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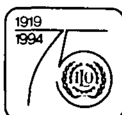
# OFFICIAL BULLETIN

Vol. LXXVII, 1994




Series B, No. 1

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293RD REPORT

MEASURES TAKEN BY THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA TO IMPLEMENT THE RECOMMENDATIONS OF THE FACT-FINDING AND CONCILIATION COMMISSION ON FREEDOM OF ASSOCIATION


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

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

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*Vol. LXXVII* *1994* *Series B, No. 1*

## Reports of the Committee on Freedom of Association (292nd and 293rd Reports)

### 292ND REPORT[1]

### I. 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 17, 18 and 25 March 1994, under the Chairmanship of Mr. Jean-Jacques Oechslin, former Chairman of the Governing Body.

2. The members of the Committee of Indian, Argentinian and Kenyan nationalities were not present during the examination of the cases relating to India (Case No. 1651), Argentina (Cases Nos. 1679, 1684 and 1728) and Kenya (Case No. 1713) respectively.

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* *

3. The Committee is currently seized of 110 cases, in which complaints have been submitted to the governments concerned for observation. At its present meeting, it examined 32 cases on the merits, reaching definitive conclusions in 25 cases and interim conclusions in seven cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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[1] The 292nd and 293rd Reports were examined and approved by the Governing Body at its 259th Session (March 1994).

New cases

4. The Committee adjourned until its next meeting the cases relating to: Guatemala (No. 1740), Argentina (Nos. 1741, 1744 and 1745), Canada (Nos. 1743, 1747, 1748, 1749, 1750 and 1758), Dominican Republic (No. 1751), Myanmar (No. 1752), Burundi (No. 1753), El Salvador (Nos. 1754 and 1757), Turkey (No. 1755), Peru (No. 1759), Sweden (No. 1760), Colombia (No. 1761), Czech Republic (No. 1762) and Norway (No. 1763), because it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

5. The Committee is still awaiting observations or information from the governments concerned in the cases relating to: Spain (No. 1561), Venezuela (Nos. 1612, 1676, 1685 and 1739), Côte d'Ivoire (No. 1647), Haiti (Nos. 1682, 1711 and 1716), Colombia (No. 1686), El Salvador (No. 1693), Cameroon (No. 1699), Philippines (No. 1718), Argentina (Nos. 1723 and 1736), Turkey (No. 1727), Dominican Republic (No. 1732), Canada (Nos. 1733 and 1737) and Guatemala (No. 1734). As regards Spain (Case No. 1561), Venezuela (Cases Nos. 1612 and 1739), Argentina (Cases Nos. 1723 and 1736), the governments concerned announced that they were going to send their observations soon. As regards Costa Rica (Case No. 1678/1695), the Committee is awaiting the Government's observations on the most recent communication of the complainants.

Observations requested from complainants
and/or governments

6. With respect to Cases Nos. 1658 (Dominican Republic) and 1665/1667 (Ecuador), the Committee is awaiting the comments from the complainants. The Committee requests the complainants concerned to transmit, without delay, the information requested. As regards Case No. 1609 (Peru), the Committee requests the complainants and the Government to provide any additional information so that the matter may be examined in full knowledge of all the facts.

Partial information received from governments

7. In Cases Nos. 1512/1539 (Guatemala), 1527, 1541, 1598 and 1706 (Peru), 1552 (Malaysia) and 1756 (Indonesia), the governments have sent certain information on the allegations made. The Committee requests them 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. The Committee intends to examine Cases Nos. 1568 (Honduras), 1629 (Republic of Korea), 1641 (Denmark), 1648/1650 (Peru), 1649 and 1719 (Nicaragua), 1671, 1687, 1691 and 1712 (Morocco), 1701 (Egypt), 1730 (United Kingdom), 1735 and 1738 (Canada), 1742 (Hungary) and 1746 (Ecuador) at its next meeting.

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* *

Complaint presented under article 26 of the ILO Constitution

9. With respect to Case No. 1594 (Côte d'Ivoire) which concerns a complaint made by Worker delegates to the 79th (1992) Session of the International Labour Conference under article 26 of the ILO Constitution, as well as a complaint presented by the World Confederation of Labour, the Committee had urged the Government at its May 1993 meeting [see 289th Report, paras. 1-29] to submit as soon as possible detailed replies to the different aspects of this complaint and it had stated that, in the light of the factual and legal information at its disposal, it would re-examine the advisability of taking further action on the complaint presented under article 26 of the ILO Constitution by establishing a Commission of Inquiry. At its November 1993 meeting, the Committee had requested the Government to accept a direct contacts mission to the country. Since that meeting, no reply has been received. Therefore, the Committee must point out that in the event that it receives no reply for its next meeting, it will consider the setting up of a Commission of Inquiry and the establishment of contacts between the Chairman of the Committee and the Government's delegation to the Conference.

## URGENT APPEALS

10. As regards Cases Nos. 1703 (Guinea), 1704 (Lebanon), 1709 and 1724 (Morocco) and 1726 (Pakistan), the Committee observes that, despite the time which has elapsed since the presentation of these complaints or since their last examination, it has not received the Governments' observations. The Committee draws the attention of all these Governments 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, even if the observations or information requested from the Governments have not been received in due time. The Committee accordingly requests the Governments to transmit their observations or information as a matter of urgency.

*

* *

11. 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: Nos. 1621 (Sri Lanka), 1679 (Argentina), 1696 (Pakistan), 1697 (Turkey), 1725 (Denmark), 1731 (Peru).

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

12. As regards Case No. 1417 (Brazil) concerning the murder of trade union leaders, the Committee had requested the Government at its November 1991 meeting to continue to keep it informed of developments in the trials concerning the deaths of the trade union leaders Mauro Pires and Sebastiao Teixeira do Carmo [see 279th Report, para. 12]. In a communication of 29 October 1993, the Government transmits a copy of the verdict handed down by the Court of First Instance with regard to the murder of Mr. Mauro Pires which sentences the guilty party to 12 years' imprisonment. The Government further states that in July 1993 the sentenced party appealed against this decision. The Committee takes note of this information and requests the Government to provide information on the sentence handed down by the Court of Appeal in this matter as well as to keep it informed of the outcome of the trial concerning the death of Mr. Sebastiao Texeira do Carmo.

13. As regards Case No. 1479 (India), the Committee had noted that the Central Administrative Tribunal of Cuttack dismissed the application of 40 employees regarding wage deductions higher than the corresponding period of a strike in which they had participated. The Committee reiterated its previous recommendation inviting the Government to ensure that workers having organized or participated in apparently lawful industrial action should not be subject to penal or other sanctions [see 287th Report, para. 17]. In a communication of 30 December 1993, the Government indicates that the penal action in question had been taken for activities that were not lawful industrial action, since the situation in the Heavy Water Plant is governed by the Central Civil Services (Conduct Rules) 1962, rule 7 of which specifically prohibits the holding of meetings and demonstrations by Government servants within such premises. On a related issue, the Government adds that the Central Administrative Tribunal of Cuttack has now confirmed the disciplinary action taken against Mr. Satapathy, one of the initial complainants in this case (the Appellate disciplinary authority had reduced Mr. Satapathy's penalty to a stoppage of three increments). The Committee takes note of this information.

14. As regards Case No. 1509 (Brazil), the Committee had requested the Government at its November 1990 meeting to send it more

precise information on the outcome of the investigation into the murder of the trade union leader Valdicio Barbosa dos Santos which had occurred on 12 September 1989 in the City of Pedro Canario, State of Espirito Santo [see 275th Report, para. 26]. In a communication of 29 October 1993, the Government states that the magistrates have asked the police of the City of Pedro Canario to hand over the report on this murder in order to continue the investigation. The Committee takes note of this information and requests the Government to keep it informed of the outcome of the judicial investigation.

15. As regards Case No. 1514 (India), last examined by the Committee at its May 1992 meeting [see 283rd Report, paras. 103-123], the Government had been requested: (a) to keep the Committee informed of measures taken, if necessary, to guarantee teachers in general, and members of the Hindustan Engineering Employees' Trade Union (HEETU) in particular, adequate protection against acts of anti-union discrimination, including effective and sufficiently dissuasive sanctions; (b) to establish speedy and efficient procedures allowing the reinstatement of workers dismissed for trade union activities; and (c) to transmit the decisions of the Madras Labour Court concerning the case of 13 employees dismissed and the complaint lodged by the General Secretary of the HEETU. In a communication of 30 December 1993, the Government states: that it is for the courts to decide whether teachers should be considered as workmen under the Disputes Act; that the Industrial Disputes Act already contains procedures allowing dismissed workers to obtain relief from industrial tribunals; and that the Madras Industrial Tribunal has dismissed the complaints in question, as the petitioner trade union did not send a claim statement, nor make representations in respect of several adjournments in the case; that the text of the decision has been requested from the Tamil Nadu authorities. On the first issue, the Committee draws the Government's attention to the fact that, according to the principles of freedom of association, teachers should enjoy the same protection as other workers against acts of anti-union discrimination, independently of the view taken by national courts as to whether or not teachers are covered by the definition of workmen in the Disputes Act. The Committee requests the Government to keep it informed of developments in this respect. As regards the second issue, the Committee recalls that it had already expressed its concern at the slowness of the existing remedies [see 283rd Report, para. 121]; it invites the Government to improve these procedures and to keep it informed of developments in this respect. Finally, the Committee requests the Government to provide it with the text of the decision of the Madras Labour Court, referred to by the Government in its communication.

