692. In its communication of 10 September 1998, the complainant provided a copy of the decision of 2 September 1998 by the District Labour Court in Warsaw, reinstating Mr. Marek Grabowski in the Auxiliary Establishment of the Prime Minister's Chancellery under previous conditions of work and pay.

B. The Government's reply

Complaint of the OPZZ

693. In a communication dated 14 December 1998, the Government, with regard to the complaint presented by the "All Poland Trade Union Alliance" (OPZZ), acknowledges that under article 19 of the Trade Union Act and with regard to guidelines or draft legislation or regulations, it must consult with nationwide trade union organizations on matters of trade union concern. However, the Government points out that due to the enormous amount of reforms carried out as well as the magnitude of legislative work initiated by the Government, it happens occasionally that the Government must ask the social partners to shorten the period of consultations, but in the vast majority of cases legislation is adopted after regular and unshortened consultation with social partners.

694. Concerning the specific pieces of legislation referred to in the complaint, the Government admits that the draft regulation of the Minister of Finance on the setting of prices for heating had not been subjected for consultation with trade unions. The Government explains that it had a duty to limit the extent of the expected increase in heating prices since an uncontrolled liberalization of prices could have had a negative social impact. Since the Government had to free up heating prices as provided for in the Energy Act of April 1997, the aforementioned regulation limiting the scope of price increases had to be introduced without delay because of the forthcoming winter.

695. In the case of the draft regulation amending the procedures of granting loans from the National Housing Fund, the Government admits once again that the draft was submitted to trade union organizations for consultation on 19 January 1998, with a request for opinions by 22 January 1998. The Government indicates that the shortening of the consultation period was justified since it sought for the regulation to become law as early as March (before the end of winter), so that projects directed at more efficient production of heating energy sources could be financed and carried out over spring and summer. The Government also points out that the OPZZ never questioned the urgency of such a regulation since it submitted its comments on 20 January 1998.

696. In the case of the draft Bill introducing acts reforming public administration, the Government explains that the need to shorten consultations resulted, on the one hand, from the tight legislative calendar of the Parliament and, on the other hand, from the fact that the Bill could not be finalized before the adoption of other Bills determining spheres of competence of new organs to be created in relation with the reform of public administration.

697. Finally, concerning the issue that the Government treats unions unequally, it explains that the 1991 Act on the settlement of collective disputes does not allow for the Government to be a party to a collective dispute. However, the Government explains that it has reached agreements with several trade union organizations concerning settlement procedures in cases of conflict. In fact, on 29 May 1992, the Government signed an agreement of this type with the "Solidarnosc" trade union. However, the Government indicates that the OPZZ did not take up the offer and therefore does not have a similar agreement with the Government which entails that there are no legal nor contractual grounds for the OPZZ to enter into collective disputes with the Government.

Complaint of the WZZPS

698. In a communication dated 5 November 1998, the Government, with regard to the complaint presented by the Warsaw Trade Union of Self-Government Employees (WZZPS), explains that the first matter concerning the collective dispute with the President of the capital city Warsaw, was resolved on 2 October 1998. In this regard, the Government states that an agreement with the plaintiff was concluded before the district court of Warsaw Labour Division by which the parties agreed to the termination of the employment contract on 31 December 1998 due to the liquidation of the work post of the plaintiff, with full payment of redundancy pay.

699. Concerning the termination of the employment contract of the Chairperson of the Board of the WZZPS, the Government explains that this termination was done in conformity with article 52, paragraph 1, of the Labour Code and that this decision was taken by the employer of Ms. Sikorka-Mrozek following her unacceptable conduct, consisting in using sick leave contrary to their designation. While using her sick leave, Ms. Sikorka-Mrozek was carrying out trade union activities on the work premises. According to the Government, Ms. Sikorka-Mrozek, as Chairperson of the Board of the WZZPS, decided unilaterally to use her work post in the Education Section of the Board of Zolibory District in room 315 as the head office of the trade union. Her employer acknowledged this fact and accepted it in order to ensure appropriate cooperation with the union. However, since the uncooperative conduct of the Chairperson and her trade union activity made difficult the work of the Education Section, her employer proposed the use of another room exclusively for trade union purposes. This was refused by the Chairperson who then took several months of sick leave taking with her the key to room 315. Since official documents were in that room and the lack of access paralysed the work of the Education Section, on 6 October 1997 room 315 was opened by a commission and the trade union documentation which was there was secured. Ms. Sikorka-Mrozek lodged a complaint against this action, which was rejected by the district prosecutor and by the Voivodship prosecutor in appeal. The Government also mentions that Ms. Sikorka-Mrozek has since lodged a complaint to the Labour Court concerning the termination of her employment contract and that the decision on that case is still pending.

Complaint of the trade union "Sprawiedliwośc"

700. In a communication dated 6 November 1998, the Government, with regard to the complaint presented by the trade union "Sprawiedliwośc", explains that according to the Auxiliary Section of the Prime Minister's Chancellery, Mr. Marek Grabowski, chairman of the trade union "Sprawiedliwośc", created this trade union and took the function of chairman as a way to gain special protection against the receipt of the notice of termination of his employment contract. The Auxiliary Section of the Prime Minister's Chancellery states that from 9 January 1995 to 30 June 1998, Mr. Grabowski was the head of a publishing and editorial section. After an internal inquiry on 13 March 1998, Mr. Grabowski was informed of the negative appraisal of the work of his section and of the intention of his employer to terminate his employment contract. Since Mr. Grabowski was on sick leave from 17 March to 28 March 1998, the notice of termination was only submitted to him on 30 march 1998 (a Monday). On the same day, his employer received the information concerning the creation of the founding committee of the trade union "Sprawiedliwośc". In this context, the Government explains that Mr. Grabowski lodged a complaint to the Labour Court demanding that the notice of termination be annulled in view of the protection he was entitled to according to the Trade Union Act.

701. In a communication dated 27 January 1999, the Government indicates that an appeal was lodged by the Auxiliary Section of the Prime Minister's Chancellery against the decision of the Labour Court of 2 September 1998 which requested the reinstatement of Mr. Grabowski.

C. THE COMMITTEE'S CONCLUSIONS

702. *The Committee notes that this case relates to three different sets of allegations by three different plaintiffs, concerning namely, the refusal to consult with workers' organizations before the adoption of legislation, anti-union discrimination and dismissals of trade union leaders.*

Complaint of the OPZZ

703. *Concerning the first complaint, the Committee notes that the Government acknowledges in all cases cited by the complainant that it did not consult or had to shorten the consultation periods relating to various pieces of draft legislation. In each case, the Government invokes compelling reasons on his side for not fully respecting its obligations of consultation with the social partners. On this aspect of the case, the Committee recalls the importance of consulting organizations of employers and workers during the application of legislation which affects their interest. While taking due note of the Government's explanations and the fact that in the vast majority of cases, the principle of consultation seems to be respected, the Committee draws nevertheless the attention of the Government to the provisions of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which provides that measures should be taken to promote effective consultation and cooperation between public authorities and employers' and workers' organizations without discrimination of any kind against these organizations [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, paras. 928 and 929]. The Committee expresses the hope that the Government will do its utmost to respect these principles in the future.*

704. *Concerning the second aspect of the complaint by the OPZZ, the Committee notes that according to the Government, no agreement exists between the OPZZ and itself regarding procedures for the settlement of collective disputes while such agreements do exist with other unions. In these circumstances, the Committee can only encourage the parties to start negotiations with a view of concluding such an agreement. The Committee requests the Government to keep it informed of any developments concerning this aspect of the case.*

Complaint of the WZZPS

705. *With regard to the complaint formulated by the WZZPS, from the information contained in the file, the Committee understands that the first aspect of the complaint, which concerned the lack of negotiations with regard to a collective labour dispute, was solved when an agreement with the plaintiff was concluded before the District Court of Warsaw/Labour Division.*

706. *Concerning the second aspect of the complaint, namely the termination of the employment contract of Ms. Sikorka-Mrozek and the violation of trade union premises by the employer, the Committee notes the conflicting versions of the two parties. The Committee recalls firstly that one of the fundamental principles of freedom of association is that workers, as well as trade union officials, should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal,*

demotion, transfer or other prejudicial measures. But the principle that a worker or trade union official should not suffer prejudice by reason of his or her trade union activities does not necessarily imply that the fact that a person holds trade union office confers immunity against dismissal irrespective of the circumstances. The Committee has pointed out in the past that one way of ensuring protection of trade union officials is to provide that these officials may not be dismissed either during their period of office or for a certain time thereafter, except, of course, for serious misconduct [see **Digest**, *op cit. paras. 724, 725 and 727]. The Committee notes that the case of Ms. Sikorka-Mrozek is still pending in the Labour Court. In this regard, the Committee requests the Government to send it a copy of the judgement as soon as it is handed down and, if it appears from the Court decision that the dismissal is found to be related to the exercise of legitimate trade union activities, to obtain the reinstatement in her job of Ms. Sikorka-Mrozek and to keep the Committee informed of the measures taken in this respect.*

707. *As regards the use of Ms. Sikorka-Mrozek's office in the Education Section as the trade union head office and the subsequent intrusion by her employer in that office during her absence, while the Committee takes note of the Government's explanations, it still recalls the importance it attaches to the principle that the property of trade unions should enjoy adequate protection and that the occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyse trade union activities [see* **Digest**, *op. cit. paras. 183-184]. Finally, the Committee requests the Government to confirm that the trade union WZZPS can perform its legitimate trade union activities in appropriate premises and to keep it informed in this regard.*

Complaint of the trade union "Sprawiedliwośc"

708. *Concerning the complaint of the trade union "Sprawiedliwośc", the Committee notes that with regard to the dismissal of Mr. Marek Grabowski, chairman of the founding committee of "Sprawiedliwośc", a decision of 2 September 1998 of the Warsaw District Labour Court requested that Mr. Grabowski be reinstated in his post under previous conditions of work and pay. The Committee also notes that Mr. Grabowski's employer, the Auxiliary Section of the Prime Minister's Chancellery, has lodged an appeal against this court decision. While the employer declares that Mr. Grabowski was dismissed solely on grounds of incompetence and that the creation of the union was merely a protection against an imminent dismissal, the complainant emphasizes the fact that he received his notice of termination of employment contract on the same day he informed his employer of the creation of the union "Sprawiedliwośc". In view of the contradictory statements as to the reasons for terminating the employment contract of Mr. Grabowski, the Committee can only recall that no person should be dismissed or prejudiced in his or her employment by reason of legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* **Digest**, *op. cit., para. 696]. The Committee requests the Government to keep it informed of the outcome of the appeal judgement in this case and to take measures to reinstate Mr. Grabowski if his dismissal is proven discriminatory. The Committee also requests the Government to indicate if the union "Sprawiedliwośc" is able to perform its activities normally.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Concerning the complaint of the OPZZ, the Committee requests the Government to ensure that measures are taken in the future to promote effective consultation and cooperation between the public authorities and the social partners before adopting legislation affecting workers' or employers' interests; the Committee also encourages the Government and the OPZZ to start negotiations in view of reaching an agreement on procedures for the settlement of collective disputes and requests the Government to keep it informed in this regard.

(b) Concerning the complaint of the WZZPS, the Committee asks the Government to send it a copy of the judgement concerning the dismissal of Ms. Sikorka-Mrozek and, if it appears from the court decision that the dismissal is found to be related to the exercise of legitimate trade union activities, to obtain her reinstatement. The Committee requests the Government to keep it informed of the measures taken in this respect. The Committee also requests the Government to confirm that the WZZPS can perform its legitimate trade union activities in appropriate premises and to keep it informed in this regard.

(c) Concerning the complaint of the trade union "Sprawiedliwość", the Committee asks the Government to keep it informed of the outcome of the appeal judgement in the case of the dismissal of Mr. Grabowski and to take the measures to reinstate him if his dismissal is proven discriminatory. The Committee also requests the Government to indicate if the trade union "Sprawiedliwość" is able to perform its activities normally.

Geneva, 4 June 1999.

Max Rood,
Chairperson.

