

ensure that the procedure on the allegations of anti-union discrimination be brought to a speedy conclusion in a fully impartial manner, and to keep it informed in this respect, including by providing a copy of any decision reached; (ii) further if the allegations are found to be justified, but that the workers have received formal notification of their dismissals, the Committee requests that the Government ensure, in cooperation with the employer concerned, that the workers are reinstated or, if reinstatement is not possible, that they are paid adequate compensation; the Committee requests to be kept informed in this regard.

- (d) *Recalling that freedom of association implies the right of the organizations themselves to pursue lawful activities for the defence of their occupational interests, the Committee requests that the Government look into the allegations that the four union officers were significantly restricted in their union activity while the employment relationship still existed, and to take, if need be, appropriate steps to ensure that the local union may freely organize its activities to defend the occupational interests of its members; the Committee requests to be kept informed in this respect.*

CASE NO. 2304

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

**Complaint against the Government of Japan
presented by
the Japan Confederation of Railway Workers' Unions (JRU)**

Allegations: The complainant alleges that on the pretext of certain minor incidents, the police conducted massive operations against the complainant and its affiliates, including the arrest of seven trade union officers and members and their detention for ten months, searches of 134 trade union premises and residences of trade union leaders, and confiscations of 2,757 items of trade union property, thus seriously impeding the complainant's activities and undermining its image to society

- 972.** The complaint is contained in communications from the Japan Confederation of Railway Workers' Unions (JRU) dated 1 and 25 August and 14 October 2003. The International Transport Workers' Federation (ITF) associated itself to the complaint in a communication dated 16 March 2004.
- 973.** The Government sent its observations in a communication dated 25 May 2004.
- 974.** Japan 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

975. The complainant states that since November 2002, it has been facing, along with its affiliates, East Japan Railway Workers' Union (JREU) and JR Toukai Union, a series of actions by the police, prosecutors and judicial authorities which greatly impede their trade union activities. According to the complainant, these actions include the arrest and long-term detention of union members, domiciliary search of union offices and union officers' residences, and confiscation of many union-related documents and items. The above were, according to the complainant, based on charges of: (1) the ordinary crime of coercion; and (2) the alleged violation of the Law on Punishment against Violent and Other Acts. The complainant believes that the authorities use these penal provisions in order to obstruct and intervene in lawful trade union activities. It adds that they continue to take various actions under the pretext of conducting investigations with the intention to weaken the union. The complainant recalls that Conventions Nos. 87 and 98, ratified by Japan, contain an obligation to avoid undue interference with or obstruction of lawful trade union activities.
976. The complainant adds that a trial is currently pending in this case and that the judgement will determine the question whether the alleged acts with which trade union members are charged fall within the scope of criminal acts or constitute normal trade union activities. The complainant also emphasizes that it is determined to prove the union members' innocence in court. However, the complainant requests that the Government be urged in the meantime to stop the obvious obstruction of and intervention in its trade union activities.

Coercion case

977. More specifically, the complainant states that on 1 November 2002 the Public Safety Department of the Metropolitan Police Agency arrested the following seven union members on charges of coercion: Kunio Yanaji who is a full-time union worker, and Satoru Yamada, Jyun-ichi Uehara, Shuichi Saito, Kakunori Oguro, Tomio Yatsuda, Keiitsu Ohma who are trade union members. The above remained detained until October 2003. According to the complainant, the reason for their detention amounts to an incident which occurred in the Omiya region when one union member of the Urawa Electric Train Depot sub-branch of the JREU, an affiliate of the complainant, repeatedly acted against the union and its policies. The sub-branch of the Urawa Electric Train Depot tried to persuade the said union member through discussions to stop the aggressive actions against the union but the member did not respond in a sincere manner, continuously lying to the other members. Therefore, the sub-branch went ahead with a procedure to let the member leave the union upon his own request. No violence was involved.
978. However, the complainant continues, the Public Safety Department of the Tokyo Metropolitan Police Agency applied the crime of coercion to this case after the said union member seceded from the union and later on resigned from the company. The crime of coercion is defined as: "a person who, by intimidating another through threats to his life, body, freedom, fame or property or by use of physical violence, causes the other to perform an act which the other has no obligation to perform, or hinders the other from exercising a right, shall be punished by imprisonment with appointed work for not more than three years" (article 223 of the Penal Code). According to the complainant, the Public Safety Department of the Tokyo Metropolitan Police Agency proceeded to the arrests and investigation of this case one year after the facts had occurred. The complainant adds that, on 22 November 2002, the Tokyo Public Prosecutor's office indicted the seven trade union officers and members and their trial has been under way at the Tokyo District Court. The complainant has argued during the trial that the crime of coercion does not apply to the facts of this case and seeks the acquittal of all the defendants.

