



## FOURTH ITEM ON THE AGENDA

**Report of the Committee on  
Freedom of Association****342nd Report of the Committee  
on Freedom of Association***Contents*

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## 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 25 and 26 May and 2 June 2006, under the chairmanship of Professor Paul van der Heijden.
2. The members of Argentinian, Chilean, Guatemalan, Mexican and Bolivarian Republic of Venezuelan nationality were not present during the examination of the cases relating to Argentina (Case No. 2420), Chile (Case No. 2337), Guatemala (Cases Nos. 2203, 2295, 2298, 2390 and 2421), Mexico (Cases Nos. 2442, 2444 and 2446) and the Bolivarian Republic of Venezuela (Cases Nos. 2254 and 2422), respectively. The Chairperson of the Committee also recused himself with respect to Case No. 2337 (Chile).

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3. Currently, there are 102 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 31 cases on the merits, reaching definitive conclusions in 17 cases and interim conclusions in 14 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

### **Serious and urgent cases which the Committee draws to the special attention of the Governing Body**

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos. 2318 (Cambodia), 2450 (Djibouti) and 2365 (Zimbabwe) because of the extreme seriousness and urgency of the matters dealt with therein.

### **New cases**

5. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2477 (Argentina), 2478 (Mexico), 2479 (Mexico), 2480 (Colombia), 2481 (Colombia), 2482 (Guatemala), 2483 (Dominican Republic), 2484 (Norway), 2485 (Argentina), 2486 (Romania), 2487 (El Salvador), 2488 (Philippines), 2489 (Colombia) and 2490 (Costa Rica), since 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**

6. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 1865 (Republic of Korea), 2248 (Peru), 2265 (Switzerland), 2268 (Myanmar), 2292 (United States), 2400 (Peru), 2454 (Serbia and Montenegro), 2456 (Argentina), 2458 (Argentina), 2459 (Argentina), 2460 (United States), 2461 (Argentina), 2462 (Chile), 2463 (Argentina), 2464 (Barbados), 2465 (Chile), 2466 (Thailand), 2467 (Canada), 2468 (Cambodia), 2469 (Colombia), 2470 (Brazil), 2471 (Djibouti), 2473 (United Kingdom/Jersey) and 2474 (Poland).

## Observations requested from complainants

7. The Committee is still awaiting observations or information from the complainant in the following case: No. 2409 (Costa Rica).

## Partial information received from governments

8. In Cases Nos. 1787 (Colombia), 2177 (Japan), 2183 (Japan), 2241 (Guatemala), 2248 (Peru), 2319 (Japan), 2341 (Guatemala), 2355 (Colombia), 2361 (Guatemala), 2362 (Colombia), 2384 (Colombia), 2392 (Chile), 2396 (El Salvador), 2413 (Guatemala), 2434 (Colombia), 2435 (El Salvador), 2440 (Argentina), 2443 (Cambodia), 2445 (Guatemala), 2452 (Peru), 2457 (France), 2472 (Indonesia), 2475 (France) and 2476 (Cameroon), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

## Observations received from governments

9. As regards Cases Nos. 2373 (Argentina), 2405 (Canada), 2430 (Canada), 2436 (Denmark), 2437 (United Kingdom), 2438 (Argentina) and 2451 (Indonesia), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

## Urgent appeals

10. As regards Cases Nos. 2313 (Zimbabwe), 2348 (Iraq), 2425 (Burundi), 2426 (Burundi), 2432 (Nigeria) and 2449 (Eritrea), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

## Receivability of a complaint

11. The Committee decided that Case No. 2427 (Brazil) was not receivable.

## Article 26 complaints

12. The Committee is awaiting the observations of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry.
13. As regards the article 26 complaint against the Government of the Bolivarian Republic of Venezuela, the Committee recalls its recommendation for a direct contacts mission to the country in order to obtain an objective assessment of the actual situation.



## Transmission of cases to the Committee of Experts

14. 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: Australia (Case No. 2326), Guatemala (Case No. 2295), Mauritius (Case No. 2281) and Turkey (Case No. 2303).

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

### Case No. 2302 (Argentina)

15. The Committee last examined this case at its meeting in November 2005 [see 338th Report, paras. 346-358], when it made the following recommendations:
- (a) The Committee requests the Government to keep it informed of any negotiations or dialogue undertaken between SIJUPU and the Higher Court of Justice of San Luis Province (STJSL).
  - (b) With regard to the request for trade union status (*personaria gremial*) by SIJUPU, the Committee regrets the long time which elapsed for the adoption of a decision on this question and expresses the hope that the authorities will issue a decision soon. The Committee requests the Government to keep it informed in this respect.
16. In a communication dated 17 February 2006, the Government stated that the Higher Court of Justice of the province, in its new composition, had taken careful note of the Committee's recommendations. Since the steps taken in July 2005, and in recognition of the legal status of the Trade Union of Judicial Employees of San Luis (SIJUPU), the Court had embarked upon a fruitful dialogue that had made it possible to resolve all the problems raised. The Government also stated that the Court had undertaken to continue its open dialogue with the trade union.
17. *The Committee notes this information. It regrets that the Government has not informed it of the situation with regard to SIJUPU's application for trade union status (personaria gremial), and requests the Government to inform it of the ultimate outcome of the procedure.*

### Case No. 2344 (Argentina)

18. The Committee last examined this case relating to alleged acts of anti-union harassment of the complainant organization's assistant secretary at its meeting in November 2005 [see 338th Report, paras. 22-25], when it made the following recommendation:

The Committee recalls that no person should be discriminated against in his or her employment as a result of his or her legitimate trade union activities or membership, whether present or past. The Committee notes this information and, in particular, that the judicial authority of the second instance upheld the decision that rejected the request for the lifting of trade union privileges and authorization for dismissal filed by the National Institute of Social Services for Persons Receiving Retirement Benefits and Pensions against the trade union official Praino Raúl. In this respect, the Committee requests the Government to keep it informed of the outcome of the extraordinary appeal filed in relation to the judicial decision of the Court of Second Instance.

19. In a communication dated 14 November 2005, the Government refers to events connected with this case that have already been examined by the Committee. In a communication

dated 12 February 2006, the Government states that the State's appeal to the Supreme Court of Justice, which sought the annulment of the decision of the Appeals Court that upheld the ruling of the Court of First Instance rejecting the request for the lifting of trade union privileges filed by the National Institute of Social Services, has not yet been ruled upon. The Government also undertakes to inform the Committee of any new developments in this matter.

20. *The Committee notes this information and requests the Government to keep it informed of the outcome of the extraordinary appeal now before the Supreme Court of Justice concerning the lifting of trade union privileges and authorization for dismissal of the trade union official, Praino Raúl.*

### **Case No. 2326 (Australia)**

21. The Committee last examined this case at its November 2005 meeting [see 338th Report, paras. 409-457] and on this occasion made the following recommendations:

- (a) The Committee requests the Government to provide specific information as to the forums for consultations and proposals tabled by the social partners with regard to the 2003 and 2005 Bills.
- (b) The Committee requests the Government to take the necessary steps with a view to modifying sections 36, 37 and 38 of the Building and Construction Industry Improvement Act, 2005 (the 2005 Act), so as to ensure that any reference to "unlawful industrial action" in the building and construction industry is in conformity with freedom of association principles. It further requests the Government to take measures to adjust sections 39, 40 and 48-50 of the 2005 Act, so as to eliminate any excessive impediments, penalties and sanctions against industrial action in the building and construction industry. The Committee requests to be kept informed of measures taken or contemplated in this respect.
- (c) The Committee requests the Government to take the necessary steps with a view to revising section 64 of the 2005 Act so as to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law, by decision of the administrative authority or the case law of the administrative labour authority. The Committee requests to be kept informed in this respect.
- (d) The Committee requests the Government to take the necessary steps with a view to promoting collective bargaining as provided in Convention No. 98, ratified by Australia. In particular, the Committee requests the Government to review, with the intention to amend, where necessary, the provisions of the Building Code and the Guidelines so as to ensure that they are in conformity with freedom of association principles. It further requests the Government to ensure that there are no financial penalties, or incentives linked to provisions that contain undue restrictions of freedom of association and collective bargaining. The Committee requests to be kept informed in this respect.
- (e) The Committee requests the Government to introduce sufficient safeguards into the 2005 Act so as to ensure that the functioning of the Australian Building and Construction (ABC) Commissioner and inspectors does not lead to interference in the internal affairs of trade unions and, in particular, requests the Government to introduce provisions on the possibility of lodging an appeal before the courts against the ABC Commissioner's notices prior to the handing over of documents. As for the penalty of six months' imprisonment for failure to comply with a notice by the ABCC to produce documents or give information, the Committee recalls that penalties should be proportional to the gravity of the offence and requests the Government to consider amending this provision. The Committee requests to be kept informed on all of the above.
- (f) In light of the above, the Committee, recalling once again the importance that should be attached to full and frank consultations taking place on any questions or proposed legislation affecting trade union rights, requests the Government to initiate further consultations with the representative employers' and workers' organizations in the

building and construction industry so as to explore the views of the social partners in considering proposed amendments to the legislation having due regard to Conventions Nos. 87 and 98, ratified by Australia, and with the principles of freedom of association set out in the conclusions above. The Committee requests to be kept informed of developments in this respect.

22. In its communication dated 10 February 2006, the Government provided information on the above recommendations.

- In respect of recommendation (a), the Government states that it has undertaken extensive consultation with industry participants and interested parties regarding the Building and Construction Industry Improvement Bill 2003 (BCII Bill 2003) and the Building and Construction Industry Improvement Bill 2005 (BCII Bill 2005). Both Bills represented the Australian Government's considered response to recommendations of the Royal Commission into the building and construction industry following extensive public consultation and scrutiny by the Australian Parliament. The Australian Government believes the Australian Council of Trade Unions (ACTU) and unions in general were given ample opportunity to provide submissions on reform and legislation. These opportunities were available during extensive consultation periods for both the BCII Bill 2003 and the BCII Bill 2005. The fact that the unions decided not to avail themselves fully of these numerous opportunities is not a reflection on the level of consultation undertaken.
- With regard to recommendation (b), the Australian Government does not consider that the BCII Act 2005 requires amendment for the purposes proposed therein. The Government submits that sections 36, 37 and 38 of the BCII Act 2005, which specifically deal with industrial action, reflect Australia's ILO obligations, including freedom of association principles. Concerning penalties, the Government indicates that, for most industries, the penalties contained in the Workplace Relations Act 1996 are sufficient to deter unlawful conduct. However, the Royal Commission found that an entrenched culture of lawlessness exists in the building and construction industry, and a belief among industry participants that breaking the law does not have any real consequences. The measures contained in sections 39, 40 and 48-50 of the BCII Act 2005 are a direct response to these findings.
- In respect of recommendation (c), the Government submits that section 64 of the BCII Act 2005 helps to ensure that determination of the bargaining level is left to the discretion of the parties at the enterprise level. Large building and construction projects involve work by an array of employers and employees. Project agreements, which are commonly used on building sites, can be intended to deny employers and their employees the right to develop terms and conditions that suit their circumstances by trying to secure "pattern" outcomes. Furthermore, the nature of the work and the conditions applying to various employers in the industry may differ markedly. The Government considers that it is inefficient and costly to mandate a single set of terms and conditions in these circumstances. For the most part, project agreements impose inflated wages and conditions, inconsistent with existing workplace negotiated agreements and without a commensurate increase in productivity.
- As concerns recommendation (d), the Government indicates that the National Code of Practice for the Construction Industry (the National Code) and associated Implementation Guidelines (the Guidelines) are not designed to promote any type of industrial instrument above another. The Guidelines are drafted for the purpose of assisting employers and employees to practically implement the recommendations of the Royal Commission, as well as at progressing the Government's commitment to establishing higher standards of workplace relations behaviour, flexibility and productivity within the building and construction industry. For the Government, the

Committee's comments on the status of collective bargaining are based on the proposition that Article 4 of Convention No. 98 imposes an unqualified obligation on ratifying States to promote collective bargaining at the expense of all other forms of bargaining. The Australian Government does not agree with that view: Article 4 requires measures for the encouragement and promotion of collective bargaining to be taken "where necessary", and that such measures are to be "appropriate to national conditions".

- With regard to recommendation (e), the Government considers the existing safeguards in the BCII Act 2005 to be comprehensive and appropriate and, as such, does not judge further protections to be necessary. Given the extent of unlawful and inappropriate behaviour in the industry, the powers of the ABC Commissioner to require a person to provide information are both appropriate and necessary. The Government emphasizes that there currently exist important protections and safeguards in the BCII Act 2005. The Act establishes criteria that the ABCC must satisfy in order to exercise its powers to obtain information and restricts what a person may do with protected information that has been obtained during the course of official employment. In this connection, unauthorized recording or disclosure of protected information is an offence carrying a maximum of 12 months' imprisonment. The protected information provisions apply to all members of staff of the ABCC. The Government therefore considers that penalties of this nature have the effect of providing protection to individuals who seek to provide information to the ABCC. It also points out that the powers granted to inspectors are similar to the powers of inspectors in many countries. Concerning the right of appeal to the courts before handing over documents, the Government states that such right currently exists and has been exercised on several occasions. In all of the cases cited by the Government, the person served with a notice or requirement to produce documents was afforded the opportunity to test the validity and ambit of the notice in the Federal Court. The Government emphasizes that the relevant operative provisions of the BCII Act 2005 contain a minimum 14-day time period to comply with the notices. This affords persons the opportunity to obtain legal advice with respect to their legal options and to test the matter in the courts if they so choose. With respect to the penalty of six months' jail for failure to comply with a notice issued by the ABC Commissioner to provide information or documents, the Government states that the courts retain the discretion to impose a penalty proportional to the gravity of the offence and can apply a sentence of less than six months' imprisonment or impose a financial penalty instead of a jail term.
- In respect of recommendation (f), the Government considers that appropriate regard was given to Australia's obligations under ILO Conventions Nos. 87 and 98 in developing the building and construction industry improvement legislation. It further informs that the ABC Commissioner intends to meet on a regular basis with the industry's participants. The industry's key employer and employee associations will be invited to these meetings. The meetings will be an opportunity to canvass any issues of concern about the administration of the BCII Act 2005 by the ABC Commissioner. In addition, the Government informs that it convenes a National Workplace Relations Consultative Council at least twice a year. The Council is chaired by the Minister for Employment and Workplace Relations and is attended by national union and employer representatives. Employers and unions are entitled to raise concerns about workplace relations legislation in this forum. Finally, the Government reiterates that the BCII Act 2005 does not restrict freedom of association or the right of employees to organize, but rather seeks to address those activities identified in the Royal Commission that impinge upon these basic rights. As such, the Government considers that the BCII Act 2005 reflects Australia's international obligations with respect to freedom of association principles and therefore does not propose to amend the legislation for the purposes proposed in the recommendations.

23. *The Committee notes the detailed information provided by the Government. It notes however that important discrepancies remain, particularly in respect of recommendations (b), (c) and (d), and regrets that the Government has not taken steps specifically aimed at addressing these points through further consultations with the representative employers' and workers' organizations in the building and construction industry.*
24. *While taking due note of the further information provided by the Government, the Committee observes that this information largely reiterates the reasoning previously put forward by the Government in respect of restrictions upon industrial action, determination of bargaining levels and the promotion of collective bargaining more generally. The Committee therefore once again requests the Government to initiate further consultations with the representative employers' and workers' organizations concerned in the building and construction industry in order to explore their views on all of the matters raised in the Committee's previous recommendations so as to ensure that the Building and Construction Industry Improvement Act, 2005, is in full conformity with Conventions Nos. 87 and 98. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

### **Case No. 2407 (Benin)**

25. At its November 2005 session, the Committee examined the substance of the case which concerns the dismissal of 40 workers, union officials and staff representatives following a strike at the Financial Bank Benin. The Committee requested the Government swiftly to conduct an independent and impartial inquiry in order to determine whether anti-union discrimination was indeed behind the dismissals carried out by the bank in August 2004 and whether national legislation giving effect to the Workers' Representatives Convention, 1971 (No. 135), had been properly applied in that case, and to inform it of the outcome. The Committee also requested the Government to send it the text of the ruling of the court of first instance concerning the legality of the strike organized in August 2004 by the Union of Workers of the Financial Bank Benin (SYN.TRA.F.I.B) [see 338th Report, paras. 471-493].
26. In a communication of 18 January 2006, the Government states that an inquiry will be conducted in order to ascertain the facts with regard to the discrimination to which some employees at the bank were allegedly subjected on the grounds of their trade union membership. The Government recalls, however, that the dismissal procedure for staff representatives is governed by sections 115 to 121 of the Labour Code (Act No. 98-004 of 27 January 1998). The issue of extending to union officials the protection accorded to staff representatives is currently being examined and will be taken into account during procedures to align the provisions in question with the ratified Conventions.
27. *The Committee notes this information and requests the Government to keep it informed of the outcome of the inquiry conducted into the alleged trade union discrimination to which some employees of the Financial Bank Benin were subjected. The Committee also reminds the Government of its request concerning the ruling of the Court of First Instance on the legality of the strike organized by the SYN.TRA.F.I.B in August 2004.*

### **Case No. 2374 (Cambodia)**

28. The Committee examined this case at its November 2005 meeting [see 338th Report, paras. 494-511] and on that occasion it formulated the following recommendations:
- (a) The Committee deeply regrets that the Government has not replied to the allegations despite the fact that it was invited to do so on several occasions, including by means of an urgent appeal, and urges it to reply promptly.

- (b) The Committee urgently requests the Government to ensure in cooperation with the employer that the workers dismissed as a result of their legitimate trade union activities are reinstated without loss of wages and without delay or, if it is found by an independent judicial body that reinstatement in one form or another is not possible, that they are paid adequate compensation along with penalties against the employer in conformity with applicable national legislation, which would represent sufficiently dissuasive sanctions for such anti-trade union actions. The Committee requests the Government to keep it informed of any development in this regard.
- (c) Concerning the question of alleged interference by management in the establishment of a union at the Raffles Hotel in Phnom Penh, the Committee urges the Government to take all necessary measures so as to put an end to any acts of anti-union discrimination and interference in this case. The Committee requests to be kept informed in this respect.
- (d) With respect to the allegations that the enforcement of trade union rights were left to non-binding arbitration, the Committee considers that the protection of workers' trade union rights needs to be accompanied by efficient and enforceable procedures and requests the Government to ensure that all workers who suffer acts of anti-union discrimination have access to procedures which lead to final and binding decisions. In the present case, the Committee requests the Government to take the necessary steps urgently to ensure that the rights of the workers and union leaders concerned are effectively protected.

29. In its communication of 14 November 2005, the Government indicated that workers' and employers' organizations have discussed the issues raised in this case on numerous occasions. They have reached an agreement and, to that effect, signed a collective agreement solving the problems and reinstating all workers.

30. *The Committee notes with interest the information provided by the Government. It regrets however that no information was provided on the steps taken to ensure that all workers who suffer acts of anti-union discrimination have access to procedures, which lead to final and binding decisions. Recalling once again that the protection of workers' trade union rights needs to be accompanied by efficient and enforceable procedures, the Committee draws this aspect of the case to the Committee of Experts on the Application of Conventions and Recommendations.*

### **Case No. 2257 (Canada/Quebec)**

31. The Committee examined the substance of this case at its session in November 2004. It concerns the exclusion of managerial staff from Quebec's Labour Code, which prevents them from forming unions and enjoying all the associated rights and prerogatives, in particular: a real right to collective bargaining; the right to a dispute settlement procedure in the absence of the right to strike; and the right to legal protection against acts of employer interference. The Committee requested the Government to amend the Labour Code in order to resolve all these problems, in accordance with the principles of freedom of association, and to keep it informed of the development of the situation in that regard [see 335th Report, paras. 412-470].

32. In a communication dated 26 August 2005, following a meeting during the 2005 session of the International Labour Conference between the Chairperson of the Committee on Freedom of Association (CFA) and the Canadian delegation, which included representatives of the Government of Quebec, the Government of Quebec explained that it had set up an Inter-Ministerial Committee on the follow-up of the recommendations of the CFA, with a mandate to make recommendations to the Government on the matter. The Inter-Ministerial Committee began its work in March 2005 and carried out series of consultations in the ministries concerned with a view to assessing the impact of the recommendations of the CFA.

33. In a communication dated 29 November 2005, sent to the Government on 12 December 2005, the complainant organization, the National Confederation of Managerial Staff of Quebec (CNCQ), reported a number of inquiries that had been made to the Government (December 2004; 8 March, 12 April and 31 August 2005) about its plans regarding the follow-up to the Committee's recommendations. The last reply received from the Ministry concerned, dated 3 October 2005, noted the creation of the Inter-Ministerial Committee "... with a mandate to examine the recommendations made by the Committee on Freedom of Association and to draw up proposals for follow-up. When the proposals of this committee are known, rest assured that you will be invited to a meeting to discuss this issue". The CNCQ has still not received any further reply or commitment in response to its requests for follow-up and meetings in connection with this case.
34. *The Committee takes note of this information. Emphasizing that the problems underlying this complaint date back to the beginning of the 1980s (see annex to the decision, 335th Report, November 2004), the Committee trusts that the Inter-Ministerial Committee will by now have made substantial progress. The Committee firmly trusts that the Inter-Ministerial Committee's proposals for follow-up will fully reflect its previous recommendations and respect for principles of freedom of association, and urges the Government of Quebec to send its observations on the matter swiftly. The Committee also reminds the federal Government of Canada that the principles of freedom of association should be fully applied throughout its territory.*

#### **Case No. 2305 (Canada/Ontario)**

35. The Committee last examined this case at its November 2005 session. The Committee requested the Government to continue to pursue its best efforts to maintain a stable and harmonious labour relations atmosphere in the education sector and to continue to keep it informed of results achieved at the Education Partnership Table [see 338th Report, paras. 35-37].
36. In a communication dated 14 December 2005, the Government states that it continues to work with education stakeholders to bring peace and stability to the sector. For the first time in the history of Ontario, teachers' unions and school boards settled four-year collective agreements (running from 1 September 2004 to 31 August 2008), without any strike or lockout. This new collaborative approach was facilitated by the Government's discussions with teachers' unions and school boards, and led to the development of provincial frameworks and policies, which formed the basis for the peaceful negotiation of local agreements. The Government is also establishing a provincial stability commission to provide a forum for a collaborative response to province-wide issues arising out of the four-year agreements.
37. In addition, the Government has established the Education Partnership Table, a new forum designed to get broad and diverse insights from the education sector on provincial education policy early in the policy development process. The Table consists of representatives from unions and employers in the education sector, as well as students, parents and school principals. Participants agree to work towards consensus and, wherever possible, to raise issues first at the Table for all to examine and help solve collectively. The first meeting of the Table was held on 6 March 2004; it is anticipated that meetings will be held on a quarterly basis in 2006.
38. *The Committee notes with interest the information provided by the Government in the present case, which reflects a constructive and preventive approach with respect to labour relations in the education sector based on social dialogue with all stakeholders.*

**Case No. 2172 (Chile)**

39. At its meeting in November 2005, the Committee requested the Government to inform it of the decision handed down with regard to the dismissal of seven unionized pilots from the Lan Chile enterprise [see 338th Report, para. 43].
40. In its communications dated 28 April 2005 and 6 January 2006, the Government states that there are currently two lawsuits relating to the dismissal of Lan Chile pilots. The latter (lawsuit No. 4787-2003, brought before the Fifth Labour Court of Santiago) has been ruled upon and the complaint has been rejected by the Labour Tribunal. As to the action brought before the Sixth Labour Court of Santiago by the Labour Directorate with regard to anti-union practices (lawsuit No. 6371-2004), a ruling was handed down in first instance in favour of the complainant. While the ruling was under appeal, the parties reached an agreement out of court, as a result of which the Appeals Court of Santiago revoked the ruling in first instance.
41. *The Committee notes the extrajudicial agreement between the parties with respect to the dismissal of the pilots, and the decision of the judicial authority concerning the dismissal of one of the pilots in which his complaint was rejected.*

**Case No. 2296 (Chile)**

42. At its meeting in June 2005, the Committee requested the Government to communicate the ruling handed down on the dismissal of the 102 workers at Distribuidora de Industrias Nacionales S.A., against which a complaint had been lodged with the Freedom of Association Office of the Labour Directorate [see 337th Report, para. 52].
43. In its communication dated 6 January 2006, the Government states that the Labour Court of Santiago ruled in favour of the complainant on 5 October 2005 and that the court sentenced the company to pay costs and a fine of 140 monthly tax units; subsequently, an appeal was lodged against this ruling by the company, and it is still under examination.
44. *The Committee notes this information and requests the Government to inform it of the decision handed down in respect of the appeal lodged by the company.*

**Case No. 2352 (Chile)**

45. At its meeting in November 2005, the Committee made the following recommendations on the matters still pending in relation to the Compañía de Telecomunicaciones de Chile S.A. (CTC) and other companies in the group [see 338th Report, para. 644]:
- (a) The Committee observes that the labour inspection and in certain cases the judicial authority in the first instance, sanctioned certain anti-union acts which took place during the industrial dispute which began in 2002 in the companies of the CTC de Chile Group and the subsequent collective bargaining, and regrets the serious repercussions that these acts might have had on the level of membership of the FENATEL organizations. The Committee also observes that the judicial authority is still to decide certain appeals lodged by the company and that it ruled against the recourse of the labour inspection claiming the non-compliance by the company of the trade union leave; an appeal was lodged against this ruling. The Committee strongly expresses the expectation that such anti-union acts will not recur in the future and requests the Government to ensure compliance with Conventions Nos. 87 and 98 by those companies.
  - (b) The Committee requests the Government to keep it informed of the result of the appeals lodged with regards to this case, in particular on the appeal relating to trade union leave of FENATEL officials, or relating to the non compliance with the clauses of the



collective agreement, and to indicate whether FENATEL has lodged an appeal with respect to the dismissal of the delegates of that organization in respect of whom the company states that it was unaware of their position as delegates and that in any event they did not enjoy trade union status.

46. In its communication dated 6 January 2006, the Government states, in connection with the allegation of anti-union practices (changing the leave situation of union officials, denying officials the right to visit the offices, replacing workers during the strike), lawsuit No. 5295-2003, that the complainant lodged an appeal against the ruling of 5 August 2004, which had not yet been decided upon.
47. *The Committee notes this information and requests the Government to send it the decision handed down by the judicial authority following the appeal against the ruling of 5 August 2004 in connection with anti-union practices. The Committee also requests the Government to send it any ruling handed down in connection with the alleged non-compliance with provisions of the collective agreement and with the dismissal of delegates of the National Federation of Telephone and Telecommunication Workers' Unions of Chile (FENATEL) in 2001 and 2003 (regarding whom the company informed the Committee that it was unaware of their position as delegates and that in any event they did not enjoy trade union immunity).*

### **Case No. 2046 (Colombia)**

48. The Committee last examined this case at its meeting in November 2005 [see 338th Report, paras. 91-115]. On that occasion the Committee made the following recommendations on the matters that remained pending.
49. With regard to the alleged dismissal and sanctioning of workers belonging to SINALTRABAVARIA for participating in a strike at the company on 31 August 1999, the Committee took note of the decisions adopted until that time, and requested the Government to continue to take the necessary measures to expedite the ongoing judicial proceedings and to keep it informed of the outcome of the proceedings and of the appeals lodged.
50. In its communication of 23 January 2006, the Government reports on two of the pending trials in which payment of compensation for dismissal has been ordered but asserts that this was not a sanction for participating in the strike of 31 August 1999. *The Committee takes note of this information and expresses the strong hope that the Government will take all the measures available to it to ensure that the pending trials are concluded as soon as possible.*
51. With regard to the dismissal of trade union officers at the Caja de Crédito Agrario, in disregard of trade union immunity and in contravention of the rulings ordering the reinstatement of a number of these officers, the Committee noted the Government's statement that, of the total 34 court cases, 18 had been completed; it requested the Government to keep it informed of the outcome of the 16 remaining cases. In that regard, the Government states that it is awaiting the rulings of the various courts involved in the trade union immunity cases and will communicate them to the Committee as soon as they are handed down. *The Committee takes note of this information.*
52. With regard to the actions taken by the Cervecería Unión to suspend the trade union immunity of William de Jesús Puerta Cano, José Everardo Rodas, Alberto Ruiz and Jorge William Restrepo, the Committee requested the Government to keep it informed of the final outcome of the appeals. The Committee notes that, according to the Government, in the case of Mr. Puerta Cano, the protection against dismissal that he claimed was denied.

As for Mr. Rodas and Mr. Ruiz, the Court of Second Instance has not yet handed down its ruling, and the Government will inform the Committee as soon as a decision has been taken. *The Committee takes note of this information and requests the Government to keep it informed of the final outcome of the appeals lodged.*

- 53.** With regard to the alleged subsequent unjustified dismissal for gross misconduct of SINALTRAINBEC officials and of founders of the Trade Union of Workers of the Beverages and Foodstuffs Industry (USTIBEA), including William de Jesús Puerta Cano, Luis Fernando Viana Patiño, Edgar Dario Castrillón Munera and Alberto de Jesús Bedoya Riós, the Committee noted the Government's statement that the Ministry of Social Protection is not competent to initiate an inquiry, which can only be ordered by a judge, and that it would forward information on any appeals that the workers involved might lodge. As to the protection of the rights of officials with trade union immunity under national legislation (sections 485 et seq. of the Labour Code on supervision and monitoring), the Committee was of the view that the administrative authorities hold certain investigative powers that can lead to the imposition of sanctions, without prejudice to the right of the parties involved to lodge an appeal. This was not a question of declaring individual rights or settling disputes, but of carrying out an inquiry into events in order to prevent any infringement of legal provisions (in this specific case, the dismissal of a trade union officer with trade union immunity in the absence of any corresponding judicial authorization) and punishing any offenders, thereby allowing the parties to appeal to the judicial authorities. That being so, the Committee renewed its request to the Government to carry out an investigation into this matter and to keep it informed. In its communication dated 23 January 2006, the Government states that in December 2005 the Office for Cooperation and International Relations sent a request to the Coordinator of the Prevention, Inspection, Supervision and Monitoring Group of the Territorial Directorate of Antioquia to begin an administrative labour inquiry into the company and that it would inform the Committee of its findings. *The Committee takes note of this information and requests the Government to keep it informed of the outcome of the inquiry.*
- 54.** As regards the closure of the COLENVASES plant, which led to the dismissal of 42 employees and seven trade union leaders without their trade union immunity being waived and without complying with the Ministry of Labour's ruling authorizing the closure but ordering the company first to comply with clauses 14 and 51 of the collective agreement in force, the Committee notes the Government's statement that a verdict is still awaited from the Administrative Disputes Tribunal and that the Committee will be informed as soon as it is handed down. *The Committee takes note of this information and requests the Government to keep it informed on the matter.*
- 55.** As regards the allegations presented by SINALTRABAVARIA concerning the pressure on workers to resign from the trade union, the Committee requested the Government to take the measures necessary to carry out an investigation into the matter within the company and to keep it informed. The Committee notes the communication of October 2005 from SINALTRABAVARIA which refers to these allegations and states that the Government has not carried out any significant investigation. The Committee also notes that, in its communication of 23 January 2006, the Government indicates that the Territorial Directorate of Cundinamarca conducted an administrative labour inquiry and issued resolution No. 00015 of 10 January 2003 in which it did not sanction the enterprise. The Government adds that the Territorial Directorate has again been requested to investigate and that it will inform the Committee of the outcome. *The Committee reiterates how important it is for inquiries to be independent and to have the confidence of all parties and requests the Government to keep it informed of the outcome of the investigation initiated.*
- 56.** As regards the allegations presented by the Single Confederation of Workers of Colombia (CUT), concerning the refusal of the National Federation of Coffee Growers of Colombia

to collect ordinary union dues from workers who are not members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia and Almacenes Generales de Deposito de Café S.A. (SINTRAFEC) but who benefit from the collective agreement, and concerning the dismissal of several workers on account of their trade union membership and the regular use of labour cooperatives to replace workers on indefinite contracts, despite the fact that this is banned in the collective agreement, the Committee requested the Government to take the necessary steps to ensure that ordinary union dues are collected without delay from non-union workers employed by the National Federation of Coffee Growers of Colombia who benefit from the collective agreement, on behalf of SINTRAFEC, and to carry out an inquiry into the dismissal of several workers on account of their trade union membership, and into the use of labour cooperatives to replace workers on indefinite contracts, despite the fact that this is banned in the collective agreement, and to keep it informed on these matters.

- 57.** Regarding the refusal of the National Federation of Coffee Growers and Almacafé to collect union dues for SINTRAFEC, the Government indicates in its communication of 3 November 2005 that section 400 of the Labour Code provides that trade unions may request employers to collect ordinary and extraordinary dues as long as that decision is taken in a general assembly, by a vote of two-thirds of its members. This is a decision that workers' organizations take freely and without any involvement of the authorities, and one that must be respected by employers and the administrative and judicial authorities. Since 1961, relations between the National Federation of Coffee Growers and Almacafé and the trade union have been regulated by collective agreements, negotiated every two years, sometimes through awards by arbitration tribunals. In the last 25 years, the collection of extraordinary dues for union members has been subject to a regulatory agreement, except in the Collective Agreement of 1984 and in the Arbitration Award of 1986. Colombian law has regulated the obligations of non-union members when they benefit from the collective agreement between the trade union and the employer, through Decree No. 2351 of 1965, article 39, and its Regulatory Decree No. 1376 of 1966, article 12, which set their contribution at half the ordinary dues payable by unionized workers. The National Federation of Coffee Growers and Almacafé have complied with the request to deduct union dues made to it in accordance with the law. During the period referred to in the claim, no dues or partial dues were collected, either because the relevant rules and regulations provided for in section 400 of the Labour Code had not been complied with and there had been no collective bargaining on the subject, or because the rights of those who should pay the dues were not being respected, particularly those of non-unionized workers, whose obligation is provided for by the law, where they are not willing to make any greater contribution to the union.
- 58.** According to the Government, the trade union's failure to comply with the rules and regulations stemmed from the extraordinary dues that were not collected from its members in 1984, 1986 and 1987, that the ordinary dues of non-members were double that permitted by law, and that extraordinary dues were not collected from third parties outside the union that had not given their consent to pay them. Hence the union's claim that employers should not collect the dues, but pay out of their own assets the amounts not collected. The trade union SINTRAFEC lodged a claim in court for a sum of money equal to what they considered had not been collected as union dues; the claim was rejected by the Courts of First and Second Instance as well as by the Supreme Court of Justice.
- 59.** Regarding the termination of the employment contracts of members of SINTRAFEC, the Government notes that, according to information sent by the Federation, of 125 members of SINTRAFEC seven left by mutual agreement (labour conciliation), two died, three came to the end of their fixed-term contracts, two were dismissed for just cause, two were granted an old-age pension, and four were dismissed without just cause, making a total of 20 workers who left the company. The Government refers to another five workers who

were dismissed; in two cases their reinstatement has been ordered (one of these has already been reinstated) and the other three are awaiting a court ruling.

- 60.** Regarding the contracts with associated labour cooperatives, the Government reports that the National Federation of Coffee Growers and Almacafé enter into service contracts for activities which, because they entail not physical labour but civilian activities, call for technical and managerial autonomy rather than subordination. For occasional, incidental or casual labour, recruitment may also be through temporary work enterprises, as provided for by the Labour Code. Temporary workers are also employed to replace staff on holiday, on maternity or sick leave and to cope with increased production, transport, sales of products or merchandise, harvest time for coffee beans, when they may be taken on for six months, renewable. The Government has on a number of occasions explained that article 333 of the Constitution provides for economic freedom, which should be understood as the freedom of people to engage in economic activities in order to maintain or increase their assets, though always within reason and in such a way as to be compatible with other people's rights. In exercising this freedom, enterprises can make contracts with associated labour cooperatives in order to be more efficient, more productive and more competitive.
- 61.** The Government adds that since 2001 the National Federation of Coffee Growers and Almacafé has, on its own initiative, been encouraging dialogue with SINTRAFEC, with a view to improving labour relations, promoting coexistence and establishing a system of cordial business relations, and has invited the union to work together with it in to enhance their collective wealth in terms of productivity, competitiveness and employability, as a vital component of a commercial enterprise. *The Committee takes note of this information.*
- 62.** With regard to the allegations presented by the National Trade Union of Industrial Workers in the Production, Manufacture and Processing of Food and Dairy Products (SINALTRAPROAL), concerning the refusal to register union members elected to the executive board of SINTRANOEL, to register the change of status of SINTRANOEL from a company-based union to an industry-based union (SINALTRAPROAL), and to register the new members of SINTRANOEL's executive board following the break-up of Industrias Alimenticias Noel into two separate companies, Compania Galletas Noel S.A. and Industrias Noel S.A., on the grounds that, according to the Council of State, workers in the employ of one of the companies cannot sit on the executive board of the trade union of the other company and that the change of the company trade union into an industry organization is not valid because it happened after the company split in two, the Government states that it has to respect the decision made by the Council of State, which is the highest judicial authority with the power to examine decisions made by the administrative authority. *The Committee takes note of this information.*
- 63.** *Regarding the communication of the Single Confederation of Workers of Colombia (CUT) dated 15 February 2006, the Committee regrets that the Government has not sent its observations on the matter and requests it to do so without delay. The Committee also requests the Government to keep it informed of all the judicial decisions and administrative inquiries referred to in the preceding paragraphs which remain pending, namely: the actions taken by Cervecería Unión to have the trade union immunity of various union officials waived and the corresponding legal appeals; the inquiry into the dismissal without cause of SINALTRAINBEC officials and founders of the Trade Union of Workers of the Beverages and Foodstuffs Industry (USTIBEA); the inquiry into the closure of the COLENVASES plant, which led to the dismissal of 42 employees and seven trade union leaders without their trade union immunity having been waived and without complying with the Ministry of Labour's resolution authorizing the closure but ordering the company first to comply with clauses 14 and 51 of the collective agreement in force; the inquiry into the allegations presented by SINALTRABAVARIA concerning the pressure on workers to resign from the trade union.*

**Case No. 2068 (Colombia)**

- 64.** The Committee last examined this case at its November 2005 meeting [see 338th Report, paras. 682-711]. On that occasion the Committee made the following recommendations:
- (a) Concerning the murders of trade union officials Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, the Committee once again strongly urges the Government to take the necessary steps without delay to ensure that the investigations allow those responsible for these murders to be identified and adequately punished in the near future and to keep it informed in this respect.
  - (b) Regarding favouritism towards one of the enterprise unions to the detriment of the industry union, the Committee requests the Government to ensure that the principles of freedom of association are fully respected in the enterprise, particularly as regards the non-interference of the enterprise in favour of a union.
  - (c) Regarding the violation of the collective agreement in the Textiles Rionegro enterprise, while regretting that the Government has not sent its observations on the matter, the Committee requests that it promptly take measures to guarantee the full application of the existing collective agreement in the enterprise.
  - (d) Regarding the allegations presented by ASEINPEC concerning the dismissal of union leaders in violation of trade union immunity, the Committee requests the Government to carry out an independent investigation to determine whether the union leaders dismissed in violation of union immunity for participating in a one-day action in support of prison security in 2000 have all been reinstated as ordered by judicial and administrative rulings and requests the Government to keep it informed in this respect.
  - (e) Regarding the allegations of the dismissal of union leaders and members in the Municipality of Puerto Berrío – 57 members, including members of the Executive Committee of the Union of Puerto Berrío Municipal Workers and 32 members of the Puerto Berrío Municipal Employees' Association – in view of the fact that the Labour Inspector sanctioned the municipality for the collective dismissal, in particular that of the union leaders, the Committee requests the Government to take measures to carry out an independent investigation to determine whether, in the restructuring process, the workers who were merely union members were the object of anti-union discrimination and to keep it informed in this respect.
  - (f) As regards the SINTRAUTRO members dismissed in 1992 from the SOFASA enterprise, who, according to the CUT, were not included in the 1997 conciliation agreement, the Committee, while observing that the dismissals took place more than ten years ago, requests the Government to ensure that the workers involved have been fully compensated. In this context, the Committee requests the complainant to send the Government a full list of the workers affected.
- 65.** The Government sent its observations in communications dated 18 November 2005 and 23, 24 and 26 January 2006.
- 66.** The Employees' Association of the National Penitentiary and Prison Institute (ASEINPEC) sent additional information in a communication dated 23 October 2005.
- 67.** *With regard to recommendation (a) relating to the murders of trade union officials Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, the Committee regrets that the Government has not sent its observations on the matter. The Committee expresses the firm hope that the Government will adopt without delay the necessary measures to elucidate the facts and punish those responsible.*
- 68.** As to recommendation (c) relating to the violation of the collective agreement in the Textiles Rionegro enterprise, the Government indicates that additional information on the matter has been requested from the trade union organization as part of the investigation

and that a new collective agreement was signed on 29 May 2005, with validity until 31 May 2007. *The Committee notes this information.*

- 69.** As regards recommendation (d) concerning the dismissal of ASEINPEC union leaders in violation of trade union immunity, the Government indicates that the Director-General of the National Penitentiary and Prison Institute (INPEC) stated in communication 7100-DIG of 24 January 2006 that all the judicial and administrative rulings have been strictly complied with, including the decisions ordering the reinstatement of certain officials. The INPEC currently has no judicial rulings pending compliance. Nevertheless, by way of official letter No. 18096 of 13 December 2005, the trade union organizations ASEINPEC and SINGINPEC were asked to provide information on circumstances or observations that they might have with respect to the situation, without having brought the matter up.
- 70.** However, as regards the dismissal, the Committee also notes that the trade union organization has sent additional information on the matter, according to which the Government, while it has carried out the reinstatements, has not recognized the payment of the social benefits to the reinstated officials. The trade union organization sent a list of the workers affected, namely: Buyuque Penagos Henry, Cardona Marín Rafael, Pérez Santander Jairo, Gómez Suárez Leonardo, Gracia Domingo José Halles, Gutiérrez Rojas Gustavo, Gutiérrez Santos Luis Fernando, Hernández Bastidas Filmar Edgar, López Tordecillas Libis Lucía, Martínez Giraldo Francisco, Nieto Rengifo Harold, Parra Verdugo Alirio, Serna Rengifo Pedro, Shonewolf Romero Efraín, Velásquez Rodríguez Cayetano, Villarraga Miriam Fran Mauricio, Suárez Cardona Orlando Alberto, González Muñoz Javier, Palencia Galvis Jorge Humberto, Milton Marino Polo Cortez, Amaya Patiño Germán, Conrado García Villada, Carlos Alirio Puentes, Juan de la Rosa Grimaldos Barajas. According to the trade union organization in the administrative proceedings, the Government indicates that they have already been paid. *In view of the fact that there are legal proceedings pending, the Committee requests the Government to keep it informed of the final outcome.*
- 71.** As regards Juan de la Rosa Grimaldos in particular, the Government indicates that he was dismissed for unjustified absence from his post. Mr. Grimaldos lodged an appeal for reversal against Decision No. 1616 of 1 June 2000, which declared the post to be vacant as a result of abandonment, and it was rejected. He also brought proceedings before the ordinary court, which were also rejected, a decision that was upheld by the High Court of Bogotá. *The Committee notes this information.*
- 72.** Concerning recommendation (e) relating to the dismissal of union leaders and members in the Municipality of Puerto Berrío, the Government states that in re-examining Decision No. 8333625-005 of 2 August 2002 as a result of which the municipality was fined, it appears that the inspector handed down an opinion with respect to the trade union persecution, but not to the collective dismissal. *The Committee observes that it is not clear from the Government's statement whether or not there was anti-union discrimination in the framework of the restructuring process. This being the case, and so that it may examine the matter in full possession of the facts, the Committee requests the Government to send a copy of Decision No. 8333625-005 of 2 August 2002, to which it referred previously.*
- 73.** With respect to recommendation (f) concerning the SINTRAUTRO members dismissed in 1992 from the SOFASA enterprise, who, according to the CUT, were not included in the 1997 conciliation agreement, the Government states that the trade union organization has been requested to send information on the workers affected, which has not yet been received. The Government also sends a communication from SOFASA S.A. in which it says it will provide the relevant clarifications on the workers affected, as soon as the complainant organization sends the Government a list of them. *The Committee notes this information.*

**Case No. 2142 (Colombia)**

74. The Committee last examined this case at its meeting in March 2003 [see 330th Report, paras. 56-58]. On that occasion, the Committee requested, with respect to the alleged dismissal of 22 workers from Inca Metal S.A. in 1999, that the Government recommend to the company, should it anticipate hiring new workers, to make every effort to re-hire as many as possible of the 22 workers who had been dismissed for economic and restructuring reasons.
75. The Antioquia branch of the Single Confederation of Workers of Colombia, in communications dated 1 March and 6 June 2005, and the National Trade Union of Metal Workers, Metallurgists, Steel Workers, Miners and Electrical and Electronic Workers (SINTRAMETAL), in communications dated 31 August 2005 and 17 March 2006, stated that the company had hired temporary workers without giving any consideration to the 22 dismissed workers. The trade union therefore presented an application for judicial protection, which was rejected both by the Higher Tribunal of Medellín and by the Supreme Court of Justice. SINTRAMETAL adds that the company imposed a non-union collective accord for 2001-03 on the non-unionized workers and that several workers were dismissed for not agreeing to it. At the same time a collective agreement for January 2000 to May 2002 was negotiated, but its implementation was prevented by the existence of the earlier collective accord. The trade union states that, on 1 October 2004, the company was sanctioned by the Ministry of Social Welfare for failing to respect the collective agreement.
76. Regarding the alleged collective dismissal of 22 workers while Inca Metal S.A. was being restructured in 1999 and the subsequent hiring of temporary staff without giving consideration to the workers who had been collectively dismissed, as the Committee had suggested, the Government, in its communications dated 4 May 2005 and 3 February 2006, again describe the circumstances that had led to the collective dismissal in 1999. As to the subsequent recruitment of workers through temporary employment services, the Government states that, under the country's Constitution, employers benefit from economic freedom, and are thus entitled to offer such temporary contracts. *The Committee notes this information and, while recognizing the freedom of the company to offer contracts, deplores the fact that, in offering the new contracts, it gave no consideration to any of the 22 dismissed workers, as the Committee had suggested in its previous examination of the case.*
77. Regarding the imposition of a non-union collective accord, the Government states that under domestic legislation it is possible for such collective accords and collective agreements to coexist within an enterprise and refers to a decision of the Constitutional Court which, in one of its paragraphs, states that employers are entitled to conclude non-union collective accords with non-unionized workers, which may coexist with collective labour agreements. There is, however, an exception to this general rule in section 70 of Act No. 50 of 1990, which stipulates that "when a trade union or trade unions comprise more than a third of the workers in an enterprise, the enterprise shall not enter into collective contracts or extend those that are in force". *The Committee notes this information and the sanction imposed on the company in 2004 for failing to respect the collective agreement. The Committee requests the Government to guarantee that resorting to non-union collective accords does not impinge upon the right of the trade union organization to bargain collectively.*

**Case No. 2151 (Colombia)**

- 78.** The Committee last examined this case at its meeting in November 2005 [see 338th Report, paras. 116-128]. On that occasion the Committee made the following recommendations on the matters that were still pending.
- 79.** With regard to the allegations relating to the dismissal of officials of SINTREBENEFICIENCIAS for having formed a trade union organization in the Cundinamarca District, the Committee had taken note of the information provided by the Government according to which the dismissal of officials of SINTRABENEFICIENCIAS was carried out in breach of the provisions of the Labour Code and requested that the Government take the necessary measures to reinstate these officials without any loss of wages. The Committee notes the information provided by the Government to the effect that for the officials to be reinstated a judgement has to be handed down. *The Committee asks the Government to inform it whether the workers are still entitled to resort to the appropriate judicial channels to obtain their reinstatement.*
- 80.** The Committee had requested that the Government provide information on the outcome of the proceedings pending before the Council of State concerning the legality of Decree No. 1919, which suspended certain advantages in respect of wages and benefits that were provided for in collective agreements. In a communication dated 23 January 2006, the Government stated that no ruling had yet been handed down. *The Committee takes note of this information and requests that the Government keep it informed of any rulings handed down.*
- 81.** The Committee notes the new communication from the Union of Workers of the Social Welfare Fund of Cundinamarca (SINDECAPRECUNDI) dated 10 March 2006, according to which the Social Welfare Fund denied Jorge Eliécer Carrillo Espinosa, president of the union, the right to lodge an appeal, basing its refusal on an earlier decision of the administrative disputes court denying the official the right to reinstatement and to the corresponding compensation, on the grounds that he had been dismissed without his trade union immunity being waived. The Committee observes that sections 405 and 408 of the Labour Code interpret the guarantee of trade union immunity as a right not to be dismissed or subjected to less favourable working conditions and not to be transferred to other establishments within the same enterprise or to another municipality, without just cause having previously been verified by the labour court; and that they further stipulate that, in the event of a worker being dismissed in defiance of the rules and regulations governing trade union immunity, he or she shall be reinstated and, by way of compensation, the employer shall be sentenced to pay him or her any wages not paid because of the dismissal. *The Committee requests the Government to take whatever measures are within its power to resolve the case of Jorge Eliécer Carrillo Espinosa in accordance with the provisions of sections 405 and 408 of the national legislation.*
- 82.** The General Confederation of Labour (CGT) sent new allegations, in a communication dated 9 March 2006, concerning the Government's failure to comply with the Committee's recommendations with respect to the dismissal of members of the executive board of the Union of Official Workers of Cundinamarca (SINTRACUNDI) without their trade union immunity having been waived. The complainant organization alleges that the dismissed officials have exhausted the judicial channels that are available to them to have the legislation enforced. The Committee observes that these allegations are similar in effect to those dealt with in the previous paragraph. *Therefore, with respect to the workers of SINTRACUNDI also, the Committee requests the Government to take whatever measures are within its power to resolve their situation in accordance with sections 405 and 408 of the Labour Code.*



**Case No. 2239 (Colombia)**

83. The Committee last examined this case at its meeting in November 2005 [see 338th Report, paras. 134-148]. On that occasion, the Committee made the following recommendations on the matters that were still pending.
84. With regard to the allegations concerning the unilateral annulment by Tejicóndor of the signed collective agreement, following its merger with Fabricato, the Committee had noted that according to the Government the agreement signed by the workers at Tejicóndor was applied to these workers until its expiry date, after which the collective agreement signed between Fabricato and SINDELHATO, currently covering 56 per cent of workers in the company, was extended to them. The Government states in its communication dated 24 January 2006 that SINALTRADIHITEXCO initiated lawsuits in the ordinary courts, which ruled in favour of the enterprise; the ruling was upheld in the Court of Second Instance where it was shown that the agreement concluded with SINDELHATO was much more to the advantage of the workers than that concluded with Tejicóndor. At present a new collective agreement signed on 5 April 2005 with SINDELHATO is in force, and will remain so until 4 April 2008. *The Committee notes this information.*
85. With regard to the allegations presented by the WFTU concerning the forced signing of a collective contract (*pacto colectivo*) with unionized and non-unionized workers at GM Colmotores, which led to the automatic resignation of a large percentage of members from the National Union of Workers in Metal Mechanics, Metallurgy, Iron, Steel, Electro-Metals and Related Industries (SINTRAIME), the Committee requested the Government to be kept informed of the final outcome of the appeal lodged by SINTRAIME against the ruling of the Territorial Directorate of Cundinamarca, which had declared that it was not competent in the matter of the suspected irregularities at GM Colmotores. *The Committee regrets that the Government has not sent its observations on the matter. The Committee requests the Government to keep it informed of the final outcome of the appeal that has been lodged.*
86. With regard to the allegations concerning the murder of Mr. Luis Alberto Toro Colorado, a member of the National Executive Committee of SINALTRADIHITEXCO, the Committee had taken note of the ongoing investigation by the Attorney-General's office which had been assigned to the Bello District Criminal Court. *Noting that it has not yet received any further information from the Government on the matter, the Committee requests the Government to continue doing all within its power to establish the identity of the murderers so that they may be duly punished, and to keep it informed of any developments related to the case.*

**Case No. 2363 (Colombia)**

87. The Committee last examined this case at its meeting in November 2005 [see 338th Report, approved by the Governing Body at its 294th Session, paras. 712-737]. On that occasion, the Committee made the following recommendations:
- (a) with regard to the allegations regarding the refusal by the Labour Inspectorate to register the document establishing the union, the list of members of the executive board and the statutes of the Union of Employees and Workers in the Ministry of External Relations (UNISEMREX), the Committee requests the Government to take the necessary measures to modify the legislative provisions so that public employees can enjoy the rights flowing from the Conventions ratified by Colombia including the right to collective bargaining and the right to strike. Taking into account that the sections of the statutes which raise objections are not contrary to Convention No. 87, the Committee requests the Government to proceed without delay to the registration of the Constitution, the list

of executive board members and the statutes of the Union of Employees and Workers in the Ministry of External Relations (UNISEMREX);

- (b) regarding the allegations concerning the sanctions of two months' suspension and an equal period of special incapacity imposed on Ms. Luz Marina Hache Contreras, the Committee requests the Government to inform it of the outcome of the appeal lodged in respect of the decision to impose sanctions on Ms. Luz Marina Hache Contreras and to send a copy of the ruling;
- (c) with respect to the allegations concerning the refusal of the Government to negotiate the list of demands presented by ASONAL JUDICIAL in 2001, the Committee requests the Government to take the necessary measures to ensure that the right of public officials to bargain collectively is respected, in accordance with the provisions of Convention No. 154, which it has ratified;
- (d) with regard to the allegations concerning the refusal to grant trade union leave, the Committee requests the Government to take the necessary steps to ensure that trade union leaders in the public administration are able to make use of the facilities necessary to carry out their functions in accordance with Convention No. 151.

**88.** The Committee notes the Government's observations in its communication dated 23 January 2006. With regard to recommendation (a), concerning the refusal by the Ministry of Social Welfare to register UNISEMREX, the Government points out that this trade union organization can lodge an appeal with the administrative disputes authority against the administrative decision not to allow its registration. The Government also states that, since the matter concerns Convention No. 151, it is studying whether other legislations apply the Convention; so long as the necessary legislative adjustments have not been made, it will be impossible for the authorities to register the trade union organization.

**89.** *The Committee reiterates its observation that Article 2 of Convention No. 87 stipulates that workers and employers, without distinction whatsoever, shall have the right to establish organizations of their own choosing and that this implies that public administration workers should also enjoy the same right. This being so, the Committee requests the Government once again to take the necessary steps to have the Constitution, the list of executive board members and the statutes of the union of employees and workers in the Ministry of External Relations (UNISEMREX) registered without delay.*

**90.** With regard to recommendation (b), concerning the two months' suspension of Ms. Luz Marina Hache Contreras, in respect of whom the Committee had requested the Government to inform it of the outcome of the appeal lodged and to send it a copy of the ruling, the Government states that the judicial authority of second instance confirmed the sanction and ordered that it be imposed. *The Committee observes, however, that the Government has sent a copy of the ruling in first instance but not a copy of the appeal. The Committee requests the Government to send it a copy of the appeal.*

**91.** With regard to recommendation (d), concerning the refusal to grant the officials of ASONAL JUDICIAL trade union leave, the Government states that, in accordance with regulatory Decree No. 2813 of 2000, the representatives of public servants in all bodies are entitled to paid trade union leave which, though not permanent – since workers have to carry out their daily tasks – is granted periodically. *The Committee notes this information.*

**92.** *In more general terms, the Committee observes that the issues raised in this case as in several other cases relating to Colombia refer to the existence of obstacles to the full exercise of freedom of association in public services. Bearing in mind that the Government ratified Conventions Nos. 151 and 154 in 2000 and the observations of the high-level tripartite visit that took place in October 2005, the Committee invites the Government to consider the possibility of requesting the Office's technical assistance to examine all the*

*problems of freedom of association in the public service, so that the necessary steps can be taken to bring the country's legislation and practice into line with Conventions Nos. 151 and 154. It further recalls its invitation to the Government to consider very seriously the possibility of setting up an ILO office in the country.*

### **Case No. 2272 (Costa Rica)**

- 93.** At its March 2005 session, the Committee requested the Government to keep it informed of the outcome of the legal proceedings with regard to the officials Mr. Rodolfo Jiménez Morales and his wife, Ms. Kenya Mejía Murillo, and their disassociation from the National Insurance Institute (INS); the Committee requested the Government to inform it of the outcome of the proceedings for defamation against Mr. Rodolfo Jiménez Morales and expressed the hope that the procedures in question would be concluded soon [see 336th Report, para. 44].
- 94.** In its communication of 5 October 2005, the complainant organization (the National Association of Public and Private Employees – ANEP) sent a copy of the judgements of 21 May and 22 October 2004 of the Third Chamber of the Supreme Court of Justice, which endorsed the judgement of first instance dismissing the action for defamation instituted by the former executive director of the INS against the union official Mr. Rodolfo Jiménez Morales as the deadline for initiating criminal proceedings had expired. The ANEP adds that, since the disassociation of the officials Mr. Rodolfo Jiménez Morales and his wife, Ms. Kenya Mejía Murillo, the INS continues to prevent them from working as insurance brokers; the ANEP expresses its concern as it could take up to ten years for a final judgement to be handed down concerning the disassociation of the two people in question. The ANEP also provides new information and indicates that the complaint by the former director of the INS was not filed in a personal capacity, as maintained by the Government.
- 95.** In its communications of 19 May, 3 August, 5 October and 11 November 2005 and 23 January and 24 February 2006, the Government states that the current executive director of the INS sent a report dated 29 June 2005 in which he indicates that it has been stated repeatedly that the former executive director of the INS instituted proceedings against Mr. Rodolfo Jiménez Morales in his personal capacity and not in his capacity as a public official. Thus, the matter is a private one concerning the complainant and the defendant and, as such, it would be necessary to request information from the complainant concerning the outcome of the proceedings. In other words, the INS is not a party to these judicial proceedings which restricts its access to the case files. Furthermore, with regard to the proceedings under labour law initiated by Mr. Rodolfo Jiménez Morales against the INS, the ordinary proceedings are at the first instance stage, the demonstration phase, during which the various means of proof furnished by both parties and/or requested by the judge are admitted. Given that in cases involving labour issues, evidence can be furnished until such a time as the court is ready to pass judgement, and that the other party is informed of this evidence and can refer to it, the proceedings have taken a very long time. The complainant's most recent judicial proceeding was the submission of a request for reinstatement, on which the court still has to take a decision. Once a decision has been handed down concerning the request for reinstatement and the judge considers that all the evidence has been examined, the judgement of first instance will be pronounced. The Government states that the proceedings concerning the reinstatement of Ms. Kenya Mejía Murillo are still pending.
- 96.** *The Committee notes the judgements provided by the complainant organization which dismiss the action for defamation instituted against union official Mr. Rodolfo Jiménez Morales. The Committee notes the information provided by the Government on developments concerning the labour law proceedings initiated by the official in question and his wife, Ms. Kenya Mejía Murillo, whereby they have requested their reinstatement.*

*The Committee notes the complainant organization's concern that the proceedings may last for years. The Committee hopes that the proceedings will soon be concluded and requests the Government to send its observations on the communication from the complainant organization dated 5 October 2005.*

### **Case No. 2367 (Costa Rica)**

**97.** At its June 2005 meeting, the Committee made the following recommendations [see 337th Report, para. 793]:

- (a) As to the allegations concerning delays affecting procedure in the case concerning the dismissal of trade union officials of the Association of Workers of the Fertilizer Sector (more than eight-and-a-half years after the dismissals took place), the Committee notes and deplores the excessive delays affecting the abovementioned case and recalls that proceedings relating to matters of anti-union discrimination, in violation of Convention No. 98, should be examined promptly, so that the necessary corrective measures can be really effective; excessive delay in dealing with anti-union discrimination cases and, in particular, the long delay in deciding proceedings for the reinstatement of dismissed union leaders amounts to a denial of justice and thus a denial of the union rights of those affected. Whilst taking note of the efforts being made by the authorities to resolve the question of delays to legal proceedings, the Committee once again expresses its concern at the delays affecting proceedings, in particular with regard to the present case. The Committee requests the Government to take the necessary measures to ensure that the draft laws it referred to which are aimed at speeding up the operations of the legal system are adopted promptly. The Committee expects that the judicial authority will issue a ruling on the dismissal of the trade union officials of the ATF without delay, given that over eight and a half years have passed since the dismissals took place and requests the Government to communicate a copy of the ruling as soon as it is issued.
- (b) As to the entry effected by employees of FERTICA into the trade union office of the AFT and requisitioning of documents and goods, the Committee deplores the fact that representatives of the enterprise FERTICA unilaterally and without prior warning or consent entered into the office of the ATF trade union and relocated it to other premises belonging to the enterprise. The Committee requests the Government to communicate a copy of the ruling to be handed down as a consequence of the legal process undertaken by the Ministry of Labour for unfair employment practices and expects that the ruling will be handed down in the near future, restitution will be made for the damages and the ATF trade union will have its possessions returned to it.
- (c) The Committee requests the Government to communicate a copy of the ruling dated 8 April 2001, handed down by the Lower Small Claims Court of Puntarenas.

**98.** In its communications of 11 November 2005 and 24 February 2006, the Government indicated its willingness to respond to the Committee's concerns regarding the delay in the proceedings, and refers to the information given to the Committee of Experts on a number of bills aimed at resolving this problem and drawn up with the ILO's technical assistance. The Government adds that it has communicated the Committee's conclusions on the present case to the President of the Supreme Court of Justice and to the general manager of FERTICA. The Supreme Court considers that the situation with regard to Case No. 2367 is unacceptable, and that efforts must be made to ascertain whether the delay is due to the conduct of the parties concerned or of one of the individuals responsible for examining the case. The Supreme Court on 6 September 2005 reported on developments in the proceedings in relation to this case, which have dragged on for more than nine years.

**99.** The Government also reports another case examined by the Lower Small Claims Court of Puntarenas which led to a ruling on 17 February 2005 against the FERTICA company for arbitrarily evicting the supplies store and union office of ATF from their premises. The company was fined 661,200 colones, but lodged an appeal which is still pending.

**100.** *The Committee notes this information and, noting that the judicial proceedings in this case have been dragging on for more than nine-and-a-half years, once again expresses its serious concern at the situation which it deeply deploras, reiterates its previous recommendations, and hopes that rulings will be handed down without any further delay. The Committee requests the Government to keep it informed in this regard.*

### **Case No. 2385 (Costa Rica)**

**101.** At its November 2005 meeting, the Committee made the following recommendations on the pending questions concerning the process of collective bargaining between the National Registry and the union SINTRARENA [see 338th Report, para. 821]:

- The Committee regrets that the opening of discussions between the parties was delayed by seven months from the submission of the list of claims in October 2002 due to the delay by the Commission on Bargaining Policy in issuing the bargaining directives and requests the Government to take measures to ensure that the said body issues its directives in a reasonable time.
- The Committee observes that it is apparent from the documentation sent by the complainant organizations and the Government that the Commission on Bargaining Policy did not authorize a large number of draft clauses presented by the trade union for the purposes of negotiation, invoking the principle of legality. The Committee requests the Government to indicate whether the decisions of the Commission on Bargaining Policy can be appealed to the judicial authority or to an independent body.
- The Committee suggests that the Government should seek ILO technical assistance to accelerate the dispute settlement mechanisms for collective bargaining in the public sector.
- The Committee requests the Government to send it full information on the possible signing of the document sent by the Ministry of Justice to the trade union and invites the complainant organizations to explain the reasons why the trade union has not yet signed it.

**102.** In its communication of 24 February 2006, the Government states that a collective agreement between the National Registry and the union SINTRARENA was signed on 29 April 2005. The Government adds that it has informed the Commission on Bargaining Policy for the Negotiation of Collective Agreements in the Public Sector of the recommendations of the Committee on Freedom of Association, and hopes that, as the Committee suggests, the Commission's directives will be issued in a reasonable time. The Government has requested the Commission on Bargaining Policy to indicate whether its decisions can be appealed to a judicial or independent body, and to inform the Committee once the Commission has submitted its observations. The Government states that it has received ILO technical assistance for which a member of the Committee of Experts on the Application of Conventions and Recommendations has been responsible.

**103.** *The Committee takes note of this information and awaits the new information referred to by the Government regarding the possibility of appealing against the decisions of the Commission on Bargaining Policy.*

### **Case No. 2376 (Côte d'Ivoire)**

**104.** The Committee examined the substance of this case at its November 2005 session. The case relates to the alleged infringement of the trade union rights of Mr. Thompson, General Secretary of the Union of Workers of the Autonomous Port of Abidjan, who was initially dismissed by the port authority with the authorization of the Vridi district branch of the labour inspectorate. This decision was later revoked by the Labour Inspection Directorate.

The Committee requested the Government to ensure that the trade union official in question was reinstated in his post, in accordance with the decision of the Labour Inspection Directorate, without loss of pay or of other social benefits [see 338th Report, paras. 822-843].

- 105.** In a communication dated 9 January 2006, the Government confirms that the Labour Inspection Directorate, having ruled that Mr. Thompson's actions did not constitute serious misconduct, revoked the decision to dismiss him and ordered his immediate reinstatement. However, there are no legislative provisions whereby the authorities can oblige an employer to maintain a contractual relationship with a worker or reinstate him. If an employer refuses, he or she is liable to be required to pay, in addition to compensation for dismissal, special compensation of from 12 to 36 months of gross wages, depending on the seniority of the worker. Given that the port authority refused to reinstate the worker in question in his post, the latter took the case to court, where it is still pending.
- 106.** *The Committee notes this information and recalls the provisions of Article 1 of Convention No. 135, ratified by Côte d'Ivoire, which provides that workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative. The Committee also recalls that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation where employers can, in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 707]. The Committee further recalls that, if Mr. Thompson's reinstatement is not possible, the Government should ensure that he receives full compensation, which should be such as constitute a sufficiently dissuasive sanction against the employer for anti-union practices. The Committee requests the Government to bring these principles to the attention of the court with which Mr. Thompson lodged his appeal, and expects it to take them fully into consideration when ruling on the case. The Committee requests the Government to provide it with a copy of the ruling in question as soon as one is handed down.*

### **Case No. 2330 (Honduras)**

- 107.** With respect to this case, the Committee had requested the Government to: (1) keep it informed of the outcome of the lawsuit by the Minister of Education against the official, Nelson Edgardo Cálix for slander, libel and defamation; (2) indicate whether, by virtue of the non-reprisal clause established in the 10 July 2004 agreement between the Government and the complainant organizations, and specifically the clauses relating to wages and the deduction of trade union dues, the sanctions (fines) against the president of COPEMH and against COPEMH and COPRUMH, and the application to have these organizations' legal personality suspended, had been abandoned or set aside. At its meeting in November 2005, the Committee: (i) noted with interest that the authorities had abandoned the lawsuit intended to suspend the legal personality of the complainant organizations and requested the Government to keep it informed of any new decision in relation to this case; and (ii) invited the Government and the trade union organizations to find a negotiated solution to the unresolved issues before the judicial authority, based on the non-reprisal clause arising out of the conciliation settlement of 10 July 2004 and on Conventions Nos. 87 and 98 which have been ratified by Honduras and apply fully to teaching staff so that the complainant organizations should be able to represent their members without any problem whatsoever; the Committee requested the Government to keep it informed in this respect [see 338th Report, para. 175].

- 108.** In a communication dated 6 January 2006, the Government reiterated the information it had sent on 2 August 2005 of which due note was taken when the case was examined in November 2005.
- 109.** *In these circumstances, the Committee calls on the Government to send the information that has been requested.*

### **Case No. 2364 (India)**

- 110.** The Committee examined this case at its November 2005 meeting [see 338th Report, paras. 959-983] and on that occasion it formulated the following recommendations:

- (a) The Committee deeply regrets that, despite the time that has elapsed since the complaint was first presented, the Government has not replied to any of the complainants' allegations. The Committee strongly urges the Government to be more cooperative in the future.
- (b) The Committee recalls that public servants, other than those engaged in the administration of the State, should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment of public service. The Committee therefore requests the Government to take the necessary measures in order to ensure the application of this principle in Tamil Nadu.
- (c) The Committee requests the Government to take the necessary measures to amend the Tamil Nadu Government Servants Conduct Rules and the Tamil Nadu Essential Services Maintenance Act so as to ensure that public servants, with the only possible exception of those exercising authority in the name of the State, and teachers may exercise the right to strike.
- (d) The Committee requests the Government to give necessary instructions so as to ensure in the future that any police intervention is wholly proportionate to the threat to public order that may have been created by a strike action.
- (e) The Committee requests the Government to give appropriate instructions to the police and the other competent authorities so as to obviate the dangers to freedom of association that such massive arrests and dismissals involve.
- (f) The Committee requests the Government to review the matter of lost wages following the termination of the strike action, in consultation with the trade unions concerned, with a view to compensating the employees concerned for any damages suffered solely for the exercise of legitimate trade union activities and to keep it informed in this respect.
- (g) The Committee urges the Government to take immediately the necessary measures so as to ensure the recognition of all associations of government employees and teachers, whose recognition was withdrawn as a sanction for their participation in the strike and to keep it informed of developments in this respect.
- (h) The Committee urges the Government immediately to return the office building to the Tamil Nadu Secretariat Association and keep it informed in this respect.
- (i) The Committee requests the Government to provide its comments on the complainant's request concerning monetary compensation to the families of the 42 employees who had lost their lives.
- (j) In order to ensure a sound and lasting labour relations environment, the Committee requests the Government to begin thorough consultations on the unsettled issues related to the terms and conditions of employment of government employees and teachers with the trade unions in this sector. The Committee requests the Government to keep it informed in this respect.

- 111.** In its communication dated 19 January 2006, the Government indicates that, in India, the government servants are treated as a separate category of workers. Article 311 of the

Indian Constitution provides safeguards to civil servants in the form of a high degree of job security. At the same time, article 309 allows the State to impose certain restrictions upon fundamental rights of the civil servants. Given their special statute, the government servants in India cannot be given the right to collective bargaining and the right to strike. However, the government servants have access to alternative negotiation machinery in the form of a joint consultative body. They can also approach the administrative tribunals to seek redressal of their grievances.

- 112.** As concerns the strike carried out by the government employees in Tamil Nadu, the Government states that, following a meeting held with the representatives of government employees and teachers, the Government of Tamil Nadu has announced a package of measures which included annulment of punishments and withdrawal of the disciplinary cases against the employees who had participated in the strike. The period of strike from 5 to 24 July 2003 has now been treated as duty. This measure has benefited 165,533 persons. As a further measure of good will, the Government has decided that, except in respect of those employees and teachers who were dismissed from service and then reinstated, the period of absence from 25 July to 16 November and 30 December 2003 would be treated as duty for all other government employees and teachers. This measure would benefit 4,303 persons. With a view to promoting mutual understanding between the Government, government employees and teachers and with a view to building a constructive and meaningful future for people, the Government has issued an order seeking recognition of 37 public service associations. Moreover, the Service Delivery Improvement and Grievance Redressal Committees are being constituted both at the state level and at the district level to focus on both improvement of performance and efficiency as well as redressal of grievances for employees and teachers. Finally, the Government indicates that an option to carry over seven days of annual leave has now been restored.
- 113.** *The Committee notes the information provided by the Government. It notes with interest the measures taken by the Government in consultation with the representatives of government employees and teachers. The Committee notes that these measures include the annulment of punishments and withdrawal of the disciplinary cases against the employees who had participated in the strike, the payment of lost wages following the termination of the strike action and the recognition of 37 associations of government employees and teachers.*
- 114.** *With regard to the Government's statement on the right of government employees and teachers, the Committee refers to its previous examination of this case [see 338th Report, paras. 974-975] where it recalled to the Government that public servants, other than those engaged in the administration of the State, should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means of settling disputes arising in connection with the determination of terms and conditions of employment of public service. Furthermore, teachers should be able to exercise the right to strike. The Committee therefore requested the Government to ensure the application of these principles and to amend the Tamil Nadu Government Servants Conduct Rules and the Tamil Nadu Essential Services Maintenance Act (TNESMA). The Committee reiterates its request and asks the Government to keep it informed of the measures taken in this respect.*
- 115.** *The Committee regrets that no information was provided by the Government in respect of the Committee's previous request to return the office building to the Tamil Nadu Secretariat Association and on the complainant's request concerning monetary compensation to the families of the 42 employees who had lost their lives and urges the Government to transmit this information without delay. While noting from the Government's reply that an option concerning carry-over of annual leave has now been restored, the Committee, recalling that the strike was called to protest the state Government's unilateral decision to withdraw pension benefits, requests the Government*



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*once again to indicate whether thorough consultations have been held in respect of this issue and whether any final agreement has been reached.*

### **Case No. 2304 (Japan)**

- 116.** At its November 2005 meeting, the Committee examined this case, which concerns the arrest and detention of trade union officers and members, massive searches of trade union offices and residences of trade union leaders, and confiscation of trade union property. On that occasion the Committee requested the Government: to clarify the scope of the suspension of the prosecution of three suspects (Tokyo Station incident) and in particular, to indicate whether all charges against them had been dropped; to continue to keep it informed of the progress of the judicial proceedings and to provide it with the final judgement on this case; to keep it informed of developments as regards the proceedings filed by the Japan Confederation of Railway Workers' Union (JRU) (state liability, compensation for unreasonable search and confiscation) in the Tokyo District Court, and to provide it with the court's judgement once issued. As regards confiscated items, the Committee noted that the Tokyo Public Prosecutor's Office still retained several items seized during the search raid and, in particular: 857 items linked to a coercion case; 34 items linked to a violation of the Law on Punishment against Violent and Other Acts ("the Law"), 22 of which were seized again later by the Metropolitan Police Department; 12 other items and documents that, according to the Government, could not be returned because their original possessors refused the offer of return. The Committee requested the Government to ensure that all items confiscated in relation to the cases of coercion and violation of the Law be returned as soon as possible, and to continue to keep it informed of progress made in this respect. The Committee further requested the Government to provide details on the 22 items initially seized as part of the investigation of the Tokyo Station incident and were later re-confiscated [see 338th Report, paras. 207-221].
- 117.** In a communication dated 20 December 2005, the complainant JRU states that, despite the ILO recommendations, the Government has again infringed on trade union rights. The police and judicial authorities used false charges of "embezzlement" to raid ten sites, including the union offices and officers' houses, and confiscated again more than 2,000 items, as follows. On 7 December 2005, some 80 police officers of the Tokyo Public Safety Bureau raided a JRU office in the Meguro Satsuki Kaikan, searched the building for four days and seized 1,395 items, including some personal items belonging to persons who were in the office. The police also seized: 390 items at the office and warehouse of the East Japan Railway Workers' Union (JREU); 40 items from the training facilities managed by the JREU; and 358 items from eight locations, including residences of JRU officers and ex-officers. According to the list provided by police, 2,194 items were confiscated. The JRU gives a long list of examples of items seized.
- 118.** In a communication dated 28 February 2006, the JRU confirms the contents of its previous allegations, mentions that the police gave misleading information on the number of items returned to the complainant, in response to the Committee's recommendations. The JRU also states that the first oral arguments were heard on 21 February 2006 as regards the proceedings filed earlier, and that it has filed three other lawsuits (search of private residences; arbitrary interference with JRU's operations; abuse of power by authorities). The JRU also complains about the unfairness of the judicial process, due in particular to several replacements of judges, long delays and multiple hearings.
- 119.** In its communication dated 15 March 2006, the Government states that the "suspension of prosecution" [see 338th Report, para. 217] is one of the methods of non-institution of prosecution (based on article 248 of the Code of Criminal Procedure) at the prosecutor's discretion, depending on the circumstances of the offence. In this case, the Prosecutor's

Office decided on 16 March 2005 to suspend the prosecution of the three suspects for the so-called Tokyo Station incident.

- 120.** As regards the return of seized items, the Government states that the authorities have returned, and will continue to return, the seized items to their rightful owners, once it is established that such items are less important for proving a case: (a) concerning the “Urawa Train Depot” incident, the authorities returned 161 items to the complainants on 25 November 2005, and 148 other items as of 28 February 2006; out of 1,870 items seized, 1,161 have already been returned and 13 others will be returned any time. The Prosecutor’s Office will return the remaining items as and when considered appropriate, in the process of the criminal trial; (b) as regards the so-called Tokyo Station incident, the 12 items which had been refused by their owners were returned in July 2005; all 1,039 items seized in this incident, except for the 22 seized again by police, have already been returned to their possessors.
- 121.** The embezzlement case [see 338th Report, para. 220] concerns some members of the JRU and other groups, who are accused of private embezzlement of funds entrusted to them on behalf of the JRU. As the case is now under police investigation, the Government will decide whether to provide detailed information to the Committee, on the basis of further developments in the inquiry. The legal action for state liability and compensation [see 338th Report, para. 221] filed by the JRU in 2004 against the Government and the Tokyo Metropolitan authorities, is currently pending before the Tokyo District Court.
- 122.** *The Committee notes the information provided by the complainant and the Government, including the fact that no proceedings have been filed against the three persons involved in the Tokyo Station incident. The Committee also notes the information provided by the Government as regards the seized items, and requests it to continue to provide updated information in this respect. The Committee further requests the Government to keep it informed of developments as regards the various legal proceedings that are currently pending, against the complainant members, or against the authorities (state liability; unreasonable searches; confiscation), and to provide it with the judgements as soon as they are issued. Finally, the Committee requests the Government to provide its observations on the supplementary allegations made by the complainant organization in its communication of 28 February 2006.*

### **Case No. 2109 (Morocco)**

- 123.** The Committee last examined this case at its November 2005 meeting. It concerns the dismissal of eight trade unionists working for the Fruit of the Loom company, as well as acts of anti-union repression following the establishment of a trade union office. On that occasion, the Committee [see 338th Report, paras. 232 to 235]:
- hoped that the judicial decisions concerning Mr. Abdellah Sainane and Mr. Lahcen Toufik would be implemented promptly;
  - urged the Government to provide information relating to the situation of the workers on whom information had been missing;
  - hoped that the decision of the Rabat Court of Appeal regarding the reports of the Labour Inspectorate would be communicated to it as soon as possible;
  - requested the Government to keep it informed of the outcome of the inquiry being carried out by the Royal Gendarmerie on the unauthorized collective dismissal.
- 124.** In a communication dated 15 February 2006, the Government states that, with regard to the unauthorized collective dismissal, Mr. Abdel Malek el Wassini, former director of the Fruit of the Loom company, was convicted *in absentia* and ordered to pay a fine of 2,000

dirhams plus costs (a copy of the ruling is attached to the Government's communication). Concerning the report on the wrongful dismissal without notice, the Government states that there is no new information to report; the file has been referred to the Bouknadel authorities for examination and the competent court has not yet reached any conclusion.

**125.** *The Committee notes this information. It requests the Government to continue to keep it informed of developments with regard to the issues still pending, namely, the prompt implementation of the rulings in connection with the case of Mr. Abdellah Sainane and Mr. Lahcen Toufik; the situation of the workers on whom information had been missing (namely Mrs. Asia Atla, Mr. Khalid Llalmaoui, Mr. Abdelfettah Lasfar and Mr. Abdelhafid El Hachi); and the decision of the Rabat Court of Appeal on the two reports of the Labour Inspectorate.*

### **Case No. 2404 (Morocco)**

**126.** The Committee examined the substance of this case at its November 2005 session. It concerns allegations of anti-union discrimination, in particular the dismissal of union representatives engaged in legitimate union activities, the collective dismissal of workers following a protest strike and the employer's refusal to bargain collectively. The Committee requested the Government [see 338th Report, para. 1056] to:

- take the necessary measures without delay to ensure that the union leaders dismissed in violation of national law effectively enjoy all the protections and guarantees provided by that law, including by reinstating them or, if reinstatement is not possible, by ensuring that the union leaders in question receive appropriate compensation taking account of the damage caused and the need to avoid the repetition of such acts in the future;
- take the necessary measures so that all the dismissals carried out in violation of national law are punished in accordance with that law, including cancellation of the dismissals and reinstatement of the workers concerned or, if reinstatement is not possible, by ensuring that the union leaders in question receive appropriate compensation taking account of the damage caused and the need to avoid the repetition of such acts in the future;
- instruct the competent services to intervene more actively in the next round of collective bargaining at the Somitex S.A. company, so as to ensure the progress of negotiations in good faith;
- inform it of the judgement as soon as it is handed down in the case of the eight workers who refused the payments;
- indicate whether the employer concerned had been consulted and, if not, to obtain the employer's view through the relevant employers' organization;
- keep it informed of any developments regarding all these points.

**127.** In a communication dated 15 February 2006, the Government states that the Labour Inspectorate of the town of Salé is closely monitoring developments in labour relations within all those enterprises falling within its jurisdiction, including the Somitex S.A. company. Social dialogue is being pursued within the Somitex S.A. company, thanks to the various arrangements for representation provided for by law. The election of workers' delegates (seven regular and seven non-unionized substitute representatives) took place on 28 December 2004, in accordance with the relevant provisions; the delegates meet with the employer once a month, or whenever there is a particular need to do so. The Negotiating Committee is a joint body which was established on 4 January 2005 and held two meetings in 2005 to discuss issues including the economic and financial consequences of the negotiations for 2004, forecasts for 2005, the entry of new employees, the company's internal regulations and the creation of a disciplinary council. In addition, a Health and Safety Committee was established on 4 January 2005 and held its first meeting on

11 January 2005, when it discussed the possibility of organizing a health and safety awareness day. Finally, on 24 December 2005, the Somitex S.A. company organized an information day on the new provisions of the Labour Code. The event was attended by more than 100 workers and their representatives.

- 128.** As to the specific complaints, the Government states that the union's officers, including the General Secretary who presided over the reconciliation agreement concluded between the company and the workers, were faced with a personal choice: either to accept the reconciliation agreement with compensation, or to take their cases to court. All the officials chose the former option, except for five individuals who appealed to the competent court; the court ruled in favour of three of them, ordering the payment of compensation of between 22,692 and 40,475 dirhams. The management of the company appealed against these rulings. It will be for the court to rule on the issue of their reinstatement in the company, should they express such a wish, but they have not so far done so.
- 129.** As to the collective dismissal of 186 workers, the dispute was resolved by the reconciliation agreement. The workers concerned received compensation agreed with the employer, while continuing to enjoy access to all means of legal redress; a total of 49 workers who were not satisfied with the proposed compensation went to court, but 47 of them subsequently withdrew their cases. The court of first instance ordered the employer to pay compensation to the other two workers of 57,729 and 12,677 dirhams respectively, and the employer appealed against this decision. The cases involving the other workers are still being examined by the courts. The Government states that no worker has expressed to the court the wish to be reinstated in the company, which is a matter for the courts to decide, and that the director of the company has given a firm undertaking to respect any court decisions.
- 130.** The Government also states that, in this case, all decisions made by the employer were taken following consultation with the Moroccan Labour Union (UMT), the Labour Ministry and the Regional Committee for Investigation and Reconciliation, in coordination with the General Confederation of Moroccan Entrepreneurs (CGEM) and the Moroccan Association of the Textile and Ready-to-Wear Garment Industry. In conclusion, the Government states that the situation within the company, which employs 556 workers and is one of the most stable enterprises in the Kingdom in terms of employment, has returned to normal.
- 131.** *The Committee notes this information, including the fact that the labour relations situation within the Somitex S.A. company appears to have returned to normal, thanks in particular to the various joint consultation bodies. As to the cases still pending, the Committee requests the Government to inform it as soon as possible of any rulings handed down, in the first instance or on appeal, with regard both to the union representatives and the workers affected by the collective dismissal. The Committee requests the Government to ensure that the union leaders and workers concerned receive, where appropriate, suitable compensation, taking account of the harm caused to the workers concerned and the need to avoid recurrences of such acts in the future.*

### **Case No. 2281 (Mauritius)**

- 132.** The Committee last examined this case, which concerns the need to revise the Industrial Relations Act (IRA) in conformity with freedom of association principles, at its November 2005 meeting. On that occasion, the Committee noted with regret that efforts made to amend the IRA had not resulted in the adoption of legislation based on broad consensus of social partners, and expressed its trust that efforts would be vigorously pursued to bring the IRA into full conformity with Conventions Nos. 87 and 98, and that the Government and social partners would continue fully to consult with a view to building

consensus and preparing the ground for future legislation amending the IRA. The Committee requested to be kept informed of developments, and reminded the Government that ILO technical assistance remained at its disposal if it so wished [see 338th Report, paras. 241-250].

- 133.** In a communication dated 10 February 2006, the Government states that, following the general elections held in June 2005, the newly elected Government announced its determination to reform the industrial relations framework, to promote effective tripartism and to strengthen dialogue with social partners. The Minister of Labour chaired a first meeting on 21 November 2005 with representatives of trade union federations to lay the foundations of reform; it was generally agreed that they would submit representations based on the Employment Labour Relations Bill (ELRB) introduced by the previous Government and subsequently withdrawn. A technical committee was set up. On 20 December 2005, the Minister also met employers' representatives, who agreed that further discussions would be based on the ELRB.
- 134.** On 30 November 2005, the technical committee met with the representatives of federations who agreed to send a common memorandum, which they did on 14 December 2005. That document did not contain any comments on the ELRB, but only a request that their views, expressed in memorandums submitted to the previous Government in January and December 2004, be incorporated in a new draft bill. It is worth mentioning that the federations had highlighted their disagreement only with clauses relating to: recognition and registration of trade unions; industrial disputes; and voluntary arbitration. Bilateral discussions took place on 17 January 2006, where the technical committee informed the federations that it was ready to listen to their proposals on issues agreed at the previous meeting. They however requested from the Minister a written commitment to the effect that the ELRB would be used for future discussion, observations and counter-proposals, either under a new name or a new bill altogether, incorporating the proposals of both the federations and employers' organizations. Although it was conveyed to the federations that the technical committee, as previously agreed, was expecting their views and proposals on the basis of the ELRB, they maintained their position that they would come up with further proposals only when a new draft bill would be released.
- 135.** The technical committee has started the examination of the documents submitted in January and December 2004 by the federations and expects to complete the exercise by the end of February 2006; the federations have been so informed. At a meeting on 23 January 2006 between the technical committee and employers' representatives, it was decided that the ELRB, embodying the views of both employers' and workers' organizations, would be the subject of future discussions with a view to building consensus. It was also decided that bipartite discussions would be held in the meantime with employers' organizations, to identify those provisions of the ELRB that were contrary to principles advocated by employers.
- 136.** The Government is considering the drafting of a new bill, based on the proposals made by employers' and workers' organizations, as new issues have surfaced during discussions.
- 137.** *The Committee notes this information and in particular the efforts made to achieve consensus through social dialogue. It trusts that these efforts will be vigorously pursued by all parties, and that the Government will do its utmost to ensure adoption of a legislation that is in full conformity with Conventions Nos. 87 and 98. The Committee reminds the Government that ILO technical assistance remains at its disposal if it so desires and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

**Case No. 2346 (Mexico)**

- 138.** At its meeting in June 2005, the Committee requested the Government to take measures to ensure that, in future, if the body responsible for granting legal recognition considers that there are irregularities in the documentation submitted, an opportunity is provided to the organizations in question to rectify such irregularities. The Committee requests the Government to keep it informed of measures taken to follow up its request [see 337th Report, para. 1057].
- 139.** In its communication dated 7 February 2006, the Government stated that the Local Conciliation and Arbitration Board of the State of Puebla (the competent body in Case No. 2346) had requested the intervention of the Federal Office for Labour in those cases where the workers and trade unions had so requested or had been in doubt as to the procedure. In accordance with its mandate under the law, the Federal Office for Labour verifies that the documentation deposited by applicants for the registration of a trade union with the labour authority meets the requirements of the provisions of sections 364 and 365 of the federal Labour Code. This mandate is set out in sections 530 and 534 of the Code, which read as follows:
- Section 530. The Federal Office for Labour shall have the following functions:
- I. to represent or advise the workers and their trade unions, on request and before any authority, in matters relating to the application of labour standards;
  - II. to lodge appropriate ordinary and extraordinary appeals in defence of a worker or trade union;
  - III. to propose amicable solutions to the parties concerned for the settlement of their disputes and to have the outcome officially recorded.
- Section 534. The services rendered by the Federal Office for Labour shall be free of charge.
- 140.** Moreover, at the request of the government of the State of Puebla, a Secretariat for Labour and Competition was established on 7 March 2005, one of whose principal objectives is to ensure the follow up, supervision and transparency of labour affairs in the state. In addition, Special Conciliation and Arbitration Board No. 7 was set up at municipal headquarters in Tehuacan, Puebla, to enforce workers' rights in the area, which is one of the most important in the state in terms of industrial activity.
- 141.** The Government stated that the Local Conciliation and Arbitration Board of the State of Puebla were participating in a technical cooperation project with the International Labour Organization (ILO) that began in May 2005 – “Study and diagnosis of the efficiency of local conciliation and arbitration boards in Mexico”. The objective of the project is to contribute to a more effective and efficient national system of rendering justice in labour matters, with a view to simplifying procedures, reducing lead time and costs and making the institutions concerned more consistent with one another and more efficient. The project is designed to make Mexico's system of rendering justice in labour matters more efficient by giving it better access to data and practical recommendation, in the light of its tripartite composition.
- 142.** *The Committee notes this information with interest and trusts that the ILO's current technical cooperation will make it possible for the Government to fulfil in full its recommendation that trade unions in the process of being established be provided with the opportunity of rectifying any irregularities in the documentation they submit.*

**Case No. 2286 (Peru)**

**143.** The Committee examined this case, in which the complainant alleges that, as a result of the establishment of a trade union, its General Secretary was dismissed and a criminal complaint was filed against him, and that a number of workers belonging to the trade union were dismissed in order to weaken the organization, at its meeting in June 2005, when it made the following recommendations [see 337th Report, paras. 1113-1123]:

- (a) The Committee requests the Government to ensure compliance with the court order to reinstate Mr. Leonidas Campos Barrenzuela, General Secretary of the trade union at the Petrotech Peruana S.A. enterprise, in his job.
- (b) As regards the criminal investigation against Mr. Leonidas Campos Barrenzuela for having allegedly forged documents, which began on 15 April 2003, the Committee trusts that this investigation will soon be completed and requests the Government to keep it informed of its outcome.
- (c) As regards the alleged intimidation of workers at Petrotech Peruana S.A. into leaving the trade union, the Committee requests the Government to ensure that the workers of the Petrotech Peruana S.A. enterprise are not subject to pressure or threats owing to their membership of the trade union.
- (d) As regards the alleged dismissal of various workers who belonged to the trade union for alleged serious misconduct, with the sole aim of weakening the new trade union, the Committee once again requests the Government to conduct an independent investigation into this matter and, should it conclude that the workers in question were dismissed owing to their membership of the trade union recently established at the enterprise, to take measures so that they are reinstated in their jobs, without loss of pay. The Committee requests the Government to keep it informed in this respect without delay.