317th Report of the Committee on Freedom of Association

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 317th Session (May 1999), met at the International Labour Office, Geneva, on 27 and 28 May and 4 June 1999 under the chairmanship of Professor Max Rood.

2. The Committee examined a representation for the non-observance by Denmark of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1948 (No. 98), made under article 24 of the ILO Constitution by the Dansk Magisterforening (DM).

3. The Committee submits a report on this representation for the Governing Body's approval.

Case No. 1971

Definitive report

Representation against the Government of Denmark presented by the Association of Salaried Employees in the Air Transport Sector (ASEATS) and the Association of Cabin Crew at Maersk Air (ACCMA) under article 24 of the ILO Constitution alleging non-observance by Denmark of 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)

Allegations: Government interference in free collective bargaining and the right to strike through the statutory imposed extension of collective agreements and the linking of agreements for conciliation purposes

4. By communications dated 7 May, 1 September 1998 and 4 May 1999, the Association of Salaried Employees in the Air Transport Sector and the Association of Cabin Crew at Maersk Air, referring to article 24 of the ILO Constitution, sent the Director-General a representation alleging non-observance by the Government of Denmark of 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).

5. At its June 1998 session, the Governing Body declared this representation receivable and decided to refer it to the Committee on Freedom of Association for examination (Case No. 1971) [see GB.272/8/2].

6. The Government sent its comments on this case in a communication dated 25 January 1999.

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

A. The complainants' allegations

8. In a communication dated 7 May 1998, the Association of Salaried Employees in the Air Transport Sector and the Association of Cabin Crew at Maersk Air allege that the Government of Denmark has violated Conventions Nos. 87 and 98 by upholding, and

applying against them, section 12 of Act No. 192 of 6 March 1997 on Conciliation in Labour Disputes (hereinafter, "the Conciliation Act").

9. By way of background, the complainants indicate that the agreements between them and their respective employers were due for renewal in the spring of 1998. On 30 March 1998, the Public Conciliator informed the Association of Salaried Employees in the Air Transport Sector that the Danish Employers' Association had wished this association's agreement with Scandinavian Airlines (SAS) and Scandinavian Airlines Data to be subject to mediation. The Association of Salaried Employees in the Air Transport Sector protested against this inclusion in conciliation procedures by a letter dated 3 April 1998, referring in particular to the fact that similar inclusions had occurred in 1991, 1993 and 1995, thereby depriving them of their right to free collective bargaining. This protest was ignored by the Public Conciliator who, thereby, made use of his powers under section 12 of the Conciliation Act.

10. In this respect, the complainants recall that the Conciliation Act empowers the Public Conciliator to include several sectors of employment in a mediation irrespective of the wishes of the unions and/or employers concerned and furthermore provides that the result of the mediation is to be decided by a majority of the workers taken as a whole, all sectors included. Thus, a sector having voted in favour of the mediation may be forced into a labour dispute if the majority of the labour market votes against the mediation. On the other hand, where the members of a sector have voted against the mediation, they may be deprived of their right to strike if the majority of the workers in the labour market vote in favour.

11. In the present case, the collective agreements of the Association of Cabin Crew at Maersk Air were also included in the global mediation. At the expiry of the collective agreements of the complainants, the respective employers' parties called a lockout of the members of the organizations effective 27 April 1998.

12. On 6 May 1998, the Minister of Labour introduced to Parliament Bill No. 86 on the renewal of certain collective agreements. Section 1 of the Bill provides that the collective agreements comprised by the mediation result of the Public Conciliator are renewed until 1 March 2000. Sections 2 to 4 introduced certain amendments to the agreement and under section 5 the conflict was terminated. Section 6 imposes a peace obligation on the parties for the entire two-year extension. The Bill was adopted by the Parliament on 7 May 1998. Thus, the collective agreements for the complainants were renewed by statutory provisions, leaving no opportunity for the complainants to enter into collective bargaining with their counterparts.

13. In conclusion, the complainant states that the free functioning and free collective bargaining of the complainants have been violated by the Government through the action taken by the Public Conciliator under section 12 of the Conciliation Act and their rights to strike and enter into free collective bargaining have been violated by the adoption of Bill No. 86.

14. In their communications dated 1 September 1998 and 4 May 1999, the complainants emphasize that the statutory renewal of collective agreements was made with respect to the entire labour market and was not limited to any restricted sectors which could be considered as essential services.

B. The Government's reply

15. In a communication dated 25 January 1999, the Danish Government stated that on 30 March 1998 the Public Conciliator presented a draft settlement for the renewal of the

collective agreements which expired on 1 March 1998. The majority of the collective agreements were in the field covered by the Danish Employers' Confederation (DA) and the Danish Federation of Trade Unions (LO). The draft settlement also included the renewal of some collective agreements in the field of the DA and the Federation of Salaried Employees (FTF).

16. The collective agreement between Scandinavian Airlines Systems and the Association of Salaried Employees in the Air Transportation Sector and the collective agreement between Maersk Air and the Association of Cabin Crew at Maersk Air have been included in the Public Conciliator's draft settlement and have subsequently been covered by the Government's Act on renewal. Scandinavian Airlines System and Maersk Air are members of the DA.

17. The draft settlement was put to a vote and was adopted by the employer side, but rejected by the employee side. When the draft settlement had been rejected, an industrial dispute broke out on the Danish labour market, comprising more than 400,000 employees.

18. When the industrial dispute had been running for ten days, the Folketing (the Danish Parliament) adopted the Act on renewal of certain collective agreements, etc. for the purpose of putting an end to the general dispute which had paralysed many functions in the Danish society with resulting serious consequences.

19. The Government recalls that it is significant for the Danish system that a very large part of the Danish workers are organized and this high organization rate forms the background for the collective bargaining system. The Danish trade unions are traditionally established as national unions divided according to skills, and these are further divided into local branches. Typically, the workers in an individual enterprise are organized in a number of different unions according to their specific skills. Denmark has no industrial unions. The Government further emphasizes that the labour law system is to a wide extent based on agreements between workers and employers and to a lesser extent on legislation. There is a large number of collective agreements on the Danish labour market. In the field of the DA/LO alone, there are more than 600 collective agreements. These collective agreements are considered as private agreements and thus the Danish Government has only little knowledge of the contents of the individual collective agreements.

20. As the collective agreements have to a wide extent been concluded on the basis of occupational sector or work functions, there are usually several collective agreements in the individual enterprise which regulate the workers' pay and working conditions. This is the background as to why the renewal of the individual collective agreements is designed to take place simultaneously and why the social partners aim at achieving a uniform development on the organized labour market. Before the expiry of the individual collective agreement, the parties undertake negotiations on the renewal starting with the exchange of claims.

21. Even when the negotiations for a new collective agreement have not been concluded before the expiry of the collective agreement, this does not result in a collective agreement's gap. Usually, the collective agreement continues to run until an agreement on a new collective agreement has been made, or until one of the parties takes industrial action — the workers by launching a strike and the employers by a lockout under the respective collective agreement.

22. Until 1995, the renewal of collective agreements took place more or less through a renewal of the collective agreements both in the private sector and in the public sector during the spring of the odd year. In 1995, as a new initiative, three-year collective agreements were concluded in the industrial sector (the Confederation of Danish Industries

(DI) and CO Industry), while the rest of the private sector and the public sector renewed their collective agreements for the usual two-year period.

23. In connection with the renewal of the collective agreements in 1997, the private sector, not including the industry, and the public sector made agreements on the renewal of their collective agreements. In the field of the DA/LO, both one-year and three-year collective agreements were made. The background was the industry's three-year renewal of collective agreements in 1995 and a wish to restore the pace of the renewal of the collective agreements. The rest of the labour market kept the two-year collective agreements.

24. In connection with the renewal of the collective agreements in the spring of 1998, the majority of the private sector was successfully brought into the same renewal pace, which means that negotiations will mainly take place in year 2000. In the spring of 1999, however, the collective agreements in the public sector (state and local authorities) and in the private sector, the SALA sector (i.e. the sector of agriculture, forestry and horticulture) and the financial sector are to be renewed.

25. The job of the Public Conciliator is to assist the social partners in connection with the renewal of the collective agreements and to settle disputes. The tasks and powers of the Public Conciliator are laid down in the Conciliation Act. The Danish Government has no influence on the Public Conciliator's actions in connection with the renewal of the collective agreements. He/she does not, for example, have to take into account any national economy considerations in his/her efforts to reach a draft settlement which is acceptable to the parties. It is the task of the Public Conciliator to try to make the two parties reach agreement and he/she has certain powers in this connection. Among his/her most important powers are the following:

— the Public Conciliator may decide on his/her own or at the request of the parties to convene them for negotiations;
— the Public Conciliator may, while acting as a mediator, postpone a notified dispute for two weeks;
— the Public Conciliator may, when he/she finds it expedient, propose a draft settlement. Before he/she proposes the draft settlement, he/she has to consult representatives of the parties and representatives of the main organizations, if the parties are members of such an organization;
— the Public Conciliator may decide that several draft settlements in different sectors completely or partially are to be considered as a whole, so that the results of the voting in the different sectors are linked together. It is a precondition that the negotiation possibilities in the respective sector are considered exhausted. It is the Public Conciliator who decides when the negotiation possibilities are exhausted.

26. A draft settlement has to be put to the vote with the parties. When a draft settlement is proposed, the members of the organizations, which are included, must be notified thereof. On the workers' side, the voting takes place either by ballot or by voting in a competent body. The organizations decide themselves (in their regulations) whether they vote in the former way or in the latter.

27. The workers' side may reject a draft settlement by ballot by an ordinary majority if the participation rate in the poll is above 40 per cent. If the rate is below 40 per cent, it is a requirement that a majority has voted against the proposal and that this majority represents at least 25 per cent of the persons entitled to vote. On the employers' side, the voting takes place according to the organizations' regulations.

28. In 1998, the majority in the private labour market negotiated on the renewal of their collective agreements. The renewals concerned more than 500 collective agreements and covered more than 400,000 employees. The parties to the collective agreements suc-

ceeded under the Public Conciliator's guidance and direction in reaching agreement on the renewal of a number of collective agreements which covered more than 98 per cent of the workers.

29. On 31 March 1998, the Public Conciliator proposed a draft settlement which was recommended by the main organizations. The draft settlement covered partly the already concluded agreements, partly the collective agreements in the few sectors without any agreements. The draft settlement was put to the vote and the result of the vote was to be returned to the Public Conciliator on 24 April 1998, at the latest. The draft settlement was accepted by the employers' side, but rejected by ballot by the workers' side.

30. Following the rejection of the draft settlement, the dispute broke out on 27 April 1998. Immediately after the announcement of the ballot, the Government summoned the parties to the dispute to a meeting, where the Prime Minister reminded the parties to the collective agreements of their responsibility and encouraged them to undertake negotiations immediately in order to find a solution which could put an end to the dispute.

31. For the next ten days, the parties continued the negotiations, which mostly concentrated on more days off from work. At that point, however, the parties informed the Government that they could not reach an agreement which would put an end to the dispute. At the same time, the parties expressed the view that the situation had come to a deadlock and that there was no chance of a negotiated solution bringing an end to the dispute within the next few weeks.

32. On that background, the Government put forward a proposal for the renewal of certain collective agreements. The Bill was adopted by the Folketing on 7 May and the dispute stopped on 8 May 1998.

33. The new collective agreements run for two years so that the system of the majority of the private labour market negotiating collectively in the year 2000 is maintained. Regarding the contents of the Act, it is based on the rejected draft settlement with the addition of different forms of days off (up to five days for families with children), on which issue the parties had negotiated following the break-out of the dispute. These improvements were partly financed through a reduction of the employers' part of the pension contribution, partly through the abolition of an employer tax to the State.

34. The Government observes that this case contains two main questions. The first is the question of the Public Conciliator's right to link several draft settlements, and the second the Government's statutory intervention.