- 979.** The complainant adds that apart from the seven members' arrest, the Public Safety Department carried out a domiciliary search at 53 spots including union offices and union officers' residences, confiscating 1,008 items such as union members' lists and other union property. The complainant notes that all sorts of items are listed on the search warrant as materials concerning the "formation, history, principles, doctrine, policy, organizational structure, activities and finance" of the JRU and that consequently, items totally unrelated to the allegation of the "crime of coercion" or "law on punishment against violent and other acts" have been confiscated (e.g. lists of union members, accounting books, bank accounts, documents related to trials, legal action documents for the labour committee, computers, mobile phones, pocketbooks, files, books and magazines, etc.). The complainant attaches a list of searched places and items seized. The places searched include the residences of the seven suspects (239 items seized), nine union offices (379 items seized), 31 residences of other union members and officers (288 items seized) and trade union facilities in the company. Among the seized items figure pocketbooks, address lists, telephone lists, letters, drafts, memos, internal regulations, work agreements, files of petition, materials for the trial, union meeting materials, event plans, reports, records, union magazines and pamphlets, accounting books and bankbooks, cassette and video tapes, films, newspapers, magazines, books, mobile phones, personal computers, and micro cassette recorders. According to the complainant, most of the searched premises and the confiscated items had nothing to do with the allegations.
- 980.** According to the complainant, this confiscation of indispensable property for carrying out union activities has had a tremendously negative impact on its daily union activities. In particular, the confiscation by the Public Safety Department in June 2003 of materials related to the trial of the seven defendants, hinders the activities of the trade union in court so as to protect its members. Moreover, the complainant states that it is undue interference to collect information on ordinary activities of the union and personal information on the union officers and members through confiscated materials.
- 981.** The complainant adds that repeated requests for bail were made to the Tokyo District Court. Most of them were dismissed on the grounds of the possibility of destruction of evidence and escape. On 1 August 2003, the Tokyo District Court made a judgement to grant bail pursuant to a request submitted on 29 July 2003 by the complainant. However, the Tokyo Prosecutor's Office made an appeal to the Tokyo High Court and the bail was immediately suspended. On 4 August 2003, the Tokyo High Court accepted the appeal and cancelled the judgement granting bail on the basis of the "possibility of destruction of evidence". On 11 August 2003, the complainant made a special appeal to the Supreme Court for the cancellation of the judgement rendered by the Tokyo High Court but the Supreme Court dismissed the appeal on 3 September 2003. Finally, the complainant notes that on 9 October 2003, the Tokyo District Court decided to bail out the defendants. The Prosecutors made an immediate appeal to the Tokyo High Court which dismissed the appeal on 10 October 2003.
- 982.** The complainant adds that the seven defendants were detained for almost nine months while payment of their wages had been suspended by the company causing great hardship to them and their families. The detained union members were only allowed to see their family members and their attorneys so that union officers and members could not visit them in prison. The complainant adds that requests for bail were dismissed by the Tokyo District Court because the Tokyo Public Prosecutor's Office insisted on the risk of destruction of evidence based on the fact that the JREU had been not only uncooperative but also critical during the whole process of the investigation. The complainant notes that it is clearly an infringement of basic union rights to maintain someone in detention because the union has been critical of the manner in which the investigation has been carried out by the police and prosecution.

**Violation of the Law on Punishment
against Violent and Other Acts**

- 983.** The complainant further alleges that another large-scale search and confiscation of union property took place on 12 June 2003 when the Public Safety Department of the Tokyo Metropolitan Police Agency conducted a domiciliary search at 18 spots including the union offices and residences of union officers, confiscating 538 items. The complainant attaches a list of searched places, including six union premises (447 items seized) and 11 residences of trade union officers and former officers including the complainant's president, two vice-presidents and the secretary-general (91 items seized). The list of items seized is similar to the one noted above.
- 984.** The complainant alleges that the reason for the search was a minor incident which took place on 21 June 2002. On that day, members of the JR Toukai Union who are affiliated to the complainant handed out fliers protesting against an unjust transfer of a union member and the complainant had also dispatched its members to hand out the fliers. The manager of JR Toukai Company persistently followed the union members who handed out the fliers, repeatedly checked and threatened the participating members and even followed all the members who were in a group after having finished their action. One officer of the complainant union protested to the manager of the company and stopped him holding his arm. One year later, without any prior notice, the Public Safety Department of the Tokyo Metropolitan Police Agency abruptly conducted a large-scale investigation and confiscation with the pretext that this act should be prosecuted since it was violating the Law on Punishment against Violent and Other Acts.
- 985.** The complainant adds that on 26 June 2003, it filed an application of quasi-interlocutory appeal to the Tokyo District Court claiming that the warrant for the 12 June searches was illegal. After this appeal, the Public Safety Department of the Tokyo Metropolitan Police Agency started to return part of the confiscated items, as "these were not necessary".

