



SEVENTH ITEM ON THE AGENDA

**Reports of the Committee on Freedom
of Association**

**339th Report of the Committee on Freedom
of Association**

Contents

	<i>Paragraphs</i>
Measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry	1-93
A. Introduction	1-7
B. New allegations relating to the recommendations of the Commission of Inquiry	8-53
C. The Government's reply on measures taken to implement the recommendations of the Commission of Inquiry	54-69
D. The Committee's conclusions	70-92
The Committee's recommendations	93

Measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry

A. 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 3 and 4 November 2005, under the chairmanship of Professor Paul van der Heijden.
2. A complaint under article 26 of the ILO Constitution against the Government of Belarus for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was submitted on 18 June 2003 by 14 Workers' delegates to the International Labour Conference.
3. At its 288th Session (November 2003), the Governing Body decided to refer the complaint to a Commission of Inquiry. The Commission issued a very detailed report [see Trade union rights in Belarus: Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), July 2004] containing numerous recommendations relating to freedom of association and collective bargaining, which was then submitted to the Governing Body at its 291st Session (November 2004).
4. At its 291st Session, the Governing Body took note of the report of the Commission of Inquiry and decided that the implementation of the Commission's recommendations be followed up by this Committee. The Committee, noting that the deadline set by the Commission for action to be taken on some of its recommendations was 1 June 2005, requested the Government to transmit any additional observations and information relating to the measures taken to implement the Commission's recommendations as soon as possible, so that it could examine this case in full knowledge of the facts at its meeting in November 2005 [see 336th Report, para. 13 and 337th Report, para. 15].
5. The Belarus Trade Union of Workers in the Radio and Electronics Industry, Automobile and Agricultural Machinery Workers' Union (REAAMWU) sent new allegations relating to the recommendations of the Commission of Inquiry in a communication dated 26 August 2004. The Congress of Democratic Trade Unions (CDTU) sent new allegations in communications dated 4 and 8 October 2004 and 2 February and 30 September 2005. The Radio and Electronic Workers' Union (REWU) sent new allegations in communications dated 28 December 2004 and 2 June 2005 and the International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 11 April and 8 September 2005.
6. The Government transmitted partial observations on the measures taken to implement the Commission of Inquiry recommendations in communications dated 12 and 24 May, 9 and 20 September and 12 October 2005.
7. The Committee has examined the information contained in the Government's communication and the new allegations and additional information provided by the ICFTU, the CDTU, the REAAMWU and the REWU. The Committee submits for the

approval of the Governing Body the conclusions it has reached concerning the measures taken to implement the recommendations of the Commission of Inquiry.

B. New allegations relating to the recommendations of the Commission of Inquiry

- 8.** In its communication dated 26 August 2004, the Belarus Trade Union of Workers in the Radio and Electronics Industry, Automobile and Agricultural Machinery Workers' Union (REAAMWU) indicated that gross violations of trade union rights continued in Belarus. In particular, the REAAMWU refers to the decision of the Minister of Justice in Decree No. 239 of 16 July 2004 to revoke the registration of amendments and additions to the constitution of the Radio and Electronics Workers' Union (REWU), which had been adopted at the Fourth Extraordinary Congress on 3 February 2004 and registered by the Ministry of Justice on 12 April 2004. These amendments had changed the name of the union to REAAMWU given the merger of the REWU with the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU).
- 9.** According to the REAAMWU, as the merger did not suit the Federation of Trade Unions of Belarus (FPB), the FPB, along with the presidential administration, put pressure on the Ministry to cancel the registration of the amendments, thus effectively abolishing the REAAMWU. No grounds were given for the revocation of the registration and no reply has been received to the written request from the union to be informed of the motivation for the revocation. The REAAMWU made a complaint to the Supreme Court in respect of these actions taken by the Ministry of Justice.
- 10.** The REAAMWU added that several of its members have been exposed to threats and psychological and administrative pressure and named in particular the BATE enterprise in Borisov and the MAZ enterprise in Minsk.
- 11.** In its communications of 4 and 8 October 2004, the Congress of Democratic Trade Unions (CDTU) referred to the ongoing persecution of trade unionists. In particular, the CDTU indicated that Messrs. Gaichenko, Dukhomenko, Obukhov, Shaitor and Stukov, activists from the Belarussian Free Trade Union at the Novopolotsk Transport and Dispatch Centre, the Polotsk Transport and Dispatch Centre and Plosksteklovolokno, had all been transferred to one-year contracts and subsequently not renewed.
- 12.** Air traffic controllers who had just formed a new primary trade union organization were also transferred to one-year contracts and Oleg Dolbik, former vice-president of the Belarussian Trade Union of Air Traffic Controllers (BTUATC), was told on 17 September 2004 that his contract would not be renewed upon its expiration on 1 October 2004. The CDTU strongly believes that this was an act of reprisal against Mr. Dolbik for his trade union activities and in particular for his appearance as a witness before the ILO Commission of Inquiry and the Commission of Inquiry organized by the European Commission. The CDTU recalled that Mr. Dolbik has worked as an air traffic controller for 18 years and has never been disciplined. He was also only 39 years old, six years younger than the average age of Belarussian air traffic controllers. The CDTU could only conclude that the management of Belaeronvigsatsia had received orders from the highest level to demonstrate its complete indifference to the ILO and the recommendations of the Commission of Inquiry.
- 13.** The CDTU also transmitted a statement made by Mr. Marinich concerning the pressure and harassment he has suffered at his workplace since his having provided information to the ILO and EU Commissions. Mr. Marinich stated that, on 30 June 2004, the director general of MAZ-Kupava suggested that he resign of his own volition, otherwise he would be dismissed for systematic breaches of labour discipline. When he asked why such

measures were being taken, he was told that some people should spend less time testifying against the authorities in front of all these commissions. He was forced to resign so as to avoid having breaches of labour discipline marked into his copybook. All further attempts to find work had been unsuccessful and he believes that he has been blacklisted.

- 14.** In its communication dated 2 February 2005, the CDTU informed that the Government had not yet published the text of the recommendations made by the Commission of Inquiry, as was recommended, nor had the CDTU received any reply from the Prime Minister to its letter asking the Government whether it had any intention to fulfil the Commission's recommendations. While the FPB has sent invitations to the CDTU representatives to take part in joint meetings, no invitations or decisions had been taken by the Government in this respect. All letters sent by the CDTU to request the Ministry of Labour to take into account the Commission's recommendations and send all proposals on legislation, to grant legal addresses to primary organizations of independent trade unions and to reinstate unlawfully dismissed trade union activists and workers who gave witness to the Commission have gone unanswered. The CDTU believed that all available evidence led to the conclusion that the Government was doing everything possible, including through its plan to amend the Trade Union Act with regard to standards for representativeness, to avoid complying with the Commission's recommendations and to eventually eliminate independent trade unions in Belarus.
- 15.** In its communication dated 28 December 2004, the REWU informed of new attempts by the authorities to demolish its member organizations in the cities of Slutsk and Gomel. According to the minutes of the trade union meeting of the primary organization of the REWU at the Open Stock Company (OAO) Slutsk-Modul, the managing director of the enterprise proposed that the organization transfer its affiliation to the Belarussian Industry Workers' Union (BIWU) and following severe pressure on the workers, the unlawful decision to transfer was taken. In addition, the REWU indicated that only 67 of the 179 members had voted for the transfer, demonstrating that two-thirds of the members were being transferred into another union without their personal consent. Similar attempts were made in respect of the REWU primary organization at the Systems Engineering Design Office of the Republic Scientific and Industrial Unitary Enterprise. The difficulty here arose from the fact that the primary organization had affiliated to REAAMWU, the registration of which had been subsequently revoked. The REWU was making all efforts to exchange the documents of registration to REAAMWU for registration in REWU (to which it had reverted back), but the local authorities were refusing to return registration documents to the trade union committee chairperson and soliciting its members rather to confirm their affiliation to the BIWU.
- 16.** In its communication of 2 June 2005, the REWU stated that, on 8 October 2004, the Supreme Court rejected REWU's complaint concerning the revocation of the constitutional amendments and additions made to its constitution, merging its organization with the AAMWU and creating the REAAMWU. The trade union's subsequent appeal was also rejected. As a result of the cancellation of state registration of the amendments to its by-laws, the trade union was forced to change its structure and register its primary-level organizations again or replace their founding documents, during which it came up against blatant opposition by the registration bodies.
- 17.** In Gomel, the primary-level trade union of the RNPUP "KBSP" enterprise was effectively dissolved by the registration body and the enterprise management, together with the Sovietsky District Administration of Gomel. In Minsk, the primary-level trade union of the RUP "MAZ" [Minsk Automobile Plant] enterprise was unlawfully refused registration on the grounds that the organization's legal address was given in another district of the city outside the territory of the enterprise. The primary-level trade union of the RUP "MoAZ" enterprise in Mogilev was unlawfully refused registration on the grounds that it did not