35. Concerning the first question, the Government emphasizes the special characteristics of the Danish labour market. The fact that a large number of collective agreements exist in the same enterprise and in the same sector with different unions makes it necessary for it to be possible to have a single ballot in a situation where the parties are not able to solve the problems themselves. The Government stresses that it is not a matter of expanding a collective agreement to cover other groups than those directly covered by the respective collective agreement. Nor is it a matter of forcing a collective agreement onto the majority of the workers. The fact is that negotiations take place in the individual sectors and if the Public Conciliator finds it expedient, he/she may propose a draft settlement for the solution of outstanding questions. As a starting point, such a proposal has to be put to the vote among workers and employers, who may either accept it or reject it. The linking rule means that the individual draft settlements may — if the negotiation possibilities in the individual fields are considered exhausted — be linked together as a single proposal, which all the affected workers and employers vote on as a whole. Therefore, the result is the same as if it had been the case of an industrial collective agreement, where sometimes groups of

workers, e.g. in individual enterprises or groups with special functions, have to accept that they are turned down by the majority of their colleagues. If it were not for this rule, some even very small groups of workers, by voting no to their collective agreement, could prevent a return to work, irrespective of their colleagues voting yes to their collective agreements because the individual job functions in modern enterprises are so heavily dependent on each other. In that situation, such a group could exercise a sort of extortion which their colleagues would find unacceptable.

36. Basically, it is therefore a matter of a solidarity rule which underlines the collective nature of the Danish labour law system. Regarding the question whether it is a matter of large or small groups, it appears from the above description that if the majority of the workers who are covered by a linked draft settlement disapproved of this draft settlement, they have the power to reject it by vote. In the present case, a majority of workers, together with the complainants, voted no to the draft settlement. Furthermore, it was a matter of such a large poll participation that the proposal could be rejected by an ordinary majority. The Government therefore has difficulty seeing where the linking in this concrete situation has been detrimental to the complainants, even if their own arguments were accepted. They actually achieved the result they wanted from the ballot.

37. Regarding the legitimacy of the statutory intervention, the Government first points out that as soon as the conflict was a fact, it had established a monitoring group of government officials from a number of ministries to monitor the development of the dispute daily and the consequences it had on different sectors of society.

38. The parties involved in the dispute showed readiness to grant the necessary exemptions in order to avoid the safety and health of the population being jeopardized, which was the case more or less. Towards the end of the dispute problems started to emerge which could not continue to be solved by granting exemptions or other emergency measures. These were mainly problems due to lack of cleaning and accumulation of garbage which created serious problems for institutions and hospitals. According to information received from the hospitals many of them could only maintain an acute emergency service as regards surgery and medical treatment and there were also growing problems with supplies of certain medicaments used in the treatment. There were increasing transport problems in general which led to a risk to the vital transportation of medicine and medical test analyses.

39. For the Government, however, the decisive factor was that on the basis of the expressed declarations of the parties, it could be foreseen that the dispute would run for at least five weeks. In addition to this, the dispute would now be expanded to include groceries and other daily necessities. The Danish society is not able to endure a dispute of this duration and scope, as this would lead to serious problems for safety and health. It would have been irresponsible to risk such a situation just for the sake of providing documentation.

40. The Government is aware of the Committee's practice, according to which the economic consequences of a dispute are — as a starting point— considered irrelevant for deciding whether an intervention is legitimate or not. However, the Government points out that such a large-scale dispute would have had catastrophic consequences for the national economy if it had been allowed to run for the mentioned further three weeks at least. Denmark has, as one of the few countries in the world, been successful in fighting unemployment, which during the last five years has been halved from 13 per cent to approximately 6 per cent. It is obvious that such a measure puts very heavy demands on trade and industry which have to be able to absorb the many unemployed persons. This can

only be possible under favourable economic conditions. If Danish trade and industry — and not least the exporting trades — had to lie idle for more than the approximate two weeks which had already passed, there is hardly any doubt that this would have had long-term damaging effects, not only in the form of immediate economic losses, but perhaps even worse in the form of lost market shares, which it would have taken years to regain. A return to high unemployment would have been putting a very large burden on the population.

41. As regards the nature of the intervention, we point out that the time frame of two years corresponds to the usual term for Danish collective agreements, that according to the review of the Government it would not have been possible or expedient considering the very purpose of the intervention to intervene only in certain sectors, but that the transport sector, to which the complainants also belong, is under all circumstances essential to the functioning of society and, furthermore, that the workers were granted concessions in several essential respects which constitute a major step forward seen from a child and family policy angle. Lately, Danish wage increases have actually been above the countries normally used as comparators.

42. In conclusion, the Government argues that the power which the Public Conciliator has under section 12 of the Conciliation Act to link several sectors into a single draft settlement, is closely connected to the structure and the dynamics which characterize the Danish labour market model, a model which is further characterized by a high rate of organization, many unions, many sectoral collective agreements, which — among other things — mean that pay and working conditions in one sector of activity are regulated by several different unions' collective agreements and by the fact that Danish collective agreements unlike in other countries are not extended to other areas by law as general collective agreements.

43. The individual member is ensured influence in relation to the draft settlement by this being sent to all members for a ballot. It should, furthermore, be stated that linking is not the same as an "extension of an agreement to the entire sector", *linking means that the voting on the renewal of a number of collective agreements takes place as single ballot.* This means that the Association of Salaried Employees in the Air Transportation Sector and the other unions have negotiated on the renewal of their own collective agreement(s) and that the provisions of the draft settlement are subsequently incorporated into the individual collective agreements. Thus, the acceptance of a draft settlement does not imply that the collective agreements, which are covered by the draft settlement, lapse.

44. The Act on renewal of certain collective agreements, etc. was adopted in 1998 by the Folketing for the purpose of bringing an end to a major dispute, which had paralysed many functions and had already had serious consequences as a result. However, the Folketing did not intervene until the moment when the social partners had given up the possibility of reaching a negotiated settlement and had notified the Government that they were not able to reach an agreement within the following weeks.

45. As it has been stated, both the Public Conciliator's power to link several collective agreements resulting in a single draft settlement and the Folketing's power, under extraordinary circumstances, to intervene and put an end to a dispute on the labour market when this had become a threat to the safety and health of the population, are necessary elements of the Danish collective agreements model. Without these elements, the Government argues that it would be necessary to change the Danish model radically, which neither the Government nor the social partners would like to do at the present time.

C. THE COMMITTEE'S CONCLUSIONS

46. *The Committee observes that this case concerns allegations that the Government has violated the complainants' right to strike, right to bargain collectively and has interfered in the complainant organizations' free functioning both through the maintenance and application of section 12 of the Conciliation Act and through the adoption of statutory provisions extending collective agreements.*

47. *The Committee must first recall that it has already examined on several occasions in the past complaints concerning the application of section 12 of the Conciliation Act (see Case No. 1418, 254th Report and Case No. 1725, 292nd and 307th Reports) and concerning intervention by the Government in free collective bargaining through the statutory extension of collective agreements [see Case No. 1338, 243rd Report, Case No. 1443, 259th Report and Case No. 1421, 265th Report].*

48. *As concerns section 12 of the Conciliation Act, the Committee notes the Government's argument, similar to that which has been expressed in previous cases, concerning the reasons why, within the Danish system, it is important for individual collective agreements to be renewed simultaneously. In particular, it notes the Government's position that the fact that a large number of collective agreements exist in the same enterprise and in the same sector with different unions makes it necessary to provide the possibility of having a single ballot in situations where the parties are not able to solve the problems themselves. According to the Government, the linking of individual draft settlements as a single proposal is the equivalent to industrial collective agreements where groups of workers in individual enterprises with special functions may have to accept a contrary position favoured by the majority of their colleagues. Finally, the Government stresses that, because individual job functions in modern enterprises are so heavily interdependent, extortion could be exercised by small groups of workers over the majority of their colleagues if such linking were not possible.*

49. *The Committee further notes the information provided by the Government concerning the tasks and powers of the Public Conciliator. In particular, the Committee notes that the Public Conciliator may decide that several draft settlements in different sectors be considered as a whole for voting purposes only after he or she considers that the negotiation possibilities in the respective sector have been exhausted. Finally, the Committee notes the Government's observation that in the present case the linking was not detrimental to the complainants since they voted, along with the majority, to reject the draft settlement.*

50. *While taking due note of the observations made by the Government, in particular that the Conciliation Act does not result in the extension of "a collective agreement" to an entire sector of activity, the Committee still observes that the linking of various draft settlements to be submitted to a vote within the overall labour market may result in a given sector, to which one of the draft settlements would apply, finding itself subject to a decision of the majority of the labour market even if the majority of the workers in that sector, represented by a majority organization, maintained a different view [see, for example, Case No. 1418, 254th Report, para. 206]. The Committee therefore considers that the view expressed when it last examined the conformity of section 12 with the principles of freedom of association (see Case No. 1725) remains valid. At that time, the Committee noted that, even subsequent to the legislative amendments made to the Conciliation Act in 1997, the system still made it possible for an overall draft settlement to cover collective agreements involving an entire sector of activity even if the organization representing most of the workers in that sector rejected the overall draft settlement [see Case No. 1725, 307th*

Report, para. 29]. The fact that, in this particular case, the outcome of the voting was in line with the position of the complainants does not change the fact that the present legislation can give rise to restrictions on the right of majority organizations to enter into free collective bargaining in a manner contrary to Article 4 of Convention No. 98.

51. *Furthermore, the Committee considers that the analogy made to industrial collective agreements is irrelevant. The particularities of the Danish system raised by the Government, such as the existence of several different collective agreements in a given enterprise, make sense only in so far as they recognize the right of these many and diverse representative sectoral unions to undertake meaningful negotiations. The argument of job-interdependency and the risks of extortion should not be such as to deny the rights of legitimate representative unions to participate in free collective bargaining.*

52. *Finally, the Committee notes that section 12 may also have a negative impact on the possibility of a workers' organization to exercise the right to strike in so far as it may be bound by a labour market decision to accept an overall draft settlement to which a collective agreement concerning their sector has been linked. The Committee requests the Government to review the legislation, in consultation with the social partners, so as to ensure that the view of the majority of workers in a given sector is not subordinated to the view of the majority of the entire labour market as concerns the possibility of continuing free collective bargaining of terms and conditions of employment and as concerns the possibility of undertaking industrial action.*

53. *As concerns the legitimacy of the statutory intervention extending for two years the collective agreements under review in the spring of 1998, including those pertaining to the complainants, the Committee takes due note of the considerations evoked by the Government to the effect that: the extension for two years corresponds to the usual term for Danish collective agreements; the transport sector, which includes the complainants in this case, is under all circumstances essential to the functioning of society and; the legislative extension also granted concessions to the workers in several essential respects.*

54. *The Committee must nevertheless first observe that the principal effect of this intervention has been to render impossible collective bargaining in the private sector for the period of the two years by which the collective agreements have been extended. In this regard, the Committee recalls the importance it attaches to the principle that the public authorities should refrain from any interference which would restrict or impede the lawful exercise by trade unions of their right, which the Committee regards as an essential element in freedom of association, to seek to improve the living and working conditions of those whom they represent through collective bargaining or other lawful means; and that any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and formulate their programmes [see 243rd Report, para. 245 (Case No. 1338 (Denmark))].*

55. *The Committee also notes that a further effect of the Act to Renew Certain Collective Agreements has been both to terminate the industrial action which had already begun and to prohibit any further industrial action which might occur in the relevant sectors for the period by which the operation of the collective agreements were statutorily extended. In this respect, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of whole or part of the population) [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, 4th edition, para. 526]. While noting the Government's position that the transport sector, which includes the complainants in this case, is under*

all circumstances essential to the functioning of society, the Committee must recall that it does not consider transport generally to constitute an essential service in the strict sense of the term [see ***Digest****, para. 545].*

56. *Moreover, as concerns the Government's argument that problems began to emerge towards the end of the dispute which could not continue to be solved by granting exemptions or other emergency measures, the Committee recalls that, although it is recognized that a stoppage in services or undertakings such as transport companies might disturb the normal life of the community, it can hardly be admitted that the stoppage of such services could cause a state of acute national emergency. It has therefore considered that measures taken to mobilize workers at the time of disputes in services of this kind are such as to restrict the workers' right to strike as a means of defending their occupational and economic interests [see* ***Digest****, para. 530].*

57. *Further, as concerns the nature of the services to be provided by the complainant, the Committee notes that the Government only refers in this case to a general risk feared in respect of the vital transportation of medicine. In this respect, the Committee would recall that a minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population; in addition, the workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities [see* ***Digest****, para. 558]. The Committee notes with regret that no attempts appear to have been made by the Government to negotiate a minimum service for the period of the industrial action in question in such a way as to have enabled the parties to the dispute to resolve their differences through free collective bargaining rather than resorting to a statutorily imposed settlement which has bound the parties for two years.*

58. *Finally, the Committee notes from the list of organizations covered by the conciliator's proposed compromise that the action taken by the Government had an impact on a large number of employees (over 400,000) covered by over 500 collective agreements without any effort being made to distinguish between those sectors which might have been argued to be genuinely essential (or likely to cause an acute national crisis) and those which cannot be considered as such.*

59. *In the light of the preceding paragraphs, the Committee is of the view that the 1998 Act renewing certain collective agreements involved statutory intervention in the collective bargaining process contrary to the principles of free collective bargaining and the right of workers' and employers' organizations to organize their activities and to formulate their programmes. The Committee therefore urges the Government to ensure that such intervention is not repeated in the future.*

60. *The Committee draws the legal aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee requests the Government to review section 12 of the Conciliation Act as indicated in its conclusions, in consultation with the social partners, so as to ensure that the view of the majority of workers

in a given sector is not subordinated to the view of the majority of the entire labour market as concerns the possibility of continuing free collective bargaining of terms and conditions of employment and as concerns the possibility of undertaking industrial action.