16. In Case No. 1559 (Australia), the Committee, at its November 1992 meeting [see 284th Report], had asked the Government to take measures to remove the requirement, recently introduced in the federal Industrial Relations Act, of a membership of 10,000 for trade union registration at the federal level. The Government, in a communication of 18 January 1994, provides a copy of the Industrial Relations Reform Act 1993. Section 75(c) of the Act amends section 189 of the

Industrial Relations Act to provide new criteria for registration: the minimum requirement for the registration of an employee association is now a membership of 100. The Committee takes note with interest of the action taken by the Government.

17. As regards Case No. 1575 (Zambia), at its May 1993 meeting the Committee had requested the Government to take its observations [see 284th Report, paras. 900-919] into account in the drafting of the Industrial Relations Bill and to keep it informed of developments in the adoption process of the text. In a communication of 21 January 1994, the Government indicates that the Industrial Relations Act 1993 (which replaces the Industrial Relations Act 1990), became effective on 30 April 1993. A copy of the new Act has been provided. The Committee notes with interest that many of the issues which had been raised have been addressed in the Act. However, some limitations have not yet been fully removed: minimum membership (100) for the establishment of a trade union (section 9(1) and (2)); ban on multiple office-holding (sections 18(3) and 30(3)); ban on strikes in certain mining operations (section 107(10)(f)); police powers in case of strikes in essential services (section 107(6)). The Committee asks the Government to keep it informed of amendments taking into account its previous observations on these points.

18. As regards Case No. 1581 (Thailand), the Committee had requested the Government at its November 1993 meeting [see 291st Report, para. 21] to keep it informed of any progress reached regarding the adoption of the revised State Enterprise Labour Relations Act. It further requested the Government to provide information on the restitution of assets of the trade unions which had been dissolved under the said Act. In a communication of 23 February 1994, the Government states that the draft revised State Enterprise Labour Relations Act is awaiting consideration of the House of Representatives at the next session with a view to enacting it into law by the National Assembly. As regards restitution of assets of the trade unions which were dissolved under the State Enterprise Labour Relations Act of 1991, the Government points out that since the proclamation and entry into force of the 1991 Act, there has been no transfer or handing over of the assets of the dissolved trade unions to any other juristic persons or to the Thai Red Cross Society. The Committee takes note of this information with interest. It would once again request the Government to keep it informed of developments relating to the adoption of the revised State Enterprise Labour Relations Act.

19. As regards Case No. 1621 (Sri Lanka), the Committee had requested the Government at its February 1993 meeting [see 286th Report, paras. 176-193] to take immediate measures to amend the list of essential services where strikes were banned, which list was established by the 6 July 1989 Essential Services Order issued under the Emergency (Miscellaneous Provisions and Powers) Regulations, as well to remove export industries and other non-essential services listed in the Order as well. It also requested the Government to ensure that the employees of Simca Garments Ltd. in the free trade

zone in Colombo who had been dismissed en masse for having gone on strike be immediately reinstated in their jobs and to keep it informed of developments concerning implementation of the Labour Commissioner's request to this end. In a communication of 31 December 1993, the Government provides the following information: (i) services connected with export of commodities and other export products have ceased to be essential services with effect from 17 June 1993 and the Emergency (Maintenance of Exports) Regulations No. 1 of 9 March 1992 have been rescinded on 29 September 1993; (ii) security arrangements at the export processing zones have been revised in June 1993 to "permit not more than two authorized representatives of any trade union to enter any export processing zone on the written invitation of the labour representatives of the Joint Consultative Councils of any enterprise located in the zone in order to meet such labour representatives at a common meeting point within the zone"; (iii) the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 1993 has been amended so that strikes in essential services are no longer illegal provided that the strike has been commenced by a registered trade union and that 14 days' notice has been given to the employer concerned and the Labour Commissioner; (iv) by virtue of Emergency (Industrial Disputes) Regulation No. 1 of 1993, all disputes arising after 24 June 1989 and remaining unsettled shall be referred by the Minister of Labour for arbitration; consequently, any worker who was or is a party to such dispute shall be deemed not to have vacated or terminated his employment at any time after 20 June 1989, by reason of the operation of the provisions of the Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1993; and (v) an amendment which proposes to introduce a special chapter to the Industrial Disputes Act to provide for unfair labour practices to be deemed offences under the Act and which would guarantee the application of Articles 1 and 2 of Convention No. 98, has been placed before the Cabinet of Ministers; after receipt of Cabinet approval, this amendment will be drafted prior to being presented in Parliament. The Committee takes note of this information with interest. It nevertheless requests the Government to continue to keep it informed of measures taken to ensure that the employees who had been dismissed for having gone on strike are reinstated in their jobs as well as of any developments concerning the preparation and adoption of the amendment which proposes to introduce a special chapter to the Industrial Disputes Act on unfair labour practices. Moreover, the Committee draws the legislative aspects of this case regarding the application of Convention No. 98 to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

20. Regarding Case No. 1622 (Fiji), the Committee, when it last examined it at its May 1993 meeting, had asked the Government once again to amend all those legislative provisions relating to trade unions, enumerated in its previous recommendations and to keep it informed thereto. In a communication dated 24 January 1994, the Government states that it has decided to adopt the following changes: repeal of the ban on multiple office-holding for trade union officers (in this respect the Government states that it has withdrawn action commenced in February 1992 against Mr. M. Chaudhry which was pending

in the High Court); repeal of the six weeks' validity period for union strike ballots; repeal of the requirement for secret ballots provided for in Decree No. 44 of 1991; repeal of check-off agreements for public sector unions by restoration of check-off to all public service unions. The Government states that the draft amendments will be submitted to Parliament for adoption and that in the meantime the provisions concerned are considered as redundant and obsolete and are not enforced. The Committee takes note of this information with interest and asks the Government to provide copies of the texts amending trade union legislation as soon as they have been adopted.

21. As regards Case No. 1628 (Cuba), the Committee examined it during its May 1993 meeting [see 287th Report, paras. 268-282] and requested the Government to make an immediate pronouncement on registration of the General Union of Cuban Workers (UGTC) and to keep it informed of any measures adopted in this respect. In a communication dated 16 December 1993, the Government criticizes the Committee's recommendations and in particular points out that this case lacks legal objectivity in view of the fact that the request which was initially made by Mr. Rafael Gutiérrez Santos to the Ministry of Justice (concerning a request for registration of some trade union organization) was discounted subsequently at his request in a letter of 1 April 1992 which had been transmitted to the Committee. The Committee takes note of the Government's observations. It has decided to transmit these observations to the complainant organization so that the latter may provide any comments or information that it considers to be useful in this respect and, in particular, any document proving effectively the request for registration of the organization concerned.

22. As regards Case No. 1630 (Malta), the Committee had requested the Government at its February 1993 meeting [see 286th Report, paras. 576-590] to supply details of the proceedings initiated by workers at the Malta Drydocks who suffered discrimination in their working conditions because of their affiliation to the Union Haddiema Maghqudin (UHM) which is in turn affiliated to the complainant, the Confederation of Malta Trade Unions (CMTU). The employer had allowed overtime to members of another union while it had refused it to workers affiliated to the UHM. The Committee had also requested the Government to keep it informed of progress in the talks under way with the employer over the question of non-discriminatory apportionment of overtime. In a communication of 16 November 1993, the Government states that the Employment Commission, to which the workers concerned had referred their case, decided in favour of two workers and ordered management to pay them compensation. In a communication of 3 December 1993, the complainant points out that its complaint concerns not just the two employees mentioned by the Government, but all those Malta Drydocks employees who were denied overtime by the employer. It further considers that had the Government acted on the Committee's recommendations, there would not have been the need for the employees concerned to act on their own for redress and that the award of the Employment Commission does not release the Government from its obligations to conform itself with the international labour

Conventions it has ratified. The Committee takes note of all this information. Regretting that the Government has not furnished any information on the talks under way with the employer over the question of non-discriminatory apportionment of overtime, the Committee can only reiterate the recommendations that it had formulated during its February 1993 meeting and requests the Government to continue to keep it informed of any further information concerning this case.

23. As regards Case No. 1639 (Argentina), the Committee examined it at its February 1993 meeting [see 286th Report, paras. 61-94] and expressed the hope that the Government would, as soon as possible, be able to meet the objectives of its economic plan, so as to fully restore the right to collective bargaining which had been limited by the promulgation of Decree No. 1334/91. In a communication dated 18 November 1993, the Government states that in April 1993 the new trade union executive of the Association of Airline Pilots (one of the complainant organizations) had re-established working relations with Aerolineas Argentinas. These relations were fully normalized after the signing of an agreement providing for a new wage increase. The Government also states that in October 1993 the parties had begun negotiations with a view to renewing the collective labour agreement. The Committee notes this information with interest.

