing a measure which was proportionate to the absence: one day per year or part of a day rather than the total loss of seniority. Even though they knew the risk which they were running, workers and their organisations continued the illegal strike movement by claiming that they were the most competent, if not the only judge to decide which services should be maintained. In this case, the trade union organisations did not even attempt to negotiate through recourse to the legal means of pressure applicable to the maintenance of essential services. Indeed, it has not been proved, and the trade union organisations have not tried to do so, that a legal strike would have no effect on their bargaining power or that such a strike would not be an effective means of promoting the interests of the workers whom they represent. It is true that the promotion of workers' interests is rightly considered to be very important; however, in a democratic society, no one is above the law and those who violate these laws publicly and deliberately jeopardise the very foundations of such a society. It is precisely this kind of conduct which Article 8 of Convention No. 87 is designed to prohibit.

247. As regards the amendment of collective agreements, the Government emphasises that Act No. 160 enables it, only in the event of an illegal strike, to replace, amend or suppress any provision of a collective agreement applicable in the network with a view to "providing for the method whereby the employer fills a post, recruits new workers and as regards any matter concerning the organisation of work" and "only for the purposes of ensuring essential services" (section 9 of Act No. 160). This power was given to the Government "from the date, for the period and in the conditions which it shall fix". Two decrees were thus adopted on 6 and 13 September 1989 concerning the members of the FQPUN and the CNTU. The decrees stipulate that the texts shall remain in force until the trade unions concerned and the workers respect the law. However they cease to be applicable "when a new collective agreement is concluded between the negotiating parties empowered for this purpose". The purpose of the measure was thus limited and its effects were temporary since the illegal strikes ended on 17 September 1989 and collective agreements were in fact signed on 10 November 1989 with the FQPUN, on 27 April 1990 with the SAF (CNTU) and on 11 May 1990 with the FQPUN (CNTU). Given the short period of time between the adoption of the decrees and the end of the strikes, the Government emphasises that these decrees had no effect in practice.

248. The Government emphasises furthermore that even if sections 10 to 17 of Act No. 160 make provision for penal sanctions, no penal proceedings were taken against any workers or their organisations, despite the seriousness of their actions and the dangers to which the public was exposed. The measures imposed on trade union organisations and workers who had illegally engaged in work stoppages were only customary disciplinary measures under the labour law and do not constitute criminal or penal sanctions. The measures set out in Act No. 160 were justified and proportional to the illegal action taken by the workers and their trade union organisations, collective action

which was taken in disregard of the life or normal conditions of existence of the beneficiaries of the health and social services.

249. In conclusion, the Government asks the Committee:

- to defer the examination of the case pending the decision to be taken at the internal level and which it believes will provide additional information;

- to consider that the complaint does not call for further examination; and

- to invite the employees and trade union organisations to respect international labour standards and the maintenance of essential services in the establishments of the health and social services network.

## C. The Committee's conclusions

250. In this case, the complainants criticise the contents of Act No. 160 of 11 November 1986, adopted by Quebec to ensure the maintenance of essential services in the health and social services sector. They allege that this Act infringes the judicial guarantees established by the Canadian and Quebec Charters of Rights and Freedoms and that the sanctions which it prescribes for strikes are not compatible with the provisions of Convention No. 87. They allege that this Act is solely intended to punish infringements of the Act on the process of negotiation of collective agreements in the public and parapublic sectors (Act No. 37).

251. As regards the request for the postponement of the examination of the case, the Committee note that irrespective of the judicial proceedings initiated in the national courts by the CNTU and the FQPUN, this will not have any real effect on the present complaint which is to be placed in a quite different legal framework and must be analysed in the context of international standards and principles of freedom of association. Furthermore, the parties have provided the Committee with very complete observations and information based on comprehensive documentation (the reply of the Government, including its annexes, alone covers more than 200 pages) concerning both the legislation and the facts. The Committee therefore does not consider it appropriate in the circumstances to postpone its examination of the case since the judgements to be handed down are not such as to provide relevant supplementary information concerning the present complaint.

252. As regards the facts, the Committee notes a certain contradiction between the allegations of the complainant organisations, which state that a sufficient level of essential services was maintained or provided for, and the observations of the Government which refers to serious disruptions in the hospitals during

the period in question. In this connection the Committee has taken note of the decisions reached by the Essential Services Council when it was called upon to intervene in the various instances of industrial action and strike in June and September 1989.