(b) Considering that the 1998 Act renewing certain collective agreements involved statutory intervention in the collective bargaining process contrary to the principles of free collective bargaining and the right of workers' and employers' organizations to organize their activities and to formulate their programmes, the Committee urges the Government to ensure that such intervention is not repeated in the future.

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

Geneva, 4 June 1999.

(Signed) Max Rood,
Chairperson.

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OFFICIAL BULLETIN

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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

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Reports of the Committee on Freedom of Association (318th and 319th Reports)[1]

318th Report

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 4, 5 and 12 November 1999, under the chairmanship of Professor Max Rood.

2. The members of Mexican, Venezuelan, Japanese and Pakistani nationality were not present during the examination of the cases relating to Mexico (Case No. 1974), Venezuela (Cases Nos. 1986 and 1993), Japan (Case No. 1991) and Pakistan (Case No. 2006).

* * *

3. Currently, there are 96 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 33 cases on the merits, reaching definitive conclusions in 16 cases and interim conclusions in 17 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

NEW CASES

4. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2028 (Gabon), 2029 (Argentina), 2031 (China), 2032 (Guatemala), 2033 (Uruguay), 2034 (Nicaragua), 2035 (Haiti), 2037 (Argentina), 2040 (Spain), 2041 (Argentina), 2043 (Russian Federation), 2045 (Argentina), 2047 (Bulgaria), 2049 (Peru), 2050 (Guatemala), 2052 (Haiti), 2053 (Bosnia and Herzegovina), 2054 (Argentina), 2055 (Morocco), 2056 (Central African Republic), 2057 (Romania), 2058 (Venezuela) and 2059 (Peru) because it is awaiting information and observations from the governments concerned. All these cases relate to complaints or representations submitted since the last meeting of the Committee. As regards Cases Nos. 2029, 2037, 2041 and 2045 (Argentina), the Government stated that it would send its observations shortly.

[1] The 318th and 319th Reports were examined and approved by the Governing Body at its 276th Session (November 1999).

OBSERVATIONS REQUESTED FROM GOVERNMENTS

5. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 1880 (Peru), 1888 (Ethiopia), 1979 (Peru), 2014 (Uruguay), 2019 (Swaziland) and 2022 (New Zealand). In Cases Nos. 1888 (Ethiopia) and 2031 (China), the governments have stated that they would send their observations. With regard to Case No. 2022 (New Zealand), the Government has indicated that there would be a delay in the sending of its reply due to the forthcoming general elections.

OBSERVATIONS REQUESTED FROM COMPLAINANTS

6. In Cases Nos. 1835 (Czech Republic) and 1980 (Luxembourg), the replies of the governments concerned have been transmitted to the complainants for comments. The Committee requests the complainants to send them without delay.

PARTIAL INFORMATION RECEIVED FROM GOVERNMENTS

7. In Cases Nos. 1951 (Canada/Ontario), 1970 (Guatemala), 1975 (Canada/Ontario), 1965 (Panama), 1998 (Bangladesh), 2010 (Ecuador), 2017 (Guatemala), 2036 (Paraguay), 2039 (Mexico) and 2048 (Morocco), the governments have sent partial information on the allegations made. The Committee requests all of these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

OBSERVATIONS RECEIVED FROM GOVERNMENTS

8. As regards Cases Nos. 1865 (Republic of Korea), 1953 (Argentina), 1959 (United Kingdom/Bermuda), 1961 (Cuba), 1963 (Australia), 1984 (Costa Rica), 1989 (Bulgaria), 1992 (Brazil), 2007 (Bolivia), 2008 (Guatemala), 2013 (Mexico), 2021 (Guatemala), 2024 (Costa Rica), 2025 (Canada/Ontario), 2027 (Zimbabwe), 2030 (Costa Rica) and 2044 (Cape Verde), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

URGENT APPEALS

9. As regards Cases Nos. 1995 (Cameroon) and 2023 (Cape Verde), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments concerned. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit their observations or information as a matter of urgency.

MISSIONS

10. In the context of Case No. 2011 (Estonia) concerning allegations of governmental interference in the establishment and internal functioning of trade unions, the Government invited the ILO to send a mission to review the matters raised in the case with representatives of government and organizations of workers and employers, with a view to finding a solution in accordance with the principles of freedom of association. The mission took place from 25 to 27 August 1999; it was led by Ms. Anna Pouyat, Deputy Chief of the Freedom of Association Branch, who was accompanied by Ms. Shauna Olney, Senior

Legal Officer, Freedom of Association Branch, and Mr. Giuseppe Casale, Senior Industrial Relations Specialist, ILO Budapest. The Committee requests the Government to provide further observations on the complainants' allegations to enable it to examine the case at its next session in March 2000, and to keep it informed of the registration status of the Central Association of Estonian Trade Unions (EAKL).

WITHDRAWAL OF A COMPLAINT

11. In communications dated 26 and 28 October 1999, the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) and the United Steelworkers of America, AFL-CIO/CLC (USWA), have requested that the complaint which they brought jointly against the Government of the United States (Case No. 2026) be withdrawn. The Committee has taken due note of this request and decided to close the matter.

* * *

TRANSMISSION OF CASES TO THE COMMITTEE OF EXPERTS

12. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Panama (Case No. 1931), Venezuela (Case No. 1993) and Ukraine (Case No. 2038).

EFFECT GIVEN TO THE RECOMMENDATIONS OF THE COMMITTEE AND THE GOVERNING BODY

Case No. 1509 (Brazil)

13. The Committee last examined this case which concerns the murder, on 12 September 1989, of the trade union leader Valdicio Barbosa dos Santos at its March 1999 meeting [see 313th Report, para. 18] and, at that time, noted that: the legal proceedings concerning this case were still pending before the tribunal of the State of Espíritu Santo (in appeal from the criminal court) following an appeal lodged by Romualdo Eustáquio Luz Faria — accused of having participated in the aggravated homicide and liable to penalties of 12 to 30 years' solitary confinement provided for in sections 121(2)(I) and (IV) and 29 of the Penal Code — and that the other accused, Gilberto Marçal da Rocha had not yet been located, which was why the sentence had not been served on him. The Committee had asked the Government to keep it informed of the final result of the legal proceedings in question.

14. In a communication dated 28 July 1999, the Government states that the appeal lodged by the accused Romualdo Eustáquio Luz Faria had been turned down. In connection with the other accused, Gilberto Marçal da Rocha, the Government states that there was enough evidence to presume that he was guilty of the crime; however, given that he was still on the run and that an order had been issued summoning him to appear in order to be detained pending his trial, he was declared to be in contempt of court and the period of prescription for the legal proceedings was suspended.

15. *The Committee takes note of this information.*

Case No. 1997 (Brazil)

16. At its June 1999 meeting, the Committee had requested the Government and the complainant "to keep it informed of whether the enterprises of the Porto Alegre port sector

[had] denounced the collective agreement as a result of the meeting to which the complainant objected [called by the Executive Group for Port Modernization] and whether sanctions [had] been applied to them for complying with the agreement" [see 316th Report, para. 162].

17. In its communication of 21 September 1999, the Government states that the agreement in question had been denounced by the National Ministry of Labour because it contained provisions in violation of the national legislation (detailed by the Government in its communication and including, for example, the failure to observe a minimum break of 11 hours between two shifts), and that no sanctions had been applied in respect of compliance with the collective agreement.

18. *The Committee takes note of this information.*

Case No. 1934 (Cambodia)

19. The Committee last examined this case at its May 1999 meeting [see 316th Report, paras. 196-213]. It had requested the Government to review the situation of the dismissed trade union leaders and workers of the Tack Fat Garment Factory and the factory of Samhan Fabrics Co. Ltd. within the framework of impartial procedures and to introduce in its legislation measures granting effective protection against acts of anti-union discrimination.

20. In a communication dated 12 August 1999, the Government states that concerning the dismissals of the trade union leaders and workers of the Tack Fat Garment Factory and the factory of Samhan Fabrics Co. Ltd., the Ministry of Labour has done everything it could to settle them by complying with the labour law provisions and the relevant ministerial orders and that it has already sent detailed reports to the Committee in this respect. Nevertheless, in order to ensure impartiality in the settlement of the above disputes, the Government is requesting technical assistance from the Office.

21. Concerning legal measures granting effective protection against acts of anti-union discrimination, the Government explains that legal provisions do exist in the Cambodian Labour Code, particularly articles 279-282 and 292-294. The Government insists that those guilty for violating the abovementioned provisions are liable to severe fines and/or imprisonment to up to one month. These penalties are spelled out in articles 369, 373 and 380 of the Labour Code.

22. *The Committee takes due note of this information and will transmit the request for technical assistance to the competent bodies of the Office.*

Case No. 1985 (Canada)

23. At its June 1999 meeting, the Committee urged the Government to make every effort in the future to avoid having recourse to back-to-work legislation in the postal service and suggested that the Government examine the possibility of introducing, in agreement with the trade union concerned, measures, such as negotiated minimum services, in order to avoid recourse to back-to-work laws. The Committee also requested the Government to re-examine the proposal that it have recourse to the assistance of the Office in order to facilitate finding solutions to the difficulties identified, and to provide the Committee with an answer in this regard [see 316th Report, para. 326].

24. In a communication of 1 September 1999, the Government affirms its commitment to the principle of free collective bargaining. Regarding efforts to avoid having recourse to back-to-work legislation in the future, the Government states that during the recent review of the relevant provisions of the Canada Labour Code, workers' and employers' organizations were extensively involved in the consultation process, and many of

the recommendations came about as a result of consensus. The Government states further that according to a report of the Task Force reviewing the legislation, both business and labour agreed that the system generally works well. On the issue of negotiated minimum services, the Government points out that with effect from 1 January 1999, revisions to the Canada Labour Code were proclaimed, including provisions governing the maintenance of activities that are to be continued during a legal strike or lockout. The legislation requires that the employer and trade union reach an agreement on the supply of services, operation of facilities or production of goods necessary to prevent an immediate and serious danger to the safety or health of the public. Failing agreement, the question may be referred by either party or the Minister of Labour to an independent, quasi-judicial tribunal (the Canada Industrial Relations Board). In response to the Committee's request that the Government re-examine the proposal that it have recourse to the assistance of the Office, the Government, while acknowledging the concerns expressed by the Committee, states that in light of its continuing commitment to the principle of free collective bargaining and the extensive recent revisions to the Canada Labour Code, there is no need for a direct contacts mission or other ILO assistance.