correspond to the aims and objectives of the trade union. Officials of the Leninsky District Administration in Mogilev, when they issued a copy of their decision to the chairperson of the trade union committee of the primary-level organization, told him that if the employer refused to provide a legal address, the primary-level organization would not be able to engage in social partnership under section 2.2 of the by-laws.

- 18.** In Rechitsa, the local authorities demanded confirmation of the legal address of the registered primary-level trade union of the OAO “Ritm” enterprise. At the insistence of the local authorities, the employer gave the legal address of the primary-level organization without informing the trade union of this. The trade union had concluded rental agreements at another address, but after the local authorities intervened these agreements were cancelled by the landlords.
- 19.** In January 2005 the FPB published false information on its web site to the effect that the REWU trade union had ceased to exist. This information was repeated on national television and radio. In January 2005, according to a letter from the Ministry of Justice to the Office of the Public Prosecutor of the Republic, the REWU and its organizational units began and are continuing to undergo a complete verification to determine its republic-level status. The Office of the Public Prosecutor of the republic sent a declaration and letters to the trade union stating that it lacks republic-level status on the grounds that not all of its regional organizational units are registered. This requirement is contrary to the legislation in force in the Republic.
- 20.** The REWU emphasized that not one of the Commission’s recommendations under Case No. 2090 has been implemented. What is more, the regulations for drawing up and examining documents presented for state registration of political parties, trade unions and other public associations, as well as the recording and state registration of their organizational units, approved by Order No. 22 of 1 December 2000 of the Minister of Justice of the Republic of Belarus, have been amended (Order No. 8 of 14 March 2005 of the Ministry of Justice) in such a way as to allow organizational units of a trade union to be removed from the record and deleted from the state register (section 23(1)).
- 21.** In its communications of 11 April and 8 September 2005, the International Confederation of Free Trade Unions (ICFTU) transmitted a report prepared by its organization on “Trade union rights in Belarus – Implementation of the recommendations of the ILO Commission of Inquiry”. The ICFTU added that it had recently learned of the adoption on 17 July 2005 of Decree No. 327 on additional measures of protecting workers’ labour, socio-economic rights and interests (annexed to the complaint), which it asserted, was not in conformity with the right to freedom of association. This Decree prescribes that labour inspection and control of implementation of labour legislation at enterprises shall be carried out by the Federation of Trade Unions of Belarus (FPB) and its affiliates, regardless of whether another union exists at the enterprise. The right of trade unions to decide their activities freely is highly compromised by this Decree, as unions other than FPB affiliates are not entitled under the law to monitor respect of labour legislation at their workplace. Monitoring and safeguarding respect of labour rights, including those emanating from the labour legislation are some of the core activities of trade unions and by restricting those rights to one union federation the Government is effectively denying all other unions the ability to function.
- 22.** The ICFTU also referred to the Decree amending Decree No. 460 on international technical assistance rendered to the Republic of Belarus, signed by the President on 18 August 2005 and which prohibits receiving and using international technical assistance directed at among others anti-constitutional aims, the overthrow of state power, interference in internal affairs, waging of social, national, religious and racial hostility or other actions prohibited by the legislation. Such assistance cannot be used for street rallies,

demonstrations, picketing, strikes and the production of agitation material among others. The ICFTU understood from information provided to it that organizers of seminars, conferences and other forms of public debates must now provide information about their organization and its activities to the Commission on Problems of International Technical Cooperation under the Council of Ministers of the Republic of Belarus. This information will also be registered by the Ministry of Economy, which shall decide which activities can be allowed to take place. Its decision is delivered to the regional executive committee in charge of the dossier, who then grants (or denies) final permission to proceed with the planned event, seminars, etc. This Decree clearly interferes with trade unions' right to plan their own activities and affiliate and cooperate with international organizations.

23. The ICFTU further indicated that following a mission it has undertaken in May 2005 to assess the implementation of the Commission's recommendations, it was obliged to note that the situation had only worsened. It referred, in particular to the following:

- primary organizations that were denied registration could not survive and were dissolved, creating a spillover effect for regional organizations that were dissolved following the absence of three registered constituencies;
- pressure on members of independent trade unions persisted and, in some cases, increased;
- of all the trade unionists that had suffered discrimination and harassment in the workplace only one was re-engaged, although on lower terms and having lost his seniority and his acquired rights;
- several witnesses to the ILO Commission of Inquiry were blacklisted. They could not find jobs on state enterprises, were demoted or had to accept jobs that did not correspond to their qualifications;
- legal amendments were being prepared by the Government in secrecy from independent trade unions, leaving the impression that these amendments would be passed once the inquiry on Belarus was finally closed, and all independent trade unions in Belarus would effectively be destroyed.

24. The ICFTU emphasized that this picture did not correspond to the Government's statement before the Conference Committee on the Application of Standards that the first stage of the action plan had been successfully completed in the first half of 2005 and that the Government was now working on the second stage. Independent trade unions were not informed of any measures to implement the recommendations, and the Government had made no attempts to engage in dialogue with these unions on the ILO decisions. If any measures were actually taken, they were envisaged in total secrecy from the ones that were intended to benefit from those recommendations. The ICFTU provided the following information in respect of each of the recommendations of the Commission of Inquiry.

Recommendation 1 – Immediate registration of primary level organizations

25. The Government of Belarus failed to implement this recommendation. The organizations that were listed in the complaint and its annex have not been registered and the authorities continued to deny registration to primary-level organizations for the reasons that were criticized in the report as incompatible with Convention No. 87. (The ICFTU provided a full follow-up status on the primary-level organizations, which is attached in an annex.)

26. The CDTU could not report any positive developments with registering their organizations regardless of their having tried to rely on the Commission's recommendations. CDTU affiliates who tried to have their primary organizations registered were still required to provide the legal address, as stipulated by Decree No. 2, and employers continued to refuse to provide this address.
27. Non-registration of primary organizations has created a spillover effect leading to the denial of registration of regional organizations due to the lack of the required number of registered primary organizations. This has affected at least three regional organizations of the Belarussian Free Trade Union (BFTU) in Mogilev, Baranovichi and Novopolotsk-Polotsk.
28. The REWU started to experience problems with registration from the moment it disaffiliated from the state-controlled FPB. The ICFTU referred to the issues raised by the REAMWU concerning the revocation of its registration and added that the president of the FPB himself had written personally to the Minister objecting to the initial registration of the constitutional changes.