**144.** In a communication dated 20 October 2005, the Government states that: (1) with regard to the Committee's recommendation (a), Petrotech Peruana S.A. declared in a communication dated 28 September 2005 that Leonidas Campos Barrenzuela was reinstated in his post on 23 September 2004 and since then has been working regularly; and that, in the judicial proceedings No. 193420-2003-000031 before the Twentieth Labour Court of Lima, the final amount of the back-pay due to Mr. Campos has not yet been determined; (2) with regard to the Committee's recommendation (b), concerning the criminal investigation against those responsible for the breach of public confidence by allegedly forging the signature of several persons that have signed the constitution act of the company trade union, the First Specialized Criminal Court of Talara stated that, on 24 August 2005, a ruling was handed down clearing Leonidas Campos Barrenzuela of the charge. An appeal was lodged against this ruling by Petrotech Peruana S.A. and has been referred to the Decentralized Criminal Court of Sullana for investigation. It is apparent from the foregoing that Leonidas Campos Barrenzuela is still facing criminal charges, and additional information has therefore been requested on the situation and will be sent to the Committee in due course; (3) with regard to the Committee's recommendation (c), account must be taken of the company's claim, in a communication dated 28 September 2005, that relations with the trade union and its members are currently entirely normal, that two collective agreements have been concluded (agreement 2003-2004 on 25 November 2003, and agreement 2004-2005 on 8 March 2005) and that a third is being negotiated. The Government adds that, in order to determine the complainant trade union organization's response to the company's denial of its alleged intimidation of workers into leaving the trade union, it has been deemed advisable to request the National Federation of Petroleum and Allied Workers of Peru (FENPETROL) to give its version of the matter, of which the Committee will be informed in due course; (4) with regard to the Committee's recommendation (d), communication No. 704-2005-MTPE/9.1 of 26 September 2005 has been referred to the National Directorate for Labour Relations to determine, in so far as it is competent, the measures necessary for the relevant Regional Directorate for Labour and Employment Promotion to arrange for a special visit to inspect the facilities of Petrotech

Peruana S.A. or, if appropriate, to convene a meeting out of court in order to obtain up-to-date information on all the points covered by the recommendations of the Committee on Freedom of Association with respect to the complaint presented by FENPETROL against the Government of Peru. The Government promises to inform the Committee in due course of the outcome of the measures and action that the National Directorate for Labour Relations deems appropriate.

145. *The Committee notes this information. In particular, the Committee notes with interest that, according to information supplied by the company, Leonidas Campos Barrenzuela, General Secretary of the trade union at Petrotech Peruana S.A. has been reinstated in his post and that the judicial authority is currently determining the final amount of the back-pay due to him. Finally, the Committee requests the Government to keep it informed: (1) of the final outcome of the criminal proceedings against Leonidas Campos Barrenzuela for allegedly forging documents; (2) of the outcome of the steps taken by the administrative authority with respect to the alleged intimidation of workers at Petrotech Peruana S.A. so that they leave the trade union; and (3) of the outcome of the special inspection visit that the administrative authority has ordered to be conducted at Petrotech Peruana S.A. in connection with the alleged dismissal of a number of workers who belonged to the trade union for alleged serious misconduct, with the sole aim of weakening the new trade union.*

### **Case No. 2252 (Philippines)**

146. The Committee last examined this case at its November 2005 session [see 338th Report, paras. 304-313]. On that occasion, it requested the Government to: (1) trusting that the proceedings which have been pending for quite some time before the courts with regard to the certification of the Toyota Motor Philippines Corporation Workers' Association (TMPCWA) will be concluded soon, keep it informed of the final decision as soon as it is handed down; (2) institute an independent inquiry into the allegations of employer interference, in particular, the creation of a new union under the dominance of the corporation, and if such allegations are found to be true, to take the necessary remedial action; (3) provide information on the efforts made to promote negotiations in good faith between the complainant TMPCWA and the Toyota Motor Philippines Corporation (TMPC); (4) keep it informed of developments in respect of the congressional discussions relating to the amendment of article 263(g) of the Labor Code concerning the exercise of the right to strike, as well as any measures taken to amend the national legislation so as to allow a fair, independent and speedy certification process providing adequate protection against acts of employer interference; (5) indicate the measures taken to initiate discussions to consider the reinstatement of the 227 workers dismissed by the corporation and union officers deemed to have lost their employment status or, if reinstatement is not possible, the payment of adequate compensation; and (6) keep it informed of developments in the proceedings and of any measures taken to withdraw criminal charges laid against 18 trade union members and officers and to provide its observations on allegations of harassment, including by the police.
147. The Committee first takes due note of the communications from the complainant of 20 December 2004 and 22 March 2005 and the Government's reply of 16 May 2005, which have just now been brought to its attention. As the complainant's communications concern events that have since been surpassed by events indicated in its later communications, including those examined at its meeting in November 2005, the Committee will not set them out in detail here. As for the Government's reply, the Committee notes the concern it has expressed that the communication of the complainant paints the Government as a conniving partner of the TMPC. The Government asserted that this is an untruthful presentation of the real picture of the dispute designed to generate the recommendations against the Government. The Government emphasized that it has religiously observed Conventions Nos. 87 and 98 and recalled that it had in fact certified



the TMPCWA as the sole and exclusive bargaining agent of the company. Mechanisms facilitating the exercise of the right to self-organization and collective bargaining have been instituted. Expedious resolution of representation issues, ministerial union registration and promotion of responsible unionism as provided in Department Order No. 40-03 is zealously implemented. But compelling the TMPC to negotiate with the TMPCWA is another matter. The controversy has its roots in the challenged votes during the 8 March 2000 certification election. The corporation insisted on its opening as members of the rank and file bargaining unit while the TMPCWA opposed its inclusion. The Department of Labor and Employment (DOLE) rules for its exclusion and thus certified the TMPCWA, but the substantive issue on exclusion or inclusion was still pending at the Court of Appeals. The pending issue has effectively hampered any coercive action on the part of the DOLE to compel the parties to negotiate collectively. The adamant refusal of TMPC to observe DOLE's order cannot be allowed, but the remedy/ability to compel the corporation to negotiate requires initiatory action from the TMPCWA through the filing of an unfair labour practice case before the National Labour Relations Commission for refusal to bargain pursuant to sections 247 and 248 of the Labor Code. The union had recourse to this action only on 14 February 2005 after another union, the Toyota Motor Corporation Labor Organization (TMPCLO), filed a petition for certification election. The grounds for the union's unfair labour practice case was alleged company domination of the TMPCLO and not a refusal by the company to bargain. This has sidelined an effective coercive intervention by the DOLE on the employer's refusal to bargain. The union chose to raise the issue of refusal to bargain only with the National Conciliation and Mediation Board, whose authority is limited to persuasive influence without any adjudicatory or decision-making authority. As a result of this approach by the union, conciliation meetings are ongoing to explore options for the parties to initiate collective bargaining even pending a decision from the Court of Appeals. The Government adds that it is a gross misrepresentation to say that it would authorize another certification election as the petition filed by the TMPCLO was still pending. The Government concludes by stating that the implementation of any effective measures to compel TMPC to negotiate with TMPCWA requires an initiatory action on the part of the union.

- 148.** In a communication dated 9 January 2006, the Government affirms that it has not been remiss in disseminating updates on this case and refers to its previous replies, including the reply of May 2005 noted above. As regards the conclusions of the Committee in November 2005, the Government states that it is not Government policy to simply grant or order the conduct of a certification election, but rather to follow the applicable laws, rules and regulations. In deciding to grant the request by TMPCLO to conduct a certification election, the Government considered the following facts: (1) the strong clamour from a majority of the members of the bargaining unit for a certification election. Of the some 765 employees at TMPC, 174 supported the petition for certification election, while 502 urged for the immediate conduct of the election; (2) the TMPCLO has convincingly proven that there has been substantial change in the composition of the rank-and-file bargaining unit since the election in March 2000. Two of the plants have been merged and the number of employees reduced from 1,100 to 765. The Government states that substantial change in the bargaining unit is a basis for a new certification election and refers to Supreme Court precedent in this regard. In particular, the Government states that, the Supreme Court pronounced that the presumption of continued majority status is subject to the rule that such majority status does not continue forever especially in the face of an assertion and offer of proof to the contrary or in view of altered circumstances which have likely occurred in the interim, or by a change in the conditions which demonstrates that a shift in sentiment actually exists among the employees and is caused by other factors than the employer's refusal to bargain collectively. The burden of coming forward with proof of majority status is upon the union asserting it and the TMPCWA has not disproved the allegation of substantial change nor has it shown proof that it still enjoys majority representative status; and (3) there are four bars to a petition for certification election:

negotiation bar; contract bar; one-year certification bar; and deadlock bar. There is no presence in this case of a negotiation bar or a contract bar. The one-year certification bar lapsed long before the petition for certification. Deadlock bar is not present either as the Supreme Court has ruled that there must be proof that the union has taken action to legally coerce the employer to comply with its statutory duty to bargain collectively either by: (a) filing an unfair labour practice (ULP) case, or (b) staging a legitimate strike in protest against the employer's refusal to bargain collectively in order to compel it to do so. The records clearly show that the filing of the ULP case and notice of strike was resorted to by the TMPCWA only after the TMPCLC files the petition for certification election. This belated action deterred the Government from effectively intervening to compel the parties to negotiate.

- 149.** The Government adds that the ULP case filed by the TMPCWA on the sole ground of company domination has been dismissed by the National Labor Relations Commission in a decision dated 9 August 2005. The conciliation-mediation efforts to bring TMPCWA and the management to the bargaining table have been unproductive with both parties adopting non-conciliatory positions. The concern that the ordered certification election will be influenced by the TMPC is unwarranted since there are built-in mechanisms in the conduct of certification elections to ensure the free and honest expression of the will of the members of the bargaining unit. As the TMPCWA is also included as a choice in the certification election, the election could actually affirm the majority status of the TMPCWA.
- 150.** As regards the 277 dismissed members and officers of the TMPCWA, 42 per cent (105) have already availed themselves of the compensation package. With regard to the criminal charges of grave coercion, the Government asserts that these are beyond the realm of the employer-employee relationship and outside the ambit of the right to strike, the complainants therein being private individuals. Without desistance from the private complainants, the Government cannot withdraw or dismiss the case.
- 151.** As regards section 263(g) of the Labor Code, the Government states that the Secretary of Labor and Employment made specific instruction to review and revise the entire Labor Code even before the Toyota dispute. The Government refers in particular to House Bill No. 1505 which proposes to amend this section by limiting the assumption power of the Secretary of Labor and Employment to enterprises engaged in providing essential services such as, hospital, electrical services, water supply and communication and transportation. Senate Bill No. 1027 which proposes to amend this section is still pending in the Committee on Labor. Finally, the Government states that sanctions for participation in illegal strikes have also been taken up in these deliberations so as to ensure that participants in strikes that are eventually declared illegal are imposed with penalties commensurate to their participation and involvement.
- 152.** In a communication dated 27 March 2006, the complainant organization alleges that the Government has not implemented the Committee's recommendations and instead has conspired with the TMPC to continue the new certification election on 16 February 2006. Having fearlessly joined the election, the TMPCWA managed to fail the recognition of the company-sponsored union, the TMPCLC. According to the complainant, while the Department of Labor has not yet issued any resolution about the results of the election, it is favouring the TMPCLC by granting its motion to open the challenged votes' envelopes and ordering the parties to submit position papers for the opening of segregated ballots. The TMPCWA is taking legal action to prevent the opening of the challenged votes. The complainant requests the Committee to strongly urge the company and the Government to settle the long and worsening labour dispute in the country.

153. *The Committee takes due note of the detailed information provided by the Government in this case, including its earlier communication of May 2005, the open and constructive dialogue it has maintained as well as the various efforts it has made to resolve this dispute, and the limitations it asserts is placed upon it in this regard due to the lack of timely action by the complainant under national law. The Committee must note with regret, however, that no new information has been provided in respect of the appeal made by the Toyota Motor Philippines Corporation (TMPC) regarding its insistence that the certification election of 2000 should have been opened to the members of the rank-and-file bargaining unit, particularly given that this appears to be the substantive reason behind the non-recognition of the Toyota Motor Philippines Corporation Workers' Association (TMPCWA). Indeed, it would appear from the latest allegations made by the TMPCWA that this same question is at issue in respect of the latest certification election, which took place on 16 February 2006. The Committee firmly expects that the Court of Appeal will be in a position to render its decision in this matter without delay so that conditions for the certification elections at TMPC can be firmly and clearly established. The Committee requests the Government to keep it informed in this regard and to transmit a copy of the Court of Appeal's judgement as soon as it is rendered.*
154. *As regards the allegation that a new union was created at the TMPC under the dominance of the corporation, the Committee takes due note of the Government's indication that the unfair labour practice case filed by the TMPCWA with the National Labor Relations Commission in respect of this matter was dismissed in a decision dated 9 August 2005 and requests the Government to transmit this decision. The Committee further requests the Government to transmit its observations in respect of the latest allegations of the complainant concerning the new certification election of February 2006, as well as any decisions rendered in respect of the legal action taken by the complainant.*
155. *The Committee notes with interest the Congressional discussions relating to the amendment of article 263(g) of the Labor Code, as well as those relating to the proportionality of sanctions for illegal strike action. The Committee would recall in respect of the specific proposed House Bill No. 1505 that transport generally does not constitute an essential service in the strict sense of the term [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 545]. Given the long-standing issues in this case in respect of union certification for collective bargaining purposes, the Committee strongly suggests once again to the Government to consider measures to allow a fair, independent and speedy certification process providing adequate protection against acts of employer interference and draws the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*
156. *As regards the 227 union officers and members dismissed from the TMPC, the Committee notes the Government's reply that 42 per cent of these workers have accepted the compensation package. The Committee regrets, however, that, given the long period that has elapsed since these dismissals, it has no information in respect of the 122 other workers and requests the Government to provide information on the measures taken to initiate discussions to consider their reinstatement, or if not possible, the payment to them of adequate compensation.*
157. *As regards the criminal charges laid against 18 trade union members and officers, the Committee takes due note of the Government's indication that the complainants in this case are private individuals and the charges are outside of the realm of the employer-employee relationship. In these circumstances, the Government indicates that it has no authority to withdraw or dismiss the case. Given the length of time since this criminal action was first instituted against the 18 trade unionists, the Committee firmly expects that these cases will be decided in the very near future so as to avoid the damage*

*that can result from long unresolved cases against union leaders. The Committee requests the Government to transmit a copy of the relevant court judgements as soon as they are rendered. The Committee further observes that no information has been provided in respect of the allegations of harassment by the police in respect of these 18 unionists. It, therefore, requests the Government to institute an independent inquiry into these allegations and to keep the Committee informed of the outcome.*

### **Case No. 2148 (Togo)**

- 158.** The Committee last examined this case at its March 2005 sitting [see 336th Report, paras. 113 to 115]. On that occasion, the Committee noted that the events which gave rise to this complaint dated from June 1999 and that the Government had still not acted on the Committee's recommendation, reiterated since March 2002, to rescind the decrees declaring certain teachers absent without leave. The Committee again urged the Government to rescind the decrees and to keep it informed of developments in that regard.
- 159.** In a communication of 5 January 2006, the Government referred to the statement made in its communication of 6 January 2005 that, in view of the difficulties arising from the case, it had been agreed with the union concerned – the National Union of Independent Trade Unions of Togo (UNSI) – that this matter would be dealt with at the social dialogue meetings due to be held during the first quarter of 2005. Due to the events that arose in Togo in 2005, the process only resumed in July 2005; it ended on 12 September with the signing of an agreement on the terms of reference for social dialogue, featuring Case No. 2148 among the priority points for discussion. Work was due to restart in January 2006.
- 160.** *The Committee takes note of this information. Recalling once again that the events which gave rise to this complaint date from June 1999, in the context of a legal strike calling for the payment of arrears and outstanding wages, the Committee again urges the Government to rescind the decrees in question and to communicate swiftly the results of the social dialogue due to be held in January 2006, as well as the decisions taken as a result regarding the teachers who are still affected by the application of the decrees.*

### **Case No. 2192 (Togo)**

- 161.** The Committee last examined this case at its meeting in March 2005 [see 336th Report, paras. 116-120]. On that occasion, the Committee noted that the case involved allegations of anti-union discrimination and interference in trade union activities by the company New Seed Processing Industry Oil of Togo (NIOTO). The Committee repeated its previous recommendations regarding the dismissal by the company NIOTO of Mr. Awity Boko, General Secretary of the National Trade Union of Food and Agriculture Industries (SYNIAT). The Committee requested the Government to keep it informed of the outcome of the legal proceedings concerning Mr. Awity's dismissal and, should it emerge that the dismissal was indeed motivated by anti-union discrimination, to take immediate action to ensure that Mr. Awity was reinstated, and to keep it informed of any measures taken.
- 162.** In a communication dated 5 January 2006, the Government reiterated that the case of Mr. Awity Boko was still pending before the courts and that it would keep the Committee informed of developments in that regard, although there had as yet been no developments.
- 163.** *While noting this information, the Committee recalls that, in its previous communication, the Government stated that the hearing, supposed to be held on 3 August 2004, had been postponed to 14 September 2004, and then remanded again to 1 February 2005. Emphasizing that the dismissal in question dates back to 1 November 2001 and recalling*

*that justice delayed is justice denied, the Committee urges the Government to take any measures in its power to ensure that a decision on this case is handed down quickly and to keep it informed of any developments in this regard.*

### **Case No. 2126 (Turkey)**

- 164.** The Committee last examined this case at its June 2004 meeting [see 334th Report, paras. 67-74]. The Committee recalls that the allegations in this case concerned the change of branch activity classification of the Pendik and Alaybey shipyards from “shipbuilding” to “national defence”, which resulted in the loss of representation rights for the Dok Gemi-Is trade union on behalf of workers involved. Allegations of anti-union discrimination were also raised and more specifically: (a) allegations of the impending dismissal of 1,100 workers of the Haliç and Camialti shipyards, virtually all of whom were alleged to be Dok Gemi-Is members; (b) allegations of harassment and intimidation of Dok Gemi-Is members by management of the Pendik and Alaybey shipyards, including the dismissal of the maximum number of workers allowed by law (nine per month), and the dismissal of some 200 workers at the ship-scraping site at Aliaga the day after they had agreed to join the Dok Gemi-Is union. In the course of its last examination, the Committee expressed its concern over the absence of progress made to give effect to its recommendations in this case since its first examination in 2002 and requested the Government in particular to: (a) take the necessary steps to guarantee the right of Dok Gemi-Is to organize and represent its members in the Pendik and Alaybey shipyards and to ensure that any lost membership in this union as a result of the classification of these shipyards as falling within the national defence be immediately restored; (b) to institute independent investigations into all the allegations of anti-union discrimination and to take the necessary remedial steps if these allegations are proven to be true.
- 165.** In its communication of 3 February 2006, the Government once again states that, under section 4 of Act No. 2821 on Trade Unions, the branch of activity covering a workplace is determined by the Ministry of Labour and Social Security and the decision of the Ministry in this respect may be appealed against by the parties concerned. In the present case, the Ministry’s decision to classify the Pendik and Alaybey shipyards as workplaces under the “National Defence” branch of activity was contested twice before the competent courts and the courts of first instance rejected the appeals of the unions concerned. The Supreme Court of Appeal confirmed the verdicts of these courts. The Government further states that the Ministry of Labour and Social Security has initiated work to amend, with consensus of social partners, Act No. 2822 on Collective Agreements, Strikes and Lockouts. The Government points out, however, that there is no intention to abolish or change the branch of activity called “National Defence”.
- 166.** *The Committee notes the Government’s intention to amend Act No. 2822 on Collective Agreements, Strikes and Lockouts as well as its affirmation that it has no intention to abolish or change the branch of activity called “National Defence”. The Committee recalls that in the present case, the sudden change of the branch classification of the Pendik and Alaybey shipyards has, for a significant number of workers, resulted in the immediate loss of their right to be represented by the organization which they had freely chosen. While not calling into question the approach of setting up broad bands of classification relating to branches of activity for the purposes of clarifying the nature and scope of industrial level unions, the Committee considered that the fine distinction made between shipbuilding in the commercial sector and that carried out for naval purposes bordered on the illogical, particularly given the identical nature of the functions carried out by the workers and the fact that there was no distinction between their status as “employee” falling within the scope of the Trade Unions Act. The Committee concluded that the radical impact of the decision to classify the Pendik and Alaybey shipyards as part of the national defence sector with the resulting loss of trade union membership and*

*representation, constituted a violation of both the organizational and the representational rights of the workers affiliated to Dok Gemi-Is, in contravention of Convention No. 87 (ratified by Turkey) [see 327th Report, paras. 843 and 844]. In these circumstances, the Committee can only reiterate its previous recommendations and strongly urge the Government to take the necessary steps to guarantee the right of Dok Gemi-Is to organize and represent its members in the Pendik and Alaybey shipyards. The Committee requests the Government to keep it informed of the measures taken to ensure that the workers at the Pendik and Alaybey shipyards can join the organization of their own choosing, including Dok Gemi-Is. The Committee also urges the Government to institute independent investigations into all the allegations of anti-union discrimination in this case and to take the necessary remedial steps if these allegations are proven to be true. It requests the Government to keep it informed of the outcome of these investigations.*

### **Case No. 2303 (Turkey)**

- 167.** The Committee last examined this case at its November 2005 meeting [see 338th Report, paras. 328-339] and on that occasion it had requested the Government to keep it informed: (1) of the measures taken to ensure that the competent labour authorities conduct an independent investigation promptly into the reasons for which 246 trade union members were dismissed on 27 September 2003 and, if it is found that there has been anti-union discrimination, to take all necessary measures with a view to their reinstatement in their posts without loss of pay or, if the competent court were to decide that reinstatement is not possible, to ensure that the dismissed workers receive full compensation for the prejudice suffered; (2) on the progress of a lawsuit for unjustified dismissal filed by 50 trade union members who were dismissed between 30 September and 10 October 2003 before the 8th Istanbul Industrial Court and to communicate a copy of the final decision once rendered; (3) on the measures taken to amend section 12 of the Collective Agreements, Strike and Lockout Act No. 2822, so as to bring it into line with the principle according to which, if there is no union covering more than 50 per cent of the workers in a unit, collective bargaining rights should nevertheless be granted to the unions in this unit, at least on behalf of their own members, or they should be allowed to jointly negotiate a collective agreement applicable to the enterprise or bargaining unit; and (4) of the steps taken to ensure that section 33 of Act No. 2822 is amended so that the authority to decide whether to suspend a strike rests with an independent body which has the confidence of all parties concerned.
- 168.** In its communication dated 3 February 2006, the Government once again indicates that the labour inspectors carried out two inspections into the allegations of the Kristal-Is Trade Union. The inspection carried out at the workplace in November 2003 revealed that workers filed a lawsuit alleging infringement of sections 2, 5 and 18 to 21 of Labour Act No. 4875. In these circumstances, no administrative action could be taken as long as a complaint was pending before the court. The inspection recommended that a fine be imposed on the employer for violation of section 29 of the Labour Act. A second inspection, carried out in February 2004, also found that a complaint alleging anti-union discrimination was brought to the competent courts by the workers concerned, therefore, no administrative action could be taken.
- 169.** With regard to the amendment of Acts Nos. 2821 and 2822, the Government indicates that a draft bill on trade unions aiming to simplify and replace Act No. 2821 was presented to the social partners for their views and proposals. A meeting on this subject was held in December 2005. The work on the amendment of Act No. 2822 on collective labour agreements, strikes and lockouts was continuing and it was expected that it would be completed within a short period of time and brought to the attention of the social partners. As regards section 33 of the Act more specifically, the Government referred to the information it provided in Case No. 2329: it is thought to amend section 33 so as to

provide that, when taking a decision to suspend a strike, the Council of Ministers shall first seek the opinion of the High Board of Arbitration, rather than of the Council of State.

**170.** By its communication of 22 March 2006, the Government transmits decisions taken by the first and the second Labour Tribunal of Kartal with regard to the three workers – members of the Kristal-Is Trade Union dismissed from the Pasabahce Glassware Factory in Eskisehir, as well as the judgements of the 9th Department of the Court of Appeal.

**171.** *The Committee notes the information provided by the Government. The Committee recalls that, in its previous examinations of this case, it had already noted that the employer had been fined. The Committee recalls that the allegations in this case concerned dismissals of trade unionists and their replacement with other workers aimed at preventing the union from reaching the 51 per cent representativeness requirement. The Committee notes the Government indication that the dismissed workers lodged lawsuits before the competent courts. The Committee further notes the court decisions transmitted by the Government in respect of three dismissed workers. The Committee notes that the courts concluded that these workers lost their employment on account of their trade union membership. The courts requested the enterprise in question to reinstate the dismissed workers or, if that was not possible, to pay compensation equivalent to one-year salary, as prescribed by the Law on Trade Unions. The Committee notes that in one of these decisions, the court considered that “the contract of employment of the defender, as well as of about 300 other workers, was terminated due to these workers’ trade union membership”. The Committee expects that the above decisions have now been implemented by the Pasabahce Glassware Factory and request the Government to specify whether these workers have been reinstated or compensated. The Committee further requests the Government to continue keeping it informed on the status of the remaining 293 dismissed workers.*

**172.** *With regard to the amendments to the Trade Unions Act No. 2821 and the Collective Agreements, Strikes and Lockouts Act No. 2822, the Committee recalls that previously, the Government had stated that the work on the amendments should be completed by September 2005. Noting the Government’s indication that the bill amending Act No. 2821 was presented to the social partners and that the Government expected to complete its work on the amendment of Act No. 2822 in the very near future, the Committee trusts that the final version of the amended Acts will take into account its previous recommendations and, more specifically, that section 12 of Act No. 2822 will be amended so as to bring it into line with the principle according to which, if there is no union covering more than 50 per cent of the workers in a unit, collective bargaining rights should nevertheless be granted to the unions in this unit, at least on behalf of their own members. With regard to its request to amend section 33 of the same Act so that the authority to decide whether to suspend a strike rests with an independent body which has the confidence of all parties concerned, the Committee notes the Government response and refers the Government to its recommendations in this respect in Case No. 2329. It requests the Government to transmit all information regarding the proposed legislative amendments to the Committee of Experts on the Application of Conventions and Recommendations to which it refers the legislative aspects of this case.*

### **Case No. 2329 (Turkey)**

**173.** The Committee examined this case at its November 2005 meeting [see 338th Report, paras. 1258-1283] and on that occasion it formulated the following recommendations:

- (a) Noting that a collective agreement has already been concluded for the period 2004-05 in the tyre industry as a result of the Official Mediator’s intervention, the Committee expresses regret at the Government’s systematic practice of ending collective disputes and precluding strikes on grounds of national security in sectors such as the tyre

industry, which has no apparent link to national security and does not constitute an essential service in the strict sense of the term. The Committee requests the Government to refrain from this practice in the future and to ensure that strikes are not precluded in this manner, with the possible exception of essential services in the strict sense of the term, disputes in the public service involving public servants exercising authority in the name of the State or in an acute national crisis.

- (b) The Committee once again requests the Government to take all necessary measures with a view to modifying section 33 of Act No. 2822 so that responsibility for suspending a strike on the grounds of national security does not lie with the Government, but with an independent body which has the confidence of all parties concerned. The Committee requests the Government to keep it informed of developments in this respect.

**174.** In its communication dated 3 February 2006, the Government indicates that within the context of the ongoing work to amend Act No. 2822 on Collective Agreements, Strikes and Lockouts, the Ministry of Labour and Social Security has adopted the following position: when taking a decision to suspend a strike under section 33 of the Act, the Council of Ministers should first seek the opinion of the High Board of Arbitration, rather than of the Council of State, as was considered appropriate previously.

**175.** *The Committee recalls that this case concerns the recurrent suspension of strikes in the tyre industry on the grounds that the strike would be a threat to national security and requests the Government to provide information in this regard. The Committee notes from the Government's statement that the proposed amendment to section 33 of Act No. 2822 on Collective Agreements, Strikes and Lockouts, which grants the power to suspend a strike on the grounds that the strike would be a threat to national security, would envisage a consultative role of the High Board of Arbitration, rather than the Council of State, but that the final decision would still be made by the Council of Ministers. In these circumstances, it reiterates its previous recommendation and requests the Government to take all necessary measures with a view to modifying section 33 of Act No. 2822 so that the final responsibility for determining whether a strike should be suspended on the grounds of national security does not lie with the Government, but with an independent body which has the confidence of all parties concerned. In this respect, the High Board of Arbitration could potentially be considered to constitute such an independent body provided that it has more than a consultative role and that its decision could be appealable only before the courts. The Committee requests the Government to keep it informed of developments in this respect.*

### **Case No. 2160 (Bolivarian Republic of Venezuela)**

**176.** At its meeting in March 2005, the Committee requested the Government to communicate the details of the rulings handed down with respect to the dismissal of trade unionists Siviria and Acuña, and to indicate whether the trade unionist Montero had initiated legal action in connection with his dismissal (these persons had been dismissed for establishing the Trade Union of Revolutionary Workers of the New Millennium and had been working in the INLACA Corporation) [see 336th Report, para. 137].

**177.** In its communication dated 16 January 2006, the Government merely reiterated its earlier statements.

**178.** *The Committee asks the Government to communicate to it the information and rulings it requested in its previous examination of the case. The Committee recalls that the allegations date back to 2001 and stresses that justice delayed is justice denied [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 56]. The Committee trusts that the judicial authorities will hand down their ruling in the very near future.*



**Case No. 2249 (Bolivarian Republic of Venezuela)**

179. At its meeting in June 2005, the Committee made the following recommendations on the matters that were still pending [see 337th Report, para. 1499]:

- In general terms, the Committee notes with grave concern that the Government has not implemented its recommendations concerning a number of important issues that constitute very serious violations of trade union rights.
- The Committee calls on the Government to take steps to have Carlos Ortega, president of the CTV, released from detention and to vacate the detention orders against the officials and members of UNAPETROL, Horacio Medina, Edgar Quijano, Iván Fernández, Mireya Repanti, Gonzalo Feijoo, Juan Luís Santana and Lino Castillo, and to keep it informed of developments in this respect.
- The Committee deplores the mass anti-union dismissals that occurred at the PDVSA state enterprise and its subsidiaries and notes that only some 25 per cent of the cases of dismissal have been resolved and that, of those, 6,048 were resolved by the workers withdrawing their application and 147 were declared irreceivable or settled in favour of PDVSA, often on the grounds that the deadline had expired. The Committee considers that the delay of the courts in resolving the immense majority of the 23,000 dismissals (according to UNAPETROL) is tantamount to a denial of justice and does not in any way exclude the possibility that the cases were dropped precisely because of the excessive delay. The Committee once again urges the Government in the strongest of terms to enter into negotiations with the most representative trade union confederations in order to find a solution to the remaining instances of dismissal at PDVSA and its subsidiaries on account of the organization of or participation in a strike during the national civic work stoppage. The Committee considers that the founders and members of UNAPETROL should in any case be reinstated in their jobs, since in addition to participating in a civic work stoppage they were dismissed while they were undergoing training.
- The Committee takes note of the Government's statement that the appeal against the decision of the Minister of Labour denying UNAPETROL registration is currently before the Administrative Policy Chamber of the Supreme Court of Justice and requests the Government to send it the text of the ruling handed down. In the meantime, and in order to avoid the issue of the registration of UNAPETROL being held up still further by possible appeals or judicial delay, the Committee once again calls on the Government to initiate direct contacts with the members of UNAPETROL, so as to find a solution to the matter of its registration and determine how the legal shortcomings referred to by the Government can be corrected.
- With regard to the alleged acts of violence, arrests and torture by the military on 17 January 2003 against a group of workers from the Panamco de Venezuela S.A. enterprise, leaders of the Beverage Industry Union of the state of Carabobo, who were protesting against the raiding of the enterprise and the confiscation of its assets, which was a threat to their source of work, the Committee notes that the complaints submitted by José Gallardo, Jhonathan Rivas, Juan Carlos Zavala and Ramón Díaz are currently under investigation and stresses that the allegations concern the detention and torture of these workers and of Faustino Villamediana. While regretting that the proceedings currently pending at the Office of the Attorney General with respect to four workers have not yet been concluded despite the fact that the events go back to December 2002 or January 2003, the Committee firmly hopes that the authorities will rapidly conclude the investigations and requests the Government to keep it informed of any decision that is taken.
- The Committee requests the Government to send it the decision adopted by the labour inspectorate regarding the reassessment of the dismissal of trade unionist Gustavo Silva.
- With regard to the dismissal of FEDEUNEP official Cecilia Palma, the Committee requests the Government to inform it whether this trade unionist has appealed against the ruling of 1 September 2003 and, if so, to keep it informed of the outcome of her appeal.

- In general terms, the Committee regrets the excessive delay in the administration of justice demonstrated by several aspects of this case and stresses that justice delayed is justice denied, and that this situation impedes the effective exercise of the rights of trade union organizations and their members.

**180.** In its communication dated 27 July 2005, the National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL) attaches (1) a letter to the Ministry of Labour dated 25 July 2005 reiterating its requests for a meeting between representatives of the Ministry and of UNAPETROL, and (2) a letter to the Ministry of Energy and Petroleum dated 25 July 2005 requesting further talks. The purpose of both requests was to comply fully with the recommendations of the Committee on Freedom of Association.

**181.** In its communication dated 13 January 2006, the Workers' Confederation of Venezuela (CTV) alleges that on 13 December 2005, the criminal court of first penal instance handed down a ruling condemning the president of CTV, Carlos Ortega, to 15 years, 11 months, five days and 20 hours of imprisonment for the alleged crime of civil rebellion. Carlos Ortega had been charged with participating, as president of the CTV, in the protest movement known as the national civic work stoppage that took place in December 2002 and January 2003.

**182.** The CTV states that the Committee on Freedom of Association had observed that, given the extent of the movement (participation of hundreds of thousands of people) and the substance of the demands formulated by the Confederation and its member organizations (violation of freedom of association, dismissal of trade unionists, non-recognition of the executive committee of the CTV) the protest movement could be likened to a general strike.

**183.** In its 334th Report, paragraph 866, the Committee observed that:

... "the national civic work stoppage convened by the CTV, inter alia, and comprising a set of labour claims, can be likened to a general strike, and therefore to a trade union activity and that the detention of leaders of workers' and employers' organizations for activities connected with the exercise of their right to organize is contrary to the principles of freedom of association" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 69]. The Committee recalls that hundreds of thousands of persons participated in the civic work stoppages, and that although the principal objective of the stoppages was to secure the departure from office of the President of the Republic or the holding of a recall referendum, they did not result in any coup d'état, what lay behind the demands having more to do with a clear protest against the Government's economic and social policy and its consequences, and against the failure to recognize the executive board of the CTV.

The same text [para. 869] calls upon the national Government to cease its harassment of the president of the CTV:

[...] the Committee considers that the purpose of the detention order against Mr. Ortega was to neutralize or take reprisals against this union leader for his activities in defence of workers' interests, and it therefore strongly urges the Government to take steps to vacate the detention order against Mr. Ortega and guarantee that he may return to the country so as to be able to perform the trade union functions corresponding to his post of president, without being subject to reprisals..

**184.** In fact, however, as further evidence of the way the Government disregards its international undertakings, the reprisals against Carlos Ortega have reached the point of the judicial authority handing down the sentence mentioned above. Mr. Ortega's right to defence has been violated as has his right to be tried by independent judges (*jueces naturales*), since the trial should have been before special jurors (*escabinos*) and not – as

was the case, with a single, non-impartial judge. The sentence is full of general comments and does not specify the crimes that Carlos Ortega is supposed to have committed. Finally, the court proceedings show that the prosecutor's charges are nothing but a repetition of the arguments that the Government has served up to the Committee on Freedom of Association, on the basis of which a judge lacking the most elementary sense of impartiality described as civil rebellion the national civic work stoppage that the Committee's Report assimilates to a general strike.

- 185.** The CTV claims that the sentence referred to in its latest allegation is one more step in the Government's efforts to do away with free trade union organizations. It is trying to frighten trade union officials and workers into giving up their legitimate rights. The sentence imposed on Carlos Ortega means that he will have to spend almost 16 years in prison without being able to carry out his functions as union leader. The CTV attaches a copy of the proceedings of the public hearing at which the sentence was pronounced.
- 186.** In its communication dated 27 January 2006, the National Single Federation of Public Employees (FEDEUNEP) states that its earlier complaint in the present case did not refer exclusively to the collective contract entered into by the public authorities and another organization but also to the fact that the employer refuses in practice to fulfil its obligation to recognize and discuss collective problems with FEDEUNEP, as was apparent during the negotiation of the 2003 collective agreement when FEDEUNEP was denied the right to take part in the discussions. What happened was that, instead of organizing a trade union referendum as required by law, the labour authority listed FEDEUNEP as a minority federation and arranged a round table to discuss the draft collective agreement from which FEDEUNEP was excluded. This is an anti-union practice. FEDEUNEP requests that it be recognized and allowed in future to negotiate the framework collective agreement for 2006 with the pro-government federation, as well as to take part in the discussions with the Office of the Vice-President of the Republic and the Ministry of Labour. FEDEUNEP encloses copies of a number of letters to the authorities requesting its inclusion in various social dialogue activities.
- 187.** In its communication dated 26 October 2005, the Government states that, in their various communications containing additional information, the complainants claim that the Ministry of Labour taken no action whatsoever to have the persons who worked for state petroleum enterprises reinstated and paid the wages due to them; the fact of the matter is that they were quite rightly dismissed for abandoning their posts without justification and for taking an active part in the work stoppage called by the employers in December 2002 in order to depose, by means of an unconstitutional and illegal *fait accompli*, a President of the Republic who had been democratically elected by the majority of Venezuelan citizens in free and transparent elections.
- 188.** The Government states that, so far, the labour inspectorate has in fact ruled on 6,122 requests for reinstatement and payment of wages due. These rulings were published on the Ministry of Labour's web site, where of the Committee on Freedom of Association and any other interested party can consult them. The handling of the proceedings by the complainants was in most cases thoroughly careless and incomplete. It is obvious from the records that neither the complainants nor their representatives took the necessary steps to substantiate their claims before the labour inspectorate; this is clear from the fact that for long periods the case was in fact at a standstill. In spite of this, and instead of drawing the obvious legal conclusions from the procedural inactivity and simply closing the case, the Ministry of Labour chose to go ahead with the proceedings anyway. This, however, did not change the attitude of many of the complainants, who went so far as to ignore some of the most important stages in the proceedings and in any case provided no evidence on which to base their allegations and arguments. Those were the circumstances in which the labour inspectorate was obliged to make its rulings.

- 189.** The Government adds that, in any case, 4,653 cases brought before the labour inspectorate were dropped by the complainants, as was duly recorded by the authorities, and as the Committee on Freedom of Association has already been informed. Added to the rulings already handed down, this means that less than 10 per cent of the complaints lodged are still awaiting a ruling.
- 190.** The Government goes on to state that, so far, rulings have been handed down on 10,164 of the appeals lodged by persons who were quite rightly dismissed for abandoning their posts without justification in order to take an active part in the employers' work stoppage in December 2002, whose objective was to depose the President of the Republic. In all these cases, the complaints demonstrated negligence, carelessness and incompetence as can be seen from the record. Some 20 per cent of the cases were closed because there were no new developments, in accordance with the laws and regulations in force, owing to the utter carelessness of the complainants and their representatives in failing to take any kind of action.
- 191.** Meanwhile, labour relations in the national petroleum industry continue to function quite normally in the spirit of cooperation and social dialogue with trade union organizations that is typical of the Government of the Bolivarian Republic of Venezuela, which recognizes labour rights that in the past had always been violated by the anti-governmental technocratic clique in the petroleum industry and which has significantly increased workers' contractual rights. Recently, for example, over 2,000 people who for years had been working for state petroleum companies on fixed-term contracts were given permanent status and contracts of indeterminate duration. A ninth collective petroleum agreement was also concluded that it introduces new rights, increases the number of people covered and provides for substantial wage increments; the agreement is available for consultation on the web site of the Ministry of Labour.
- 192.** Finally, the fact that the complainants have never informed the Committee on Freedom of Association of the real situation regarding either the complaints that were dropped or the decisions that were handed down by the labour inspectorate shows just how serious and reliable the information they send really is. The fact that they conceal facts that are essential to a proper understanding and treatment of their complaint is, at best, a violation of the obligation on both parties to act in good faith.
- 193.** In its communication dated 6 March 2006, the Government states that the information regarding FEDEUNEP does not warrant any observation or reply from the Venezuelan Government, since the Committee on Freedom of Association has already received all the information it requested. The case has been examined by the Committee on Freedom of Association in the light of the claims of both parties, and especially the information sent by the complainants, and the Committee has expressed its opinion on the matter and published it in the relevant reports. The Government is struck by the way the complainants are trying to keep the case open without providing any evidence or grounds that the Committee on Freedom of Association has not already analysed and commented on.
- 194.** The Government states further that the criminal proceedings in which Carlos Alfonso Ortega Carvajal was sentenced by the court of first instance respected all the principles, guarantees and rights of the inhabitants of Venezuela that are clearly laid down in the laws and regulations of the Bolivarian Republic of Venezuela, including the international rights and guarantees ratified by the Republic with respect to human rights. The Government adds that it is important to bear in mind that the parties may lodge an appeal, since Mr. Ortega was sentenced by a court of first instance. Moreover, the case against Mr. Ortega could in no way be dismissed on the grounds that he was exercising trade union functions in the CTV, since all the charges brought against him by the Office of the Attorney-General, supported in court by evidence and witnesses, had to do with crimes

committed and encouraged by Mr. Ortega against the Venezuelan people, thereby placing him outside the law (see Article 8 of Convention No. 87); in no way did the sentence imposed by the court refer to Mr. Ortega's alleged trade union activities, as the Committee on Freedom of Association has been told on countless occasions by the complainants in their efforts to link the crimes to freedom of association.

195. *With regard to the allegations concerning the president of CTV, Carlos Ortega, whom the Committee had called on the Government to have released from detention, the Committee notes the CTV's statement that (1) in the sentence it handed down on 13 December 2005, the judicial authority condemned Mr. Ortega to 15 years, 11 months, five days and 20 hours of imprisonment for the alleged crime of civil rebellion; (2) Carlos Ortega had been charged with participating, as president of the CTV, in the demonstrations that took place during the national civic work stoppage (end of 2002 and beginning of 2003), which the Committee on Freedom of Association had stated could be likened to a general strike; (3) Carlos Ortega's right to defence has been violated: the sentence handed down (or rather the record of the public hearing at which the decision was announced) does not specify the alleged criminal acts and the judge showed not even the most elementary sense of impartiality.*
196. *The Committee notes that, on the other hand, the Government asserts that (1) the procedural rights and guarantees provided for in Venezuela's legal system and in international agreements on human rights were respected; (2) the case was not dismissed on the grounds of Carlos Ortega's status as a trade union official because all the charges brought against him by the Attorney-General and backed up in court with evidence and witnesses had to do with crimes committed and encouraged by Mr. Ortega against the Venezuelan people, thereby placing him outside the law of the land (see Article 8 of Convention No. 87); (3) the sentence imposed makes no reference to Mr. Ortega's alleged trade union activities.*
197. *With regard to procedural guarantees, the Committee observes that, in countering the claim by Carlos Ortega's defence that the judge was not competent to examine the case because the court had been set up with a single judge only, the Office of the Attorney-General maintained that the jurisprudence provided for the possibility of a court being set up with a single judge when the defendants attend only after being sent a second summons, though in fact, in order to ensure that the law was complied with, they were sent not two but four summonses; two of the defendants were thus notified, one of whom declined to attend while the other simply did not appear.*
198. *The Committee expresses its profound concern at the arguments put forward by the authorities, which they claim to be based on jurisprudence, especially as the charges dealt with here included civil rebellion, instigation to disobey the law, and use of false public documents (which were the charges eventually retained in the judgement that was handed down). Moreover, the defence states that it had lodged an appeal for Carlos Ortega to be judged by a jury in accordance with the law. The defence also argues that Carlos Ortega cannot be judged for events that took place in 2003 and that were not mentioned in the original charges against him, but only for the events of 2005. It draws attention to the fact that, according to the law, the initial charge sheet must contain the identity of the persons charged, a clear and substantiated account of events, the relevant provision of the law and the grounds for the charges. The Committee recalls that the absence of guarantees of due process of law may lead to abuses and result in trade union officials being penalized by decisions that are groundless, and that it may also create a climate of insecurity and fear which may affect the exercise of trade union rights [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 106].*

199. *The Committee observes further that Mr. Ortega was sentenced for the offences indicated in the previous paragraph to nearly 16 years of imprisonment and that the record of the hearing is basically a summary of the arguments put forward by the Government previously, which the Committee had rejected on the grounds that the national civic work stoppage – which included a general strike and mass demonstrations – was a trade union activity engaged in by hundreds of thousands of workers. Moreover, as it has already pointed out, the Committee considers that the trial did not respect the rules of due process in that the court consisted of a single judge.*
200. *This being so, and bearing in mind the importance of due process of law being respected, the Committee trusts that the trade union leader, Carlos Ortega, will be released without delay and requests the Government to send it the decision handed down by the authority hearing the appeal. The Committee also requests the Government to send it a copy of the sentence handed down by the court of first instance (with all the reasons and conclusions therefor) in respect of the trade union leader Carlos Ortega (the CTV has sent only a copy of the record of the public hearing at which the decision of the court and the sentence were made public).*
201. *With regard to the latest allegations of FEDEUNEP, the Committee notes that the Government states that they have already been examined by the Committee in the connection with the allegations presented by the complainant and by the Government. The Committee recalls that it had previously examined the allegation that FEDEUNEP had been excluded from the negotiation of the 2003 framework collective agreement and that another organization had illegally taken its place; on that occasion, the Committee had decided, given the little time that remained before the collective agreement expired, not to pursue its examination of the allegations any further. The Committee observes that the latest allegations of FEDEUNEP refer to the discrimination which it says it is still being subjected to by the authorities of the Ministry of Labour, who have excluded it from the social dialogue and from collective bargaining and refuse to recognize it. The Committee requests the Government to recognize FEDEUNEP and to take steps to ensure that it is not the object of discrimination in the social dialogue and in collective bargaining, particularly in the light of the fact that it is affiliated to the Workers' Confederation of Venezuela (CTV) – another organization that has encountered problems of recognition which the Committee has already examined in the context of this case. The Committee requests the Government to keep it informed of any invitation it sends to FEDEUNEP in the context of the social dialogue. The Committee recalls the principle that both the government authorities and the employers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities [see *Digest*, op. cit., para. 307].*
202. *With regard to the dismissal of over 23,000 workers from PDVSA and its subsidiaries in 2003 for having taken part in a strike during the national civic work stoppage, the Committee notes the Government's statements, and specifically that only 10 per cent of the appeals lodged with the labour inspectorate and other judicial authority have not yet been ruled upon. The Committee deeply regrets that the Government has disregarded its recommendation that it enter into negotiations with the most representative workers' federations in order to find a solution to the dismissals at the PDVSA and its subsidiaries as a result of the organization of or participation in a strike during the national civic work stoppage. The Committee reiterates this recommendation.*
203. *Finally, the Committee regrets to observe that, one year after its previous examination of the case, the Government has not sent it any information on most of its earlier recommendations with respect to serious matters, including arrests and torture; it therefore requests it do so without further delay and to comply with those recommendations. The recommendations referred to are as follows:*

- *the Committee calls on the Government to take steps to vacate the detention orders against the officials and members of UNAPETROL, Horacio Medina, Edgar Quijano, Iván Fernández, Mireya Repanti, Gonzalo Feijoo, Juan Luis Santana and Lino Castillo, and to keep it informed in this respect;*
- *the Committee considers that the founders and members of UNAPETROL should be reinstated in their jobs since, in addition to the fact that they were participating in a civic work stoppage, they were dismissed while they were undergoing training;*
- *the Committee takes note of the Government's statement that the appeal against the decision of the Minister of Labour denying UNAPETROL registration is currently before the Administrative Policy Chamber of the Supreme Court of Justice and requests the Government to send it the text of the ruling handed down. In the meantime, and in order to avoid the registration of UNAPETROL being held up still further by possible appeals or judicial delay, the Committee once again calls on the Government to initiate direct contacts with the members of UNAPETROL, so as to find a solution to the matter of its registration and determine how the legal shortcomings referred to by the Government can be corrected;*
- *with regard to the alleged acts of violence by the military on 17 January 2003 against a group of workers from the PDVSA enterprise – leaders of the Beverage Industry Union of the State of Carabobo – who were protesting against the raiding of the enterprise and the confiscation of its assets, which was a threat to their source of work, the Committee notes that the complaints submitted by José Gallardo, Jhonathan Rivas, Juan Carlos Zavala and Ramón Díaz are currently under investigation and stresses that the allegations refer to the detention and torture of these workers as well as of Faustino Villamediana. While regretting that the proceedings currently pending at the Office of the Attorney-General with respect to four workers have not been concluded despite the fact that the events go back to December 2002 or January 2003, the Committee firmly hopes that the authorities will rapidly conclude the investigations and requests the Government to keep it informed of any decision that is taken;*
- *the Committee requests the Government to send it the decision adopted by the labour inspectorate regarding the reassessment of the dismissal of trade unionist Gustavo Silva and draws attention to the delays in the conduct of these proceedings;*
- *with regard to the dismissal of FEDEUNEP trade unionist Cecilia Palma, the Committee requests the Government to inform it whether she has appealed against this ruling of 1 September 2003 and, if so, to keep it informed of the outcome of her appeal; and*
- *in general, the Committee deeply regrets the excessive delay in the administration of justice with regard to several aspects of this case and emphasizes that justice delayed is justice denied and that this situation prevents the trade unions and their members from exercising their rights effectively.*

\* \* \*

## Request for follow-up information

204. Finally, the Committee requests the governments concerned to keep it informed of any developments relating to the following cases.

Case	Last examination on the merits	Last follow-up examination
1890 (India)	June 1997	November 2005
1937 (Zimbabwe)	March 1998	March 2006
1991 (Japan)	November 2000	June 2004
1996 (Uganda)	June 1999	March 2006
2006 (Pakistan)	November 2000	November 2005
2027 (Zimbabwe)	March 2000	March 2006
2048 (Morocco)	November 2000	June 2005
2084 (Costa Rica)	March 2001	March 2006
2086 (Paraguay)	June 2002	March 2006
2096 (Pakistan)	March 2004	November 2005
2104 (Costa Rica)	March 2002	March 2006
2114 (Japan)	June 2002	March 2006
2139 (Japan)	June 2002	November 2005
2153 (Algeria)	March 2005	March 2006
2156 (Brazil)	March 2002	March 2006
2158 (India)	March 2003	November 2005
2164 (Morocco)	March 2004	March 2006
2166 (Canada)	March 2003	March 2006
2171 (Sweden)	March 2003	March 2006
2173 (Canada)	March 2002	March 2006
2180 (Canada)	March 2003	March 2006
2187 (Guyana)	November 2003	November 2005
2188 (Bangladesh)	November 2002	March 2006
2196 (Canada)	March 2003	March 2006
2199 (Russian Federation)	June 2003	March 2006
2208 (El Salvador)	March 2003	March 2006
2211 (Peru)	June 2004	March 2006
2214 (El Salvador)	March 2005	March 2006
2216 (Russian Federation)	November 2003	March 2006
2217 (Chile)	November 2004	March 2006
2227 (United States)	November 2003	March 2006
2228 (India)	November 2004	November 2005
2229 (Pakistan)	March 2003	November 2005
2234 (Mexico)	November 2003	November 2005
2236 (Indonesia)	November 2004	March 2006
2237 (Colombia)	June 2003	March 2006



Case	Last examination on the merits	Last follow-up examination
2242 (Pakistan)	November 2003	November 2005
2244 (Russian Federation)	June 2005	–
2251 (Russian Federation)	March 2004	March 2006
2253 (China/Hong Kong Special Admin. Region)	June 2004	November 2005
2255 (Sri Lanka)	November 2003	March 2006
2256 (Argentina)	June 2004	November 2005
2259 (Guatemala)	March 2006	–
2264 (Nicaragua)	November 2005	–
2270 (Uruguay)	March 2006	–
2273 (Pakistan)	November 2004	November 2005
2274 (Nicaragua)	November 2004	November 2005
2275 (Nicaragua)	November 2005	–
2283 (Argentina)	November 2004	November 2005
2289 (Peru)	November 2004	November 2005
2291 (Poland)	March 2004	March 2006
2297 (Colombia)	June 2004	March 2006
2299 (El Salvador)	June 2004	March 2006
2301 (Malaysia)	June 2004	March 2006
2314 (Canada)	March 2006	–
2328 (Zimbabwe)	March 2005	March 2006
2333 (Canada)	March 2006	–
2336 (Indonesia)	March 2005	March 2006
2338 (Mexico)	March 2005	March 2006
2339 (Guatemala)	March 2006	–
2340 (Nepal)	March 2005	March 2006
2342 (Panama)	November 2005	–
2343 (Canada)	November 2005	–
2350 (Republic of Moldova)	November 2005	–
2351 (Turkey)	March 2006	–
2368 (El Salvador)	March 2006	–
2371 (Bangladesh)	June 2005	March 2006
2378 (Uganda)	November 2005	–
2380 (Sri Lanka)	March 2006	–
2381 (Lithuania)	March 2005	November 2005
2386 (Peru)	November 2005	–
2387 (Georgia)	November 2005	–
2391 (Madagascar)	November 2005	–
2393 (Mexico)	March 2006	–
2395 (Poland)	June 2005	March 2006
2397 (Guatemala)	March 2006	–

Case	Last examination on the merits	Last follow-up examination
2399 (Pakistan)	November 2005	–
2401 (Canada)	November 2005	–
2403 (Canada)	November 2005	–
2411 (Bolivarian Republic of Venezuela)	March 2006	–
2412 (Nepal)	March 2006	–
2414 (Argentina)	March 2006	–
2415 (Serbia and Montenegro)	March 2006	–
2416 (Morocco)	March 2006	–
2417 (Argentina)	March 2006	–
2418 (El Salvador)	March 2006	–
2419 (Sri Lanka)	March 2006	–
2424 (Colombia)	March 2006	–
2428 (Bolivarian Republic of Venezuela)	March 2006	–
2431 (Equatorial Guinea)	March 2006	–

**205.** The Committee hopes that these governments will quickly provide the information requested.

**206.** In addition, the Committee has just received information concerning the follow-up of Cases Nos. 1962 (Colombia), 2017 (Guatemala), 2050 (Guatemala), 2087 (Uruguay), 2088 (Bolivarian Republic of Venezuela), 2200 (Turkey), 2258 (Cuba), 2267 (Nigeria), 2271 (Uruguay), 2377 (Argentina), 2354 (Nicaragua), 2382 (Cameroon), 2383 (United Kingdom), 2402 (Bangladesh), 2429 (Niger), 2433 (Bahrain) and 2439 (Cameroon), which it will examine at its next meeting.

CASE NO. 2420

DEFINITIVE REPORT

### **Complaint against the Government of Argentina presented by**

— **the Congress of Argentinean Workers (CTA) and**  
— **the Association of Teachers of Santa Fe (AMSAFE)**

*Allegations: The complainant organizations object to a resolution issued by the Undersecretary for Labour of the Province of Santa Fe stating that the conflict existing between the Association of Teachers of Santa Fe (AMSAFE) and the Ministry of Education of the province would be submitted to a compulsory conciliation process and ordering the suspension of a strike*

**207.** The complaint appears in a communication of the Congress of Argentinean Workers (CTA) and the Association of Teachers of Santa Fe (AMSAFE) dated 12 April 2005.

- 208.** The Government sent its observations in a communication of 10 May 2006.
- 209.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainants' allegations**

- 210.** In their communication of 12 April 2005, the Congress of Argentinean Workers (CTA) and the Association of Teachers of Santa Fe (AMSAFE) object to Administrative Act No. 33 of 17 March 2005 issued by the Undersecretary for Labour of the Province of Santa Fe which, in the part containing the verdict and sentence, states:

Article 1: Submit the dispute which has arisen between the Association of Teachers of Santa Fe and the Ministry of Education of the province to the compulsory conciliation process established in Article 14 s.s. and c.c. of Provincial Act No. 10.468.

Article 2: Order the parties, as of this notification, to return to the conditions existing prior to the dispute; workers at all levels, represented and/or affiliated to the Association of Teachers of Santa Fe shall return to their posts and shall continue to carry out their normal functions, which they shall not interrupt during the compulsory conciliation process, the employer shall not alter the conditions of the labour relationship with its employees which existed prior to the dispute, in accordance with the provisions of Provincial Act No. 10.468.

Article 3: Convoke the parties to a conciliatory audience on 21 March 2005 at 11:00 a.m., to be held before the Office of the Secretary of State for Labour and Social Security of the province, at Calle Rivadavia 3051 P.A. in this the city of Santa Fe.

- 211.** The complainant organizations state that the dispute in this case arose owing to a wage increase, turned down by the Government of the Province of Santa Fe, covering all education workers employed by the State of the Province of Santa Fe, which under the Constitution must guarantee the provision of education services in its territory. Approximately 30,000 workers are employed in the public education sector throughout the province, 6,000 of whom belong to the Rosario branch of AMSAFE. Faced with the provincial government's policy of unilaterally introducing a single raise for the whole of 2005, stipulated in Decree No. 288/05, and given the non-remunerative nature of the raise and the fact that it may not be used as the basis for the calculation of other additional payments (a mere 100 Argentinean pesos with conditions attached), at a General Governing Assembly meeting held on 24 February 2005, AMSAFE decided, with over 25,000 members voting in favour, to hold a 72-hour strike on 1, 2 and 3 March 2005 and to continue this strike action on 7, 8 and 9 of the same month. Moreover, in the absence of a solution, the strike was to be repeated every week for 72 hours in the same fashion. This made for a total of 11 strike days, as work was also stopped on 15, 16, 17 and 21 and 22 March 2005, the stoppage called for 23 March being suspended as the trade union, while questioning the legitimacy of the act, submitted to the compulsory condition and the lifting of direct action measures.
- 212.** The complainant organizations emphasize that the act in question violates the right to strike, as its aim is to suspend the ongoing strike, rendering it ineffective, in the interests of the employer, the party ordering the lifting of the measure being an integral part of the government employer and not having any degree of operational independence.
- 213.** Finally, the complainant organizations state that on 12 April 2005, the AMSAFE assembly decided to accept the Government's proposal put forward at the coordinating table, suspending the course of industrial action voted on in February, and point out that the issue could still lead to a dispute.

**B. The Government's reply**

- 214.** In its communication of 10 May 2006, the Government indicates that as a result of the initiation of a dispute over wage increases, the confederation of teachers' trade unions decided to stage work stoppages in the beginning of the 2005 academic year with 72-hour strikes on 1-3 and 7-9 March; these continued after a brief interruption of one week, on 15, 16, 17, 20 and 21 March, and then in uninterrupted weekly stoppages of 72 hours until a solution could be found to the wage claims. As a result of this situation, on 17 March, the Undersecretary for Labour of the Province of Santa Fe issued resolution No. 33 introducing obligatory conciliation, calling on the parties to return to the conditions existing prior to the dispute and to workers to return to their posts until the end of conciliation. Due to the ongoing dispute, the provincial administration issued resolution No. 35 extending the period of obligatory conciliation introduced by the previous resolution No. 33/05, so that the parties could go on with their dialogue in the negotiating table and find an agreed solution to the dispute. On 13 April 2005, the Association of Teachers of Santa Fe (AMSAFE) decided to accept the wage proposal made by the representatives of the provincial government, putting an end to the dispute and the obligatory conciliation process. In these circumstances, all the pending proceedings were discontinued.
- 215.** With regard to the allegations against the introduction of obligatory conciliation by the provincial administration, since it is not an independent organ, the Government pointed out that taking into account the final result – agreement between the parties – and the manner in which the negotiations progressed – in a framework of genuine respect and social dialogue – everything indicates that in fact the State's intervention promoted freedom of association and made a balance of interests possible, as provided for in Article 8(2) of Convention No. 87. In fact, the order of the Secretary for Labour did not contravene or apply in a way which violated the guarantees provided for in this international instrument. The administration established a climate of reconciliation between the parties who managed to reach an agreement putting an end to the dispute after mutual concessions.
- 216.** The Government stated that the main reason for imposing conciliation was the need to keep the schools open as canteens functioned in them. Consequently, there was an urgent need to maintain minimum conditions of operation – always with precautions – in light of the ongoing dispute (stoppages took place during the period of the obligatory conciliation). The explanations provided and the facts which gave rise to the proceedings prove that the allegations that the authorities aimed at rendering ineffective the industrial action were false.
- 217.** The Government indicates that in this case one cannot ignore the fact that the dispute took place two years after the worst flooding in the history of Argentina in the last century. In fact, the overflowing of the Río Salado, which took place on 29 March 2003 in the province, led to disastrous consequences for the educational system in various towns of Santa Fe: (a) destroyed or inundated educational establishments; (b) enormous percentage of students and professors incapable of reaching the public educational establishments because they were themselves victims of the disaster; (c) more than 80 per cent of educational establishments in the city of Santa Fe and cities affected by the phenomenon had to become evacuation centres in order to come to the aid of thousands of persons who had lost their furniture and possessions in the inundation. This situation affected the holding of classes for a period of 60 days in 2003. Consequently, this is not only a trade union problem but also a real social conflict, because as a result of the inundations, the children in the most affected zones and the teachers had to participate in the operations against the flooding. The Government finally recalls that this disaster was preceded by the bankruptcy of 2001, the consequences of which are well-known in the international community. For this reason, the absence of classes in that province in

particular had much more serious consequences for the community than in other areas of the country, endangering the life, security and health of the students. To sum up, taking into account the context of complete economic crisis and natural disaster, the intervention of the provincial authority did not constitute in any way an interference in the autonomy and collective independence.

### C. The Committee's conclusions

- 218.** *The Committee notes that in their complaint, the Congress of Argentinean Workers (CTA) and the Association of Teachers of Santa Fe (AMSAFE) object to Administrative Act No. 33, issued by the Undersecretary for Labour of the Province of Santa Fe (included in the annex by the complainants) through which it was decided to “submit the dispute which has arisen between the Association of Teachers of Santa Fe and the Ministry of Education of the province to the compulsory conciliation process established in Article 14 of Provincial Act No. 10.468” and to order the striking workers to return to their posts and to continue to carry out their normal functions, and not to interrupt those functions during the compulsory conciliation process. Moreover, the Committee notes that the complainant organizations also criticize the fact that the Administrative Act in question was issued by the provincial government in its role as the employer and that it is in no way independent.*
- 219.** *The Committee notes that the Government indicates that: (1) taking into account the final outcome (agreement between the parties) and the manner in which the negotiations progressed in a framework of genuine respect and social dialogue, everything indicates that the State's intervention promoted freedom of association and made a balance of interests possible; (2) the order of the Secretary for Labour did not contravene or apply in a way which violated the guarantees provided for in Convention No. 87 and the administration established a climate of reconciliation between the parties who managed to reach an agreement putting an end to the dispute after mutual concessions; (3) the main reason for imposing conciliation was the need to keep the schools open as canteens functioned in them; (4) the conflict took place two years after a flooding in the province of Santa Fe which led to disastrous consequences for the educational system (destroyed or inundated educational establishments, students being incapable to reach the schools, etc.) and was added to the financial crisis of 2001, reason for which the absence of classes in the province would have much more serious consequences for the community than in other areas of the country.*
- 220.** *The Committee also takes due note of the fact that AMSAFE states that it decided to accept the proposal put forward by the Government at the coordinating table and suspended the course of industrial action voted on in February 2005. The Committee concludes that the dispute which gave rise to the present complaint has ended.*
- 221.** *In this regard, the Committee recalls that it has been called on before to examine complaints presented against the Government of Argentina concerning convocation by the authorities to the compulsory conciliation procedure in the public sector and therefore makes reference to appropriately formulated previous conclusions stating that “the Committee emphasizes that it would be desirable to entrust the decision of opening the conciliation procedure to an organ which is independent of the parties to the dispute” [see 336th Report, Case No. 2369, para. 212, and 338th Report, Case No. 2377, para. 403]. In these circumstances, the Committee requests the Government, given the above information, to bring its law and practice into line with Conventions Nos. 87 and 98.*

## The Committee's recommendation

**222.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

*Reiterating that it would be desirable to entrust the decision of opening the conciliation procedure to a body which is independent of the parties to the dispute, the Committee requests the Government to bring its law and practice into line with Conventions Nos. 87 and 98.*

CASE NO. 2262

INTERIM REPORT

### **Complaint against the Government of Cambodia presented by the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**

***Allegations: The complainant organization alleges that some 30 leaders and members of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) have been dismissed because of their role in establishing a trade union in private companies in the garment sector***

**223.** The Committee has already examined the substance of this case on two occasions, most recently at its June 2005 meeting, where it presented an interim report to the Governing Body [see 337th Report, paras. 249-263, approved by the Governing Body at its 293rd Session].

**224.** As a consequence of the lack of a response on the part of the Government, at its March 2006 meeting [see 340th Report, para. 10], the Committee launched an urgent appeal and drew the attention of the Government 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 this case even if the observations or information from the Government have not been received in due time. To date, the Government has not sent its observations.

**225.** Cambodia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

#### **A. Previous examination of the case**

**226.** In its previous examination of the case, the Committee made the following recommendations [see 337th Report, para. 263]:

- (a) The Committee requests the Government to make all efforts to ensure that Ms. Chey Khunthynith is reinstated in her post or in an equivalent position without loss of pay or benefits at the Cung Sing Factory, and that she enjoys full legal protection against acts of anti-union discrimination. If the competent court finds that her reinstatement is not

possible, the Committee requests the Government to ensure that she is paid adequate compensation, so as to constitute sufficiently dissuasive sanctions in respect of such acts of anti-union discrimination. The Committee requests the Government to keep it informed of the decision issued by the competent court in respect of the complaint filed by the Department of Labour Inspection, and to provide it with a copy of said decision as soon as it is handed down.

- (b) The Committee urges once again the Government to provide its observations on its previous recommendations, as follows:
  - (i) the Committee requests the Government, in cooperation with the FTUWKC and the employer, to take appropriate steps to ascertain the identity of the complainant (Secretary-General of the FTUWKC) dismissed at the INSM Garment Factory and, once this is done, to ensure that this person is reinstated, and enjoys full legal protection against acts of anti-union discrimination or, if such reinstatement is not possible, that this person is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles;
  - (ii) the Committee requests the Government to provide its observations regarding the dismissals of the President and 30 other union members of the FTUWKC at the INSM Garment Factory, after having obtained the relevant information from the employer. The Committee urges the Government to ensure, in cooperation with the employer concerned, that the workers concerned are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions in conformity with the principles of freedom of association and collective bargaining;
  - (iii) the Committee requests the Government to provide it with the court decision concerning the dismissal of Ms. Muth Sour at the Top Clothes Garment Factory. If the dismissal resulted from her trade union activities, the Committee requests the Government to ensure that she is reinstated and enjoys full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that she is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles;
  - (iv) the Committee requests the Government to take appropriate measures so that the three union officials of the CCWADU dismissed at the Splendid Chance Garment Factory are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles.
- (c) The Committee reminds the Government that it can avail itself of the technical assistance of the Office in order to assist with the drafting and enforcement of the appropriate legislation.
- (d) The Committee requests the Government to keep it informed of developments on all the points above.

## **B. The Committee's conclusions**

**227.** *The Committee deplores that, despite the time that has elapsed since this case was first examined, the Government has not replied to the Committee's recommendations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee strongly urges the Government to be more cooperative in the future.*

**228.** *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*

229. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*
230. *The Committee recalls that this complaint initially concerned various allegations of anti-union discrimination, harassment and dismissals at three private companies in the garment and textile industry in Cambodia (INSM Garment Factory, Top Clothes Garment Factory and Splendid Chance Garment Factory). A further complaint of a similar nature was filed concerning the dismissal of Ms. Chey Khunthynith, President of the FTUWKC local branch at the Cung Sing Garment Factory in Phnom Penh.*
231. *Concerning the situation of Ms. Chey Khunthynith, the Committee in its previous examination of the case had noted the explanations given by the Government concerning the efforts made by the labour inspectorate to conciliate the case, and the failed attempt to have the management reinstate her. In the absence of further information from the Government, the Committee cannot but recall that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment; and that protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. Such guarantee in the case of trade union officials is also necessary to ensure the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 724]. In addition, the Committee recalls that necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions if they so wish [see **Digest**, op. cit, para. 703]. The Committee therefore firmly urges the Government to make all efforts to ensure that Ms. Khunthynith is reinstated in her post or in a similar position without loss of pay or benefits, and enjoys full legal protection against acts of anti-union discrimination. If the competent court finds that her reinstatement is not possible, the Committee once again requests the Government to ensure that she receives adequate compensation so as to constitute sufficiently dissuasive sanctions in respect of such acts of anti-union discrimination. The Committee requests the Government to keep it informed of the decision issued by the competent court in respect of the complaint filed by the Department of Labour Inspection, and to provide it with a copy of that decision as soon as it is handed down.*
232. *The Committee deplores once again that, despite several reminders, the Government did not provide any reply concerning the other aspects of the case and its previous recommendations. The Committee therefore strongly urges the Government to submit its observations in respect of its recommendations concerning the situation at the following establishments: INSM Garment Factory; Top Clothes Garment Factory; and Splendid Chance Garment Factory.*
233. *In its previous examination of the case, the Committee noted a discernible pattern in all the situations complained of in this case, i.e. repeated acts of anti-union discrimination, often culminating in dismissals, and an apparent lack of effectiveness of the sanctions provided for in the law to remedy such acts of anti-union discrimination. Taking into account the repeated nature of similar complaints in the country, and in view of the total absence of reply from the Government in this respect, the Committee recalls once again*



that protection against anti-union discrimination is insufficient if the legislation is such that employers can, in practice, on condition that they pay the compensation prescribed by law for unjustified dismissal, dismiss any worker, if the true reason is his trade union membership or activities [see *Digest*, op. cit., para. 707]. The Committee firmly urges the Government rapidly to take legislative measures to ensure, through sufficiently dissuasive sanctions, that these principles are embodied in the legislation. The Committee reminds the Government that it can avail itself of the technical assistance of the Office in this regard.

## The Committee's recommendations

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

- (a) The Committee firmly urges the Government to make all efforts to ensure that Ms. Chey Khunthynith is reinstated in her post or in a similar position without loss of pay or benefits, and enjoys full legal protection against acts of anti-union discrimination. If the competent court finds that her reinstatement is not possible, the Committee once again requests the Government to ensure that she receives adequate compensation so as to constitute sufficiently dissuasive sanctions in respect of such acts of anti-union discrimination. The Committee requests the Government to keep it informed of the decision issued by the competent court in respect of the complaint filed by the Department of Labour Inspection, and to provide it with a copy of that decision as soon as it is handed down.*
- (b) The Committee strongly urges the Government to provide its observations on its previous recommendations, as follows:*
  - (i) the Committee requests the Government, in cooperation with the FTUWKC and the employer, to take appropriate steps to ascertain the identity of the complainant (Secretary-General of the FTUWKC) dismissed at the INSM Garment Factory and, once this is done, to ensure that this person is reinstated, and enjoys full legal protection against acts of anti-union discrimination or, if such reinstatement is not possible, that this person is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles;*
  - (ii) the Committee requests the Government to provide its observations regarding the dismissals of the President and 30 other union members of the FTUWKC at the INSM Garment Factory, after having obtained the relevant information from the employer. The Committee urges the Government to ensure, in cooperation with the employer concerned, that these workers are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions in conformity with the principles of freedom of association and collective bargaining;*
  - (iii) the Committee requests the Government to provide it with the court decision concerning the dismissal of Ms. Muth Sour at the Top Clothes*

*Garment Factory. If the dismissal resulted from her trade union activities, the Committee requests the Government to ensure that she is reinstated and enjoys full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that she is paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles;*

*(iv) the Committee requests the Government to take appropriate measures so that the three union officials of the CCWADU dismissed at the Splendid Chance Garment Factory are reinstated and enjoy full legal protection against acts of anti-union discrimination or, if reinstatement is not possible, that they are paid adequate compensation so as to constitute sufficiently dissuasive sanctions, in conformity with the above principles.*

*(c) The Committee reminds the Government that it can avail itself of the technical assistance of the Office in order to assist with the drafting and enforcement of the appropriate legislation.*

CASE NO. 2318

INTERIM REPORT

**Complaint against the Government of Cambodia  
presented by  
the International Confederation of Trade Unions (ICFTU)**

***Allegations: Murder of two trade union  
leaders – continuing repression of  
unionists in Cambodia***

**235.** The Committee examined this case on its merits at its June 2005 session, where it issued an interim report, approved by the Governing Body at its 293rd Session [see 337th Report, paras. 264-342].

**236.** As a consequence of the lack of a response on the part of the Government, at its March 2006 meeting [see 340th Report, para. 10], the Committee launched an urgent appeal and drew the attention of the Government 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 this case even if the observations or information from the Government have not been received in due time. To date, the Government has not sent its observations.

**237.** The complainant submitted new allegations in a communication dated 8 September 2005.

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

## A. Previous examination of the case

**239.** In its previous examination of the case, the Committee made the following recommendations [see 337th Report, para. 342]:

- (a) The Committee emphasizes the seriousness of the allegations pending which refer to the murder of trade union leaders Chea Vichea and Ros Sovannareth. The Committee deeply deplores these events and draws the Government's attention to the fact that such a climate of violence leading to the death of trade union leaders is a serious obstacle to the exercise of trade union rights.
- (b) The Committee urges the Government to institute without delay an independent judicial inquiry into the murders of Chea Vichea and Ros Sovannareth in order to identify not only the perpetrators of these crimes but also the instigators. The Committee asks the Government to keep it informed of the outcome of this inquiry.
- (c) With regard to the reported agreement on no future marches in which Chea Mony and his fellow representative of the FTUWKC were forced to promise to make garment workers stop the strike and refrain from further marches, the Committee expects that the Government will declare this agreement null and void and requests the Government to ensure in the future the right of workers to peaceful demonstration to defend their occupational interests.
- (d) With regard to the physical assaults that particularly concern Lay Sophead and Pul Sopheak, both presidents of unions affiliated to the FTUWKC, the Committee asks the Government to institute independent judicial inquiries into these assaults and to keep it informed of the outcome.
- (e) Lastly, the Committee urges the Government to take measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives.

## B. The complainant's new allegations

**240.** In its communication dated 8 September 2005, the complainant organization indicates that on 3 August 2005 it protested to the Cambodian Government against the 20-year prison sentences that were handed down to Born Samnang and Sok Sam Ouen in the case of the murder of Chea Vichea. The ICFTU points out that the investigation into the murder of Chea Vichea was marked by numerous procedural irregularities concerning the investigation and prosecution. These irregularities included the arrest of the accused without warrant, the dearth of evidence against them, an initial confession of one of the accused allegedly made under duress after he was beaten and given inducements. As stated by the Special Representative of the United Nations Secretary General for Human Rights in Cambodia, there were many indications that the two men had been chosen to take the blame regardless of what the evidence suggested.

**241.** Furthermore, it is reported that the owner of the newspaper stand where Chea Vichea was murdered, who could recognize the real killers, was too afraid to attend the trial; and witnesses whom the police ascertained had seen the murderers and had described them, were not even called for the trial. Chea Vichea's brother Chea Mony, who has taken over the presidency of the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC) after the former was murdered, explained in a statement on 3 August 2005 that the judge had given too much importance to the vague parts of the accusations and had neglected testimonies in favour of the two men.

**242.** In addition to the 20-year prison term, the complainant organization points out that Sok Sam Ouen and Born Samnang have also been ordered to pay US\$5,000 each as

compensation to Chea Vichea's family. Chea Mony stated that he would not accept any money whatsoever from these two innocent men.

- 243.** The complainant organization also indicates that both the FTUWKC as well as the retired former King of Cambodia, Norodom Sihanouk, have made official statements to the effect that Born Samnang and Sok Sam Ouen are not the real murderers and that the Government should release these two innocent men, find the real killers and allow judicial authorities to bring them into justice without interference. According to the complainant organization, retired former King of Cambodia, Norodom Sihanouk considered the trial to be "a shame for the country". He also deplored the measures taken against Hing Thirith, the investigating judge who had initially led the inquiry, and who was transferred to the tribunal of the remote province of Stung Treng, after he had ordered that all charges against the two men be dropped for lack of evidence.
- 244.** The ICFTU further mentions that it shares the family's strong concerns about the safety of the two unjustly convicted men, including fears that they may be ill-treated or poisoned while in detention.

### **C. The Committee's conclusions**

- 245.** *The Committee deplores that, despite the time that has elapsed since this case was first examined, the Government has not replied to the Committee's recommendations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee strongly urges the Government to be more cooperative in the future.*
- 246.** *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*
- 247.** *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*
- 248.** *The Committee once again expresses its deep concern and regret at the seriousness of this case that concerns the assassination of trade union leaders Chea Vichea and Ros Sovannareth, within less than four months interval. The assassination of two trade unionists over such a short period of time gives rise to serious concern for the security of the trade union movement in the country. The Committee deeply deplores these events and once again draws the Government's attention to the fact that such a climate of violence leading to the death of trade union leaders is a serious obstacle to the exercise of trade union rights.*
- 249.** *The Committee notes with deep concern the allegations forwarded by the complainant organization on 8 September 2005, according to which there are many indications, supported by other independent sources such as the Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, that the two men who were sentenced to 20 years' imprisonment, Born Samnang and Sok Sam Ouen, are not the real murderers of trade union leader Chea Vichea, and which clearly call into question the impartiality of the court proceedings in this respect. The Committee notes from the*

*allegations that the investigation into the murder of Chea Vichea was marked by numerous procedural irregularities concerning the investigation and prosecution (arrest of the accused without warrant, dearth of evidence against them, initial confession of one of the accused allegedly made under duress after he was beaten and given inducements, disregard of key testimonies, etc.). The Committee also notes that judge Hing Thirith had been transferred to a remote province after he had ordered that all charges against the two men be dropped for lack of evidence.*

- 250.** *The Committee stresses the importance that should be attached to the right to freedom and security of person and freedom from arbitrary arrest and detention, as well as to the right to a fair trial by an independent and impartial tribunal, in accordance with the provisions of the Universal Declaration of Human Rights.*
- 251.** *Having regard to the particular circumstances of this case and in view of the absence of any new information from the Government, the Committee must express its serious misgivings as to the regularity of the trial concerning Chea Vichea's murder and of the proceedings leading to it. There are no indications, according to the information available to the Committee, that his death has been the subject of thorough, independent and impartial inquiries to establish the facts and to determine the perpetrators of the crime, as well as its instigators.*
- 252.** *Furthermore, the Committee deeply regrets the total absence of any information from the Government as to the institution of an independent judicial inquiry into the murder of trade union leader Ros Sovannareth. The Committee urges the Government to institute such an inquiry immediately and to keep it informed of the outcome.*
- 253.** *According to the elements at its disposal, the Committee is bound once again to draw the Government's attention to the fact that the investigations and proceedings carried out so far have not allowed the identification of those responsible for the assassinations of both trade union leaders and most importantly have not uncovered any information leading to the instigators of these heinous acts. The Committee must emphasize in the strongest terms that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. The absence of judgements against guilty parties creates in practice an atmosphere of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 51 and 55]. In light of these principles, the Committee firmly urges the Government to take measures in order to reopen the investigation into the murder of Chea Vichea and to ensure that no one is deprived of their liberty without the benefit of a normal procedure before an impartial and independent judicial authority.*
- 254.** *The Committee deplors that, despite several reminders, the Government has not provided any reply concerning the other aspects of the case and its previous recommendations, which it reiterates here, concerning the right to strike in the garment industry and reported cases of intimidations, threats and physical assaults against Lay Sophead and Pul Sopheak, both presidents of unions affiliated to the FTUWKC.*
- 255.** *Finally, the Committee expresses its deep concern with the extreme seriousness of the case, and calls the Governing Body's special attention on the situation.*

**The Committee's recommendations**

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

- (a) The Committee deplores the absence of reply from the Government to its previous recommendations and urges it to be more cooperative in the future.*
- (b) The Committee emphasizes once again the seriousness of the allegations pending which refer to the murder of trade union leaders Chea Vichea and Ros Sovannareth. The Committee deeply deplores these events and draws the Government's attention to the fact that such a climate of violence leading to the death of trade union leaders is a serious obstacle to the exercise of trade union rights.*
- (c) The Committee firmly urges the Government to take measures in order to reopen the investigation into the murder of Chea Vichea and to ensure that no one is deprived of their liberty without the benefit of a normal procedure before an impartial and independent judicial authority.*
- (d) The Committee urges the Government to institute immediately an independent judicial inquiry into the murder of Ros Sovannareth and to keep it informed of the outcome.*
- (e) With regard to the reported agreement on no future marches in which Chea Mony and his fellow representative of the FTUWKC were forced to promise to make garment workers stop the strike and refrain from further marches, the Committee expects that the Government will declare this agreement null and void and requests the Government to ensure in the future the right of workers to peaceful demonstration to defend their occupational interests.*
- (f) With regard to the physical assaults that particularly concern Lay Sophead and Pul Sopheak, both presidents of unions affiliated to the FTUWKC, the Committee urges the Government to institute independent judicial inquiries into these assaults and to keep it informed of the outcome.*
- (g) The Committee firmly urges the Government to take measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives.*
- (h) The Committee expresses its deep concern with the extreme seriousness of the case, and calls the Governing Body's special attention on the situation.*

CASE NO. 2408

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Cape Verde  
presented by  
the Cape Verde Confederation of Free Trade Unions (CCSL)**

*Allegations: The Cape Verde Confederation of Free Trade Unions (CCSL) alleges that, in spite of Cape Verde having ratified Convention No. 98 in 1979, there is no regulation of collective bargaining in the country and only one collective agreement has been concluded at national level. Furthermore, the complainant alleges failure to comply with the agreement concluded in the Council for Social Cooperation with regard to calculating supplementary hours and overtime pay*

- 257.** The complaint is contained in a communication from the Cape Verde Confederation of Free Trade Unions (CCSL) dated 16 February 2005. The complainant sent additional information in a communication dated 14 March 2005 and new allegations in a communication dated 26 July 2005.
- 258.** The Government sent its observations in communications dated 27 April 2005 and 31 January 2006.
- 259.** Cape Verde has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 260.** In its communications of 16 February and 14 March 2005, the Cape Verde Confederation of Free Trade Unions (CCSL) alleges that the Government has failed to comply with Article 4 of Convention No. 98. According to the complainant, despite the fact that Cape Verde ratified this Convention in 1979, since then there has been only one instance of collective bargaining, which took place in the safety sector in 1998, covering 573 of the country's 144,310 workers. The complainant states that, although the collective agreement in question is a national one, it is not respected by enterprises.
- 261.** The complainant adds that, although the Government has amended labour legislation on two occasions, collective bargaining has still not been regulated, and this is greatly to the detriment of the workers of Cape Verde, the vast majority of whom are covered by individual contracts of employment. Furthermore, the initial draft of the Labour Code of Cape Verde contains no provisions to facilitate collective bargaining. The complainant organization adds that Cape Verde enterprises now opt unilaterally for services contracts.
- 262.** Lastly, in its communication of 26 July 2005, the complainant states that in December 2003 the Government and nurses' unions signed an agreement containing a

range of previous demands regarding pay increases, supplementary hours, overtime pay and weekly rest, among others. The complainant alleges that on 18 June 2004 the Ministry of Health unilaterally ceased to apply section 18 of the agreement, which covers overtime work. The complainant began proceedings in respect of this action which are still pending. Furthermore, in May 2005, the same ministry changed the way in which supplementary hours are calculated, violating sections 16 and 17 of the agreement.

## **B. The Government's reply**

- 263.** In its communications of 27 April 2005 and 31 January 2006, the Government states that the General Legal Provisions for Labour Relations (RJGRT), approved by Legal Decree No. 62/87 of 30 June, amended by Legal Decree No. 51-A/89 of 26 June and confirmed by resolution No. 32/III/89 of 30 December 1989, and amended through Act No. 101/IV/93 of 31 December, contains a whole section devoted to collective bargaining, and collective agreements in force in the country operate on the basis of these legal provisions.
- 264.** The Government expresses its desire for an increase in collective bargaining, which can be seen through the Government's legislative programme, the Ministry of Labour's plan of activities and the actions of the labour administration services. However, according to the Government, the central role which must be played by unions and employers' representatives in this respect should not be forgotten. The State's role is in fact simply that of a coordinator or motivator, and in this regard it has fulfilled its function.
- 265.** The Government denies that there has only been one instance of collective bargaining in Cape Verde, citing as a new example the bargaining which took place in 2002 between Cape Verde Telecom and unions, as well as bargaining currently under way. The 1998 collective agreement concerning private security services has been reviewed again in 2004.
- 266.** According to the Government, the preponderance of individual labour contracts over collective contracts is not due to a lack of regulation, as the complainant claims, nor is it the sole responsibility of the State, since collective bargaining must be voluntary. So, once the right conditions have been established, as they have been in Cape Verde, it falls to unions and employers to bargain in order to sign collective agreements. The Government adds that in any event, the examples of individual contracts given by the complainant organization date back before the adoption of the legislation mentioned.
- 267.** With regard to the allegations that successive amendments to legislation have not led to regulation of collective bargaining, the Government states that all the legislative processes carried out have involved the social partners in order to reach a consensus, in accordance with the provisions of the Constitution and the spirit of dialogue and social cooperation. In this regard, the new Labour Code of Cape Verde is currently being discussed with the social partners, including the CCSL, and being studied by the Council for Social Cooperation. The Government expresses its surprise, however, that the CCSL has not once mentioned collective bargaining within the Council for Social Cooperation, something which is dealt with in Part I, Section II, Chapter II (sections 87 to 100) of the Labour Code of Cape Verde. The Government thus expresses concern at this complaint, given that the complainant has the opportunity to have its views considered by the Council. As regards the contract for services, the Government states that, although this type of contract is regulated in Cape Verde, it has a different function from the labour contract and that every time there exists a legal subordination relationship, there is a labour contract.



## C. The Committee's conclusions

268. *The Committee observes that this case concerns the Government's failure to promote collective bargaining, in accordance with Article 4 of Convention No. 98, which has been ratified by Cape Verde, and violations of sections 16, 17 and 18 of the agreement concluded between the Government and nurses' unions by the Ministry of Health.*
269. *With regard to the alleged failure on the part of the Government to promote collective bargaining, the Committee notes that, according to the complainant, only one collective agreement has been concluded in Cape Verde, in the health and safety sector, since the ratification of Convention No. 98 in 1979, and that the initial draft of the Labour Code of Cape Verde contains no provisions to facilitate collective bargaining.*
270. *The Committee notes that the Government, for its part, states that an entire chapter of the General Legal Provisions for Labour Relations (RJGRT) in force is devoted to collective bargaining (the Government attaches a copy of the relevant sections of the RJGRT); that the Government promotes collective bargaining through its legislative programme, the Ministry of Labour's plan of activities and the actions of the labour administration services, but that it falls to unions and employers to undertake bargaining. The Government also underlines that there are other collective agreements not mentioned by the complainant, such as that concluded by Cape Verde Telecom, and that the complainant has not mentioned the issue of collective bargaining within the Council for Social Cooperation, of which the CCSL is part and which is at present discussing the new Labour Code of Cape Verde.*
271. *The Committee observes that, although collective bargaining in Cape Verde is regulated by Section II of the RJGRT, very few collective agreements have been concluded since the Convention was ratified, a fact confirmed by the Government, which mentions only the agreements concluded in the health and safety sector and by Telecom and those which are currently under discussion, without giving further details. The Committee therefore observes that, although the Government cites various measures intended to promote collective bargaining, the conclusion of collective agreements has not been sufficiently promoted in the country in accordance with Article 4 of Convention No. 98, which lays down that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements". At the same time, the Committee recalls the principles mentioned in paragraphs 844 and 845 of the **Digest** relative to the voluntary nature of collective bargaining, according to which the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association [**Digest of decisions and principles of the Freedom of Association Committee** 1996, para. 844] and collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining [**Digest**, op. cit., para. 845]. The Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see **Digest**, op. cit., para. 814]. At the same time, the Committee recalls that there is no duty to conclude an agreement.*
272. *Furthermore, the Committee recalls that the Committee of Experts has reiterated on successive occasions the need for the Government to further promote collective bargaining in the country [see Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IA) Convention No. 98, 2005, 2004, 2002, 2001 and 2000]. In these circumstances, the Committee encourages the Government to take*

*increased measures, in consultation with the workers' and employers' organizations concerned, to promote collective bargaining in Cape Verde and to keep it informed of any new collective agreement concluded in either the public or private sectors.*

- 273.** *The Committee further observes that the new draft Labour Code is currently being discussed, and that the initial draft, which contains a chapter on collective bargaining, is being studied by the Council for Social Cooperation with the participation of the social partners. The Committee hopes that the new Labour Code will be discussed and approved in the near future, in consultation with all the social partners, and that it will allow the effective development of the right to bargain collectively. The Committee reminds the Government that it may benefit from the ILO's technical assistance and requests it to keep it informed of developments in this regard.*
- 274.** *As regards the allegations that enterprises prefer to conclude services contracts in order to avoid the application of the Labour Code, the Committee notes that according to the Government, although this type of contract is regulated in Cape Verde, it has a different function from the labour contract and every time there exists a legal subordination relationship, there is a labour contract.*
- 275.** *With regard to the allegations presented on 26 July 2005 concerning violations by the Ministry of Health of sections 16, 17 and 18 (on allowances for work in the periphery and supplementary hours) of the agreement concluded between the Government and nurses' unions, the Committee observes that the Government has not sent its observations in this regard and recalls that agreements should be binding on the parties [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 818]. The Committee requests the Government to carry out an investigation into the matter without delay and to inform it of the results.*

## **The Committee's recommendations**

- 276.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *With regard to the alleged failure to promote collective bargaining, the Committee encourages the Government to take increased measures, in consultation with the most representative workers' and employers' organizations, to promote collective bargaining in Cape Verde and to keep it informed of any new collective agreement concluded in either the public or private sectors.*
- (b) *The Committee hopes that the new Labour Code will be discussed and approved in the near future, in consultation with all the social partners, and that it will allow the effective development of the right to bargain collectively. The Committee reminds the Government that it may benefit from the ILO's technical assistance and requests it to keep it informed of developments in this regard.*
- (c) *With regard to the allegations presented on 26 July 2005 concerning violation by the Ministry of Health of sections 16, 17 and 18 (on allowances for work in the periphery and supplementary hours) of the agreement concluded between the Government and nurses' unions, the Committee observes that the Government has not sent its observations in this regard and recalls that agreements should be binding on the parties, and requests*

*the Government to carry out an investigation into the matter without delay and to inform it of the results.*

CASE NO. 2337

DEFINITIVE REPORT

**Complaint against the Government of Chile  
presented by  
the National Trade Union of ING Seguros de Vida S.A. (SNTISV)  
supported by the Confederation of Banking and Related Trade Unions (CSBA)**

*Allegations: Practices used by the enterprise to obstruct the collective bargaining process; dismissal of delegates and members of the complainant trade union; pressure applied by the enterprise to force members working at two branches to resign from the trade union; non-compliance with collective agreements, in particular, deduction of benefits arising under those agreements; the enterprise's refusal to recognize the affiliation to the ING AFP (Pension Fund Administrator) Santa María S.A. Trade Union of workers whose labour contracts were modified by the enterprise, with the result that this trade union is running short of money and its existence is under threat*

277. The Committee examined this case at its June 2005 meeting [see 337th Report, paras. 425-450] and presented an interim report to the Governing Body. The Government sent its observations in communications dated 4 November 2005 and 15 February 2006.