25. The Committee takes note of this information. With respect to the Committee's recommendation urging the Government to make every effort in the future to avoid recourse to back-to-work legislation in the postal service, the Committee notes that the follow-up information provided by the Government is very general in nature, relating to the overall industrial relations system rather than the specific situation in the postal service. Given that this is not the first instance of back-to-work legislation being imposed in the postal sector in Canada, the Committee would urge the Government to make every effort in the future to avoid having recourse to back-to-work legislation in this sector specifically. Concerning negotiated minimum services in the postal service, the Committee notes the recent amendments to the Canada Labour Code highlighted by the Government. The Committee observes, however, that the provisions apply to essential services in the strict sense of the term, which in the view of the Committee would not include the postal service [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 545]. The Committee, therefore, again suggests that the Government examine the possibility of introducing, in agreement with the trade union concerned, measures, such as a negotiated minimum service, in order to avoid recourse to back-to-work legislation in the postal service, and requests the Government to keep it informed in this respect.*

Case No. 1942 (China/Hong Kong Special Administrative Region)

26. The Committee examined this case at its November 1998 meeting [see 311th Report, paras. 235-271] on which occasion it made the following recommendations:

(a) the Committee requests the Government to take steps to repeal section 5 of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance, 1997 (ELRO), which restricts union office to persons actually employed in the trade, industry or occupation of the trade union concerned;

(b) the Committee requests the Government to take the necessary steps to repeal: (i) section 8 of the ELRO which subjects the use of union funds in certain instances to the approval of the Chief Executive of Hong Kong; and (ii) section 9 of the ELRO which institutes a blanket prohibition on the use of union funds for any political purpose;

(c) the Committee requests the Government to review the Employment (Amendment) (No. 3) Ordinance, 1997, with a view to ensuring that provision is made in legislation for: (i) protection against all acts of anti-union discrimination; and (ii) the possibility of the right to reinstatement

which would not be conditional upon the prior mutual consent thereto of both the employer and the employee concerned;

(d) the Committee requests the Government, in the near future, to give serious consideration to the adoption of legislative provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes which respect freedom of association principles.

27. In a communication dated 25 May 1999, the Government refers to the above recommendations of the Committee. Concerning the issue of restrictions on the eligibility of union officials to stand for office, the Government points out that section 17(2) of the Trade Union Ordinance provides that persons who are or who have been engaged or employed in the trade, industry or occupation of the trade union concerned can become officers of the union. In addition, any person who is or has not been engaged or employed in the trade, industry or occupation of the trade union concerned can become an officer with the consent of the Registrar of Trade Unions. So far, all applications for consent have been approved. The Government is nevertheless actively reviewing the occupational requirement of trade union officers and will consult the Labour Advisory Board (LAB) in due course on the outcome of the review.

28. *In this regard, the Committee once again recalls that the determination of conditions of eligibility of union office is a matter that should be left to the discretion of union by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right by trade union organizations. Noting that the Government is reviewing the occupational requirement of trade union officers, the Committee once again requests the Government to repeal section 5 of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance, 1997 (ELRO), which restricts union office to persons actually or previously employed in the trade, industry or occupation of the trade union concerned.*

29. With regard to government restrictions on the use of union funds, the Government first of all states that section 33(1) of the Trade Union Ordinance specifies the areas in which unions may expend their funds. According to the Government, those specifications are broad enough to enable trade unions to use their funds to promote the interests of their members. Moreover, to cater to the needs of individual unions, the Chief Executive of Hong Kong can give his approval for unions to contribute or donate funds to trade unions established outside Hong Kong and for other purposes. With regard to restrictions on the use of union funds for political purposes, the Government indicates that through such restrictions, it seeks to ensure that trade unions perform their true functions of promoting and protecting the interests of their members and are not engaged essentially in political activities. While believing that the Trade Union Ordinance provides sufficient flexibility on the use of union funds, the Government states it is actively reviewing the provisions on union funds and will consult the Labour Advisory Board on the outcome of the review.

30. *Recalling that section 8 of the ELRO subjects financial contributions to trade unions or similar organizations abroad as well as the use of union funds for any other purposes than those enumerated in section 33(1) of the Trade Union Ordinance of 1989 to the "approval of the Chief Executive", the Committee would reiterate that provisions which give authorities the right to restrict the freedom of a trade union to administer and utilize its funds as it wishes for normal and lawful trade union purposes are incompatible with the principles of freedom of association. Similarly, recalling that section 9 of the ELRO contains a blanket prohibition on the use of union funds for any political purpose, the Committee would remind the Government that provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives are*

contrary to the principles of freedom of association. Noting the Government's statement that it is actively reviewing the provisions on union funds, the Committee once again requests the Government to take steps to repeal sections 8 and 9 of the ELRO.

31. With regard to the issue of protection against acts of anti-union discrimination, the Government indicates that the Employment Ordinance provides protection against all acts of anti-union discrimination which are not confined to dismissals only. Moreover, Part VIA of the Employment Ordinance provides for reinstatement or re-engagement subject to the prior mutual consent of the employer and employee concerned. Where no order for reinstatement or re-engagement is made, the labour tribunal may award to the employee termination payments and compensation of up to a maximum of HK$150,000.

32. *As regards the issue of the scope of protection against acts of anti-union discrimination, the Committee notes that section 32A(1)(c)(i) of the Employment Ordinance provides for protection only against dismissal of workers on grounds of union activities and section 32A(5)(a) of the same Ordinance entitles an employee to make a claim for remedies only in relation to a dismissal on grounds of trade union membership, office or activities. The Committee once again reminds the Government that protection against acts of anti-union discrimination should cover not only dismissal but also any discriminating measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker. As regards the requirement of prior mutual consent in the absence of which a worker may not be reinstated but instead awarded compensation, the Committee does not consider that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities. The Committee therefore once again requests the Government to review the Employment (Amendment) (No. 3) Ordinance, 1997, with a view to ensuring that provision is made in the legislation for: (i) protection against all acts of anti-union discrimination; and (ii) the possibility of the right to reinstatement which would not be conditional upon the prior mutual consent of both the employer and the employee concerned.*

33. Finally, with regard to the issue of promoting collective bargaining through legislation, the Government points out that there is no consensus on this issue within the Legislative Council. On 9 December 1998, the Legislative Council voted down a motion requesting the Government to submit to the Council for reconsideration, among others, the repealed legislation on compulsory collective bargaining. On 28 April 1999, the Council also voted down a motion requesting the Government to consider, among others, legislation for compulsory collective bargaining. An amended motion requesting legislation for a bargaining mechanism and union recognition was also voted down at the same sitting.

34. *The Committee deeply regrets this state of affairs which runs contrary to the principle that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. Since the Committee had previously considered that the case at hand furnished a clear illustration of the appropriateness of adopting provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes, the Committee once again requests the Government to give serious consideration to the adoption of appropriate provisions which respect freedom of association principles.*

35. The Committee requests the Government to keep it informed of measures taken to give effect to its recommendations.

Case No. 1988 (Comoros)

36. At its June 1999 session [see 316th Report, paras. 379-390], the Committee had urged the Government, if it had not yet been done, to release without delay the four trade union officers of the USATC, i.e. Ibouroi Ali Tabibou, Abdéramane Mohamed Said, Mad Ali and Mdjomba Moussa, if it was found that they had been arrested for reasons connected with the exercise of their trade union rights, and to keep it informed in this respect.

37. In a communication dated 7 July 1999, the Government points out that Ahmed Abdou Halidi and Ibouroi Ali Tabibou had not been imprisoned but only detained for the time required for the legal authorities to question them; they had been subsequently released.

38. The Committee takes note of this information but regrets that the Government failed to provide any information on the fate of the other trade union officials, i.e. Abdéramane Mohamed Said, Mad Ali and Mdjomba Moussa. The Committee urges the Government once again to confirm that these trade union officials have been released and to keep it informed in this respect.

Case No. 1875 (Costa Rica)

39. At its March 1997 meeting the Committee made the following recommendation regarding the pending allegations of anti-union discrimination [see the Committee's 306th Report, para. 361]: "The Committee requests the Government to take measures to facilitate the reinstatement in their jobs of the largest possible number of dismissed UNEIDA executive board members."

40. In its communications of 27 August and 7 September 1999, the Government refers to the considerable efforts which it has made to comply with the Committee's recommendations, and indicates that the case is currently being heard by the courts of second instance, where the complainant must present its observations and objections at the appropriate time and in the appropriate form.

41. The Government attaches documents indicating that the executive of the IDA as a gesture of good faith ordered the provisional reinstatement of four of the dismissed union leaders; five other union officials are still awaiting a decision.

42. The Committee notes this information with interest, while recalling that the dismissals of the union leaders date from 1996 and occurred in an autonomous state establishment. The Committee requests the Government to take measures that will bring about a rapid solution to the dismissals that are still pending, taking into account the favourable rulings already handed down in the lower court.

Case No. 1966 (Costa Rica)

43. In its last examination of the case in June 1999, the Committee made the following recommendations on the allegations that had remained pending [see 316th Report, paras. 53-55]:

The Committee requests the Government to keep it informed of the outcome of the instructions given to the administrative authorities with a view to finding a solution and achieving the reinstatement of the dismissed persons [by the FERTICA SA ENTERPRISE] and expresses the hope that these reinstatements will be made in the very near future.

The Committee requests the Government to study the possibility of amending legislation so that once an inquiry concludes that acts of anti-union discrimination have occurred, the effects of such acts shall be declared null and void at least until the judicial authorities have ruled on the matter.

The Committee also requests the Government to carry out an inquiry into the alleged promotion by the enterprise of an executive board parallel to that of the Association of Workers of FERTICA SA (AFTe) and to keep it informed of the inquiry into the promotion by the enterprise of a new trade union (SITRAFER).

44. In its communication of 27 August 1999, the Government states that it has instructed the competent authorities to comply with all the Committee's conclusions and recommendations, taking into account a court ruling barring the actions which were the subject of the complaint by lapse of time, that ruling was upheld following an appeal from the Ministry of Labour. The Government describes the conciliation proceedings that have been initiated.

45. The Government adds that with regard to legislation, it has brought draft legislation before the Legislature with a view to amending certain provisions of the Labour Code in the spirit of the Committee's recommendations. On 16 March 1999, the legislation in question received the unanimous endorsement of the Legislature's Standing Committee on Legal Affairs and is now being examined in a national consultation process. Its purpose is to introduce greater speed and flexibility into the administrative procedures and mechanisms provided for in the Labour Code and is in keeping with the comments made in previous years by the Committee of Experts. The text of the proposed amendments is as follows:

[...]

Section 367bis. It shall be absolutely prohibited for employers to dismiss the workers referred to in section 367 except on grounds related to a serious failure to fulfil obligations arising from the contract of employment, in accordance with the reasons established in the present Code.

In such cases, the employer shall be obliged to follow a formal procedure before dismissal to demonstrate the existence of the reasons given for the dismissal. The procedure in question shall be such as to ensure in all cases that due process is observed for the protected worker in question, that any evidence from witnesses or documents submitted by the worker is properly examined, and that the worker shall have access to the file and the right to be assisted by a trained legal specialist or other designated representative. If the worker so requests, the labour inspector of the relevant jurisdiction shall also be allowed to participate in the proceedings.

In cases in which the employer, having followed the due procedure, proceeds with the dismissal, the worker concerned shall be entitled to apply to a labour court of the appropriate jurisdiction for summary proceedings to review the decision, verify the existence of the reasons given for the dismissal based on the evidence obtained and ensure that said reason is recorded in the file presented by the employer.

The competent judge shall within 48 hours of receiving the worker's application grant a hearing to the respondent in order that it may within three days submit a certified copy of the file. Upon expiry of this period, if the employer has not submitted the required documents, or if these documents do not confirm the reasons given for the dismissal, or if the established procedure has not been followed, the judge shall without any further formality order the immediate reinstatement of the worker with full rights. In all cases, any ruling in these proceedings shall be based solely on the case presented by the employer and given within a period of not more than ten days of receiving the application by the dismissed worker.