Trespass case

- 986.** The complainant finally alleges that prior to the release of the abovementioned seven trade union officers and members, in September-October 2003, the police carried out further domiciliary searches at 63 places including the JREU offices and the union officers' residences, confiscating 1,211 items on the grounds of "intrusion of residence". According to the complainant, this accusation was fabricated from the mere fact that the JREU members had put union fliers in the mailboxes of an apartment complex in Tokyo on 13 June 2003. A concierge made a phone call to the police and policemen rushed in and took five union members to the police station. After their interrogation, they were released. The complainant adds that three months later, the police searched the union offices and residences of union officers and members, confiscating among other things, 12,500 sheets of union fliers on 27 October 2003.
- 987.** Overall, according to the complainant, during the ten months' detention of the seven trade union officers and members, the number of places targeted for domiciliary search amounted to 134, with 2,757 confiscated items. Finally, the complainant notes that these incidents created tremendous obstacles to its activities and caused an irreversible loss as fear was instigated against it and its social reputation was undermined. This was enhanced by the fact that the police made a one-sided announcement to the media in which it mentioned the involvement of extremists in the union, an accusation which is not even mentioned in the bill of indictment. The complainant notes that these facts clearly show the authority's intention to isolate the trade union and undermine its image to society.

988. In its communication dated 16 March 2004, the ITF alleges that the actions of the law enforcement authorities are totally disproportionate to the original offences and designed to seriously hinder the union's ability to carry out its normal functions in clear breach of the ILO standards on freedom of association.

B. The Government's reply

Coercion case

989. In its communication dated 25 May 2004, the Government states that according to the indictment in this case, the facts are as follows. The seven defendants, who were members of the Omiya District Headquarters of the East Japan Railway Union (JREU), an affiliate of the complainant concluded that the victim, who was also a member of JREU and worked for the East Japan Railway Company (JR East) as an engine driver, was a disrupter of JREU. They therefore intended to make him secede from JREU and resign from the company since he joined the campaign sponsored by another union which was hostile to the JREU and made false excuses when he was asked about it.

990. According to the indictment, from 21 January until around the end of June 2001, the defendants intimidated the victim 14 times yelling "Hey you guys! Get out of the union. I mean to make you quit the company. I am a member of the Kakumaru sect. I'll tease you every time I see you. I'll do it so that you feel inclined to resign, as you get tired of hearing it. It's about time for you to think of your future." The Government specifies that the Kakumaru sect is the most powerful of all the ultra-leftist violent groups in Japan and gave rise to a number of terrorism and guerrilla incidents in the past while at present, it has deeply infiltrated the complainant and the JREU which is affiliated to the complainant. The Government states that one of the defendants in this case is a member of the sect. The Government adds that, as a result of the repeated intimidation, the defendants made the victim secede from JREU on 28 February 2001 and resign from the company on 31 July of the same year.

991. The Government indicates that the investigation progressed as follows: on 11 February 2002 the victim submitted an incident report to the Metropolitan Police Department (MPD) with regard to the abovementioned coercion. Through careful investigation, the MPD found out that the acts of the defendants constituted the crime of coercion as prescribed in paragraph 1, of article 223 of the Penal Code. Therefore, based on the arrest warrants issued by the Tokyo Summary Court, the MPD arrested the defendants on 1 November 2002. The defendants were detained on 3 November 2002 and indicted on the 22 November by the Tokyo District Public Prosecutor's Office under charges of coercion. The Government then provides detailed information on the progress of the trial which has reached 19 sessions in court and is currently at the stage of examination of witnesses.

992. The Government also indicates that the defendants continued to be in detention after their indictment. Their defence counsel applied for bail but the Tokyo District Court rejected it once. The Tokyo District Court later on granted bail on 1 August 2003. However, the public prosecutor filed an appeal against this decision which was cancelled by the Tokyo High Court on 4 August 2003. The defence counsel filed a special appeal to the Supreme Court. The appeal was rejected and the decision of the High Court was sustained on 3 September 2003. Finally, the Tokyo District Court granted bail on 9 October 2003 and although the public prosecutor filed an appeal, the Tokyo High Court rejected it on 10 October. Thus, all the defendants were released and are now free.