Recommendation 2 – Amendment of Decree No. 2 and its rules and regulations to eliminate obstacles

29. The Government has not implemented or envisaged any amendments to Decree No. 2 or its rules or regulations that would implement this recommendation. Moreover, some steps taken or envisaged by the Government made the situation worse. In particular, the ICFTU referred to the amendments to the Rules of the Ministry of Justice on Registration of Political Parties, Trade Unions and other Public Associations adopted on 14 March 2005.
30. The amendment introduced the grounds for striking organizational structures (trade unions) off the register (section 23.1). Organizational structures (essentially primary and territorial organizations) may be deleted from the register either when trade union activities are terminated or when a trade union makes a decision to dissolve the organizational structure, but also on the following grounds:
 - if the registrar issues a written warning to a union on violation of legislation or its statutes and the discrepancies are not eliminated in one month's time. It means that an organization may be dissolved for failure to comply with legislation which has already been determined to be in conformity with ILO standards, or an organization may be dissolved due to legal incompliance of a formalistic nature;
 - if the registrar learns of untrue information or data in the documents submitted for registration, or if legislation was violated during the registration and these violations cannot be removed. This means that an organization may be dissolved if something changes (for example, they cannot stay in their registered legal address and cannot get a new one) and the data in registration documents become incorrect.
31. In both cases the organizations may be struck from the register by decision of the registrar (administrative authority) and not by a court decision. Administrative dissolution is a clear violation of ILO Convention No. 87.
32. Moreover, the Ministry of Justice has prepared draft amendments to the Law on Trade Unions (the draft was attached to the complaint). This draft amendment introduces the notion of the national trade union, which should have at least 7,000 members and be active in the majority of oblasts (regions) of Belarus, including the City of Minsk and comprise at least one-third of the total number of people who work or study in one or a number of branches of economic activity. In order to be considered a national trade union association,

two national trade unions were necessary with at least 7,000 members each. Currently minimum membership requirements for trade unions are set out in the corresponding rules, which set a threshold of 500 persons from a majority of regions and the City of Minsk in order to establish a republican (national) trade union. Increasing the threshold for republican trade unions would oblige all these unions to re-register, and many of them would lose their status and even face the threat of dissolution. The amendment would also allow the FPB to monopolize social dialogue on the national level, excluding all other workers' organizations. The ICFTU-affiliated CDTU currently has 11,000 members and, failing to show at least two affiliates comprising 7,000 members each, would lose its status as a national trade union centre. If the amendment is adopted, CDTU would have to re-register as a territorial association or dissolve itself.

Recommendation 3 – Dissolution of the Republican Registration Commission and amending the procedure of registration

33. No decision to disband the Republican Registration Commission has been taken and no amendments on the registration procedures have been adopted.

Recommendation 4 – Dissemination of the conclusions and recommendations, public declaration of unacceptability of the acts of interference into trade union matters, investigation of complaints of external interference

34. The steps taken by the Government for implementing this part of recommendation 4 were not taken in good faith and even did more harm than good. The ICFTU representatives interviewed representatives of the independent trade unions and the editor of the trade union newspaper "Salidarnasc" (Solidarity), as well as the staff of the ILO project in Minsk, who were following the press since the report was published, and they all confirmed the absence of any reference to the ILO Commission of Inquiry. Thus if the conclusions and recommendations have been published at all, it was done in a media not available to the general public and this kind of publication could not therefore meet the definition of being "made public through a wide dissemination and without delay".
35. The only evidence of publishing extracts of the report comes from the journal of the Ministry of Labour and Social Protection "Labour and Social Protection". The issue No. 4 of 2005 (approved for publishing on 28 March 2005) includes an article called "The Commission of the International Labour Organization completed its work" (pages 52-53). Regrettably this article cannot be seen as a bona fide publication of the Commission's conclusions and recommendations for the following reasons:
- (1) The journal was printed only in April 2005, although already in November 2004 the Government was aware that the conclusions and recommendations had to be published "without delay".
 - (2) The journal in question is a specialized edition not read by the general public. The print run noted on the title page of the issue No. 4 is 5,320 copies, which does not qualify for wide dissemination (as compared to "Sovetskaya Belarus" that had a print run of over 300,000 copies in April 2005).
 - (3) The article was omitted from the table of contents published on pages 2 and 3 of the journal, which means that a reader who was not going to read the journal from cover to cover or stumble on the article accidentally would have never learned that the article was published at all.

- (4) The article consists of 12 recommendations, although the Commission recommended publishing both the conclusions and the Recommendations.
- (5) The article itself is tendentious, leaving an impression that the Commission came to Belarus with a technical mission. There is no mention of the complaint against the Government of Belarus, nor that the Commission concluded that Belarussian law and practice were incompatible with ILO standards. Even the full title of the Commission was not shown.
- 36.** Independent trade unions and other persons interviewed by the ICFTU staff had never heard a declaration from the Government clearly indicating that acts of interference in trade union activities were unacceptable. While the Government had told the Committee on the Application of Standards that an explanatory letter with interpretation of the norms and provisions of the international and domestic legislation determining principles of interaction between social partners and non-interference by the employers and trade unions in the internal affairs of each other had been prepared and submitted to all interested parties (enterprises, trade unions, state agencies), the independent trade unions have never seen such a letter. In any event, interference into internal trade union matters have continued by employers, by local authorities and by the Prosecutor's office and investigations into complaints have not been made.
- 37.** By way of illustration, the ICFTU indicated that on 29 April 2005, the Prosecutor-General sent a letter to REWU mentioning that an additional investigation of the union had been carried out and that it was found that it did not have organizational structures in most oblasts of Belarus. Therefore REWU would have to submit to the Prosecutor's office documentation that would confirm registration of its structures in most of the regions, otherwise it would lose its status as a nationwide trade union. The deadline was 15 May – less than three weeks. The Prosecutor's office was scrutinizing the matter excessively, asking for more and more documentation and lists of members, questioning every document that was offered.
- 38.** Finally, the ICFTU indicated that no complaint submitted to the authorities before the report was published has been reinvestigated. When trade unions tried to submit new complaints of a similar nature to the Prosecutor's officers, they received the same formalistic replies and refusals to investigate as had occurred before the Commission's Report was published.

Recommendation 5 – Protection of the organizations listed in the complaint

- 39.** As explained above, no additional investigation had been carried out and no additional means of protection have been made available to those organizations. Neither the CDTU nor REWU could give a single example of the Prosecutor's office or other authorities being helpful to trade unions in these matters. REWU seeks help for all their problems and consistently gets a standard reply that “no grounds for [Prosecutor's] intervention have been found”, while CDTU affiliates have mostly given up on the Prosecutor's offices.

Recommendation 6 – No enterprise management in trade union meetings

- 40.** This recommendation concerns the trade unions affiliated to the FPB, since the CDTU constitution has never allowed enterprise managers to become trade union members, and REWU changed their constitution to this effect later on. However, the ICFTU representatives interviewed local trade unionists in the enterprises where both CDTU and

FPB-affiliated trade unions were operating, and they confirmed that employers still took part in meetings of FPB organizations and that participation of the enterprise management was regarded as a matter of honour. Although the Government of Belarus promised to the ILO Governing Body that they would send a letter to enterprise directors on non-interference in internal trade union affairs, the unions have no knowledge of this being done. The CDTU sent a letter to the Council of Ministers asking for such a directive, but has received no answer so far.