When a ruling is given in favour of reinstatement, it shall be enforced by the judge within 24 hours of the ruling. An employer or employer's representative who refuses to implement a reinstatement order shall be required to pay a sum equivalent to one day's wages to each worker concerned for every calender day during which it fails to comply with the order. Failure to reinstate

shall also be deemed to be an offence subject to a fine under section 614, paragraph 6 of the present Code.

During the course of the proceedings, no type of interlocutory challenge shall be admissible and ruling shall be subject to appeal only in the Higher Labour Court, which shall give a ruling within a period of 48 hours. Once a definitive ruling is handed down it shall have the character of a formal matter adjudged.

Section 368. Workers covered by the present law shall not be liable to dismissal without reason as provided for under the Labour Code. The competent labour judge shall declare null and void such a dismissal where there is no just cause for the dismissal in accordance with the present Code, or in the case of non-compliance with the procedure established under the previous section and shall order the reinstatement of the worker and payment of wage arrears, in addition to any sanctions to which the employer may be liable under the terms of the present Code and its supplementing and associated enactments. If the worker expressly indicates the desire not to be reinstated, he or she shall be paid compensation furthermore to the labour rights corresponding to a dismissal without reason equivalent to the wages which would have been paid during the period in which protection under the terms of section 367 was not provided.

46. *The Committee notes with satisfaction the proposed amendments of the Labour Code submitted to the Legislative Assembly following tripartite consultations. The Committee hopes that the amendments will be adopted in the very near future and requests the Government to keep it informed in this regard.*

47. *As regards the other pending recommendations, the Committee takes note of the fact that the judicial authorities have ruled that the actions of FERTICA SA were barred by lapse of time. It also notes the instructions issued by the Government to the competent authorities to carry out the necessary investigations and comply with the Committee's recommendations. Under these circumstances, the Committee reiterates the conclusions and recommendations which it made in June 1999 and hopes that at its next meeting it will see conclusive results in all the matters still pending.*

Case No. 1954 (Côte d'Ivoire)

48. During its last examination of the case at its March 1999 session [see 313th Report, paras. 29-31], the Committee once again urged the Government to take all necessary measures in order to reinstate in their posts, if they so wished, all workers and staff delegates who were victims of anti-trade union discrimination following strike action at the Abidjan Ship Repair and Industrial Work Enterprise (CARENA). In addition, it requested the Government to resume negotiations with regard to the industrial dispute at the CARENA enterprise and to keep it informed of the decisions taken by the industrial advisory board which had been set up in this context. The Committee deplored the fact that the Government had provided no new information; it reiterated its conclusions according to which, in the case in point, the use of police forces constituted an infringement of the trade union rights of the workers concerned.

49. In its response dated 26 May 1999, the Government again indicates that, given the legal provisions and regulations in force as well as the relevant practice concerning the management of industrial disputes, the strike action initiated by the free trade union federation "Dignité" was clearly illegal under the terms of article 82.3 of the Labour Code and that the Minister of Employment, Public Service and Social Welfare, the relevant competent authority, had notified the workers of the illegality of the strike and had informed them of the risks they were running. The Government "is indignant at the conclusions of the Committee on Freedom of Association, according to which 'the responsibility for declaring a strike illegal should lie with an independent body which has the confidence of the parties'; it also questions the conclusions which, in relation to the

legal provisions in force, have no legal foundation and, beyond any doubt, constitute serious interference by the Committee on Freedom of Association, the role of which is not only to attend to the protection of fundamental freedoms, particularly freedom of association and the exercise of the right to strike, but also to ensure compliance by the social partners with the rules governing the Republic". Accordingly, in the Government's opinion, under no circumstances may the Committee on Freedom of Association allege that the ministry responsible for labour does not represent an independent body and, hence, that it does not have the confidence of the parties to the dispute. The Government considers that the Minister of Employment, Public Service and Social Welfare, as an administrative authority, constitutes an independent body. With regard to the alleged lack of confidence, the Government also questions the analysis presented by the Committee on Freedom of Association which has not deigned to consult the employer party to the dispute. The Government states that it is "entitled to expect from the Committee on Freedom of Association substantiated, coherent observations devoid of any sentimentalism and bias". It believes that it is only with this aim in view that the Committee will truly assist in making the parties to industrial relations aware of their responsibilities and, thereby, promote social dialogue. More specifically, the Government states that, contrary to the false allegations of Dignité, out of the 330 workers registered at the beginning of the strike on 5 March 1997, 138, including 14 staff delegates, were dismissed for dereliction of duty. The Government maintains that the figure of 300 dismissed workers, as advanced by Dignité and accepted without further inquiry by the Committee on Freedom of Association, is erroneous. In fact, out of the 330 workers on the CARENA payroll in March 1997, 245 were declared in dereliction of duty on 14 April 1997, 64 were not re-employed, 43 were reinstated, 138 including 14 staff delegates were still in dereliction of duty as of 6 March 1999 and the enterprise's workforce numbered 294 on the same date. With regard to the resumption of negotiations following the industrial dispute in CARENA, the Government indicates that three meetings of the industrial advisory board were held after the Committee on Freedom of Association presented its recommendations. These meetings took place on 17 February, 3 March and 20 May 1999. The social partners took opposing positions regarding the recommendation to reinstate the dismissed workers: the employers believe that the industrial advisory board is not empowered to decide that the workers should be reinstated; they decided that it would be appropriate for the workers who considered that their rights had been infringed to present their claims to the relevant judicial bodies; on the other hand, the workers' organizations believe that the Government should exercise its power to secure the reinstatement of the dismissed workers. Regarding the recommendation to pursue negotiations, the industrial advisory board proposed that the CARENA issue be reopened. A joint technical committee made up of an equal number of worker and employer representatives was set up. It was to commence work after the appointment of the various representatives on 3 June 1999. The Government recalls that the relevant regulations, in particular Decree No. 65-131 of 2 April 1965, establish this body's terms of reference, its structure and methods of work and that the industrial advisory board is not entitled to order an employer to reinstate dismissed workers. It repeats that workers who consider that their rights have been infringed may lodge a complaint with the tribunals (article 81.7 to 81.31 of the Labour Code). As regards interventions by the police during the protest march of 4 February 1998, the Government vigorously objects to the reservations expressed by the Committee on Freedom of Association regarding the information provided. The Government once again declares that Dignité had not obtained prior authorization for the march, as required pursuant to Act No. 92-464 on the repression of certain forms of violence. In its opinion, whereas trade union rights are recognized and applied, they must nevertheless be exercised without endangering public order. Finally, in the light of the

action it has undertaken in favour of social dialogue and tripartite cooperation, the Government states that it cannot entertain groundless injunctions from the Committee on Freedom of Association.

50. *The Committee takes note of the Government's comments and observations to the effect that the Committee's conclusions constitute serious interference. The Committee notes that where national laws violate the principles of freedom of association, it has always considered it within its mandate to examine the laws, provide guidelines and offer the ILO's technical assistance to bring the laws into compliance with the principles of freedom of association, as set out in the Constitution of the ILO and the applicable Conventions [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 8]. Hence, the Committee once again reiterates its consistent jurisprudence according to which the decision to declare a strike illegal should lie with an independent body which has the confidence of the parties. The Committee stresses the importance of a spirit of dialogue and cooperation which should prevail in the resolution of industrial disputes. Consequently, the Committee trusts that all of the staff delegates affiliated to Dignité and all of the workers dismissed due to participating in peaceful strikes in connection with the industrial dispute in the CARENA enterprise will be reinstated in their posts if they so wish. It requests the Government to keep it informed in this respect.*

Case No. 1987 (El Salvador)

51. At its March 1999 meeting, the Committee made the following recommendations:

(a) Observing that legislation imposes a series of excessive formalities for the recognition of a trade union and the acquisition of legal personality that are contrary to the principle of the free establishment of trade union organizations (the requirement that the trade unions of independent institutions should be works unions), that make it difficult to set up a trade union (minimum number of 35 workers to establish a works union) or that in any case make it temporarily impossible to establish a trade union (the requirement for six months to have passed before applying to establish another trade union even if the previous one did not obtain legal personality), the Committee:
   — concludes that the legislation seriously infringes the principles of freedom of association;
   — regrets that in applying this legislation the authorities have refused legal personality to a number of trade unions in the process of being set up in the ANTEL enterprise and in the Telecommunications Company of El Salvador SA de C.V.; and
   — regrets that the application for recognition and registration made by SITTEL in August 1998 has not been dealt with and is still pending. The Committee requests the Government to accelerate the procedure and register the union;
   — urges the Government to take measures with a view to amending the legislation so that the current excessive formalities that apply to the establishment of trade union organizations are removed and so that workers do not have to constitute enterprise-based works unions if they do not consider this to be appropriate.

(b) The Committee requests the Government to take steps with a view to reinstating the trade unions leaders Mr. Luis Wilfredo Berrios and Mrs. Gloria Mercedes González in their posts and to guarantee that in future proprietorial changes that occur in the framework of privatization do not directly or indirectly threaten unionized workers and their organizations.

[See 313th Report, para. 117.]

52. In its communication dated 10 October 1999, Communications International (CI) pointed out that the Government has not taken any steps to reinstate the trade union leaders Luis Wilfredo Berrios and Gloria Mercedes González in their posts, nor to guarantee recognition of the unions, nor to amend the legislation along the lines of the Committee's recommendations.

53. In its communications dated 8, 23 and 27 October 1999, the Government stated, in respect of the provisions which the Committee had recommended amending, that the constitutional requirements and those concerning the acquisition of legal personality of a trade union were set forth by the National Coordinating Forum, a tripartite body, which had been assisted by an ILO technical mission. The previous legislation has been improved and, according to the information provided in a document published by the International Labour Office which covers El Salvador, the text is in an advanced stage. There is therefore no basis for considering that the legislation seriously violates the principles of freedom of association.

54. The Government adds that legal personality was granted to the Works Union of Telecommunications Employees of El Salvador (SITTEL) on 26 October 1998.

55. As concerns the reinstatement of Luis Wilfredo Berrios and Gloria Mercedes González, the Government states that it cannot interfere with the decisions of the Telecommunications Company of El Salvador SA, which is a private enterprise regulated by its own social rules (the Government appended a letter from the enterprise indicating that the dismissed persons had not fulfilled international standards of productivity, nor did they meet the minimum requirements concerning efficient service and quality).

56. *The Committee notes the information provided by the Government, in particular concerning the granting of legal personality to the SITTEL union. As concerns the Government's statement that it is unfounded to say that the legislation seriously violates the principles of freedom of association, the Committee emphasizes that its conclusions had referred only to three aspects of the legislation. Moreover, the fact that the legislation is currently being elaborated within a tripartite forum and that ILO technical assistance has been provided does not necessarily signify that every single provision adopted is in conformity with the principles of freedom of association. The Committee therefore reiterates its previous recommendations concerning the need to amend the legislation. As concerns the Committee's recommendation to the Government to take steps with a view to the reinstatement in their posts of the abovementioned trade union leaders, the Committee notes the Government's statement that it cannot interfere with the decisions of a private enterprise. In this respect, the Committee draws the Government's attention to the principle according to which, where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 754]. The Committee thus once again requests the Government to take steps with a view to reinstating the trade union leaders Luis Wilfredo Berrios and Gloria Mercedes González in their posts.*

Case No. 1960 (Guatemala)

57. At its last examination of the case in June 1999, the Committee made the following recommendations on the outstanding issues [see 316th Report, para. 532]:

(a) the Committee requested the Government to keep it informed of developments relating to the understanding which appeared to have been reached at the Mopá and Panorama plantations apparently ending the conflict that had occurred at both plantations;

(b) the Committee requested the Government to recognize the workers' unions at the Alabama and Arizona plantations without delay and to keep it informed in this respect; and

(c) the Committee requested the Government to keep it informed about the results of the mediation measures taken by the authorities concerning the dismissal of workers from the Alabama and Arizona plantations and the legal action initiated by the employers.