253. The Council issued several decisions (on 4, 8, 13 and 21 September) ruling that the strikes, either announced or under way, were illegal. It ordered the trade unions and federations concerned to take all the necessary measures to ensure that their members returned to work and urged the latter to resume work. Furthermore, the Council studied in detail the actual situation in several large hospitals in Quebec throughout this period, in particular in its decisions of 8 and 21 September, from which the Committee notes the following conclusions and observations: "not only is the method of acquisition of the right to strike (in the public and parapublic sectors) very different from the general framework of the Labour Code, but the exercise of the right to strike is subject to strict and imperative rules. It is clear that the work stoppage organised by the federation is illegal. Absolutely none of the prescriptions of the Labour Code has been respected either as regards advance notice or as regards the essential services to be maintained during the strike ... In the case of an illegal strike, the services which a union intends to provide cannot be evaluated in the same way as during a period of legal strike ... In no part of the Labour Code is a trade union organisation authorised to launch an illegal strike and subsequently provide staff when necessary, according to its own assessment and on a case-by-case basis, as the trade union in this case wanted to do ... The witnesses who gave evidence and the examination of the lists deposited describing the health services which were to be maintained make it necessary for us to conclude that the dispute, if it results in a strike, will probably cause prejudice to the health services to which the public is entitled. Nurses play a vital role in the organisation of care in hospitals. Their work is regulated by and exclusive to their professional body. Their absence from both hospitals and care centres could cause prejudice to a service to which the public is entitled. The closing down of beds which is imposed upon employers, the refusal of admissions even before the strike has been initiated, the nurse-patient ratio which is much lower than usual are factors which oblige us to reach this conclusion" (pages 12 and 13 of the decision of 8 September). The decision of 21 September is essentially along the same lines.

254. The Committee notes that the parties were heard by the Council and were able to present their arguments before it took its decision. The Council is without any doubt in the best position to evaluate objectively the real situation given its membership and the information available to it. It would therefore seem that the strikes of September 1989 did in fact cause serious disruptions in the health services in Quebec, making it necessary in several cases to adopt various measures: the closing down of beds, the refusal of non-urgent admissions, the closing of external clinics, etc.

255. As regards the legislation, the complainants' criticisms concern Act No. 160 and the series of measures it introduces for the implementation of Act No. 37. The Government replies that the complainants' arguments concerning Act No. 37 are irreceivable since the Committee has already examined these provisions in Case No. 1356 and "considered them generally to be in accordance with international standards". The Government therefore maintains that the Committee should not reopen the case since it has made final recommendations on the subject. Before continuing its examination of the substance, the Committee wishes to rectify this observation and the conclusion which the Government draws from it.

256. Act No. 160 exists and has meaning only in conjuction with Act No. 37: the Committee cannot therefore analyse it separately. In other words it would be illogical and inappropriate to examine the supplementary Act (Act No. 160) without taking into account the provisions of the main Act (Act No. 37). The question to be examined by the Committee is therefore whether the legislative contents of Acts Nos. 37 and 160 taken together are compatible with the principles of freedom of association flowing from the respective international Conventions. In doing so the Committee is not reopening a case; its examination is restricted to the different components of a legal process of negotiation which may lead it to note that the previous conclusions and recommendations on a given Act have or have not been implemented.

257. The Committee does not intend to return in detail to the analysis of Act No. 37 which it had made in the context of Case No. 1356 [248th Report, paras. 67 to 147, approved by the Governing Body at its 235th Session]. It does, however, emphasise that that case involved organisations of teaching staff whereas the present case concerns exclusively the health and social services sector, which the Committee and the Committee of Experts on the Application of Conventions and Recommendations have always considered as essential services in the strict sense of the term, where the right to strike may be restricted or even prohibited. Furthermore the Committee recalls the comments which it had added, based on long-established case law: "... if the right to strike is restricted or prohibited in the public service or in essential services, appropriate safeguards must be afforded to protect workers who are thus denied one of the essential means of defending their occupational interests. Restrictions therefore should be offset by appropriate, impartial and speedy conciliation and arbitration procedures, in which the parties concerned can take part at every stage, whose award should be binding on both parties, and, once rendered, be rapidly and fully implemented." [ibid., para. 144.] The following recommendation, amongst others, was thus made: "as regards the determination of salaries for the second and third years of a collective agreement in the public sector, the Committee suggests that the Government consider the possibility of establishing a further procedure enabling both parties to appeal to a mediator or independent arbiter to resolve a dispute in cases where the machinery set up by the Act is unsuccessful in resolving the dispute, especially since strikes are prohibited

during this period. The awards of such arbiters should be binding on both parties." [ibid., para. 147(b).]