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

**A. Previous examination of the case**

279. In its May 2005 meeting, the Committee made the following recommendations [see 337th Report, para. 450]:

- (a) The Committee expresses its concern in observing the numerous anti-trade union practices ongoing within the ING Seguros de Vida S.A. and AFP Santa María enterprises, which were verified by the administrative and judicial authorities and requests the Government to take the necessary measures to ensure that Conventions Nos. 87 and 98 are fully respected within the abovementioned enterprises.
- (b) As to the practices allegedly employed by the enterprise to prevent collective bargaining by workers, belonging both to the National Trade Union of Workers of ING Seguros de Vida S.A. (SNTISV) and the Trade Union ING AFP Santa María in 2003, in that the enterprise refused to participate in the collective bargaining process, the Committee highlights the principle that, while the question as to whether or not one party adopts an amenable or uncompromising attitude towards the other party is a matter for negotiation

between the parties, both employers and trade unions should bargain in good faith making every effort to reach an agreement. The Committee requests the Government to take measures to ensure that in the future the ING Seguros de Vida S.A. and AFP Santa María enterprises respect this principle and abstain from employing anti-trade union practices such as those verified by the Labour Inspectorate.

- (c) With regard to the dismissal of delegates and members of the SNTISV subsequent to the 2003 collective bargaining process, the Committee invites the complainant organization to communicate any information regarding the number of individuals dismissed and any facts that may indicate that the dismissals are linked to the exercise of trade union rights.
- (d) As to the alleged pressure for workers to withdraw from the SNTISV, the Committee deplores the pressure of an anti-trade union nature verified by the judicial authority and requests the Government to take the measures necessary to ensure that the enterprise ING Seguros de Vida S.A. abstains from such practices, as well as from offering benefit packages to workers in return for not joining the trade union, as stated by the Government. The Committee also deplores the fact that these practices led to the workers feeling compelled to leave the trade union.
- (e) As to the enterprise's alleged failure to comply with the collective agreements, the Committee requests the Government to take the necessary measures to ensure that the ING Seguros de Vida S.A. respects the legislation and the collective agreement which was extended for 18 months in light of article 369 of the Labour Code.
- (f) As to the enterprise's alleged refusal to recognize as members of the Trade Union ING AFP Santa María those workers whose labour agreements were amended by the enterprise and excluded them from the scope of the collective bargaining process, the Committee notes that these facts were verified by the judicial authority and requests the Government to take the necessary measures to prevent the enterprise from having recourse to anti-trade union practices in the future.
- (g) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprises concerned, on the questions at issue.

## **B. The Government's reply**

**280.** In its communications dated 4 November 2005 and 15 February 2006, the Government sent communications from ING Seguros de Vida S.A. and the National Trade Union of ING Seguros de Vida S.A. (SNTISV).

**281.** ING Seguros de Vida S.A. states that it must be borne in mind that, towards the end of 2001, ING acquired ownership of various companies operating in Chile, including Aetna Seguros de Vida S.A., Aetna Seguros Generales S.A., Cruz Blanca Isapre S.A. and Administradora de Fondos de Pensiones Santa María S.A. Some of these had previously been owned by United States enterprises, others by Chilean concerns. Subsequently, a number of companies merged with existing Chilean ING enterprises – this was the case with ING Seguros de Vida S.A., among others. The companies were all different in terms of management style, technology, human resources policy and salary scale. Consequently, one of the first steps taken was to carry out a survey of the employment situation in each company, so as to examine what organizational system should be introduced in each case and what changes should be made in the staff salary scale.

**282.** All this took place in 2002, and in August 2002 a new, single, salary and benefits scale was proposed and agreed to by all the administrative personnel in the various ING companies; with some minor adjustments, this is the one that is in force today. The scale was agreed to all the more readily because for many of the administrative employees it meant a substantial increase in salary and benefits. The same happened in February 2003, when the sales staff of the various ING companies were offered and agreed to, a similar scale of wages – and especially benefits – that applied to everyone.

- 283.** According to the enterprise, at the time of this report the differences have been resolved, and both the trade union officials and the workers affiliated to the aforementioned unions are governed by the same rules that apply to all ING employees. The court cases have been dropped, the benefits have been incorporated into the individual contracts, and a collective agreement dated 31 March 2005 has been signed with the members of the AFP Santa María S.A. Trade Union, running for a little over two years from 1 March 2005 to 30 June 2007. Currently, there are no grounds for the complaints submitted to the ILO Committee on Freedom of Association, though the Government repeats that ING Seguros de Vida S.A. and AFP Santa María S.A. maintain that there never was any threat to freedom of association.
- 284.** As to the alleged violation of the right to collective bargaining, the enterprise draws attention to the fact that, under Chilean legislation, the right to collective bargaining is written into the Constitution and is regulated by the Labour Code. Both the SNTISV and the AFP Santa María S.A. Trade Union have freely exercised their legal right to bargain collectively. On 26 December 2001 a collective agreement was signed with the workers affiliated to the AFP Santa María S.A. Trade Union, in accordance with the relevant laws and regulations. On 1 June 1999 a collective agreement was signed between Aetna Chile Seguros de Vida S.A. and the workers affiliated to the Aetna Seguros de Vida Trade Union. In other words, the workers have freely exercised their right to collective bargaining in full.
- 285.** The enterprise points out that, notwithstanding the above, circumstances did arise during the last two collective bargaining processes that affected relations between the two parties – though this can in no way be considered as having prevented the workers from bargaining collectively. In negotiations with ING Seguros de Vida S.A. in June 2003, when no agreement was reached, the workers exercised their prerogative under section 369 of the Labour Code to extend the existing collective agreement by 18 months. The right to do this under Chilean legislation applies only to workers who engage in collective bargaining. In no way can this be deemed a refusal to negotiate; on the contrary, it is one way of concluding a collective bargaining process. Furthermore, in the negotiations held with AFP Santa María S.A. in December 2003, the enterprise exercised its right to express legal reservations as to the admissibility of bargaining with a certain group of workers. Both of these situations are entirely governed by the law and the exercise of a legal right cannot be considered a refusal to bargain collectively.
- 286.** The enterprise states that the fact that neither ING Seguros de Vida S.A. nor AFP Santa María S.A. was prepared to negotiate any benefit other than those covered by each employee's contract cannot be interpreted as a refusal to bargain collectively either. On 31 March 2005 the AFP Santa María S.A. Trade Union negotiated a collective agreement with the general management of the company, which is currently in force. In the case of the SNTISV, there is neither a contract nor a collective agreement and workers affiliated to the union therefore have the same rights and benefits as the rest of the company's employees.
- 287.** As to the alleged dismissal of trade union officials, the enterprise states that no union official has been dismissed. Under the country's labour legislation, prior authorization from a competent judge is required before a trade union official can be dismissed. None of the companies of the ING group has initiated legal proceedings to remove the immunity of any of its trade union officials. What did happen is that some union officials, at their request, entered into an agreement to leave the enterprise; this they did of their own free will and in accordance with the laws and regulations in force. The workers fully supported this arrangement, which was actually requested by the union officials and was introduced with the knowledge and authorization of the courts themselves.

- 288.** Regarding the alleged pressure to force workers to resign from the trade union, the enterprise states that it has never exercised any such pressure. Freedom of association is fully respected by the various companies of the ING group, approximately 6 per cent of whose workforce are union members. What workers describe as pressure after the company changed hands is just their way of saying that, when the ING group of companies was reorganized, the sales staff received all the severance pay and compensation to which they were entitled before being laid off. Later, a large number of them were rehired under new terms of remuneration and benefits; one of the legal implications of this is that their union membership was terminated, but they can rejoin whenever they want.
- 289.** As to the alleged non-compliance with collective agreements, the enterprise states that it has not failed to meet any of its commitments under individual contracts or collective agreements. What occurred was a dispute between the AFP Santa María S.A. Trade Union and the enterprise over the interpretation of the collective agreement of 26 December 2001 as it related to the source of certain payments. This led to two court cases (Nos. 4520-2003 and 2667-2004) being brought before the Ninth Labour Court of Santiago. These have now been settled once and for all, with the agreement of both parties, under a deal approved by the competent court. The ING stresses that it does respect, and always has respected, the laws and regulations in force and that its workers are the very backbone of the group. Furthermore, as can easily be proved, whenever there has been a dispute with any of the trade unions it has been submitted to the competent court for decision.
- 290.** The Government attaches with its reply a communication dated 29 August 2005 from the SNTISV, which states that, so long as the employer violates the provisions of the labour legislation and flaunts the resolutions of the Labour Directorate, it will continue to inform the competent authorities – as often as necessary – of any activity that might be to the detriment of either the freedom of association of the workers or an instrument governing their collective labour relations. The complainant organization states that it trusts that the recommendations of the labour authority, along with the machinery for enforcing the relevant laws and regulations, really will improve labour relations in the enterprise. In the event that the involvement of the labour authority fails to do this, the trade union will have no option but to direct its complaints to whomever it deems fit, possibly including workers' organizations in other countries.

### **C. The Committee's conclusions**

- 291.** *The Committee recalls that the outstanding allegations in this case relate to practices employed by ING Seguros de Vida S.A. to prevent collective bargaining, dismissal of delegates and members of the complainant trade union, pressure by the enterprise to force members working at two branches to resign from their trade union, non-compliance with collective agreements, and the enterprise's refusal to recognize the affiliation to the AFP Santa María S.A. Trade Union of workers whose employment contracts it had modified, with the result that the union is running short of money and its existence is under threat. The Committee observes that, regarding the recommendations it made when it last examined this case at its meeting in June 2005 [see 337th Report, para. 450], the Government has sent information it had received from ING Seguros de Vida S.A. and from the complainant trade union.*

#### **Recommendation (a)**

- 292.** *The Committee expresses its concern about the numerous anti-trade union practices that the administrative and legal authorities have verified at ING Seguros de Vida S.A. and AFP Santa María S.A. The Committee notes that ING Seguros de Vida S.A. states that the differences that existed have been resolved and that both union officials and the workers affiliated to the said unions are now governed by the same rules and regulations that apply*

*to all employees of the various ING companies; the court cases have been dropped, the benefits have been incorporated into the individual contracts and a collective agreement, dated 31 March 2005, has been signed with the members of the AFP Santa María S.A. Trade Union, running for a little over two years from 1 March 2005 to 30 June 2007; currently, there are no grounds for the complaints submitted to the ILO Committee on Freedom of Association, though ING Seguros de Vida S.A. and AFP Santa María S.A. maintain that, in their view, there never was any threat to freedom of association. The Committee also notes the communication from the complainant organization that was sent by the Government which states that, so long as the enterprise violates the provisions of the labour legislation and flaunts the resolutions of the Labour Directorate, it will continue to inform the competent authorities of any activity that might be to the detriment of either the freedom of association of the workers or any instrument governing their collective labour relations.*

#### Recommendation (b)

**293.** *As to the practices allegedly employed by the enterprise to prevent collective bargaining by workers affiliated both to the SNTISV and the AFP Santa María S.A. Trade Union in 2003, by refusing in practice to negotiate, the Committee requested the Government to take measures to ensure that in future ING Seguros de Vida S.A. and AFP Santa María S.A. respect this principle and abstain from employing anti-trade union practices such as those verified by the Labour Inspectorate. The Committee notes the enterprise's statement that: (1) under Chilean legislation, the right to collective bargaining is written into the Constitution and is regulated by the Labour Code, and both the SNTISV and the AFP Santa María S.A. Trade Union have freely exercised their legal right to bargain collectively; (2) on 26 December 2001, a collective agreement was signed with the workers affiliated to the AFP Santa María S.A. Trade Union in accordance with the relevant laws and regulations; (3) in negotiations with ING Seguros de Vida S.A. in June 2003, when no agreement was reached, the workers exercised their prerogative under section 369 of the Labour Code to extend the existing collective agreement by a further 18 months; (4) on 31 March 2005, the AFP Santa María S.A. Trade Union negotiated a collective agreement with the general management of the company, which is currently in force; and (5) in the case of the SNTISV, there is neither a contract nor a collective agreement and workers affiliated to the union therefore have the same rights and benefits as the rest of the company's employees. The Committee notes with interest that a collective agreement has been concluded between the enterprise and the AFP Santa María S.A. Trade Union. However, the Committee requests the Government to endeavour to effectively promote and encourage the full development and use of voluntary negotiation procedures between the enterprise and the SNTISV, with a view to regulating employment conditions through collective agreements.*

#### Recommendation (c)

**294.** *With regard to the dismissal of delegates and members of the complainant trade union (SNTISV) subsequent to the 2003 collective bargaining process, the Committee invited the complainant organization to send details of the names of those dismissed and any facts that may indicate that the dismissals were linked to the exercise of trade union rights. The Committee observes that the complainant organization has not provided the information requested. On the other hand, the Committee notes that ING Seguros de Vida S.A. states that none of the companies of the ING group has initiated legal proceedings to lift the immunity of any of its trade union officials, but that some union officials have entered into an agreement to leave the enterprise of their own free will, in accordance with the laws and regulations in force.*

## Recommendation (d)

**295.** *As to the alleged pressure on workers to withdraw from the complainant trade union (SNTISV), the Committee deplored the pressure of an anti-trade union nature verified by the judicial authority and requested the Government to take the measures necessary to ensure that ING Seguros de Vida S.A. abstains from such practices, as well as from offering benefit packages to workers in return for not joining the trade union, as stated by the Government. The Committee notes that ING Seguros de Vida S.A. states that: (1) it has never exercised any pressure to force workers to resign from their trade union; and (2) what workers describe as pressure after the company changed hands was in fact a reorganization of the ING group of companies, in the process of which the sales staff received all the severance pay and compensation to which they were entitled before being laid off; a large number of them were rehired under new terms of remuneration and benefits and could rejoin their union if they wished. Given the contradictions between the enterprise's statement and the Government's reply that was examined in June 2005, which reported that the judicial authority had fined the enterprise for the alleged occurrences [see 337th report, para. 445], the Committee requests the Government to see, in accordance with the judicial decision, that its previous recommendations are complied with, by taking the effective measures necessary to ensure that ING Seguros de Vida S.A. does not exert pressure on its workers to resign from the complainant organization and that workers are able to maintain their union membership.*

## Recommendation (e)

**296.** *As to the enterprise's alleged failure to comply with the collective agreements, the Committee requested the Government to take the necessary measures to ensure that ING Seguros de Vida S.A. respected the legislation and the collective agreement that was extended by 18 months in the light of article 369 of the Labour Code. The Committee notes the enterprise's statement that: (1) it has not failed to meet any of its commitments under individual contracts or collective agreements; what occurred was a dispute between the AFP Santa María S.A. Trade Union and the enterprise over the source of certain payments under the collective agreement, which led to two court cases that have now been settled under a deal approved by the competent court; and (2) when no agreement was reached in the collective bargaining of June 2003, the workers of ING Seguros de Vida S.A. exercised their prerogative under section 369 of the Labour Code to extend the existing collective agreement.*

## Recommendation (f)

**297.** *As to the alleged refusal of AFP Santa María S.A. to recognize the affiliation to the AFP Santa María S.A. Trade Union of workers whose employment contracts were modified, or to include them in the collective bargaining process, the Committee noted that these facts were verified by the judicial authority and requested the Government to take the necessary measures to prevent the enterprise from having recourse to anti-trade union practices in the future. In this regard, the Committee notes the enterprise's statement that it has always respected the laws and regulations in force, that its workers are the very backbone of the group and that, where there has been a dispute with any of the trade unions, it has been submitted to the competent court for decision. Given that the alleged events were verified and confirmed by the administrative and judicial authorities [see 337th Report, para. 447], the Committee requests the Government to ensure that its previous recommendations are complied with, by taking the necessary effective measures to prevent the enterprise in future from resorting to anti-trade union practices.*



## The Committee's recommendations

298. *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 endeavour to effectively promote and encourage the full development and use of voluntary negotiation procedures between ING Seguros de Vida S.A. and the National Trade Union of ING Seguros de Vida S.A. (SNTISV), with a view to regulating employment conditions through collective agreements.*
- (b) *Given the contradictions between the enterprise's statement and the Government's reply, and specifically that the judicial authority fined the enterprise for the alleged occurrences, the Committee requests the Government to ensure, in conformity with the judicial decisions, that its previous recommendations are complied with, by taking the effective measures necessary to ensure that ING Seguros de Vida S.A. does not exert pressure on its workers to resign from the complainant organization and that workers are able to maintain their union membership.*
- (c) *As to the alleged refusal of AFP Santa María S.A. to recognize the affiliation to the AFP Santa María S.A. Trade Union of workers whose employment contracts were modified, or to include them in the collective bargaining process, the Committee notes that these facts were verified by the judicial authority and requests the Government to ensure that its previous recommendations are complied with, by taking the necessary effective measures to prevent the enterprise in future from resorting to anti-trade union practices.*

CASE NO. 2356

INTERIM REPORT

### Complaints against the Government of Colombia presented by

- the National Union of Public Employees of the National Service for Training SENA (SINDESENA)
- the Union of Employees and Workers of SENA (SINDETRASENA)
- the Single Confederation of Workers of Colombia (CUT)
- the Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE-UPTC) and
- the Cali Municipal Enterprises Union (SINTRAEMCALI)

*Allegations: The National Union of Public Employees of the National Service for Training SENA (SINDESENA), the Union of Employees and Workers of SENA (SINDETRASENA) and the Single Confederation of Workers of Colombia (CUT) allege the collective dismissal of trade union members and trade union leaders*

*within the framework of a restructuring process; the refusal by the National Service for Training (SENA) to negotiate with the trade union organizations; the Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE-UPTC) alleges the dismissal of two trade union leaders who were covered by trade union immunity and the Cali Municipal Enterprises Union (SINTRAEMCALI) alleges that the administrative authority declared a permanent assembly meeting staged within the Municipal Enterprises of Cali (EMCALI) to be illegal and that this decision gave rise to the dismissal of 49 trade union members and leaders*

- 299.** The Committee last examined this case at its May-June 2005 meeting [see 337th Report, paras. 637-715]. The Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE-UPTC) transmitted further information in a communication dated 5 May 2005 and new allegations with communications dated 20 July and 30 September 2005. The Cali Municipal Enterprises Union (SINTRAEMCALI) sent new allegations in communications dated 6 June and 21 October 2005. The Medellín Subdirective of the National Union of Public Employees of the National Service for Training SENA (SINDESENA), sent new allegations in communications dated 2 August 2005 and 23 February 2006.
- 300.** The Government sent its observations in communications dated 14 and 28 September, 25 November and 15 December 2005 and 22 February and 15 May 2006.
- 301.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

#### **A. Previous examination of the case**

- 302.** On last examining the case, the Committee made the following recommendations [see 337th Report, para. 715]:
- (a) As to the allegations presented by SINDESENA, SINDETRASENA and CUT concerning the collective dismissal of trade union leaders and members within the framework of the process of restructuring SENA, in order to be able to reach its conclusions based on all the facts, the Committee requests the Government to inform it of how many workers were dismissed in total, and how many of those dismissed were trade union members or trade union leaders.
  - (b) As to the dismissal of the eight trade union leaders of SINDESENA, the Committee requests the Government to take the necessary measures to retain the posts of the trade union leaders, so that they may carry out their duties during the restructuring process and, should it prove impossible to retain these posts, to transfer them to similar posts.
  - (c) Within the framework of the restructuring process under way within SENA, the Committee requests the Government to take the necessary measures to carry out wide-

ranging consultations with the trade union organization SINDESENA on the consequences of the abovementioned process prior to continuing with dismissal proceedings.

- (d) As to the allegations concerning SENA's refusal to bargain collectively, the Committee requests the Government to take the necessary measures to ensure that, following consultations with the trade union organizations concerned, legislation be amended in order to bring it into line with the Conventions ratified by Colombia so that the workers in question may enjoy the right to collective bargaining.
- (e) As to the suppression of trade union leave within SENA, the Committee expects that, in the future, leave will be the subject of negotiations between the trade union organizations and SENA.
- (f) As to the allegations presented by SINTRAEMCALI concerning the administrative authority's declaration that the permanent assembly meeting held on EMCALI premises was illegal, a declaration which subsequently led to the dismissal of 43 trade union members and six trade union leaders, the Committee requests the Government:
  - (i) as to the permanent assembly meeting which involved the occupation of the installations, to take the necessary measures to ensure that an independent investigation is carried out to determine the facts, find out whether or not a work stoppage took place and determine who was responsible for the acts of violence. The Committee requests the Government to send its observations in this respect;
  - (ii) as to the dismissal of the 49 workers (43 trade union members and six trade union leaders), the Committee requests the Government, taking into account the results of the abovementioned investigation and in the light of the responsibility that the participants in the permanent assembly meeting may have incurred, to re-examine the situation of those individuals dismissed who did not take part in acts of violence;
  - (iii) as to the declaration, through Ruling No. 1696 of 2 June 2004, issued by the Ministry of Social Protection, in accordance with article 451 of the Substantive Labour Code, that the permanent assembly meeting was illegal, the Committee requests the Government to take the measures necessary to amend article 451 of the Substantive Labour Code, in accordance with the principle that responsibility for declaring a strike illegal should lie with an independent body which has the confidence of the parties involved.

## B. New allegations

**303.** In its communication dated 6 June 2005, the Cali Municipal Enterprises Union (SINTRAEMCALI) refers to a plan to assassinate various SINTRAEMCALI trade union leaders. These allegations are not reproduced here, as they are being examined within the framework of Case No. 1787. The trade union organization further encloses the decision of the Office of the Official Municipal Representative of Santiago de Cali to exercise prior control with regard to internal disciplinary measures within the Municipal Enterprises of Cali (EMCALI) concerning the occupation of the enterprises on 26 and 27 May 2004.

**304.** In its communication, dated 21 October 2005, with regard to the Committee's recommendations, SINTRAEMCALI states that:

- The Government has not taken any measures with regard to carrying out an independent inquiry to establish the facts and thus to determine whether a "work stoppage" took place and who was responsible for the acts of violence. On the contrary, the Government has sown the seeds of psychological terror among the workers by initiating 462 disciplinary proceedings against the workers, exercising undue pressure under pain of dismissal for any kind of claim and persecuting workers for discussing the trade union.

- Neither has the situation of any of those individuals dismissed been re-examined, as was recommended by the Committee in subparagraph (f)(ii).
- As to the amendment of article 451 of the Substantive Labour Code, the Government has taken no action in this regard.

**305.** Furthermore, the trade union organization encloses copies of communications submitted to it by various public authorities and entities, such as: the Official Representative of Santiago de Cali, the Mayor of Cali, the Governor of Valle del Cauca, the Regional Public Ombudsman, the Municipality of Santiago de Cali, the Secretariat of Governance, Communal Affairs and Law and Order of Cali, the Office of the Official Municipal Representative of Yumbo-Valle, the Municipal Health Secretariat of Yumbo Town Hall and Radio Cali, among others, stating that, during the period of the permanent assembly declared by the workers of EMCALI, there were no reports of any health emergencies nor of any failures in the provision of services. It also encloses a certificate from the Regional Attorney for Valle, stating that no acts of violence were registered as having been committed between 26 and 29 May 2004. The Regional Public Ombudsman of Valle del Cauca made a similar statement upon inspecting EMCALI's facilities following their evacuation and discovering that no damage had been done.

**306.** As to the non-renewal of the employment contract of Ms. Nilce Ariza, Director of the Centre for Research, because of the activities of her partner who is the chairperson of the Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE-UPTC), in accordance with the allegations examined when the case was last examined [see 337th Report, para. 660 onwards], the organization sends a copy of a notarial certificate in which a female student at the university declares having heard the Vice-Rector of the university state that the lecturer, Ms. Nilce Ariza, had been dismissed owing to her partner's activities. The trade union organization states that the teaching staff selection process for lecturers for the 2004 period, from which she was excluded, went ahead despite not having been properly advertised. According to the complainant organization, no teaching staff selection procedure was held and, therefore, the trade union organization made a criminal complaint against the Vice-Rector, the Dean of Law and the Vice-Dean for having appointed lecturers in 2004 without having held the corresponding merit-based selection procedure, as well as presenting a disciplinary complaint and requesting that a preliminary inquiry be opened within the Office of the Attorney. Moreover, it states that the university initiated disciplinary proceedings against the chairperson of the trade union organization for having lodged a *tutela* action for the protection of constitutional rights following the dismissal of Ms. Ariza.

**307.** The trade union organization also refers to the non-renewal of the contract of Ms. Isabel Cristina Ramos who held the post of controller (*fiscal*) within the trade union. The complainant organization states that, on 25 August 2005, the Third Labour Court of the Circuit of Tunja ordered that Ms. Ramos be reinstated because her trade union immunity had not been lifted prior to her dismissal. However, the university appealed against that decision.

**308.** In its communications dated 2 August 2005 and 23 February 2006, the Medellín Subdirective of the National Union of Public Employees of the National Service for Training SENA (SINDESENA) alleges that, as a part of a policy aimed at persecuting and threatening SINDESENA trade union leaders, disciplinary proceedings were launched against the entire Regional Subdirective of Magdalena for carrying out trade union activities. The complainant organization adds that Mr. Ricardo Correa Bernal, Vice-Chairperson of the Medellín Subdirective and Secretary of the organization's national committee was sanctioned for three months.

## C. The Government's reply

- 309.** In its communications dated 14 and 28 September, 25 November and 15 December 2005 and 22 February and 15 May 2006, the Government sends its observations on the recommendations made by the Committee upon last examining the case, as well as on the new allegations that have been presented.
- 310.** With regard to subparagraph (a) of the recommendations, the Government reiterates that the process of restructuring SENA was carried out based on Act No. 790 of 2002 "issuing provisions for the continuation of the programme of renewal of the public administration and granting the President of the Republic extraordinary powers".
- 311.** In light of the above information, SENA, advised by the Administrative Department of the Public Service, carried out technical studies analyzing the legal framework of the entity, reviewing objectives, functions, mission, vision, assessment of provision of services and product quality, the entity's structure, the specific manual of functions and requirements and analysis of workloads and payroll. Based on these technical studies and once the legal procedure had been completed, on 28 January 2004, institutional restructuring Decrees Nos. 248 "amending Decree No. 1426 of 1998 and Decree No. 3539 of 2003; 249 "amending the structure of the National Service for Training (SENA)"; and 250 "adopting the payroll of the National Service for Training (SENA)" were issued.
- 312.** Decree No. 250 of 28 January 2004 suppressed 1,116 posts, including management, executive, consultant, doctor, dentist, administrative (secretaries and office clerks), operational (auxiliary) and public official posts. In accordance with the abovementioned technical studies, as a part of the new payroll, 542 posts were created at management, executive, consultant, professional and technical levels. However, with the suppression of 1,116 posts and the creation of 542 new posts, 574 posts were lost, giving a current payroll of 6,898 staff which corresponds to the requirements of the entity, according to the technical study that was carried out.
- 313.** As it had not previously been envisaged that all of the 1,116 posts suppressed from the payroll would be cut and as Decree No. 250 of 2004 created 542 new posts which were taken up by some of those individuals whose former posts had been suppressed and others have been appointed as vacancies have arisen, to date only 532 former public employees have been made redundant from the entity owing to the restructuring process. Moreover, the 31 public official posts that were suppressed were all vacant at the time, meaning that no public official (unionized or not) was made redundant from the entity.
- 314.** Of the 532 former public employees, 165 were members of trade unions that were legally formed prior to 28 January 2004 and none of them were trade union leaders.
- 315.** The Government states that the suppression of posts did not in the main affect unionized staff. Of the 2,656 civil servants belonging to SINDESENA at the time that the Decrees announcing the process of restructuring SENA were issued (28 January 2004) only 168 were made redundant, none of whom belonged to any executive, or enjoyed trade union immunity.
- 316.** In the case of the Union of Employees and Workers of SENA (SINDETRASENA), it was founded following the issuing and publication of the Decrees governing the restructuring process affecting SENA (Nos. 248, 249 and 250) of 28 January 2004, and thus it cannot be said that the national government carried out a process of collective dismissal of worker members of SINDETRASENA because, on 28 January 2004, when the Decrees were issued, neither the Government nor SENA knew that this trade union was going to be founded.

- 317.** The Government adds that the Inspector of the Employment, Labour and Social Security Group denied SINDETRASENA leave to register, through resolution No. 002781 which, following an appeal, was upheld by resolution No. 003567 of 16 September 2004 and was again upheld by the Inspector of the Employment, Labour and Social Security Group of the Territorial Directorate for Cundinamarca of the Ministry of Social Protection through resolution No. 004630, of 25 November 2004. The refusal by the Ministry to register the trade union is based on the failure of the supposed trade union to fulfil the legal requirements with regard to its foundation.
- 318.** Initially, 146 public servants belonging to this unrecognized trade union organization were made redundant. Seventy-seven of these are included among those members of SINDESENA who were made redundant because they also belonged to that trade union.
- 319.** The Government states that the matter was examined by the competent legal authorities which, in some cases, denied reinstatement while ordering it in others. Thus, nine of the 146 public servants who were made redundant have been reinstated on the payroll and, to date, 137 members of SINDETRASENA have been made redundant, of whom 74 have already been recorded among those members of SINDESENA who were made redundant.
- 320.** The Government concludes that, to date, with regard to the civil servants made redundant as a consequence of the restructuring process:
- a total of 532 public servants have been made redundant as a consequence of the restructuring process;
  - to date, 165 members of SINDESENA have been made redundant, or 6.2 per cent of the 2,656 members of this trade union organization on 28 January 2004;
  - as to the members of SINDETRASENA, to date, 137 have been made redundant, 74 of whom have already been recorded among the 165 referred to in the previous subparagraph, because they also belong to SINDESENA. Thus only 63 individuals who are solely members of SINDETRASENA were made redundant through the suppression of their posts.
- 321.** The Government reiterates its previous position, stated on various occasions, that restructuring processes are a consequence of the economic situation of public entities and that the aim is to ensure the viability of the entity and not to weaken the trade union organization. The Government states that, in this case, it should be recalled that, when the civil servants learnt of the restructuring process, they decided to found the trade union organization, perhaps with the aim of obtaining employment stability, forgetting that the aim of trade union organizations is not the employment stability of union leaders but the defence of the rights connected to the trade union organization.
- 322.** As to subparagraph (b) of the recommendations, the Government states that the process of restructuring SENA is now complete, it being impossible to retain the eight posts of the union leaders. Here, the Government refers to article 8 of Decree No. 250 of 2004, in light of which, once the labour judge has authorized the lifting of trade union immunity, the posts are automatically suppressed.
- 323.** As to other possibility of transfer to other similar posts, Act No. 909 of 2004 grants the eight union leaders the right to choose between compensation or transfer to other equivalent posts within the public sector within six months of the date on which they are informed of the suppression of their posts, in keeping with their status as employees with administrative career rights, it being up to each of them to make clear their decision.

- 324.** Of the eight public servants whose trade union immunity is being lifted, to date, seven continue to work at the entity and only one (Mr. Marco Tulio Ramírez Brochero, of the Guajira Regional Office) was made redundant as of 13 May 2005, the First Labour Court of the Circuit of Riohacha having authorized his redundancy in a ruling dated 15 December 2004 which was upheld in the second instance by the Higher Court of the Legal District of Riohacha (Civil, Family and Labour Division) through a ruling handed down on 3 March 2005. In accordance with the internal legislation, the civil servant who had been made redundant was informed that he had the right to be transferred to another equivalent post within the following six months, or to compensation, but as he did not make his decision clear, steps were taken to proceed to pay compensation as stipulated by law.
- 325.** As to subparagraph (c) of the recommendations, the Government states that the process of restructuring SENA is now complete, stating that, according to the Secretary-General of SENA, the administration of SENA opened forums for dialogue and coordination with the trade union organizations that were present within the entity (SINDESENA and SINDETRASENA), in the same way as with the students and other bodies such as the pensioners' association.
- 326.** As to subparagraph (d) of the recommendations, the Government states that with regard to collective bargaining with the trade unions, SENA has brought its approach into line with the existing constitutional and legal standards, under which collective agreements may only be concluded with the trade union of public officials which, within SENA, is SINDETRASENA. The collective agreement concluded on 25 March 2003 with SINDETRASENA is therefore still in force; with regard to the trade union of public employees, SENA gave due consideration to its requests as stipulated by law.
- 327.** As to the violation of points 15,16, 17, 19 and 21 (points addressing trade union guarantees, such as leave, airline tickets and transport to assemblies) of the agreement concluded by the national government, represented by the Minister of Social Protection, the General Director of SENA and SINDESENA, the Government states that according to the opinion issued by the legal director of SENA, "the agreements concluded between SENA and SINDESENA lack legal validity, being contrary to the Political Constitution and the law". In the same way, the trade union agreement signed as a consequence of the list of grievances of 21 December 2000 and the agreement signed on 6 August 2002 are contrary to the Constitution. With regard to collective bargaining in labour disputes, article 55 of the Political Constitution stipulates that "The right to collective bargaining to regulate labour relations is guaranteed, with the exceptions stipulated by law ... ." Under the Constitution, article 416 of the Substantive Labour Code states that "trade unions of public employees may neither present lists of grievances, nor conclude collective agreements, however, trade unions of public officials possess all the attributes of other workers' trade unions and their lists of grievances shall be dealt with under the same terms as those of other unions, although they may not call for, or carry out, strike action". The Constitutional Court declared that this decision might be applied.
- 328.** The Government adds that, in light of the above information and in order to lend scope to the application of the collective agreements concluded between SENA and SINDESENA, through communication No. 00882, addressed to SENA and having transcribed parts of the opinions issued by the Consultation and Civil Service Division of the Council of State on 30 September 2002 (File No. 1471), the Ministry of Social Protection concluded that the collective agreement concluded within SENA should cease to apply in the case of certain aspects which were contrary to the Constitution or the law, based on article 4 of the Political Charter which stipulates that "in any case of incompatibility between the Constitution and the law or any other legal standard, the provisions of the Constitution shall be applied". Thus, SENA's legal office considered that, given the constitutional, legal

and case law framework, SINDESENA did not have the legal possibility of presenting a list of demands to the administration of the entity. The Government adds that “trade union collective agreements, not having a legal identity owing to the lack of the legal possibility, are unenforceable and ineffective, and, thus, SENA cannot apply and comply with such agreements. However, with regard to the aspects in which the agreement refers to the mission and functions of SENA, the entity is obliged to comply with the law.

- 329.** As to subparagraph (e) regarding trade union leave, it should be pointed out that such leave was not suppressed by SENA, indeed, under the provisions of Act No. 584 of 2000 and Regulatory Decree No. 2813 of the same year and under judicial rulings within the entity trade, union leave of a permanent nature was no longer to be granted. Neither Conventions Nos. 87 nor 98, nor the decisions of the Committee on Freedom of Association allow for the existence of this strange phenomenon that is trade union leave of a permanent nature. The principles of the Committee clearly spell out that, whenever the trade union organization wishes to carry out activities at the workplace during the employers’ normal working hours, the latter’s agreement must first be sought.
- 330.** In accordance with meetings held between SENA and the legal representatives of SINDESENA, authorization was given for the trade union leave necessary for the exercise of trade union activities; in 2004, union leaders were granted 1,025 working days of paid leave, the equivalent of 2.8 years, while in 2005, throughout the whole year 2,439 working days of paid leave were granted, that is to say 6.68 years.
- 331.** As to subparagraphs (f)(i), the Government states that, under article 451 of the Substantive Labour Code, the Ministry of Social Protection is the competent body with regard to investigating and determining the illegality of a work stoppage, based on the Law and the Political Constitution, as set out in resolution No. 1696 of 2 June 2004. The Government adds that Conventions Nos. 87 and 98 do not establish that the legality or illegality of a work stoppage may not be determined by the Ministry in its role as competent government body. Given that the Government is responsible for compliance with Conventions, there is no reason why it should not adopt the decision of the Ministry. The Government recognizes the importance of the Committee’s observations and accepts that the Ministry must enjoy independence when deciding on the illegal nature of the stoppage, given that it should limit itself to objectively establishing the situation. This independence is guaranteed, both by the legal framework governing the civil servants of the Ministry and their conduct and by the legal proceeding open to the workers to challenge before the courts any decisions taken by the Ministry.
- 332.** The Government also states that, in its ruling, the Constitutional Court states that none of the dismissed workers objected to being linked to the stoppage, nor did they deny that they had participated in that action.
- 333.** The Government states that the Ministry not only based its decision on the known facts, rather, in order to guarantee due process and the right to a defence, administrative civil servants of the Territorial Directorate of Valle del Cauca of the Ministry of Social Protection on two occasions carried out visits; on the first occasion the entries to the entity were blocked and, on the second occasion, they discovered that no services were being provided to the public.
- 334.** The intervention by the Ministry in the work stoppage is aimed at avoiding the dismissal of those who had merely suspended the service, prevented from working more by the circumstances surrounding the stoppage than by a desire to take part in the stoppage, on the condition that upon learning that the stoppage had been declared illegal, they did not continue to participate in this action.



- 335.** With regard to the acts of violence, the Government states that the Office of the Public Prosecutor (the competent body in determining the level of responsibility of workers having participated in acts of violence, which are not covered by Conventions Nos. 87 and 98) was made aware of the situation and was informed of the situation. The legislation stipulates the legal mechanisms for challenging the Ministry's decision, such as the action for annulment before the administrative judicial authority, which is the competent authority for checking the legality of acts reported by public entities and legal proceedings before the labour courts, the competent body for verifying the legality of the dismissals.
- 336.** As to subparagraph (f)(ii), the Government states that the right to defence and due process of the workers was guaranteed because, in accordance with the provisions of article 2 of resolution No. 001696, in order to impose sanctions on those having participated in a collective work stoppage that has been declared illegal, the corresponding disciplinary procedure must be followed. The Municipal Enterprises of Cali (EMCALI) complied with this requirement.
- 337.** As to subparagraph (f)(iii), although the Ministry of Social Protection forms part of the Government, this does not mean that it is biased in its actions. As has previously been pointed out, the Ministry acts in accordance with the internal legislation and moreover, in accordance with the ruling of the Supreme Court of Justice, Labour Appeals Division, of 26 May 1980: "The Ministry intervenes to prevent abuses of the employer during a dispute but not to legalize dismissals, just cause for which must be demonstrated before the labour courts. The Ministry may prevent dismissal in one case but leave the employer free to proceed to dismiss other individuals. However, should the employer decide to proceed with a dismissal, he/she will be responsible and must demonstrate just cause in the ordinary labour courts, if necessary."
- 338.** The Government states that, in response to the present recommendations, EMCALI stated that in this case it has been proved that Cali Municipal Enterprises Union's (SINTRAEMCALI) allegations do not constitute a violation of the exercise of trade union rights and that the complainant has not presented evidence supporting its claims. Furthermore, SINTRAEMCALI has initiated each and every one of the legal procedures at its disposal under Colombian legislation. Moreover, EMCALI EICE ESP followed the relevant legal procedure in order to determine that the violent takeover of the administrative facilities of the enterprise, which gave rise to a work stoppage, was illegal and openly unconstitutional, as the takeover affected an enterprise that provides essential public domestic services.
- 339.** The Government states that, in light of the events in question, the trade union organization lodged a *tutela* action for the protection of constitutional rights in order to avoid the application of resolution No. 1696 of 2 June 2004, and article 450, in light of which the workers would be dismissed and the legal personality of the trade union cancelled. The judicial authority decided, in the first instance, to grant *tutela* regarding the right to form trade unions in order to ensure that the legal personality of SINTRAEMCALI was not cancelled. However, the judicial authority rejected the request for *tutela* with regard to the right to work and preventing the dismissals, on the grounds that the dismissals had already taken place. The workers were therefore entitled to make use of the normal legal channels in order to request that the dismissals be reversed. The trade union organization challenged this legal decision, but it was upheld in the second instance. Finally, the Constitutional Court overturned the decision handed down in the first instance that had granted *tutela* regarding the right to form trade unions and upheld the decisions refusing the other requests for *tutela*, rejecting definitively all the requests made for *tutela*. The Government adds that the trade union organization initiated an action for annulment and the re-establishment of rights before the Council of State, against resolution No. 1696 of 2 June 2004, in order to determine whether the events that took place led to a work stoppage and,

if this was not the case, to ensure that the rights allegedly violated by EMCALI EICE EXP were re-established.

- 340.** The Government states that, in light of the fact that the events clearly took place and led to a work stoppage, the enterprise is unable to carry out an independent inquiry for administrative reasons. Despite this, the enterprise proceeded to carry out a new inquiry in order to satisfy the demands of the ILO, reviewing the copies of the videos filmed during the work stoppage, confirming the occurrence of a work stoppage and identifying those who participated in that action.
- 341.** As to the allegations presented by ASOPROFE-UPTC, with regard to the non-renewal of the contract of Ms. Isabel Cristina Ramos, *fiscal* of the trade union organization, despite the reinstatement order issued by the Third Labour Court of the Circuit of Tunja on 25 August 2005, on the grounds that her trade union immunity had not been lifted, the Government states that the trade union organization bases its denouncement on a *tutela* award which, in the first instance, ordered the reinstatement of Ms. Isabel Cristina Ramos, an ASOPROFE-UPTC *fiscal*. The award was appealed against by the University of Pedagogy and Technology of Colombia (UPTC). The High Court of the Judicial District of Tunja, Labour Division ruled that the *amparo* (enforcement of constitutional rights) mechanism was inappropriate, owing to the fact that the trade union leader was not linked to the university by an employment contract, as was claimed in her *tutela* appeal, and therefore did not benefit from prior notification regarding renewal of her contract. However, under resolution No. 0904 of 16 February 2004, she was appointed from that date until 16 December of that year to the post of temporary full-time lecturer. Moreover, although the trade union leader was dismissed despite her trade union immunity, according to the ruling, she may make use of the legal mechanism stipulated in article 118 of the Procedural Labour and Social Security Code; therefore, in the case of the trade union leader there was no evidence of irreparable harm, the legal basis of *tutela*, and therefore her appeal was rejected.
- 342.** The Government adds that the trade union organization did not turn to the ordinary labour courts, the competent body with regard to events related to the dismissal of workers with trade union immunity. As to the reference to the Termination of Employment Convention, 1982 (No. 158), the Government refers to the statements previously made by the Committee to the effect that, the Committee limits itself to commenting on violations of ILO Conventions with regard to the freedom of association and that it is not within its remit to comment on the matter of the breaking of employment contracts through dismissal, commenting, rather, when the dismissal system contains elements of anti-union discrimination.
- 343.** As to the allegations presented by ASOPROFE-UPTC, with regard to Ms. Nilce Ariza, the Government refers to the information provided by the university stating that Mr. Luis Bernardo Díaz Gamboa, chairperson of the trade union and partner of Ms. Nilce Ariza, has been a full-time university lecturer since 2003. As a result, he is covered by Act No. 30 of 1992, under which he is a public employee but is not subject to free appointment and revocation. Furthermore, in accordance with article 39 of Decree No. 196 of 1971, as a public servant he may not practice as a lawyer, in particular he may not litigate against the nation, the district or the municipality. However, Mr. Díaz Gamboa agreed to accept the power granted by Ms. Nilce Ariza Barboza to present the *tutela* action. This being a disciplinary matter, the legal office informed the dean of the university who referred the matter to the Attorney-General of the Nation. The Government states that, in his role as a civil servant, Mr. Díaz Gamboa is accused of having committed a fault because of the ban on practicing as a lawyer and not because of his role as chairperson of the trade union.

344. As to the matter of the selection of teaching staff, the university reiterates that temporary teaching staff members are neither public employees nor public officials, and the university, as an autonomous entity, in accordance with resolution No. 057 of 2003, held a public selection procedure. Ms. Ariza simply did not meet the requirements of that procedure.

#### D. The Committee's conclusions

345. *The Committee notes the new allegations submitted by the Cali Municipal Enterprises Union (SINTRAEMCALI), the National Union of Public Employees of the National Service for Training SENA (SINDESENA) and the Academic Trade Union Association of Lecturers of the university of Pedagogy and Technology of Colombia (ASOPROFE-UPTC). The Committee recalls that the present complaint refers to: (1) the process of restructuring and subsequent dismissal of members and leaders of SINDESENA; (2) the declaration by the Ministry of Social Protection that a work stoppage on 26 and 27 May 2004 in Cali Municipal Enterprises (EMCALI) by SINTRAEMCALI was illegal, a declaration which subsequently led to the dismissal of 43 trade union members and six trade union leaders; and (3) the non-renewal of the employment contract of two lecturers at the University of Pedagogy and Technology of Colombia (UPTC), despite the fact that they enjoyed trade union immunity.*

#### **Restructuring of the National Service for Training (SENA)**

346. *As to the allegations concerning the collective dismissal of trade union leaders and members within the framework of a restructuring process within SENA, the Committee recalls that in order to be able to reach its conclusions based on all the facts, it requested the Government to inform it of how many workers were dismissed in total, and how many of those dismissed were trade union members or trade union leaders. The Committee notes the information supplied by the Government to the effect that Decree No. 250 of 28 January 2004 ordered the suppression of 1,116 posts within SENA and that to date, only 532 former public employees have been made redundant. The Committee notes that of these 532 former public employees, 165 were members of SINDESENA out of a total of 2,656 civil servants belonging to this trade union. Moreover, the restructuring also resulted in the dismissal of 146 public servants belonging to the Union of Employees and Workers of SENA (SINDETRASENA). Of these 146 workers, 77 among those members of SINDESENA who were included were made redundant because they also belonged to that trade union.*

347. *As to these 146 workers, the Committee notes that, following the legal proceedings brought by the persons concerned, the legal authorities ordered the reinstatement of nine of the aforementioned workers, giving a final total of 137 dismissed SINDETRASENA members, of whom 74 have already been recorded among those members of SINDESENA who were made redundant, with the result that only 63 SINDETRASENA workers have been affected by the restructuring process. In conclusion, the dismissals affected 165 workers belonging to SINDESENA, 74 of whom were also members of SINDETRASENA, with a further 63 workers belonging exclusively to the latter organization.*

348. *The Committee therefore observes, on the basis of the information supplied by the Government, that the restructuring process undertaken within SENA was general in scope and affected all workers, including those belonging to trade union organizations, but without any indication that the aim of the restructuring has been to affect or weaken the trade unions. In this regard, the Committee recalls that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or*

*not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions. In any case, the Committee can only regret that in the rationalization and staff reduction process, the Government did not consult or try to reach an agreement with the trade union organizations. [See **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 935.]*

- 349.** *In this regard, the Committee recalls that in subparagraph (c) of its recommendations, it requested the Government to carry out wide-ranging consultations with SINDESENA prior to continuing with dismissal proceedings, and notes that, according to the Government, the restructuring process has already been completed but that the administration of SENA opened forums for dialogue and coordination with the trade union organizations, as well as students and the pensioners' association present within the entity.*
- 350.** *As to subparagraph (b) of the recommendations concerning the dismissal of the eight SINDESENA union leaders, the Committee recalls that, in its previous examination of the case, it requested the Government to take the necessary measures to retain the posts of the trade union leaders, in order that they could carry out their duties during the restructuring process and, should it prove impossible to retain these posts, to transfer them to similar posts. The Committee notes that, according to the Government, the process of restructuring within SENA is now complete, making it impossible to retain the eight posts of the union leaders, and that once the labour judge has authorized the lifting of trade union immunity, the posts will be automatically suppressed. At present, of the eight union leaders, only one has been stripped of trade union immunity, whilst the others remain in their posts. At the same time, the Committee notes the Government's reply stating that, in accordance with Act No. 909 of 2004 and its regulatory standards, once the union immunity of the eight trade union leaders has been lifted, these individuals will be given the right to choose between compensation or transfer to other equivalent posts within the public sector within six months of the date on which they are informed of the suppression of their posts, in keeping with their status as employees with administrative career rights, it being up to each of them to make clear their decision. In the case of the union leader whose union immunity has already been lifted, the Committee notes that he was made redundant as of 13 May 2005 and informed of his right to choose either to transfer to another equivalent post within the following six months or compensation; but as he did not make his decision clear, steps were taken to proceed to pay compensation, as stipulated by law. The Committee requests the Government to keep it informed of developments in the circumstances of the other seven union leaders.*
- 351.** *As to subparagraph (d) of the recommendations concerning SENA's refusal to bargain collectively, the Committee recalls that in its previous examination of the case, it requested the Government to take the necessary measures to ensure that, following consultations with the trade union organizations concerned, legislation be amended in order to bring it into line with the Conventions ratified by Colombia so that the workers in question could enjoy the right to collective bargaining. The Committee notes the Government's reiteration of the fact that, in accordance with existing constitutional and legal standards, public officials may not present lists of grievances and as such may not bargain collectively, being limited solely to the presentation of respectful petitions. At the same time, the Committee notes that, according to the Government, the opinion issued by the legal director of SENA means that the agreements concluded between SENA and SINDESENA lack legal validity. The Committee notes that the Government draws on the above to explain the alleged violation of points 15, 16, 17, 19 and 21 (points addressing trade union guarantees, such as leave, airline tickets and transport to assemblies) of the agreement concluded by the Minister of Social Protection and the General Director of SENA and SINDESENA, in addition to the trade union agreement signed as a consequence of the list of grievances of 21 December 2000 and the agreement signed on 6 August 2002.*

352. *In this regard, the Committee must firstly recall that the principle of good faith must prevail during any negotiation process undertaken and that once agreements have been entered into, the parties are obliged to comply with them [see Digest, op. cit., para. 818]. At the same time, the Committee recalls, as on other occasions in recent years when presented with similar allegations against the Government of Colombia, that whilst certain categories of civil servants should already have been enjoying the right to bargain collectively in accordance with Convention No. 98, recognition of this right has been extended to cover all civil servants since the ratification by Colombia of Convention No. 154 on 8 December 2000 [see 328th Report, Case No. 2068, para. 215, and 338th Report, Case No. 2363, para. 735 (Colombia)]. In these circumstances, recalling that special modalities of application may be established for collective bargaining within the public administration, but bearing in mind that collective bargaining cannot be considered to exist merely on the basis of the presentation of respectful petitions, the Committee once again requests the Government to take the necessary measures to ensure that, in consultation with the trade union organizations concerned, legislation be amended without delay in order to bring it into line with the Conventions ratified by Colombia. The Committee requests the Government to keep it informed of any developments in this regard.*
353. *As to subparagraph (e) of the recommendations concerning SENA's refusal to grant trade union leave, the Committee notes that, according to the information provided by the Government relating to the provisions of Act No. 584 of 2000 and Regulatory Decree No. 2813 of the same year, within the entity, union leave of a permanent nature was no longer to be granted. The Committee notes that, despite this, the Government supplies information on all union leave granted during 2004 and 2005, following meetings between SENA and the legal representatives of SINDESENA. The Committee recalls that "while account should be taken of the characteristics of the industrial relations system of the country, and while the granting of such facilities should not impair the efficient operation of the undertaking concerned", Paragraph 10(1) of the Workers' Representatives Recommendation, 1971 (No. 143), provides that workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions. Paragraph 10(2) also specifies that, while workers' representatives may be required to obtain permission from the management before taking time off, such permission should not be unreasonably withheld [see Digest, op. cit., para. 952]. The Committee therefore expects that the Government will continue to grant the union leave necessary for the exercise of trade union activities, in consultation with the organizations concerned.*
354. *As to the new allegations presented by the complainant organization concerning persecution and threats towards SINDESENA, trade union leaders and the launch of disciplinary proceedings against the entire Regional Subdirective of Magdalena for carrying out trade union activities and the three-month sanctions imposed on Mr. Ricardo Correa Bernal, Vice-Chairperson of the Medellín Subdirective and Secretary of the organization's national committee, the Committee regrets that the Government has not sent its observations on this matter and requests it to do so without delay.*

### **Cali Municipal Enterprises (EMCALI)**

355. *As to subparagraph (f) of the recommendations relating to the allegations concerning the administrative authority's declaration that the permanent assembly meeting held on EMCALI premises was illegal, a declaration which subsequently led to the dismissal of 43 trade union members and six trade union leaders, the Committee recalls that in its previous examination of the case, it requested the Government: (1) to carry out an independent investigation to determine the facts, find out whether or not a work stoppage took place and determine who was responsible for the acts of violence; (2) taking into*

account the results of the abovementioned investigation and in the light of the responsibility that the participants in the permanent assembly meeting may have incurred, to re-examine the situation of those individuals dismissed who did not take part in acts of violence; and (3) with regard to the declaration, through Ruling No. 1696 of 2 June 2004, issued by the Ministry of Social Protection, in accordance with article 451 of the Substantive Labour Code, that the permanent assembly meeting was illegal, to take the measures necessary to amend article 451 of the Substantive Labour Code, in accordance with the principle that responsibility for declaring a strike illegal should lie with an independent body which has the confidence of the parties involved.

- 356.** *As to the launch of an independent investigation to determine the facts, find out whether or not a work stoppage took place and determine responsibility, the Committee notes that according to the complainant organization, the Government has not undertaken an independent investigation and has instead initiated 462 sets of disciplinary proceedings against workers, subjecting them to undue pressure, with the threat of dismissal for discussing the trade union. The Committee also notes that the complainant organization encloses copies of communications submitted to it by various public authorities and entities stating that, during the period of the permanent assembly declared by the workers of EMCALI, there were no reports of any health emergencies nor of any failures in the provision of services, together with a certificate from the Regional Attorney for Valle stating that no acts of violence were registered between 26 and 29 May 2004, and an attestation from the Regional Public Ombudsman of Valle del Cauca stating that upon inspection of EMCALI's facilities following their evacuation, no damage had been done.*
- 357.** *The Committee also notes that, according to the Government, under article 451 of the Substantive Labour Code, the Ministry of Social Protection is the competent body charged with undertaking independent investigations and determining the illegality of any work stoppage. The Committee notes the additional reply from the Government to the effect that Convention No. 87 does not refer to the proscription on investigations being carried out by this Ministry, that the Ministry based its decision on the known facts, and that administrative civil servants of the Territorial Directorate of Valle del Cauca of the Ministry of Social Protection carried out visits to EMCALI on two occasions, finding the entrances to the entity blocked on the first occasion and discovering on the second that no services were being provided to the public.*
- 358.** *At the same time, the Committee notes that the Constitutional Court rejected a number of tutela actions lodged by the complainant organization in order to prevent its legal personality being cancelled and leaders and members being dismissed, but that the trade union organization initiated an action for annulment and the re-establishment of rights before the Council of State, against resolution No. 1696 of 2 June 2004, in order to determine whether the events that took place led to a work stoppage and, if this was not the case, to ensure that the rights of SINTRAEMCALI were re-established. This action is pending.*
- 359.** *As to the acts of violence, the Committee notes that according to the Government, the Office of the Public Prosecutor (Fiscalia General) was made aware of the situation in order to determine the responsibility of the workers involved in these acts which are not covered by Conventions Nos. 87 and 98.*
- 360.** *Firstly, as to the statement that a work stoppage had occurred and the ruling by the Ministry of Social Protection that it was illegal, in accordance with article 451 of the Substantive Labour Code, the Committee is of the opinion that responsibility for declaring a strike or work stoppage illegal should lie not with the Government but with an independent body which has the confidence of the parties involved, particularly in those cases where the Government is party to the dispute [see **Digest**, op. cit. paras. 522 and*

523], the judicial authority being best placed to act as an independent authority. In this regard, the Committee regrets that it has to reiterate as it has stated, on a number of occasions, that article 451 of the Substantive Labour Code is not in accordance with the principles of freedom of association [see 337th Report, Case No. 2356, para. 715 and Case No. 2355, para. 631]. This situation is particularly apparent in the present case, involving opposing points of view between the trade union organization and EMCALI, a public enterprise. Given these circumstances, the Committee requests the Government to take the necessary measures without delay to amend article 451 of the Substantive Labour Code, in accordance with the principle that responsibility for declaring a strike illegal should lie with an independent body which has the confidence of the parties involved. The Committee requests the Government to keep it informed in this regard.

- 361.** Secondly, the Committee observes that an action is currently pending before the Council of State, the highest judicial authority to examine decisions of the administrative authorities, for annulment and the re-establishment of rights, against resolution No. 1696 of 2 June 2004, in order to determine whether the events that took place led to a work stoppage and, if this was not the case, to ensure that the rights allegedly violated by EMCALI EICE ESP are re-established. Given these circumstances, with regard to the finding that a work stoppage had occurred and the declaration by the Ministry of Social Protection that it was illegal, the Committee requests the Government to inform it of the final outcome of this action and trusts that the State Council will take into account the principles set forth in the preceding paragraphs concerning the undertaking of an independent investigation and the declaration of a work stoppage by an independent authority.
- 362.** As to the dismissal of the 43 union members and six union leaders, the Committee notes that according to information from SINTRAEMCALI, none of the dismissal decisions has been re-examined. The Committee also notes that according to the Government, the workers' right to defence and due process was guaranteed, since disciplinary proceedings have been launched in accordance with the provisions of article 2 of resolution No. 001696 prior to sanctions being imposed on those who participated in a collective work stoppage that has been declared illegal. Furthermore, pursuant to the Committee's earlier recommendation that the dismissals be reviewed, the Committee notes that the enterprise proceeded to carry out a new inquiry in order to satisfy the demands of the ILO, reviewing the copies of the videos filmed during the work stoppage, confirming the occurrence of a work stoppage and identifying those who participated in that action. Firstly, the Committee observes that the enterprise does not have the status of independent authority to enable it to undertake the requested investigation. Secondly, the Committee observes that the dismissal of 49 SINTRAEMCALI workers was the result of their alleged participation in a work stoppage declared illegal by the Ministry of Social Protection, a declaration currently being examined by the State Council as set forth in the previous paragraph. Given these circumstances, the Committee requests the Government to re-examine the dismissal situation in the light of the decision of the State Council, once this has been handed down, and requests the Government to keep it informed of any progress in this regard.
- 363.** As to the investigation launched by the Public Prosecutor into the acts of violence, the Committee requests the Government to keep it informed of the outcome of this investigation.
- 364.** As to the most recent allegations presented by SINTRAEMCALI concerning the launch of 462 sets of disciplinary proceedings and the pressure exerted on workers not to discuss the trade union or risk dismissal, the Committee, recalling that "no person should be dismissed or prejudiced in his or her employment by reason of legitimate trade union activities" [see *Digest*, op. cit., para. 696], requests the Government to take the necessary measures to guarantee EMCALI workers the ability to exercise their trade union rights

*freely and without fear of reprisals, to carry out an independent investigation in which both parties are confident into the pressure, threats and disciplinary proceedings to which workers were subject, and to keep it informed in this regard.*

### **University of Pedagogy and Technology of Colombia (UPTC)**

- 365.** *As to the allegations presented by the Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE-UPTC) concerning the non-renewal of the employment contracts of the lecturers Ms. Nilce Ariza [see 337th Report, para. 660 onwards] and Ms. Isabel Cristina Ramos, despite the fact that they were trade union leaders, the Committee notes with regard to Ms. Ariza that the complainant organization encloses a copy of the notarial certificate in which a female student at the university declares having heard the Vice-Rector of the university state that, the lecturer, Ms. Nilce Ariza, had been dismissed due to the activities of her partner, the chairperson of the trade union organization. At the same time, the Committee notes that according to the trade union organization, the selection process for lecturers for the 2004 period, from which she was excluded, went ahead despite not having been properly advertised and without the corresponding merit-based selection procedure having taken place, giving rise to a number of administrative and legal actions against the university and its authorities by the trade union organization. The Committee also notes that, according to the complainant organization, the university initiated disciplinary proceedings against the chairperson of the trade union organization for having lodged a tutela action following the dismissal of Ms. Ariza.*
- 366.** *The Committee notes that, according to the information supplied to the Government by the university, Mr. Luis Bernardo Díaz Gamboa, chairperson of the trade union and partner of Ms. Nilce Ariza, has been a full-time university lecturer since 2003. As a result of this and in accordance with article 39 of Decree No. 196 of 1971, as a public servant, he may not practice as a lawyer and in particular may not litigate against the nation, the district or the municipality. Thus, owing to the fact that he presented a tutela on behalf of Ms. Ariza, which constitutes a disciplinary matter, the legal office informed the dean of the university, who referred the matter to the Attorney-General of the nation. As to the matter of the selection of teaching staff, the university reiterates that temporary teaching staff members are neither public employees nor public officials and the university, as an autonomous entity, in accordance with resolution No. 057 of 2003, held a public selection procedure. Ms. Ariza simply did not meet the requirements of that procedure.*
- 367.** *The Committee recalls that in its previous examination of the case, it considered that Ms. Ariza had not been hired for the year 2004 because of her refusal to present her candidature as she had done on previous occasions on which she had been employed, and that, with regard to her trade union immunity as a member of the executive committee, the very nature of the fixed-term temporary lectureship contract dictated that it would expire once the term had concluded, and that under these circumstances, it was inappropriate to request the lifting of trade union immunity because the intention was not to dismiss a worker. Rather, the contract binding worker to employer had come to an end. [see 337th Report, para. 708].*
- 368.** *However, the Committee observes that according to the new allegations, no selection procedure for the renewal of teaching posts was held in 2004 and the start of the procedure was never advertised. At the same time, the Committee observes that according to the statement made by a female student, the Vice-Rector is alleged to have stated that Ms. Ariza's contract would not be renewed because of her links with the chairperson of the trade union. Given this situation, the Committee requests the Government to take the necessary measures to carry out an independent investigation in order to establish whether*



*the renewal of Ms. Ariza's contract was refused on anti-union grounds and to inform the Committee of the outcome.*

- 369.** *In addition, the Committee observes that proceedings have been initiated against the chairperson of the trade union, Mr. Luis Bernardo Díaz Gamboa, on the grounds that he represented Ms. Ariza despite his status as a public servant barring him from bringing legal proceedings as a lawyer. The Committee observes that Mr. Díaz Gamboa did not provide representation as a lawyer but rather in his capacity as chairperson of the trade union to which Ms. Ariza belongs. Consequently, the Committee requests the Government to take measures to revoke the proceedings launched and to guarantee fully Mr. Gamboa's right to carry out his trade union activities.*
- 370.** *As to the case of the lecturer, Ms. Isabel Cristina Ramos, controller of the trade union organization, the Committee observes that her contract was not renewed despite the reinstatement order issued by the Third Labour Court of the Circuit of Tunja on 25 August 2005, on the grounds that her trade union immunity had not been lifted prior to dismissal. The Committee notes that the Government, for its part, states that the District High Court revoked the previous finding, ruling that the amparo (enforcement of constitutional rights) mechanism was inappropriate, owing to the fact that the trade union leader was not linked to the university by an employment contract, as was claimed in her tutela appeal, but rather had been appointed, under resolution No. 0904 of 16 February 2004, from that date until 16 December of the same year, to the post of temporary full-time lecturer. Moreover, although the trade union leader was dismissed despite her trade union immunity, according to the ruling, she may make use of the legal mechanism stipulated in article 118 of the Procedural Labour and Social Security Code. The Government adds that the trade union organization did not turn to the ordinary labour courts, the competent body with regard to events related to the dismissal of workers with trade union immunity.*
- 371.** *In this regard, the Committee refers to its observation in its previous examination of the case that fixed-term contracts such as those of temporary lecturers are ended once the term has concluded without the need to request judicial authorization for the lifting of trade union immunity, since the very nature of the fixed-term temporary lectureship contract dictates that it will expire once the term has concluded and that, given these circumstances, it is inappropriate to request the lifting of trade union immunity because the intention is not to dismiss a worker. Rather, the contract binding worker to employer has come to an end. Bearing this in mind, unless the complainant organization can supply additional evidence in support of the alleged anti-union nature of the non-renewal of the contract, the Committee will not proceed with the examination of these allegations.*

## **The Committee's recommendations**

- 372.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) As to the dismissal of the eight National Union of Public Employees of the National Service for Training SENA (SINDESENA) union leaders, whose posts the Committee requested the Government to take the necessary measures to retain in order that they could carry out their functions during the restructuring process and, should this prove impossible, to transfer them to similar posts, the Committee, noting that the trade union immunity of one of these individuals has already been lifted, leading to his dismissal, requests the Government to keep it informed of any developments in the circumstances of the other seven union leaders.*

- (b) *As to the National Service for Training's (SENA) refusal to bargain collectively, the Committee, recalling that special modalities of application may be established for collective bargaining within the public administration, but bearing in mind that collective bargaining cannot be considered to exist merely on the basis of the presentation of petitions, once again requests the Government to take the necessary measures to ensure that, in consultation with the trade union organizations concerned, legislation be amended without delay in order to bring it into line with the Conventions ratified by Colombia. The Committee requests the Government to keep it informed of any developments in this regard.*
- (c) *As to SENA's refusal to grant trade union leave, the Committee, recalling that Paragraph 10(1) of the Workers' Representatives Recommendation, 1971 (No. 143), provides that workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions and that, whilst the workers' representative may be required to seek authorization from his/her superiors before taking time off, such authorization should not be denied without proper justification, expects that the Government will continue to grant the authorization necessary for the carrying out of trade union activities, in consultation with the organizations concerned.*
- (d) *As to the new allegations presented by the complainant organization concerning the persecution and threatening of trade union leaders, the launch of disciplinary proceedings against the entire Regional Subdirective of Magdalena for carrying out trade union activities and the three-month sanction imposed on Mr. Ricardo Correa Bernal, Vice-Chairperson of the Medellín Subdirective and Secretary of the organization's national committee, the Committee requests the Government to send its observations without delay.*
- (e) *As to the allegations presented by the Cali Municipal Enterprises Union (SINTRAEMCALI) concerning the administrative authority's declaration that the permanent assembly meeting held on Cali Municipal Enterprises (EMCALI) premises was illegal, a declaration which subsequently led to the dismissal of 43 trade union members and six trade union leaders, the Committee requests the Government:*
- (i) *to take the necessary measures without delay to amend article 451 of the Substantive Labour Code, in order that responsibility for declaring a strike or work stoppage illegal can be accorded to an independent body which has the confidence of the parties involved. The Committee requests the Government to keep it informed of any developments in this regard;*
  - (ii) *as to the ruling by the Ministry of Social Protection confirming the occurrence of a work stoppage and its declaration that this stoppage was illegal, the Committee requests the Government to inform it of the final outcome of the action initiated before the Council of State against resolution No. 1696 of 2 June 2004, in order to determine whether the*

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*events that took place led to a work stoppage. The Committee trusts that the Council of State will take into account the principles set forth in the preceding paragraphs concerning the requirement for investigations and the declaration of illegal strikes to be undertaken by an independent authority;*

- (iii) as to the dismissal of the 43 trade union members and six trade union leaders as a result of their alleged participation in a work stoppage declared illegal by the Ministry of Social Protection, currently under examination by the Council of State, the Committee requests the Government to re-examine the situation of those dismissed in the light of the future ruling of the Council of State, and to keep it informed of any developments in this regard;*
- (iv) as to the investigation initiated by the Office of the Public Prosecutor into acts of violence, the Committee requests the Government to keep it informed of the outcome of this investigation;*
- (v) as to the most recent allegations presented by SINTRAEMCALI concerning the launch of 462 sets of disciplinary proceedings and the pressure exerted on workers not to discuss the trade union or risk dismissal, the Committee requests the Government to take the necessary measures to guarantee EMCALI workers the ability to exercise their trade union rights freely and without fear of reprisals, to carry out an independent investigation with the confidence of both parties into the pressure, threats and disciplinary proceedings to which workers were subject, and to keep it informed in this regard.*
- (f) As to the non-hiring of lecturer, Ms. Nilce Ariza, by the University of Pedagogy and Technology of Colombia (U.P.C.T.), the Committee requests the Government to take the necessary measures to carry out an independent investigation in order to establish whether the renewal of Ms. Ariza's contract was refused on anti-union grounds and to inform the Committee of the outcome.*
- (g) As to the proceedings that have been initiated against the chairperson of the trade union, Mr. Luis Bernardo Díaz Gamboa, on the grounds that he represented Ms. Ariza, the Committee requests the Government to take measures to revoke the proceedings launched and to fully guarantee Mr. Gamboa's right to carry out his trade union activities.*

**Complaint against the Government of Colombia  
presented by  
the World Confederation of Labour (WCL)**

*Allegations: The World Confederation of Labour (WCL) alleges that Schering Plough S.A. is putting pressure on workers through electronic messages, so as to give up the collective agreement signed with the National Union of Workers of the Pharmaceutical and Chemical Industry (SINALTRAFARQUIM), as well as promoting temporary employment and carrying out collective dismissals. Supertiendas y Droguerías Olímpica S.A. is not complying with the collective agreement concluded with the National Union of Workers of Supertiendas y Droguerías Olímpica S.A. (SINALTRAOLIMPICA) and the members of the union are obliged to carry out tasks that are not part of their duties. The National Apprenticeship Service (SENA) is refusing to enter into collective bargaining with the Union of Workers of the National Apprenticeship Service (SINTRASENA); Ms. María Gilma Barahona Roa has been refused registration as a member of the executive committee of the National Unitary Trade Union of Official Workers and Public Servants of the State (SINUTSERES); and the Cundinamarca branch of the Red Cross is not respecting the package of benefits agreed upon in the collective agreement*

373. The complaints appear in communications from the World Confederation of Labour (WCL) dated 31 August 2005.
374. The Government sent its observations in a communication dated 21 February 2006.
375. Colombia has ratified the Freedom of Association and Protection of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

## A. The complainant organization's allegations

- 376.** The World Confederation of Labour (WCL) alleges that various anti-union acts have been committed in several companies. The allegations are set out below.
- 377.** Schering Plough S.A. is using electronic mail to pressure workers into giving up the collective agreement concluded with the National Union of Workers of the Pharmaceutical and Chemical Industry (SINALTRAFARQUIM); it promotes temporary employment for workers with more than 12 years' service and has carried out collective dismissals and brought pressure to bear on the workers to oblige them to give up their posts; and it has closed the sterile products facility and replaced the workforce contracted to work there by employees of parallel and satellite companies.
- 378.** Supertiendas y Droguerías Olímpica S.A. is not complying with clause 35 of the collective agreement concluded with the National Union of Workers of Supertiendas y Droguerías Olímpica S.A. (SINALTRAOLIMPICA), which stipulates that packers shall receive a minimum wage, plus a 1 per cent bonus and all other benefits, payments, overtime and holiday pay provided for by the law. The WCL states that, in order to cut costs, the company created a cooperative for minor workers. These children pay 14,000 Colombian pesos a month to be members of the cooperative and are assigned such heavy work schedules that they are unable to continue with their studies. They do not receive a wage, and depend entirely on tips from clients. They also have no social security. According to the WCL, the workers' cooperative is being used to disguise the employment relationship so that the company does not have to comply with Conventions Nos. 87 and 98.
- 379.** When the Union of Workers of the National Apprenticeship Service (SINTRASENA) decided to opt out of 65 per cent of the existing collective agreement, the National Apprenticeship Service (SENA) stated that it intended to limit the new agreement to what was required by law and to do away with certain benefits.
- 380.** The authorities have refused Ms. María Gilma Barahona Roa registration as a member of the executive committee of the National Unitary Trade Union of Official Workers and Public Servants of the State (SINUTSERES) because the unit where she works is currently undergoing restructuring. This ignores the fact that the grounds for non-registration are clearly set out in the Labour Code.
- 381.** Since September 2003, the Cundinamarca branch of the Red Cross has unilaterally decided not to respect the package of benefits agreed upon with the Trade Union of Workers of the Red Cross (SINTRACRUZROJA), and which it has been paying since 1987. The workers have filed *tutela* proceedings (for the protection of their rights) which are currently pending.

## B. The Government's reply

- 382.** With regard to Schering Plough S.A., the Government states that the alleged facts are vague. Furthermore, the company says that it has never been the subject of an administrative labour inquiry for non-respect of the right of freedom of association. On the contrary, the company has concluded 14 collective labour agreements establishing quite favourable working conditions for the company's workforce.
- 383.** According to the company, labour relations are excellent, in so far as the employers respect the right to organize and freedom of association and the workers respect the principle of free enterprise and the operational and hierarchical structure that is vital to any properly organized company.

- 384.** The Government also states that, according to the company, the latest collective labour agreement was signed on 22 November 2004, coming into force on 1 December 2004 and expiring on 30 November 2006, and it adds: “The agreement was the outcome of direct negotiations, conducted in an atmosphere of harmony, respect and good relations. None of the clauses of the agreement have been modified by the employer and working conditions have improved, in line with the financial equilibrium of the company and in the spirit of equity that must prevail in any collective bargaining.” The Government attaches copies of the minutes of the negotiations and of the collective labour agreement.
- 385.** Regarding the closure of the sterile products facility, according to the company, at the end of December 2004 the sterile facility had to be transferred to a Central American country for reasons linked to organization, productivity and globalization, rather than because of any intention to weaken the right to form trade unions and freedom of association; indeed the trade union organization continues to exist and to exercise its functions. Consequently, the company introduced a voluntary retirement programme, against which none of the workers taking up the offer lodged a complaint with the judicial authority. In order to clarify the situation further, the Government attached a copy of the record of the conciliation procedure signed by the workers and the company at the Ministry of Social Welfare. The Government also enclosed a report submitted by the BDM company to Schering Plough S.A. on the support, assistance and training provided to the workers who accepted voluntary retirement.
- 386.** The Territorial Directorate for Cundinamarca of the Ministry of Social Welfare launched an administrative labour inquiry into Schering Plough S.A. in response to a request made by Mr. Luis Orlando Velásquez, but the inquiry was shelved as a result of the conciliation agreement concluded between the company and the plaintiff. The Government attached a copy of the record.
- 387.** With regard to the allegations relating to non-compliance with clause 35 of the collective agreement by Supertiendas y Droguerías Olímpica S.A., the Government states that the Territorial Directorate for Atlántico of the then Ministry of Labour and Social Security carried out an administrative labour inquiry into the matter and ruled, in resolutions Nos. 00318 of 27 April 2000 and 00737 of 3 August 2000 that there were no grounds for imposing sanctions on Supertiendas y Droguerías Olímpica S.A. The decision of the Territorial Directorate was based on its conclusion that “the National Union of Workers of Supertiendas y Droguerías Olímpica S.A. (SINALTRAOLIMPICA) is not the legitimate representative of the interests of self-employed minor workers who, although providing services within the said company, are not members of this trade union organization – nor could they be since under the labour regulations the organization can only represent its own members; representation of the minor workers therefore comes under the Colombian Civil Code and the Minors’ Code”. The two resolutions were attached.
- 388.** The Government states that, according to the information provided by the Administrative Vice-Chairperson of Supertiendas y Droguerías Olímpica S.A., the post referred to in the complaint in question does not currently exist within the company. The title of this post is now General Services Assistant, a category that absorbed a number of posts whose titles were expressly abolished by the parties to the negotiation process, the trade union and the company. According to the Administrative Vice-Chairperson, the former post of “packer” bears no relation to the tasks carried out by the cooperative of minor packers, given that the former focuses on activities inside the company while the latter is intended for the clients.
- 389.** The Government adds that Colombia has no law prohibiting employers from creating cooperatives, which is why Supertiendas y Droguerías Olímpica S.A. became involved in setting up the Cooperative of Minor Workers (COOTRAMENOR), which was approved through resolution No. 000978 of 28 September 2000. The cooperative consists of young

people who transport products purchased by clients to their vehicles; in other words they provide a direct service to the client and not to Supertiendas y Droguerías Olímpica S.A. The company financed the social security contributions for the members of the cooperative. The company also works with educational bodies to provide secondary education for members of the cooperative, who also have access to training programmes and to courses aimed at improving the social, cultural, employment and economic profile of minors. All of this contributes to their personal growth and protection within the community through decent, honest work.

- 390.** Regarding the SENA, the Government states that the WCL is unclear in its presentation of the facts involved in its complaint. On the one hand, it says that it was SINTRASENA that denounced the collective labour agreement with SENA and, on the other, it encloses annexes showing that it was denounced by SENA.
- 391.** The Government observes that, in accordance with the Supreme Court of Justice's ruling of 22 November 1984, reiterated in its ruling of 27 September 1993, "the denunciation of collective labour agreements, and by extension that of arbitration awards, is a right granted by law to the parties to terminate an agreement or award, but in fact they are not terminated until a new agreement has been concluded or an award has been handed down, as stipulated in article 14 of Decree No. 616 of 1954. When the denunciation is made by the workers, they must present their list of demands, which marks the start of the collective dispute; the dispute is resolved when a collective agreement is signed, or an award is handed down. When the denunciation is made by both parties, the negotiations on the list of demands are not subject to any previous agreements entered into by the parties in a collective agreement, or set out in an arbitration award. If it is the employer alone who denounces the agreement, it remains in force, and may be extended as provided for in the law, because employers cannot present lists of demands and therefore are not able to initiate a collective dispute that results in another collective agreement or in an award being made by a mandatory arbitration tribunal".
- 392.** The Government adds that, in its ruling of 27 September 1993, the Supreme Court of Justice stated: "The denunciation of a collective agreement and the submission of a list of demands are different legal processes and serve a different purpose. Currently, the denunciation of a collective agreement does not have the legal effect of terminating the agreement, but only of advising the other party that the agreement is no longer considered a satisfactory instrument for regulating general employment conditions within the company. Consequently, the possibility arises of a collective dispute being conducive to a new 'company law'; it does not have the effect, which it originally had under section 479 of the Labour Code, of terminating the collective agreement."
- 393.** The Government concludes by stating that, in accordance with the communication signed by SENA's human resources group coordinator, SINTRASENA has not to date denounced the collective agreement, which has therefore been extended six months at a time, as stipulated in the national legislation.
- 394.** As to the refusal by the authorities to register Ms. María Gilma Barahona Roa as a member of the executive committee following her election by the National Assembly of SINUTSERES to the post of controller (fiscal), the Government states that Ms. Barahona Roa works for the National Local Road Fund. The Fund is in the process of being liquidated, which is why the Territorial Directorate for Meta of the Ministry of Social Welfare has refused her registration as a member of the executive committee. The Directorate based its decision on the following:
- it is expressly forbidden for the legal representatives of a body in the process of liquidation to carry out activities involving the conclusion of collective agreements or

any act which is not concerned with its liquidation; this ban applies from the moment the decree ordering the dissolution and liquidation of the body has been issued;

- workers who establish trade unions, set up union branches or elect executive committees within official bodies that are in the process of liquidation cannot exercise the right to freedom of association, inasmuch as the legal representatives of such bodies – i.e. their employers – are prohibited from concluding collective labour agreements or improving working conditions as, by law, they are not empowered to do so. In such cases official registration as a trade union is not considered appropriate, especially as the Ministry of Social Welfare is responsible for supervising and controlling the implementation of labour legislation and, in particular, collective labour law in the public and private sectors, as stipulated in sections 3 and 485 of the Labour Code.

**395.** According to the Government, this is borne out by the fact that trade union immunity is a privilege enjoyed by workers, who may neither be dismissed nor demoted without just cause previously certified by a labour tribunal. As has been pointed out on previous occasions, the philosophy and democratic principle behind this rule is not stability of employment but the protection of the freedom of association as a fundamental right.

**396.** Regarding the allegations of non-respect of the package of benefits, the Government states that, according to the legal representative of the Red Cross, under Colombian legislation the benefits referred to in the complaint are in fact supplementary benefits that were unilaterally recognized by the organization in the case of some of its collaborators but were never included in the collective agreement or incorporated into labour contracts. Consequently, the employer was entitled to cease applying them at any time. Moreover, although the trade union organization presented the institution with a list of demands that included most of the extralegal benefits contained in the package in the hope of having them written into the collective agreement, no agreement was reached. Consequently, a Compulsory Arbitration Tribunal was convened which handed down an arbitration award on 15 November 2001. Article 4 of the award states: “All the extralegal benefits contained in the package of services and benefits may be granted to the employees by the employer only if financial, economic and administrative circumstances so permit; the employer may at any time amend, modify, increase or cancel the said benefits, based on the institution’s financial, economic or administrative prospects.”

**397.** The Government states that the trade union organization lodged an appeal for annulment of the award that was turned down by the Supreme Court of Justice, which concluded that, given the critical economic condition in which the institution found itself, it would be impossible to impose any additional financial burden which might jeopardize the very existence of the employer.

**398.** Consequently, taking into account the financial and economic difficulties that the institution was facing and which the workers were fully aware of, it decided quite rightly to inform its workers it had no alternative but to cancel the package.

**399.** The Government adds that the workers filed *tutela* proceedings (for the protection of their rights) and a ruling was handed down on 14 April 2005, when the complaint was rejected by the 16th Municipal Criminal Court, which considered that there had been no violation of the workers’ rights. The Government attached a copy of the ruling. The Territorial Directorate for Cundinamarca has now called for an administrative labour inquiry into the Red Cross for alleged violation of the collective labour agreement. The inquiry is under way.



### C. The Committee's conclusions

- 400.** *The Committee notes that the present case refers to allegations presented by the World Confederation of Labour (WCL), according to which: (1) Schering Plough S.A. is putting pressure on workers through electronic messages, so as to give up the collective agreement signed with the National Union of Workers of the Pharmaceutical and Chemical Industry (SINALTRAFARQUIM), as well as promoting temporary employment, carrying out collective dismissals and closing one of the company's facilities; (2) Supertienas y Droguerías Olímpica S.A. is not complying with clause 35 of the collective agreement concluded with the National Union of Workers of Supertienas y Droguerías Olímpica S.A. (SINALTRAOLIMPICA), which stipulates that packers shall receive a minimum wage. Furthermore, the packers are minors and are not held to be employees of the company, as they are members of a cooperative which, according to the WCL, was set up as a means of avoiding compliance with the Conventions Nos. 87 and 98; (3) following the denunciation of the collective agreement by SINTRASENA, the National Apprenticeship Service (SENA) attempted to cancel existing benefits; (4) refusal to register a member of the executive committee of the National Unitary Trade Union of Official Workers and Public servants of the State (SINUTSERES) on the grounds that the unit where she works is in the process of liquidation and; (5) the Cundinamarca branch of the Red Cross is not respecting the package of benefits on which agreement had been reached.*
- 401.** *As to the allegations that Schering Plough S.A. is using electronic mail to pressure workers into giving up their collective agreement, promoting temporary work, carrying out collective dismissals and closing one of the company's facilities, the Committee notes the information provided by the company to the Government, according to which the company has concluded 14 collective labour agreements, the latest of which was signed on 22 November 2004, following direct negotiations and without any collective dispute arising, and expires at the end of 2006. The Committee also notes, with regard to the closure of the company's sterile facility, that this was in response to organizational requirements and was not carried out for anti-union reasons. Consequently, the company introduced a voluntary retirement programme against which none of the voluntary retirees lodged a complaint with the judicial authority. The Committee notes that the Government attaches a copy of the record of conciliation procedure signed by the workers and the company at the Ministry of Social Welfare, and a report submitted by a company working for Schering Plough S.A. on the support, assistance and training provided to the workers who accepted voluntary retirement. The Committee further notes that, according to the Government, an administrative inquiry into the company, initiated by one of the workers who had been dismissed, was shelved because a conciliatory agreement had been reached with the company.*
- 402.** *As to the pressure put on the workers through emails to denounce their collective agreement, the Committee considers that, given the information provided regarding a series of successful negotiations carried out within the company and the fact that there is currently a collective agreement in force which expires at the end of 2006, there are not in this particular case sufficient grounds to determine the existence of a violation of the trade union rights of the workers. In these circumstances, the Committee shall not proceed any further with its examination of this allegation.*
- 403.** *Regarding the promotion of temporary work, the closure of one of the company's production facilities and the collective dismissal of workers, the Committee considers that, in these circumstances, it is not for it to give an opinion on these measures, to the extent that they do not, in themselves, constitute a violation of freedom of association. Nevertheless, the Committee recalls the importance of carrying out full and frank consultations with trade union organizations given the consequences that such measures, including closure of the enterprise, have in the social and trade union fields.*

- 404.** *As to the allegations that Supertiendas y Droguerías Olímpica S.A. has violated clause 35 of the collective agreement concluded with the trade union organization SINALTRAOLIMPICA, which sets the wage that is to be paid to merchandize packers, and that minors are being hired to perform this task and grouped together in cooperatives in order to avoid compliance with Conventions Nos. 87 and 98, the Committee notes that, according to the Government, the Ministry of Labour and Social Security carried out an administrative labour inquiry in April 2000 and found that there were no grounds for imposing sanctions on the company, as it considers that the organization does not have a legitimate mandate to represent the interests of self-employed minors who, although they provide their services within the said company, are not members of the trade union. The Government adds that, according to the company, the minors working in the cooperative provide a service which consists of transporting goods purchased by clients to their vehicles, and this service is thus provided directly to the client and not to the company. In this regard, the Committee first of all notes that there is a discrepancy between the accounts provided by the trade union organization and the company with regard to the worker status of the minors and as to whether they are covered by clause 35 of the collective agreement. While the trade union considers that the minors are working for the company and should thus be covered by the collective agreement, the Government states that, according to the company, the minors are self-employed workers who are members of a cooperative which Olímpica S.A. has helped to establish, they do not work for the company but provide a service for the supermarket's clients, and the post of packer no longer exists within the company. The Government states that there are no regulations forbidding employees to establish cooperatives, and adds that, as the workers in question do not belong to the trade union organization, the latter does not have a legitimate mandate to present a complaint.*
- 405.** *The Committee recalls in general terms that Article 2 of Convention No. 87 stipulates that workers, without any distinction, have the right to establish and to join trade union organizations, the only exceptions being the police and the armed forces. The Committee therefore considers that the minor workers and those working in cooperatives should be allowed to form or join trade union organizations of their own choosing. In these conditions, the Committee requests the Government to take the necessary measures to ensure that those minors who provide services outside Supertiendas y Droguerías Olímpica S.A. are able freely to exercise their trade union rights in order to defend their rights and interests, irrespective of whether they work directly for Supertiendas y Droguerías Olímpica S.A., or are self-employed workers or work for a cooperative. The Committee observes that it has previously examined numerous allegations concerning cooperatives in Colombia and recalls that a high-level mission which has recently visited the country, has also examined this question. The Committee recalls its previous statement that although cooperatives represent one particular way of organizing production methods, it cannot cease consideration of the special situation of workers with regard to cooperatives, in particular as concerns the protection of their labour interests and considers that such workers should enjoy the right to join or form trade unions in order to defend those interests [see 337th Report, Case No. 2362, para. 757 and 336th Report, Case No. 2239, para. 353].*
- 406.** *As to the alleged non-compliance with clause 35 of the agreement, the Committee requests the Government to send it a copy of the collective agreement so that it can determine its scope.*
- 407.** *With regard to the allegations presented by SINTRASENA concerning the partial denunciation of the collective agreement (equivalent to 65 per cent of the previous agreement) by the National Apprenticeship Service (SENA) and SENAs statement that it intended to limit the new agreement to what was required by the law, thereby doing away with certain subsidies, the Committee notes that, according to the Government, the*

*denunciation of collective labour agreements is a right granted by law to the parties but a collective agreement is in fact valid until a new agreement has been concluded or an arbitration award has been handed down. The Committee further notes that, according to the Government and in accordance with the legislation in force, if the agreement is denounced by the workers they must present a list of demands that marks the start of the collective dispute, which itself is resolved when a collective labour agreement is signed, or an arbitration award is handed down. When the denunciation is made by both parties, the negotiations on the list of demands are not subject to any previous collective agreements entered into by the parties or arbitration award handed down by the arbitration tribunal. If it is the employer alone who denounces the collective agreement, it remains in force and may be extended as provided for in the law, because employers cannot present lists of demands and therefore are not able to initiate a collective dispute that results in another collective agreement or in an award being made by a mandatory arbitration tribunal.*

- 408.** *The Committee notes that, in the present case, the collective dispute was initiated following the partial denunciation of the agreement by the trade union organization, following which the employer declared that its real intention in the new negotiation process was to reduce the benefits that had been granted in previous negotiations. The Committee notes that these aims became clear in the course of the negotiations. In this regard, the Committee recalls that the opportunity which employers might have, according to the legislation, of presenting proposals for the purposes of collective bargaining – provided these proposals are merely to serve as a basis for the voluntary negotiation to which Convention No. 98 refers – cannot be considered as a violation of the principles applicable in this matter [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 849]. In these conditions, the Committee considers that the mere statement made by SENA does not violate the principle of free and voluntary negotiation.*
- 409.** *As to the refusal by the authorities to register Ms. María Gilma Barahona Roa as a member of the executive committee following her election by the National Assembly of SINUTSERES to the post of controller (fiscal), the Committee notes that, according to the Government, this refusal is based on the fact that Ms. Barahona Roa works for the National Local Road Fund, which is in the process of being liquidated. Therefore, according to the Government, because the legal representatives of a body in the process of liquidation are not allowed to conclude collective agreements, the establishment of trade unions, the creation of trade union branches or the election of executive committees becomes irrelevant as the representatives can no longer undertake any action aimed at improving working conditions. Firstly, the Committee notes that, according to the complainant organization, Ms. Barahona Roa was elected to the post of controller within the executive committee of a national trade union organization to carry out duties going beyond the defence of the workers' interests within the body that is in the process of liquidation. Secondly, Ms. Barahona Roa continues to play a fundamental role within the body being liquidated, even though the legislation stipulates that no new collective agreements may be concluded. This role mainly consists of defending the interests of the workers during the process of liquidation. Thirdly, and finally, the Committee recalls that, in accordance with Article 3 of Convention No. 87, workers have the right to elect their representatives in full freedom. For all these reasons, the Committee requests the Government to take the necessary measures without delay for Ms. Barahona Roa to be registered as a member of the executive committee of SINUTSERES. The Committee requests the Government to keep it informed in this regard.*
- 410.** *Regarding the allegations relating to the non-respect by the Red Cross of the package of benefits agreed upon with SINTRACRUZROJA, the Committee notes that, according to the Government, the said benefits had been unilaterally granted to the workers by the Red Cross since 1987 and that, although the trade union organization claimed that these benefits were provided for in one of the collective agreements it had concluded, the*

employer denied it. Consequently, a compulsory arbitration tribunal was convened which handed down an arbitration award on 15 November 2001. The award stated that all the extralegal benefits contained in the package of services and benefits for employees should be granted by the employer only if financial, economic and administrative circumstances so permitted. The Committee also notes that, with regard to the application lodged by the trade union organization to have the award quashed, the Supreme Court took into account the critical economic condition in which the employer found itself and concluded that it was impossible to impose any additional financial burden which might jeopardize the very existence of the employer. The company then proceeded to inform the workers of its decision to cancel the said package of extralegal benefits. As a result, the complainant organization filed tutela proceedings (for the protection of its rights) which were dismissed on 14 April 2005. However, the Committee notes that the outcome of an administrative labour inquiry into alleged violations of the collective labour agreement is still pending. In these conditions, the Committee requests the Government to keep it informed as to the outcome of this inquiry.