58. In its communication of 27 August 1999, the Government reaffirms that the Ministry of Labour and Social Security had done its best to mediate within the sphere of its competence in order to reach a settlement of the disputes at the Mopá and Panorama plantations, which were not only of an industrial nature but involved criminal and commercial factors complicating the situation of the plantations. The actions of the Government within the sphere of its competence, carried out by officials at the highest level, had brought about countless meetings with representatives of both parties in the search for solutions. The workers had sought potential buyers for the plantations, making it clear to them that there were three conditions for settlement of the conflict: reinstatement of the 400 workers, recognition of the trade unions and the signing of a collective agreement at each plantation. For their part, they were promising that: (1) the buyer would not assume responsibility for the labour debt; (2) the collective agreement would be quite moderate, though it would recognize the workers' union; and (3) that the resumption of work would be gradual because of the condition of the plantations. The Ministry of Labour, in turn, had unofficial information to the effect that Mr. Littmann, the leaseholder of the Mopá and Panorama plantations, had reached an agreement with Mr. Fernando Bolaños concerning the sale of those plantations; it was also understood that the consent of Bandegua, as owner of the land, had been obtained for this.

59. The Government also states that legal recognition and registration of the workers' unions of the Alabama and Arizona Plantations Corporation and other concerns within the same group had taken place on 4 March 1999.

60. As to the authorities' mediation activities regarding the dismissal of the Alabama and Arizona plantation workers, the Government states that the Ministry of Labour recognizes the scale and the social and economic implications of the conflict and is continuing to seek alternative financial, organizational and employment solutions for the recovery of the plantations.

61. The most recent steps taken included the following: a visit was made on 7 April 1999 to the Alabama and Arizona plantations by the labour inspector and the parties involved. Moreover, the workers requested immediate reinstatement and payment of the wages owing, to which the employers declared that the Alabama and Arizona plantations no longer existed as productive enterprises because of the enormous losses that had destroyed the resources and capacity of the companies, which did not have the very large sums required to return them to productivity, and that banana cultivation and production were no longer being carried out, since there remained only two properties, totally destroyed and paralysed by the de facto strike. As to reinstatement of the workers, its inadmissibility had been determined by the courts which had declared the strike illegal and given legal authorization for the dismissal of the workers.

***62.** The Committee takes note of the development recorded in the dispute surrounding the Mopá and Panorama plantations and hopes that the parties involved, with assistance from the authorities if appropriate, can rapidly find a permanent solution. With regard to the second recommendation, the Committee notes with interest the legal*

recognition of the workers' unions of the Alabama and Arizona plantations. Finally, concerning the dismissal of the workers at the Alabama and Arizona plantations (more than 500 workers according to the complainant) and the criminal proceedings started by the employers, the Committee takes note of the negotiations arranged by the authorities with the parties in connection with the dismissals and observes that, according to the Government's reply, reinstatement of the workers is not feasible because it has been judged inadmissible by the courts through their declaration that the strike was illegal and since the plantations are no longer functioning as productive enterprises. The Committee requests the Government to send it a copy of the ruling that the strike in the Alabama and Arizona plantations was illegal and to inform it of the progress of the criminal proceedings instigated by the employers. The Committee further requests the Government to immediately send its observations on the latest information communicated by the ICFTU in a communication dated 22 October 1999.

Case No. 1719 (Nicaragua)

63. The Committee last examined this case, which concerns dismissals in the customs sector following a strike in May 1993, at its March 1999 meeting [see 313th Report, paras. 39-42]. The Committee recalls that on that occasion, fully aware of the difficulty of reinstating the workers who were dismissed almost six years ago, it urged the Government to take all the necessary measures to ensure that the parties to the dispute reach an agreement on full compensation for the workers dismissed, if reinstatement was not possible.

64. In a communication dated 6 August 1999, the Government points out that the services of the General Directorate of Labour Relations and the Directorate of Conciliation and Collective Bargaining are available to help workers to resolve the dispute.

65. The Committee takes note of this information. The Committee again requests the Government to try to ensure that the parties concerned reach an agreement — possibly with the assistance of these administrative bodies — on full compensation for the workers dismissed, if reinstatement is not possible.

Case No. 1698 (New Zealand)

66. The Committee last examined this case at its June 1999 meeting [316th Report, paras. 69-71] at which time it strongly reiterated its previous conclusion that provisions that prohibit strikes, if they are concerned with the issue of whether a collective employment contract will bind more than one employer, are contrary to the principles of freedom of association on the right to strike; therefore, the Government was requested to amend section 63(e) of the Employment Contracts Act (ECA). It also requested the Government to keep it informed of any measures taken.

67. In a communication of 16 September 1999, the Government adheres to the arguments that it has put before the Committee on a number of previous occasions, namely that section 63(e) provides a balance between the employees' right to strike and the employers' right not to have to face strike action and incur losses due to the actions of other employers over which they have no control or to be bound into arrangements with competing businesses. The Government also provided copies of recent cases concerning the following issues: the interpretation of the anti-discrimination provisions of the ECA in the context of strike action; the power under the ECA for the Employment Court to set aside an employment contract if it was procured by harsh and oppressive behaviour, undue

influence, or duress, or if the contract was harsh or oppressive; the negotiation of a new collective employment contract and ratification procedures under the ECA.

68. *The Committee takes note of the court decisions forwarded by the Government. With respect to section 63(e) of the ECA, the Committee notes with deep regret that the arguments that have already been rejected by the Committee on numerous occasions have again been raised by the Government. The Committee must once again urge the Government to amend section 63(e) of the ECA to bring it into conformity with freedom of association principles, and requests the Government to keep it informed in this regard.*

Case No. 1967 (Panama)

69. In its previous examination of the case in March 1999, the Committee made the following recommendation regarding the allegation which had remained pending [see the Committee's 313th Report, para. 150]:

Recalling that Article 5 of Convention No. 87 explicitly states that "workers' and employers' organizations shall have the right to establish and join federations and confederations," the Committee requests the Government to recognize and register, without delay, the affiliation of FENASEP to the Joint Trade Union Central and to keep the Committee informed of developments.

70. *In this regard, the Committee notes with satisfaction the information provided by the International Confederation of Free Trade Unions (ICFTU) in its communication of 5 October 1999, according to which the affiliation of FENASEP to the Joint Trade Union Central has been registered by a decision of the Minister of Labour and Social Development.*

Case No. 1618 (United Kingdom)

71. At its November 1998 meeting, the Committee noted proposals to outlaw discrimination against trade union members and the blacklisting of trade union activists in the consultative White Paper entitled "Fairness at work" and encouraged the Government to adopt, as soon as possible, provisions ensuring protection against anti-union discrimination, including blacklisting [see 311th Report, paras. 73-75].

72. In a communication dated 29 September 1999, the Government indicates that the Data Protection Act of 1998 contains strict provisions on the processing of personal information, with additional restrictions on the processing of "sensitive" personal data, a definition which includes information on trade union membership. The 1998 Act now extends these restrictions to manually processed data as well as that processed by computer, thus closing the loophole which used to be exploited by the Economic League. In addition, the Employment Relations Act of 1999 contains powers to enable the Government to make regulations to prohibit the compilation, dissemination and use of lists which contain information about trade union membership or activities with a view to their being used by employers or employment agencies in recruitment, or used to discriminate against trade unionists in employment. Draft regulations to be made under the powers in the Act will be published for consultation in the course of next year.

73. *The Committee notes this information with interest and requests the Government to keep it informed of any further developments in respect of the protection against anti-union discrimination.*

Case No. 1852 (United Kingdom)

74. At its meeting in June 1999, the Committee expressed its regret at the refusal of the Government to carry out an investigation into the allegation of anti-union victimization

at Co-Steel and, noting the apparent lack of progress in resolving the serious difficulties in labour-management relations, once again requested the Government to give consideration to establishing an independent investigation into these allegations and to indicate the measures taken to ensure that reasonable access to the plant has been afforded to the Iron and Steel Trades Confederation (ISTC). As concerns the matter of union recognition, the Committee requested the Government to keep it informed of developments in respect of the Employment Relations Bill [see 316th Report, paras. 80-83].

75. In a communication dated 29 September 1999, the Government indicates that the Employment Relations Act of 1999 contains a statutory procedure for trade union recognition, for the purpose of collective bargaining, where that is the wish of a majority of the workforce, in organizations employing 21 or more workers. The procedure seeks to encourage voluntary arrangements where possible, but provides for the Central Arbitration Committee (CAC) to decide on applications for recognition if no agreement is reached. As concerns the request to establish an independent investigation into the situation at Co-Steel, the Government recalls that it does not operate a labour inspectorate system. Cases of alleged infringement of individual employment rights can be heard by employment tribunals which examine such allegations in considerable detail. Furthermore, the Employment Relations Act extends the protection against the victimization of trade unionists and those who seek or campaign for trade union recognition. The Government also indicates that, since the take-over of the Sheerness plant by Allied Steel and Wire, ISTC have been granted access to the plant and have entered into discussions with the new management. While the right of access remains essentially a voluntary matter, the Employment Relations Act now provides for the drawing up of a statutory Code of Practice to provide the union with reasonable access to the workers to campaign for recognition. Furthermore, the Act provides individual workers with the right to be accompanied by a fellow worker or a trade union representative during disciplinary and grievance hearings, whether or not the workers are union members and whether or not their union is recognized by the employer. The Government considers that all of the above developments will enable the problems at Co-Steel to be successfully resolved.

76. *The Committee notes the information concerning the 1999 Employment Relations Act with interest. While welcoming the recent positive developments at Co-Steel, the Committee must once again express its regret at the Government's persistent refusal to establish an independent investigation into the allegations of anti-union tactics at the Sheerness plant, particularly in the light of the recent terminations made just prior to the sale of the plant [see 316th Report, para. 81]. The Committee once again requests the Government to immediately undertake an inquiry and to keep it informed of any further developments at Co-Steel in respect of union recognition for collective bargaining purposes and draws the attention of the Committee of Experts to the 1999 Employment Relations Act as concerns the application of Conventions Nos. 87 and 98.*

Case No. 1581 (Thailand)

77. At its March 1999 meeting, the Committee had recalled with great concern the numerous and serious incompatibilities between the State Enterprise Labour Relations Act (SELRA) and the principles of freedom of association and had urged the Government to take the necessary measures in the near future to amend the legislation so as to restore fully the right to organize and to bargain collectively to state enterprise employees [see 313th Report, paras. 62-64].

78. In a communication dated 29 June 1999, the Government indicates that the Senate amended the State Enterprise Labour Relations Bill and passed the revised Bill in

its second and final reading on 2 April 1999. However, the House of Representatives disapproved the amended draft on 7 April 1999. Then a Joint Ad Hoc Committee, consisting of members of the House of Representatives and Senators, was set up for consideration of the Bill. The Government adds that, at present, the State Enterprise Labour Relations Bill is under consideration of the Joint Ad Hoc Committee. In a communication dated 27 October 1999, the Government indicates that the Bill, which was amended by the Joint Ad Hoc Committee, was approved by the Senate but disapproved by the House of Representatives.

79. The Committee notes this information. It urges the Government to ensure that the Bill, in its final form, will be in conformity with freedom of association principles. It requests the Government to keep it informed of any developments in this regard and to provide a copy of the Bill once it has been adopted.

Case No. 1977 (Togo)

80. At its March 1999 meeting [see 313th Report, paras. 220-243], the Committee had requested the Government to take all the necessary measures to ensure that legally established trade union organizations including the *Force ouvrière togolaise* (FOT), the complainant in the present case, could carry on their activities without any prior authorization or interference by the public authorities, and to ensure that, in accordance with section 5 of the Labour Code, the acknowledgement of filing of the by-laws was issued to the complainant, and to keep it informed of any measures taken in this regard.

81. In a communication dated 30 August 1999, the Government states that it has asked the Minister of the Interior and Security to take all the necessary measures to ensure that the formalities for the registration of trade union organizations comply with the provisions of section 5 of the Labour Code, and that the Minister of the Public Service, Labour and Employment has asked the General Secretary of the FOT to contact the minister responsible for issuing acknowledgments in connection with his request.

82. The Committee notes with concern that the by-laws of the Force ouvrière togolaise (FOT) were filed on 5 April 1995 and that the acknowledgment of filing was requested again by the General Secretary of the FOT on 22 June 1999. The Committee requests the Government to issue without delay the acknowledgement in question, which the FOT has been awaiting for four years in order to be able to carry on its activities freely, and to keep it informed of any measures taken in this regard.