Recommendation 7 – Investigation of discrimination claims, particularly as regards the use of fixed-term contracts

41. So far the Government has not taken any steps to remedy the victims of trade union discrimination, nor has any new inquiry been conducted on the cases of discrimination mentioned in the report. Moreover, the Government is preparing the amendments to the Labour Code to further implement the system of fixed-term contracts that is already being used to get rid of independent trade unionists. The text of the amendments has been made available to the FPB, but not to independent trade unions.
42. The ICFTU representatives met with several trade unionists that had suffered retaliation after having spoken with the ILO Commission of Inquiry, or later with the EU experts. The ICFTU referred to the case of Oleg Dolbik mentioned above, the case of an anonymous trade unionist and the case of Oleg Sherbo. Mr. Sherbo had not had any problems since 2000, when he stopped pursuing trade union activities. After he spoke to the Commission, however, he received a disciplinary punishment for a wrongdoing that was so preposterous that 37 of his co-workers wrote a letter in his defence, stating that the mistake incriminated to him could simply not have happened.
43. The only person who has been re-engaged is Victor Stukov of Novopolotsk Steklovolokno enterprise, but he lost his seniority and acquired rights and almost half of his wages. Other Novopolotsk-Polotsk trade union activists mentioned in the complaint could not find jobs later.
44. While the Government had explained to the Committee on the Application of Standards that it had inspected a number of enterprises, but no trade union discrimination could be detected, the ICFTU asserted that the independent trade unions were not aware of any such inspections.

Recommendation 8 – Effective procedures against retaliatory acts

45. The Government has not taken any measures to implement this recommendation.

Recommendation 9 – Use of foreign gratuitous aid

46. The Decree has not been amended and amendments have not been envisaged. While in theory, trade unions may receive gratuitous aid if such aid is registered, registering foreign aid is unrealistic for independent trade unions. Moreover, on 30 June 2005, the news agency Interfax communicated news that the draft law on political parties and public associations (also applicable to trade unions) foresees compulsory dissolution of associations (by a court decision) if they violate the rules on use on foreign gratuitous aid. This rule would further discourage trade unions to explore opportunities of assistance from international organizations of workers.

Recommendation 10 – Amendment of the Law on Mass Activities

47. No changes have occurred except that all the rules are now provided in the Law on Mass Activities.

Recommendation 11 – Social dialogue

48. The CDTU has never been invited by the Government to participate in the sittings of the National Council for Labour and Social Issues (NCLSI). The NCLSI had met several times through the reference period and the FPB invited the CDTU to take part. However, the CDTU could not accept this invitation as it did not come from the Government. Additionally, the invitation would usually come too late for the CDTU to properly prepare.

Recommendation 12 – Review of the national industrial relations system

49. So far, no steps were taken to carry out a critical review of the industrial relations system. While the Government has stated that, in line with the recommendations, it has established an expert council on development of the social and labour legislation aimed at maintaining the constant dialogue and interaction between the authorities, trade unions (including representatives of the Federation of Trade Unions of Belarus and the Belarussian Congress of Democratic Trade Unions), employers, NGOs, scientists, and the Ministry of Labour, the CDTU was not invited to take part in the work of the expert council until the ICFTU finalized its contact mission to Belarus (the invitation came after 20 May 2005).
50. In evaluating the very language of the action plan proposed by the Government, the ICFTU considered that this plan gave rise to serious doubts about the Government's commitment. The so-called action plan was not presented for information or consultation either to the CDTU or the REWU, the trade unions it mainly concerns. One of the recommendations of the Commission was related to the obligation of the Government to broadly and immediately publish the recommendations for the Belarus society to get familiar with them. The recommendations were published only in April 2005 and not in the mass media. Furthermore, the suggested clauses of technical assistance to the Government on the part of the ILO, as well as running workshops together with the ILO, set out patently incorrect information as these were not discussed with or agreed to by the ILO. The demand to reinstate the dismissed trade union leaders and activists, to register the trade union organizations that had earlier been denied registration, as well as to reinstate the right of the CDTU to participate in the NCLSI, viewed by the Commission as priority, were not included in the action plan and virtually ignored by the Government. All these elements led the ICFTU to consider that the action plan was only a formal reaction of the Government to the recommendations and it demonstrated the lack of good will on the part of the Government.
51. In conclusion, the complainant states that the Government failed to implement each and every recommendation of the Commission of Inquiry. Although the Government reported that some steps had been taken, these steps have not been taken in good faith and in a manner that would enable progress on the matters listed in the recommendations. Legislative amendments currently prepared by the Government do not only fail to implement the recommendations, but further marginalize the genuine trade union movement in the country. The damage caused during recent years is irrecoverable, and any vacillation by the international community could only further aggravate the situation. This case is important for the whole region and for other developing and transitional countries, since it constitutes a test of how far authorities may go in violating human rights and

ignoring international law. The ICFTU concluded that the international trade union movement should make decisions on further action on trade union rights in Belarus to be implemented as a matter of priority and without delay.

52. In a communication dated 30 September 2005, the CDTU provided information on the 5th Congress of the Federation of Trade Unions of Belarus (FPB), held on 19 and 20 September 2005 and in which A. Lukashenko, President of Belarus, took part. The Prime Minister and all the ministers also participated in the event. Fragments of the speech given by the President were shown on TV and were published in official newspapers. While, according to the CDTU, the most offensive statements related to the independent trade union movement were censured out, some elements were nevertheless reported. In reply to a question raised by one of the congress delegates that, contrary to the Law on Trade Unions, the local administrations levy charges on premises rented by trade unions at “Belaruskaliy” mining company and at other enterprises belonging to “Belarusneftekhim” Concern (Former Ministry of Gas and Oil Processing and Chemical Industries), the President stated that charges would be levied as long as two trade unions continued functioning in the sector and gave a commission to the chairperson of the “Belarusneftekhim” Concern and the chairperson of the FPB to do away with independent trade unions in the sector. The President stated that he was watching the activities of trade unions closely and that trade union structures and the leaders of the mass social organizations drew much more of his attention than the opposition parties, since the latter are very weak and have no links with workers. Trade unions functioning in labour collectives could, on the other hand, really affect the minds of the working people. The President declared that there would be no more political parties or independent trade unions in 2006.
53. The CDTU expressed its fear that the Government would now resort to indirect attacks on the independent union organizations so as to avoid any negative consequences from the withdrawal of Generalized System of Preferences (GSP) by the European Union. For example, efforts might be made to compel union leaders, activists and rank-and-file members in the oil and chemical industry (the industry with the largest affiliates of Belarussian Independent Trade Union – BITU being the largest affiliate to the CDTU) to leave the independent unions. Another possibility would be that, following an outflow of members due to the fear created by the system of compulsory contract labour, the BITU and the CDTU will be forced to reregister on the basis of the planned amendments to the Law on Trade Unions. Under such circumstances, the independent trade unions are unlikely to be reregistered. In the absence of an organization, there can be no problems linked with this organization and therefore no problem of violation of trade union rights in the country in general.

C. The Government’s reply on measures taken to implement the recommendations of the Commission of Inquiry

54. In its communications dated 12 and 24 May 2004, the Government indicated that it had drawn up a plan of action with a view to implementing the recommendations of the Commission of Inquiry. A list of activities was drawn up in this regard and work to carry out these measures was under way. The Government further informed that the Commission’s recommendations were published in the journal of the Ministry of Labour and Social Protection (annexed to its communication). The Government added that it was working with the ILO regional office on a number of issues in connection with joint seminars as part of its efforts to implement the recommendations. In addition, the Government was interested in examining, with the ILO’s technical assistance, international practice with regard to legislation on mass trade union activities and related issues, as well as foreign gratuitous aid received by unions.