### **The Committee's recommendations**

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

- (a) Regarding the allegations that Supertiendas y Droguerías Olímpica S.A. has violated clause 35 of the collective agreement concluded with the trade union organization, the National Union of Workers of Supertiendas y Droguerías Olímpica S.A. (SINALTRAOLIMPICA), which sets the wages that must be paid to minors providing packing services outside the company:**
  - (i) the Committee requests the Government to take the necessary measures to ensure that the minor workers are able freely to exercise their trade union rights in order to defend their rights and interests, irrespectively of whether they work directly with Supertiendas y Droguerías Olímpica S.A., or are self-employed workers or work for a cooperative;**
  - (ii) the Committee requests the Government to send it a copy of the collective agreement so that it can determine the scope of clause 35.**
- (b) Regarding the refusal by the authorities to register as a member of the executive committee Ms. María Gilma Barahona Roa, elected by the National Assembly of the National Unitary Trade Union of Official Workers and Public Servants of the State (SINUTSERES) to the post of controller (fiscal) as a member of the executive committee, the Committee requests the Government to take the necessary measures for her to be registered without delay.**
- (c) Regarding the allegations relating to the non-respect by the Red Cross of the package of benefits agreed upon with the Trade Union of Workers of the Red Cross (SINTRACRUZROJA), the Committee requests the Government to keep it informed of the outcome of the administrative labour inquiry into the alleged violation of the collective labour agreement.**

CASE NO. 2450

INTERIM REPORT

**Complaint against the Government of Djibouti  
presented by**

- the Djibouti Union of Workers (UDT)
- the General Union of Djibouti Workers (UGTD) and
- the International Confederation of Free Trade Unions (ICFTU)

*Allegations: The complainant organizations, the Djibouti Union of Workers (UDT) and the General Union of Djibouti Workers (UGTD), allege that the Government: refuses to take the necessary measures to reinstate union members dismissed in 1995 following a strike in protest against the consequences of a structural adjustment programme launched by the IMF, despite having made a commitment to do so in 2002; continues to unfairly dismiss union officials and to harass them; has adopted a new Labour Code spelling the end of free and independent trade unionism; and shows favouritism in the appointment of worker's delegates to regional and international conferences. The UDT also alleges that a senior union official (postal sector) was unfairly dismissed; union members were repeatedly harassed; and the judiciary has not acted on complaints from union members. The ICFTU alleges the violent suppression of a strike carried out by bus and truck drivers in September 2005, which resulted in numerous arrests and the assassination of a member of the drivers' union; the prohibition of trade union elections at the national printing press during the year 2005; impediments placed by the Government to the holding and organizing of free trade union elections at all levels; massive arrests and detention of trade union members and leaders from the Union of Port Workers (UTP); the arrest of Mohamad Ahmed Mohamad, responsible for legal affairs at the UTP, Djibril Ismael Egueh, Secretary-General of the Staff Union at the Maritime and Transit Services (SP-MTS), Adan Mohamed Abdou, Secretary-General of the UDT and Hassan Cher*

*Hared, Secretary for International Affairs of the UDT, all of whom were ultimately charged with “delivering information to a foreign power”; and the barring from entry of an international trade union solidarity mission, despite the formal assurances given by the Minister of the Interior for their unimpeded entry into Djibouti and the subsequent arrest and interrogation of the unique member of this mission allowed to enter the country, an ILO official*

- 412.** The complaint is contained in communications, one sent jointly by the Djibouti Union of Workers (UDT) and the General Union of Djibouti Workers (UGDT) and the other from the Djibouti Union of Workers, both dated 4 August 2005, as well as a communication dated 20 May 2006 from the International Confederation of Free Trade Unions (ICFTU) whereby it associates itself to the complaint and provides additional information.
- 413.** The Government sent its observations in a communication dated 15 January 2006.
- 414.** Djibouti has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainants’ allegations**

- 415.** In one of the communications dated 4 August 2005, the complainants allege that following a strike declared by the two trade unions in September 1995 in protest against the implementation of a structural adjustment programme launched by the IMF, which drastically reduced Djiboutian workers’ wages, the Government adopted measures to repress protesters and union officials.
- 416.** The complainants add that the Government has acted in bad faith by failing to abide by the agreement of 8 July 2002, in which the Government undertook to reinstate the dismissed union members. At the time the agreement was signed, 11 union members had been reinstated and ten had not. Their names are included in the agreement of 8 July.
- 417.** The complainants allege that the Government continues to unfairly dismiss union officials and that they are difficult to replace because of the repression against union members.
- 418.** They allege that certain union officials, including the general secretary of the UDT and his deputy, Mr. Adan Mohamed Abdou and Mr. Souleiman Ahmed Mohamed, the treasurer and his deputy, Mr. Badoukalek Waberi Houffaneh and Mr. Awad Ibrahim Arnaoud, the international relations secretary, Mr. Hassan Cher Hared, the communications secretary and his deputy, Mr. Farah Abdillah Miguil and Mr. Kamil Hassan, are prohibited from working and have been subjected to various forms of harassment, intimidation and blackmail. The friends and families of the union members are also being pressured. In addition, the head of the East African affairs division of Belgium’s Office of the Commissioner General for Refugees and Stateless Persons was severely criticized for meeting union members and the Djiboutian human rights league.
- 419.** The complainants also allege that in November 2004, the Government adopted a new “antisocial” Labour Code, which was drafted unilaterally and is contrary to several international labour Conventions ratified by Djibouti, to human rights, and to the national

Constitution; according to the complainants, the Code will effectively eradicate free and independent trade unionism.

- 420.** In addition, the complainants allege that the Government deliberately included bogus union members in Djibouti's tripartite delegation's to certain regional and international ILO meetings.
- 421.** The UDT adds the Mr. Hassan Cher Hared, general secretary of the Djibouti Postal Workers' Union and international relations secretary of the UDT, was unfairly dismissed, after having been subjected to several acts of harassment since 1999 and while he was already being wrongfully penalized by arbitrary suspension without pay.
- 422.** It also alleges that Mr. Hassan Cher Hared lodged three complaints with the Attorney-General of the Republic which has remained unanswered, without any explanation.
- 423.** In its communication dated 20 May 2006, the International Confederation of Free Trade Unions (ICFTU) associates itself to the complaint and provides additional information concerning: the violent suppression of a strike carried out by bus and truck drivers in September 2005, which resulted in numerous arrests and the assassination of a member of the drivers' union; the prohibition, by order of the Ministry for Employment and Communication, of trade union elections at the national printing press during the year 2005; impediments placed by the Government to the holding and organizing of free trade union elections at all levels; massive arrests and detention of trade union members and leaders from the Union of Port Workers (UTP); the arrest of Mohamed Ahmed Mohamed, responsible for legal affairs at the UTP and Djibril Ismael Egueh, Secretary-General of the Staff Union at the Maritime and Transit Services (SP-MTS), Adan Mohamed Abdou, Secretary-General of the UDT and Hassan Cher Hared, Secretary for International Affairs of the UDT, all of whom were ultimately charged with "delivering information to a foreign power", apparently related to their participation in or cooperation with a seminar on training in the area of agricultural cooperatives organized in Israel by the International Institute of the trade union Histadrut, a crime that is punishable with up to 15 years' imprisonment; the barring from entry of an international trade union solidarity mission, despite the formal assurances given by the Minister of the Interior for their unimpeded entry into Djibouti and the subsequent arrest and detention of the unique member of this mission allowed to enter the country, an ILO official.

## **B. The Government's reply**

- 424.** In its communication of 15 January 2006, the Government indicates that the representatives of both complainant organizations are merely politicians and no longer union officials because there have been no elections, so their terms of office have not been renewed since 1997. It states that the union no longer has any members, subscriptions or a democratically elected committee. According to the Government, the last UGTD conference was held on 10 March 1994 and the last UDT conference from 20 to 23 April 1995. These persons therefore have no authority whatsoever to speak on behalf of any Djiboutian trade union. In addition, the Government specifies that between 2000 and 2005, several missions from the ILO and other international organizations working in the field of freedom of association came to Djibouti and freely carried out their fact-finding task.
- 425.** The Government also states that it has offered to reinstate all the workers dismissed in 1995 in their original posts. Some have refused the offers, some have embarked on careers in politics, some have started their own businesses and some have been out of the country for ten years and have freely chosen to live abroad.

426. In response to the allegation regarding Mr. Hassan Cher Hared, the Government states that he was reinstated on 2 August 2005 but that he regularly neglects his duties.

### C. The Committee's conclusions

427. *The Committee notes that in this case the complainant organizations have made the following allegations: refusal to reinstate workers dismissed following a strike in 1995; continued unfair dismissal of trade union officials by the Government; harassment of trade union officials and refusal to allow them to work; the adoption of a new "antisocial" Labour Code, which violates the law and serves to eradicate free and independent trade unionism; and favouritism on the part of the Government with regard to trade union representation at regional and international conferences.*
428. *With regard to the alleged refusal to reinstate workers dismissed following a strike, the Committee recalls that respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action. The dismissal of workers because of a strike, which is a legitimate trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th (revised) edition, 1996, paras. 591 and 593]. The Committee notes that, under the terms of the agreement concluded on 8 July 2002 between the Directorate for Labour and Relations with the Social Partners and the trade union officials who were dismissed, the Government undertook to reinstate the trade union officials concerned. According to the agreement, on that date, ten trade union officials were still awaiting reinstatement. In light of this agreement and the Government's response in this regard, the Committee requests the Government to provide further information on the situation concerning seven of these individuals: Abdoulfatah Hassan Ibrahim; Hachim Adawe Ladieh; Houssein Dirieh Gouled; Moussa Wais Ibrahim; Abdillahi Aden Ali; Habib Ahmed Doualeh and Bouha Daoud Ahmed. The Committee requests the Government to ensure that all those workers who so wish are reinstated, without loss of wages or benefits, and that those not wishing to be reinstated receive adequate compensation.*
429. *The Committee notes with regret that the Government has not responded to the allegations of harassment and unfair dismissal of trade union officials. It draws the Government's attention to the fact that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [See **Digest**, op. cit., para. 724] The Committee also considers that the harassment of the friends and families of the trade union officials constitutes a serious threat to the free exercise of trade union rights and, in general, that the Government should take stringent measures to combat such practices. The Committee thus requests the Government promptly to launch an independent inquiry into the allegations of harassment and dismissal of trade union officials, as well as into the alleged pressure on their friends and families and, should evidence be found of such acts having been committed, to take immediately the necessary measures to put an end to such acts of discrimination and harassment and to punish those responsible.*
430. *With regard to the adoption of a new Labour Code, which, according to the complainant's, is "antisocial" and violates both international Conventions and the national Constitution, the Committee requests the Government to provide a copy of the text in question.*



431. *As to the allegation of favouritism in the appointment of worker's delegates to regional and international conferences, the Committee recalls that any decisions concerning the participation of workers' organizations in a tripartite body should be taken in full consultation with the trade unions whose representativity has been objectively proved [See Digest, op. cit., para. 943].*
432. *With regard to representativity, the Committee notes that, according to the Government, the trade union officials in question do not possess the legitimacy required to ensure representation of the workers. The Committee observes, however, that, according to the conclusions of the Credentials Committee of the International Labour Conference, it was only recently (in 2004) that the Government began to challenge the existence of the UDT and UGTD, although it had had, on numerous occasions, to respond to objections submitted by these two organizations [see 92nd Session of the International Labour Conference, Geneva, 2004, second report of the Credentials Committee]. The Committee also notes that, having been presented with a fresh objection by the UDT and the UGTD at the 93rd Session of the International Labour Conference, the Credentials Committee, while remaining concerned by the matter of a "recurring trade union problem" in Djibouti, encouraged the Government to avail itself of ILO technical assistance. Trusting that the efforts of the new Minister would bring about the legal and legitimate representation of workers in Djibouti, the Credentials Committee decided not to propose any action that year with regard to the objection submitted by the UDT and the UGTD [see 93rd Session of the International Labour Conference, Geneva, 2005, third report of the Credentials Committee].*
433. *The Committee considers, however, that the disputed question of the legitimacy of the UDT and the UGTD to represent Djiboutian workers cannot be examined without particular attention being given to the overall context of respect for trade union rights in Djibouti more generally. It thus notes with deep concern the new allegations recently made by the International Confederation of Free Trade Unions (ICFTU) of serious interference by the Government in trade union activities and internal union affairs, including more specifically: the violent suppression of a strike carried out by bus and truck drivers in September 2005; the prohibition, by order of the Ministry for Employment and Communication, of trade union elections at the national printing press during the year 2005; impediments placed by the Government to the holding and organizing of free trade union elections at all levels; the arrest of Mohamed Ahmed Mohamed, responsible for legal affairs at the UTP and Djibril Ismael Egueh, Secretary-General of the Staff Union at the Maritime and Transit Services (SP-MTS), Adan Mohamed Abdou, Secretary-General of the UDT and Hassan Cher Hared, Secretary for International Affairs of the UDT, all of whom were ultimately charged with "delivering information to a foreign power", a crime that is punishable with up to 15 years' imprisonment; the barring from entry of an international trade union solidarity mission, despite the formal assurances given by the Minister of the Interior for their unimpeded entry into Djibouti and the subsequent arrest and interrogation of the unique member of this mission allowed to enter the country, an ILO official. Deploring the information concerning the arrest of an ILO official, the Committee considers this to be a serious and urgent case and urges the Government to reply to these and the other serious allegations raised by the ICFTU without delay so that it may be in a position to examine this case in full knowledge of the facts.*
434. *Given the wholly contradictory information provided in the communications of the complainant organizations and the Government, the Committee requests the Government to accept a direct contacts mission in order to clarify the situation relating to the legitimate representative nature of the trade unions in Djibouti.*
435. *As regards the initial allegations relating to the dismissal of Hassan Cher Hared, while noting that, according to the Government, he has been reinstated, the Committee notes*

*with deep concern from the latest allegations that he has now been charged under the Penal Code and trusts that the Government will reply to these allegations without delay.*

### **The Committee's recommendations**

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

- (a) With regard to the alleged refusal to reinstate the workers dismissed following a strike, the Committee requests the Government to keep it informed of the situation regarding the trade union officials to be reinstated under the terms of the agreement of 8 July 2002: Abdoulfatah Hassan Ibrahim; Hachim Adawe Ladieh; Houssein Dirieh Gouled; Moussa Wais Ibrahim; Abdillahi Aden Ali; Habib Ahmed Doualeh and Bouha Daoud Ahmed. The Committee requests the Government to ensure that all those workers who so wish are reinstated, without loss of wages or benefits, and that those not wishing to be reinstated receive adequate compensation.*
- (b) With regard to the allegations of harassment and unfair dismissal of trade union officials, the Committee requests the Government promptly to launch an independent inquiry into the allegations of harassment and dismissal of trade union officials, as well as into the alleged pressure on their friends and families and, should evidence be found of such acts having been committed, immediately to take the necessary measures to put an end to such acts of discrimination and harassment and to punish those responsible.*
- (c) With regard to the allegation concerning the adoption of a new "antisocial" labour code which violates both international Conventions and the national Constitution, the Committee requests the Government to provide a copy of the text in question.*
- (d) Deploring the information concerning the arrest of an ILO official, the Committee considers this to be a serious and urgent case and urges the Government to reply without delay to the serious allegations raised in the latest communication of the ICFTU referring to government intervention in strike action and trade union elections, arrests and detention of trade union leaders and members, the barring from entry of an international trade union solidarity mission and the subsequent arrest and interrogation of the unique member of this mission who was allowed to enter the country, an ILO official, so that it may be in a position to examine this case in full knowledge of the facts.*
- (e) The Committee requests the Government to accept a direct contacts mission.*

CASE NO. 2423

INTERIM REPORT

**Complaints against the Government of El Salvador  
presented by**

- the Trade Union Federation of Public Service Workers of El Salvador (FESTRASPEs)
- the Siglo 21 Trade Union Federation (FS-21)
- the International Confederation of Free Trade Unions (ICFTU) and
- the National Federation of Salvadorian Workers (FENASTRAS)

*Allegations: Refusal by the Ministry of Labour to grant legal personality to the Dockworkers' Union of El Salvador (STIPES), the Salvadorian Metal Engineering Workers' Union (SITRASAIMM) and the Private Security Workers' Union of El Salvador (SITRASSPEs) and the Private Security Services Workers' Union (SITISPRI), and reprisals for the formation of these trade unions (34 dismissals in the case of STIPES and two dismissals and five transfers in the case of SITRASSPEs); dismissal of the official of the Education Workers' Union of El Salvador (STEES), Mr. Alberto Escobar Orellana; dismissal of 64 members or officials of the trade union branch operating in the Hermosa Manufacturing company; and dismissal of seven trade union officials in the CMT clothing company, all members of the General Union of Seamstresses*

- 437.** The complaints are contained in communications of the Trade Union Federation of Public Service Workers of El Salvador (FESTRASPEs) (11 May and 23 September 2005), the Siglo 21 Trade Union Federation (FS-21) (26 October 2005), the International Confederation of Free Trade Unions (ICFTU) (2 December 2005) and the National Federation of Salvadorian Workers (FENASTRAS) (26 April 2006).
- 438.** El Salvador has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainants' allegations**

- 439.** In its communication of 18 May 2005, the Trade Union Federation of Public Service Workers of El Salvador (FESTRASPEs) alleges that, with the object of defending labour rights and improving the conditions of work of current dockworkers and making use of the right to form trade unions, guaranteed under the Constitution, the Labour Code and the international conventions, the Dockworkers' Union of El Salvador (STIPES) was formed

on 6 December 2004 by 41 workers of private operators, contracted by the Autonomous Port Management Authority (CEPA): REMAR, S.A.; Operadora General, S.A. de C.V.; O&M Mantenimiento y Servicios, S.A. de C.V.; Operadores Portuarios Salvadoreños, S.A. de C.V.; Servicios Técnicos del Pacífico, S.A. de C.V.; and Compañía Operadora de Servicios Integrales.

- 440.** On 7 December documentation on the formation of the trade union was submitted to the Ministry of Labour and Social Security. The Ministry raised objections to the trade union's statutes relating to spelling errors, resorting to technicalities to delay the process of granting legal personality. The causes of these objections were remedied and the documentation was resubmitted to the Ministry of Labour and Social Security on 5 January 2005. On 13 December, the Ministry of Labour and Social Security, within the terms of the law, sent a communication to the operators who provide services to CEPA in the Port of Acajutla, about the formation of the trade union and on 14 December, in violation of the protection provided in article 248 of the Labour Code to promoters of a trade union, the companies took reprisals against 34 of the 41 founding members, excluding them from the roster of workers assigned by the private operators.
- 441.** In its communication of 2 December 2005, the ICFTU enclosed the following list of dismissals:

Name	Company
Gregorio Elías Vanegas	REMAR, S.A.
Joel Antonio García García	REMAR, S.A.
Francisco Gregorio Herrera Arévalo	Operadora General, S.A. de C.V.
José Antonio León García	Operadora General, S.A. de C.V.
Edwin Gabriel Torrens Castro	Operadora General, S.A. de C.V.
Julio Ernesto Martínez	Operadora General, S.A. de C.V.
Juan Antonio Hernández Fuentes	Operadora General, S.A. de C.V.
Francisco Gregorio Herrera	Servicios Técnicos del Pacífico, S.A. de C.V.
Jorge Alberto Pimentel Tobar	Servicios Técnicos del Pacífico, S.A. de C.V.
Nelson David Alvarado Rivera	Servicios Técnicos del Pacífico, S.A. de C.V.
Jorge Alberto Miranda Cortés	Servicios Técnicos del Pacífico, S.A. de C.V.
Carlos Orlando Bolaños Sorto	O&M Mantenimiento y Servicios, S.A. de C.V.
Juan Carlos Mejía	O&M Mantenimiento y Servicios, S.A. de C.V.
Oscar Armando Iglesias Ramírez	O&M Mantenimiento y Servicios, S.A. de C.V.
Moisés Martínez	O&M Mantenimiento y Servicios, S.A. de C.V.
Oscar Antonio Cortés Castro	O&M Mantenimiento y Servicios, S.A. de C.V.
Juan Carlos Castro Rodríguez	O&M Mantenimiento y Servicios, S.A. de C.V.
Juan Antonio Cerna Durán	O&M Mantenimiento y Servicios, S.A. de C.V.
Hugo Alexander Martínez López	O&M Mantenimiento y Servicios, S.A. de C.V.
Nelson Balmore Cisneros	O&M Mantenimiento y Servicios, S.A. de C.V.
Nelson Urrutia Barrientos	O&M Mantenimiento y Servicios, S.A. de C.V.
Williams René Taxis Rodríguez	O&M Mantenimiento y Servicios, S.A. de C.V.
Angel María Umaña	O&M Mantenimiento y Servicios, S.A. de C.V.
Tito López Castro	O&M Mantenimiento y Servicios, S.A. de C.V.
Guadalupe Espinoza	Operadores Portuarios Salvadoreños, S.A. de C.V.

Name	Company
Douglas Gilberto Orellana Siliezar	Operadores Portuarios Salvadoreños, S.A. de C.V.
Alfredo Martínez Beloso	Operadores Portuarios Salvadoreños, S.A. de C.V.
Simón Vides	Operadores Portuarios Salvadoreños, S.A. de C.V.
David Suriel Monge	Operadores Portuarios Salvadoreños, S.A. de C.V.
Williams Abraham Monge	Operadores Portuarios Salvadoreños, S.A. de C.V.
Luis Alonso Duarte Martínez	Operadores Portuarios Salvadoreños, S.A. de C.V.
Nelson Antonio Rodríguez	Operadores Portuarios Salvadoreños, S.A. de C.V.
Juan Antonio Blanco	Operadores Portuarios Salvadoreños, S.A. de C.V.
Raúl Antonio Sánchez	Compañía Operadora de Servicio Integral (COPESI)
Rafael Ernesto Cuellar Gómez	Compañía Operadora de Servicio Integral (COPESI)

- 442.** FESTRASPEs adds that STIPES asked the Ministry of Labour to carry out an inspection, which took place on 21 December. In the presence of the inspectors, the legal representative of Operadores Portuarios Salvadoreños, S.A. de C.V. (OPSAL) offered to enlist the group of founder workers who work for that company, as a result of which the workers agreed to sign the inspection report in which it was stated that there had been no breach of the Labour Code by the operator, which constitutes complicity by the Ministry of Labour. The inspection report does not include that undertaking by the company, which was merely a strategy to surprise and deceive the workers.
- 443.** The trade union requested the Ministry of Labour for another inspection which took place on 7 January 2005, at which the legal representative of REMAR, S.A. and the president of the interim executive committee of the trade union who works in that company were present. The company claims that at no time was entry to the company's installations prohibited, but that it was CEPA that did not allow the workers to enter. The Ministry of Labour inspector confined himself to recommending the worker to "investigate in the CEPA the barring of access to the installations as a better way of resolving his labour problem". Again the Ministry of Labour adopts an attitude of complicity in the face of breaches of labour rights and the anti-trade union attitudes of the port operators and CEPA, which is nothing more than shady practice by the Ministry of Labour to prevent the legalization of STIPES.
- 444.** Inspections of the other four operators were requested, but the Ministry of Labour side-stepped its responsibility when it shelved these requests, arguing, orally, that if inspections and re-inspections were required, application would have to be made to a higher level.
- 445.** FESTRASPEs alleges that on 14 February 2005, in a notice issued on 28 January 2005, the Ministry of Labour stated:

That in accordance with the procedure established in article 219, paragraph 2 of the Labour Code, letters were sent to the employers asking them to confirm that the founding members of the prospective trade union were employees. Replies had been received to all those letters denying their employee status for which reason, the necessary legal requirement to form an industry trade union has not been satisfied. Therefore, in the light of the foregoing, this Ministry rules that the application for the grant of legal personality to the Dockworkers' Union of El Salvador, acronym STIPES is inadmissible.

FESTRASPEs indicates, however, that on 15 February 2005, the trade union asked for the decision of the Ministry of Labour to be reversed, based on evidence of the permanent employment relationship shown by social security certificates and seeking the granting of legal personality to STIPES. The various operating companies contributed to the social security of the workers forming the trade union, which proves the existence of the

employment relationship. The measures taken by the port operators and CEPA violate the right to organize and the Ministry of Labour has violated the Organization and Functions of the Labour and Social Security Sector Act since, instead of fulfilling its legal functions of facilitating the formation of trade union organizations, it acted as accomplice to the port operators and CEPA in refusing to grant legal personality to STIPES without justification.

- 446.** In its communication of 23 September 2005, FESTRASPEs alleges that on 26 August 2005, Mr. Alberto Escobar Orellana, second disputes secretary of the Education Workers' Union of El Salvador (STEES), was dismissed by the employers' representatives of the Universidad Centroamericana "José Simeón Cañas" where he had been working since 11 March 1999 on the grounds that, as a "non-established lecturer" of the university, he was not a permanent worker, but that his contract was for professional services and had expired on 15 July of the current year. The trade union official concerned requested the Ministry of Labour and Social Security for an inspection in respect of violation of his rights and office as trade union official.
- 447.** The inspection took place on 5 September 2005 with the presence of two inspectors from the Ministry of Labour, who interviewed the employer's representative, the chief of the university personnel department. In the inspection, the inspectors had sight of all the contracts of employment from the day when the worker concerned started work at the university, which showed his continuity of service and that under article 25 of the Labour Code he was a permanent worker who enjoyed all the labour rights established in the Labour Code. It was also found that the worker's rights as a holder of trade union office had been infringed, in that Mr. Alberto Escobar Orellana had been appointed his trade union's second disputes secretary on 19 August 2005, as shown in Ministry of Labour letter No. 352/2005. For all the foregoing reasons, the inspectors recommended that the employer should reinstate the worker and trade union official, Mr. Alberto Escobar Orellana, and the employer was given two days to comply with that recommendation, which is in accordance with circular No. 003/05 signed by the Minister and Vice-Minister of Labour in which employers are recommended to reinstate trade union officials dismissed without due cause in their normal work.
- 448.** However, FESTRASPEs continues, on 8 September a further inspection was carried out by the Ministry of Labour when it was found that the employer had not complied with the recommendation to reinstate the abovementioned worker and trade union official in clear violation of article 47 of the Constitution of El Salvador and article 248 of the Labour Code. It was also found that his salary had not been paid for reasons imputable to the employer, in violation of article 29, section 2 of the Labour Code.
- 449.** In its communication of 26 October 2005, the FS-21 alleges that on 9 August 2005, the Salvadorian Metal Engineering Workers' Union (SITRASAIMM), constituted as an industry trade union, applied for legal personality and approval of its statutes to the Ministry of Labour and Social Security. On 15 August, the Ministry of Labour informed it as follows:

Because the prospective trade union is an industry trade union, this Ministry must write to the employers of the founder members of the trade union asking them to certify their status as employees, in accordance with the provisions of article 219, paragraph 2, of the Labour Code. For that purpose, it must have the necessary information concerning the companies where these members work, such as their address and name of their legal representative, and as that information has not been provided by the interested parties, it is not possible to proceed with the requirements indicated in the abovementioned article.

The trade union provided the required information and on 22 August 2005, the Ministry notified objections to the statutes, which were remedied by the trade union on 2 September.

- 450.** On 12 October 2005, the Ministry of Labour notified the trade union that it had been refused legal personality (a copy of the administrative decision is annexed) arguing chiefly that: (1) article 2 of the trade union statutes (which establishes that “the following may become members: workers in the metal engineering industry and similar, and workers engaged in the selling of certain products for industrial or personal use and workers in consulting and advisory firms who provide services within companies in this branch”) contravenes article 209(3) of the Labour Code (definition of industry trade union); and (2) ten of the founder members did not belong to companies in which the trade union sought to act.
- 451.** On 13 October 2005, the trade union lodged an appeal with the Ministry of Labour and Social Security against the refusal to grant legal personality, requesting the Ministry to carry out inspections in the companies to ascertain the actual tasks performed by the workers in the companies for which the founders work. To date, there has been no response by the Ministry to this appeal.
- 452.** The FS-21 adds that, taking an anti-trade union attitude, the management of the companies Metalúrgica Sarti, S.A. de C.V., Reselcon, S.A. de C.V. and Servicios Talsa, S.A. de C.V. dismissed worker promoters and founders of SITRASAIMM, as listed below:

No.	Worker's name	Company	Date of dismissal
1	Francisco Samuel Romero Beltrán	Servicios Talsa, S.A. de C.V.	20 June 2005
2	Salvador González Aguilar	Servicios Talsa, S.A. de C.V.	30 June 2005
3	Vicente Ramos Escobar	Servicios Talsa, S.A. de C.V.	30 June 2005
4	Carlos Antonio Nerio Hernández	Reselcon, S.A. de C.V.	30 June 2005
5	Marcelino Arquel Franco Valle	Metarlúrgica Sarti, S.A. de C.V.	30 June 2005
6	José Antonio Serrano Rivera	Metarlúrgica Sarti, S.A. de C.V.	30 June 2005
7	José Emilio Urbina	Metarlúrgica Sarti, S.A. de C.V.	30 June 2005
8	José Miguel Amaya Chicas	Metarlúrgica Sarti, S.A. de C.V.	30 June 2005
9	José Amílcar Maldonado Castillo	Metarlúrgica Sarti, S.A. de C.V.	30 June 2005
10	Manuel de Jesús Ramírez	Servicios Talsa, S.A. de C.V.	1 September 2005
11	Israel Ernesto Avila	Reselcon, S.A. de C.V.	1 September 2005

- 453.** To these, according to the ICFTU, can be added a further seven dismissals by the company Castillo's Rent on 15 October 2005 of Carlos Alberto Gregorio Garrido, Elmez Ezequiel Carballo Marroquín, Mario Ricardo Hernández, Jorge Ernesto Rodríguez Pérez, Danilo Salvador Castro Molina, José Armando Chávez Ramos and Jorge Alberto Peña.
- 454.** The FS-21 adds further that on 15 August 2005, the Private Security Workers' Union of El Salvador (SITRASSPES) submitted an application for legal personality and approval of its statutes to the Ministry of Labour and Social Security. The Ministry informed the trade union of the need to provide the Ministry with information on the companies for which the constituents performed their services, such as their address and name of their legal representative. On 22 August 2005, the trade union met this requirement by providing the information requested on each of the companies and on 23 August 2005, the Ministry of Labour and Social Security notified objections to the statutes, which were remedied by the trade union on 30 August 2005.
- 455.** On 12 October, the Ministry notified the refusal to grant legal personality to the trade union chiefly on the following grounds: (1) the Constitution of the Republic, in article 7, paragraph 3, expressly prohibits the existence of organized armed groups of a trade union

nature; (2) by the very nature of the work performed, private security workers perform a dual trust function: just as the employers trust in them to perform the work entrusted to them, which is discretionary, the users, residents of a particular housing estate, company executives, public officials or employees, private, state or autonomous institutions, banks, etc., all rely on these workers fulfilling the specific purposes designated for them; and (3) article 221 of the Labour Code allows for the possibility of trusted employees joining a trade union, provided that the general assembly of that union accepts them as such. This necessarily means the prior existence of a trade union organization which is not formed by trusted employees and to which legal personality has been granted by the Ministry of Labour. For the foregoing reasons, the Ministry concludes that trusted employees, under current legislation, may not participate as founder members of a trade union organization since there is no government body empowered to allow their admission.

**456.** On 13 October 2005, the trade union lodged an appeal with the Minister of Labour against the refusal to grant legal personality, which has not so far resulted in any response by the Ministry of Labour, and renewed its application for legal personality. With reference to the SITRASSPES case, the FS-21 indicates that the situation is even worse and the Ministry of Labour has failed to comply with the recommendation of the ILO Committee on Freedom of Association in Case No. 2299 relating to El Salvador that trade unions formed by workers working in private security firms should be granted legal personality.

**457.** Some of the private security firms have taken steps to dismiss (two) or transfer (five) workers as reprisals against some founders of SITRASSPES:

No.	Name of worker	Firm	Date of dismissal	Action
1	Juan Vidal Ponce	SSASE, S.A. de C.V.	20 October 2005	Dismissal
2	Wilfredo Argueta Rivas	COPROSE, S.A. de C.V.	17 October 2005	Dismissal
3	Santiago Sion	Guardianes, S.A. de C.V.	20 September 2005	Transfer
4	Raúl Deleón Hernández	Guardianes, S.A. de C.V.	20 September 2005	Transfer
5	Carlos Antonio Cushco Cunza	Guardianes, S.A. de C.V.	20 September 2005	Transfer
6	Ricardo Hernández Cruz	Guardianes, S.A. de C.V.	20 September 2005	Transfer
7	Nicolás Pineda	COSASE, S.A. de C.V.	14 September 2005	Transfer

**458.** The FS-21 indicates that in the case of SITRASAIMM, the Ministry of Labour omitted to take any action because of the existence of anomalies relating to the provisions of article 2 of the trade union statutes, which was a breach of the right of audience and protection as fundamental guarantees of due process. By its actions, the Ministry of Labour violated the provisions of the Organization and Functions of the Labour and Social Security Sector Act since, by failing to apply the provisions of article 8, paragraph (b), of the Act according to which: “specific functions of the Ministry of Labour are (b) to facilitate the constitution of trade union organizations”, it played a complicit role with the companies in which the founders of SITRASAIMM and SITRASSPES work, by refusing to grant them legal personality without justification, thus violating their freedom of association despite their having fulfilled the legal requirements.

**459.** In the case of SITRASSAIM, the Ministry of Labour interpreted and applied incorrectly the provisions of article 209, paragraph (3), of the Labour Code, which defines industry trade unions in the following terms: “article 209, an industry trade union is a trade union formed by employers or workers belonging to companies dedicated to the same industrial, commercial, services, social or similar activities”. In the case concerned here, all the workers who participated in the formation of SITRASAIMM work in companies in the metal engineering industry, which consists of a series of economic activities which extend beyond the mere transformation of raw materials into a finished or semi-finished product,



this being the definition used by the Ministry of Labour, thus leaving out all those intangible industries such as the cultural industry, or where applicable, the tourist industry where there is no transformation of raw materials. In light of the above, it is clear that in the decision of the Ministry of Labour there prevailed a restricted and even discriminatory definition concerning recognition of the right to organize of the workers belonging to SITRASAIMM. It is particularly serious that the Ministry of Labour did not apply the provisions in the last part of the abovementioned article 209, paragraph (3), of the Labour Code, which uses the expression “and similar”, which indicates clearly that there must be a broad criterion consistent with the economic realities imposed by globalization relating to the classification of industrial activities, which must include all operations which by their characteristics and specificities are similar and thus form part of the same industrial activity, even when the specific activities carried on by the various companies which make up a given industrial branch are different. It would be illogical to classify as part of a same industrial activity stores which sell products of different kinds, even when they carry on the same activity, which in this case would be commerce.

- 460.** In addition, the ICFTU supports the complaint submitted by the FS-21 and refers in particular to the refusal to grant legal personality to the trade unions SITRASAIMM and SITRASSPES. The ICFTU adds that in the company Hermosa Manufacturing, 64 members were dismissed with the intention of eliminating the trade union branch in the company. Among those dismissed were officials Estela Marina Ramírez, Flor Jazmín Zometa, Sara Guadalupe Beltrán de Puentes, Sonia Marily Reyes Linares, Julia Estarada Rosa, Tomasa Martínez and María Raquel Cornejo de Vélez. In the CMT clothing company, seven branch officials of the General Union of Seamstresses (SGC), María Rosa Beltrán Meléndez, Teresa Martínez Guerra, Morena Escobar de Paulino, Dora Alicia Rivas Osegueda, Cecilia Lizeth Abarca de García, Eva Lorena Umaña Pacheco and Blanca Araceli Fuentes Castro, were all dismissed on 25 October 2005.
- 461.** In its communication dated 28 April 2006, FENASTRAS alleges that the Private Security Services Workers’ Union (SITISPRI) was denied legal personality.

## **B. The Government’s reply**

- 462.** In its communication of 18 October 2005, the Government states that the Secretariat of State for Labour employed the legal procedures set out in labour legislation, with the object of securing the reinstatement of the worker and trade union official Mr. Alberto Escobar Orellana, who was dismissed from the Universidad Centroamericana “José Simeón Cañas” (UCA), on 26 August 2005.
- 463.** In this regard it had been envisaged to carry out an inspection on 30 August 2005 at the premises of the workplace concerned, which could not be done because no employers’ representative was available to meet the designated labour inspector. He therefore left a summons to the legal representative to appear at the Labour Inspection Department for the hearing of proceedings relating to the dismissal of Mr. Alberto Escobar Orellana. This, too, could not take place due to the failure of the employer’s side to attend. In the light of the foregoing and as the persuasive approach had been exhausted, a further inspection of the workplace in question was carried out with the head of the personnel department of the Universidad Centroamericana “José Simeón Cañas” who, on being notified of the purpose of the inspection, stated that the personal contract of employment between the employer and Mr. Escobar was for a fixed term, i.e. from 11 March to 15 July 2005, for which reason he was informed on 18 August that he would be given no further assignments. Despite this, the Labour Inspection Department found that the Universidad Centroamericana “José Simeón Cañas” (UCA) had infringed articles 248 and 229, obligation 2, of the Labour Code, in having unfairly dismissed Mr. Alberto Escobar Orellana, who had the status of trade union official and, as a result of that dismissal, had

ceased paying a salary for reasons imputable to the employer. Consequently, in the inspection report, the employer was given two working days to remedy the infractions concerned.

- 464.** Following the expiry of the abovementioned time limit on 8 September 2005, the re-inspection carried out to determine whether the infractions had been corrected found that they had not been rectified. Consequently, proceedings for the imposition of a fine in accordance with the Labour Code are now in progress, information on which will be provided in due course.
- 465.** The Ministry of Labour, through the Labour Inspectorate, took all legal measures to ensure compliance with the labour rights which had been violated, such as reinstatement and payment of a salary which had not been paid for reasons imputed to the employer. It should be emphasized that there is no provision for reinstatement in national labour legislation.
- 466.** Notwithstanding the work of enforcement of labour legislation carried out by the Ministry of Labour under administrative proceedings through the Labour Inspectorate, the worker concerned still has the right to use legal mechanisms, such as the courts, and he has also been informed that he may seek legal aid. The Ministry of Labour will continue to assist the worker when he so requests.
- 467.** In its communication of 11 January 2006, the Government states that the Ministry of Labour through the Directorate General for Labour Inspection sought voluntary correction of the labour offences found, with the object of achieving the reinstatement in their respective workplaces of the workers who founded the Dockworkers' Union of El Salvador (STIPES), who were dismissed on 14 September 2005 by the private operators contracted under a tendering process held by the Autonomous Port Management Authority (CEPA). To that end, the Labour Inspectorate carried out a total of five inspections in the respective operator firms, with the corresponding re-inspections from 7 November, in which the reinstatement of the workers and payment of wages not paid for reasons imputable to the employer were sought.
- 468.** Despite the constant efforts by the Labour Inspectorate, the results of each inspection were not positive, since the trade union workers concerned have still not been reinstated in their jobs. As all means of persuasion and recommendation had been exhausted, the matter passed to proceedings for the imposition of fines, information on which will be provided in due course. It should be mentioned that the Labour Code does not provide for reinstatement, thus the Labour Inspectorate can do no more than recommend it and establish the amount of unpaid wages not paid for reasons attributable to the employer as an administrative offence which must imperatively be remedied. However, the exhaustion of the administrative proceedings does not mean that the worker is without protection, since he has the judicial route to claim fulfilment of unfulfilled labour rights, and they have already been advised to use this route. The Ministry of Labour will continue to assist the workers whenever they so request.
- 469.** In addition, the Government reports that, after pursuing the legal proceedings laid down in the Labour Code and having considered the legal implications, the Ministry of Labour decided by a resolution of 3 October 2005 to declare inadmissible the granting of legal personality to the Private Security Workers' Union of El Salvador (SITRASSPES). The reasons on which it based this refusal are as follows:
- (1) the founding members of the trade union are workers who provide their services for private security firms and for the performance of their work they must be equipped with firearms and as well as all other kinds of arms, since the principal purpose of

their work is to protect the physical safety of natural persons and the safeguarding of material assets, whether moveable or fixed;

- (2) article 7, paragraph (3), of the Constitution of the Republic expressly prohibits the existence of armed groups having the character of trade unions;
- (3) the nature of the work performed by workers in private security firms involves a dual function of trust, both for the employers with whom they have a contract of employment, and the persons to whom they provide their services. Thus, given that the users rely on workers in such firms to perform the function assigned to them, they are qualified as trusted employees. This status is conferred due to the highly personal relationship of trust that exists between workers and employers, without which there could be no employment relationship;
- (4) article 221 of the Labour Code disqualifies trusted employees from belonging to a trade union, except by agreement taken in the General Assembly which allows their admission. Thus, as workers in security firms are trusted employees, they are not eligible to belong to a trade union, since there is no government organ which can authorize their admission.

**470.** As regards the refusal to grant legal personality to the Salvadorian Metal Engineering Workers' Union (SITRASAIMM), the legal grounds taken into account in the resolution of 4 October 2005 which declared the application inadmissible are as follows:

- (a) the prospective trade union cannot be considered to be an industry trade union, which, according to article 209, paragraph (3), of the Labour Code: "is a trade union formed by employers or workers belonging to companies dedicated to the same industrial, commercial, services, social or similar activities" and, in the present case, the companies in which the founder members of the trade union work are not dedicated to the same business or activity, the field of each of the companies being as follows:
  - *Sociedad Metarlúrgica Sarti, S.A. de C.V.* has the object of "dedicating itself to functions of an industrial type and, specifically, foundry work for the manufacture of any class of metal object, manufacture and construction of agricultural machinery for sugar refining, coffee processing, cotton, construction and manufacture of metal structures and shelves for stores, buildings, roofs, etc. and any other legal activity permitted under the laws of the country";
  - *Sociedad Servicios Talsa, S.A. de C.V.* has the object of "providing natural or legal persons with advisory services, consultancy and technical assistance in the areas of production, quality control and marketing of all classes of services", i.e. the business carried on by this company is the provision of certain services;
  - *Sociedad Reselcon, S.A. de C.V.* has the object of "providing advisory, consultancy and technical assistance services, and import, export and marketing services for agricultural and livestock products, and other industrial articles or implements", i.e. the business carried on by this company is the provision of services or commercial activities;
  - *Sociedad Castillo's Rent Car, S.A. de C.V.* has the object or purpose of "anything to do with imports and exports of motor vehicles and provision of motor repair services, etc."

By stating that "the following may become members: workers in the metal engineering industry and similar, and workers engaged in the selling of certain products for industrial or personal use and workers in consulting and advisory firms

who provide services within companies in this branch”, article 2 of the statutes of the trade union concerned contain a contravention of article 209, paragraph (3), of the Labour Code, since that article limits the concept of industry trade union to a specific activity and not a generic activity under the same heading.

- (b) Moreover, the prospective trade union was constituted with a total of 49 founder members distributed across each of the companies in which they perform services as follows: a total of 18 workers perform services in the company Metalúrgica Sarti, S.A. de C.V.; a total of five workers perform services for Reselcon, S.A. de C.V.; one worker performs services for the company Servicios Talsa, S.A. de C.V.; and a total of 16 workers perform services for the company Castillo’s Rent Car, S.A. de C.V. From the foregoing it can be inferred that as only the company Metalúrgica Sarti, S.A. de C.V. is engaged in the metal engineering industry, the number of workers required by article 211 of the Labour Code is reduced to 18 founder members, and it is therefore not admissible to grant legal personality to the prospective trade union.

- 471.** In addition, the complainant states that the refusal to grant legal personality to the SITRASAIMM and SITRASSPES trade unions is a violation of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). There is no doubt whatsoever that this assertion has no legal basis, since El Salvador has not yet ratified the Convention concerned or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), for which reason these are not at present laws of the Republic. Nevertheless, national law recognizes the right of association in the broad sense and the right to organize and collective bargaining of private employers and workers and workers in official autonomous institutions.
- 472.** With respect to the Hermosa Manufacturing case, it should be explained that the company has ceased operations indefinitely, for which reason some workers decided to initiate the corresponding labour proceedings. Despite this, every effort was made by the Ministry of Labour through the various inspections and conciliation proceedings between workers and the employer to investigate and seek agreement on the company’s failure to implement labour rights.
- 473.** With regard to the 64 workers mentioned by the complainant, the Government asks that the complainant should provide the names of all and each of them, and the dates of the dismissals as better evidence of its observations.
- 474.** On the CMT, S.A. de C.V. case, the Government reports that the employer considered that the measures taken by the workers and trade union officials in taking over the installations of the company’s plant causing disruption to it, and the insults proffered against the employers’ representatives, were due cause for holding their personal contracts of employment terminated. Despite this, the workers and trade union officials, relying on article 248 of the Labour Code, requested the intervention of the Labour Inspectorate to bring about the reinstatement in their jobs and payment of wages not paid for reasons imputable to the employer. In that regard, the Labour Inspectorate carried out the requested inspections and ordered the reinstatement of the workers in their jobs and the immediate payment of the wages not paid for reasons imputable to the employer. However, the employer’s side refused to rectify the violations specified, adding that they were unaware that the dismissed workers had the status of trade union officials. However, the Ministry of Labour will continue to seek the reinstatement and payment of wages not paid for reasons imputable to the employer, by pursuing the appropriate industrial proceedings. The Government will continue to report on the results of the respective court proceedings and the proceedings undertaken at administrative level.

**475.** As regards the cases of violation of the labour rights of the worker founders of SITRASSPES, the Government reports on their employment situation as follows:

- Mr. Juan Vidal Ponce: the employing company, SSASE, S.A. de C.V., paid him the wages not paid for reasons imputable to the employer, but he was not reinstated, for which reason he is pursuing proceedings for imposition of a fine on the company;
- Mr. Wilfredo Rivas Argueta: his reinstatement by the company COPROSE, S.A. de C.V. was achieved, and he was paid the wages unpaid for reasons imputable to the employer;
- with respect to the cases of the workers Santiago Sion and Raúl Deleón Hernández, both from the company Guardianes, S.A. de C.V., the relevant inspection was carried out and it was found that they had indeed been transferred to a different place to perform their services. The employer was therefore given a deadline to remedy the violation. In the light of the foregoing, the result of the reinspection will be reported when it has taken place;
- Mr. Nicolás Pineda Escobar, was successfully reinstated, but payment of wages unpaid for reasons imputable to the employer is outstanding;
- in the case of Carlos Antonio Cushco Cruzna and Ricardo Hernández Cruz, after reviewing the record of complaints, it was found that no proceedings or action had been taken at their request, although both work for the company Guardianes, S.A. de C.V.

**476.** Finally, the Government refers to the allegations that the workers Francisco Samuel Romero Beltrán, Salvador González Aguilar, Vicente Ramos Escobar, Carlos Antonio Nerio Hernández, Marcelino Arquel, Franco Valle, José Antonio Serrano Rivera, José Emilio Urbina, José Miguel Amaya Chicas, José Amílcar Maldonado Castillo, were dismissed from their jobs because they were founder members of the Salvadorian Metal Engineering Workers' Union (SITRASAIMM).

**477.** The Government indicates in this respect that it should be taken into account that the dismissal of the workers in question predated the application for legal personality by the trade union to this Ministry, i.e. the dismissals of the workers took place during June 2005 and the trade union submitted the application for legal personality to the Ministry of Labour on 9 August 2005. This can be seen from the table annexed by the complainant which shows the names of the dismissed workers with the respective dates of dismissal.

### **C. The Committee's conclusions**

**478.** *The Committee observes that in the present complaints, the trade union organizations have submitted the following allegations: the refusal by the Ministry of Labour to grant legal personality to the Dockworkers' Union of El Salvador (STIPES), the Salvadorian Metal Engineering Workers' Union (SITRASAIMM) and the Private Security Workers' Union of El Salvador (SITRASSPES), and reprisals for the formation of these trade unions (34 dismissals in the case of STIPES and two dismissals and five transfers in the case of SITRASSPES); dismissal of the official of the Education Workers' Union of El Salvador (STEES), Mr. Alberto Escobar Orellana; dismissal of 64 members or officials of the trade union branch operating in the Hermosa Manufacturing company; and dismissal of seven trade union officials in the CMT clothing company, all members of the General Union of Seamstresses.*

**Refusal by the Ministry of Labour to grant legal personality to the trade unions STIPES, SITRASAIMM and SITRASSPES**

479. *With respect to the granting of legal personality to STIPES, the Committee notes that according to a decision of the Ministry of Labour of 15 February 2005, this refusal was because the employers said that the founder members of the trade union were not employees and that employee status was a necessary legal requirement to form an industry trade union. The Committee notes that the complainant organizations highlight the fact that the trade union requested a revocation of the refusal to grant legal personality, indicating that the founders had a permanent employment relationship as can be shown by the fact that the various companies paid the trade union founders' social security contributions (the complainant organization annexes the documents showing the social security affiliation of the 12 founders). The Committee also observes that in its reply the Government itself reported that the Labour Inspectorate sought voluntary correction of the labour offences found, with the object of achieving the reinstatement in their respective workplaces of the worker founders of STIPES; however, the Government recognizes that "the results were not positive". The Committee concludes that the founders of STIPES possessed employee status and thus enjoyed the right to form the trade union of their choosing. In any case, the Committee recalls that even if such workers did not have a permanent employment relationship, for example if they had been independent workers, they would still have the right to form such organizations as they saw fit as can be seen from the following principles of the Committee:*

- *By virtue of the principles of freedom of association, all workers – with the sole exception of members of the armed forces and police – should have the right to establish and to join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those who practise liberal professions, who should nevertheless enjoy the right to organize.*
- *All workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 235 and 236].*

480. *In these circumstances, the Committee urges the Government to grant legal personality to STIPES without delay and firmly trusts that the Ministry of Labour will allow the appeal against the decision of the Ministry of Labour refusing such legal personality. The Committee requests the Government to keep it informed in this regard.*

481. *As regards the refusal by the Ministry of Labour to grant legal personality to SITRASSPES, the Committee notes the Government's assertions that: (1) private security workers are issued with firearms and other weapons while article 7, paragraph 3, of the Constitution of the Republic expressly prohibits the existence of armed groups of a trade union character; and (2) article 221 of the Labour Code prohibits trusted employees from belonging to a trade union and workers in private security firms have a dual function of trust (to the employers and the persons to whom they provide their services).*

482. *The Committee wishes to recall that it examined these arguments in practically identical terms in a previous case on the right of workers in private security firms to belong to a trade union [see 333rd Report, Case No. 2299 (El Salvador), paras. 543-564]. On that*

occasion, the Committee formulated the following conclusions and recommendations [see 333rd Report, paras. 561-562]:

*With regard to the alleged denial of legal personality for the private security agents' trade union SITRASEPRIES, the Committee notes that the Government confirms the refusal of legal personality and indicates that it is examining the request by the complainant that this decision upholding refusal be revoked. The Committee notes the arguments put forward by the Government that, in its opinion, the granting of this legal personality would be illegal (the Constitution of the Republic – article 7 – prohibits the existence of armed groups, these are trusted employees and they may only join a trade union that has been established with workers of another kind who will accept them as members). The Committee notes in this respect that this constitutional provision should not prevent workers from carrying arms when this is necessary because of the nature of their work.*

*In this respect, the Committee recalls that, in accordance with the principles of freedom of association only the armed forces and the police can be excluded from the right to establish trade unions – which is a fundamental right. Consequently, all other workers, including private security agents should freely be able to establish trade union organizations of their own choosing. In these circumstances, the Committee believes that the denial of legal personality for the SITRASEPRIES trade union is a serious violation of freedom of association and it urges the Government to recognize this trade union and to keep it informed in this regard. ...*

- 483.** *The Committee reiterates the abovementioned conclusions and urges the Government without delay to grant legal personality to SITRASSPES without delay and to give its firm undertaking that the Ministry of Labour will allow the appeal against the decision of the Ministry of Labour refusing such legal personality. The Committee requests the Government to keep it informed in this regard.*
- 484.** *As regards the refusal by the Ministry of Labour to grant legal personality to SITRASAIMM, the Committee notes the Government's statements that the founders of the trade union sought to form an industry trade union but the companies in which they worked did not form part of the same business and article 209, paragraph (3), of the Labour Code, which defines industry trade unions in the following terms: "an industry trade union is formed by employers or workers belonging to companies dedicated to the same industrial, commercial, services, social or similar activities" limited the concept of industry trade union to a specific activity and not to a generic activity under the same heading. Moreover, according to the Government, only 18 of the 49 founder members belonged to a company engaged in the metal engineering industry (Metalúrgica Sarti, S.A. de C.V.), which did not reach the minimum number of workers required by the legislation. The other companies were engaged in the provision of certain services (advisory, consultancy and technical assistance, in production, quality control and marketing of all kinds of services), e.g. Servicios Talsa, S.A. de C.V., the performance of commercial services and activities (advisory, consultancy and technical assistance, and import, export and marketing of agricultural and livestock products and other industrial articles or implements), e.g. Reselcon, S.A. de C.V. or have as their object "anything to do with imports and exports of motor vehicles and provision of motor repair services", e.g. Castillo's Rent Car, S.A. de C.V.*
- 485.** *Furthermore, in the decision to refuse legal personality to the trade union it is indicated that, according to the companies concerned, ten of the 47 founders did not work in the companies concerned. This question appears to be related to the allegations of anti-trade union dismissals of SITRASAIMM founders (which are dealt with below in the section on allegations of dismissals), dismissals which could possibly have been invoked to argue that the trade union did not have the minimum number of workers required by the legislation.*
- 486.** *The Committee notes the assertions by the complainant organizations that: (1) article 209 of the Labour Code, in defining industry trade unions, includes the expression "and*

similar [activities]” and the Ministry of Labour chose to adopt a narrow meaning which discriminated against the SITRASAIMM trade union while the expression concerned implies a broader meaning relating to the classification of industrial activities even when the specific activities carried on by the various companies forming part of a given industrial branch are different; and (2) all the worker founders of SITRASAIMM work in companies in the metal engineering industry.

487. The Committee observes that the definition of industry trade union in article 209 of the Labour Code is subject to different interpretations by the Government and the complainant organizations. Taking into account the Government’s assertions that certain companies do not belong to the metal engineering industry, the Committee requests the complainants to provide their comments in this regard and to clarify the status of metal engineering worker of each of the founders of SITRASAIMM (except those of Sociedad Metalúrgica Sarti, S.A. de C.V. whose metal engineering status is recognized by the Government). The Committee requests the Government to inform it of the result of the administrative appeal by SITRASAIMM against the refusal to grant legal personality.
488. More generally, at least two of the three cases involving refusal of legal personality show clearly that the law must be reformed such that the right of trade unions to establish and to join organizations of their own choosing and the right to appropriate and effective protection from acts of anti-trade union discrimination are recognized without any greater limitations than those envisaged in the principles of freedom of association (which refer to the armed forces and the police). The Committee reminds the Government that ILO technical cooperation is available to it for the preparation of future trade union legislation. The Committee considers that, among other things, the new legislation should guarantee that proceedings on the case of anti-trade union discrimination should be rapid and effective, and should avoid the Ministry of Labour informing the employer of the names of founders of a trade union asking the employer to state whether or not they are employees. This type of check should be carried out in another way, for example by requiring companies to provide the Ministry of Labour with the full list of workers on its payroll so that it can check whether or not the founders are employees.

### **Dismissals and transfers of founders of the trade union organizations STIPES, SITRASAIMM and SITRASSPES and dismissals of other trade unionists**

489. The Committee notes that the complainant organizations allege: (1) 34 dismissals of founders of STIPES, who are mentioned by name; (2) 11 dismissals of founders of SITRASSAIMM; (3) two dismissals and five transfers of founders of SITRASSPES; (4) the dismissal of the STEES trade union official, Mr. Alberto Escobar Orellana; (5) the dismissal of 64 members of the Hermosa Manufacturing company (seven of them trade union officials) with the intention of eliminating the trade union branch in the company; and (6) the dismissal of seven trade union officials in the General Union of Seamstresses (SGC) branch in the CMT clothing company.
490. The Committee notes the Government’s statements that: (1) the Ministry of Labour conducted five inspections in the companies to which the founders of STIPES belonged, urging the reinstatement of the dismissed workers and payment of wages unpaid for reasons imputable to the employer but without positive results; proceedings for the imposition of fines were then initiated, of which the Committee will be kept informed; reinstatement is not provided for in the Labour Code but workers may apply to the courts to enforce unfulfilled labour rights; (2) the Ministry of Labour succeeded in obtaining the reinstatement in their jobs of the founders of SITRASSPES, Wilfredo Argueta Rivas (who had been dismissed) and Nicolás Pineda (who had been transferred); Juan Vidal Ponce (who had been dismissed) was paid his wages which had not been paid for reasons



*imputable to the employer, but he was not reinstated because proceedings for imposition of a fine were pending; with respect to Santiago Sion and Raúl Deleón Hernández the company was given a deadline to transfer these workers back to the place where they had previously worked; Carlos Antonio Cushco Cunza and Ricardo Hernández Cruz did not submit any application to the Ministry of Labour concerning their alleged transfer but continue to work for the same company; (3) the founders of SITRASAIMM were dismissed according to the allegations on 30 June 2005, while the application for the grant of legal personality to the trade union was submitted on 9 August 2005 (the Government does not send information on the alleged dismissal of Manuel de Jesús Ramírez and Israel Ernesto Avila dismissed on 1 September 2005); (4) the Ministry of Labour considered that the trade union official of STEES, Mr. Alberto Escobar Orellana had been unfairly dismissed, in violation of articles 248 and 229(2), of the Labour Code, but the employer neither remedied the offence nor paid the salary unpaid for reasons imputable to the employer; therefore proceedings for imposition of a fine were pending, of which the Committee would be kept informed. The Government indicates that the Ministry of Labour had urged the reinstatement of the worker and payment of the salary.*

- 491.** *As regards the dismissal or transfer of founders of STIPES, SITRASAIMM and SITRASSPES, the Committee observes that article 248 of the Labour Code provides as follows:*

*Members of executive committees of trade unions with legal personality or in the process of obtaining such legal personality may not be dismissed, transferred or subject to a worsening in their conditions of work, nor suspended for disciplinary reasons during the period of their election and term of office; and until after one year from having ceased their functions, other than for just cause as previously determined by the competent authority .*

*The protection to which the previous paragraph refers shall commence from the date on which the founders apply to the administrative authority for the purpose of registering the trade union.*

*The guarantee established in paragraph one also protects:*

- (a) *promoters of the formation of a trade union, for the period of 60 days from the date on which the National Department of Social Organizations in the Ministry of Labour and Social Security at their request notifies the employer or employers of their appointment. (...)*

- 492.** *Furthermore, and in general, the Committee recalls that no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present [see **Digest**, op. cit., para. 690] and that the necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish [see **Digest**, op. cit., para. 757]. In addition, taking into account the content of article 248 of the Labour Code of El Salvador, transcribed in the previous paragraph, and the refusal of certain companies to correct infringements of freedom of association despite the calls of the Ministry of Labour, the Committee points out that the existence of legislative provisions prohibiting acts of anti-union discrimination is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice [see **Digest**, op. cit., para. 742].*

- 493.** *In these circumstances, the Committee urges the Government to continue, as it has been doing up to now, to seek the reinstatement of the 34 founders of STIPES, the founder of SITRASSPES, Mr. Juan Vidal Ponce and the trade union official of STEES, Mr. Alberto Escobar Orellana, and to inform it of the result of the proceedings for the imposition of a fine undertaken by the Ministry of Labour. The Committee also requests the Government to continue to seek the transfer of Santiago Sión and Raúl Deleón Hernández, founders of SITRASSPES, to the posts which they previously occupied in their companies and suggests*

to the complainant organizations that they invite Mr. Carlos Antonio Cushco Cunza and Mr. Ricardo Hernández Cruz, also founders of SITRASSPES, to lodge a complaint about their alleged transfer with the Ministry of Labour so that it can take action in their case.

- 494.** *The Committee requests the complainant organizations to submit their comments on the Government's statement that nine of the founders of SITRASAIMM were dismissed in June 2005 while the trade union's application for legal personality was submitted on 9 August 2005, thus suggesting that those dismissals were not related to the formation of the trade union. The Committee requests the Government to send its observations on the alleged dismissal of the founders of SITRASAIMM, Mr. Manuel de Jesús Ramírez and Mr. Israel Ernesto Avila on 1 September 2005, i.e. after the application for legal personality submitted by the founders of the trade union.*
- 495.** *As regards the dismissal of 64 trade unionists in the Hermosa Manufacturing company (among them seven trade union officials designated by name), the Committee notes the Government's statements that the company has ceased operations indefinitely and that the Ministry of Labour is taking steps and carrying out inspections to investigate and try to reach agreement on the failure to implement labour rights. The Committee requests the Government to ensure that those dismissed receive all the legal compensation due and invites the complainant organizations, as requested by the Government in its reply, to communicate the names of the 57 trade unionists to which the complaint refers (the names of the seven officials are already given in the allegations).*
- 496.** *As regards the alleged dismissal of seven trade union officials in the CMT clothing company branch of the SGC, the Committee notes that the Labour Inspectorate has sought the reinstatement of the dismissed workers and payment of wages unpaid for reasons imputable to the employer. The Committee requests the Government to continue seeking the reinstatement of the seven trade union officials and payment of the wages due.*
- 497.** *The Committee requests the Government to send its observations on the communication of FENASTRAS dated 28 April 2006 relative to the legal personality of the SITISPRI trade union.*

### **The Committee's recommendations**

- 498.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee urges the Government to grant legal personality to Dockworkers' Union of El Salvador (STIPES) and the Private Security Workers' Union of El Salvador (SITRASSPES) without delay and firmly trusts that the Ministry of Labour will allow the appeal against the decision of the Ministry of Labour refusing such legal personality. The Committee requests the Government to keep it informed in this regard.*
  - (b) Taking into account the Government's assertions that certain companies do not belong to the metal engineering industry, the Committee requests the complainants to provide their comments in this regard and to clarify the status of metal engineering worker of each of the founders of the Salvadorian Metal Engineering Workers' Union (SITRASAIMM) (except those of Sociedad Metalúrgica Sarti, S.A. de C.V. whose metal engineering status is recognized by the Government). The Committee requests the*

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*Government to inform it of the result of the administrative appeal by SITRASAIMM against the refusal to grant legal personality.*

- (c) *The Committee urges the Government to continue, as it has been doing up to now, to seek the reinstatement of the 34 founders of STIPES, the founder of the Private Security Workers' Union of El Salvador (SITRASSPES), Mr. Juan Vidal Ponce and the trade union official of the Education Workers' Union of El Salvador (STEES), Mr. Alberto Escobar Orellana and to inform it of the result of the proceedings for the imposition of a fine undertaken by the Ministry of Labour. The Committee also requests the Government to continue to seek the transfer of Santiago Sión and Raúl Deleón Hernández, founders of SITRASSPES, back to the posts which they previously occupied in their companies and suggests to the complainant organizations that they invite Mr. Carlos Antonio Cushco Cunza and Mr. Ricardo Hernández Cruz, also founders of SITRASSPES, to lodge a complaint about their alleged transfer with the Ministry of Labour so that it can take action in their case. The Committee requests the complainant organizations to submit their comments on the Government's statement that nine of the founders of SITRASAIMM were dismissed in June 2005 while the trade union's application for legal personality was submitted on 9 August 2005, thus suggesting that those dismissals were not related to the formation of the trade union.*
- (d) *The Committee requests the Government to send its observations on the alleged dismissal of the founders of SITRASAIMM, Mr. Manuel de Jesús Ramírez and Mr. Israel Ernesto Avila on 1 September 2005, i.e. after the application for legal personality submitted by the founders of the trade union.*
- (e) *As regards the dismissal of 64 trade unionists in the Hermosa Manufacturing company (among them seven trade union officials designated by name), the Committee notes the Government's statements that the company has ceased operations indefinitely and that the Ministry of Labour is taking steps and carrying out inspections to investigate and try to reach agreement on the failure to implement their labour rights. The Committee requests the Government to ensure that those dismissed received all the legal compensation due and invites the complainant organizations, as requested by the Government in its reply, to communicate the names of the 57 trade unionists to which the complaint refers (the names of the seven officials are already given in the allegations).*
- (f) *As regards the alleged dismissal of seven trade union officials in the CMT clothing company branch of the General Union of Seamstresses (SGC), the Committee notes that the Labour Inspectorate has sought the reinstatement of the dismissed workers and payment of wages unpaid for reasons imputable to the employer. The Committee requests the Government to continue seeking the reinstatement of the seven trade union officials and payment of the wages due.*
- (g) *The Committee reminds the Government that it may avail itself of ILO technical cooperation for the preparation of future trade union legislation.*

*The Committee considers that, among other things, the new legislation should guarantee the right to form trade unions without restrictions, that proceedings in the case of anti-trade union discrimination should be rapid and effective, and should avoid the Ministry of Labour informing the employer of the names of the founders of a trade union in order for the employer to indicate whether or not they are employees. This type of check should be carried out in another way, for example by requiring companies to provide the Ministry of Labour with the full list of workers on its payroll so that it can check whether or not the founders are employees.*

- (h) *The Committee requests the Government to send its observations on the communication of FENASTRAS dated 28 April 2006, with regard to the legal personality of the SITISPRI trade union.*

CASE NO. 2203

INTERIM REPORT

**Complaint against the Government of Guatemala  
presented by  
the Trade Union of Workers of Guatemala (UNSITRAGUA)**

*Allegations: Assaults, death threats and acts of intimidation against trade unionists in a number of enterprises and public institutions; destruction of the headquarters of the trade union at the General Property Registry; raiding and ransacking of the headquarters of the ACRILASA trade union, and burning of its documents; surveillance of UNSITRAGUA headquarters; anti-union dismissals; violation of the collective agreement on working conditions; refusal to bargain collectively; pressure on workers to resign from their union; employers' refusal to comply with judicial orders for the reinstatement of trade union members. The enterprises and institutions concerned are: Agrícola Santa Cecilia, municipality of El Tumbador, La Torre Estate, Ministry of Public Health, Chevron-Exaco and the Supreme Electoral Tribunal*

**499.** The Committee last examined this case at its March 2005 meeting when it submitted an interim report to the Governing Body [see 336th Report, paras. 405-430]. The Government sent its observations in communications dated 8 and 30 March, 25 April, 15 June, 5 July and 16 August 2005, and 5 January 2006.

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

## A. Previous examination of the case

501. At its March 2005 meeting, the Committee made the following interim recommendations relating to the allegations presented by the complainant organization [see 336th Report, para. 430]:

- (a) The Committee requests the Government to take the necessary measures to order urgent investigations into the allegations concerning assaults, death threats and intimidation of trade union members, and the attacks on trade union headquarters. The Committee stresses the gravity of these allegations and urges the Government to refer these cases urgently to the Office of the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this respect.
- (b) The Committee reiterates its previous request to the Government to take the necessary measures to remedy the violations observed by the labour inspectorate at the General Property Registry (employer interference in union elections) and requests the Government to keep it informed in this respect.
- (c) With regard to the proceedings relating to the dismissal of 34 members of Agrícola Santa Cecilia, the Committee observes that UNSITRAGUA points out that the judicial authority of first instance ordered the reinstatement but that the judicial authority of second instance issued a ruling revoking the reinstatement order. The Committee requests the Government to send information in this respect, and particularly the text of the second-instance ruling.
- (d) The Committee requests the Government to send without delay the text of any ruling handed down with respect to the dismissal of trade unionists at Industrias Acrílicas de Centroamérica and the violation of the collective agreement in force.
- (e) The Committee requests the Government to send observations on the allegations concerning the Municipality of El Tumbador: pressure on union members to resign from their union and on union leaders not to continue with procedures for the reinstatement of dismissed workers ordered by the judicial authority, and dismissal of union officials Cesar Augusto León Reyes, José Marcos Cabrera, Víctor Hugo López Martínez, Cornelio Cipriano Salic Orozco, Romeo Rafael Bartolón Martínez and Cesar Adolfo Castillo Barrios. The Committee urges the Government to take measures to ensure that all wages owed to union leader Mr. Gramajo are paid without delay and to send its comments on the dismissal of the six union leaders mentioned above.
- (f) The Committee requests the Government to take the necessary measures to ensure compliance with the judicial orders for the reinstatement of workers at La Torre Estate.
- (g) The Committee urges the Government to communicate any ruling issued with respect to the dismissal of union leader Fletcher Alburez by the Ministry of Public Health in April 2001.
- (h) With regard to Chevron-Texaco (unilateral imposition without consultation of a code of ethics adding new grounds for dismissal, refusal to negotiate on the part of the company), the Committee requests the Government and the complainant organization to send information on whether the parties reached an agreement before the closure of the company and on the current situation of the workers.
- (i) The Committee once again requests the Government to send without delay its observations on the allegations concerning the Supreme Electoral Tribunal: unilateral imposition of an organization manual dealing with matters related to employees' duties, posts and salary levels and acts of anti-union discrimination in the application of the said manual, as well as the Tribunal's refusal to meet union leaders and negotiate a draft collective agreement. It also requests the Government to meet the parties in order to find a solution to the problems, including those referred to by UNSITRAGUA in its new allegations (anti-union dismissal of workers and denying them the right to collective bargaining).
- (j) The Committee urges the Government to revise the procedure for the protection of union rights provided for under the law in order to bring it into line with the principles set forth in the general conclusions to the present case, inasmuch as the Committee observes in

general that, as far as can be gathered from this and other complaints, not only are judicial orders for the reinstatement of dismissed union members frequently not complied with, but also the number of judicial bodies that can deal in succession with an anti-union dismissal (three or four) means that proceedings often take years.

- (k) The Committee has been informed that a direct contacts mission took place in Guatemala at the request of the Conference Committee on the Application of Standards in connexion with the application of Conventions Nos. 87 and 98. The Committee trusts that the Government will implement the conclusions of the mission and that significant progress will be observed in the near future.

## **B. The Government's new replies**

- 502.** In its communications dated 8 and 30 March, 25 April, 15 June, 5 July and 16 August 2005, and 5 January 2006, the Government sends its observations regarding the allegations in this case.
- 503.** With regard to clause (c) of the recommendations, which concerns the dismissal of 34 members of Agrícola Santa Cecilia, in respect of which UNSITRAGUA had pointed out that the judicial authority of second instance had handed down a ruling revoking the reinstatement order, the Government sent a copy of the ruling of the Fourth Chamber of the Labour and Social Welfare Appeals Court of 4 November 2003 which revokes the reinstatement order issued by the Court of First Instance. The Government indicates in an additional communication that the workers had lodged an appeal in defence of their constitutional rights (*amparo*), but that it was rejected.
- 504.** With regard to clause (d) of the recommendations, in which the Committee requested the Government to send without delay the text of any ruling handed down on the dismissal of trade unionists at Industrias Acrílicas de Centroamérica and on the violation of the collective agreement in force, the Government states that the company lodged an appeal in defence of its rights (No. 534-2001) on 2 October 2001 against the ruling of 12 September 2001 of the First Chamber of the Labour and Social Welfare Appeals Court. On 5 September 2002, the appeal was upheld but a further appeal was lodged against the ruling by a third party. At the end of 2003 (the Government refers to 18 September and 18 November 2003), the Constitutional Court handed down a ruling confirming the decision in favour of the company.
- 505.** With regard to clause (e) of the recommendations, concerning the municipality of El Tumbador (pressure on union members to resign from their trade union and on union leaders not to continue with procedures for the reinstatement of dismissed workers ordered by the judicial authority, dismissal of union officials, Cesar Augusto León Reyes, José Marcos Cabrera, Víctor Hugo López Martínez, Cornelio Cipriano Salic Orozco, Romeo Rafael Bartolón Martínez and Cesar Adolfo Castillo Barrios, and the request that measures be taken to ensure that all wages owed to union leader, Mr. Gramajo, are paid without delay), the Government indicates that the dismissed workers, Bartolón Martínez and Castillo Barrios, lodged an appeal for their reinstatement on 21 January 2005 and that, on 24 January 2005, it was ruled that their immediate reinstatement should be enforced by the local magistrate; however, it was impossible to implement this ruling because of the opposition of the mayor of the municipality who lodged an appeal against it that was subsequently rejected. The Government states that, on 15 February 2005, the municipality requested that all legal actions brought since 5 December 2003 be annulled, given that prior to lodging their appeals the workers had not tried all the direct approaches available. The judicial authority accepted this request.
- 506.** With regard to clause (g) of the recommendations, in which the Government was requested to communicate any ruling issued with respect to the dismissal of union leader, Fletcher

Alburez, by the Ministry of Public Health in April 2001, the Government sent a copy of the Supreme Court of Justice's ruling on the appeal in defence of his rights that Mr. Alburez lodged against a ruling that denied him the right to appeal against an earlier ruling ordering Mr. Alburez' reinstatement but denying him payment of wages owed to him. The appeal in defence of his rights was rejected by the Supreme Court of Justice on the grounds that it was not the proper judicial channel.

507. With regard to clause (h) of the recommendations, concerning the unilateral imposition without consultation of a code of ethics adding new grounds for dismissal, and the company's refusal to negotiate, in which the Committee had requested the Government and the complainant organization to send information on whether the parties reached an agreement before the closure of Chevron-Texaco and on the current situation of the workers, the Government states that, according to the enterprise, the Trade Union of Workers of the Texas Petroleum Company has not been destroyed and that its legal personality is registered with the relevant department of the General Labour Directorate and is currently valid. The cessation of activities in the refinery was due to the fact that the license granted by the Government had expired. The company has never had any intention of undermining the trade union rights of the workers and has not done so, as collective agreements continued to be concluded while the refinery was still operating.

### C. The Committee's conclusions

508. *The Committee notes the Government's new observations relating to the issues that remained pending during the last examination of the case. In general terms, the Committee notes that the Government has not responded to several of the allegations presented despite the fact that it has been asked to send its observations on a number of occasions and that, in other instances, the observations it has sent are not sufficiently clear. The Committee recalls the importance for governments to send precise replies to the allegations made by the complainant organization so that the Committee can carry out an objective examination. In these circumstances, the Committee requests the Government to take the necessary steps to send its observations on all of the pending allegations without delay.*
509. *With regard to clause (a) of the Committee's previous recommendations, concerning allegations of assaults, death threats and acts of intimidation against trade unionists, as well as attacks on union headquarters, the Committee deeply regrets that, despite the seriousness of the allegations, the Government has not sent its observations on the matter. The Committee recalls that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 46] and again requests the Government to refer these cases to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard.*
510. *With regard to clause (b) of the recommendations, concerning employer interference in union elections at the General Property Registry, which has been confirmed by the Labour Inspectorate, the Committee notes with regret that the Government has again not sent its observations. The Committee requests the Government to take the necessary measures to sanction the entity responsible and to ensure that similar acts do not occur in future. The Committee requests the Government to keep it informed in this regard.*
511. *With regard to clause (c) of the recommendations, concerning the dismissal of 34 members of Agrícola Santa Cecilia, the Committee notes that the ruling of 4 November 2003 of the Fourth Chamber of the Labour and Social Welfare Appeals Court revoked the*

*reinstatement order of the judicial authority of first instance and that the workers' appeal in defence of their constitutional rights was rejected.*

- 512.** *With regard to clause (d) of the recommendations, concerning the dismissal of trade unionists at Industrias Acrílicas de Centroamérica and the violation of the collective agreement, the Committee notes that the Government refers to various rulings but does not give any details of these rulings or specify which of the two allegations they concern, and does not send the text of the rulings. The Committee recalls that the allegations concerned non-compliance with the collective agreement, the dismissal of nine union members and the majority of the union's executive board (of which eight dismissals were resolved in favour of the employer), non-compliance with judicial reinstatement orders and pressure on union leaders and members to resign from their posts or from the union. Under these circumstances, the Committee again requests the Government to send without delay any judicial decisions on the dismissal of the trade unionists and on the violation of the collective agreement, as well as its observations on the allegations of pressure on union leaders and members to resign from their jobs or from the union.*
- 513.** *With regard to clause (e) of the recommendations, concerning allegations against the municipality of El Tumbador (pressure on union members to resign from their trade union and on union leaders not to continue with procedures for the reinstatement of dismissed workers ordered by the judicial authority, dismissal of union officials Cesar Augusto León Reyes, José Marcos Cabrera, Víctor Hugo López Martínez, Cornelio Cipriano Salic Orozco, Romeo Rafael Bartolón Martínez and Cesar Adolfo Castillo Barrios, and the request that measures be taken to ensure that all wages owed to union leader Mr. Gramajo are paid without delay), the Committee notes that the judicial authority ordered the reinstatement of Bartolón Martínez and Castillo Barrios but that the mayor of the municipality lodged an appeal and then requested a partial nullification of the proceedings on the grounds of procedural errors which was accepted by the judicial authority. The Committee requests the Government to keep it informed of developments in the proceedings remaining before the judicial authority.*
- 514.** *With regard to clause (g) of the recommendations, concerning the dismissal of union leader Fletcher Alburez by the Ministry of Public Health in April 2001, the Committee notes that the Government sent the text of the Supreme Court of Justice's decision on the appeal in defence of his constitutional rights that Mr. Alburez lodged against a ruling that denied him the right to appeal against an earlier ruling ordering his reinstatement but denying him payment of wages owed to him. The Committee notes that the Court rejected the appeal in defence of constitutional rights (amparo), not because Mr. Alburez was not entitled to demand the wages owed to him but because that form of appeal was not the proper judicial action to take. In these circumstances, the Committee reminds the complainant organization that Mr. Alburez is entitled to submit an ordinary appeal to the judicial authority and requests the Government to provide information as to whether such an appeal has been lodged.*
- 515.** *With regard to clause (h) of the recommendations, concerning the unilateral imposition without consultation of a code of ethics adding new grounds for dismissal and Chevron-Texaco's refusal to negotiate, the Committee notes, according to information provided by the company to the Government, that the Trade Union of Workers of the Texas Petroleum Company has not been destroyed and its legal personality is registered with the corresponding department of the General Labour Directorate and is in force; the cessation of activities in the refinery was due to the fact that the license granted by the Government had expired; and the company had no intention of undermining the trade union rights of the workers and did not do so, as collective agreements were concluded so long as the refinery was operating. The Committee regrets that the complainant organization has not communicated the requested information.*



**516.** *With regard to clause (i) of the recommendations, concerning the alleged unilateral imposition by the Supreme Electoral Tribunal of an organization manual (dealing with matters related to employees' duties, posts and salary levels) and acts of anti-union discrimination in the application of the said manual, as well as the Tribunal's refusal to meet union leaders and negotiate a collective agreement, for which purpose the Government had been requested to meet the parties in order to find a solution to the problems, the Committee again regrets that the Government has not sent its observations on the matter and requests it to do so without delay.*

### **The Committee's recommendations**

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

- (a) In general terms, the Committee requests the Government to take the necessary steps to send its observations on all the pending allegations without delay.*
- (b) With regard to the allegations concerning assaults, death threats and acts of intimidation against trade unionists as well as attacks on union headquarters, the Committee deeply regrets the lack of Government observations and again requests the Government to refer these cases to the Special Prosecutor for Offences against Trade Unionists and to keep it informed in this regard.*
- (c) With regard to the allegations concerning employer interference in union elections at the General Property Registry, which has been confirmed by the Labour Inspectorate, the Committee requests the Government to take the necessary measures to sanction the entity responsible and to ensure that similar acts do not occur in future. The Committee requests the Government to keep it informed in this regard.*
- (d) With regard to the allegations concerning Industrias Acrílicas de Centroamérica, the Committee again requests the Government to send without delay any judicial decisions that are handed down on the dismissal of trade unionists, including the members of the executive committee, and on the violation of the collective agreement, as well as its observations on the allegations of pressure on union leaders and members to resign from their jobs or from the union.*
- (e) The Committee notes that the judicial authority ordered the reinstatement of trade union officials Bartolón Martínez and Castillo Barrios (municipality of El Tumbador) but that the mayor of the municipality lodged an appeal and then requested a partial nullification of the proceedings on the grounds of procedural errors which was accepted by the judicial authority. The Committee requests the Government to keep it informed of developments in the proceedings remaining before the judicial authority.*
- (f) With regard to the allegation concerning the dismissal of union leader Fletcher Alburez by the Ministry of Public Health in April 2001, the Committee reminds the complainant organization that Mr. Alburez is entitled to submit an ordinary appeal to the judicial authority and requests*

*the Government to provide information as to whether such an appeal has been lodged.*

- (g) *With regard to the allegations concerning the alleged unilateral imposition by the Supreme Electoral Tribunal of an organization manual (dealing with matters related to employees' duties, posts and salary levels) and acts of anti-union discrimination in the application of the said manual, as well as the Tribunal's refusal to meet union leaders and negotiate a collective agreement, for which purpose the Government had been requested to meet the parties in order to find a solution to the problems that have arisen, the Committee again requests the Government to send its observations on the matter without delay.*

CASE NO. 2295

INTERIM REPORT

**Complaint against the Government of Guatemala  
presented by  
the Trade Union of Workers of Guatemala (UNSITRAGUA)**

*Allegations: Dismissal of trade union members by the Committee for the Blind and Deaf of Guatemala; non-compliance with a legal order for reinstatement and the subsequent revocation by the Appeals of Court of the reinstatement order, in violation of basic procedural guarantees; recognition of trade union representative status of a not-for-profit civil organization, the Trade Unions' and People's Action Unit (UASP); anti-union dismissals; delays in registering a trade union organization*

**518.** The Committee last examined this case at its March 2005 meeting [see 336th Report, paras. 466-478]. The Government sent its observations in communications dated 8 and 30 March, 25 April, 15 June, 5 and 26 July and 8 August 2005.

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

**A. Previous examination of the case**

**520.** At its March 2005 meeting, the Committee made the following provisional recommendations regarding the allegations presented by the complainant organization [see 336th Report, para. 478]:

- (a) As to the alleged illegitimate nature of the constitution of the Tripartite Committee on International Labour Affairs, the Committee requests the Government to send documentation on the UASP which will make it possible to determine whether it is a trade union organization or not (statutes, affiliated organizations, representativity, activities, etc.).

- (b) The Committee requests the Government to send without delay its observations on the allegations related to the Quetzal Harbour Company (dismissal of four workers), the non-compliance with judicial orders for the reinstatement of 29 workers belonging to the Workers' Trade Union of Golan S.A. company and the process of formation of the Teachers' Trade Union of Guatemala (SITRAMAGUA).
- (c) The Committee requests the Government to communicate any decision handed down with regard to the alleged dismissal of 50 workers in the Palo Gordo Agricultural, Industrial and Refining Company S.A..
- (d) The Committee requests the Government to send its observations on the communication of UNSITRAGUA dated 24 January 2005.
- (e) As regards the statement made by the complainant organization that the non-compliance with judicial orders is made possible by the fact that, in such cases, the employer faces no more than a small fine, the Committee underlines that the existence of legislative provisions prohibiting acts of anti-union discrimination is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice. The Committee requests the Government to keep it informed on the legislation and the practice in this regard.
- (f) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views on the questions at issue, as well as those of the enterprises which have not yet communicated information.

## **B. New replies from the Government**

- 521.** In its communications dated 8 and 30 March, 25 April, 15 June, 5 and 26 July and 8 August 2005, the Government sends its observations on the various allegations in this case.
- 522.** Regarding clause (a) of the recommendations, referring to the alleged illegality of the composition of the Tripartite Committee on International Labour Affairs, the Government states, in its communication of 8 March 2005, that between 21 October 2004 and 3 March 2005, the Ministry of Labour and Social Welfare sent invitations to Carlos Enrique Díaz López, a member of UNSITRAGUA and appointed member of the Tripartite Committee on International Labour Affairs, but he did not attend any of the meetings. With regard to the sending of the aides-mémoires drafted in each meeting, the Government indicates that the aides-mémoires are sent to all the participants in previous meetings so that they can read them over and make any changes they consider appropriate, but since the member of UNSITRAGUA did not attend any meetings the aides-mémoires were not sent to him.
- 523.** The Government adds that a reply from the UASP indicates that it is a not-for-profit organization outside the trade union movement. The UASP replies that it has been a member of the Tripartite Committee since 1987 without its legitimacy ever having been questioned until now. The UASP was also at one point affiliated to UNSITRAGUA. Traditionally, it is an organization whose members include both trade union organizations and people's associations. The trade union organizations include teachers, which means that denying UASP the right to participate is tantamount to denying the teachers that right.
- 524.** Regarding clause (b) of the recommendations, which refers to the dismissal of four workers from the Quetzal Harbour Company, the Government observes that the allegations do not mention the names of the dismissed workers. It adds that the membership of the Trade Union of Workers of the Quetzal Harbour Company comprises 587 of the 690 permanent workers. All the members of the executive committee and consultative council of the trade union who benefit from immunity from dismissal work at the company with no problems. In September 2004, a collective agreement was concluded and the

workers who left the company did so under a voluntary retirement plan, or because their special contracts had come to an end or been terminated.

- 525.** Regarding the alleged non-compliance with judicial orders for the reinstatement of 29 workers belonging to the Workers' Trade Union of Golan S.A., the Government enclosed information from the company indicating that the application for reinstatement referred to was settled in court on 15 March 2002, when it was denied; this ruling was confirmed by the Constitutional Court on 16 October 2002. In its communication of 8 August 2005, the Government adds that case C-2347-05 was referred to the Court of Paz de Villa Canales by the Fifth Court of First Criminal Instance for Drug Trafficking and Crimes against the Environment of the Municipality and Department of Guatemala, following an appeal on grounds of unconstitutionality submitted by Golan S.A.; the appeal was denied, and the ruling was confirmed by the Constitutional Court. On 13 and 26 July 2005, six workers resigned and withdrew their penal and civil action against the company. As regards the other workers, the case is still under way pending a ruling on the alleged refusal of the representatives of the company to reinstate the group of workers who appealed to the First Court of Labour and Social Welfare of the First Economic Zone.
- 526.** Concerning the formation of the Teachers' Trade Union of Guatemala (SITRAMAGUA), the Government states that the organization was registered on 11 March 2004 under No. 1613, page 008133 of book 20 relating to officials of trade union organizations. The Government encloses a copy of resolution No. 15-2004, and states that the trade union was registered and had been operating without any problem prior to the presentation of the allegations.
- 527.** With regard to clause (c) of the recommendations, concerning the alleged dismissal of 50 workers from the Palo Gordo Agricultural, Industrial and Refining Company S.A., the Government repeats that, according to the company, the workers concerned were recruited on a temporary basis for the sugar cane harvest.