993. The Government rejects the complainant's assertion that the arrest of the defendants was illegal or unjust as such arrest was conducted in conformity with the provisions of the

Code of Criminal Procedure on “ordinary arrest” and was based on warrants issued by a judge on the basis of objective evidence which proved that there was a reasonable cause to suspect that the acts of the defendants constituted the crime of coercion. The Government emphasizes that in this case, there was a need to arrest the defendants in that they had committed such an organizational, cunning and atrocious crime that there was a reasonable cause to strongly suspect that they might destroy, conceal or alter evidences unless they were arrested. Although immunity from punishment is applicable to appropriate trade union acts, with the exception of use of violence as prescribed in paragraph 2, of article 1 of the Trade Union Law, the defendants in this case had intimidated the victim many times for a long period of time to make him mentally exhausted, to finally force him not only to secede from the union but also to resign from the company; the abovementioned evil deeds of the defendants were far from proper acts of the trade union, and were also deemed to correspond to the use of violence. Therefore, the aforementioned immunity could never apply.

- 994.** The Government rejects as groundless the complainant’s assertion that the search and seizure conducted by the MPD was illegal or unjust. The Government indicates that according to the Code of Criminal Procedure, a judge is competent to decide through a strict prior judicial examination, not only whether investigative authorities may or may not make a search and seizure but also where to search and what to seize. The Government acknowledges that the MPD searched 72 places including the residences of the defendants in the process of investigating this case, and adds that each place searched was believed to be where the real evidence concerning the case existed and was specified as a place to search in the warrant. The Government also acknowledges that the MPD seized 1,870 goods and documents through the abovementioned searches, and adds that each item was specified as an item to seize in the warrant and was believed to have something to do with this case. Thus, according to the Government, all searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure and were completely legitimate and proper.
- 995.** The Government adds that giving consideration to the fact that the seizure inevitably entails restrictions on property, the MPD paid a considerable amount of attention to the rights of the persons involved in this case. Thus, the MPD never seized any goods or documents of which no need for seizure existed, and promptly returned the seized items to their original possessors when they turned out to be, as a result of analyses, less related to the case and less necessary for proving the case than the MPD initially believed.
- 996.** The Government rejects as groundless the complainant’s assertion that the defendants were detained for an unduly long time noting that such an assertion simply expresses dissatisfaction with the judgement of the court on this issue. The Government recalls that, according to the facts for which an indictment was issued, the acts of the defendants constitute the crime of coercion, which is very vicious as they intimidated the victim many times for a long period of time forcing him to resign from his place of work and cease the employment relationship which is the only means of making his living. Though their acts did not involve physical violence, it was eminent that their acts were organized and cunning. Thus, they cannot be said to constitute a “petty offence” as the complainant asserts. Also, in light of the fact that the incident took place inside the workplace and the intimidation was done only orally, which makes it difficult to obtain objective real evidence, the law enforcement agencies in such a case cannot but rely upon the statements of a limited number of eyewitnesses and find facts by carefully and widely collecting evidence and examining it closely.
- 997.** The Government adds that criminal procedure in Japan is designed to harmonize two elements, i.e. to guarantee basic rights to the suspected or accused persons while allowing

for the truth to be found. Thus, the physical restraint of a suspected or accused person is subject to the strict control of the judiciary and the protection of the rights of a detained person is fully guaranteed. Physical restraint prior to indictment, arrest and detention are conducted in limited circumstances, as a general rule, after very strict judicial control and the right to file a complaint against detention is also guaranteed to everyone. After the indictment has been issued, the defendant may be detained in cases where, inter alia, there is a reasonable cause to suspect that the accused may destroy or alter evidence or escape. The period of detention in such cases is two months after indictment and if it is necessary to continue further detention, it may be renewed every one month by ruling setting forth the concrete reasons thereof. The defendant in detention or his defence counsel may also apply for bail which must be granted, except where the defendant has committed a very serious offence, or where there is a reasonable cause to suspect that the defendant may destroy or alter evidence, cause bodily harm or harm the property of the witnesses or victims or threaten them, or there exist other reasons as prescribed in article 89 of the Code of Criminal Procedure. Whether or not such conditions exist is upon the judgement of the court. In addition to this, a suspect or an accused under physical restraint may be prohibited from having an interview with a person other than his/her defence counsel if there is a reasonable ground to suspect that he/she may destroy or conceal evidence.