- 55.** The implementation of the plan of action would follow three orientations. For the first, “improvement of national legislation and its application in practice with regard to the establishment and registration of trade unions and the ability of trade unions to carry out their activities” (recommendations 1, 2, 3, 6, 9 and 10), the Government indicated that it would take steps to review international experience in this area. Work would be done to develop approaches and adopt specific measures to improve national legislation and practice in line with the Commission’s recommendations. Particular attention would be paid to the following issues: preconditions for establishing trade unions (minimum membership, etc.); conditions and procedures for endowing unions (and their organizational parts) with the rights of legal persons; registration procedures and the prerogatives of registration authorities. A review would be undertaken by the Ministry of Justice. A number of primary trade union organizations in Belarus have been refused registration, for a number of reasons. The Government was examining this issue in detail (including the reasons given for refusing to register in particular cases), and would take steps to remedy the problem.
- 56.** In the light of the Commission’s view that appropriate amendments should be made to Presidential Decree No. 24 of 23 November 2003 concerning the receipt and use of foreign gratuitous aid and the Act concerning mass activities, the Government would give further consideration to the question.
- 57.** In order to prevent interference by enterprise management in trade union affairs, the Government has submitted to the parties concerned a specific letter explaining provisions of existing national law and international labour standards defining principles of interaction of social partners and prohibiting acts of interference by trade unions and employers in each other’s affairs.
- 58.** The second orientation, “improving available mechanisms for safeguarding the rights of trade unions and preventing discrimination against workers on the grounds of union membership” (recommendations 4, 5, 7 and 8), would include addressing the existence of discrimination against union members, including discriminatory use of the contracts system, which posed serious difficulties. In order to improve this situation, a study would be carried out of the practice of using fixed-term contracts and measures would be taken to improve protection of workers’ rights. This would include measures to develop mechanisms allowing a preliminary examination of individual labour disputes before they come to court, based on conciliation, mediation and voluntary arbitration involving experts familiar with ILO standards and recommendations.
- 59.** The third axe concerned “development of tripartism and social dialogue” (recommendations 11 and 12). One of the most important bodies involved in making the social partnership system work in Belarus was the National Council on Labour and Social Issues (NCLSI), although the question of representation of the social partners on the National Council had not been resolved. Government, trade unions and employers’ associations appointed their own representatives independently. As there were various unions that indicated their wish to participate in the work of the National Council, this situation needed to be resolved by legislation based on objective criteria of representativeness which would enable workers’ and employers’ organizations to take part.
- 60.** Further development of the social partnership system would be assisted by the adoption of the draft Act “concerning employers’ associations”, which had already been transmitted to the ILO for examination and favourably assessed.
- 61.** In order to ensure collaboration on a permanent basis between state authorities, trade unions, employers’ associations, representatives of NGOs and academic experts in efforts to develop national labour legislation, and in the interests of better understanding the

respective roles of the State, trade unions and employers in the social partnership system, a council would be set up to consider matters relating to the improvement of social and labour legislation under the auspices of the Ministry of Labour and Social Protection.

62. The Government added its regret that the ILO had not been in a position to assist in the holding of seminars and workshops that it had hoped to hold concerning international experience on issues relating to the regulation of the establishment and registration of trade unions and mechanisms for safeguarding the rights of workers and their organizations.
63. In its communication of 20 September 2005, the Government stressed its desire for a constructive dialogue and cooperation with the ILO, which took into account national interests. As concerned the ILO mission to Belarus proposed by the Conference Committee on the Application of Standards, the Government stated that, while it was not opposed to such a mission, it considered that the appropriate time for it would be December 2005. It explained in this respect that, in the first half of 2005, the Government concentrated its work on implementation of the plan of action to implement the recommendations of the Commission of Inquiry. Presently, it was working on defining the next steps to take in view of the implementation of the Commission's recommendations. In the framework of this second stage, legislative issues were being discussed. However, until now, no common position of various state executive bodies had been prepared. In the Government's opinion, this work should be accomplished by the end of November 2005.
64. By its communication of 9 September 2005, the Government submitted its report under article 22 of the ILO Constitution on the measures taken by the Government of Belarus to give effect to the provisions of Convention No. 87 and requested that this be brought to the attention of the Committee on Freedom of Association. In its report, the Government provided details on the plan of action it had drawn up with a view to implementing the recommendations of the Commission of Inquiry and explained the actions it had taken in the first six months of 2005.
65. Further to the information it had provided before, the Government stated that the State Department of Labour Inspection conducted a relevant study of the use of the contracts system. Some violations were found and relevant measures were taken in this respect. To ensure the rights of workers and to further regulate the use of contracts, the Ministry of Labour and Social Policy had prepared a draft presidential decree to amend Decree No. 29. The draft proposed to establish a minimum term for which the contract could be renewed (not less than one year, unless otherwise requested by the worker). The draft specified instances when contracts could be renewed. Upon the request of the FPB, the draft contained a provision requiring the employer to notify the worker and the relevant trade union about the possibilities of his or her reemployment. The notice should be sent at least two weeks before the end of the contract. Finally, the draft decree strengthened protection of certain categories of workers, such as pregnant women, women on maternity leave or fathers on paternity leave, workers of preretirement age, highly-specialized workers having a long-term working experience in the enterprise or organization in question.
66. The Government further stated that in line with the action plan, it was presently preparing a draft law to amend the Law on Trade Unions. Attention was paid to the issues raised by the Commission of Inquiry. In addition, all cases of refusal of registrations of primary trade unions had been thoroughly examined. The Government attached an analysis of the procedure for establishment and registration of trade unions prepared by the Ministry of Justice. According to this document, the Ministry of Justice had conducted an investigation of the 43 cases of refusal of registration mentioned in the complaint and concluded that in 25 cases, the question of registration did not find a positive result. In 23 of these cases, the main obstacles were related to the question of legal address. In this respect, the Ministry of Justice referred to the requirements of the housing and civil codes. According to the

Ministry, six trade unions mentioned in Case No. 2090 were registered; in 16 cases, the complainant referred to trade unions, which either had never submitted their documents for registration or were registered. It further reiterated the information the Government had already provided to the Commission of Inquiry in respect of the following BFTU primary unions: at the Novopolotsk Housing and Communal Services enterprise, Minsk Tractor Plant, Minsk Instrumental Plant, “Shveyunik” enterprise (Borisov), “Aleksandrina”, “Uspekhn” and “Pavlinka” hairdressing salons (Mogilev), Baranovichi Technical College of the Belkoopsoyuz, Minsk Electro-Technical Plant and Construction Trust No. 12, as well as the BFTU regional organization in Baranovichi. The Ministry also referred to the lack of use by trade unions of the judicial system. It stated that the decision of the registering body had only been appealed to the courts in seven cases. Moreover, following an initial refusal to register, the complainant trade unions resubmitted their documents for registration in only eight cases. The Government stated that on the question of registration, in accordance with the action plan, it intended to take the necessary steps to study relevant international practice.

- 67.** As concerns Decree No. 24, the Government once again stressed that the Decree did not prohibit receipt and use of foreign gratuitous aid and that there were no cases of liquidation of trade unions for violation of the procedure established by the Decree. However, taking into account the recommendations of the ILO supervisory bodies, the Government intended to examine this question with a view to finding an optimal solution. One of the problems that the Government was facing was the absence of sufficient information on the relevant international practice. The Government was counting on the help of the Office in this respect.
- 68.** Presently, the Government was working on scheduling further actions to be taken with a view to implementing the plan of action. Particular attention would be paid to legislative issues, development of social dialogue and tripartism, as well as technical cooperation with the ILO. To deal with the questions of improvement of labour legislation, the Minister of Labour and Social Protection established a Council of Experts comprising representatives from Government, trade unions and employers’ organizations, as well as representatives of NGOs and academics. Trade unions were represented by the FPB and the CDTU. The Council conducted its first meeting on 2 August 2005 and discussed the questions related to the use of the contracts system and improvement of legislation on trade unions. The members of the Council were invited to submit to the Ministry of Labour and Social Protection their views on the necessary actions to take by 15 September 2005.
- 69.** In a letter of 12 October 2005, the Government, in reply to the ICFTU’s latest allegations, refers to its previous communications. As regards the Presidential Decree No. 237 on additional measures of protecting workers’ labour, socio-economic rights and interests, the Government argued that contrary to the ICFTU’s statement, this Decree did not deprive trade unions other than the FPB affiliates of the right to carry out labour inspections and control of implementation of labour legislation at enterprises. The Government explained that according to section 463 of the Labour Code and section 19 of the Law on Trade Unions, trade unions had a right to carry out control of implementation of labour legislation. The procedure of such controls was provided by Ministerial Edict No. 1630 of 23 October 2000. Decree No. 237 gave the FPB the authority to carry out labour inspections at the enterprises where no trade union existed. The Decree did not deprive other unions of their right to carry out labour inspections at the enterprises employing their own members. The Decree was adopted taking into account the fact that the FPB had necessary structures and means to carry out control of implementation of labour legislation at the national level. The additional powers were given to the FPB as the most representative workers’ organization.