### **C. The Committee's conclusions**

- 528.** *The Committee notes the Government's observations on some of the allegations that were still pending since the previous examination of the case.*
- 529.** *Regarding clause (a) of the recommendations, referring to the alleged illegality of the composition of the Tripartite Committee on International Labour Affairs, the Committee observes, first of all, that the allegations concern the communication from the complainant organization dated 24 January 2005 (see clause (d) of the recommendations), which stated that:*
- *without consulting the trade union organizations, the Government approved a new set of regulations for the Committee which is in violation of Conventions Nos. 87 and 144 and appointed to the Committee members of the Trade Unions' and People's Action Unit (UASP), which is a civil organization, on the grounds that it was the most representative organization, the purpose being to undermine UNSITRAGUA which was reduced to the status of deputy member of the Committee;*
  - *the Government does not send information documents (aides-mémoires) to the members of UNSITRAGUA.*
- 530.** *The Committee notes the Government's statement that the representative of UNSITRAGUA, as a member of the Tripartite Committee, was sent a number of communications but that he did not attend any of the meetings; as a result, he was not sent the information documents (aides-mémoires) which are sent only to members who take*

part in previous meetings so that they can make any changes they consider appropriate. The Committee requests the Government and UNSITRAGUA to explain the difference in the rights of titular and deputy members of the Tripartite Committee. The Committee also requests UNSITRAGUA to explain the reasons for which it did not attend the meeting of the Tripartite Committee. As to the UASP, the Committee notes that, according to the Government, it has been a member of the Tripartite Committee since 1987 because its membership includes a number of trade union organizations such as the teachers' union. The Government encloses a copy of the notarial Protocol of the constitution of the Trade Unions' and People's Action Unit dated 14 February 2002, which was recorded in the civil registry on the same date and attested to the fact that a number of natural persons had decided to establish the association. According to articles 1 and 2 of the Protocol, it is a not-for-profit civil organization whose function is to offer technical, cultural, educational, economic and social support and which focuses on providing trade unions and people's organizations, on request, with guidance, advice, coordination and assistance in respect of their autonomy, individual and collective rights, decisions and competence. According to article 9, the association consists of a general assembly and an executive board. The Government encloses a list of the members of the association, which include numerous trade union organizations.

- 531.** However, the Committee observes that the trade union nature of the association is not apparent from the documentation sent by the Government, since its purpose would seem to be essentially one of providing advisory services and there are no details as to the trade union activities that it is engaged in. Moreover, the Committee observes that, although the Government, quoting the UASP, states that it has been participating in meetings of the Tripartite Committee since 1987, it was in fact not constituted until 2002. Furthermore, the organization is listed in the civil registry but not in the public registry of trade unions, like other organizations referred to in this case in previous paragraphs.
- 532.** Consequently, in order to determine the legality of the composition of the Tripartite Committee on International Labour Affairs, the Committee requests the Government to indicate the method employed to determine that the said association is the most representative, to explain why the organization is listed in the civil registry and not in the public registry of trade unions, like other trade union organizations in the country, and to outline the trade union functions and activities carried out by the association.
- 533.** Regarding the dismissal of four workers from the Quetzal Harbour Company, the Committee notes the Government's objection that the complaint does not mention the names of the dismissed workers, and its observation that the membership of the trade union comprises 587 of the 690 workers, that all the members of its executive committee and consultative council benefit from immunity from dismissal and therefore have not been dismissed, that a collective agreement was concluded in September 2004 and that, in any case, the workers who left the company did so under a voluntary retirement plan or had come to the end of their contract. Bearing in mind that the allegations are vague, in so far as they do not mention the names of the dismissed workers, the Committee requests the complainant organization to provide the names of the dismissed workers and to inform it of the circumstances under which they were dismissed.
- 534.** Regarding the alleged non-compliance with judicial orders for the reinstatement of 29 workers belonging to the Workers' Trade Union of Golan S.A., the Government states that six workers resigned and withdrew their penal and civil action against the company and that, as regards the other workers, the case is still under way pending a ruling on whether or not the company disobeyed the order to reinstate them. Observing that according to the allegations, which have not been denied by the Government, the reinstatement of the workers was ordered in a judicial ruling, the Committee requests the Government to take the necessary measures to ensure that the company reinstates the

*dismissed workers immediately, in accordance with the judicial orders, and to keep it informed of developments in the matter.*

- 535.** *Regarding the formation of the Teachers' Trade Union of Guatemala (SITRAMAGUA), the Committee notes that, according to the Government, the organization has been registered since 11 March 2004 under No. 1613, page 008133 of book 20 relating to officials of trade union organizations, prior to the presentation of the allegations.*
- 536.** *With regard to clause (c) of the recommendations, concerning the alleged dismissal of 50 workers from the Palo Gordo Agricultural, Industrial and Refining Company S.A., the Committee notes that the Government repeats information that it provided in previous examinations of the case, to the effect that the workers were recruited on an occasional basis for the sugar cane harvest, but does not refer to any court ruling that may have been handed down in this connection. The Committee requests the Government once again to inform it whether the dismissed workers initiated court proceedings and of the outcome of any such proceedings.*
- 537.** *The Committee observes that the Government has not sent it any information regarding clause (e) of the recommendations, which refers to UNSITRAGUA's claim that non-compliance with judicial orders is made possible by the fact that the employer faces no more than a small fine. Recalling once again that the existence of legislative provisions prohibiting acts of anti-union discrimination is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice, the Committee refers this legislative aspect of the case to the Committee of Experts on the Application of Conventions and Recommendations.*

### **The Committee's recommendations**

- 538.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee requests the Government and UNSITRAGUA to explain the difference in the rights of titular and deputy members of the Tripartite Committee. The Committee also requests UNSITRAGUA to explain the reasons for which it did not attend the meeting of the Tripartite Committee.*
  - (b) Regarding the alleged illegality of the composition of the Tripartite Committee on International Labour Affairs, the Committee requests the Government to indicate the method employed to determine that the Trade Unions' and People's Action Unit (UASP) is the most representative, to explain why the organization is listed in the civil registry and not in the public registry of trade unions, like other trade union organizations in the country, and to outline the trade union functions and activities carried out by the association.*
  - (c) Regarding the dismissal of four workers from the Quetzal Harbour Company, the Committee requests the complainant organization to provide the names of the dismissed workers and to inform it of the circumstances under which they were dismissed.*
  - (d) Regarding the alleged non-compliance with judicial orders for the reinstatement of 29 workers belonging to the Workers' Trade Union of Golan S.A., the Committee requests the Government to take the necessary*

*measures to ensure that the company reinstates the dismissed workers immediately, in accordance with the judicial orders, and to keep it informed of developments in the matter.*

- (e) *Regarding the dismissal of 50 workers, recruited on an occasional basis for the sugar cane harvest, from the Palo Gordo Agricultural, Industrial and Refining Company S.A., the Committee requests the Government once again to inform it whether the dismissed workers initiated court proceedings and of the outcome of any such proceedings.*
- (f) *Regarding UNSITRAGUA's claim that non-compliance with judicial orders is made possible by the fact that the employer faces no more than a small fine, the Committee, recalling once again that the existence of legislative provisions prohibiting acts of anti-union discrimination is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice, refers this legislative aspect of the case to the Committee of Experts on the Application of Conventions and Recommendations.*

CASE NO. 2298

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

### **Complaint against the Government of Guatemala presented by**

- **the Trade Union Confederation of Guatemala (CUSG) and**
- **the Trade Union of Workers of the Guatemalan Telecommunications Enterprise (SUNTRAG)**

*Allegations: Death threats against four trade union leaders; according to the allegations, the President of the Republic announced that the enterprise would be closed, disregarding the fact that a collective dispute on conditions of work concerning the refusal by the enterprise to negotiate a new collective agreement was pending before the judicial authority; in addition, with the aim of weakening the workers' movement and destroying the trade union, the enterprise decided to implement a voluntary retirement scheme for all the workers, but in fact the workers are being obliged to resign*

**539.** The Committee examined this case at its November 2005 meeting and presented the Governing Body with an interim report [see 338th Report, paras. 870-890, approved by the Governing Body at its 294th Session (November 2005)].

**540.** The Government sent additional observations in a communication dated 6 January 2006.

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

#### **A. Previous examination of the case**

**542.** When it last examined this case, the Committee made the following recommendations [see 338th Report, para. 890]:

- (a) The Committee observes that the Government has not replied to the allegations concerning the death threats allegedly received by trade union leaders Julio César Montugar, Juan Carlos Aguilar, Francisco Velásquez and Agustín Sandoval Gómez, and that, according to the allegations, these cases have been referred to the competent authority. The Committee emphasizes the seriousness of these allegations and requests the Government to ensure that an independent inquiry is promptly carried out and to inform it of the outcome of such inquiry.
- (b) Concerning the allegations regarding the Guatemalan Telecommunications Enterprise, the Committee regrets that the Government has not sent its observations on the allegations and urges it to do so without delay.

**543.** With regard to the latter recommendation, the Committee observed that, according to the allegations, the President of the Republic announced that the enterprise would be closed, disregarding the fact that a collective dispute on conditions of work concerning the refusal by the enterprise to negotiate a new collective agreement was pending before the judicial authority. In addition, with the aim of weakening the workers' movement and destroying the trade union, the enterprise decided to implement a voluntary retirement scheme for all the workers. In fact, however, the workers are being obliged to resign, with the payment of all their employment benefits (the complainants attach a circular in support of their allegations) and the legislation is being infringed since, once a collective dispute has been referred to the judicial authority, any termination of a contract requires court authorization. Moreover, the workers have received a promise that they will be rehired with different conditions and lower wages, and the enterprise is currently involved in a work stoppage without its having been authorized by any judicial authority [see 338th Report, para. 888].

#### **B. The Government's further observations**

**544.** In its communication dated 6 January 2006, the Government states that the Ministry of the Interior's Special Public Prosecutor for Offences against Journalists and Trade Unionists stated that the file concerning Mr. Juan Carlos Aguilar was closed on 28 July 2004 when he withdrew his complaint; as to Mr. Agustín Sandoval Gómez, it was rejected on 3 August 2004, with no appeal being lodged with the competent body. Mr. Julio César Montugar and Mr. Francisco Velásquez did not institute legal proceedings regarding the alleged threats.

**545.** With regard to the Guatemalan Telecommunications Enterprise (GUATEL), the Government recalls that, basically, according to the allegations, the President of the Republic announced in the national press that the enterprise was to be closed and that, despite the fact that it was involved in a collective dispute, it had decided to introduce a voluntary retirement scheme for all its employees so as to weaken the workers' movement. The Government states that the collective dispute was examined by the Third Labour Court and that, given the decision taken on 15 April 2004 by the workers and the trade union involved in the collective dispute to drop the case following the conclusion of a conciliatory agreement satisfying their claims and the approval of the decision by the judicial authority, the case is now closed. The Government requests the Committee to close the case.



## C. The Committee's conclusions

**546.** *The Committee notes that the present case involves allegations of death threats against four trade union leaders, as well as the refusal by the Guatemalan Telecommunications Enterprise (GUATEL) to negotiate a new collective agreement, along with other anti-union practices such as the illegal introduction of a voluntary retirement scheme, despite the fact that, so long as the collective dispute is pending before the judicial authority, the latter's authorization is required for any termination of an employment contract.*

### Allegations of death threats

**547.** *The Committee notes the Government's statements regarding the allegations of death threats, according to which: (1) the file concerning Mr. Juan Carlos Aguilar was closed by the Ministry of the Interior's Special Public Prosecutor for Offences against Journalists and Trade Unionists on 28 July 2004 when Mr. Aguilar withdrew his denunciation; (2) the case of Mr. Agustín Sandoval Gómez was rejected by the Special Public Prosecutor on 3 August 2004, with no appeal being lodged with the competent body; (3) Mr Julio César Montugar and Mr. Francisco Velásquez did not initiate any legal proceedings regarding the alleged threats.*

**548.** *The Committee requests the Government to provide a copy of the text of the decision of the Special Public Prosecutor of 3 August 2004 to reject the complaint lodged by trade union official Mr. Agustín Sandoval regarding death threats, so that it may ascertain the reasons for the decision. The Committee also invites the complainant organizations to apprise trade union leaders Mr. Julio César Montugar and Mr. Francisco Velásquez of the importance of reporting the alleged death threats made against them to the Special Public Prosecutor so that the corresponding investigation may be carried out. The Committee recalls in general that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 47].*

### Other allegations

**549.** *As to the allegations regarding the GUATEL, the Committee notes with interest that the trade union and the workers concluded an agreement with the enterprise and dropped the legal proceedings they had initiated.*

## The Committee's recommendations

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

- (a) The Committee requests the Government to provide a copy of the text of the decision of the Special Public Prosecutor of 3 August 2004 to reject the complaint lodged by trade union official Mr. Agustín Sandoval regarding death threats, so that it may ascertain the reasons for the decision.*
- (b) The Committee also invites the complainant organizations to apprise trade union leaders Mr. Julio César Montugar and Mr. Francisco Velásquez of the importance of reporting the alleged death threats made against them to the Special Public Prosecutor so that the corresponding investigation may be carried out.*

CASE NO. 2390

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS**Complaints against the Government of Guatemala  
presented by**

- **the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS) and**
- **the Union of Workers of the Technical Institute for Training and Productivity (STINTECAP)**

*Allegations: The Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS) alleges a series of acts of anti-union discrimination against members and leaders of the Union of Workers of NB Guatemala (SITRANB) by the NB Guatemala company, and specifically the dismissal of workers and intimidation and threats against members of the executive committee of the union. Moreover, the complainant organization alleges the anti-union dismissal of 52 workers of the Trade Union of Horticultural Workers of Salamá (SINTRAHORTICULTURA); although an order was given reinstating these workers, the legal procedure is still ongoing and the workers have not been reinstated. The Union of Workers of the Technical Institute for Training and Productivity (STINTECAP) alleges acts of interference and pressure on the workers to leave the union*

- 551.** The complaints are contained in communications dated 30 September and 11 October 2004, presented by the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS), and in a communication dated 4 July 2005, presented by the Union of Workers of the Technical Institute for Training and Productivity (STINTECAP). FESTRAS sent further information in a communication dated 16 November 2004, as did STINTECAP in a communication dated 3 August 2005.
- 552.** The Government sent its observations in communications dated 30 March, 16 August and 2 November 2005 and 5 January 2006.
- 553.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. The complainants' allegations

- 554.** In its communications dated 30 September, 11 October, 16 November 2004 and 4 July 2005, FESTRAS alleges that in February 2003 the workers of NB Guatemala, a subsidiary of Nobland International, decided to establish a Union of Workers of NB Guatemala (SITRANB). In October 2003, when the enterprise was officially notified of the decision and a request was lodged with the Labour Inspectorate for protection from dismissal, the enterprise dismissed the following women workers by way of reprisal: Windi Analí López Matíaz, Mayra Alejandra Chácon Ortiz, Marta Yolanda Secaida Mash and Marconi Chojolan Morales. The dismissed workers and the labour inspector have been refused access to the enterprise. In spite of the conciliation hearings organized by the Ministry of Labour and Social Welfare, the enterprise refuses to reinstate the workers. The women are being pressured to make positive statements about the enterprise and, on 13 November 2003, the enterprise dismissed one of the founders of the trade union, Florencio Petet Chávez. According to the complainant organization, in meetings with the company the trade union has been singled out as being responsible for a drop in production. Pressure is being put on union leaders, who are being persecuted, accused of stealing from the enterprise and offered money to leave the union and who have received death threats. A campaign of constant harassment is being waged against the members of the executive committee.
- 555.** FESTRAS also alleges that in June 1997 the workers of Horticultura de Salamá decided to form a Trade Union of Horticultural Workers of Salamá (SINTRAHORTICULTURA) and, according to the General Labour Inspectorate, were granted protection from dismissal as of 30 July 1997. However, since July 1997 executives of the enterprise have been exerting pressure on the workers not to establish the trade union. The complainant organization adds that, on 28 August, two other executives of the enterprise, accompanied by a labour inspector, prevented 52 workers affiliated to the trade union from entering the enterprise's facilities. On the same date, the Labour and Social Welfare Court of the second economic zone ordered the immediate reinstatement of the workers, along with the payment of any wages owed. However, when on 17 November the magistrate attempted to ensure compliance with this order, the general manager of the enterprise refused to comply, arguing that he had lodged an appeal to have the order cancelled. On 17 June 1998, the Labour Chamber of the Court of Appeals dismissed this appeal. The complainant organization states that the enterprise filed constitutional proceedings (*amparo*) with the Chamber for the Protection of Constitutional Rights and Preliminary Hearings, which rejected the appeal. In 2004, the workers had still not been reinstated, despite having initiated a number of proceedings with the legal authorities which continually made excuses or claimed that they were not competent in the matter.
- 556.** The organization alleges that some of the dismissed workers withdrew their action against the enterprise in exchange for money. Finally, on 24 September 2004 the Second Labour Court ordered the reinstatement of the workers and the payment of wages owed and ordered the magistrate to see that its orders were carried out, but the ruling contains an error in the dates which has led to its execution being delayed on a series of occasions.
- 557.** In its communication dated 4 July 2005, STINTECAP alleges acts of interference and pressure on the workers to leave the trade union in exchange for promotion. The organization also denounces personal threats made by telephone. A number of complaints have been lodged with the Ministry of Labour and Social Welfare, to no avail.

**B. The Government's reply**

- 558.** In its communications dated 30 March, 15 June, 16 August, 2 November 2005 and 5 January 2006, the Government transmits its replies to the various allegations presented in the case.
- 559.** As to the allegations concerning NB Guatemala, the Government states that the Ministry of Labour and Social Welfare has taken conciliatory action in the dispute through the General Labour Inspectorate.
- 560.** As to the allegations concerning Horticultura de Salamá, the Government has sent a note it has received from the enterprise rejecting each of the allegations presented by the complainant organization. It denies that it dismissed the workers who established the trade union and states that it was they who refused to enter the enterprise's facilities to work, as was recorded by the labour inspector who was present. It also denies that it has put pressure on workers to leave the trade union. According to the enterprise, in 1997, faced with imminent dismissal, the manager of the facility decided to form the trade union organization in order to obtain protection from dismissal. Of the 46 workers who initiated the reinstatement proceedings, only 15 have maintained their appeal, as the enterprise has come to an agreement with the others. The enterprise claims that the dispute is still going on, since whenever it tries to solve the problem with the workers individually it is faced with opposition from their trade union representative. The enterprise lists the various legal bodies that have examined the workers' request for reinstatement; these proceedings ended when, on 8 February 2005, the workers belonging to the trade union submitted a memorandum to the Ministry of Labour and Social Welfare stating that they had all resolved the labour problems that had previously existed and declaring that they had no further grievance against the enterprise. The Government attaches a copy of this communication.
- 561.** As to the allegations presented by the Union of Workers of the Technical Institute for Training and Productivity (STINTECAP), the Government states that there is no way of determining the existence of discrimination, as there are no documents in support of the complainant's claims. Moreover, those affected did not lodge a complaint with the judicial authority. The Government adds that the Tripartite Committee on International Labour Affairs convened the parties for a conciliation meeting and that, according to a note from the STINTECAP dated 9 August 2005, both the management of the enterprise and the trade union organization have continued to hold meetings to resolve the disputes between the parties.

**C. The Committee's conclusions**

- 562.** *The Committee notes that the present case refers to allegations presented by the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS) concerning: (1) acts of anti-union discrimination against members and leaders of the Union of Workers of NB Guatemala (SITRANB) by the NB Guatemala company, and specifically the dismissal of four workers following the establishment of the trade union, and intimidation and threats against members of the executive committee of the union; (2) the anti-union dismissal of 52 workers of the Trade Union of Horticultural Workers of Salamá (SINTRAHORTICULTURA); and (3) allegations presented by the Union of Workers of the Technical Institute for Training and Productivity (STINTECAP) concerning acts of interference and pressure on the workers to leave the union.*
- 563.** *As to the alleged acts of anti-union discrimination against members and leaders of the SITRNB, and specifically the dismissal of four workers shortly after the foundation of the trade union, the pressure exerted on those workers, and the persecution and constant*

harassment of union members, the Committee notes the information provided by the Government, to the effect that the Ministry of Labour and Social Welfare has intervened in the dispute through the General Labour Inspectorate and is seeking conciliation. However, the Committee notes that, according to the allegations, despite the attempts at conciliation the enterprise refuses to reinstate the dismissed workers. The Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see *Digest of decisions and principles of the Freedom of Association Committee*, 1996, para. 696]. This being the case, the Committee requests the Government to take measures to ensure that an independent inquiry is carried out and if it is determined that the dismissals were linked to the formation of the trade union organization and other anti-union acts, to ensure that the workers are immediately reinstated and paid wages owed and that sufficiently dissuasive sanctions are imposed on the enterprise for the anti-union acts committed. The Committee requests the Government to keep it informed in this regard.

**564.** *As to the allegations concerning the dismissal of 52 workers at Horticultura de Salamá in 1997, following the formation of the SINTRAHORTICULTURA, and all the legal proceedings ordering the reinstatement of the workers (a ruling which is still not final owing to the successive appeals and proceedings initiated by both parties), the Committee notes that, according to the Government, of the 46 workers who initiated reinstatement proceedings, only 15 have maintained their appeal, as the enterprise has come to an agreement with the others, and that on 8 February 2005 the workers belonging to the trade union organization SINTRAHORTICULTURA presented the Ministry of Labour and Social Welfare with a memorandum stating that labour issues had been resolved and that they had no further grievance against the enterprise. The Committee notes, however, that according to the documents presented by the Government, the legal proceedings appear to be still under way. This being the case, the Committee requests the Government and the complainant organization to inform it as to whether the complainant organization has withdrawn the legal proceedings it had initiated.*

**565.** *As to the allegations presented by STINTECAP concerning acts of interference and pressure and threats against the workers to force them to leave the trade union, the Committee notes that, according to the Government, there are not sufficient grounds to support the allegations and those involved have not initiated legal proceedings. The Committee also notes that the Tripartite Committee for International Labour Issues intervened in the dispute in an attempt to conciliate. The Committee refers to the principle cited in previous paragraphs, to the effect that no person should be prejudiced in his or her employment by reason of legitimate trade union activities. This being the case, the Committee requests the Government to take the necessary measures to ensure that an independent inquiry is carried out into the alleged facts and to keep it informed in this regard, as well as to inform it of the outcome of the Tripartite Committee's attempts at conciliation.*

## **The Committee's recommendations**

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

- (a) *As to the allegations concerning the dismissal of four workers shortly after the foundation of the trade union, the pressure exerted on those workers, the persecution and constant harassment of union members, and the acts of anti-union discrimination against members and leaders of the Union of Workers of NB Guatemala (SITRANB) in the NB Guatemala company, the*

*Committee requests the Government to take measures to ensure that an independent inquiry is carried out and if it is determined that the dismissals were linked to the formation of the trade union organization and the other anti-union acts, to ensure that the workers are immediately reinstated and paid wages owed and that sufficiently dissuasive sanctions are imposed on the enterprise for the anti-union acts committed. The Committee requests the Government to keep it informed in this regard.*

- (b) *As to the allegations concerning the dismissal of 52 workers at Horticultura de Salamá in 1997, following the formation of the Trade Union of Horticultural Workers of Salamá (SINTRAHORTICULTURA), and all the legal proceedings in which the reinstatement of the workers had been ordered, the Committee notes the communication sent by the trade union organization to the Ministry of Labour and Social Welfare concerning the withdrawal of all the complaints that had been lodged, as indicated by the Government to the Committee. The Committee requests the Government and the complainant organization to inform it as to whether the complainant organization has withdrawn the legal proceedings it had initiated.*
- (c) *As to the allegations presented by Union of Workers of the Technical Institute for Training and Productivity (STINTECAP) concerning acts of interference, pressure and threats against the workers to force them to leave the trade union, the Committee requests the Government to take the necessary measures to ensure that an independent inquiry is carried out into the alleged facts and to keep it informed in this regard, as well as to inform it of the result of the Tripartite Committee's attempts at conciliation.*

CASE NO. 2421

DEFINITIVE REPORT

**Complaint against the Government of Guatemala  
presented by  
the National Trade Union of Health Workers of Guatemala (SNTSG)**

*Allegations: Failure by the Ministry of Public Health and Social Assistance to comply with provisions of the collective agreement relating to trade union leave and the deduction of trade union dues*

**567.** The complaint appears in a communication from the National Trade Union of Health Workers of Guatemala (SNTSG) dated 20 April 2005.

**568.** Since there was no reply from the Government at the Committee's March 2006 meeting [see 340th Report, para. 10], the Committee made an urgent appeal to the Government, drawing its attention to the fact that, in accordance with the procedure established in its 127th Report [para. 17] approved by the Governing Body, it would present a report on the substance of the case at its next meeting, even if the information or complete observations requested had not been received in due time. To date, no observations have been received from the Government.

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

## A. The complainant's allegations

570. In its communication dated 20 April 2005, the National Trade Union of Health Workers of Guatemala (SNTSG) alleges that the Ministry of Public Health and Social Assistance deliberately misinterprets what is stipulated in the collective agreement on working conditions, in particular those provisions concerning the granting of trade union leave, undermining this right in practice in order to restrict freedom of association.
571. Although the granting of union leave is governed by section 20 of the existing collective agreement of 2000, which provides for greater rights than the Labour Code, the Ministry of Labour is imposing less favourable provisions; specifically, it has enforced the provisions of the Labour Code regarding such leave on the basis of the biased decisions of its own staff. These decisions overlook the fact that the Ministry of Labour and Social Security itself, in a resolution dated 15 May 2001, clearly stated that the provisions of section 20 of the collective agreement must be respected in granting union leave to Ministry of Public Health and Social Assistance officials. The complainant organization states that the new ruling of the Ministry of Labour and Social Security (General Labour Inspectorate) dated 20 December 2004 revokes its previous ruling of 15 May 2001; on the basis of this new ruling, union officials are informed by their line managers that union leave will henceforth have to comply with the provisions of the Labour Code in that paid union leave will be limited to six days per year.
572. The complainant organization also states that attempts to restrict freedom of association were made by the Ministry of Public Health when it refused to deduct trade union dues, citing supposed legal requirements, despite being required to do so by section 21 of the collective agreement on working conditions. In fact, since 13 February 2004, when the deduction of union dues was requested, it has allegedly refused to do so in a manner that is arbitrary and an abuse of authority. In a memorandum dated 13 February 2004, the authorities cite the lack of infrastructure as the reason.
573. The following are the relevant provisions of the collective agreement:

*Section 20:* "... the Ministry of Public Health and Social Assistance shall grant paid leave to [...] nine members of the National Executive Committee of the SNTSG while they remain in office [...]"

*Section 21:* "... The Ministry of Public Health and Social Assistance shall deduct regular trade union dues from the wages of workers affiliated to the SNTSG, in accordance with the labour laws and statutes in force, as well as deducting additional dues in special cases as required by the union. For the purposes of this section, the SNTSG shall make available the payroll list of its members so that the dues can be deducted by the Ministry of Finance, which shall then transfer the money by cheque to the SNTSG [...]"

574. The complainant organization supplies the documents to which it refers.

## B. The Committee's conclusions

575. *The Committee deeply regrets that, despite the time that has elapsed since the complaint was presented, the Government has still not responded to the allegations made by the complainant organization, despite the fact that the Committee has on a number of occasions urged it to send its observations or information on the case, including through an urgent appeal made at its March 2006 meeting. Under these circumstances, and in*

accordance with the procedure established in its 127th Report [para. 17] approved by the Governing Body, the Committee indicated that it would present a report on the substance of the case at its next meeting, even if the information or complete observation requested had not been received in due time.

- 576.** *The Committee recalls that the purpose of the procedures instigated by the International Labour Organization for the examination of alleged violations of freedom of association is to ensure that this freedom is respected in law and in fact. The Committee therefore believes that, while the procedure protects governments against unfounded accusations, the governments themselves must recognize the importance of supplying detailed and accurate information on the allegations made in order to allow an objective examination.*
- 577.** *The Committee notes that the allegations in this case refer to the failure of the Ministry of Public Health and Social Assistance to comply with the provisions of the existing 2000 collective agreement on working conditions, specifically those concerning the granting of union leave and the deductions of union dues.*
- 578.** *With regard to the issue of union leave, the Committee notes that, although section 20 of the collective agreement states that “the Ministry shall grant paid union leave to nine members of the executive committee while they remain in office”, that is, without a priori limiting the number of days of paid leave (as stated in the General Labour Inspectorate’s resolution of 15 May 2001), the ruling of the General Labour Inspectorate of 22 December 2004 (supplied by the complainant organization) states that union leave for nine members of the national executive committee must be understood as trade union leave within the meaning of the Labour Code, according to which such leave should comprise six days of paid leave and as many additional days as necessary of unpaid leave; a communication from the human resources manager dated 22 February 2005, a copy of which is provided by the complainant organization, confirms that paid leave is of six days’ duration.*
- 579.** *The Committee understands the complainant organization’s concern about the change in the public administration’s interpretation of section 20 of the collective agreement, especially in view of the fact that the collective agreement dates from 2000 and was negotiated between the complainant trade union and representatives of the previous administration, who interpreted it in the same way as the union. The Committee also highlights the fact that it is difficult to sustain the new administration’s interpretation, according to which the provisions of the collective agreement are identical to those of the Labour Code, i.e. six days of paid leave. The Committee points out that the clause in question does not specify a fixed number of days of paid leave, but rather links the duration of union leave to the length of time in office.*
- 580.** *Under these circumstances, the Committee requests the Government to ensure that section 20 of the collective agreement (relating to trade union leave) is complied with, and draws the Government’s attention to the fact that, in the event of conflicting interpretations of a collective agreement in the public sector, the definitive interpretation should not be that of the public administration, which would be acting as judge as well as party in the case, but rather that of an independent authority.*
- 581.** *As to the issue of the deduction of union dues from the wages of members of the complainant organization (section 21 of the collective agreement), the Committee notes the memorandum from the Legal Adviser’s Office of the Ministry of Public Health and Social Assistance dated 13 February 2004 (supplied by the complainant), according to which the application of this rule “is not enforceable, given that the Ministry of Health and Social Assistance does not currently have at its disposal the infrastructure required to implement such a measure [...]”.*



**582.** *The Committee recalls that collective agreements must be binding on both parties [see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 818] and urges the Government to take the necessary measures without delay to ensure the effective observance of section 21, including the establishment of the appropriate infrastructure.*

### **The Committee's recommendations**

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

- (a) The Committee deeply regrets that the Government has not responded to the allegations, despite having been asked to do so on a number of occasions, including through an urgent appeal.*
- (b) The Committee requests the Government to ensure compliance with section 20 of the collective agreement applicable to the National Trade Union of Health Workers of Guatemala (SNTSG) (concerning union leave), and draws the Government's attention to the fact that, in the event of conflicting interpretations of a collective agreement in the public sector, the definitive interpretation should not be that of the public administration, which would be judge and party in the case, but rather that of an independent authority.*
- (c) The Committee recalls that collective agreements must be binding on both parties, and urges the Government to take the necessary measures without delay to ensure compliance with section 21 of the collective agreement relating to the deduction of union dues for the SNTSG, including the establishment of the appropriate infrastructure.*

CASE NO. 2321

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

### **Complaint against the Government of Haiti presented by**

- the Haitian Trade Union Coordination (CSH) and**
- the International Confederation of Free Trade Unions (ICFTU)**

*Allegations: The complainant organizations allege that a search was carried out at the headquarters of a trade union confederation without a judicial warrant; that trade union members were arbitrarily detained and ill-treated and that threats were made against trade union leaders and members*

**584.** *The Committee examined the substance of this case at its March 2005 session [see 336th Report, paras. 479-497] in the absence of observations from the Government, despite*

the fact that it was the subject of an urgent request at the Committee's November 2004 session.

**585.** At its March 2006 session, the Committee again made an urgent request to the Government, drawing its attention to the fact that, in accordance with the procedure established in paragraph 17 of its 127th Report, approved by the Governing Body, the Committee could submit a report on the substance of the matter, even if the Government's information or observations had not been received in time.

**586.** The Government has not transmitted any information in the meantime.

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

## **A. Previous examination of the case**

**588.** Upon last examining the case, the Committee made the following recommendations:

- (a) The Committee deplors that, despite the time which has elapsed since the presentation of the complaint, the Government has not replied to the allegations made by the complainant organizations.
- (b) The Committee requests the Government to take the necessary steps to ensure that, in the future, searches carried out on trade union premises do not take place without the provision of an appropriate judicial warrant, and that they are restricted to the purposes which are the reason for the provision of the warrant.
- (c) The Committee requests the Government to take all necessary measures to ensure that, in future, no trade unionists are arrested or detained without benefiting from normal judicial proceedings and having the right to due process, and in particular, the right to be informed of the charges brought against them, to communicate freely with counsel of their own choosing, and to a prompt trial by an impartial and independent judicial authority.
- (d) The Committee requests the Government to specify the measures it intends to take to identify and punish those responsible for the ill-treatment which, according to the allegations of the ICFTU, has been inflicted on several trade unionists during their detention by the police force.
- (e) The Committee requests the Government to indicate the measures it intends to take to ensure that leaders and members of workers' organizations are able to carry out their activities freely, without facing violence, pressure or threats of any kind.

## **B. The Committee's conclusions**

**589.** *The Committee must again deplore the fact that, despite the time that has elapsed since the presentation of the complaint (January 2004) and given the decision handed down by the Committee in March 2005, the Government has never responded to the allegations made by the complainant organization, although it has been urged to send its observations on several occasions. In particular, the Committee addressed another urgent appeal to the Government during its March 2006 session. This being the case, and in accordance with the procedure established in paragraph 17 of its 127th Report, approved by the Governing Body, the Committee stated that at its next session it would submit a report on the substance of the matter, even if it had still not received the Government's information or observations.*

- 590.** *The Committee again reminds the Government that the purpose of the whole procedure established by the International Labour Organization regarding the examination of allegations concerning violations of freedom of association is to ensure the respect of the freedom of association of employers and workers, in law and in fact. The Committee is confident that, if this procedure protects governments against unreasonable accusations, governments on their side will recognize the importance for the protection of their own good name of formulating for objective examination detailed factual replies to such detailed factual charges as may be put forward [see First Report, para. 31].*
- 591.** *The Committee again emphasizes that, in the present case, the allegations made by the complainant organizations concern several serious violations of the fundamental principles of freedom of association laid down in Conventions Nos. 87 and 98: the search without a warrant of CSH premises; the arbitrary arrest and detention of several trade unionists, without bringing them before a judge or charging them with any offence; trade unionist victims of ill-treatment, including physical violence; constant threats and intimidation from certain violent groups against many trade unionists, leading some of them to go into hiding.*
- 592.** *Recalling its conclusions in this regard, and taking account of the complete absence of cooperation on the part of the Government, the Committee can only reiterate its previous recommendations, which it urges the Government to implement fully and promptly and to keep it informed of the progress made in this respect. In these circumstances, given the seriousness of the allegations, the Committee invites the Government to accept a direct contacts mission, in order to obtain as much information as possible regarding the case and to improve government cooperation regarding the Committee's procedures.*

### **The Committee's recommendations**

- 593.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee must again deplore the fact that, despite the time that has elapsed since the presentation of the complaint (January 2004) and since the last examination on the merits (March 2005), the Government has not responded to the allegations made by the complainant organization.*
  - (b) The Committee requests the Government to take the necessary steps to ensure that, in the future, searches carried out on trade union premises do not take place without an appropriate judicial warrant, and that they are restricted to the purposes motivating the issuance of the warrant.*
  - (c) The Committee requests the Government to take all necessary measures to ensure that, in future, no trade unionists are arrested or detained without benefiting from normal judicial proceedings and having the right to due process, and in particular, the right to be informed of the charges brought against them, to communicate freely with counsel of their own choosing and to a prompt trial by an impartial and independent judicial authority.*
  - (d) The Committee requests the Government to specify the measures it intends to take to identify and punish those responsible for the ill-treatment which, according to the allegations of the ICFTU, has been inflicted on several trade unionists during their detention by the police force.*

- (e) *The Committee requests the Government to indicate the measures it intends to take to ensure that leaders and members of workers' organizations are able to carry out their activities freely, without facing violence, pressure or threats of any kind.*
- (f) *Given the seriousness of the allegations and the complete absence of cooperation on the part of the Government, the Committee invites the Government to accept a direct contacts mission, in order to obtain as much information as possible regarding the case and to improve government cooperation regarding the Committee's procedures.*
- (g) *The Committee urges the Government to implement fully and promptly all the above recommendations and keep it informed of the progress made in this respect.*

CASE NO. 2441

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Indonesia  
presented by  
the International Union of Food, Agricultural, Hotel,  
Restaurant, Catering, Tobacco and Allied  
Workers' Associations (IUF)**

*Allegations: The complainant organization alleges that the President of the Federation of Independent Tobacco, Cane and Sugar Workers' Unions (FSPM TG), and Chairperson of its affiliate trade union (Gunung Madu Plantation Union), has been dismissed for recommending that workers reject an unsatisfactory wage increase offer of the employer (PT Gunung Madu Plantation). The complainant organization further alleges that the dismissal authorization deliberately exploits the vague wording of section 158 of the 2003 Manpower Act. The complainant organization also alleges obstacles to the registration of the FSPM TG. Finally, it alleges harassment and threats of physical violence against the FSPM TG leaders*

**594.** The complaint is contained in communications from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) dated 18 July, 10 and 20 October and 24 November 2005.

**595.** The Government sent its observations in communications dated 18 August 2005 and 13 February 2006.

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

#### A. The complainant's allegations

597. By its communication of 18 July 2005, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) lodged a complaint on behalf of its affiliate, the Federation of Independent Tobacco, Cane and Sugar Workers' Unions (FSPM TG). In this communication, as well as in its subsequent communications of 10 and 20 October and 24 November 2005, the IUF alleged the anti-union dismissal of Mr. Daud Sukamto, the President of the FSPM TG, also chairperson of the Gunung Madu Plantation Union, a member of the FSPM TG; the obstacles to the registration of the FSPM TG and threats and harassment of trade union leaders.

#### *Anti-union dismissal of Mr. Daud Sukamto*

598. In its communication of 18 July 2005, the IUF alleged that Mr. Daud Sukamto was dismissed for recommending that workers reject an unsatisfactory wage increase offer made by the employer (the PT Gunung Madu Plantation). The IUF summarized events that led to the dismissal of Mr. Sukamto as follows. On 22 January 2005, the plant management presented to the union its proposal for a wage increase. As this proposal did not take into consideration the union's request to include length of service on the pay scales, the union informed its members and the management that its board had rejected the wage increase. However, the general manager of the enterprise considered that the action of the trade union leaders violated the collective agreement and section 158(1)(f) on the Manpower Act of 2003, by "influencing and/or encouraging other workers to commit acts contrary to the regulations or the law". The general manager requested that interrogation of the signatories be undertaken, including the chairperson of the Gunung Madu Union, Mr. Sukamto. On 25 January 2005, the union informed the management of its acceptance of the originally proposed increase. Nonetheless, between 29 January and 3 March 2005, union officers and rank-and-file members were summoned by the Head of Security for questioning on their involvement in the rejection of the wage increase. On 12 March 2005, the general manager requested that Mr. Sukamto's employment be terminated for his role in urging employees to reject the wage increase and on 21 March, a letter of his suspension was issued. On 14 April 2005, the Central Lampung Office of Social, Manpower and Transmigration Affairs issued Recommendation No. 567/126a/D.6/2005, stating that the actions of Mr. Daud Sukamto inciting others to reject the company's policy with regard to the wage increase for 2005 was a "gross misconduct" under section 158(1)(f) of Manpower Act No. 13 of 2003. Following the enterprise's request addressed to the Chair of the Lampung Committee for Industrial Dispute Settlement (P4D) to authorize the dismissal of Mr. Sukamto, the management and the union representatives met with the Lampung P4D committee. The union representatives were told that based on the Indonesian Constitutional Court's 2005 review of Manpower Act No.13 of 2003, the P4D had no jurisdiction in this case and that the employer could dismiss Mr. Sukamto only after receiving a binding ruling from a court of the criminal jurisdiction. However, on 21 June 2005, the P4D officially recommended that Mr. Sukamto be dismissed, effective June 30, making no mention of the Constitutional Court's review of the Manpower Act. It cited, as the causes of dismissal, the reasons previously raised by the plantation management, i.e. Mr. Sukamto's involvement with the IUF and his recommendation to reject the management wage offer.

599. The IUF further submitted that the decision of the P4D was based on the vague wording of section 158 of the Manpower Act, which allowed employers to dismiss workers for their

trade union activities and left discretionary powers to the dispute resolution committee in defining what constituted grounds for a dismissal. The section provided that an employer may fire a worker who had committed “gross misconduct” including “encouraging a colleague to commit acts which contravene laws and regulations”. Nowhere did the law state that advising union members to reject a management proposal constituted a “gross misconduct”, yet the wording was sufficiently vague that the interpretation of what constituted grounds for dismissal was left to the discretion of the dispute resolution committee. It was precisely this legal vacuum, which led the Constitutional Court to call for an amendment of the relevant parts of the Manpower Act.

- 600.** In its communication of 24 November 2005, the complainant added that on 14 November 2005, three government officials held a meeting with the IUF representatives and informed them that an investigation into the IUF allegations conducted on 25 August 2005 concluded there had been no violations of freedom of association at the PT Gunung Madu Plantation. However, when the Government officials were presented with a copy of the ruling of the Lampung P4D of 21 June 2005, which upheld the dismissal of Mr. Sukamto, they declared to be unaware of this decision. The IUF therefore raised doubts about the seriousness of the investigation conducted by the authorities.

### ***Obstacles to the registration of the FSPM TG***

- 601.** In its communication dated 10 October 2005, the complainant alleged that following its establishment in February 2005, the FSPM TG was registered and received its registration number on 21 March 2005. In its letter of 23 March 2005, informing the union of its registration, the Office of Manpower stated that the FSPM TG had met in full the conditions of article 2 of the Ministerial Decree. However, the Chief of the Kediri City Manpower Office requested, on 23 March, further documents and asked Mr. Legimin, the FSPM TG General Secretary, to sign a statement to the effect that certain documents remained to be submitted and would be submitted within a month. According to the complainant, such a request was not in accordance with the conditions for registration as provided for in Ministerial Decree No. 16/2001 and the Trade Union Act. Despite this fact, the Federation had attempted to comply with the request of the Chief of the Kediri City Manpower Office and submitted the additional information in April. However, the Chief of the Manpower Office refused to accept the documents and informed the General Secretary of the FSPM TG that the existence of the Federation had to be questioned. On 23 May 2005, the Office of Manpower issued a letter, addressed to the Plantation Workers’ Labour Union (SP-BUN) (i.e. another trade union at the PTPN X (state-owned plantation X)), which stated that the registration of the FSPM TG had been deferred and referred to the following reasons: the withdrawal of member- unions from the FSPM TG; the objection of the management of the Pesantren Baru Sugar Mill about the FSPM TG secretariat being domiciled at the mill (i.e. where the General Secretary was employed at the time); and the statement signed by Mr. Legimin acknowledging that certain documents needed to be further provided. It then stated that the FSPM TG did not fulfil the conditions of Ministerial Decree No. 16/2001 regarding the registration of trade unions.
- 602.** The complainant indicated, however, that this letter contradicted the letter of 21 March 2005 notifying the Federation of the issuance of the registration number, which explicitly stated that the FSPM TG had met in full the conditions of article 2 of the Ministerial Decree. The IUF further submitted that article 4 of the same Decree provided for the deferral of the issuance of a registration number in the case where a trade union had not fulfilled the conditions of article 2 following an initial request for registration. Article 2 referred to the deferral of an initial registration and not the deferral of a registration number already issued. Therefore, this article could not be applied in a case where the registration number had already been provided and the conditions of this article already deemed to have been met. Furthermore, section 37 of the Trade Union Act clearly stated

that a trade union, federation or confederation could only be dissolved by its members or the decision of a court.

- 603.** The IUF further alleged that following the letter regarding deferral of the FSPM TG's registration, the management of the PTPN X had been hindering the activities of the elected general secretary of the FSPM TG and preventing the federation from carrying out its legitimate activities, such as seeking recognition as a collective bargaining agent.
- 604.** The FSPM TG had lodged written protests with both the Kediri City Manpower Office and the Indonesian Minister of Manpower, stating that the "deferral" of its registration contravened national law and violated trade union rights. In a letter of 5 October 2005, addressed to the Kediri City Manpower Office, the management of the PTPN X and the General Secretary of the FSPM TG, Mr. Legimin, the Minister of Manpower instructed the FSPM TG to seek a new registration number and upon its receipt, to "immediately withdraw" its complaint to the ILO.
- 605.** In its communication dated 24 November 2005, the complainant stated that the FSPM TG received, on 26 October 2005, an official notice of a second registration and its registration number. However, the Minister of Manpower failed to acknowledge the irregularities in the decision of the Manpower Office to defer the original registration. The complainant indicated that the FSPM TG had accepted, for practical reasons, the second registration number but it nevertheless wished to request the Committee's opinion on the irregularities that occurred in this case.

### ***Harassment and threats against the IUF and the FSPM TG executives***

- 606.** In its communication of 20 October 2005, the complainant alleged that numerous threats were made against the officers of the FSPM TG and the representatives of the IUF. In particular, the IUF alleged that an anonymous "warning note" was delivered to Ms. Hemasari Dharmabumi, the IUF Indonesia representative, on 31 August 2005, while she was attending an ILO seminar for plantation workers. The note warned the IUF not to establish organizations in agriculture or sugar mill companies "which already have trade unions" and urged Ms. Hemasari to "go home immediately". Previously, on 18 May 2005, a letter was sent to Ms. Hemasari by the Central Leadership Board of FSPPP-SPSI complaining about the activities of the IUF in Indonesia, its "unfriendly intervention" in establishing a trade union at the PT Gunung Madu Plantation and therefore disturbing the "harmonious industrial relations" at the Gunung Madu.
- 607.** Moreover, the IUF submitted that on 27 September 2005, the All-Indonesia Sugar Mills Unions Solidarity Forum, claiming to represent all sugar mills of the state-owned plantations, as well as privately owned mills, including the Gunung Madu, issued a "statement of position" condemning the IUF for its "provocative and dishonest" actions in "hijacking the cadres of other trade unions", "discrediting the Government and trade unions of Indonesia via the Internet" and "strongly reminding the IUF not to interfere in the internal affairs of trade unions in Indonesia". Other similar statements were sent to the Minister for Manpower on 12 and 27 October 2005. Furthermore, on 30 September, another statement accusing Ms. Hemasari and Mr. Legimin of violating the legislation and threatening them with "physical action" if they did not stop their actions, was widely circulated. The IUF also submitted that ever since Mr. Legimin was transferred to work in Surabaya (allegedly because of his trade union activities), he has been followed. The complainant claimed to have called upon the public authorities, the local police and the Minister to react to the threats but no action had been taken.

**608.** In its communication dated 24 November 2005, the complainant added that on 20 October 2005, it wrote to the Minister of Manpower and Transmigration urging the Ministry and the Government to respond to this escalating pattern of threats and to treat them as a subject for a criminal investigation and to take appropriate measures to safeguard the security and well-being of Mr. Legimin and Ms. Hemasari. The IUF did not receive any reply. During a meeting held with the IUF officials on 14 November 2005, the Manpower Ministry representatives indicated that they did not consider that the threats made by other trade union representatives were a matter for a criminal investigation or action of any kind on the part of the authorities.

## **B. The Government's reply**

**609.** In its communication of 18 August 2005, the Government stated that Mr. Daud Sukamto was a chairman of the FSPSI TG plant level union from 2002 to 2005 and negotiated with the management the wage increase in conformity with the legislation in force. At first, his union rejected the management's proposal, but on 25 January 2005, his organization accepted the above proposal. Following his election to the position of the President of the FSPM TG, he resigned from his position of Chairperson of the Plant Level Trade Union (PUK SPSI).

**610.** The Government further stated that on the date of its communication, Mr. Sukamto's case was before the Central Committee for Industrial Dispute Settlement (P4D) and that while it was under examination, any comments or pre-judgment were irrelevant. In respect of section 158 of Act No. 13 of 2003, the Government indicated that it had issued a circular, through the Minister of Manpower and Transmigration, No. SE.13/Men/SJ-HK/I/2005 dated 7 January 2005, which provided that an employer should await the final decision of the civil judge before terminating an employment on the basis of "gross misconduct".

**611.** The Government also stated that it would never reject any establishment of a union, including the FSPM TG, or its affiliation to any international workers' organization. However, such an affiliation should be done in accordance with the legislation in force, such as Act No. 21 of 2000, concerning the acknowledgment of the union, and Regulation No. 16/Men/2001, dealing with registration. The FSPM TG registered its organization and received its registration number. On 23 March 2005, following the registration and acknowledgment of the FSPM TG, its General Secretary signed a letter of acknowledgment that further documents needed to be submitted and would be provided in the period of one month. Two months later, on 23 May 2005, as no single document was sent to the Manpower Office, it had suspended the union registration. On 28 June 2005, the FSPM TG once again requested the Head of the District Manpower Office to register the Federation and provided its address in the district of Kediri. However, according to the Manpower Office, there was no single union of the FSPM TG established in the district of Kediri. On the date of the communication, the FSPM TG was still in the process of registration.

**612.** In its communication of 13 February 2006, the Government stated that the alleged threats and harassments suffered by Ms. Hemasari Dharmabumi and Mr. Legimin, were considered to be "public crimes" under the Criminal Code. Therefore, if the acts of harassment really took place, as Indonesian citizens, the aggrieved persons and/or organizations were entitled to sue the responsible persons before the authorized institutions. The Government stated that after thoroughly examining the IUF's allegations it was clear that this issue was outside of the Ministry of Manpower and Transmigration competence. Furthermore, the Government considered that the statements made by other trade unions in respect of the FSPM TG, could be attributed to a "misunderstanding" between trade unions and were "not a big deal". However, this "misunderstanding" occurred before there was any kind of legislation regulating disputes between trade unions.



The Government indicated that Act No. 2 of 2004 on Industrial Relations Dispute Settlement containing a provision in this respect was enacted on 14 January 2006. Therefore, the Government called upon the unions involved to settle their differences in a spirit of brotherhood.

- 613.** The Government further confirmed the information provided by the IUF on the re-registration of the FSPM TG.
- 614.** Concerning the dismissal of Mr. Sukamto, the Government indicated that the employer was allowed to terminate Mr. Sukamto's employment as from the end of June 2005 without any separation pay because it was proved that he infringed the provisions of the collective agreement and section 158 (1)(f) of Act No. 13 of 2003 by inciting his colleagues to commit actions which would violate the legislation in force. Mr. Sukamto lodged an appeal of the decision of 21 June 2005 before the P4D of Lampung Province but this appeal was dismissed as it was lodged after the 14-day grace period.
- 615.** Finally, the Government indicated that the meeting between the IUF and the Indonesian delegation on 13 November 2005 was initiated by the IUF and, as a sign of a good will, the Government of Indonesia had decided to accept it. It therefore regretted that the IUF took advantage and submitted an unofficial communication of the Government as a new evidence to the ILO.

### **C. The Committee's conclusions**

- 616.** *The Committee notes that this case concerns the allegations of an anti-union dismissal, obstacles to register a trade union federation and threats and harassment of trade union leaders submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) on behalf of its affiliate, the Federation of Independent Tobacco, Cane and Sugar Workers' Unions (FSPM TG).*

#### **Anti-union dismissal of Mr. Daud Sukamto**

- 617.** *Concerning the first set of allegations, the dismissal of Mr. Sukamto, the Chairperson of the Gunung Madu Plantation Union and President of the FSPM TG, the Committee notes that according to the complainant, he was dismissed for recommending that the workers at the plantation reject a wage increase proposed by the employer, as it did not take into account the proposals made by the union. According to the IUF, this dismissal was based on section 158 of the Manpower Act of 2003, which, given its very broad language, allows employers to dismiss workers for their trade union activities. The Committee notes the Government's indication that following the decision of the Central Committee for Industrial Dispute Settlement (P4D), the employer was allowed to terminate Mr. Sukamto's employment as from the end of June 2005 without any separation pay because it was proved that he infringed the provisions of the collective agreement and section 158(1)(f) of Manpower Act No. 13 of 2003 by inciting his colleagues to commit actions which would violate the legislation in force.*
- 618.** *While noting that the Government confirms that Mr. Sukamto's dismissal was pursuant to section 158(1)(f) of the Manpower Act, the Committee regrets that the Government has not specified the precise action considered to be in violation of the legislation in force. At the same time, the Committee notes that the Government has not denied the complainant's allegation that this action was, in fact, Mr. Sukamto's recommendation concerning the proposed wage increase, his involvement with the IUF and the initial refusal of the union to accept the employer's proposal. The Committee considers that a recommendation of the chairperson of a union in respect of an employer's proposal is a legitimate act within the*

context of collective bargaining and should be protected as a legitimate trade union activity. While the Government has also made a general allegation that the provisions of the collective agreement had also been violated by Mr. Sukamto, the Committee has not been provided any details in this regard and considers that matters relating to the interpretation of collective agreements and compliance with their provisions should be determined by the courts.

- 619.** *The Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate, which they hold from their trade unions. Furthermore, although the holder of trade union office does not, by virtue of his or her position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities [see the **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 724 and 726]. The Committee further recalls that the right to affiliate with international organizations of workers implies the right, for the representatives of national trade unions, to maintain contact with the international trade union organizations with which they are affiliated, to participate in the activities of these organizations and to benefit from the services and advantages which their membership offers [see **Digest**, *op. cit.*, para. 635]. The Committee requests the Government to ensure the full respect of these principles.*
- 620.** *In view of the uncontested allegations that Mr. Sukamto was dismissed due to the recommendation he made to the workers in respect of the employers' proposal on a wage increase, the Committee requests the Government to take the necessary measures to reinstate Mr. Sukamto in his employment without loss of wages and benefits and to keep it informed in this respect. It further requests the Government to fully review section 158(1)(f) of the Manpower Act of 2003 in the light of the Constitutional Court judgement referred to and to take all necessary measures to ensure that the term "gross misconduct" is not interpreted so as to include legitimate trade union activities. The Committee requests the Government to keep it informed of the measures taken or envisaged in this respect and reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

### **Obstacles to registration of the FSPM TG**

- 621.** *The Committee notes from the complainant's allegation that following its establishment in February 2005, the FSPM TG was registered and received its registration number on 21 March 2005. The Office of Manpower, in its letter of 23 March 2005 informing the union of its registration, stated that the FSPM TG had met in full the conditions of article 2 of the Ministerial Decree. However, according to the complainant, the Chief of the Kediri City Manpower Office requested, on 23 March, further documents and asked Mr. Legimin, the General Secretary of the FSPM TG, to sign a statement to the effect that certain documents remained to be submitted and would be submitted within a month. Despite the attempts of the Federation to submit these documents, on 23 May 2005, the Office of Manpower issued a letter, addressed to the Plantation Workers' Labour Union (SP-BUN) (i.e. another trade union at the PTPN X (state-owned plantation X)), which stated that the registration of the FSPM TG had been deferred and referred to the following reasons: the withdrawal of member-unions from the FSPM TG; the objection of the management of the Pesantren Baru Sugar Mill to the FSPM TG secretariat being domiciled at the mill*

(i.e. where the General Secretary was employed at the time); and the statement signed by Mr. Legimin acknowledging that certain documents needed to be further provided. It then stated that the FSPM TG did not fulfil the conditions of Ministerial Decree No. 16/2001 regarding the registration of trade unions.

- 622.** *The Committee notes the Government's statement that while the registration number had been given to the FSPM TG, some details remained to be clarified. It added that the General Secretary of the FSPM TG made a statement recognizing that some documents were missing and promised to rectify the matter within a one-month period; however, two months later, as the requested documents were not submitted, the Office of Manpower issued a letter of suspension of registration. The Committee notes from the last communications of the complainant and the Government that the FSPM TG was re-registered in October 2005.*
- 623.** *While taking note of the subsequent re-registration of the FSPM TG, the Committee notes that the complainant requested the Committee's opinion on the issue of the irregularities of procedure which allegedly occurred in this case and in particular, the fact that the legislation did not provide for the possibility to defer the registration once the registration number had been issued and that section 37 of the Trade Union Act clearly stated that a trade union, federation or confederation could only be dissolved by its members or the decision of a court. The Committee takes note of the letter dated 23 March 2005, submitted by the complainant, which informs the Federation that it has been registered and that it "has fulfilled the conditions laid out in article 2(2) of the Decree of the Minister of Manpower and Transmigration" and of the letter of 23 May 2005, addressed to another union, stating the contrary. The Committee observes that the reasons given in this latter communication refer to matters such as the management's objection of the union being domiciled at the mill and a general indication of withdrawal of member-unions and the need for further documentation. In its reply, the Government refers to the lack of documentation generally and the absence of a member-union where the Federation wished to establish its office.*
- 624.** *The Committee recalls that the formalities prescribed by law for the establishment of a union should not be applied in such a way as to delay or prevent the setting up of occupational organizations [see **Digest**, op. cit., para. 249]. It further recalls that measures of suspension by the administrative authority constitute serious infringements of the principles of freedom of association [see **Digest**, op. cit., para. 664]. While the Committee is not in a position to determine whether Indonesian law was correctly applied in this case, the Committee considers that the action taken by the authorities to suspend the FSPM TG would appear to be out of proportion to the reasons given for suspending the union's registration. In addition, the Committee does not understand why the communication announcing the suspension was sent to another trade union organization. Finally, the Committee recalls that a decision to prohibit the registration of a trade union, which has received legal recognition, should not become effective until the statutory period of lodging an appeal against this decision has expired without an appeal having been lodged, or until it has been confirmed by the courts following an appeal [see **Digest**, op. cit., para. 265]. The Committee expects that the Government will ensure the full respect of these abovementioned principles in the future.*

### **Harassment and threats of IUF and FSPM TG executives**

- 625.** *The Committee notes the IUF's allegation that its representative in Indonesia, Ms. Hemasari Dharmabumi, and the FSPM TG General Secretary, Mr. Legimin, were victims of threats and harassment. These included threats of "physical action" and, in respect of Mr. Legimin, his being followed. The complainant submits that even after*

*calling on the local police, public authorities and the Minister of Manpower to react to those threats of violence by publicly condemning them and by launching an investigation and taking all measures to ensure the safety of Ms. Hemasari and Mr. Legimin, the relevant authorities considered that this issue was not a matter for criminal procedures. The IUF further alleged defamatory statements made by other trade unions in respect of the IUF and its affiliates.*

- 626.** *The Committee notes that according to the Government, the alleged threats and harassments suffered by Ms. Hemasari Dharmabumi and Mr. Legimin were considered to be “public crimes” under the Criminal Code. Therefore, if the acts of harassment really took place, as Indonesian citizens, the aggrieved persons and/or organizations were entitled to sue the responsible persons before the authorized institutions and that this issue was outside of the competence of the Ministry of Manpower and Transmigration. Furthermore, the Government considered that the statements made by other trade unions in respect of the FSPM TG, could be attributed to a “misunderstanding” between trade unions and considered it “not a big deal”. It stated that it called upon the unions to settle their differences in the spirit of brotherhood and referred to the new Act on Industrial Relations Dispute Settlement, which contains a provision on regulation of disputes between trade unions.*
- 627.** *The Committee recalls that a climate of violence, coercion and threats of any type aimed at trade union leaders undermines the free exercise and full enjoyment of the rights and freedoms set out in Conventions Nos. 87 and 98. All States have the undeniable duty to promote and defend a social climate where respect of the law reigns as the only way of guaranteeing respect for and protection of life. The Committee further recalls that violence resulting from inter-union rivalry might constitute an attempt to impede the free exercise of trade union rights [see *Digest*, *op. cit.*, paras. 62 and 974]. Taking into account the seriousness of the allegations, the Committee considers that the intervention of the authorities, in particular the police, would be called for in order to provide adequate protection of those rights. The Committee deeply regrets that the Government has failed to seriously consider and investigate the allegations of threats and harassment. The Committee therefore strongly urges the Government to conduct an independent investigation without delay into the allegations of harassment, threats and defamatory statements with a view to fully clarifying the facts, determining criminal responsibility, if any, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed in this respect.*

## **The Committee’s recommendations**

- 628.** *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 to reinstate Mr. Sukamto in his employment without loss of wages and benefits and to keep it informed in this respect.*
  - (b) The Committee requests the Government to review section 158(1)(f) of the Manpower Act of 2003 in the light of the judgement of the Constitutional Court in this respect and to take all necessary measures to ensure that the term “gross misconduct” is not interpreted so as to include legitimate trade union activities. It requests the Government to keep it informed of the measures taken or envisaged in this respect and reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

- (c) *The Committee strongly urges the Government to conduct an independent investigation without delay into the allegations of harassment, threats and defamatory statements with a view to fully clarifying the facts, determining criminal responsibility, if any, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed in this respect.*

CASE NO. 2323

INTERIM REPORT

**Complaint against the Government of the Islamic Republic of Iran  
presented by  
the International Confederation of Free Trade Unions (ICFTU)**

*Allegations: The complainant organization alleges violent police repression of the May Day 2004 rally as well as of other strikes and related protests, and the arrest, detention and conviction of several trade union leaders and activists for their trade union activities*

- 629.** The Committee examined this case at its June 2005 meeting and submitted an interim report to the Governing Body [see 337th Report, paras. 918-1046, approved by the Governing Body at its 293rd Session (June 2005)].
- 630.** The complainant submitted new allegations in a communication dated 8 March and 17 May 2006.
- 631.** The Government sent new observations in a communication dated 13 March and 17 May 2006.
- 632.** The Islamic Republic of Iran has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Previous examination of the case**

- 633.** At its May-June 2005 meeting, the Committee made the following recommendations in relation to this case [see 337th Report, para. 1046]:
- (a) Regretting that it has insufficient information to determine whether the use of force in respect of the protesting workers at the copper complex in Khatoonabad was justified or not, the Committee requests the Government to provide further information on any criminal charges brought or court judgements rendered in respect of the threats of violence and arson at Khatoonabad. It further trusts that all necessary measures will be taken in the future to ensure that excessive force is not used when controlling demonstrations.
  - (b) Noting that the complainant has referred to some 80 persons who were arrested and 15 kept for interrogation following further protests against the police intervention in Khatoonabad and Shahr-e-Babak, the Committee requests the Government to establish an independent investigation into the matter and to provide further information on whether any of these persons are still being detained or charged in relation to these two

incidents and, if so, to provide details in this respect. The Committee further requests the complainant to provide any additional information available to it which might link the spread of the protest action to Shahr-e-Babak with the workers' demands on social and economic measures.

- (c) The Committee requests the Government to provide details concerning the circumstances in which four persons were killed during the incidents at Shahr-e-Babak.
- (d) The Committee requests the Government to reply to the complainant's allegations concerning serious breaches of due process and requests it to ensure that due process is fully guaranteed during these trials.
- (e) The Committee requests the Government to ensure that all charges against Messrs. Salehi, Hosseini, Divangar, Abdlpoor, Hakimi, Khodkam and Tanomand related to the organization of the Labour Day march and the peaceful participation therein, even if it took place without prior approval, are immediately dropped.
- (f) The Committee requests the Government to provide it with precise and detailed information on the specific charges brought against Messrs. Salehi, Hosseini, Divangar, Abdlpoor, Hakimi, Khodkam and Tanomand and, in particular, to transmit copies of the judgements in their cases as soon as they are handed down.
- (g) The Committee further requests the Government to provide information in reply to the additional allegations made by the complainant in its communication dated 7 February 2005 concerning the arrest of trade union leaders of the Teachers' Guild Association, interventions in a strike at the Kurdistan Textile Factory and subsequent harassment of the workers' representatives and the proposal and adoption of legislation that would restrict the trade union rights of a large number of workers.

## **B. New allegations**

- 634.** In a communication dated 8 March 2006, the complainant sent additional information on the incidents of Khatoonabad and Saqez.
- 635.** With regard to the incident in Khatoonabad, the complainant attached a press clipping of 27 January 2004 by the Iranian Labour News Agency (ILNA) on a communiqué issued by the High Centre of Islamic Labour Councils. According to the complainant, the communiqué, made directly after the killing of four workers in Khatoonabad, confirms that workers have been killed and injured in Kerman Province. Although the Council seems to be in some confusion as to where the incident took place, it seems to be very clear that the authorities used excessive force against workers during the strike. The complainant emphasized that two years after the death of the four workers at Khatoonabad, nobody has been held responsible and, to its knowledge, the victims' families have not received compensation.
- 636.** With regard to the Saqez May Day rally of 2004, the complainant alleged that the seven labour leaders and activists, Mahmoud Salehi, Jalal Hosseini, Mohsen Hakimi, Borhan Divangar, Mohammad Abdlpoor, Esmail Khodkam and Hadi Tanomand, who were arrested on 1 May 2004 because of their labour rights activism, and subsequently charged with cooperation with the banned political party Komala, were arrested even before the rally started on 1 May 2004. The May Day event was supposed to start at 5 p.m. at the Parke Kodak (Kids' Park) in Saqez but at 5 p.m., before the rally started, security forces and plain clothes officers attacked the participants and arrested about 50 people, including the seven charged with illegal political activity. The wife of Mohsen Hakimi later confirmed that no ceremony or gathering took place on 1 May 2004, in a statement issued on 13 November 2005.
- 637.** According to the complainant, the prosecution blamed Mr. Salehi during his court hearing on 1 February 2005 for writing two documents annexed by the complainant, namely an article entitled "Preparing a cost of living index for a family of 5 in Iran" and a statement

condemning the killing of several striking workers by security forces in Khatoonabad in January 2004. Moreover, the complainant emphasized that, during Mahmoud Salehi's first court hearing on 1 February, the prosecutor included a meeting with the ICFTU mission which took place on 29 April 2004 in his reading of the indictments. These charges were repeated during the second court hearing against Mr. Salehi. On 18 April 2005 after the second hearing, Mahmoud Salehi made the following brief description of some of the exchanges during his trial.

April 18, 2005

To the compassionate workers and people of Saqez:

As you are aware, on May 1st, 2004 while preparing to participate in a May Day event, the intelligence forces arrested and subjected us to 11 days of rigorous interrogation. We were released after an outrageously high amount of bail set for our release was paid by the kind and caring citizens of Saqez. Since our release, we have been summoned to the court hearings a number of times. The last court was on April 5th, 2005. After my last hearing, my family and I have been repeatedly asked by friends and concerned people about the court process. I hereby try to provide a brief account of the allegation brought up against me by the judge in my last hearing.

1. Judge: A cassette related to 26th of Bahman (Komala Day) has been found in your house. Mahmoud: No, I have nothing to do with this.
2. Judge: You distributed a poster of Karl Marx on the Labour Day. Mahmoud: No, I did not do that.
3. Judge: 10 copies of a communiqué have been found in your house. Mahmoud: I had no communiqué of any kinds in my house and that is not true.
4. Judge: A book titled "Cheap labour, Silent Worker" has been found in your house. Mahmoud: I have a library with many books. I use books just for reading. Why didn't your agents bring other books like Imam All's and Mr. Beheshti's (religious leaders)?
5. You have written 3 articles on women's issues in Iran and have sent them to the international organizations. Mahmoud: This is false allegation and I do not accept it.
6. Judge: You have written several letters to the International Confederation of Free Trade Unions (ICFTU). Mahmoud: I met with the ICFTU mission on April 29, 2004. The Iranian Government had issued visa for this mission and my meeting with the ICFTU mission, which was legal, was observed by the government authorities.
7. You have prepared a chart about the cost of living for a family of five and have distributed it publicly. Mahmoud: yes, I did prepare this chart and gave it to the Security Office of the Labour and Social Affairs Office to take it into consideration when determining the minimum wage rate in 1383.
8. A notebook has been found in your house, which includes labour articles. Mahmoud: yes, it belongs to me and I wrote it in 1379 (2000-2001) during my incarceration at the Saqez Central Prison. This is a personal notebook and there is no problem with it.
9. Where did you get arrested? Mahmoud: at Masjid Mullah Zahed Lane.
10. Were you at the event? Mahmoud: No, no event took place so I couldn't have been at any event. Judge: So therefore you are denying that you were arrested at the event? Mahmoud: yes, I have witnesses that I was not arrested at the event.

Dear workers and concerned people, the above report is just a brief update on charges and allegations that were brought up against me by the judge on April 5th, 2005.

Mahmoud Salehi

- 638.** According to the complainant, whilst the court cases were still pending, Mahmoud Salehi and Mohsen Hakimi continued their independent labour activities and along with other workers they formed a "Coordinating Committee to Form Workers' Organizations" on 4 May 2005. However, Mahmoud Salehi was arrested on 4 August 2005 for one hour for

participating in one of the many protests that followed the shooting of Shivan Qaderi, a Kurdish opposition activist, in July 2005. Before his release he was warned against participating in any further demonstrations and strikes in Saqez. The complainant considers the arrest to be further harassment of Mr. Salehi in reprisal for his independent trade union activities, given the fact that he was warned against taking part in any demonstrations whatsoever, including strikes.

- 639.** The complainant further alleged that on 7 August 2005, at 2 a.m., security forces raided the home of Borhan Divangar. He was arrested and his computer and other belongings were seized, and later that day he was charged among other things with membership of the “Committee to Follow up the Establishment of Free Labour Organisations”, (the ICFTU believes that this is the same organization mentioned above, which Salehi, Hakimi and others co-founded), membership of the newly formed unemployed workers’ organization, managing a labour web site in Iran called “Tashakol” ([www.tashakol.com](http://www.tashakol.com)), and with participating in the wave of demonstrations in Saqez that followed the shooting of Shivan Qaderi. Borhan Divangar was kept in detention until 12 September 2005. At the beginning of his detention, his wife was only allowed to see him briefly and she reportedly noticed signs of physical abuse on his face. Some reports received by the ICFTU suggested that he might have been beaten to the point of having had difficulties to speak.
- 640.** According to the complainant, on 9 November 2005, Mahmoud Salehi, the former President of the Bakery Workers’ Association of the City of Saqez and a co-founder of the Coordinating Committee to Form Workers’ Organisations was sentenced to five years’ imprisonment and three years in exile in the City of Ghorveh. Jalal Hosseini, a member of the Bakery Workers’ Association of the City of Saqez, was sentenced to three years imprisonment, whereas Hadi Tanomand and Esmail Khodkam were acquitted.
- 641.** The complainant added that Mahmoud Salehi, Jalal Hosseini, Hadi Tanomand and Esmail Khodkam were all found not guilty with regard to the charges pertaining to association with the banned organization Komala. Despite this fact, Messrs. Salehi and Hosseini were sentenced according to article 610 of the Islamic Punishment Act, prescribing penalties from two to five years of imprisonment for congregating to conspire to commit crimes against national security. The complainant has repeatedly requested access to the court hearings to assess whether the defendants were given fair hearings and the full details of the charges brought against them, but has not been able to obtain entry visas. Full details of all the charges and the judgement on each of them have not been made available to the complainant, however, a list of reported charges was received and annexed to the complainant’s communication.
- 642.** The complainant further added that on 11 November 2005 Mohsen Hakimi, Borhan Divangar and Mohammad Abdlpoor were all sentenced to two years’ imprisonment. They were found guilty of the charge of “attempting to endanger national security by participating in an illegal gathering”, that is to say they were found guilty of celebrating May Day 2004. hence five out of the seven initially charged were sentenced, while only Hadi Tanomand and Esmail Khodkam were acquitted.
- 643.** The complainant considered that all five were sentenced for their trade union activities, especially given the fact that the initial arrests were made in connection with their participation in the May Day 2004 celebrations and that charges against them were made shortly thereafter. Furthermore, during the court hearings against Mr. Salehi, his trade union activities were held against him by the prosecutor and the judge, including a meeting he had with an ICFTU delegation in April 2004. The principal lawyer of the defendants has informed the ICFTU that the sentences will be appealed and that the five will not be imprisoned before the final verdicts are pronounced.



- 644.** Furthermore, according to the complainant, some of the charges against Mahmoud Salehi are still pending. The complainant has been informed that some of the charges have been turned over to a public court, as opposed to the Islamic Revolutionary Court in which the case has previously been heard. The charges that have been transferred to the public court concern the table that Mr. Salehi wrote, “Preparing a cost of living index for a family of 5 in Iran”. Mr. Salehi has been charged with “public opinion disturbance” which lies within the competence of the public courts, whereas the Islamic Revolutionary Court has jurisdiction over anti-governmental charges. According to information obtained by Mohsen Hakimi, public courts do not necessarily grant the public access to court hearings.
- 645.** The complainant also indicated that on 23 February 2006 Borhan Divangar was summoned to court. The court hearing lasted an hour and 15 minutes, and was held behind closed doors. However, the ICFTU believes that it concerned the charges made against him during his arrest on 7 August 2005 and his two-month detention.
- 646.** The complainant finally indicated that additional information on other previously raised violations would be sent in another communication.
- 647.** In a communication dated 17 May 2006, the ICFTU transmitted additional information in respect of the Saqez trials. The ICFTU indicates that the Iranian Government has informed it that the sentences against Messrs. Salehi, Hosseini, Hakimi, Divangar and Abdlpoor were all overturned by the Court of Appeal. The ICFTU further referred to an unofficial translation of the verdict concerning Mr. Salehi. The Court’s verdict sets out that: “Given the content of the case, since according to the police reports and the content of the file the actions of the defendant did not in fact result in the said illegal gathering, and before any riot and any activity against the internal security of the country could take place, the defendants were arrested, therefore, the said charges have not in fact taken place to try the defendants on the basis of the said actions.” The primary verdict was dismissed and the defendant was declared innocent of the said charges. In addition, however, the Court refers to further charges of assembly and collusion to act against the internal and external security of the country (article 610 of the Islamic Penal Code) that had never been made known to the defendant thus violating his legal right to defence. The Court of Appeal thus returns this aspect of the case to the primary court for the purpose of accurate examination.
- 648.** The ICFTU has been informed that the verdicts (attached to the communication) for Messrs. Hosseini and Abdlpoor are identical and assumes that the verdicts in the other cases are similar. While the ICFTU welcomes the positive sign that parts of the sentence have been quashed, it is concerned that the charges pertaining to the offence under article 610 of the Islamic Penal Code have been returned to the Saqez Revolutionary Court. In the ICFTU’s view, this charge is still an important impediment to the legitimate trade union activities of Messrs. Salehi, Hosseini, Hakimi, Divangar and Abdlpoor. The pending charges are still serious and could lead to imprisonment.
- 649.** The ICFTU further reiterates that the Appeal Court has not dealt with the charges that were turned over to a public court in the case against Mr. Salehi for public opinion disturbance for having written a table entitled “Preparing a cost of living index for a family of five in Iran”. Nor does the ICFTU have any information in respect of the court hearing on 23 February 2006 concerning the case against Mr. Divangar in which they believe he was tried for the charges made against him on 7 August 2005.

### **C. The Government’s reply**

- 650.** The Government submitted further information in response to the Committee’s recommendations in a communication dated 13 March 2006. In particular, the Government indicated that the Ministry of Labour and Social Affairs has been informed by the Ministry

of Justice under letters Nos. M/111/01/219, dated 22 November 2005, M/111/01/264, dated 14 December 2005, and M/111/01/415, dated 1 March 2006, of the recent developments and the court rulings regarding the two cases “Saqez” and “Shahr-e-babak”.

- 651.** The Government reiterated that it has always respected the principle of freedom of association and the right of workers to organize and has made its utmost efforts to ensure the improvement of social and economic conditions of the labour force throughout the country. The Government considers the right to organize public gatherings as an indisputable and important aspect of trade union rights also provided for in its Constitution. Thus, resort to force in labour-related issues is in no way implicated in its policies. Each year hundreds of different gatherings and rallies are held all around Iran without the slightest sign of trouble. Assemblies and public speeches are recognized principles and accepted rules and standards of civil society and no legal action whatsoever is ever brought against the participants or the audiences as far as minimum orderly arrangement and rule of law is observed in pertinent events. Thus, as in any other sovereign State, these meetings and demonstrations, on any occasion whatsoever, should not lead to breaching law and order. Implementing the provisions of Article 8 of Convention No. 87, all Iranian workers’ and employers’ associations should accordingly obtain official government approval for holding their assemblies and/or rallies. The Government emphasized that the holding of May Day celebrations and rallies is not considered illegal in Iran provided that the corresponding approvals are obtained from the Ministry of Interior in advance.
- 652.** According to the Government, it is evident in the verdicts issued by the Saqez court that the legal proceeding instituted against the defendants merely focused on their charges for illegal and prohibited assemblies and insurgencies leading to disorderly civil unrest and violation of social security. Although some ex-convicts and recognized dissidents and distinguished anti-government leftist and Marxist-oriented people actively participated in the May Day 2005 rally, no legal proceedings whatsoever were brought against them as there was no sign of commotion and disturbances in the corresponding incidents.
- 653.** Moreover, the Government indicated that the concern expressed by the complainant as to the arrest of the defendants because of their meeting with its mission seems to be unsubstantiated. The mission had met with many people during their stay in Iran who were not even contacted by police or security forces later on.
- 654.** As for the holding of the trials behind closed doors, the Minister of Justice indicated that “In respect of the incidents of 1 May, civil disorder, all court hearings were held in public except for one instance when some people attending the court deliberately tried to disturb the court proceedings, making the judge order for a non-public session.”
- 655.** As for the outcome of the seven trials related to the Saqez incident, the Government indicated that Mohammad Salehi was convicted for instigating “civil unrest” and “illegal demonstrations” to a total of eight years’ imprisonment, of which three years to be spent in exile in the City of Qorveh, as a leniency token (File No. Sh/263/83). Halal Hosseini (Jalal Hosseini, according to the complainant), was sentenced to three years’ imprisonment for instigating “illegal and violent demonstrations” (File No. Sh/254/83). Borhan Divangar, Mohammad Abdipoor and Mohsen Kam-gooyan (Mohsen Hakimi, according to the complainant) were sentenced to two years of imprisonment for instigating “illegal and violent demonstrations” (Files Nos. Sh/260/83, Sh/258/83 and Sh/255/83, respectively). All five were acquitted of the charges of sympathizing with subversive groups. Finally, Ismaiel Khodkam (Esmail Khodkam, according to the complainant) and Hadi Tanomand (Hadi Tanomand, according to the complainant) were acquitted of all charges (Files Nos. Sh/262/83 and Sh/261/83).

**656.** The Government further noted that:

- all the defendants in question were, according to their indictment, convicted for unlawful and violent demonstrations and civil disorder rather than attending the May Day celebrations or carrying out union/labour-related activities;
- the Iranian law stipulates that, in order to hold demonstrations and rallies, prior permission should be obtained from the Interior Ministry. The violent demonstrations in the above cases were in nature quite unrelated to labour-related activities and in apparent breach of the provisions laid down in statutory law;
- the investigating body asserts that allegations made against the defendants were based upon “illegal demonstrations”, as well as “violent acts” leading to disorderly conduct and social commotion. In fact in previous years’ Labour Days, a number of nationwide demonstrations were held. Due to the peaceful nature of those demonstrations, however, no restrictions were imposed on them.

**657.** With regard to the Shahr-e-Babak incidents, the Government provided information on the latest communication by the Minister of Justice in the abovementioned correspondence with the Minister of Labour and Social Affairs in respect of the inquiries made as to specific and more detailed information concerning the incidents.

**658.** According to the Government, the complainant’s allegations are unsubstantiated. The public authorities are not implicated in any contract made between third parties, in this case the subcontractor of the smelting plant and the workers. The subcontractor that built the smelting plant in Khatoonabad village for the National Iranian Copper Industries Company denies having made promises of permanent employment contracts to the 1,500 workers who had been recruited for the construction of the plant. At any rate, any such undertaking or promises should not entail any obligation for the National Iranian Copper Industries Company.

**659.** In contrast to the assumption of the complainant that the confrontation began when the police used force in an attempt to break the eight-day sit-in strike in front of the plant, the report of the Chief of Justice Department of Kerman Province confirms earlier government reports that violence only broke out when “rioters” started attacking public property, banks and office buildings in Shahr-e-Babak. The report confirms, with deep regret, the killing of four citizens and temporary arrest of dozens more subsequent to extensive civil disorder.

**660.** The Minister of Justice renounces allegations in respect of house-to-house search, torture of the arrested and critical condition of the injured. Contrary to the information contained in the complainant’s report, none of the people killed in the context of civil disorder were workers of the smelting plant.

**661.** Relying on an independent and sovereign judiciary system, the legal proceedings instituted to examine the charges of the four people killed rejected the allegations brought against them as to their having been amongst rioters. The court ruling rather found the police force guilty and sentenced them to pay indemnity for the loss of lives of innocent citizens.

**662.** Following the verdict issued by the military court as to termination of prosecutions of the police force involved in the dispersal of the demonstrations and the inadvertent killing of the four people, the families of the deceased objected to the decision reached at the military court. Accordingly, the court of justice of Kerman Province referred the case of the guilty police force to the National Supreme Court where it would be heard soon under File No. 15/4/85/2/83.

- 663.** Although dozens of people were arrested in the Shahr-e-Babak and Khatoonabad incidents, almost all were immediately set free. According to the latest information released by the Minister of Justice, only six defendants were found guilty of unlawful conduct by the general court in Shahr-e-Babak.
- 664.** The case of Shahr-e-Babak civil order and commotion was finally brought to the court under File No. 124/83/3 and the general court of the city found six people guilty and gave each six to 12 months' imprisonment sentences.
- 665.** In the court of appeal held on 14 January 2006 in the City of Kerman, the penalties of the defendants were suspended for three years and their imprisonment terms were further shortened too. One of them was later set free against paying a rials 1,000,000 (US\$110) bail only.
- 666.** In a communication dated 17 May 2006, the Government transmits a copy of a letter sent to the ICFTU in which it refers to the exoneration of five people arrested on May Day 2004 in Saez. In the attached letter, the Government refers to information provided by the lawyer of one of the earlier acquitted defendants who had been arrested on May Day 2004 in Saez indicating that Messrs. Salehi, Hosseini, Hakimi, Divangar and Abdlpoor were acquitted of the charges of illegal assembly and social unrest brought against them. The information that the Government had received also indicated that the Court of Appeal had drawn the attention of the Court to the negligence in the introduction of charges to the defendants during the initial stages of the court hearing. The Government states that the ruling of the Court of Appeal is perhaps a good indication of a thoroughly independent and impartial judiciary system that seeks true humane justice.

#### **D. The Committee's conclusions**

- 667.** *The Committee observes that this case concerns allegations of violent police repression of strikes, protests and the May Day 2004 rally in Saez; the arrest, detention and conviction of several trade union leaders and activists for their trade union activities; the arrest of trade union leaders of the Teachers' Guild Association; interventions in a strike at the Kurdistan Textile Factory and subsequent harassment of the workers' representatives; and the proposal and adoption of legislation that would restrict the trade union rights of a large number of workers.*

#### **Khatoonabad and Shahr-e-Babak**

- 668.** *With regard to the violent repression of a strike and protest at the copper complex in Khatoonabad on 24 January 2004, the Committee recalls that in its previous examination of this case, regretting that it had insufficient information to determine whether the use of force in respect of the protesting workers was justified or not, requested the Government to provide further information on any criminal charges brought and court judgements rendered in respect of the threats of violence and arson to which the Government had made general references in its report, and which, according to the Government, left the police with no choice but to use tear gas and water cannons.*
- 669.** *The Committee notes in this respect that the complainant forwarded a press communiqué issued by the High Centre of Islamic Labour Councils on 27 January 2004 soon after the incidents in Khatoonabad and Shahr-e-Babak, which would seem to indicate that the authorities used excessive force against workers in the Province of Kerman (Khatoonabad and Shahr-e-Babak belong to this province). Although the communiqué appears to refer to protests concerning the Mirrok Mines, according to the complainant, it refers in reality to the incidents in Khatoonabad (showing some confusion on behalf of the Council as to*

where the incident took place). The communiqué reads in part: “We have witnessed till now, labour protests, strikes, sitting strikes and labour rallies to achieve [the workers’] legal rights, but unfortunately now, we notice that the just actions of the workers are met out with firearms, and unfortunately considerable numbers of them get killed or injured. The Governorate of Kerman, unable to give convincing answers to the workers of the Mirook Mines of Kerman, resorts to violence and utilizes the Special Guards Forces to counter them. Are the workers foreign enemies and should every protest be answered with a gun?”

- 670.** *The Committee notes that the Government largely reiterates previously provided information on the incidents, emphasizing that there was no agreement as to the granting of permanent status to the protesting casual workers whose contracts were terminated at the completion of the smelting plant built by a subcontractor for the National Iranian Copper Industries Company.*
- 671.** *The Committee notes with regret that the Government advances no further information on the purported threats of violence and arson made by the workers in Khatoonabad. The Committee deplores the absence of information which could have assisted it in evaluating whether the recourse to force in respect of the protesting workers at the copper complex in Khatoonabad was justified or not. The Committee recalls that authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of law and order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 137].*
- 672.** *With regard to the violent clashes in Shahr-e-Babak, which took place on the same day as the incidents in neighbouring Khatoonabad, the Committee recalls that in its previous examination of this case it had requested the Government to provide further details concerning the circumstances in which four persons were killed as well as the believed reasons for their involvement in these events, given that the Government had indicated that these persons were not workers of the Khatoonabad smelting plant and that they were actually involved in a political protest lacking social or economic grounds.*
- 673.** *The Committee notes in this respect that according to the complainant, the four victims were workers and two years after their death nobody has been held responsible, and their families have not received any compensation.*
- 674.** *The Committee further notes that according to the Government, after carrying out an inquiry, the Ministry of Justice confirmed that violence only broke out in Shahr-e-Babak when “rioters” started attacking public property, banks and office buildings, leading to the regretful killing of four citizens and temporary arrest of dozens more pursuant to extensive civil disorder. None of those killed were workers of the smelting plant. The legal proceedings since instituted to examine the incident rejected the allegations that the four people who were killed were amongst the rioters and found the police forces guilty and sentenced them to pay indemnity for the loss of life of innocent citizens. However, the military court subsequently decided to terminate the prosecutions of the police force involved in the dispersal of the demonstrations and the inadvertent killing of four people. The families of the killed objected to this decision and the court of justice of Kerman Province referred the case to the National Supreme Court where it is pending under File No. 15/4/85/2/83.*

- 675.** *The Committee notes, therefore, that following an investigation, it has been found that the four killed persons in the Shahr-e-Babak events were not involved in a political protest, as previously indicated by the Government. The Committee deeply regrets the loss of innocent life and once again emphasizes that the intervention of the forces of law and order should be in due proportion to the danger to law and order that the authorities are attempting to control. The Committee requests the Government to take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace. The Committee notes that the issue of the killing of four innocent persons by the police force during the incidents in Shahr-e-Babak is currently pending before the Supreme Court and requests the Government to keep it informed of the progress of the proceedings and to communicate the final decision once it has been handed down.*
- 676.** *The Committee further recalls that during the previous examination of this case, it had requested the Government to establish an independent investigation into the arrests of some 80 persons and provide further information on whether any persons arrested in connection with the incidents in Khatoonabad and Shahr-e-Babak were still being detained or charged in relation to these two incidents and, if so, to provide details in this respect.*
- 677.** *The Committee notes that the Government indicates in this respect that although dozens of people were arrested in Shahr-e-Babak and Khatoonabad incidents, almost all were immediately set free. However, six defendants were found guilty of civil disorder and commotion by the general court in Shahr-e-Babak (File No. 124/83/3) and received each six to 12 months' imprisonment sentences. In the court of appeal held on 14 January 2006 in the city of Kerman, the penalties of the defendants were suspended for three years and their imprisonment terms were further shortened as well. One of them was later set free against a bail of US\$110.*
- 678.** *The Committee regrets that the Government provides no information on the names, occupations and any trade union affiliation of the six convicted persons, the specific acts with which they are accused, as well as the grounds on which they were convicted. The Committee requests the Government to communicate information in this respect, including the court decisions handed down against the six persons convicted of civil disorder and commotion in Shahr-e-Babak.*

## **Saqez**

- 679.** *In its previous examination of the case, the Committee requested the Government to reply to the complainant's allegations concerning serious breaches of due process in the trials of Messrs. Salehi, Hosseini, Divangar, Abdipoor, Hakimi, Khodkam and Tanomand; to ensure that all charges against them related to the organization of the 2004 Labour Day March and the peaceful participation therein, even if it took place without prior approval, are immediately dropped; to provide precise and detailed information on the specific charges brought against them and to transmit copies of the judgements in their cases as soon as they are handed down.*
- 680.** *The Committee notes that according to the complainant: (1) the seven trade union leaders and activists (Mahmoud Salehi, Jalal Hosseini, Mohsen Hakimi, Borhan Divangar, Mohammad Abdipoor, Esmail Khodkam and Hadi Tanomand) were arrested on 1 May 2004 because of their labour rights activism; they were subsequently charged with cooperation with the banned political party Komala; (2) they were arrested even before the May Day Rally started on 1 May 2004, when security forces and plain-clothes officers attacked the participants and arrested about 50 of them; (3) during the court hearings, (on 1 February and 18 April 2005) the prosecution accused Mahmoud Salehi of writing an article entitled "Preparing a cost of living index for a family of five in Iran" as well as a*

statement condemning the killing of several striking workers by security forces in Khatoonabad in January 2004; the prosecution included the meeting between Mr. Salehi and the ICFTU mission on 29 April 2004 in the reading of the indictments; false charges were also brought against Mr. Salehi during the hearings; (4) Mahmoud Salehi was arrested once again on 4 August 2005 for one hour for participating in one of the many protests that followed the shooting of Shivan Qaderi, a Kurdish opposition activist, in July 2005; before his release he was warned against any participation in further demonstrations and strikes in Saez; (5) on 9 November 2005, Mahmoud Salehi was sentenced by the Court of First Instance to five years' imprisonment and three years in exile in the city of Ghorveh under article 610 of the Islamic Punishment Act, which prescribes penalties from two to five years of imprisonment for congregating to conspire to commit crimes against national security; (6) Mahmoud Salehi has also been informed that he has been charged with "public opinion disturbance" because of his article "Preparing a cost of living index for a family of five in Iran" and his case is pending before the competent public court; (7) Jalal Hosseini was also sentenced by the Court of First Instance to three years' imprisonment on the same day as Mahmoud Salehi under the abovementioned article 610 of the Islamic Punishment Act for congregating to conspire to commit crimes against national security; Hadi Tanomand and Esmail Khodkam were acquitted; (8) on 11 November 2005, Mohsen Hakimi, Borhan Divangar and Mohammad Abdlpoor were also sentenced by the Court of First Instance to two years' imprisonment for "attempting to endanger national security by participating in an illegal gathering"; (9) access to the court hearings was denied to the complainant (ICFTU); (10) the Court of Appeal overturned the verdicts against Messrs. Salehi, Hosseini, Hakimi, Divangar and Abdlpoor handed down by the Court of First Instance in respect of the charges of participation in riots and unlawful assembly in Saez, while remanding the charges brought under article 610 of the Islamic Penal Code back to the first-level court for review.