998. The Government further emphasizes that the detention of the defendants in this case was made lawfully. Strict judicial control was exercised on each renewal of the period of detention every month. When the defence counsel filed an appeal with the Tokyo High Court, the latter rejected it in August 2003 on the ground that there was a reasonable cause to suspect that the defendants may destroy or alter evidence if released on bail. Thus, their detention continued, without raising any problem from a procedural or substantive point of view. The High Court which handled the appeal held as reasons for refusing the bail, the connection between the position of the defendants and the persons involved in the case, and also the substance of the court hearings together with the attitude of the defendants in response to the case, finding that if they were released on bail at the stage when the examination of the chief and deputy chief of the Urawa Train Depot was scheduled, there was a reasonable cause to suspect that the defendants would conspire or exert influence upon the persons related to the case to destroy or alter evidence.

999. With regard to the complainant's assertion that fundamental trade union rights were infringed when the authorities decided to continue the detention because the union was critical of the investigation, the Government notes the circumstances of this case, i.e. the fact that this case should be seen in the context of the organization concerned and that the defendants deny the charges thus endorsing the fears that they may destroy or alter evidence. The Government adds that, one cannot derive from the above the conclusion that the authorities are infringing upon the basic rights of the union. When the court examined the abovementioned appeal it held that "it cannot be said at this stage, considering the nature of this case and also the circumstances of the hearing by the court, that they are detained for an unduly long time".

1000. Finally, the Government notes that when the Tokyo District Court granted bail on 9 October 2003, and the Tokyo High Court rejected the appeal filed by the public prosecutor on 10 October, both Courts granted bail to the defendants under the condition that they are prohibited from contacting the witnesses to be examined in the future since the examination of important witnesses was already finished. Thus, the judgement did not imply that it had not been proper for the court to refuse bail earlier on.

1001. As for the prohibition of interviews during detention, the Government states that while the court prohibited the defendants from having interviews with persons other than the defence counsel after the indictment, it lifted part of the ban regarding interviews with their families. The Government is of the view that this was a proper step, considering the nature

and pattern of this case, the connection between the position of the defendants and other persons involved, the condition of court hearings and the attitude of the defendants responding to the case.

1002. The Government rejects as groundless, in law or in fact, the assertion of the complainant that the police issued a one-sided press release on the investigation of this case in order to socially isolate and weaken the complainant. The Government notes that all the facts announced in the MPD press release as to the investigation of this case were either true or believed to be true on reasonable grounds. Thus, according to the Government, it is a fact that the contents of the aforementioned announcement included private information on the defendants such as their names, and it is undeniable in general that a press release by the police on a criminal investigation is in conflict with the privacy of a suspect. According to the laws and judicial precedents of Japan, however, an act of defamation is not unlawful both from a criminal and civil point of view when it is found to relate to matters of public interest and to have been done solely for the benefit of the public and the alleged facts are proven to be true to an important extent. Also, an act of defamation is not unlawful from both a criminal and civil point of view in case there is a reasonable cause for the person who alleged the facts to believe them true even when the alleged facts are not proven to be true. Therefore, no matter how much the announcement of police concerning the criminal act of a suspect has hurt his/her social reputation, it is still not unlawful when it is found to relate to matters of public interest and to have been made solely for the benefit of the public, or when the announced facts are true or the police had reasonable cause to believe them true even when they are not proven to be true in the end. The abovementioned press release was found to relate to matters of public interest and to have been issued not for the purpose of socially isolating and weakening the complainant, but solely for the benefit of the public, in the interest of the right to be informed. The announced facts were limited to the objective truth or to what was believed to be true at that time on appropriate grounds. Thus, the Government concludes that the aforementioned press release was completely legal.

1003. The Government also rejects as groundless the complainant's assertion that the press release which referred to "the involvement of extremists" and the reference made to the relationship between the JREU and the Kakumaru sect hurt the social reputation of the JREU. The Government answers that the police authorities had grasped, by investigating past cases concerning the Kakumaru sect, the fact that this sect had deeply infiltrated both the complainant and its affiliated organization JREU. This had already been revealed in statements in the Diet in November 2000 and February 2001, preceding the investigation of this case, by the Director of Security Bureau, National Police Agency, in response to the questions of the Diet members. Furthermore, several newspapers had reported the content of former government statements in December 2000. These facts mean, according to the Government, that the relationship between, on the one hand, the complainant (JRU) and its affiliate JREU and, on the other hand, the Kakumaru sect was already publicly known when the aforementioned announcement was made.