24. As regards Case No. 1666 (Guatemala), the Committee examined it at its May 1993 meeting [see 287th Report, paras. 291-303] during which it requested the Government to ensure that judicial inquiries were carried out as quickly as possible with a view to ascertaining fully the alleged facts (the murder of trade union leader Zenón Sánchez Lopez; the physical attacks on trade unionists Cesario Chenchavac and Jacinto Sánchez del Cid; and the death threats made against CGTG trade union leaders) and to keep it informed of the results of those inquiries as well as the results of the inquiry that was being held on the physical attack against Mr. Jesús Miranda. In a communication of 29 October 1993, the Government states that there have been no denunciations with respect to the outstanding allegations but that it has instructed the competent authority to carry out inquiries into these matters. The Committee takes note of this information and insists that measures be taken to give effect to its recommendations. It requests the Government to keep it informed of the results of the inquiries.

25. As regards Case No. 1668 (Cyprus), the Committee, at its February and May 1993 meetings, had asked the Government to keep it informed of the outcome of the legal proceedings which had been instituted against the strikers in the port of Limassol and to provide the text of any judgement. In a communication dated 20 August 1993 the Government indicates that the charges brought against the arrested strikers were not pursued further as it was considered that this was not in the public interest. The Committee takes note of this information.

26. Finally, as regards Cases Nos. 1273, 1441, 1494 and 1524 (El Salvador), 1444, 1585 and 1610 (Philippines), 1511 (Australia), 1556

(Iraq), 1557 (United States), 1590 (Lesotho), 1605 (Canada/New Brunswick), 1606 and 1624 (Canada/Nova Scotia), 1607 (Canada/Newfoundland), 1616 (Canada), 1618 (United Kingdom), 1643 (Morocco), 1669 (Chad), 1672 (Venezuela), 1675 (Senegal), 1677 (Poland), 1683 (Russia), 1700 (Nicaragua), 1705 (Paraguay), 1710 (Chile) and 1717 (Cape Verde), the Committee requests the Governments concerned to keep it informed of developments in the various matters. The Committee hopes that these Governments will communicate the information requested shortly.

## II. CASES WHICH DO NOT CALL FOR FURTHER EXAMINATION

### Case No. 1720

### COMPLAINT AGAINST THE GOVERNMENT OF BRAZIL PRESENTED BY THE INTER-STATE FEDERATION OF TRADE UNIONS OF CIVILIAN POLICE WORKERS (FEIPOL)

27. The complaint in this case is contained in a communication from the Inter-State Federation of Trade Unions of Civilian Police Workers dated 2 June 1993. The Government sent its observations in a communication dated 29 November 1993.

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

### A. The complainant's allegations

29. The complainant organization alleges in its communication of 2 June 1993 that the President of the Trade Union of Civilian Police Officers of Mato Grosso del Sur, Mr. Eder Luiz Redó, was suspended from his post for 20 days for having sent a note to the local press in November 1991 criticizing the Assistant Secretary of Public Safety for decisions which had repercussions on working conditions in the civilian police force.

30. The complainant adds that the President of the Trade Union of Civilian Police Officers of Mato Grosso del Sur was dismissed following administrative proceedings for denunciations which he made to the Legislative Assembly concerning working conditions in the police force.

31. Finally, the complainant alleges that in violation of national legislation the Secretary of the Administration of the State of Mato Grosso decided to suspend the check-off of trade union dues.

## B. The Government's reply

32. In its communication of 29 November 1993, the Government states that disciplinary proceedings were taken against the police officer Mr. Eder Luiz Redó for his failure to fulfil his obligations under articles 103 and 104 of the Civilian Police Statute of the State of Mato Grosso, for offences committed through the communication media against the Assistant Secretary of Public Safety. The Government points out that the trade union status of Mr. Redó does not relieve him of his obligation to act as a police officer and to respect the principles of hierarchy and discipline.

33. Administrative proceedings were taken against the police officer Mauricio Godoy, who as President of the Trade Union of Civilian Police Officers of Mato Grosso del Sur denounced offences allegedly committed by his superiors. If no sanctions were finally imposed on him, this was because the Secretary of Public Safety decided to pardon him.

34. Finally, the Government states that the matter of the suspension of the check-off of trade union dues has been submitted to the judicial authorities.

## C. The Committee's conclusions

35. The Committee notes the complainant's allegations referring to sanctions against officials of the Trade Union of Police Officers of Mato Grosso del Sur and the suspension of the check-off of trade union dues. The Committee has also noted the observations of the Government in this respect.

36. The Committee recalls that Brazil has ratified Convention No. 98 and that this Convention contains a provision respecting its application to the police force which reads as follows:

> The extent to which the guarantee is provided for in this Convention shall apply to the armed forces and the police shall be determined by national law or regulations (Article 5, paragraph 1 of Convention No. 98).

37. In pursuance of this text, there is no doubt that the International Labour Conference intended to allow each State to judge to what extent it is appropriate to grant members of the armed forces

and the police the rights provided for by the Convention, that is, by implication, that States which have ratified the Convention are not obliged to grant these rights to those categories of workers [145th Report, Case No. 778 (France), para. 19].

38. In these circumstances, since the Convention has left the matter for the appreciation of member States, the Committee recommends the Governing Body to decide that this case does not call for further examination.

## The Committee's recommendation

39. In the light of the foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.

## Case No. 1728

## COMPLAINT AGAINST THE GOVERNMENT OF ARGENTINA PRESENTED BY THE NATIONAL FEDERATION OF UNIVERSITY PROFESSORS (CONADU)

40. The complaint was lodged in a communication from the National Federation of University Professors (CONADU) dated 29 July 1993. It sent additional information in a communication dated 5 October 1993. The Government sent its observations in a communication dated 5 January 1994.

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

### A. The complainant's allegations

42. In its communications of 29 July and 5 October 1993, the National Federation of University Professors (CONADU) alleges that despite having complied with every legal requirement, authorities have not granted it union personality, thus preventing it from engaging in collective bargaining.

### B. The Government's reply

43. In its communication of 5 January 1994, the Government replies that based on a resolution of 4 November 1993 (copy attached), the Ministry of Labour and Social Security granted union personality to the National Federation of University Professors (CONADU).

### C. The Committee's conclusions

44. The Committee observes with interest that the problem referred to by the complainant organization has been satisfactorily resolved by the granting of union personality via the resolution of 4 November 1993 by the Ministry of Labour and Social Security.

### D. The Committee's recommendation

45. In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that the present case does not call for further examination.

## III. CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

### Case No. 1596

### COMPLAINT AGAINST THE GOVERNMENT OF URUGUAY PRESENTED BY THE TRADE UNION CENTRE OF PAPER AND CELLULOSE WORKERS (CUOPYC)

46. The Committee examined this case at its May 1992 meeting, when it submitted an interim report to the Governing Body [see 283rd Report of the Committee, paras. 356-374, approved by the Governing Body at its 253rd Session (May-June 1992)]. The Government sent further observations in communications dated 28 September 1992, 12 May and 28 September 1993.

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

## A. Previous examination of the case

48. In May 1992, allegations remained pending concerning the dismissal, in 1990, of many strikers and trade union leaders from the National Paper Factory (FNP), immediately after the complainant organization and the FNP had signed an agreement putting an end to the strike and the dispute between them. This agreement provided that the enterprise would not resort to reprisals against the strikers. The Committee noted that an administrative inquiry was under way and would culminate in a ministerial decision determining the validity of the complaints and the measures to be taken.

49. The Committee made the following recommendation to the Governing Body on the allegations pending [see 283rd Report of the Committee, para. 374]: the Committee requests the Government to inform it of the outcome of the administrative inquiry that was undertaken following the dismissal of trade unionists and trade union leaders and if, as the indications seem to confirm, this inquiry reveals that the dismissals were based on anti-union motives, urgently to take measures with a view to securing the reinstatement of the dismissed workers and the strict application of the penalties prescribed by law.

## B. The Government's reply

50. In its communication of 28 September 1992 the Government of Uruguay, referring to the Committee's conclusions reached at its May 1992 meeting, in which it pointed out that the alleged dismissals had occurred after lawful strike action [283rd Report, para. 370], states that, although it is true that during the dispute between the National Paper Factory and its staff, the enterprise, alleging that the restructuring would necessarily involve a cut in staff, dismissed more that 100 workers including a number of trade union representatives, it is far from certain that a work stoppage exceeding three months might be described as a "legal strike", especially when it seriously threatened a factory's productive capacity, discouraged new investment, increased the risk of confrontation and undermined the climate of healthy industrial relations conducive to equitable solutions.

51. The Government adds that after the corresponding administrative inquiry in the National Paper Factory had been carried out, in compliance with all the procedural guarantees, the competent officials of the Labour Inspectorate of the Ministry of Labour advised that severe penalties should be taken against the enterprise after noting, amongst other things, that there was sound evidence that the enterprise had used the pretext of rationalization to undermine trade union activity. The Government endorses the report of the administrative inquiry carried out by the qualified advisers of the

General Labour Inspectorate, in which it notes "the dismissal of approximately 50 per cent of the executive and auditing committees" and "50 per cent of the trade union representatives negotiating on the wage boards and National Labour Directorate ... because of trade union activity ... with the intention of breaking up the trade union organization". Consequently, the General Labour Inspectorate of the Ministry of Labour and Social Security adopted a resolution on 20 August 1992, in accordance with the regulations in force, imposing a heavy fine (equivalent of 22,000 US dollars) on the National Paper Factory. The Government adds that the administrative measures adopted are separate from the legal proceeding initiated by the workers before the judiciary to redress their grievances.