Case No. 1812 (Venezuela)

83. In its last examination of the case in March 1999 [see 313th Report, paras. 270-284], when it considered allegations concerning interference by an employer in the establishment of a trade union, the Committee requested the Government to carry out an investigation into the alleged presence of representatives of the company CORAVEN-RCTV at the constituent meeting of the trade union SINATRAINCORACTEL and alleged threats to dismiss workers who refused to join the new union, and to keep it informed of developments as soon as possible; and, considering it necessary to have the ruling of the Supreme Court of Justice on the matter that had given rise to the complaint, the Committee requested the Government to send it a text of this ruling.

84. In communications dated 12 and 22 October 1999, the Government indicates that the legal representative of the trade union SRTVA sent a communication stating that the organization did indeed initiate proceedings before the Supreme Court of Justice to have the act of registration of the National Trade Union of Workers at CORAVEN-RCTV annulled, but the application was never actually lodged and the act of registration therefore

remained in force. In the light of this, the legal representative considers that the complaint brought by the SRTVA before the Committee should be set aside. Given this information from the legal representative of the SRTVA, the Government considers that, since the necessary legal steps were not taken, the case is devoid of the elements necessary for its continued examination.

85. The Committee takes note of this information from the Government, but emphasizes that it contradicts its earlier information according to which the appeal lodged by the SRTVA was ruled to be admissible by the Supreme Court on 5 May 1997 [see 313th Report, para. 274]. The Committee regrets that the Government has not acted on its recommendations in which it requested an investigation into the alleged presence of representatives of the company CORAVEN-RCTV at the constituent meeting of the trade union SINATRAINCORACTEL and the alleged threats to dismiss workers who refused to join the new union. The Committee wishes to draw the Government's attention to the fact that, by ratifying Convention No. 98, the Government undertook to respect the principle that organizations of workers and employers must enjoy adequate protection against any act of interference from one another, be it direct or through its agents or members, in their establishment, operations or administration. The Committee hopes that in future the Government will ensure that cases of interference and discrimination will be dealt with severely and that appropriate legal sanctions will be applied.

Case No. 1952 (Venezuela)

86. At its last examination of the case in March 1999 [see 313th Report, paras. 285-303], the Committee: (1) again requested the Government to ensure the reinstatement in their posts of the union officials and members who had been dismissed or transferred (Glácido Gutiérrez, Rubén Gutiérrez, Tomás Arencibia, Juan Bautista and Ignacio Díaz, and a considerable number of union members), and to keep it informed of any decision or ruling that might be handed down; and (2) as regards the allegations concerning the summoning of Tomás Arencibia and Glácido Gutiérrez to appear before a prefecture and the request for a police presence by the Eastern Fire Brigade Association when the union officials in question were at the Association's headquarters, the Committee requested the Government to carry out an investigation into these allegations and, if acts of intimidation or anti-union discrimination were found to have taken place, to take the necessary measures to prevent any recurrence and punish those responsible.

87. In a communication dated 12 October 1999, the Government states that on 8 October 1999 a meeting took place at the headquarters of the Ministry of Internal Relations involving representatives of: the municipal authorities of Baruta, Chacao and Sucre; the Eastern Fire Brigade Association; the Governor of the State of Miranda; the trade union SINPROBOM; and the National Constituent Assembly, with a view to reaching an agreement to stop the hunger strike; an agreement was duly signed providing for the allocation of funds to pay the claims of SINPROBOM members and officials who had been reinstated, including back arrears of wages. The Government indicates that Mr. Tomás Arencibia and Mr. Glácido Gutiérrez enjoy complete physical freedom within the premises of the Eastern Fire Brigade Association, where there is no police presence, and have the use of their own area for union activities, as was evident from the meeting previously referred to at the fire brigade premises between SINPROBOM and Ministry of Labour representatives.

88. The Committee takes note of this information, from which it infers that the trade union officials and members of the complainant organization who were dismissed in 1997 have been reinstated in their posts and that discussions are taking place on payment of wage arrears. The Committee requests the Government to keep it informed in this regard.

Lastly, given that the Government has not replied to the allegation concerning the summoning of the trade union officials Tomás Arencibia and Glácido Gutiérrez to appear before a prefecture, the Committee requests the Government to take measures to prevent acts which could be interpreted as intimidation of trade union officials.

Case No. 1937 (Zimbabwe)

89. The Committee last examined this case at its meeting in March 1998 when it urged the Government to amend sections 98, 99, 100, 106 and 107 of the Labour Relations Act as revised in 1996 so as to ensure that compulsory arbitration may only be imposed with respect to essential services and in cases of acute national crisis. It further requested the Government to take the necessary measures to ensure that those workers who were dismissed as a result of their participation in the Standard Chartered Bank strike of April 1997 were reinstated in their jobs and entitled to the same conditions of employment and benefits as were enjoyed prior to the strike and to amend section 107(5) of the Labour Relations Act so as to ensure that workers are not discriminated against in their employment for exercising legitimate trade union activity [see 309th Report, para. 452].

90. In a communication dated 31 August 1999, the Government indicates that following a Supreme Court ruling that domestic remedies had not been exhausted in this case, the matter was remitted to the National Employment Council for the Banking Undertakings which ruled in favour of the workers in January 1999. The employers have appealed against this verdict and the case is pending before the Labour Relations Tribunal. As concerns the request to amend the Labour Relations Act, the Government states that the request to limit the imposition of compulsory arbitration to essential services and in cases of acute national crisis should be perceived in the context of what is provided for in the Act and the fact that the Government has an economy to run and affirmed that, absent a universal definition of essential services, the banking sector in the Zimbabwean case was such an essential service. As concerns the request to facilitate the reinstatement of the dismissed workers, the Government indicates that it could not discuss this matter since it is presently before the Labour Relations Tribunal. If the judgement is not in favour of the workers, they may appeal to the Supreme Court. Given the doctrine of separation of powers, judicial processes will decide not only the fate of the workers but also the desirability of the provisions in the Labour Relations Act which were referred to by the Committee.

91. *The Committee takes note of the information provided by the Government. It must recall, however, its previous conclusions that the imposition of compulsory arbitration is only acceptable in cases of strikes in essential services and that it has already considered that banking is not an essential service. The Committee therefore urges the Government once again to amend sections 98, 99, 100, 106 and 107 of the Labour Relations Act in order to bring the legislation into conformity with this principle. Furthermore, recalling that the dismissal of workers because of a legitimate strike constitutes discrimination in employment, the Committee requests the Government to keep it informed of any measures taken to ensure the reinstatement in their jobs of those workers who were dismissed as a result of their participation in the Standard Chartered Bank strike of April 1997 under the same conditions of employment and with the same benefits as were enjoyed prior to the strike, as well as any steps taken to amend section 107(5) of the Act. Finally, it requests to be kept informed of the outcome of the case before the Labour Relations Tribunal on this matter.*

* * *

92. Finally, as regards Cases Nos. 1769 (Russian Federation), 1785 (Poland), 1793 (Nigeria), 1796 (Peru), 1813 (Peru), 1826 (Philippines), 1844 (Mexico), 1849 (Belarus), 1854 (India), 1862 (Bangladesh), 1869 (Latvia), 1877 (Morocco), 1884 (Swaziland), 1886 (Uruguay), 1890 (India), 1891 (Romania), 1903 (Pakistan), 1908 (Ethiopia), 1914 (Philippines), 1926 (Peru), 1930 (China), 1935 (Nigeria), 1939 (Argentina), 1949 (Bahrain), 1956 (Guinea-Bissau), 1957 (Bulgaria), 1969 (Cameroon), 1972 (Poland) and 1996 (Uganda), the Committee requests the governments concerned to keep it informed of any developments relating to these cases. It hopes that these governments will quickly furnish the information requested. In addition, the Committee has just received information concerning Cases Nos. 1512/1539 (Guatemala), 1812 and 1895 (Venezuela) and 1843 (Sudan) which it will examine at its next meeting.

Case No. 2016

Definitive report

Complaint against the Government of Brazil presented by the Single Central Organization of Workers (CUT)

Allegations: Refusal to deduct trade union dues

93. The complaint is contained in a communication dated 4 March 1999 from the Single Central Organization of Workers (CUT). The Government sent its observations in a communication dated 19 May 1999.

94. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

95. In its communication of 4 March 1999, the Single Central Organization of Workers (CUT) states that, following the adoption of the 1988 Constitution, which guarantees the right to form unions in the public sector, most of the existing civil associations in that sector became trade unions. The complainant states that since the beginning of 1998, the government of the State of Paraná has been carrying out anti-union acts. During January and February 1998, the Government stopped deducting trade union dues for members of the Union of Teachers in the State and Municipal Public Systems and that from October of that year onwards, in retaliation for the union's protests against the reforms undertaken by the state government of Paraná, deduction of the union dues of 43,000 unionized teachers in this state was stopped. From late 1998 onwards, the state government extended this anti-union measure to the other public service unions. The complainant points out that this conduct on the part of the Paraná state government violates the country's Constitution, national legislation and international conventions.

B. The Government's reply

96. In its communication of 5 May 1999, the Government states that the union dues claimed by the unions are those referred to in section 548(b) of the Consolidated Labour Laws, under the terms of which trade union organizations are to be funded from members' contributions in the form established in union statutes or at the unions' general meetings. Such contributions are voluntary in nature, depend on the consent of each union member

and are paid monthly. They are not compulsory, and the State of Paraná cannot be asked to deduct trade union dues at source, since it might be asked by officials to return large sums of money deducted by mistake.

97. The Government stresses that payment of the monthly trade union dues depends on the agreement of each member and that, in this regard, the Higher Labour Court has stated that the collective arrangement by which union dues are deducted from professional workers' salaries, whether or not they are union members, without their prior consent, is not compatible with Brazilian law. The Government states that as a result of this, it cannot continue to deduct union dues if it is not shown that the public servants in question are union members and, in particular, that they have given their express authorization for the deductions. Lastly, the Government states that the Court of Justice of the State of Paraná has acknowledged that there is no obligation on the part of the state to deduct union dues from salaries.

98. The Government states that the secretariat of the Paraná state government previously deducted voluntary trade union contributions from employees' salaries. Following the enactment of State Decree No. 3062/97 in January 1998, this practice was stopped since, under the terms of the Decree, deductions other than compulsory deductions are allowed only with the express authorization of the officials concerned. In the light of this measure, the Union of Teachers in the State and Municipal Public Systems and the union representing public servants employed by departments of the State of Paraná initiated protection *(amparo)* proceedings in the Paraná State Court of Justice in order to obtain recognition of the right to have members' union dues deducted at source on a compulsory basis. The Government has supplied copies of the Court of Justice rulings which indicate that the requests for such protection have been rejected.

C. The Committee's conclusions

99. *The Committee notes that in the present case, the complainant alleges that from January 1998 onwards, the government of the State of Paraná stopped deducting the trade union dues of members of the Union of Teachers in the State and Municipal Public Systems and that starting in October of that year, in retaliation for the union's protests against the reforms undertaken by the state government, they stopped deducting the union dues of 43,000 unionized teachers in the state. This measure was extended to the other public service unions from late 1998 onwards.*

100. *The Committee notes that the complainant and the Government agree that the State of Paraná had previously deducted trade union dues for members of the public sector unions and, starting in 1998, stopped doing so. However, the versions of the two parties are mutually contradictory in terms of the reasons given for discontinuing the practice. While the complainant alleges that it was done as an anti-union measure in retaliation for the union's protests against the reforms undertaken by the government of the State of Paraná, the Government states that it had previously deducted the union dues on a voluntary basis, but that under the terms of State Decree No. 3062/97 (according to which non-compulsory deductions are allowed only with the express authorization of the officials concerned), it could not continue to withhold deductions without such authorization, which has also been demanded by the Higher Labour Court and by a number of court rulings in the State of Paraná.*

101. *In this regard, the Committee emphasizes that the requirement for the express authorization of a union's members for employers to be allowed to deduct trade union dues from wages is not at variance with the principles of freedom of association. However,*