D. The Committee's conclusions

70. Generally, and before analysing the information provided with respect to each of the recommendations made by the Commission of Inquiry, the Committee deeply deplores that despite the time that has elapsed since the Commission made its report in July 2004, no concrete and tangible steps appear to have been taken by the Government to give meaningful effect to these recommendations. On the one hand, the Committee has been overwhelmed by allegations from some Belarussian trade unions and the International Confederation of Free Trade Unions (ICFTU) enumerating in detail, with names, dates and locations the continuing violation of trade union rights in Belarus, while on the other hand, the Government has only communicated a plan of action that refers to further study of eventual measures to be taken. The Committee recalls in this respect that the Commission considered that all of its recommendations could and should be carried out without further delay, while recommendations 1-6, 9 and 11 should be completed by 1 June 2005. Yet, no indication has been given as to the action taken to review and redress the specific cases of anti-union discrimination and interference observed by the Commission of Inquiry. Indeed, the Government has not even deigned to reply to any of the detailed allegations received since the Commission published its report. The Committee can only emphasize in this regard the following consideration in the Commission's report:

Given its conclusions above on the trade union situation in Belarus, the Commission considers it crucial that significant steps be taken in the immediate future to permit trade unions that are outside the FPB structure to be able to form their organizations and exercise their activities freely. It is only in such circumstances that freedom of association can be said to exist in Belarus.

71. The Committee urges the Government to fully cooperate in the future with the procedure established for supervising the measures taken for the implementation of the recommendations of the Commission of Inquiry, including by furnishing full replies to all the matters raised.

1. Immediate registration of primary-level union organizations

72. The Committee recalls that the Commission, pursuant to its conclusions in respect of the allegations concerning the denial of registration for numerous trade unions at various levels, recommended that the Government take all necessary steps for the immediate registration of those organizations listed in the complaint. The Committee notes with regret that the information provided by the Government largely reiterates the indications given to the Commission of Inquiry. While the Government has stated that six trade unions have been registered, the Committee has not been able to ascertain whether any of these are from the list annexed to the report of the Commission of Inquiry and to this present document. In addition, where the Government has indicated that registration was denied, it simply reiterates the same issue of legal address that was raised in the report of the Commission of Inquiry (an obstacle that the Commission urged be immediately removed – see Recommendation 2 below). Finally, the Committee notes that the Government refers to the action plan to study relevant international practice.

73. On the other hand, the ICFTU has provided a specific update on each of the 32 primary-level organizations in question in the complaint (see annex), only one of which successfully managed to get registered because the Greek Catholic Church provided it with the required legal address. In addition, the Committee notes from the information provided by the ICFTU that a number of these organizations were ultimately obliged to wind down their affairs given their inability to exercise their trade union activities.

74. *The Committee deeply deplores this situation, which regrettably confirms its fears that, in the absence of immediate and effective measures to ensure the right to organize for these trade unions, the struggle for independent trade unionism in Belarus will be rapidly smothered. The Committee therefore urges the Government to provide detailed information on the steps taken to ensure that each of these remaining primary-level organizations is immediately registered and that workers in those enterprises where the primary-level organization has been wound down are rapidly and duly informed of the right to form and join organizations of their own choosing without interference and that the registration of any such newly created organizations is rapidly effectuated.*
75. *The Committee further notes with deep regret the information provided by the ICFTU and the Belarussian trade unions concerning the revocation of the registration of the Belarus Trade Union of Workers in the Radio and Electronics Industry, Automobile and Agricultural Machinery Workers' Union (REAMWU). It deplores the lack of reply from the Government to these grave allegations of interference in the internal affairs of trade unions and the serious consequences that this revocation has had on the functioning of both the Radio and Electronics Workers' Union (REWU) and the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU). The Committee further notes in this respect the additional allegations of pressure placed upon the primary union organizations of the REWU with a view towards revoking the national status of the REWU, as testified to by the letter of the Public Prosecutor to the union stating that all its regional organizations were not registered. The Committee therefore urges the Government to take the necessary measures immediately for the registration of the REAMWU to be restored and to ensure that all their separately affiliated organizations may remain affiliated to the newly merged organization.*
76. *The Committee notes with deep regret the further allegations that the spillover of non-registration of primary organizations has led to the denial of registration of three regional organizations of the Belarussian Free Trade Union (BFTU) (organizations in Mogilev, Baranovichi and Novopolotsk-Polotsk). The Committee requests the Government to establish an independent investigation into these allegations and to take the necessary measures to ensure the registration of the primary organizations of the BFTU which had been denied registration so that the regional organizations may once again be registered.*

2. Amendments to Decree No. 2 and its rules and regulations

77. *The Committee deeply regrets that the Government has provided no information on the measures taken to amend Decree No. 2 on some measures for regulation of activities of political parties, trade unions and other public associations and its rules and regulations as recommended by the Commission, and has merely referred to a review of registration procedures undertaken by the Ministry of Justice and an intention to study international practice. The Committee is of the opinion that, given the absence of any steps to register the organizations that were the subject of the article 26 complaint, references to a review of international practice would appear to serve as a smoke-screen for the inaction taken with respect to the concrete recommendations of the Commission. The Committee, therefore, urges the Government to take measures immediately to amend the Decree and its rules and regulations so as to eliminate the obstacles caused by the legal address requirement and by the 10 per cent minimum membership requirement at enterprise level.*

3. Transparency of Decree No. 2 and disbanding of Republican Registration Commission

78. *The Committee deeply regrets that no information has been provided by the Government as to the measures taken to implement this recommendation and urgently requests it to provide information on the steps taken to disband the Republican Registration Commission.*

4. Conclusions and recommendations to be widely disseminated and public declarations to be made condemning interference in trade union affairs, as well as the issuance of Instructions to the Prosecutor-General, Minister of Justice and court administrators to thoroughly investigate complaints of interference

79. *The Committee takes due note of the indication given by the Government that the Commission's recommendations were published in the journal of the Ministry of Labour and Social Protection. It further notes the considerations raised by the ICFTU that this publication was wholly insufficient given that there is a severely reduced circulation of this journal both in terms of addressees and numbers. In addition, the ICFTU points out that there is no indication of the recommendations in the table of contents and the conclusions have not at all been published. Finally, the Committee understands that no measures were taken for mass distribution to the public. In these circumstances, the Committee cannot but query whether the people of Belarus and, in particular, the working men and women, are truly aware of the considerations and recommendations made by the Commission of Inquiry.*

80. *In addition, no information has been provided by the Government as to the public declarations to be made by the Government clearly indicating that acts of interference in trade union affairs were unacceptable and would be sanctioned, nor has it provided any instructions issued to the Prosecutor-General, the Minister of Justice and court administrators to ensure that complaints of interference were thoroughly investigated. Indeed, in light of the information provided by the ICFTU and some Belarussian trade unions that complaints brought are still not investigated by the relevant authorities, it would appear that such instructions have not been issued. In addition, the Committee notes with deep concern the allegations made that the President of the Republic had clearly pronounced himself against independent unions and trade union pluralism at the recent FPB Congress and considers that such declarations would be in complete opposition with the recommendations made by the Commission. The Committee therefore urges the Government to give full effect to this recommendation, including by publishing fully at the national level the conclusions and recommendations of the Commission.*

5. Guaranteed protection to workers' organizations found to have suffered interference in their internal affairs

81. *The Committee recalls that the Commission's recommendations in this respect called for the establishment of an independent body having the confidence of all parties concerned to investigate any further complaints made by the organizations concerned in the complaint. It observes that, despite the numerous allegations brought to its attention by some Belarussian trade unions and the ICFTU in respect of continuing violations of trade union rights, none of these appears to have been referred by the authorities to an independent*

body and have not even been given serious attention within the respective administrative bodies. The Committee urges the Government to establish immediately an independent body having the confidence of all parties concerned to investigate the allegations raised since the publication of Commission's report and to keep it informed of the outcome.