52. As regards the Committee's request that inquiries into situations such as the one in this case should be completed rapidly, the Government points out that although the CUOPYC submitted a complaint to the Secretary of State on 22 January 1991, the date upon which proceedings commenced, the seriousness of this complaint and the actual context in which the dismissals occurred (when the enterprise found itself having to undertake restructuration) warranted a more careful analysis and therefore took longer to determine than might have been wished.

53. In its communications of 12 May and 28 September 1993, the Government states that the National Paper Factory requested that the admininistrative proceedings stipulating financial penalties for violation of freedom of association should be reviewed and that consequently it was concluded that: the enterprise had been studying the possibility of carrying out a restructuring programme of its staff and industrial reconversion for years, which caused a dispute ending with the signing of a collective agreement in 1991; in December 1990 the enterprise dismissed 117 workers; the need for restructuration was the outcome of a painstaking and long-term analysis; the Trade Union Centre of Paper and Cellulose Workers (CUOPYC) denounced the dismissals as being violations of ILO Conventions Nos. 87 and 98, as it considered the dismissals of trade union leaders and militants to be a means of trade union persecution; the administration considered the situation as presented to be a violation of trade union rights and heavily fined the enterprise.

54. Similarly, the Government points out that after having carefully analysed the facts, it was observed that: the large majority of dismissed workers were not trade unionists; the dismissed workers were scattered throughout all branches of the enterprise, including managerial staff and workers at a much lower level; the dismissals were decided upon in accordance with impartial and well-founded criteria; the trade union still seems to exist; the development of industrial relations has been normal and satisfactory; the enterprise has not recruited new staff since the time it dismissed the workers in question; productivity has increased noticeably; five of the dismissed trade union leaders who had brought legal action against the enterprise reached an agreement which was upheld by the judicial authority, whereby they were paid a sum equivalent to one and

a half times the compensation for a usual dismissal. As a result of this agreement, no more dismissals were made and the question of trade union persecution was not raised. Finally, the Government reports that the judicial complaint submitted by two dismissed trade union leaders had been rejected by courts of the first and second instance and that the other dismissed workers had accepted compensation paid them.

### C. The Committee's conclusions

55. The Committee notes that, in accordance with the conclusions it reached at its May 1992 meeting, the General Labour Inspectorate of the Minister of Labour and Social Security imposed a heavy fine (the equivalent of 22,000 US dollars) on the National Paper Factory, after having proved through an administrative inquiry that trade union officials had been dismissed on account of their trade union activity. Similarly, the Committee notes that according to the Government, five trade union leaders who had instigated legal action challenging their dismissal reached an agreement with the enterprise, after being paid compensation, and that the judicial complaint submitted by other trade union leaders was rejected; and that finally, the remaining trade union leaders and workers accepted the compensation paid to them by the enterprise.

56. In this respect, the Committee wishes to draw the Government's attention to the principle according to which it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is accorded by legislation which enables employers in practice - on condition that they pay the compensation prescribed by law for cases of unjustified dismissal - to dismiss any worker, if the true reason is his trade union membership or activities.

57. In the present case, the Committee notes that: (1) although the dismissals took place in the context of a collective dispute, they also took place during a process of restructuring by the enterprise for economic reasons; (2) subsequently, the enterprise did not hire any new workers; (3) a heavy fine was imposed on the enterprise; and (4) the enterprise reached an agreement with all the dismissed workers except two of them, whose judicial complaints were rejected by the judicial authority. Taking into account all the foregoing elements, the Committee considers that it need not pursue its examination of these allegations.

## The Committee's recommendations

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

(a) The Committee draws the Government's attention to the principle according to which it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is accorded by legislation which enables employers in practice - on condition that they pay the compensation prescribed by law for cases of unjustified dismissal - to dismiss any worker, if the true reason is his trade union membership or activities.

(b) Taking into account the specific circumstances of this case and the manner in which the dismissals took place, the Committee will not pursue its examination of the allegations.

## Case No. 1625

## COMPLAINT AGAINST THE GOVERNMENT OF COLOMBIA PRESENTED BY THE SINGLE CONFEDERATION OF WORKERS OF COLOMBIA (CUT)

59. The Committee examined this case at its February 1993 meeting, at which it submitted an interim report to the Governing Body [see 286th Report of the Committee, paras. 385-399, approved by the Governing Body at its 255th Session (May 1993)]. The Government sent new information in a communication of November 1993.

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

### A. Previous examination of the case

61. In its communication of 20 February 1992, the Single Confederation of Workers of Colombia (CUT) alleged that workers had been dismissed for exercising their right to trade union membership, as had occurred at the MULTIPLAST (40 dismissals), INDUNAL (45 dismissals) and WACKENHUT (70 dismissals) enterprises; pressure had been put on workers to leave their trade union as occurred in the GOOD YEAR company; and workers had been obliged to join trade unions which have links with their employer, as in the case of the San Carlos sugar mill in Tulua (Valle).

62. As regards the right to strike, the complainant had alleged that, contrary to the provisions of the new National Constitution, the Government assumes the right to decide which public services are essential, among which it includes the banking and financial sectors, health, social security, telecommunications, energy (including electricity), ports, transport, water supply and sewage, education, state services in general and even a number of hotels. On this basis, the Government has declared strikes in these sectors to be illegal, with the resulting dismissals. The complainant stated further that where no agreement is reached in disputes occurring in the state sector and in many cases in the private sector, the Government ends up by convening a court of mandatory arbitration. Likewise, in the public sector, the right to collective bargaining is accorded to "official workers" (who have a contract of employment) but not to "public employees" (whose situation is governed by statute), to whom the right to strike is also denied. Furthermore, Act No. 60 of 1990 establishes that no state body shall be able to make pay adjustments that exceed the level set by the Government. Thus, section 18 of Decree No. 2914 of 1991 establishes that "the legal representatives and governing boards or councils of state industrial and commercial enterprises and of mixed-economy companies that are subject to the regulations governing state industrial and commercial enterprises shall be required, prior to concluding collective agreements envisaging wage increases higher than those decreed by the National Government for public service employees, to seek authorization from the Higher Council on Fiscal Policy (CONFIS) or the authority taking its place ...". The complainant added that when, exceptionally, a collective agreement was achieved, the Government modifies it, as occurred in the case of the state enterprise "Puertos de Colombia-Colpuertos" where the Government, by virtue of Decree No. 35 of 1992, modified the clauses on pensions and retirement.

63. Not having received the Government's observations on these allegations, at its May 1993 meeting the Committee regretted that the Government had not provided a detailed reply to these allegations (anti-union dismissals and interference; restrictive regulations and practices in relation to strikes, collective bargaining and mandatory arbitration; submission of collective bargaining in the public sector to the Government's economic policy; and amendment by decree of a collective agreement in the enterprise Puertos de Colombia), and requested the Government to reply to these allegations without delay [see 286th Report, para. 399].

## B. The Government's reply

64. In its communication of November 1993, the Government states that at no time was Act No. 50 of 1990 intended to generalize the practice of short-term contracts, and that the spirit and purpose of the Act centred on introducing greater flexibility in substantive labour standards which hampered job creation at a given time. Neither

did it call into question the guarantees for workers to organize in trade unions, given that this prerogative is enshrined in the National Constitution. Every worker has the right to decide, at his discretion, whether to belong to a trade union organization.

65. As regards the right to strike, it is enshrined in the National Constitution. None the less, the right to strike is subject to regulation by Congress, which has the power to determine and specify which activities constitute essential public services. The cases in which the Ministry declared a strike illegal conformed to the legislation in force at the time of the event, and there can be no discrimination in determining public services until Congress approves relevant legislation.

66. Concerning the right to bargain collectively, the legislation (Act No. 50 of 1990) is very precise and provides that the Compulsory Arbitration Tribunal has legal competence only for the public sector, and in cases when no agreement ending the interests dispute between the parties is reached. It should be pointed out that public employees do not have the right to bargain collectively or to exercise the right to strike, since there is no provision for this in Colombian legislation. Except for the right to strike, these rights are enjoyed in the public sector only by persons with the status of official workers. While it is true that section 2 of Act No. 60 of 1990 empowers the Government to fix wage scales, commissions, per diems and expenses, this only applies to public employees. In state institutions or bodies where the persons termed official workers are organized in trade unions, wage increases, per diems, expenses and other emoluments are governed by the collective labour agreements which are signed, or have been signed between the parties in conformity with the legal formalities.

67. As regards the policy of wage increases for state workers, the National Labour Council (consisting of employers, workers and Government) fixes wage increase percentages annually, but only for the statutory minimum wage, and not for other categories of remuneration. Lastly, the Government states that the terms of collective agreements can never be amended by decree, and that there has been no instance to date of the Government disregarding the terms of collective contracts.