- 681.** *The complainant emphasizes that all of the accused were found not guilty with regard to the charges pertaining to association with the banned organization Komala. Thus, according to the complainant, the verdicts issued by the Court of First Instance could only be due to their trade union activities given that the initial arrests were made in connection with their participation in May Day 2004 celebrations and that during the court hearings concerning Mr. Salehi in particular, his trade union activities were explicitly held against him, including a meeting he had with an ICFTU delegation.*
- 682.** *The Committee notes that, according to the Government: (1) the holding of First May celebrations and rallies is not considered illegal provided that the corresponding approvals are obtained from the Ministry of Interior in advance; (2) the legal proceedings instituted against the seven defendants merely focused on the charges of illegal and prohibited assemblies and insurgencies leading to disorderly civil unrest and violation of public security; five defendants were convicted for unlawful and violent demonstrations and civil disorder rather than attending the First May celebrations or carrying out trade union or labour-related activities; (3) the concern expressed by the complainant as to the arrest of the defendants because of their meeting with its mission seems unsubstantiated, since the mission met with many other people who were not even contacted by the police or security forces; (4) the demonstrations were quite unrelated to labour-related activities and in apparent breach of the provisions laid down in statutory law; (5) all court hearings were held in public except in one instance when some people attending the court deliberately tried to disturb the proceedings, making the judge order a non-public session; (6) Mahmoud Salehi was initially convicted by the Court of First Instance of instigating "civil unrest" and "illegal demonstrations" and sentenced to a total of eight years' imprisonment of which three years to be spent in exile in the city of Ghorveh as a leniency token (File No. Sh/263/83); (7) Jalal Hosseini was convicted by the Court of First Instance to three years' imprisonment for instigating "illegal and violent demonstrations" (File*

No. Sh/254/83); (8) Borhan Divangar, Mohammad Abdlpoor and Mohsen Hakimi were sentenced by the Court of First Instance to two years' imprisonment for instigating "illegal and violent demonstrations" (Files Nos. Sh/260/83, Sh/258/83 and Sh/255/83, respectively); (9) all five were acquitted of the charges of sympathizing with subversive groups and acquitted by the Court of Appeal of the charges of illegal assembly and social unrest for which they had been sentenced by the Court of First Instance; (10) Esmail Khodkam and Hadi Tanomand were acquitted of all charges (Files Nos. Sh/262/83 and Sh/261/83).

- 683.** *The Committee welcomes the latest information received from both the complainant and the Government that Messrs. Salehi, Hosseini, Hakimi, Divangar and Abdlpoor have been acquitted of certain charges that had led to their conviction and sentencing to from two to five years' imprisonment. The Committee also observes, however, that the charges under article 610 of the Islamic Penal Code, assembly and collusion to act against the Internal and external security of the country, appear to remain pending and have been remanded to the Court of First Instance for re-examination. The Committee must recall from the previous examination of the case that according to the Government, these persons had been arrested because they were suspected of being members and advocates of two banned political groups (the "Komala" Party and the Communist Party) who purportedly joined the marchers and disrupted the ceremony, turning the rally into a political movement rather than a labour one [see 337th Report, para. 1037]. In the absence of a conviction on these political grounds, the Committee has great difficulty in seeing how the remaining charges could be related to anything other than their trade union activities.*
- 684.** *Furthermore, the Committee notes once again that the Government has not provided any specific information as to the manner in which the peaceful rally in Saqez became violent, nor as to the actual necessity of intervention by the security forces. The Committee must therefore once again emphasize that in cases where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the Government's replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has followed the rule that the Government concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegations [see **Digest**, op. cit., para. 98].*
- 685.** *With regard to the Government's comment that the rally was unrelated to labour-related activities, the Committee would recall once again that the organizations responsible for defending workers' socio-economic interests and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living [see **Digest**, op. cit., para. 480].*
- 686.** *In light of the above, the Committee must once again recall the importance it attaches to the principle that the right to organize public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of trade union rights. Although trade unions should respect legal provisions which are intended to ensure the maintenance of public order, the public authorities should, for their part, refrain from any interference which would restrict the right of trade unions to organize the holding and proceedings of their meetings in full freedom [see **Digest**, op. cit., paras. 134 and 144.] The Committee further expects that, upon re-examination, the Court of First Instance will take fully into account all of the abovementioned principles and Messrs. Salehi, Hosseini, Hakimi,*



*Divangar and Abdipoor will be fully acquitted of all remaining charges rapidly. It requests the Government to keep it informed of developments in this regard.*

- 687.** *The Committee also notes with concern that the Government has not responded to the allegations that two of the documents used as evidence against Mr. Salehi during his trial included an article he had written on preparing a cost of living index and a statement he had made condemning the killing of several striking workers in Khatoonabad in January 2005, both of which constitute the exercise of legitimate trade union activities. In addition, the Committee notes with grave concern the complainant's new allegations according to which Mr. Salehi has been charged with "public opinion disturbance" because of his article "Preparing a cost of living index for a family of five in Iran" and his case is pending before the competent public court. The Committee urges the Government to drop all charges against Mr. Salehi related to his article "Preparing a cost of living index for a family of five in Iran", which the Committee considers constitutes a legitimate trade union activity. The Committee requests the Government to keep it informed of the measures taken in this respect.*
- 688.** *Finally, the Committee notes with concern the additional information provided by the complainant with regard to the arrest, detention, alleged severe beating and court summons of Borhan Divangar in August 2005 who was charged among other things with membership of the Coordinating Committee to Form Workers' Organizations (established by Mahmoud Salehi and Mohsen Hakimi on 4 May 2005), membership of the newly formed unemployed workers' organization, managing a labour website in Iran called "Tashakol" and participating in the wave of demonstrations in Saqez that followed the shooting of Kurdish opposition activist Shivan Qaderi. The Committee requests the Government to communicate immediately its comments in this respect.*

### **Other allegations**

- 689.** *The Committee notes with regret that the Government has not provided information in reply to the additional allegations made by the complainant in its communication dated 7 February 2005, despite the Committee's previous request to this effect. These allegations concerned: (1) the arrest of trade union leaders of the Teachers' Guild Association; (2) interventions in a strike at the Kurdistan Textile Factory and subsequent harassment of the workers' representatives; and (3) the proposal and adoption of legislation that would restrict the trade union rights of a large number of workers [see 337th Report, paras. 957-966]. In this regard, the Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations concerning violations of freedom of association is to ensure respect for the rights of employers' and workers' organizations in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating, for objective examination, detailed factual replies concerning the substance of the allegations brought against them [see First Report, para. 31].*
- 690.** *With regard to the allegations concerning the arrest of trade union leaders of the Teachers' Guild Association, the Committee recalls that the complainant referred to information from the official Iranian news agency, the Islamic Republic News Agency (IRNA) that Mahmoud Beheshti Langarudi, General Secretary of the Teachers' Guild Association and Ali-Ashgar Zati, spokesperson of the same organization, were arrested on 12 July 2004. The complainant further alleges that they were arrested for their trade union activities and strikes that they organized in March and June 2004 for the non-payment of wages. Mr. Langarudi was summoned to court in May 2004 on charges linked to the strike staged in March 2004 which was attended by 200,000 workers. He was accused of entering a school illegally, leaving his job during working hours and mobilizing*

“agitating” teachers to strike. The complainant understood from IRNA that the arrest in July 2004 could result in charges of violation of national security and organization of two protests in June in demand of higher wages and wage arrears of 5.2 billion rials (US\$620 million). According to the complainant, the teachers’ union has been intimidated into silence and has thus not issued any statement on the arrests despite a protest by teachers on 19 July 2004 in front of the main entrance of Majles (the Iranian Parliament) in Tehran. The complainant added that Messrs. Mahmoud Beheshti Langarudi and Ali-Ashgar Zati were only released on bail in mid-August 2004. Mr. Zati had to pay a bail of 70 million tomans and Mr. Beheshti 50 million tomans. However, reportedly, other members of the same association had been arrested in the northern province of Mazandaran.

- 691.** *The Committee emphasizes that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests and that it has also recognized that workers should enjoy the right to peaceful demonstrations to defend their occupational interests [see **Digest**, op. cit., paras. 132 and 475]. The Committee considers that a strike aimed at an increase in wages and payment of wage arrears clearly falls within the scope of legitimate trade union activities. The Committee emphasizes that the arrest of trade unionists may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities; moreover, the detention of trade union leaders or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see **Digest**, op. cit., paras. 71 and 76]. Noting that the two trade union leaders remained in detention for one month, the Committee emphasizes that measures of preventive detention may involve a serious interference with trade union activities which can only be justified by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period [see **Digest**, op. cit., para. 85]. The Committee requests the Government to provide detailed information on any charges brought against Mahmoud Beheshti Langarudi, General Secretary, and Ali-Ashgar Zati, spokesperson of the Teachers’ Guild Association, as well as any court decisions handed down, and to take all necessary measures to ensure that where these charges are related to their trade union activities, they are dropped or re-examined by the competent authorities in light of the abovementioned principles. The Committee requests to be kept informed in this respect.*
- 692.** *With regard to the allegations concerning interventions in a strike at the Kurdistan Textile Factory in Sanandaj, the Committee notes that according to the complainant, the factory was surrounded by armed security forces that cut off access to it during a sit-in strike to protest against mass redundancy plans announced by management. The strike started on Sunday, 31 October 2004 and by 1 November it had covered the whole factory and had drawn wide support from other factories, unions, workers and citizens. On 2 November 2004, the Labour Ministry reportedly called on Kurdistan’s Governor, the army and the management to put an end to the “rebellion”. The strike ended on 3 November when the employer and the government authorities agreed to improve severance pay, although they refused to commit to refrain from further redundancies. According to the complainant, the factory was besieged by armed forces while the negotiations were taking place and the local head of the security service observed the negotiations and at one moment waived a leaflet, shouted and made threats against the workers’ representatives.*
- 693.** *The complainant explains that renewed strike action was taken on 22 December when the employer decided to dismiss five workers. The strikers made various demands related to their terms and conditions of employment, including reinstatement of the five dismissed workers. Fearing that security forces would be deployed at the factory as they had been in November 2004, the workers elected a committee to defend their rights. However, security*

forces and the employer were pressuring the members of the committee, and in particular Shis Amani, the chair of the committee, to end the strike. He was interrogated and threatened several times and only workers' support had prevented his detention. Other workers' representatives such as Messrs. Hadi Zarei, Iqbal Moradi, Hassan Hariati, Farshid Beheshti Zad and Ahmad Fatehi were also threatened with dismissal and arrest. Many workers had reportedly been expelled and worker activists were reportedly put under "immense pressure".

- 694.** According to the complainant, on 6 January 2005, a commission created by the Department of Labour with representatives from the security forces, the Department of Labour, the management and the Ministry of Information (public security) negotiated for more than five hours with the workers' representatives and reached an agreement (on 1 January 2005, the commission had threatened the striking workers that it would expel them all). The striking workers agreed to go back to work on certain conditions, including the payment of redundancy pay to the five dismissed workers equivalent to three months' wages for each year of service at the factory plus allowances. Since the end of the strike following the agreement reached on 6 January, the representatives of the workers have been allegedly harassed and brought in for interrogation on 19 January 2005 by the Intelligence Ministry. Messrs. Shis Amani and Hadi Zarei have both been threatened. Fashid Beheshti Zad was threatened and accused of having ties with opposition political parties. The employer and the authorities were also allegedly trying to find excuses not to honour the agreement.
- 695.** The Committee must once again recall the principle enunciated above that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see *Digest*, op. cit., para. 132]. The Committee requests the Government to ensure full respect for this principle in the future. In addition, the Committee notes with deep concern that, according to the complainant, notwithstanding the agreement reached on this matter between the workers' representatives and the Department of Labour, the Ministry of Information (public security) and the factory management in January 2005, the Intelligence Ministry has subsequently interrogated, threatened and harassed Shis Amani, Hadi Zarei and Fashid Beheshti Zad. The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see *Digest*, op. cit., para. 47.]. It urges the Government to institute an independent inquiry into these allegations and to keep the Committee informed of the outcome.
- 696.** Finally, the Committee regrets that the Government has not provided any information with respect to its previous request concerning the allegations relating to the proposal and adoption of legislation that would restrict the trade union rights of a large number of workers (i.e. the exemption from the labour legislation of workshops of less than ten employees and proposals to exempt temporary workers) and requests it to do so without delay.

## The Committee's recommendations

- 697.** In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee requests the Government to take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling

*demonstrations which might result in a disturbance of the peace. Noting that the issue of the killing of four innocent persons by the police force during the incidents in Shahr-e-Babak is currently pending before the Supreme Court, the Committee requests the Government to keep it informed of the progress of the proceedings and to communicate the final decision once it has been handed down.*

- (b) Regretting that the Government has provided no information on the names, occupations and any trade union affiliation of the six persons convicted, as a result of the events in Shahr-e-Babak, nor as to the specific acts with which they were accused and the grounds on which they were convicted, the Committee requests the Government to communicate detailed information in this regard, including the court decisions handed down against these persons, without delay.*
- (c) The Committee firmly expects that, upon re-examination, the Court of First Instance will take fully into account all of the principles set forth in its conclusions and that Messrs. Salehi, Hosseini, Hakimi, Divangar and Abdpoor will be fully acquitted of all remaining charges rapidly. It requests the Government to keep it informed of developments in this regard.*
- (d) The Committee firmly urges the Government to drop all charges against Mr. Salehi related to his article "Preparing a cost of living index for a family of five in Iran", which the Committee considers constitutes a legitimate trade union activity. The Committee requests the Government to keep it informed of the measures taken in this respect.*
- (e) Noting with concern the additional information provided by the complainant with regard to the arrest, detention, alleged severe beating and court summons of Borhan Divangar in August 2005 who was charged among other things with membership of the Coordinating Committee to Form Workers' Organizations (established by Mahmoud Salehi and Mohsen Hakimi on 4 May 2005), membership of the newly formed unemployed workers' organization, managing a labour web site in Iran called "Tashakol" and participating in the wave of demonstrations in Saqez that followed the shooting of Kurdish opposition activist Shivan Qaderi, the Committee requests the Government to communicate immediately its comments in this regard.*
- (f) The Committee requests the Government to provide detailed information on any charges brought against Mahmoud Beheshti Langarudi, General Secretary, and Ali-Ashgar Zati, spokesperson of the Teachers' Guild Association, as well as any court decisions handed down, and to take all necessary measures to ensure that where these charges are related to their trade union activities, they are dropped by the competent authorities in light of the abovementioned principles. The Committee requests to be kept informed in this respect.*
- (g) The Committee urges the Government to institute an independent inquiry into the allegations that the Intelligence Ministry interrogated, threatened and harassed Shis Amani, Hadi Zarei and Fashid Beheshti Zad and to keep it informed of the outcome.*

- (h) *Regretting that the Government has not provided any information with respect to its previous request concerning the allegations relating to the proposal and adoption of legislation that would restrict the trade union rights of a large number of workers (i.e. the exemption from the labour legislation of workshops of less than ten employees and proposals to exempt temporary workers), the Committee requests the Government to provide its observations in this respect without delay.*

CASE NO. 2453

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Iraq  
presented by**

- **International Confederation of Free Trade Unions (ICFTU) and**  
— **International Confederation of Arab Trade Unions (ICATU)**

*Allegations: The complainant organizations allege that the authorities have adopted a Decree (No. 875) which gives the Government control over the finances of existing trade unions and revokes previous arrangements that allowed them to operate without undue interference and harassment from the State and had legitimized free trade unionism for the first time since the 1970s. The Government kept in place the previous laws banning trade unions in local and national governments, and failed to implement the labour law that has been developed in consultation with trade unions and the ILO. Reference is also made to an incident of interference in trade union affairs, when the police raided the office of the General Federation of Iraqi Trade Unions (GFTU) and arrested its president, and to acts of interference concerning trade union elections*

- 698.** The complaint is contained in communications from the International Confederation of Arab Trade Unions (ICATU), in the name of its affiliate General Federation of Iraqi Trade Unions (GFTU), dated 29 September 2005 and 26 February 2006, and from the International Confederation of Free Trade Unions (ICFTU), dated 24 October 2005.
- 699.** The Government sent its observations in a communication dated 23 January 2006.
- 700.** Iraq has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

**A. The complainants' allegations**

**701.** In their communications dated 29 September and 24 October 2005 and 26 February 2006, the complainant organizations indicate that, on 7 August 2005, the Cabinet General Secretary issued Decree No. 875 on behalf of the Council of Ministers of the Iraqi Republic. Based on instructions given by the occupying forces at the time, and without any prior consultation, the Decree revokes previous arrangements under the Transitional Administrative Law which had allowed trade unions to function without undue interference and harassment from the State and therefore had legitimized free trade unionism in Iraq for the first time since the Ba'ath Party took control of the trade unions in the 1970s.

**702.** The Decree reads (according to the translation provided by the ICFTU) as follows:

Decree No. 3 issued by the Governing Council in 2004 led to a government committee responsible for labour and social rights headed by Nasser al-Charderdi. This Committee no longer has that responsibility and in its place a new committee is established comprising the Ministers of Justice, the Interior, Finance, the Minister of State responsible for the Transitional Assembly, the Minister for Civil Society and the Minister of National Security.

This committee must review all the decisions taken to oversee the implementation of Decree No. 3 since its publication in 2004 and must take control of all monies belonging to the trade unions and prevent them from dispensing any such monies. In addition I am proposing a new paper on how trade unions should function, operate and organize.

*Signed:* Dr Fahdal Abass (Cabinet General Secretary).

**703.** The complainants explain that by taking control over the finances of existing federations and unions, the Iraqi Government is effectively closing down their operations and therefore removing the right to freedom of association with no indication of how long this suspension will last. This constitutes a prima facie breach of ILO principles on freedom of association and a deeply worrying attack on human rights in Iraq. The ICATU expressly requests the Government to observe trade union rights and freedoms, the recognition of the rights of its affiliate, the General Federation of Iraqi Trade Unions (GFTU), as well as the restoration of their property and frozen funds.

**704.** The ICFTU further mentions that, in addition to introducing the Decree, the Government has failed to implement the labour law that has been developed in consultation with the trade unions and the ILO, and that the laws banning trade unions in local and national governments introduced by Saddam Hussein remain in place. This is considered as an unacceptable restriction of the human and trade union rights that were guaranteed under the Transitional Administrative Law.

**705.** The ICFTU also refers to an incident of interference in trade union affairs, when the police raided the office of the GFTU on 2 June 2005 and arrested its president, Mr. Jabbar Taresh.

**706.** Finally, in its additional communication dated 26 February 2006, the ICATU alleges that the Government has started to give instructions concerning the trade unions' elections and to impose conditions that are contrary to the statutes of the trade unions by exercising tutelage over the trade union movement. The complainant protests against acts of interference in the right of trade unions, such as the constitution of preparatory committees, conditions for the candidates of trade union committees and trade unions in general. In this way, the Government is trying to control the union movement.

## B. The Government's reply

707. In its communication dated 23 January 2006, the Government informs that trade unions and workers' confederations in Iraq are practising their activities in absolute freedom enjoying complete independence and that the Ministry of Labour and Social Affairs has close relations with them.
708. The Government indicates that in view of the great number of confederations and unions that were established and due to exceptional and transitional circumstances, it has issued a resolution aiming at protecting the funds of these unions against looting and manipulation until workers' elections take place in order to choose unionized leadership.
709. The Government further informs that on 20 September 2005 in Damascus, three major Trade Unions in Iraq signed a joint agreement supported by the ICATU, according to which they elected a unified administrative body responsible for their representation within tripartite committees of work and social security, without prejudice of the rights of all other trade unions in Iraq.
710. Concerning the case of Mr. Jabbar Taresh, the Government informs that he was arrested due to a homicide action, which is irrelevant to his union activities as president of the GFTU.

## C. The Committee's conclusions

711. *The Committee notes that the allegations in this case concern restrictions placed upon the right of workers to organize their activities, as a result of Decree No. 875 issued on 7 August 2005 that allows the Government to take control of the finances of existing federations and unions and, as a consequence, to form and join organizations of their own choosing. They also refer to the persistence of previous laws banning trade unions in local and national governments, as well as failure to implement new labour legislation, and to a matter of interference in trade union affairs when the police raided the office of the General Federation of Iraqi Trade Unions (GFTU) and arrested its president.*
712. *While taking note of the process of reconstruction ongoing in the country and the rebuilding of national institutions, the Committee wishes to insist on the importance it places on the right of workers to exercise freely their trade union rights.*
713. *Concerning the restrictions on the use of trade unions funds, the Committee recalls that provisions that give the authorities the right to restrict the freedom of a trade union to administer and utilize its funds as it wishes for normal and lawful trade union purposes are incompatible with the principles of freedom of association. The freezing of union bank accounts may constitute a serious interference by the authorities in trade union activities [Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, paras. 438 and 439].*
714. *The Committee notes from the Government's reply that the measures taken unilaterally by the Government are due to the exceptional and transitional circumstances in Iraq. In this respect, the Committee recalls that on several occasions it has been called upon to examine matters of the devolution of trade union property and assets during periods of transitions. In such cases, the Committee has emphasized the importance it attaches to the principle according to which the devolution of trade union assets (including real estate) or, in the event that trade union premises are made available by the State, the redistribution of this property must aim to ensure that all the trade unions are guaranteed on an equal footing the possibility of effectively exercising their activities in a fully independent manner [Digest, op. cit., para. 687]. The Committee therefore invites the*

authorities to repeal Decree No. 875 and to enter into full discussions with all concerned parties so that a solution may be found that is satisfactory to all parties concerned and keep it informed of any progress in this respect.

- 715.** *The Committee notes the allegations according to which the abovementioned restrictions on the finances of existing federations and unions have effectively closed down their operations and removed any meaningful right to freedom of association. It also notes that Decree No. 875 foresees a paper from the Cabinet General Secretary on how trade unions should function, operate and organize.*
- 716.** *In this regard, the Committee wishes to draw the Government's attention to the principle according to which legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organizations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body so as to avoid any risk of excessive or arbitrary interference in the free functioning of organizations [Digest, op. cit., para. 331]. The Committee trusts that the Government will bear these principles in mind when drafting proposals concerning the manner in which trade unions should function, operate and organize, and that it will fully ensure, in law and in practice, the right of workers to form and join organizations of their own choosing, as well as the free functioning and administration of these organizations.*
- 717.** *The Committee further notes the allegation according to which, in addition to introducing this Decree, the Government has failed to implement the labour law that has been developed in consultation with the trade unions and the ILO and that the laws banning trade unions in local and national governments introduced by Saddam Hussein remain in place. The Committee notes that the Government has not provided any information in this regard. In these circumstances, noting that the process of preparing a new Labour Code began in 2004, the Committee expresses the hope that it will be adopted in the near future so as to ensure full protection of the right to organize and to bargain collectively for all workers, employers and their organizations in Iraq and that the Government will ensure that the laws banning trade unions in local and national governments are repealed.*
- 718.** *The Committee notes that the ICFTU refers to an incident of interference in trade union affairs when the police raided the office of the General Federation of Iraqi Trade Unions (GFTU) and arrested its president, Mr. Jabbar Taresh. It also notes from the Government that he was arrested due to a homicide action, which is irrelevant to his union activities.*
- 719.** *Given the contradiction between the complaint's allegations and the Government's reply and the fact that both are couched in very general terms, the Committee requests the complainant organizations to provide further details regarding the arrest of Mr. Taresh so that it may be in a position to reach conclusions on this aspect of the case in full knowledge of the facts.*
- 720.** *As regards the allegations of interference concerning the trade union elections mentioned by the ICATU in its communication dated 26 February 2006, the Committee recalls the principle according to which the authorities should refrain from any undue interference in the exercise of the right of workers' organizations freely to elect their representatives. It requests the Government to reply to these allegations.*



## The Committee's recommendations

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

- (a) *Concerning restrictions on the use of trade union funds, the Committee invites the authorities to repeal Decree No. 875 and to enter into full discussions with all concerned parties so that a solution may be found that is satisfactory to all parties concerned and keep it informed of any progress in this respect.*
- (b) *The Committee trusts that the Government, when drafting proposals concerning the manner in which trade unions should function, operate and organize, will fully ensure, in law and in practice, the right of workers to form and join organizations of their own choosing, as well as the free functioning and administration of these organizations.*
- (c) *The Committee expresses the hope that the new Labour Code will be adopted in the near future so as to ensure full protection of the right to organize and to bargain collectively for all workers, employers and their organizations in Iraq and ensure that the laws banning trade unions in local and national governments introduced by Saddam Hussein are repealed.*
- (d) *The Committee requests the complainant organizations to provide further details regarding the arrest of the president of the GFTU, Mr. Tareh, so that it may be a position to reach conclusions on this aspect of the case in full knowledge of the facts.*
- (e) *The Committee requests the Government to reply to the allegation of interference concerning trade union elections in the ICATU's communication of 26 February 2006.*

CASE NO. 2447

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

### **Complaint against the Government of Malta presented by the General Workers' Union (GWU)**

*Allegations: The complainant alleges that the Government violated Conventions Nos. 87 and 98 by amending the law on public holidays, thereby nullifying existing clauses on this matter in previously concluded collective agreements, bypassing the collective bargaining process and restricting the parties' right to adopt such clauses in future agreements*

722. The complaint is contained in a communication from the General Workers' Union (GWU) dated 20 September 2005.

- 723.** The Government replied in a communication dated 5 December 2005.
- 724.** Malta has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainant's allegations**

- 725.** In its communication of 20 September 2005 the GWU alleged that the Maltese Government violated Conventions Nos. 87 and 98 by unilaterally deciding to amend the law on public holidays so as to remove the right of workers to recover public holidays falling on weekends, thereby bypassing the process of collective bargaining, nullifying existing clauses on the matter in previously concluded collective agreements and restricting the negotiating parties' right to adopt such clauses in future collective agreements.
- 726.** The complainant added that according to section 17 of the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta): "Where in the case of full-time employees, a public holiday other than Sunday, falls on a weekly day of rest to which such employee is entitled, such an employee shall be entitled to an additional day of vacation leave during the calendar year when such a public holiday falls on a weekly day of rest or on a Sunday in respect of each such public holiday." This provision essentially granted workers a right to recover public holidays falling on a weekend. Collective agreements generally reflected this provision often as an expressly agreed stipulation within the agreement itself. The established principle also had repercussions on shift workers' right to additional leave and salary supplements for work on those days.
- 727.** According to the complainant, tripartite negotiations between employers' unions and the Government had broken down earlier in 2005. A range of issues had been discussed, notably whether the right to additional days of leave should be revisited. On the day following the breakdown of negotiations, the Government unilaterally decided to amend the law on public holidays thereby removing the right to recover public holidays falling on weekends. The Government did not repeal or amend the abovementioned section 17 but instead amended section 6 of the National Holidays and Other Public Holidays Act (Chapter 252 of the Laws of Malta) to read as follows:

Notwithstanding anything contained in any other law, or in any contract, or in any other instrument whatsoever:

- (a) where under the conditions of service applicable to a person such person is, or but for the provisions of this Act would have been, entitled to a holiday on any day which ceases to be a public holiday by virtue of this Act, such person shall cease to be entitled to a holiday on any such day as aforesaid, but shall become entitled to a holiday before that date;
  - (b) with effect from 1st January, 2005 when a National Holiday or a Public Holiday listed in the Schedule falls on a Saturday or Sunday, it shall not be deemed to be a public holiday for the purpose of entitling any person to an additional day of vacation leave; and any such other law, contract or instrument as aforesaid shall have effect accordingly.
- 728.** The complainant contended that the amendment: (i) violated fundamental ILO principles on the right of social partners to act as independent, autonomous organizations with the power of regulating their dealings through collective agreements; (ii) limited the social partners' freedom of negotiation and forbade them to conclude collective agreements on the issue of granting workers the right to recover public holidays which fell on a weekly day of rest; and (iii) invalidated existing rules on compensatory days of leave contained in collective agreements expiring after the coming into force of the amendment.

- 729.** While the complainant did not contest the Government's right to repeal or decide which days were public holidays, the complainant contended that, there being no exceptional circumstances (e.g. an acute crisis situation wherein there was a manifest danger to the national economy, national security or democracy), the process was not acceptable. When no agreement was reached, the Government took legislative action instead of continuing with further negotiations through which national consensus could potentially have been reached.
- 730.** The complainant found it revealing that the new amendment stated that public holidays falling on weekends were not considered as such only with regard to the right to additional leave days. The new provisions directly targeted collective agreements, making null and void such clauses both in law and in existing collective agreements. Therefore, the complainant saw this as a clear overriding of existing clauses agreed through free collective bargaining and appealed for the Government of Malta to be advised to remedy this situation.
- 731.** Furthermore, it was especially problematic that unions and employers could no longer be entitled to grant additional days of leave for public holidays falling on weekends, if they chose to do so of their own free will or through agreement with employees and unions. The law not only made null and void existing clauses in collective agreements, but also explicitly prohibited such clauses from ever being adopted in a collective agreement, thus contravening the right to free collective bargaining. The complainant therefore felt that the Government should be warned to remove any such restriction and to be advised not to intervene in free collective bargaining.

## **B. The Government's reply**

- 732.** In a communication dated 5 December 2005 the Government reaffirmed its commitment to social dialogue and free collective bargaining. The rights to associate freely and to bargain collectively were enshrined in the Employment and Industrial Relations Act which was enacted in 2002 after a lengthy and fruitful process of consultation with the social partners. This law replaced legislation with similar provisions which had been in force since 1945.
- 733.** The Government indicated that the allegation that it unilaterally took legislative measures after a breakdown in tripartite negotiations in 2005 was a misrepresentation of events. The Government had been committed to a policy of embarking on wide-ranging consultations with the social partners in the preparation of its annual budget for a number of years, and this was what happened also last year. A process of consultation was initiated by the Government in the run-up to the budget to inform the social partners on the general situation in the country and to consult with them on the proposed necessary measures. Whilst unanimous agreement was ideal, any such process of consultation did not imply that there should necessarily be agreement on the issues under discussion.
- 734.** Thus, there was no breakdown in tripartite negotiations, as alleged. No negotiations were taking place since the process in question was the usual pre-budget consultative process and not a process of collective bargaining. There was however a breakdown in the attempt undertaken by unions and employers to present a common document to the Government on the economic situation and the measures contemplated in the budget. As a result of this, the Government felt that it was its responsibility to take those measures it deemed appropriate in the national interest.
- 735.** The Government explained that employees were statutorily entitled to a minimum of four weeks and four working days annual leave entitlement apart from another 14 public and national holidays. The complainant did not contest the Government's right to repeal or decide which days were public holidays. However, it was contesting the means by which

this was done, saying that the process followed was not acceptable. In that respect, it was important to note that the granting of public holidays in Malta was carried out through the National Holidays and Other Public Holidays Act. It necessarily followed that any repeal or amendment of this law could only be made through appropriate legislative provision after approval by Parliament. This was precisely what happened through the amendments referred to and quoted by the complainant. There was no bypassing of the process of collective bargaining as alleged, simply because statutory provisions enacted by Parliament to establish national and public holidays were never a matter for collective bargaining, but essentially a matter for public national policy.

- 736.** The situation in 2004 was that a worker had a statutory right emanating from article 17 of the Employment and Industrial Relations Act to recover an additional day of vacation leave when a national or public holiday fell on a day of rest. The amendment to the National Holidays and Other Public Holidays Act did not amend the Employment and Industrial Relations Act or affect any right to freedom of association or to bargain collectively. It redefined the concept of what constituted a national or public holiday. By virtue of this amendment, any day which was a national or public holiday and fell on a Saturday or a Sunday, which also happened to be a workers' rest day, was no longer considered as a national or public holiday for the purposes of entitlement to an additional day of vacation leave. The wording of the text was chosen precisely to ensure that it would not have a negative repercussion on workers' compensation (in general, work on national or public holidays attracts additional remuneration). As the amendment stood, employees who worked on national or public holidays falling on a Saturday or Sunday did not suffer any losses in financial remuneration since, for any purpose other than the entitlement to an additional day of vacation leave, this day remained a national or public holiday thus still attracting a higher rate of remuneration. This was the only reason for the wording of the amendment of the legislation.
- 737.** The relevant clause in collective agreements dealing with this matter reflected, and in most cases repeated word for word, the minimum provisions of the law. It was important to emphasize that it was the definition of what constituted a national or public holiday in law, and in particular in so far as the entitlement to an additional day of leave when the holiday fell on a Saturday or a Sunday, which happened to be a workers' day of rest, that had changed. Any such clauses in collective agreements had not become null and void as alleged. However, it followed that any reference to the term "national holidays" or "public holidays" in any law, instrument or contract had to be interpreted in the light of this definition. This had nothing to do with the nullifying of existing clauses on the matter in previously concluded collective agreements and restricting the negotiating parties' rights to adopt such clauses in future collective agreements or invalidating existing rules on compensatory days of leave contained in collective agreements, as alleged by the complainant.
- 738.** The paradox was that, according to the Government, whilst the complainant did not contest the Government's right to decide which days were national or public holidays, it was interpreting the exercise of this right as an attack on the fundamental Conventions on freedom of association. This meant that if the Government had decided to remove four public holidays from the calendar, the complainant would have accepted this measure as a Government's prerogative. However, when the Government legislated by defining the concept of a national or public holiday in such a way as to ensure that workers who worked on such days retained the right to be remunerated at the established higher rates, the complainant not only objected to this measure, as it is its right, but perceived it to be an attack on freedom of association and collective bargaining. This was an allegation which the Government vehemently objected to.

- 739.** It was important to underline that this amendment in no way targeted or affected the process of collective bargaining as enshrined in Convention No. 98 or any element of freedom of association pursuant to Convention No. 87. Contrary to what was being alleged, unions and employers' associations were and remained free to act as independent autonomous organizations with the power of regulating their dealings through collective agreements. There was no limit whatsoever on the social partners' freedom of negotiation. Unions had been and remained free to negotiate with employers on any condition of employment, including the granting of additional days of vacation leave or of any other type of leave for that matter. In fact, various collective agreements currently in force had annual, sick leave and other entitlements which were higher than the statutory minimum requirement or which did not exist as a legal requirement. There were, for example, some collective agreements which had clauses granting an extra day of vacation leave to celebrate Union Day. Such arrangements were the product of a long tradition of free collective bargaining. The Government had not only refrained from interfering with either the process or the content of collective agreements, but actually encouraged it. In fact, the Government itself, as an employer, had on 26 October 2005 concluded a collective agreement for all public officers which regulated their conditions of employment for a six-year period. This was done after intensive and complicated negotiations with six unions representing the various categories of workers. One of these was, in fact, the complainant which did not deem it necessary to either raise or insist on the issue which it had earlier raised with the ILO.
- 740.** The Government added that it had responsibly taken various decisions in its financial estimates presented in late 2004 for compelling reasons of national economic interest. Malta was facing serious economic problems brought about by various factors including globalization, economic restructuring, fiscal deficit and ever-increasing fuel prices. The Government had adopted measures to attempt to address the urgent need to retain economic competitiveness and productivity. As stated earlier, the Government could have removed a number of national and public holidays from the calendar as was its right and as acknowledged by the complainant. However, it adopted a softer approach. The measure adopted by the Government was very prudent and was formulated in such a way so as to minimize its impact on workers' earnings and living standards. Unfortunately, the Government's preference for a milder way of dealing with this issue had been misconstrued and had resulted in a mistaken interpretation and representation of events.
- 741.** In conclusion, the Government emphasized that: (i) there was no connection between the issue at hand and Convention No. 87; (ii) there was no law in Malta, including the one referred to by the complainant, which violated any Article of Convention No. 98; and (iii) the amendment to the National Holidays and Other Public Holidays Act was made to safeguard the national interest in seeking remedies to the loss of competitiveness of the economy in a globalized environment and was a moderate and necessary measure for that purpose which also sought to safeguard workers' living standards.

### **C. The Committee's conclusions**

- 742.** *The Committee notes that the present complaint concerns allegations that the Government violated Conventions Nos. 87 and 98 by amending the law on public holidays, thereby nullifying existing clauses on this matter in previously concluded collective agreements, bypassing the collective bargaining process and restricting the parties' right to adopt such clauses in future agreements.*
- 743.** *In particular, the Committee notes from the complainant's allegations that section 17 of the Employment and Industrial Relations Act essentially granted workers a right to recover public holidays falling on a weekend and that collective agreements generally reflected this provision, often as an expressly agreed stipulation within the agreement*

itself. However, pursuant to the breakdown of tripartite negotiations on this issue in 2005, the Government unilaterally decided to amend the law on public holidays thereby removing the right to recover public holidays falling on weekends. The Government did so not by amending the abovementioned section 17, but by amending section 6 of the National Holidays and Other Public Holidays Act so as to read as follows:

*Notwithstanding anything contained in any other law, or in any contract, or in any other instrument whatsoever:*

- (a) *where under the conditions of service applicable to a person such person is, or but for the provisions of this Act would have been, entitled to a holiday on any day which ceases to be a public holiday by virtue of this Act, such person shall cease to be entitled to a holiday on any such day as aforesaid, but shall become entitled to a holiday before that date;*
- (b) *with effect from 1st January, 2005 when a National Holiday or a Public Holiday listed in the Schedule falls on a Saturday or Sunday, it shall not be deemed to be a public holiday for the purpose of entitling any person to an additional day of vacation leave; and any such other law, contract or instrument as aforesaid shall have effect accordingly.*

**744.** *The Committee notes that although the complainant does not contest the fact that the Government has the right to decide which days will be public holidays, it argues that the amendment: (i) violates fundamental ILO principles on the right of social partners to act as independent, autonomous organizations with the power of regulating their dealings through collective agreements; (ii) limits the social partners' freedom of negotiation as it forbids them to conclude collective agreements on the issue of granting workers the right to recover public holidays which fall on a weekly day of rest; and (iii) invalidates existing rules on compensatory days of leave contained in collective agreements expiring after the entry into force of the amendment. It further notes that according to the complainant, there were no exceptional circumstances (e.g. an acute crisis or manifest danger to the national economy) justifying the measure in question.*

**745.** *The Committee notes that according to the Government, there was no breakdown in tripartite negotiations in 2005, but rather a breakdown in the attempt undertaken by unions and employers to present a common document to the Government on the economic situation and the measures contemplated in the budget, in the framework of the annual wide-ranging consultations with the social partners in preparation for the annual budget. As a result of this breakdown, the Government felt that it was its responsibility to take those measures it deemed appropriate in the national interest as a remedy to the loss of competitiveness and productivity of the economy in a globalized environment. There was no bypassing of the process of collective bargaining, as alleged, simply because statutory provisions enacted by Parliament to establish national and public holidays were never a matter for collective bargaining, but essentially a matter of public national policy. The Government could have removed a number of national and public holidays from the calendar as was its right and as acknowledged by the complainant. However, it adopted a softer and prudent approach, dictated by compelling reasons of national economic interest, and formulated it in such a way as to minimize its impact on workers' earnings and living standards.*

**746.** *The Committee further notes that according to the Government, the amendment to the National Holidays and Other Public Holidays Act simply redefines the concept of what constitutes a national or public holiday and does not affect any right to freedom of association or to bargain collectively. It is the definition of what constitutes a national or public holiday in law that has changed; any such clauses in collective agreements have not become null and void as alleged, although any reference to the term "national holidays" or "public holidays" in any law, instrument or contract now has to be interpreted in the light of the new definition. However, according to the Government, this has nothing to do*

with nullifying existing clauses on the matter in previously concluded collective agreements and restricting the negotiating parties' right to adopt such clauses in future collective agreements, as alleged by the complainant. The unions and employers' organizations are free to act as independent autonomous organizations so as to negotiate the conditions of employment, including the granting of additional days of vacation leave, as is currently the practice in various collective agreements.

747. The Committee observes that both the complainant and the Government do not question the Government's prerogative to decide, as a matter of public policy, which days will be national or public holidays. The Committee also observes however, that the wording of the abovementioned section 6 of the National Holidays and Other Public Holidays Act renders automatically null and void any provision which derogates from this section in any other law, contract or instrument, including collective agreements in force. Thus, section 6 (especially the opening paragraph and paragraph (b)) has the effect of not simply changing the definition of the national or public holidays, as indicated by the Government, but also rendering null and void all other legal provisions in any instrument, including collective agreements, which grant workers the right to recover public holidays falling on a weekend.
748. The Committee considers that the interruption by law of provisions in already concluded collective agreements is not in conformity with the principles of free collective bargaining. The primary reason for such a conclusion is that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of freedom of association principles [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 844]. It recalls that in a previous case, it had found that the suspension or derogation by decree – without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98. If a government wishes the clauses of a collective agreement to be brought in line with the economic policy of the country, it should attempt to persuade the parties to take account voluntarily of such considerations, without imposing on them the renegotiation of the collective agreements in force [see **Digest**, *op. cit.*, para. 876]. While the Committee does not call into question the measures taken by the Government to modify the legislative requirement that holidays which fall on a weekly rest day be compensated with a vacation day, it requests the Government to amend section 6 of the National Holidays and Other Public Holidays Act so as to ensure that it does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday, thus leaving such matters to free and voluntary negotiations. The Committee requests to be kept informed in this respect.
749. Moreover, the Committee notes that section 6 of the National Holidays and Other Public Holidays Act also precludes voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday. Indeed, any provision in a future collective agreement derogating from the provisions of section 6 would be rendered automatically null and void.
750. The Committee recalls that, it has accepted in the past that Governments may take measures restraining collective bargaining only within the context of economic stabilization policies, if such measures remain exceptional and do not exceed a reasonable period of time. For instance, the Committee has found that legislative provisions prohibiting the negotiation of wage increases beyond the level of the increase in the cost of living are contrary to the principle of voluntary collective bargaining embodied in Convention No. 98; such a limitation would be admissible only if it remained within the context of an economic stabilization policy and, even then, only as an exceptional measure

*and only to the extent necessary, without exceeding a reasonable period of time [see Digest, op. cit., para. 891]. The Committee observes, however, that the Government has not established on the material presented that the measure under examination falls within the framework of an economic stabilization policy so as to constitute an exceptional measure with limited application in time.*

**751.** *The Committee recalls that, where intervention by the public authorities is essentially for the purpose of ensuring that the negotiating parties subordinate their interests to the national economic policy pursued by the Government, irrespective of whether they agree with that policy or not, is not compatible with the generally accepted principles that workers' and employers' organizations should enjoy the right freely to organize their activities and to formulate their programmes, that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and that the law of the land should not be such as to impair or be so applied as to impair the enjoyment of such right [see Digest, op. cit., para. 867]. The Committee therefore requests the Government to amend section 6 of the National Holidays and Other Public Holidays Act so as to ensure that this provision does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday. The Committee requests to be kept informed in this respect.*

### **The Committee's recommendation**

**752.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

*The Committee requests the Government to amend section 6 of the National Holidays and Other Public Holidays Act so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday on the basis of a collective agreement. The Committee requests to be kept informed in this respect.*

CASE NO. 2455

DEFINITIVE REPORT

### **Complaint against the Government of Morocco presented by Aircraft Engineers International (AEI)**

***Allegations: The complainant organization alleges that the Royal Air Maroc (RAM) company refuses to recognize the Moroccan Union of Aviation Technicians (STAM) and to negotiate with it, preferring to deal with staff representatives. It also claims that the company committed several acts of anti-union harassment against the officials and members of STAM,***



*including: unwarranted transfers of union leaders to other facilities; dismissal of eight technicians; threats of suspension without wages and dismissal of strikers (on legal strike since June 2005); withdrawal of medical cover for strikers and their families during the period of the strike*

- 753.** The complaint is contained in a communication dated 29 October 2005 from Aircraft Engineers International (AEI), on behalf of its affiliate, the Moroccan Union of Aviation Technicians (STAM).
- 754.** The Government sent its observations in communications dated 12 and 27 December 2005 and 15 February 2006.
- 755.** Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

#### **A. The complainant's allegations**

- 756.** The Moroccan Union of Aviation Technicians (STAM) is an independent, apolitical trade union. At the time the complaint was presented, the Royal Air Maroc (RAM) aviation technicians belonging to STAM had been on strike since 29 June 2005. The strike was an expression of the technicians' determination to assert their legitimate rights, to exercise their trade union freedoms and to bring their negotiations with the management of RAM to a successful conclusion.
- 757.** The complainant organization alleges that the management of RAM categorically refuses to recognize STAM as a trade union and has consistently refused to hold discussions with its executive committee. Moreover, instead of negotiating with this committee, the management has chosen to hold discussions with the staff representatives, in order to create the impression that it is abiding by national law and international conventions.
- 758.** The AEI adds that, in addition to refusing to recognize STAM as a trade union, the management of the company has carried out a campaign of harassment aimed at the union's members. It has ordered the unwarranted transfer of union leaders to other Moroccan facilities and dismissed eight technicians. The national authorities and the management of RAM has also employed various repressive measures of a legal and psychological nature. The management of RAM has threatened most of the strikers with dismissal or suspension should they continue with their legitimate strike action; the families of the strikers have been deprived of medical cover and access to sites belonging to the company; other RAM workers who are members of the families of some of the striking aviation technicians, have been threatened and, in some cases, transferred.
- 759.** According to AEI, the Moroccan Government and the management of RAM have violated the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the provisions of the Moroccan Labour Code.

**B. The Government's reply**

- 760.** In its communications dated 12 and 27 December 2005, the Government states that, in June 2005, the management of Royal Air Maroc (RAM) suspended eight employees, accusing them of refusing to carry out certain of their normal duties in the following circumstances:
- on the night of 24-25 June, because of their rank and because of an increased workload, four aviation technicians were transferred to another workshop to provide support for the team there, in order to ensure the timely delivery of two airplanes. The technicians concerned refused outright to carry out the work required of them;
  - furthermore, the Industrial Aviation Centre had organized a training programme, providing the instruction necessary for the completion of the tasks set out in the labour contract. A number of aviation technicians decided of their own free will not to attend the programme, without providing any explanation. They were therefore requested to join the training programme immediately. Only two of the six technicians complied with this request.
- 761.** The first four technicians were suspended on 29 June 2005, pending their appearance before a disciplinary board. The four other technicians were summoned before a disciplinary board on 5 July 2005 but failed to attend. A second summons was sent to them on 6 July 2005 and was again ignored; a third summons sent on 7 July 2005 likewise met with no response. Despite the management's manifest willingness to allow the individuals concerned to put up a defence, the disciplinary board was forced to rule that they be dismissed owing to their absence from the proceedings.
- 762.** As to the transfer of workers, the Government states that the company was responding to operational requirements.
- 763.** This being the situation, the Moroccan Union of Aviation Technicians (STAM) decided to call a strike, which began on 29 June 2005 and which, according to the Government, involved 400 strikers out of a workforce of 4,800. It was not until 1 July 2005 that the company received a press release informing it of the planned strike action, no prior notice having been given. At the beginning of the strike, the company maintains that no disciplinary measures had been taken and that STAM had not yet been established.
- 764.** Despite the situation, the senior management of the company announced that it was prepared to hold a meeting with the technicians' representatives, an invitation that was not taken up. On 7 September 2005 the human resources department sent invitations to all the staff representatives of the technicians to attend a meeting the next day; this invitation was not taken up either.
- 765.** The external services of the Ministry of Employment and Vocational Training intervened as soon as they were informed of the dispute and held several conciliation meetings to find a solution. Both parties, however, maintained their position.
- 766.** Regarding the application of the principles of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Government states that the Moroccan Constitution guarantees freedom of association for all citizens and their freedom to join the trade union organization of their choice. National law recognizes the right to associate and to bargain collectively. Collective bargaining is governed by Titles III and IV of Volume I of the Labour Code. The Government further emphasizes that it abides by the legal rules and regulations as they relate to freedom of association and spare no effort to protect the exercise of the right to organize, to resolve disputes and to promote social dialogue.

767. In its communication of 22 February 2006, the Government states that direct negotiations were held between the management of the company and the employees, resulting in an agreement whereby the strike ended and work resumed on 2 January 2006. All the employees who had been suspended were reinstated; the two employees transferred to Fès and Oujda agreed to their transfer, subject to payment of their travel expenses; the outstanding contributions for medical cover were made up, and the strikers were granted a loan on the occasion of Aïd-El-Adha.

### C. The Committee's conclusions

768. *The Committee notes that the present complaint concerns the following allegations: the Royal Air Maroc (RAM) company refused to recognize the Moroccan Union of Aviation Technicians (STAM) and to negotiate with it, preferring to deal with staff representatives; the company also committed several acts of anti-union harassment against the officials and members of STAM, including: unwarranted transfers of union leaders to other facilities; dismissal of eight technicians; threats of suspension without wages and dismissal of strikers (on legal strike since June 2005); withdrawal of medical cover for strikers and their families during the period of the strike.*

769. *The Committee notes, however, that, according to the Government's communication dated 22 February 2006, the conflict has come to an end, that the labour climate within the company has returned to normal and that an agreement has been reached on all the issues raised in the complaint, i.e. the end of the strike, the resumption of work on 2 January 2006, the reinstatement of all the employees who had been suspended, the negotiated settlement of the case of the workers transferred to Fès and Oujda, and the payment of contributions for medical coverage.*

770. *While noting this information with interest, the Committee recalls, regarding RAM's initial refusal to recognize STAM, that direct negotiations between the company and its employees, bypassing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. The Workers' Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), contain explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise is not used to undermine the position of the trade unions concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th (revised) edition, 1996, paras. 786-787]. In these circumstances, the Committee requests the Government to ensure that the RAM company recognizes STAM, which is now a legally constituted trade union, and that, in future, it negotiates with STAM's representatives, being the most representative trade union, who must not be subjected to anti-union discrimination or harassment.*

### The Committee's recommendation

771. *In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

*In these circumstances, the Committee requests the Government to ensure that RAM recognizes STAM, which is now a legally constituted trade union, and that, in future, it negotiates with STAM's representatives, being the most representative trade union, who must not be subjected to anti-union discrimination or harassment.*

CASE NO. 2442

DEFINITIVE REPORT

**Complaint against the Government of Mexico  
presented by  
the National Union of Social Security Workers (SNTSS)**

***Allegations: The complainant trade union alleges violation by the Mexican Social Security Institute (IMSS) of the provisions of the collective agreement relating to recruitment and replacements for vacant posts and the bilateral procedure for covering such posts, and also that with the suspension of cover of vacant posts following the Presidential Decree of 11 August 2004, it sought to reduce the retirement and pension scheme of the Mexican Social Security Institute***

772. The complaint is set out in a communication from the National Union of Social Security Workers (SNTSS) of 20 June 2005. The Government sent its observations in a communication of 24 January 2006.

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

**A. The complainant's allegations**

774. In its communication of 20 June 2005, the National Union of Social Security Workers (SNTSS) alleges that the Mexican Social Security Institute (IMSS) has been violating the Constitution, legislation, the current collective agreement and Convention No. 87 since the issue by the President of the Republic on 11 August 2004 of a decree which amends certain provisions of the Social Security Act and contains certain contradictory provisions.

775. The 2003 collective agreement provides as follows:

*Clause 22 – Titular rights in this contract and exclusive rights to basic posts*

The Institute recognizes that the National Union of Social Security Workers has titular rights in this contract and exclusive rights to basic posts, of which the full list of categories is set out in the appended Salaries Table, together with the posts in each category which are increased or modified by agreement between the parties.

Membership of the National Union of Social Security Workers is an essential requirement to work in the service of the Mexican Social Security Institute.

Under the terms of this contract, the Institute shall request and the Trade Union shall provide the personnel required, subject where applicable to the provisions of clause 23.

*Clause 22Bis – Cover and review of personnel establishments*

The Institute shall, in a timely manner, cover temporary or permanent vacancies with basic workers or replacements in accordance with the current employment roster and promotion regulations.

The Institute and the Trade Union shall form the National Joint Committee for review of personnel establishments, and joint subcommittees whose functions shall be to ensure permanent cover of authorized establishments, ascertain the reasons for absenteeism and recommend measures to reduce it, identify areas or services with an excessive workload or the need for restructuring, in order, where appropriate, to request the National Committee to review the establishment concerned.

*Clause 23 – Filling of vacant posts in autonomous categories or at the lowest grade and admission of workers*

Basic workers who request a change of shift and/or assignment, extension of working time, change of address and change of branch, and also workers recruited for a specific task or as replacements and new entrants shall, without exception, come from the employment rosters.

First preference in filling vacancies shall be given to basic workers, and after that, new entrants, depending on the characteristics of the post and in accordance with the employment roster regulations.

Basic workers who request a change of shift and/or assignment, extension of working time or change of address shall not be subject to conditions and shall fill vacant posts in the autonomous categories or at the lowest grades in accordance with the employment roster regulations. Basic workers who request a change of branch must satisfy the requirements of the category to which they aspire in accordance with the provisions of the employment roster regulations and obtain certified qualifications, filling vacant posts in the order of the qualifications obtained.

If there is no candidate for the vacant post in the roster of basic workers, the roster of candidates for new recruitment shall be consulted and the best qualified candidate selected. Urgent replacements to cover posts which remain vacant for less than 30 days shall be freely selected from the replacements roster and for replacements of more than 30 days, the best qualified candidate shall be employed.

The admission of applicants to the employment roster shall be effected on the basis of proposals submitted by the Trade Union for that purpose in respect of applicants who meet the requirements set out in the relevant job description, subject only to the limitation of the contracting requirements indicated by the Institute, in accordance with the numbers of vacant posts in the categories it is sought to cover.

The Trade Union may review the files relating to the selection process for new candidates for admission and shall participate in the award of appointments. The process of selection of applicants for change of branch shall be governed by the procedures set out in the Regulations for the Selection of Human Resources for Change of Branch.

In the case of new recruitment in the medical and paramedical fields, other things being equal, preference shall be given to health professionals and health technicians who have completed courses delivered by the Institute.

**776.** For its part, the Decree of the President of the Republic of 11 August 2004 establishes, inter alia, the following amendments to the Social Security Act:

Article 277D. The Technical Council may only create, replace or recruit for posts subject to criteria of productivity, efficiency and service quality, as well as increased income, only provided that it has the approved resources in its respective budget for the said creation, replacement and recruitment of posts, and the resources essential to cover the annual cost of the implications of such. Notwithstanding the foregoing, to create, replace or recruit for posts, the resources necessary to cover the future costs under the Retirement and Pension Scheme must be deposited in the Fund to which Article 286K of this Act refers, such that at any time it is fully founded.

Article 286K. The Institute shall, in accordance with the guidelines issued for the purpose by the Technical Committee, administer and manage a fund to be called the Fund for the Fulfilment of Employment Obligations of a Legal or Contractual Character, with the object of having the necessary resources at the time of its workers' retirement. For this purpose, the Technical Committee shall approve the rules of the said fund based on proposals by the Director General, who must seek the prior opinion of the Secretariat of the Treasury

and Public Borrowing. The management of the Fund must take into consideration the policies and guidelines applied by the Federal Public Administration in such matters.

The said Fund must be recorded separately in the accounting system of the Institute, establishing within it a special account for the Institute Workers' Retirement and Pension Scheme. The resources appropriated to the said Fund and special account may only be used for the purposes established in this article.

The Institute, as employer, may not allocate resources derived from contributions paid by employers and workers under the Social Security Act to this Fund to finance the special account of the Retirement and Pension Scheme. Neither shall it designate resources for this purpose from contributions, allocations and appropriations paid by the Federal Government nor the reserves to which Article 280 of this Act refers or the financial products obtained from them.

#### Transitional provisions

One.- The present Decree shall enter into force on the day following its publication in the Official Journal of the Federation.

Two.- Workers, retirees and pensioners of the Institute who have enjoyed any of these provisions up to the entry into force of the present Decree shall continue to enjoy the benefits granted by the Retirement and Pension Scheme under the same terms and conditions as they had enjoyed prior to the entry into force of the present Decree, without prejudice to such arrangements as may be agreed between the parties. For that purpose, the Institute shall contribute the corresponding amounts, contained in its budget, in accordance with Article 276 of the Social Security Act, charged to the contributions, allocations and appropriations which it is required to collect and receive under that Act.

Three.- With the object of duly fulfilling the provisions of Article 277D of this Decree, the Institute shall undertake the appropriate actuarial studies and shall communicate them to the workers' representatives. It shall also report the results of these studies to the Congress of the Union in the Report to which Article 273 of the Social Security Act refers.

- 777.** The complainant trade union states that the workers' retirement and pension scheme of the Mexican Social Security Institute is an integral part of the collective agreement which it signed with the IMSS, in Chapter XIV and article 110 of the agreement. The Institute has attempted to reduce this retirement and pension scheme, despite it being an inalienable acquired right of the complainant trade union and its members, in that the Institute suspended filling vacant posts. The mechanisms governing the replacements and recruitment for vacant posts are laid down in the collective agreement. The trade union's titular rights in the collective agreement and the exclusive right to basic posts, the list of which is set out in the salary table, are set out in clauses 22, 22bis and 23. In addition, it is expressly stated that, where posts in each of the categories are increased or modified, this shall be by bilateral agreement between the parties, the Institute and the trade union, and that membership of the trade union is established as an essential requirement to fill vacant places and be recruited to work in the Institute. As regards covering both temporary and permanent vacant posts, and all replacements in general, it is established that these must be effected through a bilateral procedure with the involvement of the joint Institute and trade union bodies regulated by the collective agreement and various regulations, including the current employment roster and promotion regulations. As regards promotions, there are promotion procedures and promotion regulations which form part of the collective agreement itself.
- 778.** The complainant trade union alleges that from 11 August 2004, the date on which the abovementioned Decree of the President of the Republic was published, the Mexican Social Security Institute (IMSS) ceased covering staff vacancies which arise on a day to day basis from trade union members despite its current contractual obligation. Up to 30 April 2005, the unfilled vacancies totalled 16,758. Of this total, doctors numbered 3,054 and nurses 3,307. The other unfilled vacancies concerned other categories. Thus, out of a total of 297,678 posts existing at 11 August 2004, 280,920 were occupied at the end of

April 2005, reducing the number of existing posts, contrary to the increase in the number of IMSS claimants in the same period (report of the SNTSS based on data from the IMSS personnel development department).

- 779.** Furthermore, in an IMSS letter dated 11 August 2004 addressed to all state, regional and federal district delegates, the general coordinator of the personnel and organization development department said that: “as a result of the amendments to the Social Security Act approved by the Legislative Power which will affect the retirement and pension scheme for workers recruited after the entry into force of the Decree which reforms articles 277D and 286K of the Social Security Act, you are informed that with effect from this date the selection procedures for new personnel in the basic categories are suspended, until the criteria and procedures governing the recruitment of personnel by the Institute are authorized”. This is what did indeed happen. Recruitment of personnel to vacancies that arose ceased, as did new personnel for newly created posts, thus breaching the obligation established in clauses 22, 22bis and 23 of the collective agreement, and despite the fact that the number of IMSS claimants or patients in the country has continued to increase.
- 780.** On 6 June 2005, the Director of the IMSS, Mr. Santiago Levy Algazi, told the press that: “Recruitment of doctors was suspended in August 2004 because bargaining with the trade union on the new retirement and pension scheme has not been completed”, adding “The central obstacle is not of a legal nature but a contractual one. If we could quickly conclude the bargaining with the trade union, the Institute could start gradually to fill the posts in the medical area” (the newspaper *Reforma* of 6 June 2005). This admission by the Director of the IMSS confirms the unilateral measure by the IMSS and the lack of a legal and contractual basis to the measure, as well as confirming the failure to comply with the collective agreement to which we referred.
- 781.** The reduction in posts is continuing in 2005, as a result of retirements, leave, holidays, incapacity through health and death of active personnel. The IMSS is not filling these posts, thus a further reduction in posts of 39,920 unfilled posts is expected for the rest of 2005. If the trend and the current monthly average continues until the end of 2005, a total of only 242,118 workers will be left in the IMSS. This means that violations of the collective agreement will continue causing serious and irreparable damage which must be prevented as a matter of urgency.
- 782.** By failing to fill the posts left vacant since 11 August 2004, the IMSS also violates the legal obligation to recognize the function of trade union representation and fails to comply with clauses 22, 22bis and 23 of the collective agreement, the fundamental basis of the goal of freedom of association: to promote and defend the interests and rights of the workers represented by the SNTSS.
- 783.** It should be clarified that the collective agreement has not been amended. It is in full legal force as is recognized by the IMSS representatives. The Director of the IMSS seeks “bargaining” with the trade union, with the intention that it should agree to renounce acquired rights in the collective agreement.

## **B. The Government’s reply**

- 784.** In its communication of 24 January 2006, the Government states that the Committee on Freedom of Association examines communications on violations of the principle of freedom of association protected by ILO Convention No. 87. The principle consists of the right freely exercised by workers and employers, without distinction whatsoever, to organize to promote and defend their respective interests [see *Summaries of International Labour Standards*, revised second edition, 1990, p. 5]. In this respect, none of the facts mentioned in the communication presented by the SNTSS constitute, as alleged, failure by

the Government of Mexico to observe the principle of freedom of association and the right to organize enshrined in the said Convention. In no comment does the SNTSS indicate that it has been prevented from freely exercising its right to establish itself, with legal personality and its own assets, to defend its members' interests by such ways and means as it considers appropriate. Neither has it been prevented from exercising its right to draw up its statutes and regulations, freely elect its representatives, organize its administration and activities and formulate its programme of action. Neither does the trade union state that it has encountered obstacles in forming federations and confederations and affiliating to them. Consequently, at no time has the Government of Mexico failed to comply with the provisions of ILO Convention No. 87.

**785.** The attention of the Committee on Freedom of Association is drawn to the fact that the matters reported by the SNTSS refer to aspects relating to the right to organize and collective bargaining contemplated in Convention No. 98 and Mexico has not ratified that Convention.

**786.** In addition, the Government states that the obligation to recognize the principle of freedom of association is that of the member States in subject to the Constitution of the International Labour Organisation, which is reflected in the *Handbook of Procedures relating to International Labour Conventions and Recommendations* (paragraph 79). Thus, for the Committee on Freedom of Association to be able to consider a complaint, the alleged violation of the principle of freedom of association must derive from acts committed by the Government. The present complaint refers to the Mexican Social Security Institute (IMSS), which is a decentralized public body, but the acts alleged against it refer to aspects of the labour relations between the National Union of Social Security Workers (SNTSS) as a trade union organization and the IMSS as an employing body, and not its action as an authority.

**787.** Nevertheless, the Government continues, in order to contribute in good faith to the work of the Committee on Freedom of Association, the following comments on the allegations of the SNTSS are submitted.

**788.** As regards the allegation of the SNTSS according to which the IMSS is not complying with its obligation to fill vacant and new posts, stipulated in clauses 22, 22bis and 23 of the collective agreement, the Government indicates that the IMSS stated that it had not ceased filling personnel vacancies arising on a day-to-day basis. Personnel were recruited subject to the following premises:

- on 16 June 2000, the “Agreement on renewal of the undertaking between the IMSS and the SNTSS to raise the quality of services” was signed. This agreement refers to the institutional agreement to fill the establishment to 95-98 per cent, depending on the type of department concerned and the pattern of nomination of posts, with 100 per cent coverage of programmed absences under approved establishments and 70 per cent cover of non-programmed absences, provided that the current rate did not increase;
- on 21 August 2002, the IMSS and SNTSS deposited with the Federal Conciliation and Arbitration Board the agreement by which they formed the National Joint Human Resources Management Committee (CNMNRH) and its respective regulations, which has representatives of the IMSS and SNTSS;
- Chapter 2 and article 3 of the regulations state that the CNMNRH has the following functions:
  - to apply post-position analysis (APP);



- to organize the workforce of operational units to strengthen priority services and categories directly serving the claimant public;
- to seek technical advice in the corresponding regulatory area in the event of discrepancies;
- with the Human Resources Unit the incorporation of the Integrated Personnel Administration System (SIAP), to manage the personnel APP of the establishments, as appropriate;
- to address central and local proposals concerning transformation, compensation and reorganization of posts, within the approved budget, establishment and structures.

**789.** Based on these elements, in the period January to October 2005, the basic post occupancy of the IMSS averaged 282,409 posts, from a budgetary framework agreed bilaterally between the CNMNRH with section general secretaries and heads of delegations of 286,271 posts, which gave 96.01 per cent coverage of the personnel establishment. The possibility of immediate filling of 3,862 vacant posts within the approved framework should be emphasized, in compliance with the employment roster and promotion regulations in the collective agreement.

**790.** The IMSS indicates that the coverage of personnel establishments was analysed in meetings of the CNMNRH, establishing coverage percentages above those laid down in the “Agreement on renewal of the undertaking between the IMSS and the SNTSS to raise the quality of services”. The trade union representatives accepted that 3.99 per cent, equivalent to 11,882 posts, should not be filled, against the background of the percentages agreed bilaterally in the CNMNRH, thus it can be concluded that the recruitment of personnel to basic vacancies is within that agreed between the IMSS and the SNTSS, as can be seen in the following table:

Month	Base framework	Replacement framework	Total
Approved framework	286 271	20 969	307 240
Occupancy	–	--	--
January	283 349	20 803	304 152
February	282 942	19 391	302 333
March	282 942	20 391	302 816
April	282 514	23 052	305 566
May	282 245	21 312	303 557
June	282 322	21 496	303 818
July	282 100	18 718	300 818
August	281 883	20 186	302 069
September	282 006	20 734	302 740
October	282 095	18 838	300 933
Monthly average	282 409	20 471	302 880
Availability	3 862	498	4 360

**791.** As can be seen, the budget allows coverage of the personnel establishment expressed as follows:

Approved operating establishment	Approved framework	Vacant with post	Vacant without post
298 153	286 271	3 862	11 882

**792.** As can be seen from this table, 3,862 posts are available which it has not been possible to fill by rotation of personnel who request change of unit via the employment roster, and these are covered by replacement personnel available in the employment roster.

**793.** In addition, it can be seen that the occupancy of posts has maintained a pattern of cover agreed bilaterally between the CNMNRH and the SNTSS. Thus, there has not been a reduction, nor has filling of vacant posts stopped and it is reiterated that occupancy for doctors and nurses has been maintained as shown in the following tables:

#### Pattern of occupied posts 2004-05

Category	Base			
	Posts		Variance	
	August/2004	September/2005	Absolute	Relative
Doctors	44 439	44 676	237	0.53
Nurses	80 057	80 132	75	0.09

Category	Students			
	Posts		Variance	
	August/2004	September/2005	Absolute	Relative
Doctors	933	843	-90	-9.65
Nurses	780	746	-34	-4.36

Category	Replacements			
	Posts		Variance	
	August/2004	Absolute	Absolute	Relative
Doctors	5 607	5 070	-537	-9.57
Nurses	6 258	5 218	-1 040	-16.62

Category	Total			
	Posts		Variance	
	August/2004	Absolute	Absolute	Relative
Doctors	50 979	50 589	-390	-0.77
Nurses	87 095	86 096	-999	-1.15

**794.** As regards the view of the SNTSS that the IMSS is in breach of the obligation to recognize the function of trade union representation and defence of SNTSS workers, which is contrary to ILO Convention No. 87, the IMSS states that it did not fail to comply with the obligation established in clauses 22, 22bis and 23 of the collective agreement. The SNTSS continues to be titular to the collective agreement, with the exclusive right to propose persons to occupy basic posts and the filling of vacant posts in autonomous categories. The IMSS has only recruited persons proposed by the SNTSS for basic posts. Thus, it has recognized the function of trade union representation of that trade union in accordance with the collective agreement.

**795.** As regards the allegation by the SNTSS that the IMSS is reducing posts as a result of retirements, leave, holidays, incapacity on health grounds and death of active personnel, which gives rise to serious and irreparable harm, the IMSS states that it has not reduced

posts this year, because it has not stopped filling vacant posts, as shown above. The occupancy of basic posts has been adjusted to the budgetary framework agreed between the CNMNRH and general secretaries of the SNTSS, taking into account, furthermore, the coverage percentages indicated in the "Agreement on renewal of the undertaking between the IMSS and the SNTSS to raise the quality of services". Thus the recruitment of personnel for vacant basic posts falls within what was agreed between the IMSS and the SNTSS.

- 796.** The SNTSS alleges that the unilateral decision of the IMSS to take this action is because the bargaining with the SNTSS on the new retirement and pension scheme has not been completed. In this respect, the IMSS states that, as soon as the relevant bargaining was concluded on 14 October 2005, an application was made on 15 October 2005 in Special Board 9bis of the Federal Conciliation and Arbitration Board, stating that, as a conciliation settlement had been reached, the agreement signed by the IMSS and the SNTSS was revoked and the Board was asked to approve the agreement reached by the parties in respect of retirements and pensions. The SNTSS stated that, as its applications were satisfied, it withdrew its strike call, and the Board agreed to approve the agreement, urging the parties to uphold and apply it at all times as if it were binding with the force of a court judgement. That done, the parties agreed on the changes to the collective agreement which would cover the period 2005-07, entering into force on 16 October 2005. The SNTSS Executive Committee itself published an information bulletin on 15 October 2005 addressed to workers of the Mexican Social Security Institute, which reads as follows:

At its last plenary meeting yesterday, the XLIV National Ordinary Congress approved by 603 votes the terms of the contractual review 2005-2007, and the increase to the salary scale, in a democratic vote of 888 delegates present and voting.

This revision of the collective agreement is of capital importance, not only for the fact of having taken decisions concerning the permanence of our benefits and obtaining a direct salary increase in the salary scale of 4 per cent and an increase of 2 per cent in line 11 (housing benefit, clause 63bis, paragraph "c") which is higher than the general average contractual wage increases this year, but for the fact, of much greater importance, of having succeeded in resolving the problem of cover of vacant posts in the Institute, with the commitment to recruit between 62,500 and 65,000 new basic workers under the mechanism indicated in the contractual clauses relating to recruitment of workers.

Also of great importance is the agreement relating to the Retirement and Pension Scheme which does not in any way affect existing retirees and pensioners, who continue with their pension and benefits set out in the Retirement and Pension Scheme, without making any contribution.

Active workers also keep the requirements and conditions for entitlement to retirement, i.e. they will continue to retire after 27 or 28 years services irrespective of their biological age, they will continue to enjoy all the benefits of the Retirement Pension Scheme and their contribution to the financing of the Scheme will increase by one percentage point in October each year, until it reaches 10 per cent.

Candidates registered in the employment roster who worked in the Institute before 16 October of this year will continue to be protected under the current Retirement and Pension Scheme and will contribute the same percentage to its financing as basic workers.

Workers who enter after 15 October this year will retire after 34 years service, for women, or 35 years for men, with a minimum age of 60 years, and a maximum amount of 100 per cent of the last base salary as set out in article 5 of the Retirement and Pension Scheme, and will contribute to the Scheme starting this year at 4 per cent, which will increase by 1 per cent annually up to 10 per cent. The amount of their pension will increase on the same dates, percentages and amounts as for active workers, i.e. it will be dynamic as for current retirees and pensions.

Contributions to the Retirement and Pension Scheme above 3 per cent of active workers and new entrants will ensure that the retirement conditions will equate to approximately 65,000 basic workers who are to be recruited in a programme starting 17 October next.

Also on the subject of the Retirement and Pension Scheme, a joint committee will be created to seek mechanisms to strengthen the Institute's financing and adjustments to the regulatory framework to find solutions to resolve its financial problems.

This revision in which the IMSS accepted the proposal approved by the LIX SNTSS National Council and ratified by the XLIV National Congress showed that the trade union's proposal is the extremely comprehensive, viable and sustainable, and that the smear campaign by the previous administration had the perverse effect of creating a dispute to the detriment of the Mexican Social Security Institute.

The SNTSS confirms its commitment to the workers in the IMSS and their families, to improve the quality and access to health care, its commitment to social security and what it represents, and our commitment to the future of the country.

**797.** In the light of the foregoing, the Government believes that it did not breach the provisions of ILO Convention No. 87, since at no time does the SNTSS indicate that the Government of Mexico prevented it from freely exercising its right to constitute itself as a trade union. It did not prevent it from exercising its rights to draw up its statutes and regulations, freely elect its representatives, organize its administration and activities or formulate its programme of action. Neither did it place obstacles in the way of forming federations and confederations and affiliating to them. In addition, the SNTSS had freely exercised its right to collective bargaining which led it to agree with the IMSS the changes to the collective agreement for the biennium 2005-07, which includes the "Additional agreement for retirement and pensions of new basic workers". In addition, the trade union was able to assert its rights in accordance with the collective agreement by participating in the National Joint Human Resources Management Committee, be recognized as titular to the collective agreement and ensure respect for its exclusive right to nominate persons to occupy basic posts.

### C. The Committee's conclusions

**798.** *The Committee observes that in the present complaint the complainant trade union alleges violation by the Mexican Social Security Institute (IMSS) of the provisions of the collective agreement relating to the recruitment and replacements for vacant posts and the bilateral procedure for filling such vacancies, and also the suspension of cover of vacant posts from 11 August 2004 which sought to reduce the Retirement and Pension Scheme of the Mexican Social Security Institute. According to the complainant trade union, by 30 April 2005, unfilled vacancies totalled 16,758 (of which 3,054 were doctors' posts and 3,307 nurses). Out of a total of 297,678 existing posts at 11 August 2004, at the end of April 2005, 280,920 were still occupied. According to the complainant trade union, a further reduction in posts was expected over the rest of the year 2005 of some 39,920. If the current trend continued, there would only be 241,118 workers left in the IMSS.*

**799.** *The Committee notes the Government's statements, according to which: (1) the complainant organization at no time indicated that it had prevented it from exercising the rights enshrined in Convention No. 87; (2) the allegations refer to aspects of Convention No. 98 which Mexico has not ratified; (3) the obligation to recognize the principle of freedom of association belongs to the member States under the ILO Constitution and for the Committee to hear a complaint, the alleged violation of freedom of association must derive from acts committed by the Government and not, as in the present case, by acts as employer by a decentralized body such as the Mexican Social Security Institute. The Committee recalls in this respect that facts imputable to individuals incur the responsibility of States because of their obligation to remain vigilant and take action to prevent violations of human rights [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 19] and that this principle also applies to all powers of the State and that the Committee's procedure can be invoked in relation to*

*States which have not ratified the Conventions on fundamental rights relating to freedom of association and collective bargaining.*

**800.** *As regards the substance of the case, the Committee notes the Government's statements and the information communicated by the IMSS according to which: (1) in the period January-October 2005 to which the complainant trade union refers, the average post occupancy in the IMSS was 282,409 which represents 96.01 per cent of the budgetary framework agreed bilaterally with the trade union, where 100 per cent would be 286,271; (2) the complainant trade union agrees in the "Agreement on renewal of the undertaking between the IMSS and the SNTSS to raise the quality of services" that 11,882 posts would not be filled, such that the recruitment of personnel to vacancies is in accordance with what was agreed between the IMSS and the SNTSS; (3) posts were filled bilaterally by the Joint Human Resources Management Committee and the complainant trade union for which reason there was no reduction nor were vacant posts not filled, including doctors and nurses (as shown in the tables included in the Government's reply); (4) in October 2005, the IMSS and the complainant trade union denounced the agreement which they had signed and signed a new collective agreement with changes (including the "Additional agreement on retirement and pensions of new basic workers"), and the complainant trade union had stated to the competent authority that as its requests had been satisfied, it was withdrawing its applications and strike call; (5) the complainant trade union itself in a communication addressed to the IMSS workers, dated October 2005, following the new collective agreement, reported positively on matters related to salaries, pensions and retirement and indicated that the agreement would guarantee conditions of retirement of approximately 65,000 workers who were to be recruited in a programme starting on 17 October 2005.*

**801.** *Taking into account the Government's explanations and information and the new collective agreement which ended the collective dispute, the Committee decides not to pursue the examination of this case.*

### **The Committee's recommendation**

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

CASE NO. 2444

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

### **Complaint against the Government of Mexico presented by the Revolutionary Confederation of Farm Workers (CROC)**

***Allegations: The complainant organization alleges: (1) that the enterprise Editorial Taller S.A. de C.V. promoted the constitution of a coalition of workers and, to avoid collective bargaining, maintained that they had already revised the collective labour agreement and that they had reached consensus; (2) violation of the right to strike through the illegal intervention of***

*the National Public Prosecutor's Office which entered the premises of the enterprise (although they were closed owing to the strike) with heavily armed police or security personnel, intimidating the strikers; and (3) the defamation of the leaders and members of the Trade Union of Industrial, Related and Allied Workers of the State of Oaxaca (STICYSEO) by the authorities of the enterprise in the national and international media following the calling of the strike*

- 803.** The complaint is contained in a communication from the Revolutionary Confederation of Farm Workers (CROC) dated 8 August 2005.
- 804.** The Government sent its observations in a communication dated 24 January 2006.
- 805.** Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainant's allegations**

- 806.** In its communication dated 8 August 2005, the Revolutionary Confederation of Farm Workers (CROC) alleges that on 1 March 2005 the Trade Union of Industrial, Related and Allied Workers of the State of Oaxaca (STICYSEO) called a strike because of the revision of the collective agreement at the enterprise Editorial Taller S.A. de C.V. (it did the same with respect to the enterprise Editorial Voz e Imagen de Oaxaca S.A. de C.V. as it was the same source of work) which was filed with the Local Conciliation and Arbitration Board. Subsequently, the enterprise presented itself with a coalition of workers – according to the complainant the enterprise promoted the establishment of the coalition – arguing that the collective agreement had already been revised and that a consensus had been reached. The complainant organization indicates that the Local Conciliation and Arbitration Board did not recognize the legal personality of the coalition and declared its claims to be inadmissible.
- 807.** The complainant organization adds that as the enterprise violated the collective agreement by revising it with a coalition of workers and failing to recognize the trade union, the STICYSEO presented a statement of claims with a call to strike to the Local Conciliation and Arbitration Board on 21 May 2005. On 17 June 2005, the STICYSEO began a strike at the enterprise and the public notaries of the State of Oaxaca certified that work had been suspended and that there was no one on the premises. Subsequently, a group of persons entered the enterprise surreptitiously and caused an electricity cut. The legal representatives of the enterprise reported and accused before the National Public Prosecutor's Office, members of the STICYSEO of committing the offences of abducting 31 persons, looting, damage to other people's property and cutting off electricity; the Prosecutor's Office began an investigation and on 20 June 2005 it organized an operation involving a large number of armed police during which the strikers were intimidated.
- 808.** The complainant organization states that finally on 18 July 2005, the members of the STICYSEO managed to remove the persons who were inside the enterprise and the legal representatives of the enterprise again reported the members of the trade union to the agent of the Public Prosecutor's Office for having committed the offences mentioned previously

and a new preliminary investigation was initiated. On 22 July 2005, the agent of the Public Prosecutor's Office, with armed personnel, carried out another operation at the enterprise and intimidated the members of the STICYSEO. The STICYSEO brought an action for constitutional protection (*amparo*) before the Third District Court against the actions of the Public Prosecutor's Office and the abovementioned agent of the Prosecutor's Office said that he could confirm robbery and damage to the building (which according to the complainant organization had been committed by the people who had occupied the building). Lastly, the complainant organization alleges that since the beginning of the strike the management of the enterprise has insulted and slandered the image of the executive committee of the STICYSEO and of its members, accusing them of being criminals before the national and international media.

## B. The Government's reply

- 809.** In its communication dated 24 January 2006, the Government states that the Committee on Freedom of Association examines communications on the violation of the principle of freedom of association protected by ILO Convention No. 87 and that it should be pointed out that none of the facts related in the communication presented by the Revolutionary Confederation of Farm Workers (CROC) constitute the alleged non-compliance by the Government of Mexico with the principle of freedom of association and right to organize enshrined in that Convention. At no time has the CROC indicated that the Trade Union of Industrial, Related and Allied Workers of the State of Oaxaca (STICYSEO) has been prevented from freely exercising the right to be constituted, with its own legal personality and assets, for the defence of the interests of its members in the form and terms that they consider appropriate. Neither has it been prevented from exercising its right to draw up its statutes and regulations, freely chose its representatives, organize its administration and activities, and formulate its programme of action. It also does not indicate that the trade union had encountered any obstacles to establishing federations and confederations and affiliating itself with them. For these reasons, the Government of Mexico has at no time failed to comply with the provisions of ILO Convention No. 87. It is brought to the Committee's attention that the facts related by the CROC refer to aspects concerning the right to collective bargaining set forth in Convention No. 98 and that Mexico has not ratified that instrument. Nevertheless, in order to contribute in good faith to the work of the Committee comments are being sent on the allegations made by the CROC.
- 810.** The Government indicates that the CROC alleges the violation of its rights during the strike action by the representatives of the Attorney-General of the Republic (PGR), who entered the premises of the enterprise Editorial Taller S.A. de C.V. on 20 June 2005, although they were closed because of the strike called by the STICYSEO. The CROC indicates that the representatives of the PGR entered the premises of the enterprise to carry out a visual inspection as part of preliminary investigation PGR/OAX/OAX/IV/118/2005 which was initiated following the trade union's report that offences including the abduction of 31 persons, looting, damage to other people's property and the cutting off of electricity had been committed. In that respect, the Government states that the Mexican legal system defines strikes as a temporary suspension of work carried out by a coalition of workers. The strike must be limited to the simple act of the suspension of work (articles 440 and 443 of the Federal Labour Act). According to the Government, it is not clear from the facts related by the CROC that the National Public Prosecutor's Office prejudiced the strike of the STICYSEO.
- 811.** It should be noted that the Public Prosecutor's Office only carried out its obligation to proceed *ex officio* with an investigation of the offences reported to it, as established in article 113 of the Federal Code of Penal Procedures, in the following manner:

- on 17 June 2005 at 3 a.m., the Agency of the Public Prosecutor’s Office Incumbent of the Fourth Investigatory Agency of Oaxaca de Juárez received a report that an offence of illegal imprisonment had been committed involving, at 2 a.m. on the same day, a group of approximately 150 persons taking the premises of the newspaper *Noticias de Oaxaca* (edited by the enterprise Editorial Taller S.A. de C.V.) and not allowing the 30 persons working there at that time to enter or leave the premises. For that reason, the Agency of the Public Prosecutor’s Office initiated preliminary investigation PGR/OAX/OAX/IV/118/2005;
- at 8 a.m. on the same day, the Agency of the Public Prosecutor’s Office carried out a ministerial inspection of the premises of the newspaper *Noticias de Oaxaca*, testifying to a blockade in de Libres and Constitución streets, the central residential area of the city of Oaxaca de Juárez;
- the Agency of the Public Prosecutor’s Office received the ministerial declaration from the owner of the newspaper *Noticias de Oaxaca*, who claimed that between 2 a.m. and 3 a.m. on 17 June, around 200 persons, without any sort of official authorization, arrived at the premises of the newspaper *Noticias de Oaxaca*, intending to enter the premises, but due to the fact that people were working there it proved impossible, and they decided to abduct the 31 workers who were there at the time;
- the Agency of the Public Prosecutor’s Office officially received the legal representative of the newspaper *Noticias de Oaxaca*, who produced the notarized power of attorney of the sole administrator of Editorial Taller S.A. de C.V., as well as the official documentation consisting of the notification of the strike relating to Editorial Taller S.A. de C.V., which was planned for 11.30 p.m. on 17 June 2005;
- the journalists of the newspaper *Noticias de Oaxaca* said that they were imprisoned for 19 hours, as the premises of the enterprise Editorial Taller S.A. de C.V. were occupied between 2 a.m. on 17 June 2005, and the corresponding strike was planned for 11.30 p.m. on the same day;
- on 20 June 2005, three agents from the Public Prosecutor’s Office of the Federation went to the premises of the enterprise Editorial Taller S.A. de C.V. to carry out an extended ministerial inspection, granted as part of preliminary investigation PGR/OAX/OAX/IV/118/2005, together with some people from the Federal Investigation Agency and experts in photography and criminology from that institution. During the extended ministerial inspection existence of the strike was found in the building mentioned, as well as of the presence of members of the state preventive police, but there was no evidence that the right to strike exercised by the workers belonging to the CROC had been violated, as the ministerial inquiries only consisted of testifying to what was observed on site.

**812.** The Government adds that the calls to strike that the STICYSEO presented to the enterprise Editorial Taller S.A. de C.V. and to the enterprise Editorial Voz e Imagen de Oaxaca S.A. de S.V., both located in the Calle de Libres, Nos. 407 and 411, are before the Local Conciliation and Arbitration Board of the State of Oaxaca.

**813.** As to the abovementioned intimidation of members of the STICYSEO by representatives of the PGR, who entered the premises of the enterprise Editorial Taller S.A. de C.V. on 22 July 2005 despite them being closed owing to the strike called by the trade union, the Government explains that in compliance with article 113 of the Federal Code of Penal Procedures, on 18 July 2005, the Agency of the Public Prosecutor’s Office Incumbent Investigator of the First Investigatory Committee in Oaxaca de Juárez initiated preliminary investigation PGR/OAX/OAX/I/148/2005 following the report of the owner of the newspaper *Noticias de Oaxaca* that the offences of looting with violence, robbery, damage



to other people's property and inflicting injuries had been committed, given that on that same day at approximately 8.13 p.m., a group of people burst into the premises of the newspaper *Noticias de Oaxaca* and removed the workers who were working inside the building. In keeping with the provisions of article 123 of the Federal Code of Penal Procedures, the agent of the Public Prosecutor's Office, accompanied by experts in surveying, photography and valuation, carried out a visual inspection at the scene and proceeded to secure the building.

- 814.** The Government indicates that during this same investigation, on 19 July 2005 the Agency of the Public Prosecutor's Office of the Federation fulfilled the formality of ministerial inspection of the premises of the newspaper *Noticias de Oaxaca*, the purpose of which was not to violate the right to strike of the workers belonging to the CROC who were outside the building. The Public Prosecutor's Office, as the body responsible for prosecuting offences and the exercise of penal action, ordered that all relevant actions be taken to prove the existence of the alleged offences and to assign probable responsibility for the alleged offences of illegal imprisonment, looting with violence, robbery, damage to other people's property and inflicting injuries in the establishment located in the Calle de Libres, Nos. 407 and 411. These investigations are under way. According to the Government, it should be recalled that the principle of freedom of association does not protect the exercising of the right to strike being carried out illegally through actions of a criminal nature and that the authority can intervene in order to keep public order, without this signifying a limitation on the right to strike.