6. Clear instructions to enterprise managers and directors

82. The Committee recalls that the Commission recommended that clear instructions be given to enterprise managers and directors not to participate in trade union decision-making. While the Government has indicated that it has submitted to the parties concerned a specific letter explaining provisions of existing national law and international labour standards defining principles of interaction of social partners and prohibiting acts of interference by trade unions and employers in each other's affairs, the Government has not provided a copy of this letter. The Committee therefore requests the Government to transmit the letter sent to enterprise managers and directors and to indicate the addressees, as well as the enterprises to which it was sent.

7. Independent investigations to be instituted into outstanding complaints

83. The Committee observes that, while the Government has provided some general information concerning its intention to address the existence of discrimination against union members, including discriminatory use of the contracts system, and to carry out a study into the practice of using fixed-term contracts and that measures would be taken to improve the protection of workers' rights, no specific information has been provided as to the measures taken to institute independent investigations having the confidence of all the parties concerned into the outstanding complaints of anti-union discrimination. The Committee further observes with concern from the allegations that several persons having testified before the Commission of Inquiry have subsequently found themselves without employment. In particular, the Committee would refer to the allegations concerning Messrs. Gaichenko, Dukhomenko, Obukhov, Shaitor, Stukov, Marinich, Dolbik and Sherbo. While Mr. Stukov has apparently been reinstated, he is said to have suffered a significant (50 per cent) reduction in pay and he has lost his seniority and acquired rights. The Committee urges the Government to institute immediately independent investigations into all the outstanding complaints of anti-union discrimination. As regards the situations of Messrs. Gaichenko, Dukhomenko, Obukhov, Shaitor, Stukov, Marinich, Dolbik and Sherba, and particularly in light of the apparently blatant link between their cooperation with the Commission and their loss of employment (or in the case of Mr. Stukov, loss of wages and rights) to which the Government has provided no reply whatsoever, the Committee urges the Government to take the necessary measures to ensure that they are reinstated in their posts with full compensation for lost wages and maintenance of their acquired rights.

8. Adequate protection against anti-union discrimination and independence of the judiciary

84. While noting the Government's indication that it intends to put into place a mechanism for the preliminary examination of labour disputes based on conciliation, mediation and voluntary arbitration, the Committee recalls that this recommendation concerns the need for adequate protection against anti-union discrimination as a question of right. The Commission had considered in this respect that such protection could only be ensured through an impartial and independent judiciary. The Committee therefore requests the Government to indicate the measures taken to implement the recommendations made by

the United Nations Special Rapporteur on the independence of judges and lawyers, as recommended by the Commission.

9. Amendment of Decree No. 24

85. *While the Government has referred to its desire to hold a seminar on the international experience in respect of the receipt of foreign gratuitous aid by trade unions, the Committee wishes to recall that the Commission made very clear conclusions in respect of Decree No. 24 on foreign gratuitous aid [see paras. 622-624 of the report of the Commission of Inquiry], which it furthermore considered could be rapidly implemented before its deadline of 1 June 2005. The Committee therefore urges the Government to take the necessary measures immediately to amend Decree No. 24 so as to ensure that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations in conformity with Articles 5 and 6 of the Convention. The Committee further requests the Government to reply to the allegations that a draft law on political parties and public associations foresees the compulsory dissolution of associations if they violate the rules on the use of foreign gratuitous aid.*

10. Amendment of Decree No. 11 and the Law on Mass Activities

86. *Similarly, the Government refers to its desire to hold a seminar on international experience on matters relating to mass trade union activities. The Committee would also recall that the Commission had made very clear conclusions in respect of the Law on Mass Activities and Decree No. 11 that are set out in paragraphs 625-627 of its report. The Commission furthermore considered that this recommendation could be implemented before its deadline of 1 June 2005. The Committee therefore urges the Government to take the necessary measures immediately to amend the Law on Mass Activities (as well as Decree No. 11 if it has not been repealed) so as to bring it in line with the right of workers' and employers' organizations to organize their activities.*

11. CDTU participation in the NCLSI

87. *The Committee observes from the information provided by the ICFTU and some Belarussian trade unions that, while the Congress of Democratic Trade Unions (CDTU) has been occasionally invited to attend the National Council on Labour and Social Issues (NCLSI), this invitation has only come from the Federation of Trade Unions of Belarus (FPB) and not the Government. The Committee would recall that the recommendations made by the Commission of Inquiry were addressed to the Government and it is the Government's responsibility to assure their full implementation. Indeed, it would be unfortunate to allow this responsibility to be fulfilled by an organization whose very independence the Commission has considered in its conclusions to be seriously compromised [Report of the Commission of Inquiry, para. 615].*

88. *The Committee further notes that, when addressing the issue of this recommendation, the Government has referred to the need to review the matter of trade union representativeness. It further observes the draft legislation provided by the ICFTU to this effect. The Committee recalls in this respect the concern that had been expressed by the Commission of Inquiry about the Government's reconsideration of the representative nature of unions such as the CDTU on the NCLSI.*

The Commission considers that restricting social dialogue to one trade union federation, whose independence has been called into question above, would not only have the effect of

further anchoring a de facto state-controlled trade union monopoly, but would also infringe upon the right of workers to form and join organizations of their own choosing, provided in Article 2 of Convention No. 87, by treating the FPB with such favouritism and placing it at such an advantage as to influence unduly the workers' choice of organization. [Report of the Commission of Inquiry, para. 630.]

- 89.** *The Committee considers that, in the present context, introducing important changes to the trade union legislation in respect of the determination of trade union representativeness as currently alleged can only be understood as an attempt to eliminate any independent voices within the trade union movement in Belarus. The Committee therefore urges the Government to put aside any proposals to amend the Law on Trade Unions and to take steps directly to invite the CDTU to participate in the NCLSI.*

12. Review of the industrial relations system

- 90.** *The Committee notes the indications from both the Government and the ICFTU that an expert council on development of the social and labour legislation including representatives from the FPB, the CDTU, the employers, NGOs, scientists and the Ministry of Labour has been established. In light of the above conclusions concerning the lack of progress made in the implementation of the recommendations of the Commission of Inquiry, however, the Committee has some doubts as to the truly effective work that may be done by this expert council in making recommendations for the industrial relations system in Belarus to ensure a clear distinction between the role of the Government and that of the social partners and to promote clearly independent structures of workers' and employers' organizations. The Committee trusts that the expert council will bear in mind all of the above conclusions in its work and requests the Government to keep it informed of the progress made in the review of the industrial relations system and any proposals made.*