Violation of the Law on Punishment against Violent and Other Acts

1004. With regard to the case of the violation of the Law on Punishment against Violent and Other Acts, the Government indicates that the outline of the case, as revealed by the investigation of the MPD, is as follows. The JR Toukai Union, an affiliate of the complainant, held an assembly in front of Tokyo station on 21 June 2002, in order to protest against the transfer of a member of its executive committee who had been transferred from the JR Toukai Company because he had not obeyed instructions in the course of employment. The three suspects of this case were members of the complainant's executive committee and were at the assembly in order to support the struggle of the

JR Toukai Union. They noticed the presence of a supervisory employee of the aforementioned company (the victim), who watched the movements of the participants to prevent them from committing offences (bursting into the facilities of the company, etc.). Therefore, the suspects attempted to threaten and attack him in conspiracy, then surrounded him and used physical violence against him, pulling him by the arm and both lapels of his jacket. The Government adds that on 21 June 2002, the very day when the incident occurred, the victim submitted an incident report to the MPD with regard to the physical violence. Through careful investigation, the MPD found out that the acts of the suspects constituted a violation of the Law on Punishment against Violent and Other Acts. Therefore, the MPD has been conducting the necessary investigation, interrogating the suspects several times without arresting them.

- 1005.** The Government rejects, as unfounded, the complainant's assertion that the search and seizure conducted by the MPD was illegal or unjust. The Government acknowledges that the MPD searched 35 places, including the residences of the suspects, in the process of investigating this case and adds that each place searched was believed to be where the real evidence concerning the case existed and was specified as a place to search in the warrant. The Government also acknowledges that it seized 1,039 goods and documents through the abovementioned searches and adds that each item was specified as an item to seize in the warrant, and was believed to have something to do with this case. Thus, according to the Government, all searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure and were completely legitimate and proper.
- 1006.** The Government adds that giving consideration to the fact that the seizure inevitably entails restrictions on property, the MPD paid a considerable amount of attention to the rights of the persons involved in this case. Thus, the MPD never seized any goods or documents of which no need for seizure existed and promptly returned the seized items to their original possessors when they turned out to be, as a result of analyses, less related to the case and less necessary for proving the case than the MPD initially believed.

Case of trespass

- 1007.** With regard to the case of trespass, the Government indicates that the outline of the case as revealed by the investigation of the MPD and other investigative authorities are as follows. The 11 suspects who were members of the Tokyo District Headquarters of JREU broke into several apartment buildings in the area of Tabata-shinmachi, Kita-ku, Tokyo, without permission from the residents or janitors (the victims) on 13 June 2003, in order to deliver a large amount of handbills in which they appealed to the law enforcement authorities to release the detained defendants of the aforementioned coercion case. On 14 June 2003, i.e. the following day, one of the victims submitted an incident report to the MPD in relation to the fact of trespass and some others followed suit. Through careful investigation, the MPD found out that the acts of the suspects constituted the crime of trespass as prescribed in article 130 of the Penal Code. The MPD conducted the necessary investigation until 23 February 2004. The Tokyo District Public Prosecutor's Office decided, on 24 March 2004, to suspend indicting all the suspects mainly due to the small damage and to their conceding the fact of trespass.
- 1008.** The Government rejects as unfounded the complainant's assertion that the search and seizure conducted by the MPD was illegal or unjust. The Government acknowledges that the MPD searched 63 places including the residences of the suspects in the process of investigating this case, and adds that each place searched was believed to be where the real evidence concerning the case existed and was specified as a place to search in the warrant. The Government also acknowledges that it seized 1,251 goods and documents through the abovementioned searches, and adds that each item was specified as an item to seize in the

warrant, and was believed to have something to do with this case. Thus, according to the Government, all searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure, and were completely legitimate and proper.

- 1009.** The Government adds that giving consideration to the fact that the seizure inevitably entails restrictions on property, the MPD paid a considerable amount of attention to the rights of the persons involved in this case. Thus, the MPD never seized any goods or documents of which no need for seizure existed, and promptly returned the seized items to their original possessors when they turned out to be, as a result of analyses, less related to the case and less necessary for proving the case than the MPD initially believed. Furthermore, the seized items still in custody are to be returned soon, as their examination was finished.