258. The Committee has taken due note of the explanations of the Government on the reasons which led it to establish the present negotiation system and on the constraints, particularly economic, with which it is confronted. However, the Committee notes that in the final analysis salaries in the health sector are determined at the national level by regulation. After the publication of the Institute's report, the Council of the Treasury negotiates with the associations of employees with a view to reaching an agreement (section 53). The President of the Council of the Treasury must present in March of each year to the National Assembly a draft regulation establishing salary scales for that year; the parties must be heard by a parliamentary commission before the draft regulation can be submitted to the Government for adoption (section 54); salary scales, which may not be lower than those of the previous year, are those established in the regulation adopted by the Government (section 55).

259. Thus employees in the health sector still do not enjoy a compensatory mechanism allowing impartial and independent settlement of disputes, particularly as regards salaries. Furthermore, even if they enjoy the right to strike, this right is deprived of any real effectiveness because of the minimum percentages of essential services which must be maintained (90, 80, 60 and 55 per cent depending on the nature of the establishment). The Committee therefore once again suggests that the Government establish a procedure, where employees do not enjoy the right to strike or have a right to strike which is so restricted that it is deprived of any real effectiveness, enabling the two parties in the event of a deadlock in negotiations to have recourse to conciliation or mediation procedures, and then to an independent arbitrator so as to resolve their dispute, with the arbitration awards being binding on both parties and fully and rapidly implemented. The Committee recalls in this connection that it is "essential that all members of bodies exercising conciliation or mediation functions shall not only be impartial but shall also be considered as such by the parties concerned if they are to secure and maintain their confidence, for it is on that confidence that the success of these procedures really depends". [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 370.]

260. At the same time the Committee emphasises that it is not the full text of Act No. 37 which is being called into question but only the absence of compensatory impartial and independent machinery for the settlement of disputes, in particular wages disputes, in the event of a deadlock in negotiations. The other components of the negotiation machinery established by Act No. 37 do not pose any problem of principle as regards freedom of association. In particular, the Committee has noted the role entrusted to the Institute of Research and Information on Remuneration, a joint body which in addition to its mandate of research and analysis on remuneration, "has the function of informing the public of the comparative state and development of the overall remuneration of employees in the government service ... on the

one hand and the overall remuneration of other Quebec employees ... on the other" (section 19 of Act No. 37). The Committee has also noted with interest the following passage in a decision of the Essential Services Council, in which the latter explains how it perceives its role: "The mandate of the Council is to intervene during a dispute, when it believes that there is prejudice to a service to which the public is entitled: this is its first mission. The Council plays no part in the negotiations between the parties and its only role is to ensure that the public continues to receive the health services to which it is entitled. On several occasions, within the framework of its decisions, the Council has informed the parties that it firmly believed that the best means of ensuring the continuity of services was a good climate of industrial relations in the establishments of the health network, and the opportunity for the parties concerned to conclude a negotiated labour contract. This is the philosophy adopted by the Council in the exercise of its mandate." (Page 4 of the decision of 19 June.)

261. As regards Act No. 160 itself and the constitutional arguments raised by the complainants, the Committee considers firstly that it is not competent to formulate an opinion on the compatibility of this legislation with the Quebec and Canadian Charters of Rights and Freedoms, a matter which falls within the competence of the national courts.

262. The other arguments of the complainants concern in fact the severity of the sanctions established by Act No. 160 which are intended to encourage strongly - not to say forcibly - trade unions and their members to respect Act No. 37:

- section 9: amendment of collective agreements for "any matter concerning the organisation of work ... solely for the purposes of ensuring essential services";

- sections 10 to 17: the possibility of penal procedures sanctioned by fines (25-100 dollars; 5,000-25,000 dollars for trade union officials; 20,000-100,000 dollars for trade unions). Persons who knowingly help or encourage infringements of the Act are subject to the same penalties;

- sections 18 and 19: suspension of the obligatory check-off of union dues; 12 weeks per day or part of a day of infringement;

- section 20 to 22: no salary for the duration of an illegal strike; additional reduction of salary for an equivalent period;

- section 23: loss of one year's seniority per day or part of a day of illegal strike.