68. As regards the allegations concerning specific cases presented by the complainants, the Government states the following:

- MULTIPLAST enterprise: there was no collective dismissal in this enterprise as a result of the exercise of the workers' right to organize in trade unions. The trade union had denounced an alleged collective dismissal, and when the administrative investigation by the Ministry of Labour was under way and a decision was about to be issued, the trade union withdrew its complaint;

- WACKENHUT DE COLOMBIA S.A. enterprise: this enterprise signed a fixed-term contract for services with the Ministry of Public

Works and Transport - the National Road Fund. The contract expired and the Ministry of Public Works and Transport decided not to renew it. Once the original reason for the contracts of employment no longer existed, the enterprise requested the Ministry of Labour to authorize the dismissal of workers in accordance with the law. At no time were workers dismissed as a result of the exercise of the right to organize in trade unions. By Resolution No. 2001 of 25 August 1992, the Ministry of Labour resolved to authorize the dismissal of 444 workers and ordered the necessary guarantees for payment of retirement pensions, severance pay, social benefits and other rights. The Resolution issued by the Ministry of Labour remained final as the legal remedies have not been exercised against it;

- INDUNAL enterprise: In 1992, 13 workers were unilaterally dismissed from this enterprise without just cause and without the enterprise applying to the Ministry of Labour. The enterprise also dismissed 17 workers in 1993 without just cause and without having gone through the necessary formalities with the Ministry. The dismissed workers have been paid compensation in accordance with the law, and to date no complaint has been lodged by the trade union or by the workers citing collective dismissals or anti-union policies;

- GOOD YEAR: regarding the allegation of pressure on workers to withdraw from the trade union, there has not been any investigation lending credence to the complaint, neither have any denunciations or judicial appeals been lodged on the matter;

- SAN CARLOS sugar mill: for some time there has been a power struggle in the enterprise for trade union representation by two industrial workers' unions, "SINTRACANAISUCOL" and "SINTRAINDUL", which have 250 and 100 members, respectively. There is also an enterprise-level trade union with a total membership of 1,000 workers. At the latest negotiations, there was a confrontation between the different trade union organizations. None the less, the collective agreement was signed for a term of about one year. No anti-union acts took place, neither were any complaints lodged nor actions brought in connection with the conflict.

### C. The Committee's conclusions

69. The Committee observes that the allegations which remained pending when it examined this case at its May 1993 meeting referred to anti-union dismissals and interference, restrictive regulations and practices in relation to strikes, collective bargaining and mandatory arbitration; subordination of collective bargaining in the public sector to the Government's economic policy; and amendment by decree of a collective agreement in the enterprise Puertos de Colombia.

70. As regards the alleged dismissals of workers in the enterprises MULTIPLAST (40), INDUNAL (45) and WACKENHUT (70) for having exercised their right to organize in trade unions, the Committee notes the Government's observations denying that anti-union dismissals had taken place in the enterprise MULTIPLAST and pointing out that the enterprise's trade union withdrew the complaint it had presented, and that in the case of the WACKENHUT enterprise (a security enterprise) the fixed-term contract with the Ministry of Public Works and Transport had come to an end. Concerning the INDUNAL enterprise, the Committee notes the fact that the Government states that 30 workers have been dismissed without just cause, that they have been paid compensation in accordance with legal provisions and that no actions have been brought in court. In these circumstances, since the Government admits that the workers were dismissed without just cause, the Committee points out the principle according to which it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is accorded by legislation which enables employers in practice - on condition that they pay the compensation prescribed by law for cases of unjustified dismissal - to dismiss any worker, if the true reason is his trade union membership or activities. The Committee requests the Government to ensure that the competent authorities re-examine the case of the workers dismissed from the INDUNAL enterprise and, if it is found that they were dismissed for anti-union motives, to take measures to reinstate them in their posts.

71. As regards the allegations of pressure on workers to leave their trade union in the GOOD YEAR enterprise and pressure on workers in the San Carlos sugar mill in Tulua to join a trade union which has links with their employer, the Committee notes that the Government states that no complaints or judicial appeals have been filed in this connection. The Committee requests the Government to carry out an investigation into the allegations, and if they are confirmed, to adopt the necessary sanctions.

72. Concerning the allegations that the Government assumes the right to decide which public services are essential (including banking, the financial sector, social security, ports, transport, water supply and sewage, education, hotels, etc.) and on this basis has declared strikes in these sectors to be illegal, with the resulting dismissals, and that where no agreement is reached in disputes occurring in the state sector and in many cases in the private sector, the Government convenes a court of mandatory arbitration, the Committee notes the Government's observations to the effect that the right to strike is subject to regulation by Congress, which is empowered to determine and specify which activities are essential public services, and that the legislation provides that the legal competence of the Compulsory Arbitration Tribunal applies only to the public sector, and in cases where no agreement ending the interest dispute is reached. It also notes that, according to the Government, in cases where the Ministry has declared a strike illegal, it has been in pursuance of the legislation in force, and that no distinction can be made among the public services where strikes may or

may not be held until the legislation to this effect is approved by Congress.

73. The Committee observes that matters relating to essential services and the imposition of mandatory arbitration in Colombia have already been examined by the Committee on several occasions [see 270th, 275th and 284th Reports of the Committee, Cases Nos. 1434, 1477 and 1631 (Colombia), paras. 256, 199 and 398, respectively], and it must therefore reiterate the conclusions it reached on those occasions:

> ... the Committee draws the Government's attention to the fact that in accordance with its jurisprudence, the right to strike can only be restricted (as by the imposition of obligatory arbitration to end a strike) or prohibited in essential services in the strict sense of the term; i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Furthermore, the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations, when examining the application of Convention No. 87 by Colombia at its March 1989 meeting, stressed that the prohibition of strikes in the legislation not only applied to essential services in the strict sense of the term, but also to a very wide range of public services which are not necessarily essential ...

The Committee likewise observes that, according to the Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 80th Session, Report III (Part 4A), 1993, the Government has provided information to the Conference Committee on the Application of Standards indicating that the new Constitution of 1991 only lays down restrictions on the right to strike in essential services, to be defined by the legislature in a future law, and there will be tripartite consultation on the subject. In this connection, the Committee trusts that this tripartite consultation will be achieved in the near future and that the principles outlined by the Committee on this subject will be fully taken into account in drafting the new legislation.

74. Regarding the allegations that the strikes were declared illegal, with resulting dismissals, the Committee observes that the complainants do not provide specific information - enterprises in which strikes were declared, dates, persons affected, etc. - and that the Government merely replies that the law was complied with. In these circumstances, the Committee is unable to reach conclusions in this respect. However, it brings the Government's attention to the following principles: when trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against contrary to Article 1 of Convention No. 98; the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a

violation of freedom of association [_Digest of decisions and principles of the Committee on Freedom of Association_, 1985, paras. 443-444].

75. Concerning the allegation that the right to collective bargaining is accorded only to "official workers" (who have a contract of employment) but not to "public employees" (whose situation is governed by statute), even when they are not acting on behalf of the public authorities, and that this category of workers is also denied the right to strike, the Committee observes that the Government declares that Colombian legislation does not provide for these rights for public employees. The Committee recalls that it examined similar allegations to those which are presented in this case at its November 1988 meeting, and therefore reiterates the following conclusions drawn at that time [see 259th Report of the Committee, Case No. 1465 (Colombia), para. 677]:

> [The Committee] wishes to emphasize that, within the framework of Conventions Nos. 87 and 98, the legal status of Colombian public servants [not acting on behalf of the public authorities] is not satisfactory, to the extent that the workers of state-owned commercial or industrial enterprises should have the right to negotiate collective agreements, enjoy suitable protection against acts of anti-union discrimination and enjoy the right to strike, provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population ... The Committee requests the Government to take measures to ensure that legislation grants to public servants the basic guarantees and rights deriving from Conventions Nos. 87 and 98.

76. As regards the allegation that no state body can make pay adjustments that exceed the levels set by the Government, the Committee notes the Government's observations to the effect that Act No. 60 empowers the Government to fix wage scales, but that this only applies to public employees and that in state institutions or bodies where there are trade unions of official workers, the wage scale is determined by the terms of collective agreements. In this connection, the Committee refers to its conclusions in the preceding paragraph and requests the Government to take measures to ensure that public employees who are not acting on behalf of the public authorities may determine their remuneration freely through collective bargaining, on the same footing as official workers.

77. Lastly, the Committee notes that the Government denies the allegation that it amended clauses of the collective agreement on retirement and pensions in the state enterprise Puertos de Colombia-Colpuertos, following the enactment of Decree No. 35 of 1992 (this allegation is dealt with in detail in Case No. 1620).

## The Committee's recommendations

78. 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 ensure that the competent authorities re-examine the case of the workers dismissed from the INDUNAL enterprise and, if it is found that these workers were dismissed for anti-union motives, to take steps to ensure that they are reinstated in their posts.

(b) The Committee requests the Government to carry out an investigation on the alleged anti-union pressure on workers in the GOOD YEAR enterprise and the San Carlos sugar mill in Tulua and, if these are confirmed, to ensure that appropriate sanctions are adopted.