C. The Committee's conclusions

- 1010.** *The Committee notes that this case concerns allegations that on the pretext of certain minor incidents, the police conducted massive operations against the complainant and its affiliates, including the arrest of seven trade union officers and members and their detention for ten months, searches of 134 trade union premises and residences of trade union leaders, and confiscations of 2,757 items of trade union property, thus seriously impeding the complainant's activities and undermining its image to society.*
- 1011.** *The Committee observes that one trade union officer and six members of the JREU which is an affiliate of the complainant (Kunio Yanaji, a full-time union worker, and Satoru Yamada, Jyun-ichi Uehara, Shuichi Saito, Kakunori Oguro, Tomio Yatsuda, Keiitsu Ohma who are trade union members), have been indicted for the crime of coercion on the ground that, from 21 January until around the end of June 2001, they intimidated a member of their union 14 times, thus making him secede from the union on 28 February 2001 and resign from his job in the East Japan Railway Company on 31 July of the same year. According to the Government, the victim submitted an incident report to the Metropolitan Police Department (MPD) with regard to the alleged coercion on 11 February 2002. The MPD arrested the defendants on 1 November 2002. The arrest was based on a judicial warrant. According to the Government, there was a need to arrest the defendants in that they had committed such an organizational, cunning and atrocious crime that there was a reasonable cause to strongly suspect that they might destroy, conceal or alter evidence unless they were arrested.*
- 1012.** *The Committee also observes that the defendants were arrested on 1 November 2002, detained on 3 November 2002 and released on 10 October 2003; thus, they remained in detention more than 11 months. Requests for bail were dismissed on the grounds of the possibility of destruction of evidence and escape. The Committee notes that according to the Government, preventive detention is subject to a general two-month limit established by law. Any extension beyond the two-month limit must be accorded every month on the basis of a court decision stating the concrete reasons thereof. The Committee notes that the reasons put forward in this case for extending the detention for an additional nine months were according to the Government, the connection between the position of the defendants and the persons involved in the case, the substance of the court hearings and the attitude of the defendants in response to this case. In particular, the Government emphasized that if the defendants were released on bail at the stage when the examination of the chief and deputy chief of the Urawa Train Depot was scheduled, there was a reasonable cause to suspect that the defendants would conspire or exert influence upon the persons related to the case in order to destroy or alter evidence. The Committee notes that, apparently for the same reasons, the seven defendants were prohibited from communicating with anyone except their family members and their attorneys, so that they could not have any contact*

with other trade union officers and members. The Committee further notes that the trial of the seven defendants is currently under way at the Tokyo District Court. The complainant seeks their acquittal by arguing that the crime of coercion does not apply to the facts of their case.

- 1013.** *The Committee recalls that, in general, 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 of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 85]. The Committee notes that in this case, even though the preventive detention exceeded the general two-month limit established by law, each extension was decided in the framework of a judicial procedure. The Committee takes note of the fact that the seven trade union officers and members accused of coercion have now been released while their trial is under way at the Tokyo District Court. It requests the Government to keep it informed of the progress of the judicial proceedings and to communicate the final judgement once rendered.*
- 1014.** *The Committee takes note of the Government's statement that, in order to investigate this crime after the seven defendants were arrested and detained, 72 trade union premises and residences of trade union members and officers were searched and 1,870 items were seized, in accordance with warrants issued by the Courts. The Committee observes that the searches continued in 2003 in response to two incidents. On 12 June 2003, the police searched, according to the Government, 35 premises including the residences of the complainant's president, two vice-presidents and the secretary-general, and seized 1,039 items. This action was taken in order to investigate an incident which had taken place one year earlier, on 21 June 2002, and which was prosecuted on the basis of the Law on Punishment against Violent and Other Acts. The Committee takes note of the information provided by the Government concerning the incident between members of the JR Toukai Union and a supervisory employee of the JR Toukai Company. Moreover, the Committee notes that in September-October 2003, the police searched 63 premises and seized 1,251 items in the process of investigating a case of trespass which, according to the Government itself, involved very small damage. The incident concerned 11 trade union members who left fliers calling for the release of the seven defendants in the mailboxes of apartment buildings in Tokyo without the permission of the residents or janitors.*
- 1015.** *The Committee notes that according to the complainant, the searches were conducted on the basis of judicial warrants which were overly comprehensive, ordering the seizure of all sorts of items concerning the formation, history, principles, doctrine, policy, organizational structure, activities and finance of the JRU, items which according to the complainant were totally unrelated to the allegations. The items seized allegedly included lists of union members, accounting books, documents related to trials, legal action documents, computers, mobile phones, pocketbooks, files, books and magazines. The seizure of these items had, according to the complainant, a negative impact on its daily trade union activities. In particular, the confiscation of trial-related materials hindered its efforts to defend its members in court. According to the Government, the wide range of places and items listed in the warrants were justified by the fact that the law enforcement agencies had to rely on statements of a limited number of eyewitnesses and find facts by carefully and widely collecting evidence and examining it closely. All searches and seizures were conducted after a strict judicial examination by a judge in accordance with the related prescriptions of the Code of Criminal Procedure and were completely legitimate and proper while the MPD returned promptly the seized items to their original possessors when they turned out to be less related to the case and less necessary for proving the case than the MPD initially believed. The Committee also notes that with*

regard to the case of trespass, the Government indicates that the seized items still in custody are to be returned soon, as their examination has been completed.