263. The Government itself admits that these are indeed severe penalties. The Committee notes, however, that during the events surrounding the negotiations in 1989, no penal proceedings were taken against workers and their organisations and that the provisions

establishing the amendment of collective agreements have not been implemented. The Committee notes further that Act No. 160 is a permanent text and that these provisions could be invoked during a future dispute. In the present case there were three additional measures.

264. As regards the salary deductions, the Committee notes that they comprise two elements: the non-payment of salary for days of strike, which is not really a sanction since no work was performed; and an additional deduction equivalent to the hours not worked, and which is in fact a monetary sanction. This sanction is proportional in that its severity depends upon the duration of the infringement.

265. As regards the suspension of the obligatory check-off of union dues, the Government emphasises that the trade union may continue to collect contributions directly from its members. Although this is theoretically possible, it involves considerable difficulties in practice in the context of this case, even if these measures are temporary. It is thus a real sanction which can deplete the financing sources of the trade union, hinder its operational capacity and reduce the services which it provides to its members.

266. As regards loss of seniority, the Committee believes that this is perhaps the measure which is most likely to create medium and long-term difficulties in that it risks disrupting on a lasting basis the climate of industrial relations in establishments in the health sector. Indeed, seniority is the decisive criterion for obtaining a number of rights or benefits: choice of post, preferential right to holiday leave, transfers, etc. The negative consequences on relations between employees and between employers and employees are easy to see. As regards sanctions, in particular for strike actions, the Committee considers that there must exist a certain proportionality between the sanctions imposed and the offences committed, if one wants to re-establish a harmonious industrial relations climate, once the dispute is over. This principle is particularly relevant as regards the loss of seniority provided for by Act No. 160.

267. The complainants refer to a previous decision of the Committee concerning legislation (special Act No. 111), adopted in 1983 by the Government of Quebec, which included similar provisions: two days of salary deduction for each day of strike, loss of three years' seniority for each day of strike, suppression of the obligatory check-off of union dues, etc. [230th Report, Case No. 1171, paras. 114 to 171.] The Committee stresses, however, that the complaint there mainly concerned teachers, whereas the present case refers to essential services in the strict sense of the term.

268. However, the Committee recalls that employees deprived of the right to strike because they perform essential services must have appropriate guarantees to safeguard their interests: a corresponding denial of the right of lockout, provision of joint conciliation procedure and where, and only where, conciliation fails, the provisions of joint arbitration machinery. As regards the nature of

the system in question, the Committee points out that restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [Digest, para. 397].

## The Committee's recommendations

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

(a) The Committee once again requests the Government, in the cases in which employees concerned do not have the right to strike, or whose right to strike is so restricted that it is devoid of any real effectiveness, to establish a procedure allowing the two parties, in the event of a deadlock in negotiations, to have recourse to conciliation and mediation procedures, and then to an independent arbitrator so as to resolve the dispute, whose arbitration awards should be binding on both parties and fully and rapidly implemented.

(b) Recalling that sanctions disproportionate to offences committed are not conducive to harmonious industrial relations, the Committee invites the Government to take the proportionality criterion into account in the application of Act No. 160 to employees and trade unions in the health and social services sector. It suggests, with a view to re-establishing harmonious industrial relations, that the Government re-examine or amend the measures and sanctions already imposed.

(c) The Committee asks the Government to keep it informed of developments in the situation of industrial relations in the public and parapublic sectors.

## Case No. 1532

## COMPLAINT AGAINST THE GOVERNMENT OF ARGENTINA PRESENTED BY THE ARGENTINE TELEPHONE WORKERS' AND EMPLOYEES' FEDERATION - BUENOS AIRES TRADE UNION (FOETRA)

270. The Argentine Telephone Workers' and Employees' Federation - Buenos Aires Trade Union (FOETRA) submitted a complaint alleging violation of trade union rights in a communication of 16 April 1990. In August 1990 this organisation withdrew the complaint, stating that the problems which had given rise to it had been resolved.

Subsequently, in a communication of 10 September 1990 the organisation submitted a new complaint containing allegations that were substantially similar to those made in the previous complaint. The Government replied in a communication of 14 May 1991.