(c) The Committee trusts that the principles it has outlined will be fully taken into account in drafting the new legislation which will define essential services.

(d) The Committee requests the Government to take steps to ensure that the legislation affords "public employees" who are not acting on behalf of the public authorities the basic guarantees and rights deriving from Conventions Nos. 87 and 98 as regards strikes and collective bargaining.

## Case No. 1679

### COMPLAINTS AGAINST THE GOVERNMENT OF ARGENTINA PRESENTED BY
### - THE GENERAL CONFEDERATION OF LABOUR (CGT)
### - THE URBAN TRANSPORT WORKERS' TRADE UNION (UTA)
### - THE INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)
### - THE AERONAUTIC WORKERS' ASSOCIATION (APA)
### - THE COMMERCIAL AIRLINE ADMINISTRATIVE WORKERS' TRADE UNION (UUPSA)
### - THE AERONAUTIC TECHNICAL WORKERS' ASSOCIATION (APTA) AND
### - THE COMMERCIAL AIRLINE FLIGHT TECHNICIANS' ASSOCIATION (ATVLA)

79. The complaints in this case appear in communications received from the General Confederation of Labour (CGT) and the Urban Transport Workers' Trade Union (UTA), dated 6 November 1992, and in a joint communication from the Aeronautic Workers' Association (APA), the Commercial Airline Administrative Workers' Trade Union (UPSA), the Aeronautic Technical Workers' Association (APTA) and the Commercial Airline Flight Technicians' Association (ATVLA) of February 1993.

Subsequently, in communications dated December 1992 and 6 April 1993, the Urban Transport Workers' Trade Union submitted additional information and new allegations. In a communication of 7 January 1993 the International Transport Workers' Federation (ITF) associated itself with the complaint submitted by the UTA.

80. The Government sent its observations in a communication dated 23 November 1993.

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

## A. The complainants' allegations

82. In its communication of 6 November 1992 the General Confederation of Labour (CGT) alleges that in response to a number of problems faced by the trade union movement the CGT called for a general 24-hour strike on 9 November, to which the Government responded by seeking to apply in respect of several trade unions in the services sector the provisions of Decree No. 2184/90 (concerning "procedures to prevent or resolve labour disputes"), with the threat of sanctions and reprisals.

83. In their communications of 6 November 1992, December 1992 and February 1993, the UTA, the APA, the UPSA, the APTA and the ATVLA add that given the prospect of various conflicts of interest in the transport sector (ground and air) and the prospect of a general strike, the Government promulgated several ministerial resolutions in order to apply arbitrarily Decree No. 2184/90, by establishing transport as an essential service, and thereby undermining the right of workers' organizations in this sector to organize their activities and formulate their programmes of action.

84. Specifically, the complainants object to the classification of transport as an essential service (section 1, paragraph 1), the imposition of minimum services established unilaterally by the public authorities, and the excessively high percentage of compulsory minimum services in the case of air transport (100 per cent for flights to the country's southern region, 70 per cent for the rest of the country, and 100 per cent for international flights) and ground transport (70 and 90 per cent for urban services, and 90 per cent for long-distance services). The complainants also object to the measures which government authorities threatened to apply in the event that the workers failed to provide the minimum services established by the Ministry of Labour. These measures include compulsory arbitration, the declaration of strikes as illegal and the suspension or revocation of the trade union's legal status (sections 9, 10 and 11 of the Decree).

85. Lastly, in its communication of 6 April 1993, the UTA states that the Ministry of Labour responded to a dispute between the Buenos Aires Underground Transport Enterprise (a state-owned enterprise) and its workers by extending to this form of transport the provisions of Decree No. 2184/90, and ordering that a minimum service should be provided during the dispute. The complainant organization alleges that in April 1993 the Ministry of Labour, citing the failure to provide minimum services (which it established unilaterally in the absence of an agreement between the parties), declared illegal the strike which the workers had undertaken, and threatened the trade union with the suspension or revocation of its legal status.

B. The Government's reply

86. In its communication of 23 November 1993 the Government states that Decree No. 2184/90, which governs the right to strike, was issued in accordance with the regulatory powers given to the Executive Branch by the National Constitution, that the right to strike is constitutionally guaranteed, and that this right has been regulated successively by Act No. 14786 (on procedures for the handling of disputes), Act No. 16936 (on compulsory arbitration), Decree No. 879/57 (on the resolution of collective disputes between state-owned enterprises and their staff), and lastly, by the Decree in question. The Government states that the regulation of strikes highlights the lawfulness and importance attached to this right in national legislation; moreover, as the right to strike is governed by the above-mentioned Acts, the Executive Branch is constitutionally authorized to regulate its exercise.

87. The Government points out that it not only recognizes the right to strike, but also promotes machinery for the prevention and settlement of labour disputes, although it prefers that the parties themselves establish dispute settlement machinery. It adds that owing to the period of recession, inflation and fiscal deficit which the country experienced in the 1980s, the Government promulgated emergency economic and state reform legislation, and set up machinery to avoid the prolonged or complete interruption of essential services, thereby establishing a balance between the general interest and the rights of parties to a specific dispute.

88. The Government states that the Decree in question contains a conceptual and generic definition of essential services for the purpose of ensuring that minimum services are provided in the event of a strike; the Decree further provides that upon learning of a labour dispute which comes under its competence by virtue of Act No. 14786, the Ministry of Labour shall proceed to determine whether such dispute will affect, in whole or in part, certain of the services mentioned in the Decree. The Government clarifies that in accordance with the provisions of section 5 of the Decree, the parties must agree on the steps to be taken to ensure that the minimum services are provided

throughout the dispute, and, in the absence of such an agreement, the determination of minimum services shall be made by the Ministry of Labour, which shall avoid an arbitrary decision by consulting the competent ministry or government agency. Likewise, the Decree provides that in respect of those activities or enterprises in which a collective or enterprise agreement calls for the provision of minimum services, full compliance must be given to such agreement, failing which the public authorities will enforce its application. The Government emphasizes the fact that it has not suppressed the right to strike in the essential services, but has established a procedure to regulate this right, in which the interested parties have a voice.

89. As regards the provision which establishes that recourse will be had to compulsory arbitration in the event that strike action is taken without respecting the requirements concerning the provision of minimum services which have been agreed to or established, the Government states that this is in accordance with the provisions of Act No. 16936, which was never contested by trade union organizations and which has been applied routinely for years.

90. Moreover, the Government states that transport has been included among those services whose complete or partial interruption might endanger the life, health, freedom or safety of part of the population or of persons, since it plays an essential role in the country, by uniting geographically distant points; in addition, account must be taken of the serious consequences which would ensue from an interruption of transport as regards the provision of food, the transfer of sick people, etc. Lastly, as regards the frequencies established for such minimum services, the Government repeats that these frequencies were determined after consultation with the competent government agency, namely, the Transport Department of the Ministry of Economy, Works and Public Services, and that these minimum frequencies do not prevent the exercise of the right to strike, but only limit or restrict it in certain specific cases, to the extent that they represent an essential and necessary service for the community.

### C. The Committee's conclusions

91. The Committee notes that the allegations submitted in this case concern the content and application of Decree No. 2184/90 (concerning the "procedures to prevent or resolve labour disputes"), as regards the establishment of minimum services in the transport sector.

92. In the first place, as regards the statutory requirement for maintaining a minimum service (section 5 of the Decree) during strikes in the transport sector, whether by land, air or rail, the Committee agrees with the Government's statements which emphasize the need to attend to the general interest and highlight the fundamental function

of transport in the country, which covers a large geographical expanse, as well as the negative consequences for the population deriving from the absence of a minimum service (the distribution of food, the transport of sick people, etc.). The Committee considers that the transportation of passengers and commercial goods is not an essential service in the strict sense of the term (one the interruption of which might endanger the life, safety or health of all or part of the population); however, this is a public service of primary importance in the country, where the requirement of a minimum service in the event of strike can be justified. In these conditions, the Committee considers that, in this case, the requirement of a minimum service in the transport sector in the event of a strike does not violate the principles of freedom of association.

93. As regards the allegation concerning the unilateral establishment of minimum services by the Ministry of Labour, the Committee notes that, according to section 5 of the Decree, such a measure is taken only in the absence of agreement between the parties, which are consulted in any event. In this connection, the Committee has already had occasion to give its opinion on similar allegations concerning the establishment of a minimum service in the public services, and reiterates its pertinent conclusions, to the effect that in the event of differences of opinion among the parties concerning the scope of a minimum service in the public sector, "legislation should provide that such a dispute should be resolved by an independent body" [see 291st Report of the Committee, Cases Nos. 1648 and 1650 (Peru), para. 467], and not by the Ministry of Labour or the ministry or public enterprise concerned.