- 1016.** *While taking due note of the fact that the searches took place on the basis of a judicial warrant, the Committee notes that the Government has not specified the grounds on the basis of which the Courts ordered the search of premises other than the domicile of those accused of the crime of coercion, thus ordering the search of a large number of trade union offices and residences of trade union officers and members who were not indicted. The Government has also not indicated the reasons why the seizure concerned not simply items related to the offences under investigation, but also anything related to the internal functioning of the complainant trade union (JRU). The Committee recalls that the defendant in this case is not the JRU but seven of its officers and members who are, moreover, accused on the basis of ordinary criminal law. The Committee recalls that any sentences passed on trade unionists on the basis of the ordinary criminal law should not cause the authorities to adopt a negative attitude towards the organization of which these persons and others are members [see **Digest**, op. cit., para. 66]. This is all the more so in this case where sentences have not been pronounced yet and the procedure is still at the stage of the examination of evidence. Moreover, the Committee recalls that it has drawn attention to the importance of the principle that the property of trade unions should enjoy adequate protection. With regard to searches of trade union premises, it is stated in the resolution on trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session (1970), that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights [see **Digest**, op. cit., paras. 184 and 204]. Noting that the searches and confiscations against the complainant trade union and its members have apparently ceased, the Committee requests the Government to take all necessary measures in order to ensure that any remaining confiscated items which do not have a direct connection to the facts of the case are immediately returned to the complainant and to keep it informed in this respect. It also requests the Government to ensure that the judicial procedures under way do not interfere in the free exercise of trade union activities.*
- 1017.** *The Committee further notes that according to the complainant, the police caused great damage to its social reputation by making a one-sided announcement to the media in which it mentioned the involvement of extremists in the union, an accusation which is not even mentioned in the bill of indictment. The Committee notes that in answer to this allegation, the Government indicates that: (1) according to the indictment, the seven trade union officers and members are accused of having made verbal threats by using, among other things, the phrase "I am a member of the Kakumaru sect"; (2) this sect is the most powerful of all the ultra-leftist violent groups in Japan and gave rise to a number of terrorism and guerrilla incidents in the past; (3) at present, the sect has deeply infiltrated the complainant and its affiliate JREU while one of the defendants in this case is a member of the sect; (4) the abovementioned announcement is not illegal as it related to matters of public interest and the police had reasonable cause to believe it true even if it does not prove to be true in the end; (5) the relationship between the complainant, the JREU and the Kakumaru sect has been publicly known from the investigation of past cases and had already been revealed in statements by the Director of Security Bureau, National Police Agency in the Diet in November 2000 and February 2001; and (6) several newspapers had reported the content of former government statements on this issue in December 2000.*
- 1018.** *With regard to the Government's comments, the Committee observes that the alleged infiltration of the complainant by the Kakumaru sect is not included among the accusations contained in the indictment and that therefore, the Court is not requested to pronounce itself on this issue. The Committee considers that the police should abstain from any declaration which might damage the reputation of a trade union as long as the matters in question have not been confirmed by the judicial authorities.*

The Committee's recommendations

1019. *In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:*

- (a) *The Committee takes note of the fact that the seven trade union officers and members accused of coercion have been released while their trial is pending at the Tokyo District Court. It requests the Government to keep it informed of the progress of the judicial proceedings and to communicate the final judgement once rendered.*
- (b) *Noting that the searches and confiscations against the complainant trade union and its members have apparently ceased, the Committee requests the Government to take all necessary measures in order to ensure that any remaining confiscated items which do not have a direct connection to the facts of the case are immediately returned to the complainant and to keep it informed in this respect. It also requests the Government to ensure that the judicial procedures under way do not interfere in the free exercise of trade union activities.*
- (c) *The Committee considers that the police should abstain from any declaration which might damage the reputation of a trade union as long as the matters in question have not been confirmed by the judicial authorities.*

CASE NO. 2308

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

Complaint against the Government of Mexico presented by the National Trade Union of Electrical and Allied Workers of the Mexican Republic (SNIPES)

Allegations: Refusal by the authorities to accept an amendment of the complainant organization's by-laws to enable it to extend its coverage to workers in the cable television sector, radio broadcasting, and the manufacturing of radios, televisions, light bulbs and electronics in general

1020. The complaint is contained in a communication from the National Trade Union of Electrical and Allied Workers of the Mexican Republic (SNIPES) dated 8 October 2003. The Government sent its observations in a communication dated 22 April 2004.

1021. 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).