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

## A. The complainant's allegations

272. The Argentine Telephone Workers' and Employees' Federation (FOETRA) - Buenos Aires Trade Union, alleges in its communication of 16 April 1990 that, in spite of an increase of 466 per cent in the cost of living in the first quarter of 1990, remuneration in the telephone sector increased by only 40 per cent. In these circumstances, and in order to bring pressure to bear on the National Telecommunications Enterprise (ENTEL), a state enterprise, FOETRA called for a 24-hour nationwide strike on 4 April 1990, while the Buenos Aires Trade Union called for a two-hour work stoppage per shift and occupation on 5 April 1990. The Buenos Aires Trade Union was formally warned on 2 April 1990 not to carry through with this action; the union challenged this warning in court but no decision has been issued. On 10 April 1990 the Ministry of Labour issued resolution No. 208/90, in which it proposed to file action in court to obtain the cancellation of the trade union status of the Buenos Aires Trade Union, and to denounce the probable commission of crimes specified in sections 192, 194 and 197 of the Criminal Code.

273. In August 1990 FOETRA - Buenos Aires Trade Union withdrew its complaint since the Ministry of Labour had decided not to pursue the cancellation of its trade union status, thereby removing the grounds for the complaint.

274. In its communication of 10 September 1990, FOETRA - Buenos Aires Trade Union alleges that there has been no wage increase in spite of the fact that over five months have elapsed since it submitted its first complaint, and in addition, that the ENTEL enterprise had suspended overtime work; consequently, wages in August were lower than they had been in March. The workers' repeated demands have gone unheeded and the problems have begun anew. The Ministry of Labour has responded with warnings to workers not to engage in direct action, and has invoked the compulsory conciliation scheme provided for in Act No. 14786. In this context, the enterprise offered a wage increase which, though it did not fully meet the expectations of workers, was expressly accepted by them; but, as incredible as it may seem, this offer was later withdrawn on the grounds that it had not been "accepted" by the Ministry of Economy, a development which could only add fuel to the dispute (it should be noted that part of this wage increase was paid, as had been agreed, so that there is little

question that the wage increase was put into effect). The Ministry of Labour, for its part, declared "illegal" the workers' action of 28 August 1990.

275. It was in this context, the complainant organisation adds, that the Ministry of Labour issued resolution No. 704 of 30 August 1990, which instructed the Ministry of Labour's legal department to file an action in court for the cancellation of the trade union status (or recognition) of FOETRA - Buenos Aires Trade Union, in accordance with the provisions of section 56 of Act No. 23551, and to file charges alleging the probable commission of the crimes specified in sections 192, 194 and 197 of the Argentine Criminal Code. In addition, as part of the action to cancel recognition, the Ministry of Labour has requested the court temporarily to suspend the trade union's executive committee and to appoint an auditor. Moreover, the Ministry of Labour issued resolution No. 711 of 31 August 1990 which: (1) temporarily and until the conclusion of the lawsuit suspends the trade union's registration, and (2) temporarily suspends its trade union rights and the collection of funds paid by employers as membership contributions on behalf of workers belonging to the trade union. According to the legislation, trade union registration automatically implies the acquisition of recognition (section 23 of Act No. 23551); therefore, the suspension of a trade union's registration automatically implies the suspension of its legal status, making it impossibile for it to carry out any trade union activity. It therefore implies the death of the trade union. Likewise, resolution No. 711 orders the suspension of the exercise of all rights arising from the trade union's legal status, even before the court has authorised such a measure.

## B. The Government's reply

276. In its communication of 14 May 1991 the Government states that the dispute between FOETRA - Buenos Aires Trade Union and the ENTEL enterprise was subject to the provisions of Act No. 14786 on compulsory conciliation, and that the parties were therefore under the obligation to bargain during the period established by law. The FOETRA - Buenos Aires Trade Union's decision to leave the bargaining table (which the trade union itself recognises) before the expiration of the period of conciliation, did serious harm to the community and must be qualified as imprudent and as clear evidence of disregard for the public interest. In the hypothetical situation that the parties had reached agreement, but that one of them had to submit the decision to another body, the time prescribed for negotiation would not be altered. The illegality of the strike, and the Ministry of Labour's declaration of the strike as illegal, does not concern the strike itself, but rather the timing of the strike, which took place during the period set aside for conciliation. In fact, section 11 of the above-mentioned Act clearly states that, once the period set aside for conciliation has expired without the resolution of the dispute or the