94. As regards the power of the Ministry of Labour to declare a strike illegal in the event that the parties fail to comply with the minimum service requirements (section 10 of the Decree), and to submit the dispute to compulsory arbitration (section 9 of the Decree), and, if applicable, to request the courts to suspend or revoke the legal status of the trade union organization concerned (section 11 of the Decree), the Committee notes the Government's statement to the effect that trade union organizations had never previously objected to Act No. 16936, which establishes compulsory arbitration. In this connection the Committee had previously noted that the recourse to compulsory arbitration in the event of strikes should be confined to essential services in the strict sense of the term (those whose interruption would endanger the life, personal safety or health of all or part of the population) [see 286th Report of the Committee, Case No. 1620 (Colombia), para. 384], and that transport is not one of these services.

95. Moreover, the Committee notes that the administrative authorities may declare a strike illegal if the minimum service agreed between the parties is not provided, but that Decree No. 2184/90 allows administrative authorities to declare a strike illegal in other cases, specifically, in the event of the infraction of other legal requirements. In this connection the Committee has previously considered that in the event of strikes "the final decisions

concerning the illegality of strikes should not be made by the Government, especially in those cases in which the Government is a party to the dispute [see 284th Report of the Committee, Case No. 1586 (Nicaragua), para. 942].

96. As regards the possible suspension or revocation of the legal status of trade union organizations for not providing the mininum service throughout the strike, the Committee considers that such measures are not acceptable. In this respect, it notes that section 11 of the Decree in question states that "in respect of trade union organizations which provide, encourage or support strike action which is considered illegal, the competent authority may proceed to implement the provisions of clauses 2 and 3 of section 56 of Act No. 23551 (concerning trade union associations)". In this connection the Committee notes that clause 2 of Act No. 23551 concerns the request by the Ministry of Labour to trade union organizations to renounce measures which entail the infraction of legal or statutory provisions, or the non-compliance with provisions issued by the competent authority in the exercise of its legal prerogatives; and that clause 3 provides that the courts may suspend or revoke a trade union's legal status when the trade union fails to comply with requests issued under clause 2, and when it is proved that the trade union is guilty of serious administrative irregularities. In these conditions, while noting that the final decision to suspend or revoke a trade union's legal status is made by an independent judicial body, the Committee reiterates that such measures should not be adopted in the case of non-compliance with minimum service.

97. As regards the allegation concerning the high requirements established for the minimum service, the Committee notes that the Government states only, and then in a general way, that the levels of minimum service are determined after consultation with the competent agency, in this case the Transport Department of the Ministry of Economy, Works and Public Services, and that these minimum levels do not prevent the exercise of the right to strike, but only limit or restrict it in specific cases which constitutes an indispensable service for the community. In this respect, the Committee notes that the Government has not, at first sight, commented on the high percentages of minimum service cited by the complainants which, in certain cases, stand at 90 or 100 per cent, which effectively constitute a prohibition to the right to strike. The Committee therefore cannot exclude the possibility that excessive minimum service levels were in fact established, even though the strike in question never materialized. Nevertheless, as it has done on previous occasions, the Committee emphasizes that "a definitive ruling on whether the level of minimum services was indispensable or not - made in full possession of the facts - can be pronounced only by the judicial authorities, in so far as it depends, in particular, upon a thorough knowledge of the structure and functioning of the enterprises and establishments concerned and of the real impact of the strike action" [see 254th Report of the Committee, Case No. 1403 (Uruguay), para. 447].

98. As regards the allegation submitted by the UTA concerning the declaration that strike action taken by the workers of the Buenos Aires Underground Transport Enterprise was illegal, and the alleged threat to suspend or revoke the trade union's legal status, the Committee notes that the Government has not furnished specific information. Nevertheless, the documentation submitted by the complainant organization indicates that when the parties failed to reach an agreement, the labour authorities established the level of minimum service to be provided during the dispute, that the UTA as well as the Buenos Aires Underground Transport Supervisory Staff Association were warned to rescind all measures which would affect the provision of a minimum level of service, and that the strike action was ultimately declared illegal when the minimum service levels were not met. The Committee notes that since the complaint was submitted in April 1993, the complainant has not sent new information that would enable the Committee to determine whether effect was given to the threat of suspending or revoking the trade union's legal status. In these conditions the Committee refers to its earlier conclusions on the importance of ensuring that any decision concerning the illegality of a strike in the public services and the establishment of minimum service in the absence of agreement between the parties should be handled by an independent body.

99. In consideration of the foregoing conclusions, the Committee requests the Government to take the necessary measures with a view to amending legislation so that final decisions concerning the illegality of strikes and the establishment of a minimum service in the absence of an agreement between the parties are left to an independent body. Furthermore, the Committee brings this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

## The Committee's recommendations

100. 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 take the necessary measures with a view to amending legislation so that final decisions concerning the illegality of strikes and the establishment of a minimum service in the absence of an agreement between the parties are left to an independent body.

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

## Case No. 1684

### COMPLAINT AGAINST THE GOVERNMENT OF ARGENTINA PRESENTED BY
### - THE GENERAL CONFEDERATION OF LABOUR OF THE ARGENTINE REPUBLIC (CGT) AND
### - THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

101. The complaint in this case appears in a communication from the General Confederation of Labour (CGT) dated 16 November 1992. In a communication dated 25 November 1992, the International Confederation of Free Trade Unions (ICFTU) endorsed the complaint made by the CGT. The Government sent its observations in a communication dated 29 January 1994.

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

### A. Allegations of the complainants

103. In its communication of 16 November 1992, the General Confederation of Labour (CGT) criticizes the content of Executive Decree No. 817/92 to deregulate port activities and Decree No. 1264/92, respecting the transportation by sea, river or lake of passengers, cargo and fish as well as all port activities in general. The complainant organization states that these decrees have suspended the force of 62 collective agreements in the sector, which will have to be renegotiated on lower terms than those established in the previous agreements and shall be made subject to the criterion of productivity.

104. The relevant provisions of the two Decrees are as follows:

Decree No. 817/92

Section 37: (final paragraph): "... The force of collective labour agreements, acts, agreements or arbitration awards included in Annex III to the present text shall be suspended".

Section 35: "For a transitory period and until the conclusion of the new agreements to which reference is made in the following section, those clauses of collective agreements, acts, agreements, or any other standard-setting act which establishes labour conditions which are detrimental to productivity or which impede or make difficult the normal management and administration of the enterprise, in accordance with the provisions of sections

64 and 65 of the Act respecting labour contracts, as specified below, shall cease to have effect:

(a) clauses respecting the automatic adjustment of wages or allowances;

(b) the payment of contributions and subsidies for social purposes not established by the laws in force;

(c) standards which impose the maintenance of minimum staff levels;

(d) standards which restrict or condition the recruitment or promotion of staff to requirements other than the suitability, competence or capacity of workers;

(e) job stability schemes;

(f) payment of wages by periods of less than two weeks;

(g) standards imposing the recruitment of national staff;

(h) the obligation to recruit indirectly;

(i) the compulsory recruitment of delegates or the compulsory presence of delegates amongst staff;

(j) the recruitment of specialized staff when not required;

(k) deviation from the minimum conditions fixed by the Act respecting labour contracts as regards remuneration, paid leave, hours of work, rest periods, dismissal and supplementary annual wage, and as regards general legislation respecting occupational accidents;

(l) to give priority to specific categories of workers;

(m) any standard which is contrary to greater efficiency and labour productivity.

Section 36: "The Ministry of Labour and Social Security shall, within the ten days following the entry into force of this Decree, convene the bargaining committees of the collective agreements regulating the labour relations of staff covered by the present standards to bring such agreements into line with the provisions in force with the issuing of this Decree".

Decree No. 1264/92

Section 1: "The final paragraph of section 37 of Chapter V of Decree No. 817/92 shall be replaced as follows: "The force of collective labour agreements, acts, agreements or arbitration awards included in Annex III of this text shall be suspended".

Section 2: "Annex III of Decree No. 817/92 shall be replaced by Annex I of the present text". [The new Annex includes 62 collective agreements.]

### B. The Government's reply

105. In its communication of 29 January 1994, the Government states that as a result of the worldwide social and economic transformation, the Government must through its laws and acts restructure the capital-labour relationship. With respect to international labour standards the action of the Government has at no time resulted in any dysfunctionings affecting the principles governing freedom of association.

106. It adds that the subjective right to the intangibility of collective agreements must be given up when the economic situation in which such clauses have to be applied shows that the latter have not only ceased to be relevant but, furthermore, have become a real source of distortion of the labour relationship which they are supposed to regulate, and when they become inapplicable because of the need for modernization and pose a real danger to the maintenance of the very sources of work in the sectors concerned. The realities in which the provisions of the said decrees must be considered concern not only the serious economic crisis which has affected the country and which led to the adoption by the National Congress of the Acts respecting administrative reorganization and economic emergency (Nos. 23.696 and 23.697), but the need to adapt the economic and productive structure of the nation to the new situation brought about by growing international competition and the country's recent adhesion to the regional integration process. All these factors, which cannot be dealt with by the public power as it would wish, have made it necessary to modify the structures in place in the country, including not only maritime and port activities, but all economic activities in general.