### C. The Committee's conclusions

- 815.** *The Committee observes that in this case the complainant organization alleges: (1) that the Trade Union of Industrial, Related and Allied Workers of the State of Oaxaca (STICYSEO) promoted the revision of the collective labour agreement and called a strike at the enterprise Editorial Taller S.A. de C.V. (it did the same with respect to the enterprise Editorial Voz e Imagen de Oaxaca S.A. de C.V. as it was the same source of work) which was filed with the Local Conciliation and Arbitration Board and that in view of these circumstances the enterprise Editorial S.A. de C.V. promoted the establishment of a coalition of workers and maintained that they had already revised the agreement in question and reached a consensus; (2) the violation of the right to strike through the illegal intervention of the National Public Prosecutor's Office which entered the premises of the enterprise (although they were closed owing to the strike) with heavily armed police or security personnel, intimidating the strikers, and (3) the defamation of the leaders and members of the STICYSEO by the authorities of the enterprise in the national and international media following the calling of the strike.*
- 816.** *The Committee notes the Government's statements whereby the complainant organization has at no time indicated that it was prevented from exercising the rights established in Convention No. 87 and that the allegations concern aspects relating to Convention No. 98, which Mexico has not ratified. The Committee recalls in this connection that its procedure can be put into motion in respect of States that have ratified only one or neither of Conventions Nos. 87 and 98.*
- 817.** *As regards the allegation whereby the enterprise Editorial Taller S.A. de C.V. promoted the constitution of a coalition of workers and, to avoid collective bargaining with the trade union organization STICYSEO, maintained that they had already revised the agreement in question and reached consensus, the Committee, while noting that according to the complainant organization the Local Conciliation and Arbitration Board did not recognize the legal personality of the coalition of workers that presented itself to the enterprise Editorial Taller S.A. de C.V. and that it declared its claims to be inadmissible, observes the Government's statement that the calls to strike are before the Local Conciliation and*

*Arbitration Board of the State of Oaxaca. In these conditions, the Committee requests the Government to take measures to encourage and promote between the enterprises Editorial Taller S.A. de C.V., Editorial Voz e Imagen de Oaxaca S.A. de C.V., the newspaper Noticias de Oaxaca and the STICYSEO, the full development and use of the procedures for voluntary negotiation with the aim of regulating conditions of employment by way of collective agreements. Furthermore, the Committee requests the Government to inform it of any decisions adopted by the Local Conciliation and Arbitration Board of the State of Oaxaca on this matter.*

- 818.** *With respect to the alleged violation of the right to strike through the illegal intervention of the Public Prosecutor's Office which entered the premises of the enterprise (although they were closed owing to the strike) with heavily armed police or security personnel, intimidating the strikers and having proceeded to begin investigations, the Committee notes the Government's statements that: (1) it is not apparent from the allegations that the Public Prosecutor's Office prejudiced the STICYSEO's strike; it simply fulfilled its obligation to carry out an investigation into offences of which it is informed as established in the Federal Code of Penal Procedures; (2) on 17 June 2005 the Agency of the Public Prosecutor's Office was informed that an offence had been committed involving the illegal imprisonment of a group of 30 persons who were working at the newspaper Noticias de Oaxaca, after some 150 persons took the premises and a preliminary investigation (PGR/OAX/OAX/IV/118/2005) was initiated; (3) on 20 June 2005 three agents from the Public Prosecutor's Office went to the enterprise to carry out an inspection agreed as part of investigation PGR/OAX/OAX/IV/118/2005, together with certain experts in photography and criminology from the Federal Investigation Agency, and testified that there had been a strike; (4) on 18 July 2005, the Public Prosecutor's Office began another preliminary investigation (PGR/OAX/OAX/I/148/2005) following the report by the owner of the newspaper Noticias de Oaxaca that the offences of looting with violence, robbery, damage to other people's property and inflicting injuries had been committed, as on that day a group of people broke into the premises and took away the people working there; on 19 July the premises were inspected, which was not for the purpose of violating the right to strike; (5) the Public Prosecutor's Office, as the body responsible for prosecuting offences and exercising penal action, ordered that all necessary actions be taken to prove the existence of the alleged offences and to assign probable responsibility; the inquiries are under way; and (6) the principle of freedom of association does not protect against the right to strike being exercised illegally through criminal actions and the authority can intervene to maintain public order.*
- 819.** *The Committee observes that the complainant organization and the Government offer contradictory versions of the facts (specifically acts of violence against the property, imprisonment and injury) that occurred during the strike at the enterprise Editorial Taller S.A. de C.V. (Editorial Voz e Imagen de Oaxaca S.A. de C.V. and newspaper Noticias de Oaxaca). In this respect, the Committee notes that investigations have been initiated by the Public Prosecutor's Office and that according to the complainant organization the STICYSEO brought an action for constitutional protection (amparo) before the Third District Court against the actions of the Public Prosecutor's Office. In these circumstances, the Committee requests the Government to inform it of the results of the investigations initiated and of the judicial proceedings to which the complainant organization refers.*
- 820.** *Regarding the allegation that since the beginning of the strike the management of the enterprise Editorial Taller S.A. de C.V. has insulted and slandered the image of the executive committee of the STICYSEO and of its members, accusing them of being criminals before the national and international media, the Committee observes that the Government has not sent its observations on the matter. In these conditions, the Committee*

*requests the Government to conduct an investigation into this allegation and to inform it of the result.*

## **The Committee's recommendations**

**821. *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 measures to encourage and promote between the enterprises Editorial Taller S.A. de C.V., Editorial Voz e Imagen de Oaxaca S.A. de C.V., the newspaper Noticias de Oaxaca and the Trade Union of Industrial, Related and Allied Workers of the State of Oaxaca (STICYSEO), the full development and use of the procedures for voluntary negotiation with the aim of regulating conditions of employment by way of collective agreements. Furthermore, the Committee requests the Government to inform it of any decisions adopted by the Local Conciliation and Arbitration Board of the State of Oaxaca on this matter.*
- (b) Observing that the complainant organization and the Government offer contradictory versions of the facts (specifically acts of violence against the property, imprisonment and injury) that occurred during the strike at the enterprise Editorial Taller S.A. de C.V. (Editorial Voz e Imagen de Oaxaca S.A. de C.V. and newspaper Noticias de Oaxaca), the Committee requests the Government to inform it of the results of the investigations initiated and of the judicial proceedings to which the complainant organization refers.*
- (c) Regarding the allegation that since the beginning of the strike the management of the enterprise Editorial Taller S.A. de C.V. has insulted and slandered the image of the executive committee of the STICYSEO and of its members, accusing them of being criminals before the national and international media, the Committee requests the Government to conduct an investigation into this allegation and to inform it of the result.*

CASE NO. 2446

DEFINITIVE REPORT

### **Complaint against the Government of Mexico presented by the Trade Union of Metro Workers (ASTM)**

*Allegations: The complainant organization alleges that the Government has violated Conventions Nos. 87 and 98 by allowing the Public Transport System: (1) to hinder communication with workers and intimidate workers in order to deter them from having any dealings with or joining the complainant organization, to refuse to meet with officials from the complainant organization in order to*

*resolve the problems of members and to threaten with dismissal workers who continue participating in trade union activity; and (2) to have refused union leave with full pay to officials of the complainant organization, unilaterally disavowing an agreement to maintain this leave*

**822.** The complaint is contained in a communication from the Trade Union of Metro Workers (ASTM) dated 16 August 2005. The Government sent its observations in a communication dated 24 January 2006.

**823.** Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Workers' Representatives Convention, 1971 (No. 135), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

#### **A. The complainant's allegations**

**824.** In its communication dated 16 August 2005, the Trade Union of Metro Workers (ASTM) explains that it has legal personality and operates within the Public Transport System created by a presidential decree on 19 April 1967 to work as a decentralized public authority in the federal district and provide the public transport service known as the "Metro", using trains on underground and overground lines in the federal district, capital of Mexico.

**825.** The ASTM alleges that the Public Transport System has obstructed its union activities, hinders communication with workers, intimidates workers in order to deter them from having any dealings with or joining the ASTM; that it refuses to meet with its officials to deal with and resolve the various employment problems of members; and that workers have even been threatened with dismissal for continued participation with ASTM.

**826.** The ASTM adds that despite the fact that the Public Transport System has authorized union "commissions" (union leave), with full pay and without affecting their contributions, for workers representing the ASTM, such as Mr. José Antonio Rojas Herrera, Mr. Arturo Alvarez Gómez, Mr. Eduardo Ortiz Cintora and Mr. Leonel Cataño Rosas, it currently, unilaterally, disavows the agreement to maintain this paid union leave for the current ASTM executive committee. The Public Transport System refuses to provide facilities to allow ASTM officials to carry on their duties efficiently, despite the fact that the enterprise has more than 500 workplaces where it can appoint union members to provide their services, more than 300 worksites several kilometres apart, and various workshops for the operation and maintenance of the trains that run on the Mexico City metro.

**827.** The ASTM considers that by allowing this anti-union behaviour by the Public Transport System, the Government has violated the provisions of Conventions Nos. 87 and 135.

#### **B. The Government's reply**

**828.** In its communication dated 24 January 2006, the Government states that the Committee on Freedom of Association examines communications regarding violations of the principle of freedom of association enshrined in ILO Convention No. 87. This principle entails the right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests [see *Summaries of international labour standards*,

second (revised) edition, 1990, p. 5]. It should be noted that nothing alleged in the communication presented by the Trade Union of Metro Workers (ASTM) constitutes the supposed non-compliance by the Government of Mexico with the principle of freedom of association and the right to organize laid down in that Convention. At no point does the ASTM indicate that it has been prevented from freely exercising its right to establish itself with its own legal personality and assets in order to defend the interests of its members, in the manner and on the terms that it deems necessary, and it has not been prevented from exercising its right to formulate by-laws and regulations, electing representatives freely, organizing its administration and activities or drawing up a programme of action. Nor does it state that the union has encountered obstacles to the formation of federations and confederations or to joining them. For these reasons, the Government of Mexico has not at any time violated the provisions of ILO Convention No. 87. The Government draws the attention of the Committee on Freedom of Association to the fact that the allegations made by the ASTM refer to aspects regarding the right to collective bargaining as laid down in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which Mexico has not ratified.

- 829.** The Government recalls that the obligation to recognize the principle of freedom of association applies to member States by virtue of their adherence to the Constitution of the International Labour Organization, as reflected in the *Handbook of procedures relating to international labour Conventions and Recommendations* (paragraph 79). Therefore, for the Committee on Freedom of Association to be able to examine a complaint, the alleged violation of the principle of freedom of association must derive from acts committed by the Government. The present communication refers to the Public Transport System – a decentralized body within the public administration of the federal district – but the acts imputed to it relate to aspects of labour relations between the ASTM, in its capacity as a trade union, and the Public Transport System, in its capacity as an employer, and not to its actions as an authority.
- 830.** Nevertheless, with a view to contributing in good faith to the work of the Committee on Freedom of Association, the Government states the following:
- (1) Labour relations between the Metro Public Transport System and its workers are governed by the federal Act concerning state employees.
  - (2) The general working conditions fix the intensity and quality of work; measures that need to be adopted to prevent occupational risks; disciplinary procedures and their method of application; the dates and the conditions under which workers undergo preliminary and periodic medical examinations; unhealthy and hazardous work that must not be undertaken by minors, and the protection given to pregnant workers; and other rules that aim to achieve better safety and efficiency at work.
  - (3) The Metro Public Transport System has two trade unions: the ASTM and the National Union of Public Transport System Workers.
  - (4) On the basis of the principle of majority representation, the Metro Public Transport System has agreed general working conditions with the National Union of Public Transport System Workers, because it is the trade union representing the majority of the unionized workers this area.
- 831.** The Government adds, with regard to the allegations made by the ASTM, that the Metro Public Transport System has made the following comments:
- Regarding the allegation that the ASTM reports that *the Metro Public Transport System has hindered its communication with workers and has threatened workers to*

make them leave the union or deter them from joining it, the Metro Public Transport System firmly denies this report.

- Regarding the allegations that *the ASTM alleges that the Metro Public Transport System has refused to meet with its executive committee to deal with the work-related problems of its members; that they have been threatened with dismissal for continuing their trade union activity; and that the agreement authorizing union leave with full pay has been unilaterally disavowed*, the Metro Public Transport System firmly denies these allegations. In addition, it reports that it does not have a record of the people who, the complainant organization indicates, are on union “commissions” (the former term for union leave).

**832.** In conclusion, the Government of Mexico considers that it has not infringed the provisions of ILO Convention No. 87 because the ASTM at no point states that the Government of Mexico has prevented it from freely exercising the rights established in this Convention. In addition, the ASTM did not act in accordance with the federal Act concerning state employees, which provides the necessary mechanisms for recourse to jurisdictional bodies with a view to ensuring respect for and compliance with the rights and obligations that are due to them by law or contract, so that the State guarantees that conflicts arising in that regard will be settled in accordance with the law.

### C. The Committee’s conclusions

**833.** *The Committee notes that, the complainant organization alleges that the Government has violated Conventions Nos. 87 and 98 by allowing the Public Transport System: (1) to hinder communication with workers and intimidate workers in order to deter them from having any dealings with or joining the complainant organization, to refuse to meet with officials from the complainant organization to resolve the problems of members and to threaten to dismiss the workers who continue participating in trade union activity; and (2) to have refused union leave with full pay to four (named) officials of the complainant organization, unilaterally disavowing an agreement to maintain this leave.*

**834.** *The Committee notes the statements of the Government to the effect that: (1) the complainant organization has at no point stated that it has been prevented from exercising the rights laid down in Convention No. 87; (2) the allegations refer to aspects of Convention No. 98, which Mexico has not ratified; (3) the obligation to recognize the principle of freedom of association applies to member States by virtue of their adherence to the Constitution of the ILO, and that for the Committee on Freedom of Association to be able to examine a complaint, the alleged violation of the principle of freedom of association must derive from acts committed by the Government and not, as in this case, from the actions of a decentralized body in the public administration of the federal district, such as the Public Transport System, in its capacity as employer. The Committee recalls in this regard that the facts imputable to individuals involve the responsibility of the State because of its obligation of due diligence and its duty to prevent violations of human rights [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 19], that this principle also applies to all state authorities [see 340th Report, Case No. 2393 (Mexico), para. 28], and that the Committee’s procedure can be set in motion in relation to States that have not ratified Conventions Nos. 87 and/or 98.*

**835.** *The Committee notes that, in response to the allegations, the Government states that: (1) the Public Transport System specifically and categorically denies each allegation; (2) the complainant organization did not appeal to the judicial authority to enforce the rights that had supposedly been violated, despite the fact that the federal Act concerning state employees provides the necessary mechanisms; (3) in the Public Transport System the conditions of work have been agreed with the majority trade union (the National Union*

of Public Transport Workers), to which the majority of unionized workers belong; and (4) the Public Transport System does not have a record of the people that the complaint lists as being entitled to union leave.

**836.** Taking into account this information, which absolutely contradicts the allegations, and noting: (1) that the complainant organization has submitted very general allegations and, in particular, has not specified to date the circumstances or identified the victims of the alleged anti-union acts or of the employer's refusal to meet with union officials, and has not provided a copy of the supposed agreement on union leave to which it refers; and (2) that the complainant organization has not provided any additional information, evidence or documents to support its allegations, despite having been invited to do so, the Committee will not pursue its investigation of this case.

### **The Committee's recommendation**

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

CASE NO. 2317

INTERIM REPORT

### **Complaints against the Government of the Republic of Moldova presented by**

- the Federation of Trade Unions of Public Service Employees (SINDASP)
- the Confederation of Trade Unions of the Republic of Moldova (CSRM)
- the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND)

### **supported by**

- the International Confederation of Free Trade Unions (ICFTU)
- the General Confederation of Trade Unions (GCTU)
- the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and
- the Public Services International (PSI)

*Allegations: The complainants allege that the Government attempts to adopt legislation contrary to freedom of association. They further allege that the public authorities and employers interfere in the internal matters of their organizations and pressure their members to change their affiliation and become members of the trade union supported by the Government*

**838.** The Committee last examined this case at its November 2004 meeting [see 335th Report, paras. 1043-1096]. The Confederation of Trade Unions of the Republic of Moldova (CSRM) sent new allegations in communications dated 9 November and 30 December 2004, and 8 August and 29 December 2005. The National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND) submitted its additional allegations by a communication dated 24 November 2005. The International Confederation

of Free Trade Unions (ICFTU) sent additional information by its communication dated 9 March 2006.

**839.** The Government sent its observations in communications dated 2 April 2005 (received by the Office on 11 November 2005), 5 January and 10 May 2006.

**840.** The Republic of Moldova has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## **A. Previous examination of the case**

**841.** At its November 2004 meeting, the Committee made the following recommendations in relation to this case [see 335th Report, para. 1096]:

- (a) The Committee requests the Government to provide copies of the draft laws mentioned by the complainant and to send its observations in this regard.
- (b) The Committee recalls that certain advantages, especially with regard to representation, might be accorded to trade unions by reason of the extent of their representativeness. But it has taken the view that the intervention of the public authorities as regards such advantages should not be of such a nature as to influence unduly the choice of the workers in respect of the organization to which they wish to belong.
- (c) Recalling that Article 2 of Convention No. 98 prohibits employers from interfering in the establishment of trade unions, the Committee requests the Government to conduct an independent inquiry into the allegation of the employers' refusal to accept the establishment of trade unions at the Ecological College and the Lyceum "Mircea Eliade" and keep it informed in this respect.
- (d) The Committee requests the Government to take all the necessary measures in order to ensure that court decisions ordering the enterprise to transfer deducted trade union dues to the trade union account are duly enforced and to keep it informed in this respect.
- (e) The Committee requests the Government to take the necessary measures so as to ensure that access to enterprise premises during trade union meetings is allowed to trade union leaders and representatives, with due respect for the rights of property and management. It requests the Government to keep it informed in this respect.
- (f) The Committee considers that trade union organizations should be allowed to benefit from their international trade union contacts.
- (g) The Committee requests the Government to send as a matter of urgency its observations as regards the criminal investigations instituted over two years ago against the AGROINSIND.
- (h) The Committee requests the Government to conduct as a matter of urgency the following independent inquiries into the allegations of pressure to change trade union affiliation:
  - (i) in the districts of Ocnita, Briceni, Edinet and the municipality of Chişinău, as concerns the SINDASP;
  - (ii) in the districts of Floresti, Gagauzia, Balti, Ocnita and Edinet, as concerns the Union of Education and Science;
  - (iii) at the Wine Producing Company, Mileshti-Mish Winery, the National Chamber of Wine Producers and Wine Growers, the Viorika-Cosmetics Ltd., "Barza Alba", "Tutun CTC", "Aroma", "Cricova", "Franzeluta", Agricultural Machinery Plant in the Calarasi district and the Factory of Food Products of Balti municipality as concerns the AGROINSIND;
  - (iv) into the allegations of the CSRSM concerning trade union organizations in the health field and, more particularly, as concerns the disaffiliation of the trade union of the Ministry of Health from the "Sanatatea" Trade Union;



- (v) into the circumstances of disaffiliation of the Federation of Unions of Chemical Industry and Energy Workers, the “Moldsindcoopcomet” Federation, the “Raut” Trade Union and the Trade Union of Workers of Cadastre, Geodesy and Geology “SindGeoCad” from the CSRSM.

The Committee requests the Government to keep it informed of the results of these investigations.

## B. The complainants' new allegations

- 842.** In its communications dated 9 November and 30 December 2004, and 8 August 2005, the Confederation of Trade Unions of the Republic of Moldova (CSRSM) alleges that the public authorities, especially at the local level, as well as some employers continue to violate trade union rights by threatening and intimidating trade union leaders of the CSRSM-affiliated organizations. The complaints filed with the Office of the Public Prosecutor brought no results. To explain the unsuccessful attempts of the union to address the Office of the Public Prosecutor, the CSRSM refers to the absence of legislative provisions sanctioning violations of trade union rights and the absence of a judicial machinery to defend trade union rights. The CSRSM addressed a letter to the Parliament requesting to re-examine the possibility of amending the Criminal Code and the Code of Administrative Offences so as to include penalties for breaches of trade union rights. In its reply dated 15 December 2004, the Parliamentary Committee on Legal Issues, Appointments and Immunity stated that trade union demands could not be satisfied without, however, outlining the reasons for this. The CSRSM considers that the Parliamentary Committee's true motive is to protect state officials from being charged with violating legislation on trade unions. It repeated its demand to make legislative amendments but was still awaiting the Parliament's reply.
- 843.** The CSRSM further provides detailed information in respect of the alleged violations of trade union rights of its two affiliates – the Union of Education and Science and the Trade Union “Sanatatea”. As concerns the Union of Education and Science, the complainant submits that chairpersons of trade union committees of the educational institutions from Floresti, Donduseni and Edinet districts were not allowed to participate in the pedagogical conference held in August 2004. In this respect, the head of the Department of Education, Youth and Sport of the Edinet district declared that the conference was not a place for politics. Trade union leaders who nevertheless decided to participate were forced to leave. Moreover, according to the complainant, the representatives of the local public administration continued convoking directors of the educational institutions and instructing them to ensure that trade unions of their schools join trade unions affiliated to the Confederation “Solidaritate”. Such cases took place in the towns of Comrat and Telenesti, as well as in the Riscani, Floresti and Rezina districts. The same also took place within the Ministry of Education. The complainant states that on 13 September 2004, the Minister of Education organized a meeting of trade union members of the staff of the Ministry to discuss the opportunity of joining the branch trade union of the Ministry of Education affiliated to the Confederation “Solidaritate”. Following speeches of the Minister, the Vice-Minister, the heads of the departments and other officials, workers, afraid of being dismissed, voted for joining the “Solidaritate”. Furthermore, on 15 September 2004, the vice-president of the union in the Floresti district was ordered to clear her office, which was earlier provided to her in accordance with the Law on Trade Unions and the branch collective agreement.
- 844.** With regard to the Trade Union “Sanatatea”, the complainant indicates that the Vice-Minister of Health is himself involved in the campaign aiming at transferring the “Sanatatea” primary trade union to the Confederation “Solidaritate”. The management of the preventive medical centres and trade union leaders are threatened with dismissals and pressured to organize meetings to discuss joining the “Solidaritate”. The complainant

transmits copies of two sets of minutes of such meetings; at one of them, the Vice-Minister was present and expressed his opinion on the benefits of joining the “Solidaritate”. According to the complainant, the Vice-Minister also allegedly ordered to stop transferring trade union dues to the executive committee of the “Sanatatea” and to establish a new trade union of medical workers, which could later join the Confederation “Solidaritate”. All complaints to the authorities about undue interference were to no avail. The Ministry of Health refuses to sign the branch collective agreement already drafted and accepted by the Ministry and the “Sanatatea”.

- 845.** By its communication of 29 December 2005, the CSRM transmits the observations of the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND) (which had also been forwarded directly by the AGROINSIND in its communication of 24 November 2005) on the efforts taken to destroy this union and transfer its members to the “Solidaritate”. The AGROINSIND alleges that on 10 November 2005, Mr. Ianiev, technical director of the S.A. “Elevator Kelley Grains” and a member of the communist party of the Republic of Moldova, has convoked a meeting of workers of the enterprise. During the meeting, he asked the employees, majority of which were members of the AGROINSIND, to create a new trade union affiliated to the “Solidaritate”. Application forms requesting withdrawal from the AGROINSIND were distributed to that end. An election of the trade union committee was organized and its chairperson elected. The chairperson of the Causeni territorial union of the AGROINSIND tried, in vain, to explain to those present that the creation of a new union was illegal and that actions of the administration of the enterprise were a grave interference in trade union activities and a breach of trade union rights. However, he was insulted by Mr. Ianiev who stated that he was acting under the instructions of the president of the administrative council of the enterprise.
- 846.** In its communication of 9 March 2006, the International Confederation of Free Trade Unions (ICFTU) alleges the continuing violation of trade union rights in the Republic of Moldova. In particular, it submits that legislative and statutory acts are still being adopted without proper consultations with the CSRM. The laws of the Republic do not envisage any responsibility for violation of trade union rights; all proposals made by the CSRM to make relevant legislative changes are constantly turned down. Furthermore, the ICFTU alleges that the state authorities continue to interfere in the internal affairs of trade unions. More specifically, it refers to the pressure exercised by the authorities on the AGROINSIND’s leadership (the criminal case against this union was dismissed on 26 December 2005, only following resignation of the union chairperson on 22 December 2005) and by employers of the “Moldcarton”; transfer, under pressure by the authorities, of several Federation of Trade Unions of Public Service Employees (SINDASP)-affiliated trade union associations to the union affiliated to the “Solidaritate”; interference by the regional authorities into internal affairs of the Union of Education and Science, with a view to transfer member of this union to the “Viitarul”, affiliated to the “Solidaritate”; the pressure exercised upon the “Sanatatea” union and the Union of Culture Workers, which, under the pressure exercised by the directors of the respective enterprises, were forced to change their affiliation. Finally, the ICFTU alleges the favouritism by the Government of the “Solidaritate”-affiliated trade unions. In this respect, the ICFTU refers to the statements made by the President of the Republic of Moldova, who openly expressed his support of the “Solidaritate” and trade union monopoly, and to the participation of the “Solidaritate” in the work of the Ministry boards and other industrial authorities, whereas the CSRM representatives are often excluded.

### **C. The Government’s reply**

- 847.** By its communication of 2 April 2005, the Government transmits comments of the special working group established on 11 May 2004 and made up of the First Deputy Minister of

Labour and Social Protection, Deputy Minister of Economy, Deputy Minister of Foreign Affairs, chief of section responsible for parties and non-governmental organizations (Ministry of Justice) and head advisor to the government apparatus charged with examining the complaint in the present case and the conclusions and recommendations reached by the Committee. The working group considers that the complainants failed to submit concrete proofs to substantiate their allegations. It further considers that both trade union confederations receive equal treatment from the Government and that the Government will continue to support only those proposals and initiatives which are well-founded, real and non-populist, regardless of which trade union presents them.

**848.** As concerns the previous recommendations of the Committee, the working group provides the following observations:

- Recommendation (a): the draft law amending section 11 of the Law on Trade Unions and the draft law on non-commercial organizations were not considered by the Government following arguments against such legislation forwarded by the Confederation “Solidaritate” and the Confederation of Trade Unions of the Republic of Moldova (CSRM) in their common communications of 23 and 30 July 2003.
- Recommendation (b): the working group supports the Committee’s view that certain advantages could be provided to trade unions in order to increase their membership.
- Recommendation (c): as regards the allegation that certain employers oppose establishment of trade unions at their enterprises or institutions and, in particular, as concerns the cases of the Ecological College and the Lyceum “Mircea Eliade”, the Government indicates that these cases were examined during the meetings with the personnel and the administration of the educational institutions. The complainants’ accusations were not confirmed. It was established that teachers of the Lyceum “Mircea Eliade” left the trade union in 1995. In 2001-02, upon an initiative of the director of the lyceum and a representative of the teachers’ trade union organization of the Chisinau district, efforts were made to establish a trade union organization at the lyceum, but the teachers refused, as they saw no benefit from trade union membership.
- Recommendation (d): a labour inspection conducted at the “Moldcarton” enterprise in January 2005 confirmed the allegation of the complainants in this case. In fact, due to the financial difficulties of the enterprise, trade union dues were not transferred to the trade union of the “Moldcarton”. Referring to the two court decisions of 2004 ordering the enterprise to transfer due amount to the union, the Government states that in December 2004, half of that amount was already paid. The director of the enterprise was served with an order to rectify all violations of labour legislation within 21 days. A complaint based on section 41(1) of the Code of Administrative Offences was also filed with the court.
- Recommendation (e): with regard to the right of trade union leaders to access workplaces of their members, the Government refers to the existing legislation and, in particular, to section 31(3) of the Law on Trade Unions which prohibits employers to limit or hinder trade union representatives from visiting his or her enterprise to carry out their union duties. However, due to the specific activities of some enterprises and the form of their ownership, in some cases, an access has to be negotiated with their owners. To prevent problems related to the access to workplaces from reoccurring in the future, a proposal will be made to the social partners at the national level to conclude an agreement to establish a mechanism allowing trade union representatives to exercise their trade unions duties at the various enterprises.

- Recommendation (f): the Government agrees that trade union organizations should benefit from their international trade union contacts as that allows them to strengthen their position.
- Recommendation (g): concerning the criminal investigations instituted against the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND), the Government submits that the criminal proceeding was opened following material evidence of fiscal evasion submitted by the State Tax Inspectorate. Following a criminal investigation, it was established that the trade union administration did not register the AGROINSIND as a non-profit organization, which would exempt it from paying income tax, therefore this organization was liable for tax. The Civil Chamber of the Court of Appeals concluded that the AGROINSIND had violated the tax legislation. That was subsequently confirmed by the Supreme Court of Justice. Currently, criminal proceedings were still pending.
- Recommendation (h): with regard to the allegations of pressure to change trade union affiliation, the Government states the following:
  - (i) It denies that pressure was exercised on the Federation of Trade Unions of Public Service Employees (SINDASP) territorial trade union organizations in the districts of Ocnita, Briceni, Edinet and the municipality of Chisinau. According to the Government, following certain tension between the ex-president of SINDASP and the territorial trade union organizations, these organizations were excluded from SINDASP by the decision of the executive committee of the Federation on 18 February 2004. Following a demand by a third of the members of the Council of the Federation, an extraordinary meeting was scheduled on 19 March 2004 and the decision was taken to dismiss SINDASP's president, its vice-president and the accountant. It was also decided to overturn the decision of the executive committee of 18 February 2004. Therefore, the territorial organizations of the abovementioned districts were still members of SINDASP.
  - (ii) The Government considers that recruitment of trade union members from other trade union organizations was effectuated in accordance with the legislation in force. During 2004, meetings were held in the districts of Comrat, Ceadir-Lunga, Vulcanesti, Ocnita, Donduseni, Floresti, Edinet and Balti with participation of the president of the Republican Council of the Union of Education and Science, vice-president of the CSRМ, presidents of the territorial trade union associations and the president of the Trade Union of Education "Viittorul", member of the Confederation "Solidaritate". During these meetings, following statements made about the activities of the Union of Education and Science, wishes to join "Viittorul" were expressed.
  - (iii) As concerns the disaffiliation of trade union organizations at the National Chamber of Wine Producers and Wine Growers, the Viorika-Cosmetics Ltd., "Barza Alba", "Tutun CTC", "Aroma", "Cricova", "Franzeluta", Agricultural Machinery Plant in the Calarasi district and the Factory of Food Products of Balti municipality from the AGROINSIND, the Government indicates that this took place in accordance with the statutes of these organizations, following their decision to withdraw their AGROINSIND affiliation and to establish a new Federation of Trade Unions of Food Processing Industry and Allied Sectors "Sindparc". This organization was registered by the Ministry of Justice on 16 August 2004.
  - (iv) The Government considers that the disaffiliation of certain organizations from the "Sanatatea" Trade Union was due to the excessive politicization of several

trade union leaders and representatives, whose actions did not contribute to the fulfilment of strategies and priorities of the health system of the Republic of Moldova. The Government further considers that the process of disaffiliation or affiliation to another trade union, following a majority or unanimous decision to this effect, is a right of each primary trade union organization. Currently, trade union organizations of the majority of medical institutions withdrew their “Sanatatea” membership. The disaffiliation of the primary trade union organization of the Ministry of Health from the “Sanatatea” took place following a decision of trade union members at the meeting on 27 May 2004. At the same time, the Ministry continues to collaborate with the “Sanatatea” when drafting legislative and normative acts.

- (v) The decision of the Federation of Unions of Chemical Industry and Energy Workers, the “Moldsindcoopcomet” Federation, the “Raut” Trade Union and the Trade Union of Workers of Cadastre, Geodesy and Geology “SindGeoCad” to disaffiliate from the CSRSM was taken by the respective trade union councils, in conformity with their trade union statutes.

**849.** In its communications of 5 January and 10 May 2006, the Government indicates that the national legislation ensures the best conditions for the establishment and functioning of trade unions, ensures the workers’ right to join trade unions, regulates in detail the role of trade unions and entitles them with numerous rights. To ensure the observance of trade union rights, the national legislation previously provided for sanctions under the Criminal Code: hindering of the legal activity of trade unions was fined by 30 minimum salaries or a dismissal. The new Criminal Code does not make a violation of trade union rights an offence. Such actions are now sanctioned by section 41 of the Code of Administrative Offences which provides for a fine of 75 conventional units for the violation of the Labour Code (which regulates trade union rights). However, agreeing with the position of the CSRSM that the Code of Administrative Offences does not adequately sanction violation of trade union rights, the Government has drafted a law amending the Code of Administrative Offences which would introduce a new provision sanctioning the impediment of legal activities of trade unions and their bodies by persons exercising important public functions by a fine ranging from 75 to 200 conventional units. The draft is currently under review by the competent ministries and social partners (including two trade union confederations).

**850.** The Government further indicates that a draft law on the organization and functioning of the national commission for consultation and collective bargaining, and on consultations and collective bargaining at branch and territorial levels, was elaborated with participation of all social partners and relevant institutions.

**851.** With reference to the affiliation of trade unions of a lower level to those of a higher level, the Government indicates that, according to the Law on Trade Unions, the issues concerning organizational structure, affiliation to other trade unions, establishment of federations and confederation are regulated by the statutes of each union, adopted without any interference from the authorities. Moreover, each worker has a right to join a union and to withdraw his or her membership from the union. In this context, the Government provides information regarding the following trade unions mentioned in the complaint submitted by the CSRSM and the ICFTU.

### **Trade Union “Sanatatea”**

**852.** Since April 2005, the Ministry of Labour and Social Protection has been dissolved and its competences were now assumed by the Ministry of Health and Social Protection and the Ministry of Economy and Trade. The complainants had previously accused the previous Minister of Health and his deputy of interference into trade union internal affairs of the

“Sanatatea”. A former Minister of Labour and Social Protection has now been appointed Minister of Health and Social Protection. Since the Ministry’s administration was changed, the cooperation between the Ministry and the “Sanatatea” has improved and, as a result, all trade unions from the medico-sanitary institutions again joined the “Sanatatea”. To ensure an adequate social and economic protection of the workers of this branch, the Ministry of Health and Social Protection and the Trade Union “Sanatatea” negotiated and signed a collective agreement for the years 2005-08.

### ***Federation of Trade Unions of Public Service Employees (SINDASP)***

853. The SINDASP was registered by the Ministry of Justice on 21 September 2001. On 29 March 2004, it submitted to the Ministry of Justice amendments to its statutes reflecting a decision taken on 19 March 2004 by the extraordinary meeting of the Federation’s Council to dismiss the SINDASP’s president, Mr. Molosag, for reasons of mismanagement leading to the partition of the SINDASP. Ms. Harbur was appointed vice-president of the Federation and was to perform the interim functions of the president according to the trade union statutes. On 23 April 2004, the Ministry of Justice made the relevant modification in the State Registry. On 28 April, the dismissed administration of the SINDASP applied to the court asking to repeal the above decision of the Ministry of Justice, arguing that the Council of the Federation did not have the right to re-elect the president of the Federation due to the absence of the required quorum. This application was rejected by the decision of the Ministry of Justice on 7 June. On 14 June 2004, Mr. Spivacenco was elected president of the SINDASP by the extraordinary meeting of the Federation’s Council. Mr. Molosag did not recognize the decision of the collegial body and applied to court to have the decision of 19 March 2004 annulled and to be re-established in his previous function. By its decision of 16 August 2005, the court rejected his application. The Court of Appeals, however, reversed the decision of the Court of the First Instance and declared the decision of 19 March null and void. This decision of the Court of Appeals was challenged by the Council of the Federation before the Supreme Court.

854. Furthermore, the Government indicates that, in accordance with the SINDASP’s statutes, withdrawal of a territorial trade union from the Federation is effectuated by submitting an application to this effect to the executive committee of the Federation, which adopts a decision on the exclusion from the Federation’s membership. In respect of the territorial organizations of Ocnita, Briceni, Floresti, Chisinau, Riscani, Cimislia, Donduseni, Balti, Calarasi, Ungheni, Edinet, such a decision was not yet taken, therefore these organizations still remain members of the SINDASP.

### ***Union of Education and Science***

855. In May 2005, seven primary trade unions from the Rezina district adopted a decision to withdraw their affiliation to the Union of Education and Science and to affiliate to the Trade Union “Viitorul”, which was later done in conformity with the statutes of both organizations.

### ***Trade Union of Culture Workers***

856. On 17 November 2005, the Council of the Union took a decision to withdraw its membership from the CSRM and to affiliate to the “Solidaritate”. However, some members of the initial Trade Union of Culture Workers disagreed with the decision of the Council and established an alternative Trade Union of Culture Workers affiliated to the CSRM. According to the Government, everything was done in conformity with the legislation in force.

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**National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND)**

**857.** In its reply to the latest ICFTU's allegations, the Government states that the resignation of Mr. Porcescu, the Chairperson of the Federation, was not related to the dismissal of the case, but was only a coincidence. Initially, the case was dismissed on 10 September 2004, while liability of the Federation for breaking fiscal legislation has been established by the Civil College of Court of Appeal and confirmed by the Supreme Court. Thus, the decision of 10 September 2004 was considered groundless and was rescinded. Additional criminal investigation was carried out. However, following the investigations, it was decided to dismiss the case.

**858.** The Government further affirms that it treats the two trade union confederations equally. To support its statement, it refers to the 13,000 decisions of the Government and 300 legislative acts, adopted following consultations with both confederations. Furthermore, during 2005, social partners adopted three new collective agreements at the national level, each of which has been negotiated between the Government, the National Confederation of Employers, the CSRM and the "Solidaritate". The Government also refers to the 11 collective agreements at branch and territorial level concluded with the participation of trade unions of the respective level (eight affiliated to the "Solidaritate", including the SINDASP and the Trade Union of Workers of Cadastre, Geodesy and Geology, and three to the CSRM). As to the participation of trade union representatives in various councils established by the ministries, the Government reiterates that the choice of representatives is based on the sole reason that the activity of a given council is related to the sector of economy which the union represents. It further states that recently, on 7 April 2006, the Government has approved the composition of the commission for equality between women and men, which included representatives of both trade union confederations.

**D. The Committee's conclusions**

**859.** *The Committee recalls that this case concerns allegations of the Government's attempts to adopt legislation contrary to freedom of association, interference by the public authorities and employers in the internal matters of trade union organizations, and pressure exercised upon trade union members to change their affiliation and become members of the trade union supported by the Government.*

**860.** *The Committee notes that as regards the allegation of the Government's attempt to adopt new legislation contrary to freedom of association, the Government indicates that having considered the views expressed by the Confederation "Solidaritate" and the Confederation of Trade Unions of the Republic of Moldova (CSRM), it had decided not to pursue the amendment of the Law on Trade Unions and the draft law on non-commercial organizations.*

**861.** *The Committee notes the complainants' new allegation to the effect that the national legislation does not provide for sufficient sanctions for violations of trade union rights. The Committee notes that the Government refers to the Code of Administrative Offences, which sanctions violations of the provisions of the Labour Code by a fine of 75 conventional units. The Government also states that the draft amendments to the Code, which would sanction the impediment of legal activities of trade unions and their bodies by persons exercising important public functions by a fine ranging from 75 to 200 conventional units, are now under review by the competent authorities and the social partners.*

862. *The Committee further notes that, in their recent communications, the complainants submit that on numerous occasions, the CSRM has requested the Government to amend the current legislation so as to provide for sufficient penalties for violation of trade union rights. However, such proposals were, so far, turned down. The CSRM also alleges the absence of judicial machinery competent to deal with the complaints of violation of trade union rights. The Committee recalls that legislation must make express provisions for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations to ensure the practical application of Article 2 of Convention No. 98 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 764]. The Committee further emphasizes the value of consulting workers' and employers' organizations during the preparation and application of legislation, which affects their interests. The Committee therefore expects that legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions will be soon adopted following full and frank consultations with social partners, including the CSRM and the National Confederation of Moldovan Employers. It further expects that the measures taken by the Government in this regard will not only address violations of the Labour Code, but also other laws concerning freedom of association and collective bargaining rights, such as the Law on Trade Unions. The Committee requests the Government to keep it informed of the developments in this respect.*
863. *The Committee recalls that it had previously pointed out that while certain advantages might be accorded to trade unions by reason of the extent of their representation, the intervention of the public authorities as regards such advantages should not be of such a nature so as to influence unduly the choice of the workers in respect of the organizations to which they wish to belong. The Committee notes from the reply provided by the Government in its three communications that while it treats the two confederations (the CSRM and the "Solidaritate") equally (for example, both are included in the governmental commission for equality between women and men), it "supports the Committee's view that certain advantages could be provided to trade unions in order to increase their membership". In view of the recent ICFTU allegations of continuing favouritism on behalf of the Government in respect of the "Solidaritate" and the statement made by the President of the Republic of Moldova to this effect, the Committee is bound to once again stress that by placing one organization at an advantage or at a disadvantage in relation to the others, a government may either directly or indirectly influence the choice of workers regarding the organization to which they intend to belong, since they will undeniably want to belong to the union best able to serve them, even if their natural preference would have led them to join another organization. A government which deliberately acts in this manner violates the principle laid down in Convention No. 87 that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impedes their lawful exercise [see **Digest**, op. cit., paras. 303-304]. The Committee requests the Government to reply to the abovementioned ICFTU allegations.*
864. *With regard to its previous request to conduct an independent inquiry into the allegation of the employers' refusal to accept the establishment of trade unions at the Ecological College and the Lyceum "Mircea Eliade", the Committee notes the Government's statement that meetings were held between the personnel and the administration of these institutions and that the complainants' allegations were not confirmed. According to the Government, on the contrary, teachers of the Lyceum refused to establish a trade union, as they saw no benefits in doing so. While no further information was provided by the complainants in respect of these two institutions, the Committee recalls that this case concerns numerous allegations of anti-union tactics and threats and pressure exercised on the representatives and members of the Union of Education and Science. The Committee had therefore requested the Government to conduct an independent inquiry into the allegations made. The Committee regrets that the Government limited its investigation to*



*meetings between the personnel and the administration of the above educational institutions. The Committee therefore once again requests the Government to conduct independent investigations into the allegations of the employers' refusal to accept the establishment of trade unions at the Ecological College and the Lyceum "Mircea Eliade" and to keep it informed in this respect.*

- 865.** *With regard to its previous request to take all the necessary measures in order to ensure that court decisions ordering the "Moldcarton" enterprise to transfer deducted trade union dues to the trade union account are duly enforced, the Committee notes from the Government's reply that a labour inspection conducted at the "Moldcarton" enterprise in January 2005 confirmed the allegation of the complainants. Referring to the two court decisions of 2004 ordering the enterprise to transfer the amount due to the union, the Government states that in December 2004, half of that amount was already paid. The director of the enterprise was served with an order to rectify all violations of labour legislation within 21 days. A complaint based on section 41(1) of the Code of Administrative Offences was also filed with the court. The Committee requests the Government to indicate whether all deducted trade union dues have now been transferred to the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND)'s account. Further noting the new allegations submitted by the ICFTU in respect of the "Moldcarton" enterprise, the Committee requests the Government to provide its observations thereon.*
- 866.** *As concerns the Committee's previous request to take the necessary measures so as to ensure that access to enterprise premises during trade union meetings is allowed to trade union leaders and representatives, with due respect for the rights of property and management, the Committee notes the Government's statement that in order to prevent problems related to workplace access from reoccurring in the future, it intended to make a proposal to the social partners at the national level to conclude an agreement to establish a mechanism allowing trade union representatives to exercise their trade unions duties at the enterprises. The Committee requests the Government to keep it informed of all measures taken to address the question of access of trade union representatives to the workplaces in order to carry out legitimate trade union activities.*
- 867.** *The Committee takes due note of the Government's statement that trade union organizations should benefit from their international trade union contacts as that allows them to strengthen their position and expects the Government to ensure that this right can be freely exercised.*
- 868.** *The Committee notes from the ICFTU communication that the criminal case against the AGROINSIND was dismissed on 26 December 2005, following the resignation of the union chairperson on 22 December 2005. It further notes that, according to the Government, the resignation of Mr. Porcescu was not related to the dismissal of the case, but was only a coincidence. Initially, the case against him was dismissed on 10 September 2004. However, the Court of Appeal found the AGROINSIND liable for violating the tax legislation. While stating that the violation by the AGROINSIND of the tax legislation was confirmed by the Supreme Court and that accordingly, the decision of 10 September 2004 was considered groundless and was rescinded, the Government adds that following additional criminal investigation, it was decided to dismiss the case. While noting that the case against AGROINSIND has now been dismissed, the Committee expresses its concern at the alleged link between the resignation of the AGROINSIND chairperson and the dismissal of the criminal proceedings.*
- 869.** *The Committee recalls that it had previously requested the Government to conduct independent inquiries into the allegations of pressure to change trade union affiliation as concerned the following CSRM-affiliated trade unions: the SINDASP, the Union of*

*Education and Science, the AGROINSIND, the “Sanatatea”, the Federation of Unions of Chemical Industry and Energy Workers, the “Moldsindcoopcomet” Federation, the “Raut” Trade Union and the Trade Union of Workers of Cadastral, Geodesy and Geology “SindGeoCad”. The Committee notes the recent allegations submitted by the ICFTU in respect of these trade unions and requests the Government to provide its observations thereon.*

### **Federation of Trade Unions of Public Service Employees (SINDASP)**

**870.** *The Committee notes that the Government denies that pressure was exercised on the SINDASP territorial trade union organizations in the districts of Ocnita, Briceni, Edinet and the municipality of Chisinau. According to the Government, following certain tension between the ex-president of SINDASP and the territorial trade union organizations, these organizations were excluded from the SINDASP by a decision of the executive committee of the Federation on 18 February 2004. However, following the dismissal of Mr. Molosag from his post as SINDASP president for reasons of mismanagement leading to the partition of the SINDASP, the Council of the Federation decided to overturn the decision of the executive committee. Therefore, the territorial organizations of the abovementioned districts were still members of the SINDASP. The Government further indicates that Mr. Molosag contested the decision of his dismissal in court. By its decision of 16 August 2005, the court rejected his application. The Court of Appeals, however, reversed the decision of the Court of First Instance and declared the decision of 19 March null and void. This decision of the Court of Appeals was contested by the Council of the Federation before the Supreme Court. The Committee requests the Government to keep it informed of the Supreme Court’s decision once it is rendered. The Committee further notes from the information provided by the Government that when it lists in its communication the 11 collective agreements concluded at the branch and territorial levels, in two cases it refers to the agreements concluded between the relevant ministry and SINDASP, which the Government states to be affiliated to the Confederation “Solidaritate”. The Committee requests the Government and the complainants to clarify whether the SINDASP, which had previously been affiliated to the CSRM, has since changed its affiliation.*

### **Union of Education and Science**

**871.** *The Committee notes that the Government considers that recruitment of trade union members from other trade union organizations was effectuated in accordance with the legislation in force. During 2004, meetings were held in the districts of Comrat, Ceadir-Lunga, Vulcanesti, Ocnita, Donduseni, Floresti, Edinet and Balti with participation of the president of the Republican Council of the Union of Education and Science, vice-president of the CSRM, presidents of territorial trade union associations and the president of the Trade Union of Education “Viitorul”, member of the Confederation “Solidaritate”. During these meetings, following statements about the activities of the Union of Education and Science, wishes were expressed to join the “Viitorul”. The Government further indicates that in May 2005, seven primary trade unions from the Rezina district decided to withdraw their affiliation to the Union of Education and Science and to affiliate to the Trade Union “Viitorul”.*

**872.** *The Committee further notes the new allegations of violation of trade union rights of the Union of Education and Science. In particular, the Committee notes that the CSRM submits that the chairpersons of trade union committees of the educational institutions from Floresti, Donduseni and Edinet districts were not allowed to participate at the pedagogical conference held in August 2004. In this respect, the head of the Department of Education, Youth and Sport of the Edinet County declared that the conference was not a*

place for politics. Trade union leaders, who nevertheless decided to participate, were forced to leave. The Committee further notes that according to the complainant, the representatives of the local public administration continued convoking directors of the educational institution and instructing them to ensure that trade unions of their schools join trade unions affiliated to the Confederation "Solidaritate". Such cases allegedly took place in the towns of Comrat and Telenesti, as well as in the Riscani, Floresti and Rezina districts. The same also allegedly took place within the Ministry of Education. The complainant states that on 13 September 2004, the Minister of Education organized a meeting of trade union members of the staff of the Ministry to discuss the opportunity of joining the branch trade union of the Ministry of Education affiliated to the Confederation "Solidaritate". Following speeches by the Minister, the Vice-Minister, the heads of the departments and other officials, workers, afraid of being dismissed, voted for joining the "Solidaritate". Furthermore, on 15 September 2004, the vice-president of the union in Floresti district was ordered to clear her office which was earlier provided to her in accordance with the Law on Trade Unions and the branch collective agreement.

873. The Committee recalls that the complainants in this case have alleged that under the pressure from the authorities and directors of the educational institutions, the primary trade unions of the Union of Education of Science had changed their affiliation and became members of the "Viitorul". In these circumstances, the Committee requested the Government to conduct an independent inquiry not into whether the change of affiliation was made according to the statutes of the union and the national legislation, but into whether the decision to change the affiliation was a result of the pressure, threats and favouritism in respect of the "Viitorul" expressed by the heads of the local authorities and directors of schools. In view of the new allegations provided by the complainants, to which, regrettably, the Government has not replied, the Committee once again, as a matter of urgency, requests the Government to conduct independent inquiries into all alleged instances of pressure exercised upon the trade unions affiliated to the Union of Education and Science. It expects that the inquiry will be truly independent and will be composed of persons having the confidence of all of the parties involved. The Committee requests the Government to keep it informed in this respect.

### **National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND)**

874. The Committee notes that in respect of the primary trade union of the AGROINSIND, the Government also submits that the disaffiliations were carried out in accordance with the statutes of this organization. The Committee further notes the new allegations submitted by the CSRM on the efforts taken to destroy the AGROINSIND primary trade union organization at the S.A. "Elevator Kelly Grains" with a view to transfer its trade union members to the "Solidaritate". The Committee regrets that no information was provided by the Government in this respect. The Committee refers to its above conclusion in respect of the Union of Education and Science and requests the Government to conduct an independent investigation into all alleged instances of pressure exercised upon the trade unions affiliated to the AGROINSIND. It requests the Government to keep it informed in this respect.

### **Trade Union "Sanatatea"**

875. The Committee notes the Government's communication of 2 April 2005, in which it considers that the disaffiliation of certain organizations from the "Sanatatea" was due to the excessive politicization of several trade union leaders and representatives whose actions did not contribute to the fulfilment of strategies and priorities of the health system of the Republic of Moldova. The Government further considers that the process of

disaffiliation or affiliation to another trade union, following a majority or unanimous decision to this effect, is a right of each primary trade union organization. Trade union organizations of the majority of medical institutions withdrew their "Sanatatea" membership. The disaffiliation of the primary trade union organization of the Ministry from the "Sanatatea" took place following a decision of trade union members at the meeting on 27 May 2004. At the same time, the Ministry continued to collaborate with the "Sanatatea" when drafting legislative and normative acts. The Committee also notes that in its two communications of 2004, the complainant alleged that the Vice-Minister of Health was himself involved in the campaign aiming at transferring "Sanatatea" primary trade union to the Confederation "Solidaritate". The management of the preventive medical centres and trade union leaders were threatened with dismissals and pressured to disaffiliate from the "Sanatatea" and join the "Solidaritate". All complaints to the authorities about undue interference were to no avail. The Ministry of Health refused to sign the branch collective agreement already drafted and accepted by the Ministry and the "Sanatatea".

- 876.** *The Committee further notes the Government's communication of 5 January 2006, in which it indicated that since April 2005, the Ministry of Labour and Social Protection has been dissolved and its competences were now assumed by the Ministry of Health and Social Protection, and the Ministry of Economy and Trade. The previous Minister of Health, whom the complaints accused of interfering in trade union matters, was replaced. Since the change in the Ministry's administration, the cooperation between the Ministry and the "Sanatatea" has improved and as a result, all trade unions from the medico-sanitary institutions have again joined the "Sanatatea". To ensure adequate social and economic protection of the workers of this branch, the Ministry of Health and Social Protection and the trade union "Sanatatea" negotiated and signed a collective agreement for the years 2005-08. The Committee takes due note of this information.*

### **Other trade union organizations**

- 877.** *The Committee notes that according to the Government, the decision of the Federation of Unions of Chemical Industry and Energy Workers, the "Moldsindcoopcomet" Federation, the "Raut" Trade Union and the Trade Union of Workers of Cadastre, Geodesy and Geology "SindGeoCad" to disaffiliate from the CSRM was taken by the respective trade union councils, in conformity with their trade union statutes. It further indicates that on 17 November 2005, the Council of the Trade Union of Culture Workers took a decision to withdraw its membership from the CSRM and to affiliate to the "Solidaritate". According to the Government, this change was done in conformity with the legislation in force. Once again, the Committee urges the Government to conduct an independent investigation into the allegation that all these transfers took place under the pressure exercised by the authorities and employers. It requests the Government to keep it informed in this respect.*

### **The Committee's recommendations**

- 878.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee expects that legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions will be soon adopted following full and frank consultations with social partners, including the Confederation of Trade Unions of the Republic of Moldova (CSRM) and the National Confederation of Moldovan Employers. It further expects that the measures taken by the Government in this regard will not only address violations of the Labour Code, but also*

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*other laws concerning freedom of association and collective bargaining rights, such as the Law on Trade Unions. The Committee requests the Government to keep it informed of the developments in this respect.*

- (b) The Committee once again requests the Government to conduct independent investigations into the allegation of the employers' refusal to accept the establishment of trade unions at the Ecological College and the Lyceum "Mircea Eliade" and to keep it informed in this respect.*
- (c) The Committee requests the Government to indicate whether all deducted trade union dues have now been transferred to the National Federation of Trade Unions of Workers of Food and Agriculture of Moldova (AGROINSIND) account by the management of the "Moldcarton".*
- (d) The Committee requests the Government to keep it informed of all measures taken to address the question of access of trade union representatives to the workplaces in order to carry out legitimate trade union activities.*
- (e) The Committee requests the Government to transmit any judgements handed down by the courts in respect of the AGROINSIND.*
- (f) The Committee requests the Government to keep it informed of the decision of the Supreme Court concerning the dismissal of Mr. Molosag from the post of president of the Federation of Trade Unions of Public Service Employees (SINDASP).*
- (g) The Committee requests the Government and the complainants to clarify whether the SINDASP, which had previously been affiliated to the CSRM, has since changed its affiliation.*
- (h) The Committee once again requests the Government, as a matter of urgency, to conduct independent inquiries into all alleged instances of pressure exercised upon the trade unions affiliated to the Union of Education and Science, the AGROINSIND, the Federation of Unions of Chemical Industry and Energy Workers, the "Moldsindcoopcomet" Federation, the "Raut" Trade Union, the Trade Union of Workers of Cadastre, Geodesy and Geology "SindGeoCad" and the Trade Union of Culture Workers. It expects that the inquiries will be truly independent and will be composed of persons having the confidence of all of the parties involved. The Committee requests the Government to keep it informed in this respect.*
- (i) The Committee requests the Government to provide its observations on the remaining allegations submitted by the ICFTU and, more specifically, on the alleged support by the Government, including the President of the Republic of Moldova, of the "Solidaritate" and trade union monopoly and the pressure exercised on the AGROINSIND members by the employers of the "Moldcarton" enterprise.*

**Complaint against the Government of Panama  
presented by  
the Panamanian Trade Union of Maritime Tugging, Barges and Related Services  
(SITRASERMAP)  
supported by  
the International Federation of Transport Workers (ITF)**

*Allegations: The complainant organization objects to Decree No. 8 of 1998 which regulates work at sea and on waterways and which, in the opinion of the organization, denies it the right to collective bargaining and to strike; it also alleges the dismissal of the General Secretary of the Panamanian Trade Union of Maritime Tugging, Barges and Related Services (SITRASERMAP) from the enterprise Smit Harbour Towage Panama in April 2002*

- 879.** The complaint appears in a communication from the Panamanian Trade Union of Maritime Tugging, Barges and Related Services (SITRASERMAP) dated 21 July 2004. The International Federation of Transport Workers (ITF) associated itself with the complaint in a communication dated 14 January 2005. The Government sent its partial observations in communications dated 27 December 2004, 22 March and 18 May 2005, and 15 May 2006.
- 880.** Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 881.** In its communication dated 21 July 2004, the Panamanian Trade Union of Maritime Tugging, Barges and Related Services (SITRASERMAP) objects to Decree No. 8 of February 1998, which regulates work at sea and on waterways, on the grounds that it undermines the employment stability and conditions of seafarers, in particular section 75 which prevents workers from initiating industrial action or presenting financial claims. The complainant organization indicates that, in the light of this section, workers employed at sea and on waterways are not allowed to present lists of demands with a view to a collective agreement or any other industrial agreement and that the conciliation procedure prior to striking may therefore not be initiated. This prevents a large sector of the workers from exercising the right to strike.
- 882.** The complainant organization states that the Supreme Court of Justice declared section 102 of the contested Decree to be unconstitutional (because, according to the complainant, it violated section 70 of the national Constitution which stipulates that no worker may be dismissed without a valid reason and without due process of law) and that, in January 2001, it requested the same judicial authority to declare various sections of the Decree unconstitutional, including the contested section 75.

883. On the other hand, the complainant organization alleges that in June 2002 the enterprise Smit Harbour Towage Panama dismissed Captain Luis Fruto, General Secretary of SITRASERMAP, and that a decision on the matter from the Supreme Court of Justice is pending, following lengthy legal proceedings before various judicial bodies and a ruling by the Ministry of Labour and Social Development ordering his reinstatement and imposing a fine on the enterprise for contempt of court.

## B. The Government's reply

884. In its communication dated 27 December 2004, the Government states that Decree No. 8 of 26 February 1998 was the result of a process of consensus, in which various trade unions and employers' organizations participated, and which was mediated by the Government. It also indicates that there is a decision pending from the Supreme Court of Justice on the constitutionality of the Decree's provisions; section 102 has already been declared unconstitutional.

885. In its communication of 22 March 2005, the Government indicates that the Supreme Court of Justice has not yet handed down a ruling on the claim that Decree No. 8 of 1998 is unconstitutional. Nonetheless, the Government, through the Ministry of Labour and Social Development (MITRADEL) and the Panama Maritime Authority (AMP), has been holding inter-departmental meetings with the aim of, among other things, resolving the labour issues of the seafarers' case, in accordance with the Conventions ratified by Panama. In this respect, job placement for seafarers and the labour inspection system have been discussed.

886. In its communication of 18 May 2005, the Government states that it does not intend to issue a judgement on the dismissal of Mr. Luis Fruto as the matter is being examined by the Supreme Court of Justice. The Government also refers to the judicial proceedings taking place relating to the dismissal and states that the Supreme Court of Justice has still to make a ruling on the *amparo* (enforcement of constitutional rights) appeal lodged by Mr. Fruto. The Government also points out that the General Labour Directorate of the Ministry of Labour and Social Development ordered the reinstatement of Mr. Fruto and the payment of the wages owed to him, but that the judicial authority revoked this ruling.

887. In its communication of 15 May 2006, the Government states that it remains determined to comply with the international obligations it has undertaken and to try to resolve, as far as possible, all the problems concerning the Conventions that Panama has ratified. It adds in this respect that it continuously works on this case but has not been in a position to achieve further progress given that the Supreme Court of Justice has not pronounced itself yet on the appeal lodged against Decree No. 8 of 26 February 1998 on grounds of unconstitutionality. Discussions are under way in order to obtain a consensus with a view to ratifying the Maritime Labour Convention, 2006. The Government finally indicates that consideration is given to the possibility of amending Legislative Decree No. 8 so as to bring it into conformity with the provisions of Convention No. 186 and respond to the issues raised in the present complaint with regard to the application of Convention No. 87.

## C. The Committee's conclusions

888. *The Committee observes that in this case the complainant organization objects to Decree No. 8 of 1998, which regulates work at sea and on waterways, which it views as obstructing the right to collective bargaining and to strike, and also alleges the dismissal of the General Secretary of the Panamanian Trade Union of Maritime Tugging, Barges and Related Services (SITRASERMAP) from the enterprise Smit Harbour Towage Panama in April 2002.*

- 889.** *As to Decree No. 8 of 1998, which regulates work at sea and on waterways, the Committee observes that the Government and the complainant organization state that, in January 2001, the constitutionality of a number of sections of the Decree, including section 75, which is criticized by SITRASERMAP, was contested before the Supreme Court of Justice. The Committee also notes that the Government does not deny the allegation that the Decree obstructs the right to collective bargaining and to strike and that it confirms that, through the Ministry of Labour and Social Development (MITRADEL) and the Panama Maritime Authority (AMP), interdepartmental meetings are being held with the aim of, among other things, resolving the labour issues of the seafarers' case in accordance with the Conventions ratified by Panama. The Committee notes that the Government has informed the ILO that: (1) it will present a new Maritime Code Bill to the Legislative Assembly; (2) it remains determined to comply with the international obligations it has undertaken and to try to resolve, as far as possible, all the problems concerning the Conventions that Panama has ratified; (3) discussions are under way in order to obtain a consensus with a view to ratifying the Maritime Labour Convention, 2006 and consideration is given to the possibility of amending Legislative Decree No. 8 so as to bring it into conformity with the provisions of Convention No. 186 and respond to the issues raised in the present complaint with regard to the application of Convention No. 87. Under these circumstances, the Committee requests the Government to take the necessary measures to amend section 75 of Decree No. 8 of 1998 and to encourage and promote the full development and use of machinery for voluntary negotiation between employers or employers' and workers' organizations within the sector, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee requests the Government to hold proper consultations with the most representative employers' and workers' organizations in this regard. Furthermore, the Committee requests the Government to keep it informed on any ruling handed down by the Supreme Court on the unconstitutionality of the various sections of Decree No. 8, as well as on any new legislation on the maritime sector presented to the Legislative Assembly.*
- 890.** *Concerning the dismissal of Mr. Luis Fruto, the General Secretary of the SITRASERMAP from the enterprise Smit Harbour Towage Panama in April 2002, the Committee notes that the complainant organization and the Government indicate that a decision from the Supreme Court is pending on the amparo appeal lodged by Mr. Fruto to enforce his constitutional rights, alleging that the correct procedures were not followed. Under these circumstances, the Committee regrets the long time that has lapsed since the beginning of these proceedings (April 2002); it trusts that the Supreme Court of Justice will soon hand down a ruling on Mr. Fruto's dismissal and, taking into account that the Ministry of Labour had ordered the reinstatement of this trade union leader in his post, requests the Government, if it confirmed that this dismissal was due to his trade union activities, to take the necessary measures to ensure that he is reinstated in his post immediately with the payment of the wages owed to him and any other legal entitlements. The Committee requests the Government to keep it informed in this respect.*

### **The Committee's recommendations**

- 891.** *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *With regard to the contested Decree No. 8, which regulates work at sea and on waterways, noting that the Government does not deny the allegation that this Decree obstructs the right to collective bargaining and the right to strike, the Committee requests the Government to take the necessary measures to amend section 75 of the Decree and to promote the full development and use of machinery for voluntary negotiation between*



*employers or employers' and workers' organizations of the sector, with a view to the regulation of terms and conditions of employment through collective agreements. The Committee requests the Government to hold proper consultations with the most representative employers' and workers' organizations in this regard. The Committee also requests the Government to keep it informed of any ruling handed down by the Supreme Court on the unconstitutionality of various sections of Decree No. 8, as well as on any new bill on the maritime sector presented to the Legislative Assembly.*

- (b) *As to the dismissal in April 2002 of the General Secretary of the Panamanian Trade Union of Maritime Tugging, Barges and Related Services (SITRASERMAP), Mr. Luis Fruto, at the enterprise Smit Harbour Towage Panama, the Committee regrets the long time that has lapsed since the beginning of the court case (April 2002) relating to the dismissal, trusts that the Supreme Court of Justice will soon hand down a ruling on the matter, taking into account the fact that the Ministry of Labour had ordered the reinstatement of this trade union leader in his post, the Committee requests the Government, if it is confirmed that the dismissal of this union official was due to his trade union activities, to take the necessary measures to ensure that he is reinstated in his post without delay with the payment of the wages owed to him and any other legal entitlements. The Committee requests the Government to keep it informed of the ruling of the Supreme Court of Justice.*

CASE NO. 2279

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Peru  
presented by  
the General Confederation of Workers of Peru (CGTP)**

*Allegations: Mass dismissal of workers at the Congress of the Republic and the brutal repression of workers' demonstrations, detentions of trade union members and raids on trade union headquarters during the state of emergency declared by the Government on 28 May 2003*

- 892.** The Committee last examined this complaint at its June 2004 meeting and on that occasion presented an interim report to the Governing Body [see 334th Report, paras. 681-699].
- 893.** The Government sent partial observations in communications dated 17 and 25 January and 18 February 2005.
- 894.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. Previous examination of the case**

**895.** At its meeting in June 2004, the Committee formulated the following recommendations [see 334th Report, para. 699]:

- With regard to the mass dismissal of 1,117 workers at the Congress of the Republic, 257 of whom lodged a complaint before the Inter-American Commission on Human Rights, the Committee requests the Government to keep it informed of the outcome of the report of the Inter-American Commission on Human Rights and of the decisions taken by the Executive Commission established in accordance with Decree No. 27803.
- With regard to the declaration of a state of emergency on 28 May 2003, which involved, according to the allegations, the suspension of the right to assembly, the severe repression of the demonstrations, the realization of investigations and searches of trade union headquarters without the authorization of trade union officials and without legal warrants and the arrest of more than 150 trade union officials and workers of the United Trade Union of Educational Workers of Peru (SUTEP), the Peruvian Union of Higher Education Teachers (SIDESP), the Unified Trade Union of Education Centre Workers (SUTACE), the National Federation of Education Administrative Workers (FENTASE) and the National Board of Irrigation Users, the Committee requests the Government: (1) to take measures to ensure that an independent investigation is carried out into the repression exerted by the security forces during the demonstrations, and to send its observations in this respect; and (2) to inform it whether the trade union officials arrested have been released and, if they are still in custody, to ensure that they benefit from due procedural guarantees, and to inform it of the state of the proceedings under way.

**B. The Government's reply**

**896.** In its communication of 17 January 2005, the Government states that, as part of the amicable settlement phase of the proceedings currently under way before the Inter-American Commission on Human Rights of the Organization of American States (OAS), a proposal for a definitive settlement was put forward to the former employees making the claim; they did not accept the proposal, and made a counter proposal to which the Executive objected. The Congress of the Republic expressed the view that the claim of the former workers should be referred to the Inter-American Commission on Human Rights for a final decision.

**897.** The Government adds that the Inter-American Commission on Human Rights is pursuing direct discussions with representatives of the workers concerned with a view to finding a solution. The Government states that additional observations should be sent once the analysis undertaken by the Ministry of Justice and the Congress of the final report of the Inter-American Commission on Human Rights is available. As regards the total number of congressional workers dismissed, it should be noted that in accordance with Decree No. 27803, by a decision of the Executive Commission established in accordance with that Decree, they have been included in the national register of wrongfully dismissed workers, which enables them to avail themselves of one of the entitlements provided for by the Decree (reinstatement or transfer, financial compensation, early retirement or retraining), a total of 324 former Congress workers being concerned.

**898.** In its communication of 25 January 2005, the Government sends the report of the Inter-American Commission on Human Rights of the OAS on case No. 11830 – dismissed congressional workers. In the report, the Commission sets out its conclusion and recommendations in relation to the case, addressed to the Government of Peru. The report concludes that the State is responsible for violating the right to judicial protection and judicial guarantees; the report specifically recommends “Ensuring that the congressional workers named in the annex to this report have access to simple, rapid and effective judicial procedures to review their claims in relation to the termination of their

employment ...”, and that “such procedures must be subject to judicial guarantees and lead to a ruling as to the merits of the claims made”. The report also states that the official view regarding the opinion expressed by the Commission is still awaited from the Ministry of Justice and the Congress, which are the competent national authorities in this area.

- 899.** In its communication of 18 February 2005, the Government states that the Senior Clerk (*Oficial Mayor*) of Congress has given his assessment of report 78/04 of the Inter-American Commission on Human Rights in case No. 11830 along the following lines: since the report’s first recommendation is that the former congressional workers should be guaranteed the right to petition the courts for a review of their dismissals, the national Congress takes the view that, on the basis of the Code of Constitutional Procedure, according to which the character of *res judicata* can be attributed only to a constitutional ruling on the substance of a given claim, it may be possible for these claims to be reviewed in new constitutional proceedings.
- 900.** The Government adds that the possibility of coming to an amicable agreement with the complainants is being considered. This requires funds to be made available out of the existing budget, which would be a matter for the Ministry of Economics and Finances, or by some arrangement involving a budget increase by act of Congress.

### **C. The Committee’s conclusions**

- 901.** *The Committee recalls that the allegations in the present case refer to: (1) the mass dismissal of 1,117 workers at the Congress of the Republic, some 257 of whom have lodged a complaint with the Inter-American Commission on Human Rights; and (2) the declaration of a state of emergency on 28 May 2003, which is claimed to have involved the suspension of the right to assembly, the brutal repression of demonstrations, investigations and registration of trade union headquarters without the authorization of union officials or judicial warrants, and the detention of more than 150 union officials and workers from SUTEP, SIDESP, SUTACE, FENTASE and the National Board of Irrigation Users.*
- 902.** *As regards the mass dismissal of 1,117 workers at the Congress of the Republic, of whom 257 lodged a complaint with the Inter-American Commission on Human Rights, the Committee notes the Government’s information to the effect that: (1) the Inter-American Commission on Human Rights of the OAS has recommended that the Government guarantee that workers named in the report have recourse to simple, rapid and effective procedures for reviewing their claims in relation to the termination of their employment, and that such procedures should be subject to legal guarantees and lead to a ruling on the merits of the claims made; (2) the Senior Clerk (Oficial Mayor) of Congress has stated that, in the light of the Code of Constitutional Procedure, according to which only constitutional rulings on the substance of a given claim can have the character of a *res judicata*, it may be possible for these claims to be reviewed in new constitutional proceedings; (3) by a decision of the Executive Commission, the congressional workers who were dismissed have been included in the national register of workers who have been wrongfully dismissed, and can thus avail themselves of one of the entitlements provided for by Decree No. 27803 (reinstatement or transfer, financial compensation, early retirement, retraining); and (4) consideration is being given to the possibility of reaching an amicable settlement with the workers who have lodged a complaint with the Inter-American Commission on Human Rights.*
- 903.** *In this regard, while taking note of the report of the Inter-American Commission on Human Rights published in October 2004, provided by the Government in its communication of 25 January 2005, the Committee requests the Government to inform it whether the workers in question have availed themselves of the judicial remedies to which the Commission refers – and, if that is the case, to inform it of the final outcome of such proceedings – or whether an amicable agreement has been reached between the parties.*

**904.** *As regards the declaration of a state of emergency on 28 May 2003, which is claimed to have involved the suspension of the right to assemble, the brutal repression of demonstrations, the carrying out of investigations and searches of union headquarters without the authorization of trade union officials or any judicial warrants, and the detention of more than 150 trade union officials and members from SUTEP, SIDESP, SUTACE, FENTASE and the National Board of Irrigation Users, the Committee deeply regrets that the Government has not provided the observations requested. The Committee expects that all the detainees have been released, and once again urges the Government to carry out an independent investigation into all these allegations and to keep it informed of the outcome.*

### **The Committee's recommendations**

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

- (a) *As regards the mass dismissal of 1,117 workers at the Congress of the Republic, of whom 257 have lodged a complaint with the Inter-American Commission on Human Rights, the Committee, while noting the report of the Commission published in October 2004, requests the Government to inform it whether the workers in question have availed themselves of the judicial remedies to which the Commission refers – and, if that is the case, to inform it of the final outcome of any such proceedings – or whether an amicable agreement has been reached by the parties.*
- (b) *As regards the declaration of a state of emergency on 28 May 2003, which is claimed to have involved the suspension of the right to assemble, the brutal repression of demonstrations, the carrying out of investigations and searches of trade union headquarters without the authorization of trade union officials or judicial warrants, and the detention of more than 150 trade union officials and members of SUTEP, SIDESP, SUTACE, FENTASE and the National Board of Irrigation Users, the Committee firmly expects that all the detainees have been released, and once again urges the Government to carry out an independent investigation into all these allegations and to keep it informed of the outcome.*

CASE NO. 2366

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

### **Complaint against the Government of Turkey presented by**

- **the Confederation of Public Employees' Trade Unions (KESK) and**
- **Education International (EI)**

*Allegations: The complainant alleges that the Attorney-General of Ankara filed a lawsuit requesting the courts to order the dissolution of the Trade Union of Public Servants in the Education Branch (Egitim Sen), because its statutes provided as one of the trade union's purposes the defence of "the right of all citizens*

*to education in their mother tongue and the development of their culture”, which was contrary, according to the Attorney-General, to constitutional and legislative provisions prohibiting the teaching of any language other than Turkish as mother tongue, and article 3 of the national Constitution which provides that the Turkish State, along with its nation and territory, constitutes an indivisible entity*

**906.** The Committee examined this case at its November 2005 meeting [see 338th Report, paras. 1284-1305, approved by the Governing Body at its 294th Session (November 2005)].

**907.** The Government sent its observations in communications dated 30 November 2005 and 3 February 2006.

**908.** Turkey has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

#### **A. Previous examination of the case**

**909.** In its previous examination of the case in November 2005, the Committee made the following recommendations [see 338th Report, para. 1305]:

- (a) The Committee takes note of Egitim Sen’s concern that it might still be dissolved, even though it had taken steps to delete the article of its statutes that was at issue, and trusts that this will not be the case. It requests the Government to inform it of the current status of Egitim Sen.
- (b) The Committee also requests the Government to provide additional information regarding the contradictions between the Egitim Sen statutes and the national Constitution and any impact that the final court decision might have on freedom of association.

#### **B. The Government’s reply**

**910.** In communications dated 30 November 2005 and 3 February 2006 the Government indicated that the case brought against Egitim Sen by the Chief Public Prosecutor’s Office of Ankara claiming that an article in its statute was in contravention of the Turkish laws was dismissed by the Second Labour Court of Ankara on 27 October 2005 on grounds that the subject matter of the case no longer existed and that there was no cause for decision on the merits of the case, as the concerned article had been amended by the union. The court found that since Egitim Sen had amended its statute deleting the term “education in mother tongue”, there was no ground to make a decision on the dissolution of the union. The decision became final on 17 November 2005, in the absence of an appeal within the prescribed period. A copy of the decision was provided by the Government.

#### **C. The Committee’s conclusions**

**911.** *The Committee recalls the background of this case according to which the Attorney-General of Ankara filed a lawsuit on 10 June 2004 under section 37 of the Public*

*Employees' Trade Unions Act No. 4688, requesting the courts to order the dissolution of the Trade Union of Public Servants in the Education Branch (Egitim Sen), because its statutes provided as one of the trade union's purposes the defence of "the right of all citizens to education in their mother tongue and the development of their culture", which was contrary, according to the Attorney-General, to constitutional and legislative provisions prohibiting the teaching of any language other than Turkish as mother tongue, and article 3 of the national Constitution which provides that the Turkish State, along with its nation and territory, constitutes an indivisible entity.*

- 912.** *In September 2004 and February 2005 the Second Industrial Court of Ankara ruled in favour of Egitim Sen, arguing that the Turkish Constitution should be interpreted in accordance with the European Convention on Human Rights, and that a decision to close down the union was not in compliance with Articles 10 (freedom of expression) and 11 (freedom of association) of the Convention. It further noted that the disputed provision in the statutes of Egitim Sen did not constitute a risk for the unity of the nation and the territory of the Republic. In May 2005 the Supreme Court of Appeals reversed this ruling, stipulating that "freedom of association can be limited for the protection of national security, integrity of the country and public order" and that "Turkish citizens cannot be provided education in a language other than Turkish".*
- 913.** *The Committee recalls from a previous communication of Education International dated 1 September 2005, that the decision of the Supreme Court was final and there was no possibility to object to it. The Second Labour Court was therefore expected to examine the case again and render a decision in line with that of the Supreme Court. In light of this situation, and in order to avoid an impending dissolution, Egitim Sen amended its statutes on 3 July 2006 so as to delete the term "education in mother tongue". Parallel to this, it filed an application to the European Court of Human Rights.*
- 914.** *The Committee notes that, according to the latest information provided by the Government, the case was dismissed in a final decision by the Second Industrial Court of Ankara which ruled that there were no longer any grounds for the dissolution of Egitim Sen as the trade union in question had previously amended its statute deleting the reference to the right of all citizens to "education in their mother tongue". The Committee also notes that the Government has not provided any additional information on the contradictions between the Egitim Sen statutes and the national Constitution and any impact that the final court decision might have on freedom of association, as previously requested by the Committee.*
- 915.** *The Committee considers it necessary to emphasize that, in accordance with Convention No. 87, ratified by Turkey, trade unions should have the right to include in their statutes the peaceful objectives that they consider necessary for the defence of the rights and interests of their members. To fully guarantee the right of workers' organizations to draw up their constitutions and rules in full freedom, national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 333]. It also emphasizes that the right to express opinions through the press or otherwise is an essential aspect of trade union rights [see **Digest**, op. cit., para. 153] and that the full exercise of trade union rights calls for a free flow of information, opinions and ideas within the limits of propriety and non-violence. A provision that union rules shall comply with national statutory requirements is not in violation of the principle that workers' organizations shall have the right to draw up their constitutions and rules in full freedom, provided that such statutory requirements in themselves do not infringe the principle of freedom of association and provided that approval of the rules by the competent authority is not within the discretionary powers of such authorities [see **Digest**, op. cit., para. 334].*

*While noting that limits may be placed on these abovementioned rights where the manner in which they are expressed may imminently jeopardize national security or the democratic order, the Committee has serious concerns that references in a union's by-laws to the right to education in a mother tongue have given and could give rise to the call for dissolution of the trade union.*

**916.** *The Committee requests the Government and the complainants to keep it informed of developments concerning the application of Egitim Sen to the European Court of Human Rights and of the outcome of the proceedings.*

### **The Committee's recommendations**

**917.** *In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:*

- (a) The Committee has serious concerns that references in a union's by-laws to the right to education in a mother tongue have given and could give rise to the call for dissolution of the trade union.*
- (b) The Committee requests the Government and the complainant to keep it informed of developments concerning the application of Egitim Sen to the European Court of Human Rights and of the outcome of the proceedings.*

CASE NO. 2388

REPORT IN WHICH THE COMMITTEE REQUESTS  
TO BE KEPT INFORMED OF DEVELOPMENTS

### **Complaints against the Government of Ukraine presented by**

- **the International Confederation of Free Trade Unions (ICFTU)**
- **the Confederation of Free Trade Unions of Ukraine (CFTUU) and**
- **the Federation of Trade Unions of Ukraine (FPU)**

*Allegations: The complainants allege interference by the Ukrainian authorities and employers of various enterprises in trade union internal affairs, dismissals, intimidation, harassment and physical assaults on trade union activists and members, denial of facilities for workers' representatives and attempts to dissolve trade unions*

**918.** The Committee last examined this case at its June 2005 meeting [see 337th Report, paras. 1274-1377]. The Confederation of Free Trade Unions of Ukraine (CFTUU) sent new allegations in communications dated 15 July and 5 September 2005, as well as in communications dated 9 and 14 March 2006. The Federation of Trade Unions of Ukraine (FPU) forwarded additional information in a communication of 27 September 2005.

**919.** The Government sent its observations in communications dated 28 July, 9 August, 2 September, 21 October, 11 and 23 November, and 29 December 2005, as well as in a communication dated 31 January 2006.

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

#### **A. Previous examination of the case**

**921.** At its June 2005 meeting, the Committee made the following recommendations in relation to this case [see 337th Report, para. 1377]:

- (a) The Committee recalls that the rights of workers' organizations can only be exercised in a climate that is free from pressure of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. The Committee further considers that bodies responsible for investigation of allegations of violation of trade union rights should enjoy independence from the authorities against which the allegations were submitted. The Committee therefore requests the Government to take the necessary measures so as to ensure that any further allegations of trade union intimidation or harassment by the SBU are investigated by an independent body having the confidence of the parties concerned and that the SBU will refrain in future from any anti-union discrimination activities.
- (b) The Committee requests the Government to indicate whether any measures have been taken in respect of trade union organizations as a result of Interim Report No. 5535 of the Temporary Commission of Inquiry of Verkhovna Rada of Ukraine on issues related to establishing of evidence of foreign interference into financing of the election campaign in Ukraine through non-governmental organizations operating on grants of foreign States, which treats free trade unions as political organizations carrying out the order of foreign agents.
- (c) The Committee requests the Government to institute an independent investigation into the allegations of interference in the internal affairs of the All-Ukrainian Trade Union of State Agencies' Employees and to keep it informed in this respect.
- (d) The Committee requests the Government to ensure that those trade unions of the Western Donbass Association of the NPGU which suffered material damage due to the illegal search are compensated without delay.
- (e) The Committee trusts that the commission mandated to investigate the alleged violations of trade union rights at the "Postnikovskio", "Pervomai", "Vinintzkouo", "Shahtersko-glubokoe", "Duvannaya" and "Zolotoye" mines, as well as at the "Test Donetskuglestroy" Ltd. Enterprise will be independent. It further requests the Government to keep it informed on the results of the work of the commission.
- (f) The Committee requests the Government to conduct an independent inquiry into the allegations of the anti-union campaign which allegedly took place at the "Imeni Shevchenko" locomotive depot and to keep it informed in this respect.
- (g) The Committee requests the Government to provide a copy of the minutes of the meeting of 2 April 2004, during which, according to the Government, all problematic issues that had arisen at the "Krivorozhsky" plant were settled by the representatives of the provincial state administration, the management of the plant and trade unions.
- (h) The Committee requests the Government to conduct an independent investigation into the allegation that at the "Orzhitsky" sugar refinery plant, 115 workers left the union under pressure by the employer and to keep it informed of the outcome.
- (i) The Committee requests the Government to carry out an independent investigation into the allegations of an anti-union campaign carried out by the management of McDonald's and, if it is found that workers were indeed harassed and intimidated in an attempt to dissuade them from becoming members of a union, to take suitable measures to redress the situation and to ensure that workers may effectively exercise their fundamental right to organize. It requests the Government to keep it informed in this respect.



- (j) The Committee requests the Government to conduct an independent inquiry into the allegation of creation by the management of the “Svesky Nasosny Zavod” enterprise of a puppet union controlled by it and to keep it informed in this respect.
- (k) The Committee requests the Government to conduct an independent inquiry into the allegation of interference by the management of the “Gruzavtoservice” enterprise in the election of trade union officers and to keep it informed in this respect.
- (l) The Committee requests the Government to conduct independent inquiries into the allegations of anti-union dismissals at the “Knyagynskaya” mine, the State Agrarian technical secondary school of Alexandria City and the “Tomashpilsakhar” enterprise, and to keep it informed in this respect. The Committee expects that the case concerning Mr. Komissarov, the chairperson of the union at the “Promproduct” enterprise, will be examined without delay and requests the Government to keep it informed in this respect. Furthermore, the Committee requests the Government to indicate whether, in the case of dismissal of Mr. Dzyubko, the relevant procedures for dismissal of a trade union leader provided for in the Labour Code were followed.
- (m) The Committee requests the Government to institute immediately an independent judicial inquiry into the allegations of physical assaults on Mr. Shtulman, Mr. Fomenko and Mr. Kalyuzhny with a view to fully clarifying facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to keep it informed of any development regarding these cases, as well as the criminal investigation regarding the abduction and physical assaults on Mr. Volynets’ son.
- (n) As concerns the allegations of denial of certain facilities to trade unions, the Committee requests the Government to:
- inform the Committee whether the primary trade unions of the complainants’ organizations at the “Partizanskaya” mine, the “Krivoy Rog Steal” enterprise and the “Orzhitsky” sugar refinery plant were provided with office space;
  - reply to the allegation of suspension of check-off facilities at the “Tomashpilsakhar” enterprise;
  - reply to the allegation of violation of the right of the trade union representative to access the workplace at the “Svesky Nasosny Zavod” enterprise;
  - to indicate whether trade union dues deducted from workers’ wages during 2002-03 were duly paid to the FPU-affiliated trade unions;
  - to indicate whether the telephone lines were reconnected in the office of the trade union organization at the “Microprylad” Ltd. Enterprise.
- (o) With regard to the alleged instances of revocation of trade union registration:
- the Committee requests the Government to provide information in respect of the revocation of registration of the NPGU primary organization at the “Krasnolimanskaya” mine;
  - the Committee requests the Government and the complainants to provide further information concerning the reasons for the dissolution of the trade union at the locomotive depot “Imeni Shevchenko” and the All-Ukrainian Trade Union of Football Players;
  - the Committee requests the Government to take the necessary measures so as to ensure that the trade union at the “Azovstal” enterprise is re-registered;
  - the Committee requests the Government to keep it informed of the court decision as concerns the registration of the Federation of Free Trade Unions of Lvov Railways and to provide a copy of the judgement.
- (p) Recalling that collective agreements should be binding on the parties, the Committee requests the Government to keep it informed of the conclusions reached by the commission set up to examine the allegations of violations of trade union rights by the management of the “Partizanskaya” mine (“Antratsit” coal company) and of the “Stakhanova” mine (“Krasnoarmeyskugol” enterprise).

- (q) The Committee requests the Government to reply to the complainants' allegation that the administration of the maritime commercial port of Ilyichevsk refuses to bargain collectively with the Independent Trade Union of Workers of the Maritime Commercial Port of Ilyichevsk.
- (r) Recalling that, where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention, the Committee trusts that the Government will rapidly take the necessary measures to investigate the remaining allegations and to ensure that any effects of anti-union discrimination and interference are appropriately and adequately remedied.
- (s) The Committee requests the Government to provide its observations on the allegations of violation of trade union rights at the "Ordzhonikidze" and "Novodonetskaya" mines, "Meridian" international school, "Ilyich" metallurgical enterprise, "Krasnoarmeyskiy dinasovoy zavod" enterprise and "Krasnolimanskaya" coal company.
- (t) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprises concerned, on the questions at issue.

## B. New allegations

- 922.** In its communication dated 15 July 2005, the Confederation of Free Trade Unions of Ukraine (CFTUU) alleges that the management of the "Korosten's Porcelain" enterprise had launched an anti-union campaign against the primary trade union of the All-Ukrainian Trade Union "Defence of Justice", a CFTUU affiliate. In particular, the management of the enterprise refused to provide the trade union with premises and check-off facilities, and did not allow the union to participate in collective bargaining and sign a collective agreement.
- 923.** In its communication of 5 September 2005, the CFTUU further alleges that the primary trade union of the "Nikopol South-Pipe Plant" enterprise was not included, along with other trade union representatives, in the working group created to make proposals as to the efficiency of the enterprise. By the same communication, the CFTUU alleges that the management of the "Marganets ore mining and processing" enterprise refused to recognize the primary trade union of the Independent Trade Union of Miners of Ukraine (NPGU) and had launched an anti-union campaign to destroy the union by pressurizing trade union members and threatening them with dismissals.
- 924.** By its communication dated 27 September 2005, the Federation of Trade Unions of Ukraine (FPU) informs that all outstanding issues at "Mikroprylad" Ltd., "Gruzavtoservice" and "Svessky Nasosniy Zavod" enterprises were resolved. The previous conflict in relation to interference in the internal affairs of the All-Ukrainian Trade Union of State Agencies' Employees was also resolved. As concerns the allegations of suspension of check-off facilities at the "Tomashpilsakhar", "Brodecke" and "Brodecke sugar refinery plant" enterprises, the FPU states that, according to the replies it had received from the Office of the Prosecutor, those were the questions to be resolved in court. However, the primary trade unions of these enterprises have no sufficient means to address the courts.
- 925.** In its communication of 9 March 2006, the CFTUU alleges that the management of the Oil Investment Company of Lysychansk city does not recognize the newly created free trade union "Oktan". More specifically, the complainant alleges that the management has put pressure on trade union members and its chairperson by threatening them with dismissals and not granting access to the premises of the enterprise to the chairperson of the union. Furthermore, the director of the enterprise has refused to confirm the legal address of the trade union needed for trade union legalization. In its communication of 14 March 2006, the CFTUU further alleges that the management of the boarding school of Sosnytsia city refuses to recognize the primary trade union of the Free Trade Union of Education and

Science of Ukraine, the CFTUU's affiliate, puts pressure on trade union members, threatens them with dismissals and prohibits the holding of trade union meetings.

### C. The Government's reply

**926.** In its communications of 28 July, 9 August, 2 September, 11 and 23 November and 29 December 2005, the Government provides its observations regarding the following recommendations of the Committee and the specific enterprises mentioned therein.

#### **Recommendation (a)**

Security Service of Ukraine (SBU)

**927.** Under section 12 of the Law on Trade Unions, trade unions and their associations are independent from the Government, local authorities, employers, political parties and other public associations. Under the national legislation, governmental bodies, local authorities, public officials, employers and their associations are forbidden from interfering in trade union activities. Furthermore, trade unions have a right to address judicial authorities to defend their rights and interests. With regard to the specific allegation of interference by the SBU in internal trade union affairs, the Government reiterates that following an inquiry carried out by the SBU, no instances of interference by officials of the Service in the activities of trade unions in Ukraine have been established.

#### **Recommendation (e)**

"Vinnitskaya", "Postnikovskaya" and  
"Shakhtersko-glubokoe" mines

**928.** Following a meeting with the chairperson of the Shakhtyorsk City Organization of the NPGU with regard to the allegations of violations of trade union rights, it was established that in 2004, a dispute arose with the former director-general of the "Shakhtyorskantratsit" deep mining enterprise concerning his refusal to provide an office to the union within the holding's premises. The dispute has been resolved since then. No other violations of trade union rights were revealed.

"Duvannaya" mine

**929.** An inspection carried out on 1 November 2005 revealed that two unions existed at the mine: the coal industry workers' union and the NPGU primary trade union. A collective agreement was concluded between the management and the joint trade union representative body. Pursuant to the collective agreement, both unions were allocated funds for cultural and recreational activities. Appropriate conditions, such as check-off facilities, were also created so as to ensure that both unions could carry out their activities.

"Zolotoye" mine

**930.** An inspection, which took place on 31 October 2005, established that two unions existed at the enterprise. Labour, industrial and socio-economic relations at the mine were governed by a collective agreement between the management and workers represented by the president of the Pervomaisk regional trade union committee, the regional division of the NPGU of the city of Pervomaisk and the executive office of the NPGU. The inspection found, however, that, in violation of the collective agreement, the management did not make monthly payments for cultural and recreational activities and made only a one-time

payment of 1,000 gryvnas to each organization in 2005. The management was therefore ordered to rectify the violations of the labour legislation.

“Donetskuglestroy Trest” Ltd.

- 931.** An inspection carried out at the enterprise revealed that workers were represented by a joint trade union committee of the enterprise. According to its president, the trade union organization had never filed a complaint with the ILO.

### ***Recommendations (f), (l) and (o)***

Locomotive depot “Imeni Shevchenko”

- 932.** In its communication of 11 November 2005, the Government indicates that the Cherkasskaya regional state labour inspectorate carried out an inspection into the allegations of an anti-union campaign at the locomotive depot, the allegations of anti-union dismissal of Mr. Dzyubko, president of the independent trade union, and revocation of trade union registration. The inspection established that Mr. Dzyubko was dismissed on 16 January 2004 for unauthorized absence, in accordance with section 40(4) of the Labour Code. The management of the locomotive depot consulted the trade union committee representing railway and transport construction workers to seek its agreement to the dismissal. The trade union committee examined the case, despite the fact that Mr. Dzyubko had announced his intention to leave the union on 30 December 2003, and agreed to the dismissal. On 30 December 2003, the management of the enterprise received a certificate, dated 23 December 2003, from the Justice Department concerning the registration of the free trade union of railway workers of Ukraine, of which Mr. Dzyubko was a member. Mr. Dzyubko considered his dismissal to be unlawful and applied to the court for reinstatement. The Smelyansk municipal court rejected his application on 5 March 2004. The Cherkasskaya regional appellate court in its ruling of 28 May 2004 upheld the decision of the Smelyansk court. Furthermore, the investigation established that the free trade union was set up by decision of a general meeting (records of the meeting, No. 1, 17 November 2003). Mr. Dzyubko was elected chairperson of the trade union committee; three other persons were elected committee members. However, no applications from other workers to join the primary trade union organization were received. Mr. Dzyubko had later acknowledged that he wrote all the records of the union committee’s meetings, forging the signatures of all committee members. When Mr. Dzyubko’s contract of employment was terminated, the trade union organization disintegrated.