* * *

- 91.** *In conclusion, the Committee must observe with the deepest regret that virtually no concrete measures have been taken by the Government to give meaningful effect to the recommendations made by the Commission of Inquiry. In addition, the Committee must express its deep regret at the Government's indication that, as there is still no common position of the state executive bodies in respect of the measures to be taken to implement the Commission's recommendations, it cannot envisage receiving the mission proposed by the Conference Committee on the Application of Standards to assist in the drafting of the necessary legislative amendments and to evaluate the measures taken by the Government before December. Such an attitude leaves the Committee little choice but to call into question the seriousness with which the Government has taken the Commission's recommendations and its deadline.*
- 92.** *The Committee urges the Government to provide detailed information on all the measures taken in respect of each of these recommendations and to reply to the allegations made by the ICFTU and certain Belarussian trade unions, in particular in respect of the recent Decree No. 460 on international technical assistance rendered to Belarus, as well as the Amendments to the Rules of the Ministry of Justice on Registration of Political Parties, Trade Unions and other Public Associations of 14 March 2005.*

The Committee's recommendations

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

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- (a) *The Committee urges the Government to fully cooperate in the future with the procedure established for supervising the measures taken for the implementation of the recommendations of the Commission of Inquiry, including by furnishing full replies to all the matters raised.*
- (b) *The Committee urges the Government to provide detailed information on the steps taken to ensure that each of the remaining primary-level organizations is immediately registered (see annex) and that workers in those enterprises where the primary-level organization has been wound down are rapidly and duly informed of the right to form and join organizations of their own choosing without interference and that the registration of any such newly created organizations is rapidly effectuated.*
- (c) *The Committee urges the Government to take the necessary measures immediately for the registration of the REAAMWU to be restored and to ensure that all their separately affiliated organizations may remain affiliated to the newly merged organization. The Committee further requests the Government to establish an independent investigation into the allegations that the non-registration of primary organizations has led to the denial of registration of three regional organizations of the Belarussian Free Trade Union (BFTU) (organizations in Mogilev, Baranovichi and Novopolotsk-Polotsk) and to take the necessary measures to ensure the registration of the primary organizations of the BFTU which had been denied registration so that the regional organizations may once again be registered.*
- (d) *The Committee urges the Government to take measures immediately to amend Decree No. 2 and its rules and regulations so as to eliminate the obstacles caused by the legal address requirement and by the 10 per cent minimum membership requirement at enterprise level. It further requests the Government to take the necessary measures to disband the Republican Registration Commission.*
- (e) *The Committee urgently requests the Government to make a public declaration condemning interference in trade union affairs and to issue instructions to the Prosecutor-General, Minister of Justice and court administrators to thoroughly investigate complaints of interference. The Committee further requests the Government to publish the conclusions and recommendations of the Commission of Inquiry fully at national level.*
- (f) *The Committee urges the Government to establish immediately an independent body having the confidence of all parties concerned to investigate the allegations raised since the publication of the Commission's report and to keep it informed of the outcome.*
- (g) *The Committee requests the Government to transmit the letter sent to enterprise managers and directors explaining provisions of national law and international labour standards defining principles of interaction of social partners and prohibiting acts of interference and to indicate the addressees, as well as the enterprises to which it was sent.*
- (h) *The Committee urges the Government to institute immediately independent investigations into all the outstanding complaints of anti-union*

discrimination. As regards the situations of Messrs. Gaichenko, Dukhomenko, Obukhov, Shaitor, Stukov, Marinich, Dolbik and Sherbo, the Committee urges the Government to take the necessary measures to ensure that they are reinstated in their posts with full compensation for lost wages and maintenance of their acquired rights.

- (i) The Committee requests the Government to indicate the measures taken to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers.*
- (j) The Committee urges the Government to take the necessary measures immediately to amend Decree No. 24 so as to ensure that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations in conformity with Articles 5 and 6 of the Convention. The Committee further requests the Government to reply to the allegations that a draft law on political parties and public associations foresees the compulsory dissolution of associations if they violate the rules on the use of foreign gratuitous aid.*
- (k) The Committee urges the Government to take the necessary measures immediately to amend the Law on Mass Activities (as well as Decree No. 11 if it has not been repealed) so as to bring it in line with the right of workers' and employers' organizations to organize their activities.*
- (l) The Committee urges the Government to put aside any proposals to amend the Law on Trade Unions and to take steps directly to invite the CDTU to participate in the NCLSI.*
- (m) The Committee urges the Government to provide detailed information on all the measures taken in respect of each of these recommendations and to reply to the allegations made by the ICFTU and certain Belarussian trade unions, in particular in respect of the recent Decree No. 460 on international technical assistance rendered to Belarus, as well as the amendments to the Rules of the Ministry of Justice on Registration of Political Parties, Trade Unions and other Public Associations of 14 March 2005.*

Geneva, 11 November 2005.

(Signed) Professor Paul van der Heijden,
Chairperson.

Point for decision: Paragraph 93.

Annex

Follow-up on primary organizations mentioned in the report of the ILO Commission of Inquiry that were denied registration

1. Mogilev Automobile Plant – the organization previously affiliated to the BFTU is now affiliated to REWU and still not registered. They were refused registration twice since they could not obtain a legal address from the employer.
2. Mogilev Construction Trust No. 12 – organization ceased to exist in 2004.
3. Mogilev “private entrepreneurs” – not registered.
4. “Kristina” hairdressing salon (Mogilev) – not registered.
5. “Aleksandrina” hairdressing salon (Mogilev) – not registered.
6. “Uspekhn” hairdressing salon (Mogilev) – not registered.
7. “Pavlinka” hairdressing salon (Mogilev) – not registered.
8. Artificial Fibre Production Plant named after V.V. Kuibyshev (Mogilev) – previously affiliated to the BFTU, now trying to register as an affiliate of the Free Trade Union of Metalworkers.
9. BFTU regional organization (Mogilev) – did not reapply for registration, since their application would have been rejected because they do not have three registered primary organizations.
10. “Khimvolokno” enterprise (Grodno) – not registered, organization almost ceased to exist.
11. “Samana Plus” enterprise (Mosty) – not registered, organization almost ceased to exist.
12. Orsha Flax Processing Factory – not registered, only a few members remained.
13. “Orsha-Zhilfond” enterprise – not registered, only a few members remained, trade union leaders were dismissed.
14. “Orshateploseti” enterprise - not registered, only a few members remained.
15. “Avtogydrousilitel” Plant (Borisov) – trying to register and obtain the legal address.
16. “Steklovolokno” enterprise (Polotsk) – registered, since the legal address was provided by the Greek Catholic Church.
17. Novopolotsk Housing and Communal Services enterprise – not registered, ceased to exist.

18. Novopolotsk Heat and Power Generation Plant – not registered.
19. “Naftan” enterprise (Novopolotsk) – not registered, organization still exists.
20. Secondary School No. 7 (Novopolotsk) – organization was wound up.
21. Secondary School No. 4 (Novopolotsk) – organization was wound up.
22. Secondary School No. 10 (Polotsk) – organization was wound up.
23. BFTU regional organization (Novopolotsk-Polotsk) – not registered.
24. Gantsevichi central district hospital – not registered, only four trade union members remained in May 2005.
25. Automated Lines Plant (Baranovichi) - organization was wound up.
26. Baranovichi Technical College of the Belkoopsoyuz - organization was wound up.
27. Belarussian Free Trade Union regional organization (Baranovichi) – organization was wound up since none of its primary organizations was in fact registered.
28. Minsk Automobile Plant – organization asked the enterprise management to provide the legal address, no response has been received yet.
29. Minsk Tractor Plant – not registered, wound up already in 2003.
30. Minsk Electro-Technical Plant – now an organization of the Free Trade Union of Metalworkers, enterprise management does not provide legal address.
31. Minsk Motor Plant – not registered.
32. “Ekran” enterprise – not registered.