107. The Government states that the complainant organization criticizes Decrees Nos. 817/92 and 1264/92 without challenging Acts Nos. 23.696, 23.697 and 23.928 which are the bases of these decrees. The preamble of Decree No. 817/92 expressly states that the legislative power established a process of economic transformation and for this purpose empowered the National Executive to take decisions to give effect to the guidelines established therein, including, inter alia, those resulting from the Treaty of Asunción respecting the free circulation of goods, services and production factors between the signatory parties. Within this system of regional integration a deregulation process has been established, in particular as regards maritime and river transport and port activities, which requires the decentralization of administration by the transfer of powers on a concessionary basis to the provinces, municipalities or the private sector. The purpose set forth in the preamble of the Decree as

regards the labour relations system relating to port activities in general is to bring existing schemes into line with the above-mentioned modifications without - the text makes this quite clear - this resulting in any lack of protection for the workers.

108. Act No. 23.696, in particular, establishes a real system to cope with the emergency through a process of transformation of the State and its public administration, a special feature of which is the privatization policy adopted and developed by Parliament. This Act is thus a statute for privatization. According to the legislation, the Executive Decree may order, when necessary, the exclusion of all privileges and/or monopolistic clauses and/or discriminatory prohibitions, including those deriving from legal standards, when their maintenance is contrary to the objectives of privatization or if they prevent the demonopolization or deregulation of the respective service; furthermore Act No. 23.697 empowered the Executive to revise employment schemes with a view to correcting the factors which may compromise the objectives of efficiency and productivity.

109. The Government adds that in addition to specific economic aspects, the standards in question recognize another factor of particular and exceptional importance, namely the Regional Integration Agreement (MERCOSUR) which was ratified by the National Congress by Act No. 23.981. In this way and with the final objective of speeding up their economic development process on the basis of social justice, the States parties have established, amongst other objectives, the free circulation of goods, services and production factors, and the coordination of macroeconomic policies which expressly includes customs, transportation and communication.

110. Thus the Decree in question is a regulatory standard to implement different laws on the matters established by Congress and the constitutional basis of which is to be found in articles 67(28) - powers of the Congress to grant competence to the Executive - and 86(2) of the same Constitution.

111. Furthermore, the Government points out that this case concerns a situation similar to others which the Committee on Freedom of Association has examined concerning Argentina, namely Cases Nos. 1560, 1567 and 1639, which all involved acts by the administrative power as a result of the same situation of economic emergency which gave rise to the decrees being challenged in the current case. The Government mentions the conclusions of the Committee in its examination of Cases Nos. 1560 and 1567 concerning Decree No. 1757/90 - which temporarily suspended the application of certain clauses of collective agreements in the public sector which compromised the productivity and efficiency of enterprises in the sector until new collective agreements have been negotiated and adopted to replace those currently in force.

112. As regards the situation of economic emergency and the imperative or exceptional reasons for the establishment of social

dialogue in this sector of activity, the Government states that Decrees Nos. 817/92 and 1264/92 and Acts Nos. 23.696, 23.697 and 23.928 were issued in a context of very special circumstances affecting the country due to hyper-inflation. These texts were basically intended to overhaul the economy of the country which had been plunged into almost total chaos. Furthermore, the regional integration process (MERCOSUR) has also give rise to special circumstances in which the country finds itself at a unique stage in its economic and socio-political history.

113. Decrees Nos. 817/92 and 1264/92 have a protagonistic role in this respect in that they regulate activities which are sensitive to the economic situation and the regional integration within MERCOSUR as well as the generalized restructuring of port activities. As regards the economic aspects it is claimed that water transport and port services are at present one of the most regulated sectors. It is in this context of compelling needs that the State believed it essential to take measures to overhaul the economy and preserve sources of work.

114. The Government points out that very little can be done to improve the quality of life of workers if appropriate machinery is not established to increase commercial activity in the ports and that the Government finds itself in an extraordinary and exceptional situation which calls for the application of decisive measures. The ports of a country are a source of international trade and if effective corrective measures had not been taken, transporters would have opted for other ports and this would have resulted in a reduction of activity and the loss of sources of work. It is sufficient to mention the fact that many international transporters prefer to unload their cargoes in the ports of neighbouring countries and to transport them over land to Argentina, since this is cheaper than paying the costs of docking in the Argentinian ports. The attitude of the Argentinian Government was not in this context to cancel various collective agreements but to try and establish a genuine dialogue between the social partners with a view to renegotiating the clauses of the agreements in force to bring them into line with the new circumstances and thereby to guarantee on a lasting basis the maintenance of the respective economic activities and, by extension, the resulting sources of work. It should be noted that the extraordinary and imperative conditions to which the Committee's principles refer are fully substantiated in the above paragraphs especially if it is recalled that the regional integration process and the economic chaos affecting the country all occurred within the short period of less than five years, a situation which has rarely been faced by any nation.

115. Furthermore, the Government states that the provisions of Decrees Nos. 817/92 and 1264/92 pose no danger to subjective rights since at no time do the standards in question mention a derogation. In the same way, section 36 establishes that the Ministry of Labour and Social Security shall within ten days of the entry into force of the decree convene the negotiating committees of the collective agreements to bring the latter into line with the provisions in force with the issuing of the said decree. It is clear in this case that

there was no derogation of clauses of collective agreements but rather a transitory suspension of their force until the establishment of new standards. The suspension of the clauses is merely temporary and fully justified by the anti-inflation and stabilization policy of the Government. The Ministry of Labour, in resolution No. 489/92, convened the parties concerned and established a maximum limit of ten days for them to commence the process to conclude agreements.

116. The bases of this resolution, which are set forth in the preamble, are furthermore specifically related to the subjects and matters to which reference has been made, namely: (a) the adaptation of bargaining to the need for economic transformation which has been fully explained; (b) the need to protect the general interest over that of sectoral interests; (c) the establishment of a harmonious set of standards to deal with the economic crisis.

117. Unfortunately, over and above other simultaneous contingencies affecting the functioning of these joint committees, it was the lack of interest of the trade union sector which resulted in the fact that to date only one agreement has been concluded, which has been endorsed by this Ministry and which is now in force. However, the other bargaining committees have not been disbanded in the belief that the parties concerned will eventually negotiate and conclude agreements.

118. In another context which is also related to the matter under examination, mention should be made of those circumstances which - in the acts in question - concern the preservation of the principles of freedom of association. Decree No. 817/92 itself did not in any way infringe the principles of freedom of association but at most temporarily limited certain powers and established appropriate means for the effective holding of discussions on an equal footing and with account being taken of the rights of the parties.

119. Section 36 of Decree No. 817/92 stipulates as its central objective only that the signatory parties to the suspended agreements should renegotiate their clauses to "... bring them into line with the provisions in force from the issuing of this decree ...". These provisions in force are not, however, the minimum standards of the Act respecting labour contracts, but the guidelines and principles established by the new economic framework in force in the country from the time of the issuing of Acts Nos. 23.696 and 23.697.

120. The references which section 25 of the above-mentioned decree makes to those conditions of work which must be suspended until their renegotiation on the ground that they are considered detrimental to productivity (paragraphs (a) to 11) do not mean that the renegotiation of these clauses must be subject to strict or minimum limits. The legal provision in question merely determines that such clauses should be renegotiated to bring them into line with the new economic situation and regional framework, and that they may remain in force if costs are absorbed. If section 36 itself invites the social partners to renegotiate the clauses of collective agreements, it

leaves it up to them to decide the scope of the new conditions of work to be established, while taking account of the need to negotiate freely within the new framework applicable to all, including the administration, and the realities of modernization to which reference has already been made.

121. In conclusion, the method of bargaining resulting from the above-mentioned legal provision is consistent with the guidelines repeatedly expressed by the Committee on Freedom of Association.

122. For the same reasons attempts are being made at the wider regional level to promote discussion. The idea has been proposed for a collective agreement at the regional level, through sub-workgroup No. 11 of MERCOSUR (Committee No. 7), in which employers and workers in the region would themselves agree on the need to establish instruments to modify relations between both production factors.

123. Finally, the Government points out that it was obliged to choose between the gradual and continuous reduction of sources of work in the sector and the renegotiation of conditions of work in the sector; the temporary suspension of the clauses of collective agreements in force was consistent with the seriousness of the economic situation affecting the country. The Government believes that the Decrees in question are consistent with Convention No. 98 and requests that the complaint be rejected.

## C. The Committee's conclusions

124. The Committee observes that the allegations made in this case refer to the promulgation of Executive Decree No. 817/92 to deregulate port activities and Decree No. 1264/92 respecting the transportation by sea, river and lake of passengers, cargo and fish as well as all port activities. Specifically, the allegations refer to: (1) the suspension of 62 collective agreements in the sector; and (2) the obligation to renegotiate the collective agreements and, in particular, those clauses, acts, agreements or any other standard-setting act in the sector, which establish working conditions detrimental to productivity or which impede or obstruct the normal exercise of management and the administration of enterprises.

125. The Committee notes that to justify the decrees in question the Government points out: (1) that the authorities were facing a crisis situation which obliged them to choose between the gradual and continuous reduction of sources of work in the sector and the automatic renegotiation of conditions of work in the sector; (2) that under acts which predate the respective decrees and on which the latter are based, activities in the water transport sector and port services have been subject to privatization and/or decentralization through the transfer of powers to the provinces, municipalities or the private sector on a concessionary basis (Decree No. 817/92); (3) the