- 933.** In its communication dated 29 December 2005, the Government states that the free trade union was dissolved following a decision taken by trade union members at a meeting of 22 January 2004. It further states that the original record of the meeting of the free trade union is part of the evidence submitted in case No. 22458 concerning Mr. Dzyubko’s dismissal, which is currently being considered by the Supreme Court. In addition, the Cherkassk authorities set up an independent district commission, which included representatives of trade unions and employers’ organizations, heads of departments of the National Mediation and Conciliation Service and regional state labour inspectorate. The commission found that according to Mr. Dzyubko, at the time of registration, there were 15 union members and only five members were still remaining. However, he did not provide the list of the union’s members.

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**Recommendations (g) and (n)**

“Krivoy Rog Steal” (“Krivorozhsky” plant)

**934.** The territorial state labour inspectorate carried out an inspection at the enterprise and concluded that the allegations contained in the CFTUU’s communication concerning interference in the activity of the primary trade union of the NPGU at this enterprise were not supported by documentary evidence. Furthermore, a working group including representatives of employers, trade unions and regional and local executive bodies, established to examine allegations concerning violations of trade union rights set out in Case No. 2388, did not find any evidence of violations of trade union rights. The Government further states that in 2001, the NPGU was provided with a fully equipped office.

**Recommendations (h) and (n)**

“Orzhitsky” sugar refinery plant

**935.** An investigation into the allegations of violations of trade union rights was carried out by the executive authorities and the legal services with the participation of Mr. Krazhan, the president of the independent trade union. The investigation did not confirm any instances of pressure exerted on workers by their employer to leave the union. The allegation that 115 workers were forced to withdraw from their union membership was not confirmed. A fully equipped office was provided to the independent trade union free of charge.

**Recommendation (k)**

“Gruzavtoservice” enterprise

**936.** In its communication of 2 September 2005, the Government states that the regional state labour inspectorate carried out an inspection into the allegations of interference by the management in the election of a trade union committee. No evidence of such interference was found. As a result of voluntary resignations, the number of workers at the enterprise has declined significantly. In September 2005, the trade union organization dissolved itself and ceased to operate.

**937.** In its communication of 29 December 2005, the Government submits that the chairperson of the union and members of the union committee dismissed in August 2003 have been reinstated following a court ruling of May 2004.

**Recommendation (l)**

Aleksandrovsk State Technical College of Agriculture

**938.** With regard to the allegation of anti-union dismissal, the Government states that the dismissal of Ms. A.V. Polivoda was well founded, as confirmed by the Court of Appeal of the Kirovograd region on 13 July 2005.

### ***Recommendation (n)***

#### **“Partizanskaya” mine**

**939.** The inspection which took place on 31 October 2005 established that two trade union organizations existed at the mine: one affiliated to the union of mining industry workers and the other to the NPGU. Appropriate conditions enabling them to carry out their activities were created for both trade unions.

#### **“Svesky Nasosny Zavod”**

**940.** The Government confirms the declaration of the FPU that all previously raised issues were resolved.

#### **“Tomashpilsakhar” enterprise**

**941.** In its communication of 2 September 2005, the Government indicates that, according to the information provided by the public prosecutor of the Vinnitsk region, no trade union organization exists at that enterprise. According to the information provided by the enterprise, workers are represented by an authorized representative, who concludes a collective agreement with the management on behalf of the enterprise staff. Therefore, no trade union dues are withheld from the workers’ salaries. Furthermore, in a communication of 29 December 2005, the Government indicates that a working party composed of the representatives of the joint trade union of sugar industry workers, the “Podillyasakhar” association, employers, and the chief directorate of labour and social protection of the regional administration was set up to examine the recommendations of the Committee on Freedom of Association with a view to carrying out an independent investigation. The investigation failed to establish the existence of a dispute between workers’ representatives and the employer.

### ***Recommendation (o)***

#### **“Krasnolimanskaya” mine**

**942.** In respect of the alleged revocation of trade union registration, the Government indicates that, by a decision of the economic court of the Donetsk region (case No. 19/32A of 29 April 2003), the registration of the primary organization of the NPGU was revoked as no members of that union worked at the mine.

#### **“Azovstal” enterprise**

**943.** According to the Government, the Donetsk regional state labour inspectorate has established that at this enterprise, workers were represented by the MK Azovstal primary trade union organization of the Ukraine Metal Workers’ and Miners’ Union, registered on 28 January 2000 and re-registered on 4 March 2003. This primary trade union organization is one of the parties to the collective agreement for 2003-04. Management of the enterprise was not informed of the establishment, registration or existence of any other trade union at the enterprise.

#### **“Lvov Railways”**

**944.** As regards the registration of the FPU-affiliated trade union at this enterprise, it was confirmed by the economic court on 22 May 2003 (case No. 1/649-39/322) that the registration was effectuated in violation of the legislation. By its ruling of 22 September 2003, the Lvov Appellate Court modified the economic court ruling by upholding the

Federation's counterclaim. Both these rulings were overturned by the higher economic court on 17 March 2004, and the case was referred for re-examination to the Lvov district economic court which, on 8 August 2005, considered that the dispute in question did not come under the jurisdiction of the economic court. This decision was appealed by the "Lvov Railways". A hearing has been scheduled for 22 November 2005.

### **Recommendation (p)**

#### "Partizanskaya" and "Knyaginskaya" mines

**945.** In its communication of 28 July 2005, the Government indicates that, according to the territorial state labour inspectorate, while trade unions, including the NPGU, benefited from check-off facilities at these enterprises, violations of the collective agreements were found as to the non-payment of funds for cultural, sports and health activities to the independent trade unions. The management of the enterprises was therefore ordered to eliminate these violations of the collective agreement. A report of an administrative offence was filed with the court in accordance with section 41-2 of the Code of Administrative Offences.

**946.** In its communication of 11 November 2005, the Government states that a further inspection, which took place on 31 October 2005, established that in 2005, 116,82 gryvnas were paid to the NPGU for cultural, sport and recreational activities.

#### "Stakhanova" mine

**947.** With regard to the failure to comply with section 44 of the Law on Trade Unions, the sectoral agreement and the collective agreement to transfer 1 per cent of the wage fund to the trade union committee of the NPGU for cultural and sport activities, the Government states that due to the financial difficulties faced by the enterprise in 2005 only a part of the amount due was transferred.

### **Recommendation (q)**

#### Ilyichevsk Maritime Commercial Port

**948.** In its communication of 28 July 2005, the Government indicates that the inspection carried out by the territorial state labour inspectorate established that five trade union organizations were active in the port. Disagreements on the question of representation had arisen between the Independent Trade Union of Workers of Ilyichevsk Maritime Commercial Port and a joint trade union body set up to conclude a collective agreement. The Government states that under section 4 of the Law on Collective Agreements, representative bodies should be set up on the basis of proportional representation. Due to the small size of their organization, the representatives of the Independent Trade Union of Workers of Ilyichevsk Maritime Commercial Port expressed their disagreement as to the composition of the joint trade union body. As of 25 June 2005, no joint representative body had been set up.

**949.** In its communication of 29 December 2005, the Government submits that in April 2005, trade unions, including the Independent Trade Union of Workers of Ilyichevsk Maritime Commercial Port, established a single representative body for the purpose of negotiating a collective agreement. In May 2005, the port administration presented a draft of the collective agreement to the chairperson of the working committee responsible for negotiating a collective agreement for 2005-08. The collective agreement will be finalized and adopted at a meeting of the workforce after the adoption of a branch agreement for

2006-07. Currently, the collective agreement concluded for the period 2001-04, with appropriate changes, was still in force.

### **Recommendation (s)**

#### **“Novodonetskaya” mine**

- 950.** In its communication of 9 August 2005, the Government indicates that according to the information received from the main directorate for labour and social protection of the Donetsk regional state administration, the wage arrears that caused the strike at the enterprise have been reduced by 57.1 per cent.
- 951.** Furthermore, Mr. Stepanets, former president of the NPGU trade union at the mine, resigned from his job on 4 May 2005.
- 952.** In its communication of 2 September 2005, the Government indicates that no evidence of the alleged instances of pressure on the trade union leaders and members had been found. Moreover, the NPGU primary trade union was provided with separate office space. To further examine the complainant’s allegations, on 12 August 2005, a meeting was held between the trade union committee of the NPGU and the mine management during which it was decided to conclude an agreement of cooperation between the mine administration and the union.

#### **“Meridian” international school**

- 953.** The dispute between the administration of the school and the trade union committee has been resolved. According to a written explanation from the director of the school, the administration, concerned with the need to improve the school image, has no objection to the establishment of a trade union organization, and is ready to cooperate with the union. The trade union committee has been offered appropriate premises.

#### **“Krasnolimanskaya” coal company**

- 954.** With regard to the allegations of anti-union discrimination suffered by Mr. Suk following his joining of the NPGU, the Government indicates that he resigned from his job on 18 July 2005.

#### **“Krasnoarmeyskiy dinasovy zavod” enterprise**

- 955.** An investigation found no evidence to support the allegations of violation of trade union rights at this enterprise. The independent trade union “Defence of Justice” was provided with a fully equipped office. The newspaper of the union can be displayed at the enterprise entrance. Members of the union “Defence of Justice” systematically attend seminars, meetings and other events held at the plant.
- 956.** In its communication of 21 October 2005, the Government replies to the recent allegations submitted by the CFTUU in its communication of 5 September 2005. The Government informs that pursuant to Instruction No. 37339/114/1-05 of 29 August 2005 of the Cabinet of Ministers of Ukraine, the Dnepropetrovsk regional state administration agreed to include the chairperson of the independent trade union of the “Nikopol South-Pipe Plant” as a member of the working party responsible for preparing concerted conclusions and proposals concerning the prospects for effective work of the company.
- 957.** In its communication of 31 January 2006, the Government submits that the Central Administration for Labour and Social Protection of the Zhitomir Provincial State



Administration has investigated the allegations submitted by the CFTUU in its communication of 15 July 2005. The investigation included a visit to the “Korosten’s Porcelain” enterprise on 11 October 2005. It was established that, at the time of the inspection, all violations of trade union rights by the management have been rectified. The directors of the enterprise have provided premises to the primary trade union of the All-Ukrainian Trade Union “Defence of Justice”. The requests by the union members to deduct trade union membership dues have been accepted. The enterprise trade unions have been invited to form a unified representative body to bargain with the management with a view to concluding a collective agreement for the next period. The Chairperson of the union, Mr. Shevchuk, stated that he currently had no complaints about the management of the “Korosten’s Porcelain” enterprise.

#### **D. The Committee’s conclusions**

**958.** *The Committee recalls that this case concerns allegations of interference by the Ukrainian authorities and employers of various enterprises in trade union internal affairs, dismissals, intimidation, harassment and physical assaults on trade union activists and members, denial of facilities for workers’ representatives and attempts to dissolve trade unions.*

##### **Interference by the authorities in trade union internal affairs**

**959.** *With regard to the allegation of interference in internal trade union affairs of the All-Ukrainian Trade Union of State Agencies’ Employees, the Committee notes with interest that in its communication of 27 September 2005, the Federation of Trade Unions of Ukraine (FPU) informs that the previous conflict in relation to interference in the internal affairs of the All-Ukrainian Trade Union of State Agencies’ Employees was resolved.*

**960.** *The Committee regrets, however, that the Government provides no information on whether appropriate compensation was paid to those trade unions of the Western Donbass Association of the Independent Trade Union of Miners of Ukraine (NPGU), which suffered material damage due to the illegal search, as had been requested by the Committee. It therefore requests the Government to keep it informed in this respect.*

##### **Interference by the employers in trade union internal affairs**

**961.** *The Committee notes that according to the information provided by the Government, the dispute between the management of “Shakhterskantratsit” deep mining enterprise (“Vinnitskaya”, “Postnikovskaya”, “Shakhtersko-glubokoe” and “Pervomai” mines) was resolved. The dispute at the “Duvannaya” mine was also resolved. It also notes that according to the inspection carried out at the “Donetskuglestroy Trest” Ltd., workers of this enterprise are represented by a joint trade union committee. According to the Government, the president of the trade union organization had never filed a complaint with the ILO. Furthermore, the Committee notes that a labour inspection concluded that the management of the “Zolotoye” mine had violated the clause of the collective agreement concerning monthly transfers of payment for cultural and recreational activities. Noting that the management of the mine was ordered to rectify the violations found, the Committee requests the Government to indicate whether all due amounts are now being paid to the union on a monthly basis, as stipulated by the collective agreement.*

**962.** *The Committee further notes that according to the Government, the allegations of an anti-union campaign at the locomotive depot “Imeni Shevchenko” were not confirmed by the*

inspections set up to examine these allegations carried out by the regional state labour inspectorate and an independent commission which included representatives of trade unions, employers' organizations, the regional state labour inspectorate and the National Mediation and Conciliation Service.

- 963.** *The Committee also notes the Government's statement that the territorial state labour inspectorate carried out an inspection at the "Krivorozhsky" plant ("Krivoy Rog Steal") and concluded that the CFTUU's allegations of interference in the activity of the NPGU primary trade union were not supported by documentary evidence. Furthermore, a working group including representatives of employers, trade unions, and regional and local executive bodies established to examine allegations concerning violations of trade union rights set out in Case No. 2388 did not find any evidence of violations of trade union rights at this enterprise. The Committee recalls that it had requested the Government to provide a copy of the minutes of the meeting of 2 April 2004, during which, according to the Government, all problematic issues that had arisen at the "Krivorozhsky" plant were settled by the representatives of the provincial state administration, the management of the plant and trade unions. As the requested document was not provided by the Government, the Committee is bound to reiterate its request.*
- 964.** *The Committee notes the Government's statement that an investigation with regard to the alleged violations of trade union rights at the "Orzhitsky" sugar refinery plant was carried out by the executive authorities and the legal services with the participation of Mr. Krazhan, the president of the independent trade union. The investigation did not confirm any instances of pressure exerted on workers by their employer to leave the union. The allegation that 115 workers were forced to withdraw their trade union membership was not confirmed either.*
- 965.** *The Committee regrets that no information was provided by the Government in respect of the allegations of an anti-union campaign carried out by the management of McDonald's. It therefore reiterates its previous request to carry out an independent investigation into the allegations of an anti-union campaign carried out by the management of McDonald's and, if it is found that workers were indeed harassed and intimidated in an attempt to dissuade them from becoming members of a union, to take suitable measures to redress the situation and to ensure that workers may effectively exercise their fundamental right to organize. It further requests the Government to keep it informed in this respect.*
- 966.** *The Committee notes with interest the FPU's statement that all outstanding issues at the "Svesky Nasosny Zavod" and the "Gruzavtorservice" were resolved.*

## **Dismissals**

- 967.** *The Committee recalls that anti-union dismissals allegedly took place at the "Knyagynskaya" mine, the Aleksandrovsk State Technical College of Agriculture, the "Tomashpilsakhar" enterprise and the "Promproduct" enterprise and that allegedly, in the case of dismissal of Mr. Dzyubko (locomotive depot "Imeni Shevchenko") the relevant procedures for dismissal of a trade union leader provided for in the Labour Code were not followed.*
- 968.** *The Committee notes that according to the information provided by the Government, the Court of Appeal found no violation of labour legislation in the case of the teacher's dismissal from the Aleksandrovsk State Technical College of Agriculture. The Committee requests the Government to provide a copy of this decision.*
- 969.** *The Committee regrets that no information was provided on the remaining alleged cases of anti-union discrimination and therefore requests the Government to provide information*

on the outcome of the independent inquiries into the allegations of anti-union dismissals at the “Knyagynskaya” mine, the “Tomashpilsakhar” and “Promproduct” enterprises.

**970.** *The Committee further notes that according to the information provided by the Government, Mr. Dzyubko was dismissed on 16 January 2004 for unauthorized absence, in accordance with section 40(4) of the Labour Code. The management of the locomotive depot consulted the trade union committee representing railway and transport construction workers to seek its agreement to the dismissal. The trade union committee examined the case, despite the fact that Mr. Dzyubko had announced his intention to leave the union on 30 December 2003, and agreed to the dismissal. On 30 December 2003, the management of the enterprise received a certificate, dated 23 December 2003, from the Justice Department concerning the registration of the free trade union of railway workers of Ukraine, of which Mr. Dzyubko was a member. Mr. Dzyubko considered his dismissal to be unlawful and applied to a court for reinstatement. The Smelyansk municipal court rejected his application on 5 March 2004. The Cherkasskaya regional appellate court in its ruling of 28 May 2004 upheld the decision of the Smelyansk court. This case was now before the Supreme Court. The Committee requests the Government to keep it informed of the court decision in this case.*

### **Physical assaults**

**971.** *The Committee regrets that no information was provided by the Government on the alleged physical assaults on Mr. Shtulman, Mr. Fomenko and Mr. Kalyuzhny and the abduction and physical assaults on Mr. Volynets’ son. It therefore once again requests the Government to institute immediately an independent judicial inquiry into the allegations of physical assaults on Mr. Shtulman, Mr. Fomenko and Mr. Kalyuzhny with a view to fully clarifying facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed of any development regarding these cases, as well as the criminal investigation regarding the abduction and physical assaults on Mr. Volynets’ son.*

### **Facilities for workers’ representatives**

**972.** *The Committee notes the Government’s statement that the NPGU primary trade unions at the “Partizanskaya” mine, “Krivoy Rog Steal” enterprise and “Orzhitskiy” sugar refinery plant are provided with fully equipped premises.*

**973.** *As regards the allegation of suspension of check-off facilities at the “Tomashpilsakhar” enterprise, the Committee notes that according to the FPU’s communication of 27 September, the issue of check-off facilities was not yet settled and that its primary trade union did not have sufficient means to file a complaint with a court. According to the information provided by the Government in its communication of 2 September 2005, workers of this enterprise are represented by an authorized representative, who concludes a collective agreement with the management on behalf of the enterprise staff. Therefore, no trade union dues are withheld from the workers’ salaries. Furthermore, in a communication of 29 December 2005, the Government indicates that a working party composed of the representatives of the joint trade union of sugar industry workers, the “Podillyasakhar” association, employers, and the chief directorate of labour and social protection of the regional administration was set up to examine the recommendations of the Committee on Freedom of Association with a view to carrying out an independent investigation. While noting that the investigation failed to establish the existence of a dispute between workers’ representatives and the employer, the Committee requests the Government to indicate whether the issue of suspension of check-off facilities has been settled.*

974. *The Committee notes with interest that, as indicated by the FPU and the Government, all outstanding issues at the “Svessky Nasosniy Zavod” and “Microprylad” enterprises were resolved.*
975. *With regard to the allegation of suspension of check-off facilities at the “Brodecke” and “Brodecke sugar refinery plant” enterprises, the Committee notes that the FPU states that the Office of the Prosecutor suggested to the union to file a complaint in court. Given the absence of means to do so, primary trade unions of these enterprises could not avail themselves of this possibility. The Committee regrets that no information was provided by the Government in this respect or in reply to the Committee’s previous recommendation. It therefore once again requests the Government to indicate whether trade union dues deducted from workers’ wages during 2002-03 at the “Brodecke” and “Brodecke sugar refinery plant” enterprises were duly paid to the FPU-affiliated unions and, if not, to take the necessary measures to ensure the transfer of these dues.*

### **Trade union registration**

976. *The Committee notes the Government’s statement that the registration of the NPGU primary organization at the “Krasnolimanskaya” mine was revoked by the economic court due to the absence of NPGU members at the enterprise. The Committee recalls that the complainants previously submitted that the economic courts had no competence to revoke trade union registration. The Committee regrets that no information was provided by the Government in this respect. It therefore once again requests the Government to provide its observations on the complainants’ allegations and to conduct an independent inquiry into this matter and to keep it informed of the outcome.*
977. *The Committee recalls that it had previously requested the Government and the complainants to provide further information concerning the reasons for the dissolution of the trade union at the locomotive depot “Imeni Shevchenko”. The Committee notes the following information provided by the Government in respect of the dissolution of the trade union at the locomotive depot “Imeni Shevchenko”. In its communication of 11 November 2005, the Government indicates that the free trade union was set up by a decision of a general meeting (records of the meeting, No. 1, 17 November 2003). Mr. Dzyubko was elected chairperson of the trade union committee; three other persons were elected committee members. However, no applications from other workers to join the primary trade union organization were received. Mr. Dzyubko had later acknowledged that he wrote all the records of the union committee’s meetings, forging the signatures of all committee members. When Mr. Dzyubko’s contract of employment was terminated, the trade union organization disintegrated. In its communication dated 29 December 2005, however, the Government gives a slightly different version of the events stating that the free trade union was dissolved following a decision taken by trade union members at a meeting of 22 January 2004. The Government adds that the Cherkassk authorities set up an independent district commission, which included representatives of trade unions and employers’ organizations, heads of departments of the National Mediation and Conciliation Service and regional state labour inspectorate. The commission found that according to Mr. Dzyubko, at the time of registration, there were 15 union members and only five members were still remaining. However, he did not provide the list of the union’s members. Finally, the Government indicates that the issue of registration is a part of the case of Mr. Dzyubko’s dismissal, presently pending before the Supreme Court. The Committee requests the Government to provide a copy of the judgement once it is rendered.*
978. *With regard to the dissolution of the All-Ukrainian Union of Football Players, the Committee once again requests the Government and the complainants to provide further*

information on the reasons for the dissolution, as well as on any further developments of its status.

- 979.** *With regard to the dissolution of a trade union at the “Azovstal” enterprise, the Committee notes that the Government submits that at this enterprise, workers are represented by the primary trade union of the Ukraine Metal Workers’ and Miners’ Union and that the management of this enterprise was not aware of the establishment or existence of any other trade union. The Committee recalls that according to the complainants’ allegations, previously confirmed by the Government, the management of the “Azovstal” enterprise filed a suit with the Donetsk provincial economic court against the independent trade union of the “Azovstal” enterprise for unlawful use of the enterprise’s name. In its ruling of 29 December 2003, the economic court banned the independent trade union of the “Azovstal” enterprise from using the name of the plaintiff, “Azovstal”, in its title and ordered the union to make the necessary amendments to its statutes. As this was not done, the court ordered the compulsory dissolution of the public association. In view of the contradictory information provided by the Government in its different communications, the Committee requests it to examine this matter further and take the necessary measures, in accordance with its previous recommendations, to ensure that the independent trade union of the “Azovstal” enterprise is registered. It requests the Government to keep it informed in this respect.*
- 980.** *With regard to its previous request to keep it informed of the court decision concerning the registration of the Federation of Free Trade Unions of Lvov Railways, the Committee regrets that the Government did not provide any new information in this respect except for stating that the hearing by the Supreme Court was scheduled for 22 November 2005. The Committee therefore reiterates its request to transmit a copy of the judgement.*

### **Collective bargaining**

- 981.** *In respect of the previous request of the Committee to keep it informed of the conclusions reached by the commission set up to examine the allegations of violations of trade union rights by the management of the “Partizanskaya” and “Stakhanova” mines, the Government states that at the “Partizanskaya” mine, the territorial state labour inspectorate confirmed that the management failed to transfer money for cultural, sports and health activities to the NPGU primary trade union. The management of the enterprise was therefore ordered to rectify the violation of the collective agreement and a report of an administrative offence was filed with the court in accordance with section 41-2 of the Code of Administrative Offences. A further inspection, which took place on 31 October 2005, established that in 2005, 116,82 hryvnas were paid to the NPGU for cultural, sport and recreational activities by the “Partizanskaya” mine. The Committee takes note of this information.*
- 982.** *With regard to the failure to comply with section 44 of the Law on Trade Unions, the sectoral agreement and the collective agreement to transfer 1 per cent of the wage fund to the trade union committee of the NPGU for cultural and sport activities, the Government states that due to the financial difficulties faced by the “Stakhanova” mine in 2005, only a part of the amount due was transferred to the union. The Committee notes this information and expresses its hope that all of the amount due to the trade union will be paid to the union without delay. It requests the Government to keep it informed in this respect.*
- 983.** *The Committee recalls that it had previously requested the Government to reply to the complainants’ allegation that the administration of the Maritime Commercial Port of Ilyichevsk refuses to bargain collectively with the Independent Trade Union of Workers of the Maritime Commercial Port of Ilyichevsk. The Committee notes the information provided by the Government to the effect that in April 2005 trade unions, including the*

independent trade union, established a single representative body for the purpose of negotiating a collective agreement. In May 2005, the port administration presented a draft of the collective agreement to the chairperson of the working committee responsible for negotiating a collective agreement for 2005-08. The collective agreement will be finalized and adopted at a meeting of the workforce after the adoption of a branch agreement for 2006-07. Currently, the collective agreement concluded for the period 2001-04, with appropriate changes, is still in force. The Committee requests the Government to keep it informed of the developments regarding the adoption of a new collective agreement at the port.

### **Other alleged violations**

- 984.** *In its previous recommendations, the Committee had requested the Government to provide its observations on the allegations of violations of trade union rights at the “Ordzhonikidze” and “Novodonetskaya” mines, “Meridian” international school, “Ilyich” metallurgical enterprise, “Krasnoarmeyskiy dinasovoy zavod” enterprise and “Krasnolimanskaya” coal company.*
- 985.** *The Committee notes with interest that, according to the Government, the management of the “Novodonetskaya” mine provided the NPGU primary trade union with premises and concluded an agreement of cooperation with the union. It further notes with interest that the dispute between the management of “Meridian” international school has been resolved and the trade union committee has been provided with premises.*
- 986.** *With regard to the allegation of anti-union discrimination suffered by Mr. Suk following his joining of the NPGU primary trade union at the “Krasnolimanskaya” coal company, the Government indicates that Mr. Suk resigned from his job on 18 July 2005. The Committee notes that the complainants previously alleged that Mr. Suk was openly threatened and advised to leave the union. In these circumstances, the Committee requests the Government to conduct an independent investigation into this matter and if it is found that Mr. Suk was in any way forced to resign due to his union activities, to take suitable measures to remedy this situation, including the provision of sufficiently dissuasive sanctions so as to avoid any reoccurrence of such anti-union discrimination. It requests the Government to keep it informed in this respect.*
- 987.** *With regard to the previous allegations of anti-union discrimination, pressure, anti-union campaign and refusal to bargain collectively with the primary trade union “Defence of Justice” at the “Krasnoarmeyskiy dinasovoy zavod” enterprise, the Government indicates that an investigation found no evidence to support the allegations of trade union rights violations at this enterprise. The independent trade union “Defence of Justice” was provided with a fully equipped office. The newspaper of the union can be displayed at the enterprise entrance. Members of the independent trade union “Defence of Justice” systematically attended seminars, meetings and other events held at the plant. The Committee requests the Government to indicate whether the primary trade union “Defence of Justice” is recognized for collective bargaining purposes at the enterprise.*
- 988.** *The Committee regrets that the Government provides no information with regard to the allegations of trade union rights violation at the “Ordzhonikidze” mine and the “Ilyich” metallurgical enterprise and requests the Government to transmit its observations thereon without delay.*

## New allegations

989. *The Committee notes that in its communication dated 15 July 2005, the CFTUU alleges that an anti-union campaign was launched by the management of the “Korosten’s Porcelain” enterprise against the primary trade union of the All-Ukrainian Trade Union “Defence of Justice”. According to the CFTUU, the management refuses to provide the union with premises and check-off facilities and to bargain collectively with the union. The Committee notes with interest that according to the Government, the above allegations were fully investigated and all violations of trade union rights by the management were rectified. The union was provided with premises and the requests by the union members to deduct trade union membership dues have been accepted. All trade unions of the enterprise have been invited to form a unified representative body to bargain with the management with a view to concluding a collective agreement for the next period. According to the Government, the chairperson of the union “Defence of Justice” stated that he currently had no complaints about the management of the “Korosten’s Porcelain” enterprise.*
990. *The Committee further notes the CFTUU allegation that the primary trade union of the “Nikopol South-Pipe Plant” enterprise was not included, along with other trade union representatives, in the working group created to make proposals on efficiency of the enterprise. The Committee notes with interest that according to the Government’s reply, pursuant to Instruction No. 37339/114/1-05 of 29 August 2005 of the Cabinet of Ministers of Ukraine, the Dnepropetrovsk regional state administration agreed to include the chairperson of the independent trade union of the “Nikopol South-Pipe Plant” as a member of the above working group.*
991. *The Committee notes the CFTUU’s allegation that the management of the “Marganets ore mining and processing” enterprise refuses to recognize the primary trade union of the NPGU and had launched an anti-union campaign to destroy the union by pressurizing trade union members and threatening them with dismissals. The Committee regrets that no information was provided by the Government in this respect and requests it to provide its observations thereon without delay.*
992. *The Committee notes the CFTUU’s communications of 9 and 14 March 2006. In this regard, the Committee requests the Government to indicate the measures it has taken in order to ensure the legalization of the free trade union “Oktan” established at the Oil Investment Company of Lysychansk city. It further requests the Government to provide its observations on allegations of pressure put on trade union members, threats of dismissals, refusal to grant access to the enterprise’s premises to the union chairperson and prohibition to hold trade union meetings which took place at the Oil Investment Company and the boarding school of Sosnytsia city.*
- \* \* \*
993. *While noting that information has not been provided on each and every matter raised in the complaint, the Committee notes with interest the efforts made by the Government to provide information on many of the cases brought to its attention and the fact that, according to both the Government and the complainants, several of these matters have now been resolved. The Committee notes in particular the initiative taken to establish independent investigations into several of these allegations which, using a tripartite model, have included representatives from the employers’ and workers’ organizations concerned, the National Mediation and Conciliation Service and the regional state labour inspectorates. The Committee encourages the Government to continue to review the outstanding matters where possible through the use of similar independent commissions.*

*The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

## **The Committee's recommendations**

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

- (a) The Committee notes with interest the efforts made by the Government to provide information on many of the cases brought to its attention and the fact that several of these matters have now been resolved. The Committee encourages the Government to continue to review the outstanding matters and reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*
- (b) The Committee notes the initiative taken to establish independent investigations into several of the allegations in this case which, using a tripartite model, have included representatives from the employers' and workers' organizations concerned, the National Mediation and Conciliation Service and the regional state labour inspectorates. The Committee encourages the Government to continue to review the outstanding matters where possible through the use of similar independent commissions.*
- (c) The Committee regrets that the Government provides no information on whether appropriate compensation was paid to those trade unions of the Western Donbass Association of the NPGU, which suffered material damage due to the illegal search and requests the Government to keep it informed in this respect.*
- (d) The Committee requests the Government to indicate whether all due amounts for cultural and recreational activities are now being paid to the NPGU primary trade union at the "Zolotoye" mine on a monthly basis, as stipulated by the collective agreement.*
- (e) The Committee once again requests the Government to provide a copy of the minutes of the meeting of 2 April 2004, during which, according to the Government, all problematic issues that had arisen at the "Krivorozhsky" plant were settled by the representatives of the provincial state administration, the management of the plant and trade unions.*
- (f) The Committee once again requests the Government to carry out an independent investigation into the allegations of an anti-union campaign carried out by the management of McDonald's and, if it is found that workers were indeed harassed and intimidated in an attempt to dissuade them from becoming members of a union, to take suitable measures to redress the situation and to ensure that workers may effectively exercise their fundamental right to organize. It requests the Government to keep it informed in this respect.*
- (g) The Committee once again requests the Government to provide information on the outcome of the independent inquiries into the allegations of anti-union dismissals at the "Knyagynskaya" mine, the "Tomashpilsakhar" and "Promproduct" enterprises. It further requests the Government to*



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*provide copies of the court decisions concerning dismissals of Ms. Polivoda from the Aleksandrovska State Technical College of Agriculture and Mr. Dzyubko from the locomotive depot "Imeni Shevchenko".*

- (h) The Committee once again requests the Government to institute immediately an independent judicial inquiry into the allegations of physical assaults on Mr. Shtulman, Mr. Fomenko and Mr. Kalyuzhny with a view to fully clarifying facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed of any developments regarding these cases, as well as the criminal investigation regarding the abduction and physical assaults on Mr. Volynets' son.*
- (i) The Committee requests the Government to indicate whether the issue of suspension of check-off facilities at the "Tomashpilsakhar" enterprise has been settled.*
- (j) The Committee once again requests the Government to indicate whether trade union dues deducted from workers' wages during 2002-03 at the "Brodecke" and "Brodecke sugar refinery plant" enterprises were duly paid to the FPU-affiliated unions and, if not, to take the necessary measures to ensure the transfer of these dues.*
- (k) The Committee requests the Government to provide its observations on the complainants' allegation of revocation of registration of the primary trade union at the "Krasnolimanskaya" mine and to conduct an independent inquiry into this matter and to keep it informed of the outcome.*
- (l) The Committee once again requests the Government and the complainants to provide further information on the reasons for the dissolution of the All-Ukrainian Union of Football Players, as well as any further developments in its status.*
- (m) The Committee requests the Government to take the necessary measures so as to ensure that the trade union at the "Azovstal" enterprise is re-registered.*
- (n) The Committee requests the Government to provide a copy of the judgement related to the registration of the Federation of Free Trade Unions of Lvov Railways.*
- (o) The Committee expresses its hope that all of the amount due to the trade union at the "Stakhanova" mine will be paid to the union without delay. It requests the Government to keep it informed in this respect.*
- (p) The Committee requests the Government to keep it informed of the developments regarding the adoption of a new collective agreement at the Ilyichevsk Maritime Commercial Port.*
- (q) The Committee requests the Government to conduct an independent investigation into the reasons for Mr. Suk's resignation from the "Krasnolimanskaya" coal company and if it is found that Mr. Suk was in any way forced to resign due to his union activities, to take suitable measures to remedy this situation, including the provision of sufficiently dissuasive sanctions so as to avoid any reoccurrence of such anti-union*

*discrimination. It requests the Government to keep it informed in this respect.*

- (r) The Committee requests the Government to indicate whether the primary trade union “Defence of Justice” is recognized for collective bargaining purposes at the “Krasnoarmeyskiy dinasovy zavod” enterprise.*
- (s) The Committee regrets that the Government provides no information with regard to the allegations of violations of trade union rights at the “Ordzhonikidze” mine, the “Ilyich” metallurgical enterprise and the “Marganets ore mining and processing” enterprise and urges the Government to transmit its observations thereon without delay.*
- (t) The Committee requests the Government to indicate the measures it has taken in order to ensure the legalization of the free trade union “Oktan” established at the Oil Investment Company of Lysychansk city. It further requests the Government to provide its observations on allegations of pressure put on trade union members, threats of dismissals, refusal to grant access to the enterprise’s premises to the union chairperson and prohibition to hold trade union meetings which took place at the Oil Investment Company and the boarding school of Sosnytsia city.*

CASE NO. 2254

INTERIM REPORT

**Complaint against the Government of the  
Bolivarian Republic of Venezuela  
presented by**

- the International Organisation of Employers (IOE) and**
- the Venezuelan Chambers of Commerce and of Manufacturers’  
Associations (FEDECAMARAS)**

*Allegations: The marginalization and exclusion of employers’ associations in the decision-making process, excluding them from social dialogue, tripartism and the holding of consultations in general (particularly in relation to the very important legislation that directly affects employers), thereby not complying with the very recommendations of the Committee on Freedom of Association; and the arrest and charging of Carlos Fernández on 19 February 2003 in retaliation for his activities as president of FEDECAMARAS*

- 995.** The Committee examined this case at its June 2005 meeting, when it submitted an interim report to the Governing Body [see 337th Report, paras. 1500-1603, approved by the Governing Body at its 293rd Session (June 2005)].

996. The Government subsequently sent further observations in communications dated 26 October and 17 November 2005, and 14 March 2006. The IOE sent new allegations in a communication of 19 May 2006.
997. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. Previous examination of the case

998. When it examined the case in May-June 2005, the Committee on Freedom of Association made the following recommendations on outstanding issues [see 337th Report, para. 1603, approved by the Governing Body at its 293rd Session (June 2005)]:
- The Committee again urges the Government to comply with its legislation and without delay to convene periodically the national tripartite commission.
  - The Committee reiterates the importance of draft bills which affect them directly being the subject of consultation with the most representative workers' and employers' organizations, and again points out to the Government the principles set forth in the conclusions concerning consultations.
  - The Committee stresses that over and beyond the consultations and meetings held between the authorities and FEDECAMARAS, which the Committee can but encourage, it is important to consolidate these first steps in the new direction and structure them on a permanent footing. The Committee again offers the Government the services of the ILO to provide the State and society with its experience so that the authorities and social partners may regain trust and, in a climate of mutual respect, establish a system of labour relations based on the principles of the ILO Constitution and of its fundamental Conventions, as well as on the full recognition, with all its implications, of the most representative confederations and of all organizations and important trends in the world of work. The Committee requests the Government to keep it informed of all instances of social dialogue with FEDECAMARAS and bipartite and tripartite consultations, and any negotiations or agreements that ensue, and the Government's intentions with respect to the offer of ILO technical assistance.
  - The Committee once again considers that the arrest of Carlos Fernández, president of FEDECAMARAS, as well as being discriminatory, was intended to neutralize or act as retaliation against this employers' official for his activities in defence of employers' interests and, therefore, it urges the Government to take all possible steps to annul immediately the judicial proceedings against Carlos Fernández and to ensure that he may return to Venezuela without delay and without risk of reprisals; the Committee requests the Government to keep it informed in this respect. The Committee deeply deplores the arrest of this employers' official and emphasizes that the arrest of employers' officials for reasons linked to actions relating to legitimate demands is a serious restriction of their rights and a violation of freedom of association, and requests the Government to respect this principle. The Committee deplores the fact that this employers' leader has already been in exile for several years and cannot return to the country for fear of reprisals by the authorities.

## B. The Government's new observations

999. In its communication dated 26 October 2005, the Government reverts to its earlier communications dated 9 March 2004 and 25 February 2005, and reiterates its deep concern at the failure to assess properly the allegations submitted by the various persons concerned by the complaint. It stresses the unjust and inappropriate weight attached to the evidence submitted by the Government of the Bolivarian Republic of Venezuela, while the allegations presented by the complainants are assumed to be unquestionably authentic and legitimate. It is in fact something of a paradox that an international body concerned with

the protection of human rights should ignore the well-known facts of the April 2002 coup d'état and the responsibility of the perpetrators of this criminal act, among other things by demanding a stop to the investigation being carried out to punish those responsible for such a serious violation of the human rights of the entire population.

- 1000.** The Government adds that, in the best spirit of cooperation, it nevertheless encloses a number of newspaper clippings covering the period from August to October 2005 and showing how the social dialogue introduced by the Venezuelan Government has steadily been consolidated, with the participation of a large number of actors committed to social, labour and economic agreements that can benefit as much of the population as possible and help to eradicate the poverty and social exclusion that the country has suffered from for so many years.
- 1001.** This is clear evidence that, in so far as employers' organizations and their members have now taken up their professional activities again and recognized the legitimacy of a President of the Republic who was elected democratically in accordance with the country's Constitution and legislation, a new scenario has developed which has made it possible to forge ahead with a social dialogue involving more and more new and old socio-economic actors. This revival of the social dialogue has been a major factor in the traditional employers' organizations moving further and further away from the objectives of the radical groups that are still hoping to depose the constitutional President by force, even though they recognize the undeniable economic and social progress and growth that the Government has brought to the country.
- 1002.** As can be seen from the evidence supplied, the Government neither shows nor has shown any favouritism whatsoever towards the employers' organizations or their members. On the contrary, the employers and employers' association that pulled out of the social dialogue and turned it into a form of proselytizing and unproductive confrontation were those that were actively involved in the April 2002 coup d'état and in subsequent attempts to depose the constitutional President of the Bolivarian Republic of Venezuela by force. Fortunately, all that is now a thing of the past and sense has finally prevailed among the employers, who must be given credit for deciding to return to the institutional channels of democratic participation.
- 1003.** It is worth mentioning that the current president of FEDECAMARAS, José Luis Betancourt, who in the recent past was president of FEDENAGA, both of which organizations are complainants in the present case, has recognized publicly the Government's proactive attitude towards social dialogue and its readiness to become directly involved; indeed, on 7 and 26 October 2005 the president and executive committee of FEDECAMARAS held high-level meetings with the constitutional President, Hugo Chávez Frías, who is backed by the vast majority of the Venezuelan people.
- 1004.** Moreover, as the evidence (press cuttings) shows, there has also been growing social dialogue with regional employers' organizations, and the national Government and state governments have signed agreements with them and engaged in economic cooperation with private enterprises.
- 1005.** Finally, the Government calls on the Committee to apply the same criteria to all the arguments and evidence put forward, without taking sides, in other words to consolidate the legitimacy, transparency and credibility of such an important international organization by employing uniform procedures.
- 1006.** In its communication dated 17 November 2005, the Government states that since October 2004 the National Federation of Employers' Organizations (FEDECAMARAS) has engaged in regular social dialogue with the other social partners; the Government itself had

already embarked upon broad and non-exclusive consultations, unlike certain sectors linked to the old pre-1999 political and economic circles. Following its series of electoral victories, from the presidential referendum (August 2004, when there was a clear majority of 60 to 40 per cent) to the regional and local elections (with an even greater majority of 80 to 20 per cent), the process of dialogue sponsored by the Government was extended to the highest levels. The Committee on Freedom of Association has already been sufficiently and extensively informed about the process of dialogue that FEDECAMARAS has entered into, but the Government draws its attention to the additional documentary proof concerning important relevant events that took place during 2004, and specifically those summarized in the following newspaper reports: *La Calle*, 8 November 2004, "Minister Natera meets regional presidents of FEDECAMARAS"; *El Carabobeño*, 8 November 2004, "In search of dialogue. Regional presidents of FEDECAMARAS to meet Minister Natera"; *Reporte*, 8 November 2004, "Opening up a dialogue with the state governments. Minister Natera meets regional presidents of FEDECAMARAS"; *Reporte*, 9 November 2004, "Presenting development proposals to improve the country's economy. FEDECAMARAS meets the central and regional government"; *Fronteras*, 11 November 2004, "Regional requirements to be discussed. Presidents of FEDECAMARAS to meet the Vice-President tomorrow"; *El Mundo*, 16 November 2004, "Government and FEDECAMARAS to make a new start. Enterprises leave it to Albis Muñoz to set up a meeting with the President of the Republic"; *Impacto*, 16 November 2004, "Meeting to be held with Rangel. FEDECAMARAS and Venamcham move closer to the revolutionary government"; *El Nacional*, 16 November 2004, "FEDECAMARAS hoping to meet Chavez"; *El diario de Caracas*, 16 November 2004, "Keeping the economic recovery going. Vice-President meets employers' sector"; *Ultimas Noticias*, 16 November 2004, "Entrepreneurs ready to start work"; "Creating a good environment for investment. Albis Muñoz says that after the controversies with the Government we have to trust the other side"; 18 November 2005, "Executive and CONINDUSTRIA submit proposals to create new sources of employment"; *Reporte*, 24 November 2005, "Albis Muñoz: 85 per cent of the regional FEDECAMARAS in favour of dialogue with the Government. I have had nothing but pleasant surprises from the national Government".

- 1007.** The Government adds that, in line with this process of dialogue, several working meetings have been held since October 2004. These have been joint meetings dealing with such issues as the revision of the Labour Code, the drafting of regulations made under the Workers' Food Act, protection against dismissal and labour stability, and wage increases. FEDECAMARAS, along with representatives of FEDEINDUSTRIA, CONFAGAN and EMPREVEN, were invited to attend all these meetings and played a major and constructive part in them, contributing the viewpoints and aspirations of the employers' organizations, including large, medium, small and micro-enterprises from both the urban sector and the rural sector. A climate of understanding prevailed throughout, without any organization or sector trying to monopolize the debate or be the sole protagonist. The entire scenario was much the same as that engaged in with the trade union organizations and reflects the Government's continuing efforts to recognize the many facets of democratic society - without leaving any scope for monopolistic or exclusive attitudes, but rather recognizing the existence of a whole range of interests that have to be reconciled with the general well-being of the people and the demands of the majority.
- 1008.** As the Committee on Freedom of Association has already been informed, most recently through the Government's communication of 26 October 2005, social dialogue with FEDECAMARAS has been forging ahead ever since the election of the new executive committee, now presided over by José Luis Betancourt, former president of FEDENAGA. Moreover, it is taking place in the context of a recent national election - this time for the municipal councils and parish boards - in which the support for the Fifth Republic Movement and other factors of democratic change reached 85 to 90 per cent of the voters. To emphasise the point, the Government attaches ample information showing the steady

rise in popularity of the President and Vice-President of the Republic and the Government ministers, as well as the highest authorities of the Ministry of Labour. The following news reports were enclosed. *El Universal*, 11 November 2005, "Legal protection guarantees sought. FEDECAMARAS confirms its readiness to dialogue"; *El Universal*, 23 August 2005, "FEDECAMARAS enters into dialogue with the national Government"; *Reporte*, 24 August 2005, "After the meeting with executive vice-president José Vicente Rangel, FEDECAMARAS declares: the Government is prepared to dialogue"; *El Universal*, 24 August 2005, "FEDECAMARAS hopes to meet President Hugo Chávez. New opportunities for dialogue"; *El Nuevo País*, 24 August 2005, "Betancourt: I expect a lot more"; *El Universal*, 30 August 2005, "Chávez meeting with FEDECAMARAS planned"; *El Nacional*, 8 October 2005, "President of FEDECAMARAS meets Hugo Chávez"; *Ultimas Noticias*, 25 November 2005, "Dialogue. Meeting to take place this afternoon: FEDECAMARAS meets Chávez today. Said to be a major step towards setting up social forum"; *El Nuevo País*, 25 October 2005, "Chávez and FEDECAMARAS to talk today"; *El Universal*, "Dialogue. Meeting with the President planned today. FEDECAMARAS draws up final agenda of meeting with Chávez"; 10 November 2005, "FEDECAMARAS approves the invitation to Chávez to visits its headquarters"; *Unión Radio*, 10 November 2005, "President of FEDECAMARAS, José Luis Betancourt, confirms the desire of the Government and employers' associations to forge ahead on vital issues for the improvement and development of the national economy"; *El Universal*, 9 November 2005, "FEDENAGA hopes to meet Chávez"; *Cadena Global*, 11 November 2005, "All labour issues have to be treated. Betancourt admits differences exist but confirms that there has been progress"; *El Universal*, 11 November 2005, "FEDECAMARAS holds second meeting with ministers"; and *El Nacional*, 12 November 2005, "FEDECAMARAS discusses labour policy with Ministry of Labour".

**1009.** Thanks to the collaboration of all the social actors, including employers and workers and their organizations, and marking definite progress in the consolidation of the country's system of participative and direct democracy, the Government not only achieved the unprecedented economic growth rate of 17.3 per cent in 2004 but succeeded in stepping up employment, cutting the unemployment rate from 20.7 per cent in February 2003 to 11.4 per cent in October 2004. It also reduced the level of informal employment to the benefit of the formal sector, by providing more stable and better jobs. Since January 2003 the Venezuelan Government has doubled the country's international reserves, which in November 2005 reached more than 30,000 million US dollars. Other positive economic indicators included a drop in inflation to the lowest figure for 20 years, and a reduction in interest and country risk rates, and this has had positive impact on the quality of life of the population. In addition there have been a number of significant social indicators, such as the declaration by UNESCO on 28 October 2005 recognizing Venezuela as an illiteracy-free territory and other positive indicators of social inclusion in the sphere of health, social security, education and sport.

**1010.** All this progress has not only been recognized by the ILO itself through its subregional office, but has been confirmed by government management approval polls at the national level and, recently, by international surveys recognising the confidence of the Venezuelan people in their democratic institutions, in the government's political leadership and handling of the economy, and in the level of protection and security afforded by the country's labours standards and institutions [see *Corporación Latinobarómetro: Informe Latinobarómetro 2005, 1995-2005*, Santiago, Chile, November 2005, [www.latinobarometro.org](http://www.latinobarometro.org)]. This recognition has also been expressed by major workers' organizations in Latin America [see the declaration by representatives of 19 trade union organizations of the American continent in the framework of the first Latin American meeting of enterprises run by workers, held in Caracas in October 2005] and throughout the world [see the declarations of support of the former general-secretary of the Public Service Union (UNISON), Rodney Bickerstaffe, in Great Britain on 16 November 2005,

after his meeting with Venezuela's Vice-President, José Vicente Rangel, and following a resolution of support adopted by the UNISON's Congress on 14 September 2005].

- 1011.** In its communication dated 14 March 2004, the Government encloses, as irrefutable, appropriate and relevant evidence of the existence and development of social dialogue in Venezuela, a copy of the communications it has received from the National Labour Office and from its various social counterparts, which bear testimony to the Government's unswerving determination to maintain constant dialogue with the social partners – proof enough of its efforts to establish and consolidate a new State in which every one of its citizens shares responsibility and plays a vital role.
- 1012.** Similarly, as regards the exercise of human rights, the Government encloses a number of newspaper reports on the forthcoming trade union elections, emphasizing the variety of opinions of the social partners. These include:
- Communications from the Office of the Vice-Minister of Labour (No. 056 of 27 January 2006) to workers' organizations (CTV, CODESA, CGT, CUTV, UNT), employers' representatives (FEDECAMARAS, EMPREVEN, FEDEINDUSTRIA, CONFAGAN) and representatives of the Central Bank of Venezuela, Ombudsman and National Economic Council, inviting them (pursuant to section 172 of the Labour Code and Article 91 of the Constitution) to express their views on the minimum wage. The communications are evidence of the Government's determination to establish, maintain and consolidate the most just and beneficial social dialogue possible.
  - Another indication of the participation of Venezuela's citizens in the social dialogue are the working meetings that were held in January, February and March, at which workers' representatives (CTV, CODESA, CGT, CUTV, UNT) and employers' organizations (CONFAGAN, CONSECOMERCIO, FEDECAMARAS, CONINDUSTRIA, FEDEINDUSTRIA, EMPREVEN) were invited to express their opinions and observations, as part of the consultation process surrounding the drafting of the Rules and Regulations made under the Prevention, Conditions and Environment at Work Act. Working meetings were held on 19 and 26 January, 16 February and 2 March 2006. The Government also attached the attendance list of the working meeting held on 16 February 2006, and the communication of 23 February 2006 issued by Jjonny Picore Briceño, president of the National Institute for Prevention, Health and Safety at Work (INPSASEL). These working meetings were held in a climate of industrial harmony and peace, and the discussions between the social partners present were aimed at the general well-being of workers and at the drafting of a set of regulations guaranteeing the exercise of the right to work in decent conditions.
  - The participation of the social partners in the public consultation on the aforementioned Rules and Regulations has been facilitated by the election of the executive committee of FEDECAMARAS under the presidency of José Luis Betancourt. The Government attached the invitation sent by Luis Alfredo Aranque and Aurelio Concheso, respectively president and director of liaison of FEDECAMARAS' labour and social affairs committee to Jjonny Picore Briceño, president of the National Institute for Prevention, Health and Safety at Work (INPSASEL), requesting him to speak at the Federation's headquarters; his presentation is considered of the utmost importance since the information he supplies will make it possible to draft a set of regulations that meets the needs of workers, after hearing the views of the employers and the Government. The meeting will be attended by government representatives, experts and the president of INPSASEL.
  - Further evidence of the Government's determination and efforts to establish and consolidate a broad, harmonious, just and inclusive social dialogue is provided by communications from the following trade union organizations submitted by the Government: Venezuela Confederation of Workers (CTV), Confederation of Autonomous

Trade Unions of Venezuela (CODESA), Single National Trade Union of Public, Professional, Technical and Administrative Employees (SUNEPSAS); in their communications they express the good wishes, satisfaction and pleasure at the designation of Ricardo Dorado Cano-Manuel as the new Minister of Labour.

- The Government also refers to the holding of technical round tables to evaluate the impact of the collapse of the Caracas-La Guaira viaduct on the economic and labour situation in the State of Vargas; they were attended by representatives of the Ministry of Labour, Ministry of Infrastructure, Ministry of Tourism, and trade union organizations, as well as the provincial government, the municipality of Vargas and other social partners. The round tables examined the consequences for the labour force and proposals from the various social partners attending the meeting, in the context of the solidarity and commitment of the Venezuelan people and the constitutional principles of joint responsibility, partnership and participation. In the words of the Ministry of Labour, the participation and joint efforts of the Government and the social partners made it possible to show “that the dire predictions of economic collapse and labour market uncertainty were unfounded”. To meet this contingency a wage guarantee fund of 900 million bolivares was set up which enabled the Ministry of Labour to assist 95 of the 105 enterprises in the region that had requested aid, and thus to save 112 jobs.
- The Government encloses press cuttings on the forthcoming trade union elections, covering the period from November 2005 to March 2006, in which the social partners express their views; of particular interest is the statement by the judge of the Social Appeals Chamber of the Supreme Court of Justice, Juan Rafael Perdomo, on 25 February 2006 in *El Nacional*, to the effect that “the trade unions are entirely free to hold their elections without consulting anybody”. The judge emphasized that “there is no higher authority than Convention No. 87 of the International Labour Organization and article 95 of the Constitution”. In an article dated 4 March 2004 in *El Mundo*, the Legal Adviser of the Ministry of Labour, Francisco Javier López Soto, stated that “trade union organizations are entirely free to carry out elections, which is a prerogative conferred on them by the Electoral Act”. He added that, even though Article 293.6 of the Constitution states that the organization of trade union elections comes within the purview of the CNE, they are conducted in accordance with the law, i.e. the Electoral Act (LOPE), section 33 of which stipulates that the CNE must respect the autonomy and independence of trade unions and comply at all times with the international agreements signed by the Republic. Similarly, the Director-General for Labour, Carlos Alexis Castillo, stated that “the Ministry of Labour may not contest the validity of elections conducted under these circumstances, since it is the responsibility of the respective electoral committees to guarantee the legality of the results”.

### **C. New allegations by the IOE**

- 1013.** In its communication of 19 May 2006, the IOE made new allegations in which it indicates, inter alia, that there is no genuine dialogue, that the situation has not improved and that the acts of harassment in the private sector continue.

### **D. The Committee's conclusions**

- 1014.** *The Committee observes that the matters that are still pending with regard to this case refer to: its recommendation that the Government convene periodically the National Tripartite Commission provided for in the Labour Code; the importance of draft bills affecting the most representative workers' and employers' organizations directly being the subject of consultation with them; the importance of the consultations and meetings held between the authorities and FEDECAMERAS being consolidated and placed on a*



permanent footing; the Committee's request that the Government keep it informed of all instances of social dialogue with FEDECAMERAS and bipartite and tripartite consultations, and any negotiations or agreements that ensue; and the Government's intentions with respect to the offer of ILO technical assistance in establishing a system of labour relations based on the principles of the ILO Constitution and of its fundamental Conventions, as well as on the full recognition, with all its implications, of the most representative employers' and workers' organizations. Moreover, the Committee urged the Government to take all possible steps to annul immediately the judicial proceedings against Carlos Fernández and to ensure that he can return to Venezuela without delay and without risk of reprisals.

### **Bipartite and tripartite consultations and social dialogue**

- 1015.** *The Committee takes note of all the information sent by the Government on this case and on the various meetings held between the national or regional authorities and the president of the new executive committee of FEDECAMARAS or other representatives. The Committee also notes the meetings between the president of FEDECAMARAS and the President of the Republic, Vice-President of the Republic, Minister of Labour and others ministers, notably the Economic Cabinet. The Committee observes that, according to the press cuttings, the president of FEDECAMARAS expressed a positive view of these meetings, recognized the progress that had been made and discussed some of the issues that had been raised in the present case, such as the illegal seizure of land; it also observes that the President of the Republic and the president of FEDECAMARAS are studying the restoration of tripartite dialogue and that, in November 2005, FEDECAMARAS invited the President of the Republic to visit its headquarters. The Committee further notes that, according to the Government, bipartite consultations and working meetings have been held between the authorities and representatives of FEDECAMARAS and other employers' organizations to discuss legal or legislative texts (reform of the Labour Code, drafting of certain aspects of the future regulations made under the Workers' Food Act, salary increases, labour stability measures), that arrangements have been set up for economic cooperation and that agreements (the texts of which were not sent) have been concluded with regional employers' organizations. The Committee observes that it is apparent from the Government's statements that the rules and regulations made under the Prevention, Conditions and Environment at Work Act were the subject of direct tripartite consultations conducted in a climate of industrial harmony and peace.*
- 1016.** *The Committee further notes that technical round tables were held to evaluate the impact of the collapse of the Caracas-La Guaira viaduct on the economic and labour situation in the State of Vargas, with the participation of all the social partners and a number of ministries. The Committee takes note of the Government's opinion that, thanks to the combined efforts of all the social partners, the country has achieved substantial progress that is reflected in positive economic and social indicators. The Committee notes that, according to the Government, social dialogue with FEDECAMARAS has been forging ahead ever since the election of the new executive committee.*
- 1017.** *While welcoming the Government's indication that there have been developments in the dialogue with FEDECAMARAS, the Committee observes that, according to the IOE, there is no genuine dialogue and that the situation has not improved. The Committee requests the Government to send its observations on the new allegations of the IOE and to continue keeping it informed of bipartite and tripartite consultations with FEDECAMARAS as well as any negotiation or agreement with the federation or its regional bodies, and to send it the relevant texts. The Committee observes that the Government has not responded to its offer of ILO technical assistance in establishing a system of labour relations, based on the principles of the ILO Constitution and of its fundamental Conventions, so that the social*

*dialogue can be consolidated and placed on a permanent footing. The Committee requests the Government to accept this offer and to keep it informed in this regard and, as a first step, to reconvene the National Tripartite Commission as provided for in the Labour Code. The Committee also requests the complainant organizations to provide further information on the development of social dialogue.*

### **Warrant for the arrest of the former president of FEDECAMARAS and judicial proceedings against him**

**1018.** *Regarding the Committee's request that the Government takes steps to annul immediately the judicial proceedings against the former president of FEDECAMARAS, Carlos Fernández, and the order for his arrest, so that he can return to the Bolivarian Republic of Venezuela without risk of reprisals, the Committee deplores the fact that the Government has merely referred back to its earlier replies, and it therefore reiterates its previous conclusions and recommendations. The Committee draws the Government's attention to the fact that the warrant for the arrest of this employers' leader (February 2003) and the judicial proceedings against him, which have been examined in great detail by the Committee in its previous examinations of the case, were not connected with the events of April 2002 but with a national work stoppage that took place months before.*

### **The Committee's recommendations**

**1019.** *In the light of its foregoing interim conclusions, the Government invites the Governing Body to approve the following recommendations:*

- (a) The Committee calls on the Government to continue keeping it informed of the bipartite and tripartite consultations that are held with FEDECAMARAS and of any negotiation or agreement with that federation or its regional bodies, and to send it the relevant texts. The Committee observes that the Government has not responded to its offer of ILO technical assistance in establishing a system of labour relations, based on the principles of the ILO Constitution and of its fundamental Conventions, so that social dialogue can be consolidated and placed on a permanent footing. The Committee calls on the Government to accept this offer and to keep it informed in this regard and, as a first step, to reconvene the National Tripartite Commission as provided for in the Labour Code.*
- (b) The Committee requests the complainant organizations to provide further information on the development of social dialogue.*
- (c) The Committee considers once again that the detention to which Carlos Fernández, president of FEDECAMARAS, had been subjected, as well as being discriminatory, was intended to neutralize, or act as retaliation against, this employers' official for his activities in defence of employers' interests; therefore, it urges the Government to take all possible steps to annul immediately the judicial proceedings against Carlos Fernández and his warrant for arrest and to ensure that he can return to Venezuela without delay and without risk of reprisals; the Committee requests the Government to keep it informed of developments in this regard.*
- (d) The Committee requests the Government to send its observations on the new allegations of the IOE dated 19 May 2006.*

CASE NO. 2422

INTERIM REPORT

**Complaint against the Government of the Bolivarian Republic of Venezuela presented by the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS), supported by Public Services International (PSI)**

*Allegations: (1) decision of the National Electoral Council (CNE) to suspend and withhold recognition of the SUNEP-SAS elections despite the fact that they met all legal requirements; (2) failure of the CNE to give a ruling on the SUNEP-SAS claim; (3) refusal of the authorities in 2003 to negotiate a draft collective agreement; (4) subsequent refusal of the authorities in 2005 to allow the participation of SUNEP-SAS in talks on a draft collective agreement in the public health sector presented by FENASINTRASALUD – a less representative organization – on the grounds that union elections at SUNEP-SAS were overdue, and using this as a pretext to deny that union’s right to conclude collective agreements; and (5) refusal to grant trade union leave to the executive officials of the Anzoátegui section of SUNEP-SAS on the grounds that union elections were overdue. The complainant organization claims to be the most representative organization in the sector and that it has hitherto been the organization that has had the right to be recognized for collective bargaining*

**1020.** The complaint is contained in a communication from the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) dated 4 August 2005. That organization provided additional information in communications dated 24 August 2005 and 27 January 2006. In a communication dated 7 July 2005, Public Services International (PSI) associated itself with the SUNEP-SAS complaint. The Government sent its observations in a communication dated 20 January 2006.

**1021.** The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**A. The complainant's allegations**

- 1022.** In its communications of 4 and 24 August 2005, the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS), which has 26 regional sections and is affiliated to the Venezuelan Workers' Confederation (CTV) and to Public Services International (PSI), alleges that in July 2004, in accordance with national law, it informed the National Electoral Council (CNE) that the election process was started in accordance with the union's by-laws, and on 15 October 2004 the election notice was published in a national daily newspaper. The elections took place on 30 November 2004, in accordance with all the requirements of both the Venezuelan Constitution and the Organic Act on Suffrage and Political Participation, as well as the relevant provisions of various CNE resolutions and regulations. The process involved workers belonging to SUNEP-SAS, which represents the majority of the workers and which has traditionally been recognized by the various government bodies and by international trade union organizations. These workers freely and democratically exercise the right to elect subsectional, sectional and national representatives simultaneously, as is shown by the *Instrument of adjudication and proclamation* for those union representatives, issued by the Permanent National Electoral Commission.
- 1023.** SUNEP-SAS adds that, on 29 November 2004, the CNE, in a written communication, suspended and subsequently withdrew its recognition of the electoral process in question in response to the notification of the CNE made by SUNEP-SAS in July 2004, which caused significant harm because it was not possible to suspend a process already under way. This clearly constitutes a violation of the principle of autonomy in the exercise of freedom of association, which is fundamental for the development of relations between workers and employers. It also violated the Magna Carta and other relevant national laws, and clearly shows once again the interference of a public authority like the electoral authority in the internal affairs of workers and specifically in their choice of representatives.
- 1024.** SUNEP-SAS adds that on 30 November 2004, it lodged an administrative claim under section 227 of the Organic Act on Suffrage and Political Participation. That claim sought the suspension of the decision regarding the electoral process, and to date there has been no reply from the electoral body in question, which constitutes a violation of the right to defence and the right to be heard.
- 1025.** SUNEP-SAS also alleges that, some years before, on 26 December 2002, acting legitimately and on behalf of its members as the oldest trade union body and the one with the largest membership, which has historically presented, discussed and concluded collective labour agreements for the health sector and has the absolute right of representation of workers in that sector, presented the fifth draft collective labour agreement to the Ministry of Labour (Department of National Inspection and Collective Labour Issues for the Public Sector), together with the following union organizations: the Single National Union of Public Employees of the National Institute for Nutrition (SUNEP-INN) and the Single National Union of Public Employees of the Caracas University Hospital (SUNEP-HUC).
- 1026.** On 27 December 2002, in an official decision by the Ministry of Labour, SUNEP-SAS was asked for a clarification regarding its own internal regulations and list of members. SUNEP-SAS replied on 17 January 2003 and this was confirmed on 30 January 2003. On 11 March 2003, SUNEP-SAS complained in writing to the Attorney-General of the Republic regarding the delay by the Ministry of Labour in starting talks on the draft collective agreement. It also complained to the Vice-President of the Republic on 12 March 2003, and to the Ombudsman on 18 June 2003. On 14 July 2005, through resolution No. 3903 of the Ministry of Labour, examination of the conciliatory or disputed

list of claims by the Ministry was suspended and it was decided not to discuss collective agreements for health sector workers; instead a “Labour Policy Meeting” was convened immediately, and the National Federation of Regional, Sectoral and Allied Trade Unions of Health Workers (FENASINTRASALUD) and its affiliated unions were invited to attend; they do not represent the majority of workers in the sector, and this was therefore a violation of the rights of SUNEP-SAS. This shows once again that the Government of Venezuela is disregarding the rights of trade unions to defend workers’ rights and their collective and individual entitlements.

- 1027.** SUNEP-SAS adds that, owing to the situation created by the state authorities and the serious harm done to the trade union, on 15 August 2005, on the occasion of the Labour Policy Meeting for health sector workers and employees dependent on the central public administration and other institutions, it decided to ask to participate in that meeting in accordance with section 539 of the Organic Labour Act then in force. That request was, however, turned down on 17 August 2005 in an administrative order given by the Department of National Inspection and Collective Labour Issues for the Public Sector, which based its decision on the problem with regard to union elections: “... Nor, on the other hand, can there be any participation in the Department of National Inspection and Collective Labour Issues for the Public Sector by the body designated to organize and direct elections of SUNEP-SAS officials ...”; and “the National Executive Committee of the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) may do no more on behalf of the union than carry out simple administrative and operational activities with a view to ensuring that its members’ rights are protected, and it can therefore not represent its members in collective bargaining or disputes”.
- 1028.** SUNEP-SAS indicates that on the previous day, 16 August 2005, the General Secretary of FENASINTRASALUD challenged the application from SUNEP-SAS to participate, on the grounds that: “... the organization in question does not have legal capacity to exercise that right because its current executive body, whose members were supposedly appointed on the basis of elections held in October 2004, is not legitimate and is in fact the result of the most blatant and scandalous fraud perpetrated at the expense of the workers and against their most fundamental interests and constitutional rights as a result of the way the officials of the union in question are acting as a narrow clique”. According to a ruling dated 18 August 2005, containing the administrative decision by the chairpersons of the Labour Policy Meeting, the application by SUNEP-SAS to participate was declared invalid on the grounds, among other things, that union elections at the union in question were overdue. SUNEP-SAS also alleges another form of interference by the authorities. The communication dated 1 June 2005 from the Legal Affairs Office, Ministry of Health and Social Development, addressed to the General Secretary and other executive officers of SUNEP-SAS in Anzoátegui, stated that “... trade union leave requested in connection with the electoral process in question is not applicable ... and consequently every member of the SUNEP-SAS executive board, its general delegates, centre delegates and national level representatives must carry on their normal activities and duties as employees, since they do not have any capacity to represent members in negotiations or collective disputes. Consequently it is not absolutely certain that SUNEP-SAS is the legitimate representative of the workers ...”.
- 1029.** SUNEP-SAS considers that the Government and other public authorities have violated Conventions Nos. 87 and 98. In view of the interference by the CNE and the Ministry of Labour in the internal affairs of the unions and the inefficiency of the relevant administrative and judicial bodies, SUNEP-SAS requests the Committee to urge the authorities to recognize the union elections and begin discussions in connection with the fifth round of collective talks for the health sector, and to ensure that the harm suffered by the workers as a result of the delay is remedied.

**1030.** Finally, in a communication dated 27 January 2006, SUNEP-SAS submitted new allegations concerning the unlawful pay suspension imposed on 11 trade union leaders of SUNEP-SAS, Miranda section.

## **B. The Government's reply**

**1031.** In its communication of 20 January 2005, the Government transmits a copy of the memorandum of the Ministry of Labour's National Inspectorate of Labour and Collective Issues in the Public Sector, dated 3 November 2005, together with other documents sent by the Government, setting out the views and arguments of fact and law in relation to the SUNEP-SAS complaint. The documents in question are the following: resolution No. 3903 of 12 July 2005 (convocation for the Labour Policy Meeting in the health sector for the purpose of concluding a collective agreement in the public health sector); official application No. 201-05 of 15 August 2005 from SUNEP-SAS asking to participate in the Labour Policy Meeting; official resolution of 18 August 2005 by the two chairpersons of the meeting in question rejecting the request to participate in the collective bargaining process made by a union (SUNEP-HIGIENE) on grounds of "overdue elections"; ruling No. 07 of the Legal Affairs Office of the Ministry of Labour, dated 18 June 2004 regarding SUNEP-HIGIENE; and ruling No. 175 of 20 October 2005 regarding the rights and obligations of a trade union executive body in a situation where union elections were overdue at the company Telenorma. The Inspectorate's memorandum draws together the pertinent aspects of the case and the most relevant parts of the latter two documents, which concern trade unions other than the complainant organization.

**1032.** The text of the Inspectorate's memorandum reads as follows:

1. On 12 July 2005, through ministerial resolution No. 3903, published in the *Official Gazette* No. 38.228 of 14 July 2005, the Labour Policy Meeting was convened to allow conciliatory talks between the health sector employers of the national public health administration and health service providers, at the national level, in accordance with the draft collective labour agreement presented by the National Federation of Regional, Sectoral and Allied Trade Unions of Health Workers (FENASINTRASALUD) on 14 February 2005, which will cover all workers in this sector.
2. On 15 August 2005, in communication No. 201-05, the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS), in accordance with section 589 of the Organic Labour Act, applied to join the discussions at the Labour Policy Meeting.
3. Within the period established by section 540 of the Organic Labour Act (three days), the chairpersons appointed by decision No. 2005-0502 dated 18 August 2005, declared the application invalid on the grounds that union elections were overdue.

The application to participate is rejected for the following reasons.

According to article 48 of the SUNEP-SAS by-laws, the executive body of the latter has a mandate of three years in accordance with the terms of section 434 of the Organic Labour Act; elections to the executive body were last held on 21 September 2001 for the period 2001-2004, which means that in every respect, on the date at which the application was made, the mandate of the current executive committee had expired, more than one year having elapsed without new elections for all the union's bodies as required by its own by-laws.

On the assumption that the primary purpose of a trade union is to represent workers and to defend their rights and interests in relation to the employer, in accordance with section 407 of the Organic Labour Act, the chairpersons of the Labour Policy Meeting called on the executive body of SUNEP-SAS to call elections in order to comply with article 95 of the Constitution of the Bolivarian Republic of Venezuela: "... in order to ensure the exercise of trade union democracy, trade union by-laws and regulations shall stipulate that elections must be held periodically to elect members of union executive bodies and representatives through universal, direct and secret ballot ...".

In this regard, the executive committee of SUNEP-SAS, which claimed the right to participate in talks on a collective labour agreement, should previously have gone through the procedures described in the article referred to, that is, by calling elections to ensure that it can carry out its proper functions, quite apart from the fact that it is in its own interest to act in accordance with the law to ensure that workers are defended, rather than acting outside the terms of its own by-laws and the provisions of the Organic Labour Act.

That criterion is also endorsed by this Ministry of Labour through its Legal Affairs Office, in decision No. 07 dated 18 June 2004, which the National Inspectorate of Labour and Collective Affairs of the Public Sector hereby ratifies in respect of all its parts, in particular the following:

1. ... since it has not held elections to appoint a new executive body, union elections are now overdue. This notwithstanding, the current executive body of the union in question can on an interim basis continue, without this being understood to imply recognition of its legitimacy, to carry out routine administrative and operational activities in order to protect the rights of its members but, given the legal restrictions that arise from the fact that the mandate of the union's officials has not been extended, they cannot represent their members in collective negotiations or disputes, in particular conciliation and arbitration procedures, nor can they promote, negotiate, conclude, revise or modify collective labour agreements ...
2. ... In any case, once its mandate has elapsed, the executive body is required to call new elections; in failing to do so, its members become liable to sanctions in accordance with section 638 *eiusdem*. At the same time, and once a period of three months has passed from the time the mandate elapses without new elections being called, 10 per cent of the union's members can request the Labour Judge to issue the convocation required in accordance with the terms of section 435 of the Organic Labour Act in question and article 153 of the relevant regulations.

At the same time, the Supreme Court of Justice (Electoral Chamber) in ruling No. 175 of 20 October 2003 decided that:

... Such a situation of electoral moratorium has no legal justification, because it violates the principle of trade union law known as the "democratic principle", according to which the internal structure and operation of trade union organizations must be democratic, and which is based on the relevant provisions of ILO Conventions Nos. 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela and consequently form an integral part of domestic law.

In domestic law, this principle is based on article 95 of the Constitution of the Bolivarian Republic of Venezuela, according to which, for the exercise of trade union democracy, trade union by-laws and regulations are required to stipulate that elections must be held periodically for union officials and representatives by universal, direct and secret ballot. In addition, this requirement is also implied by the provision on which the union's application itself was based, namely, section 435 of the Organic Labour Act, as well as sections 433, 434 and 441 in fine of the Act, and the relevant implementing regulations; those provisions give guidance as regards the maximum period in office of trade union executive bodies, the electoral system for renewing or changing such bodies, restrictions on re-election, applications by members to call elections in the case of overdue elections, ...

In the light of the foregoing, we consider that the union file shows that there have been no union elections since 2004, as a result of which elections are overdue, which is contrary to law and to genuine freedom of association under the terms of section 143(a)(iv) of the Organic Labour Act Regulations, which stipulates that "... freedom of association comprises: ... (a) in its individual sphere, the right to ... (iv) elect, or be elected as, trade union representatives ...", and also violates public order provisions, specifically those contained in sections 10, 430, 432, 434 and 435 of the Organic Labour Act.

Consequently, since the executive board of the Single National Union of Public, Professional, Technical and Administrative Employees of the Ministry of Health and Social Development (SUNEP-SAS) is in a situation of overdue elections, it may on the union's behalf carry out only simple administrative functions, and may not under any circumstances represent members in collective talks or disputes, especially in conciliation and arbitration

proceedings, nor may it promote, negotiate, conclude, revise or modify collective agreements; as a result of this, the chairpersons of the Labour Policy Meeting were obliged to declare the application invalid, in strict accordance with the terms of the ruling of this Ministry's Legal Affairs Office and the jurisprudence of the electoral chamber of the Supreme Court of Justice, referred to previously.

### C. The Committee's conclusions

- 1033.** *The Committee notes that in the present case, the complainant organization (SUNEP-SAS) alleges that the following violated the terms of Conventions Nos. 87 and 98: (1) the decision of the National Electoral Council (CNE) to suspend and not to recognize the SUNEP-SAS elections, despite the fact they complied with legal requirements; (2) the failure of the CNE to take a decision regarding the claim lodged by SUNEP-SAS; (3) the refusal by the authorities to negotiate a draft collective agreement in 2003; (4) the subsequent refusal by the authorities (2005) to allow SUNEP-SAS to participate in talks on a draft collective agreement in the health sector presented by FENASINTRASALUD – a less representative organization – on the grounds that union elections in SUNEP-SAS were overdue; and (5) the refusal to grant union leave to members of the executive body of the Anzoátegui section of SUNEP-SAS on the grounds that union elections were overdue. The complainant organization claims to be the most representative organization in the sector, and that to date it has always been the organization entrusted with collective bargaining.*
- 1034.** *The Committee notes the Government's statements to the effect that: (1) FENASINTRASALUD presented its draft national-level collective agreement on 14 February 2005; (2) the chairpersons of the Labour Policy Meeting discussing the collective agreement in question declared invalid the application made by SUNEP-SAS on 18 August 2005 to join in the talks on the grounds that union elections were overdue, its executive committee's mandate having expired more than one year previously; it was therefore obliged to call elections, rather than acting outside the terms of its own by-laws and the Organic Labour Act; (3) according to the SUNEP-SAS file in the Ministry of Labour, there have been no union elections since 2004 (the last elections for the executive committee were held on 21 September 2001 for the period 2001-04); (4) this situation of overdue elections means that the executive body of SUNEP-SAS may only carry out routine administrative tasks on behalf of the union, and cannot under any circumstances represent members in collective talks or disputes, nor can it negotiate or conclude collective labour agreements; (5) the delay in holding elections is contrary to the democratic functioning of organizations, the Constitution of the Bolivarian Republic of Venezuela, which stipulates that there must be periodic elections for executive bodies, and national legislation, which gives guidance with regard to the maximum period in office of trade union officials; (6) the criteria applied in such cases are based on the Constitution, the Organic Labour Act, and the jurisprudence of the Electoral Chamber of the Supreme Court of Justice.*
- 1035.** *Although it endorses the Government's statements regarding the need for elections to be held for union executive bodies at the intervals stipulated in their union by-laws, and understands that when that period expires, an executive body no longer has the legal capacity to conclude collective agreements, the Committee points out that this does not apply to the complainant organization or to this case, because SUNEP-SAS did hold union elections on 30 November 2004, when it elected its subsectional, sectional and national representatives. The Committee emphasizes that the CNE sought to suspend those elections by a communication dated 29 November 2004 (a communication which the Government in its reply does not comment on or deny, despite its importance), and that as a result of this, the complainant organization lodged a claim with the CNE which has not yet been resolved; however, given that the CNE is not a judicial body, its position with regard to the elections has no bearing on their validity, any more than does the fact that the elections are not recorded in the relevant Ministry of Labour files, since under the terms of Article 3*



of Convention No. 87, workers are entitled to elect their representatives in full freedom and without any interference by the authorities. At the same time, the Government has on many occasions informed the ILO that the intervention of the CNE is optional, not mandatory, for the union organizations concerned.

- 1036.** *Under these circumstances, recalling that it has had to examine a number of cases of interference by the CNE in union elections, and noting that the complainant organization is affiliated to the Venezuelan Workers' Confederation, which has also, like other union organizations, presented to the Committee complaints of interference by the CNE in union elections, the Committee is bound to deplore the fact that the authorities have not recognized the SUNEP-SAS executive board and the officials of its 26 sections, and have disregarded the Committee's conclusions and recommendations regarding the importance of the autonomy of trade union organizations in their elections. More specifically, at its meeting in March 2005, the Committee drew the Government's attention to the following principles [see 340th Report of the Committee on Freedom of Association, Case No. 2411 (Bolivarian Republic of Venezuela), paras. 1391, 1392 and 1397]:*

*The Committee recalls that by virtue of Article 3 of Convention No. 87, workers' and employers' organizations have the right to draw up their constitutions and rules and to elect their representatives in full freedom, without interference from the public authorities (the Committee points out that the National Electoral Council is a public authority). The Committee draws the Government's attention to the fact that an excessively meticulous and detailed regulation of the trade union electoral process is an infringement of the right of such organizations to elect their representatives in full freedom, as established in Article 3 of Convention No. 87 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 355].*

*The Committee emphasizes that the regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade unions' rules themselves. The fundamental idea expressed in Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein [see **Digest**, op. cit., para. 354]; in addition, provisions which involve interference by the public authorities in various stages of the electoral process are incompatible with the right to hold free elections [see **Digest**, op. cit., para. 400]. Lastly, the Committee has also stated that, in cases where the results of trade union elections are challenged, such questions should be referred to the judicial authorities in order to guarantee an impartial and objective procedure which should also be expeditious [see **Digest**, op. cit., para. 405].*

*The Committee points out in particular that on previous occasions it has objected to the role assigned by the Constitution and the law to the National Electoral Council in organizing and supervising trade union elections, including the power to cancel elections; it has considered that the organization of elections should be exclusively a matter for the organizations concerned, in accordance with Article 3 of Convention No. 87, and that the power to cancel elections should be given only to an independent judiciary, which alone can provide sufficient guarantees of the right to defence and due process [see, for example, 336th Report, Case No. 2353 (Venezuela), para. 864].*

- 1037.** *Under these circumstances, the Committee urges the Government in future to respect these principles and to recognize the executive body of SUNEP-SAS. The Committee requests the Government to remedy the negative consequences (denial of collective bargaining rights, and of union leave for its officials) suffered by the complainant organization due to the refusal to recognize its elections in November 2004 and the move to prevent it from being involved in talks on the draft collective agreement presented by one federation in 2005, some years after the Ministry of Labour had refused to consider the complainant organization's draft of a collective agreement at the end of December 2002. The Committee requests the Government to ensure the participation of SUNEP-SAS in talks on the draft collective agreement, if the talks are still in progress. The Committee lastly requests the Government also to safeguard in future the right to collective bargaining and*

*union leave for officials of the complainant organization, which had previously been refused, in particular with regard to the SUNEP-SAS section at Anzoátegui.*

**1038.** *The Committee notes that the Government has not replied to the allegations submitted by SUNEP-SAS on 27 January 2006 concerning the unlawful pay suspension imposed on 11 trade union leaders of SUNEP-SAS, Miranda section.*

### **The Committee's recommendations**

**1039.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) Regretting the fact that the public authorities have not recognized the union elections of SUNEP-SAS in November 2004, the Committee urges the Government and the public authorities to recognize the executive committee and the union officials who won these elections, and in future to guarantee respect for the principles of non-interference by the public authorities in the trade union elections referred to in the conclusions.*
- (b) The Committee also requests the Government to remedy the negative consequences (denial of collective bargaining rights and of union leave for its officials) suffered by the complainant organization by the failure to recognize its elections in November 2004 and the move to prevent it from participating in discussions on the draft collective agreement presented by one federation in 2005, some years after the Ministry of Labour refused to consider the complainant organization's draft of a collective agreement in December 2002. The Committee requests the Government to ensure the participation of SUNEP-SAS in discussions on the draft collective agreement if these discussions are still in progress.*
- (c) The Committee requests the Government in future also to safeguard the right to collective bargaining and union leave for officials of the complainant organization, leave which had previously been refused in particular with regard to the Anzoátegui section of SUNEP-SAS.*
- (d) The Committee requests the Government to keep it informed of the follow-up to these recommendations, and to submit its observations concerning the new allegations made by SUNEP-SAS on 27 January 2006 in connection with the unlawful pay suspension imposed on 11 leaders of SUNEP-SAS, Miranda section.*

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CASE NO. 2365

INTERIM REPORT

**Complaint against the Government of Zimbabwe  
presented by  
the International Confederation of Free Trade Unions (ICFTU)**

*Allegations: The complainant organization alleges that the Government is directly responsible for numerous violations, such as attempted murders, assaults, intimidation, arbitrary arrests and detentions, as well as arbitrary dismissals and transfers committed against members, activists and leaders of the country's trade union movement and members of their families*

- 1040.** The Committee has already examined the substance of this case on two occasions, most recently at its June 2005 meeting, where it presented an interim report to the Governing Body [see 337th Report, paras. 1633-1671, approved by the Governing Body at its 293rd Session].
- 1041.** As a consequence of the lack of a response on the part of the Government, at its March 2006 meeting [see 340th Report, para. 10], the Committee launched an urgent appeal and drew the attention of the Government 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 this case even if the observations or information from the Government have not been received in due time. To date, the Government has not sent its observations.
- 1042.** Zimbabwe has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

**A. Previous examination of the case**

- 1043.** In its previous examination of the case, the Committee made the following recommendations [see 337th Report, para. 1671]:
- (a) The Committee once again urges the Government to abstain in future from resorting to measures of arrest and detention of trade union leaders or members for reasons connected to their trade union activities.
  - (b) The Committee requests the Government to ensure in future that trade union organizations are allowed to publicly express their opinions on issues going beyond strictly occupational matters and which affect workers, such as economic and social policies.
  - (c) The Committee requests the Government to keep it informed on developments concerning the dismissal of 56 workers at the Netone company, and to provide it with any judgement handed down in this respect.
  - (d) The Committee requests the Government to keep it informed of developments on the situation at Zimpost and at TelOne company, and to provide detailed information on the

reasons for the arrest of the following trade union leaders and members: Mr. Sikosana, arrested in Bulawayo on 11 October 2004, and six other union members arrested in Gweru; Messrs. Mparutsa, Mereki and Kaditera, arrested in Mutare; Messrs. Marowa, Mhike, Nhanhanga and Chiponda, arrested on 6 October 2004; Messrs. Khumalo, Ngulube and Munumo, arrested on 11 October 2004.

- (e) The Committee requests the Government to provide it with a copy of the judgement handed against Mr. Choko and eight other trade unionists, for their participation in a demonstration on 18 November 2003 in Bulawayo.
- (f) The Committee requests the Government to allow in future mutual support missions into the country by neighbouring workers' organizations, subjecting any approval only to objective criteria, without any anti-union discrimination.
- (g) The Committee requests the Government to ensure in future that trade union leaders and members are not subject to harassment and arrest for simply hosting an exchange with a neighbouring trade union.
- (h) The Committee requests the Government to provide its observations on its previous recommendations that remain pending, as regards the cases of Mr. Takaona and Mr. Mangezi.
- (i) Reiterating its deep concern with the extreme seriousness of the general trade union climate in Zimbabwe, the Committee once again calls the Governing Body's special attention to the situation.

## **B. The Committee's conclusions**

- 1044.** *The Committee deplores that, despite the time that has elapsed since this case was first examined, the Government has not replied to the Committee's recommendations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee strongly urges the Government to be more cooperative in the future.*
- 1045.** *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*
- 1046.** *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*
- 1047.** *The Committee once again notes with deep concern the serious repressive measures taken against trade union activists and officials in Zimbabwe.*
- 1048.** *As regards the situation of the 56 workers dismissed by the Netone company for taking part in strike action following management's refusal to negotiate, the Committee noted from the complainant's allegations in its previous examination of the case that an arbitration award in their favour had ordered the company to reinstate the dismissed workers without loss of pay and benefits from the date of the illegal dismissal. The award being challenged by the company, the High Court had issued a temporary stay of the execution order pending the hearing of the dispute in the Labour Court. Recalling that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [Digest of decisions and*

*principles of the Freedom of Association Committee, 4th edition, 1996, para. 475], the Committee strongly urges the Government to keep it informed of developments and to provide it with any judgement handed down in this respect.*

- 1049.** *The Committee deplores the absence of reply from the Government regarding the situation at Zimpost and at TelOne company and the fact that no detailed information was provided on the reasons for the arrest of the following trade union leaders and members: Mr. Sikosana, arrested in Bulawayo on 11 October 2004, and six other union members arrested in Gweru; Messrs. Mparutsa, Mereki and Kaditera, arrested in Mutare; Messrs. Marowa, Mhike, Nhanhanga and Chiponda, arrested on 6 October 2004; Messrs. Khumalo, Ngulube and Munumo, arrested on 11 October 2004. The Committee expects that these union leaders and members are no longer being detained. It firmly urges the Government to provide its observations in this respect. It further requests the Government once again to provide it with a copy of the judgement handed down against Mr. Choko and eight other trade unionists, for their participation in a demonstration on 18 November 2003 in Bulawayo.*
- 1050.** *Regarding the case of Mr. Matthew Takaona who was dismissed from his journalist position at Zimpapers shortly after he had engaged in activities directly germane to his trade union functions and responsibilities, the Committee, in view of the total absence of reply from the Government in this respect, urges the Government to ensure that he is rapidly reinstated in his functions, or in an equivalent position, without loss of pay or benefits. The Committee urges the Government to keep it informed of developments in this respect.*
- 1051.** *As regards the case of Mr. David Mangezi, vice-chairman of the ZCTU Chegutu district and a member of the food federation, who was transferred from his workplace at a company called Bonnezim Private Ltd. in Chegutu to Harare, the Committee noted in its first examination of the case that, while the employer's decision was apparently motivated by reasons having a political overtone, this worker was transferred without loss of pay or benefits to a parent company in the same group. Taking into account the fact that Mr. Mangezi is an elected trade union representative whose transfer may thus prevent him from exercising his legitimate trade union activities, the Committee firmly urges the Government once again to encourage the employer to reconsider that transfer decision, with a view to permitting Mr. Mangezi's return to his initial workplace in due course, if he so desires. The Committee requests the Government to keep it informed of developments in this respect.*
- 1052.** *Finally, in the absence of any reply from the Government, the Committee deeply regrets the deterioration of the situation relating to the trade union climate in Zimbabwe since its last examination of the case, which it considered to be extremely serious [see 337th Report, para. 1670]. The Committee reiterates its deep concern in this regard, and once again calls the Governing Body's special attention to the situation. Finally, the Committee requests the Government to accept a direct contacts mission.*

### **The Committee's recommendations**

- 1053.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee strongly urges the Government to be more cooperative in the future.*

- (b) *The Committee strongly urges the Government to keep it informed on developments concerning the dismissal of 56 workers at the Netone company, and to provide it with any judgement handed down in this respect.*
- (c) *The Committee firmly urges the Government once again to keep it informed of developments on the situation at Zimpost and at TelOne company, and to provide detailed information on the reasons for the arrest of the following trade union leaders and members: Mr. Sikosana, arrested in Bulawayo on 11 October 2004, and six other union members arrested in Gweru; Messrs. Mparutsa, Mereki and Kaditera, arrested in Mutare; Messrs. Marowa, Mhike, Nhanhanga and Chiponda, arrested on 6 October 2004; Messrs. Khumalo, Ngulube and Munumo, arrested on 11 October 2004.*
- (d) *The Committee firmly urges the Government to provide it with a copy of the judgement handed down against Mr. Choko and eight other trade unionists, for their participation in a demonstration on 18 November 2003 in Bulawayo.*
- (e) *The Committee urges the Government to ensure that Mr. Takaona is rapidly reinstated in his functions at Zimpapers, or in an equivalent position, without loss of pay or benefits and to keep it informed of developments in this respect.*
- (f) *The Committee firmly urges the Government to encourage the employer to reconsider the transfer decision affecting trade union leader Mr. Mangezi, with a view to permitting his return to his initial workplace in due course, if he so desires. It requests the Government to keep it informed of developments in this respect.*
- (g) *The Committee reiterates its deep concern with the extreme seriousness of the general trade union climate in Zimbabwe, and once again calls the Governing Body's special attention to the situation.*
- (h) *The Committee requests the Government to accept a direct contacts mission.*

Geneva, 2 June 2006.

(Signed) Professor Paul van der Heijden,  
Chairperson.

*Points for decision:*

Paragraph 222;	Paragraph 550;	Paragraph 837;
Paragraph 234;	Paragraph 566;	Paragraph 878;
Paragraph 256;	Paragraph 583;	Paragraph 891;
Paragraph 276;	Paragraph 593;	Paragraph 905;
Paragraph 298;	Paragraph 628;	Paragraph 917;
Paragraph 372;	Paragraph 697;	Paragraph 994;
Paragraph 411;	Paragraph 721;	Paragraph 1019;
Paragraph 436;	Paragraph 752;	Paragraph 1039;
Paragraph 498;	Paragraph 771;	Paragraph 1053.
Paragraph 517;	Paragraph 802;	
Paragraph 538;	Paragraph 821;	