



EIGHTH ITEM ON THE AGENDA

**341st Report of the Committee  
on Freedom of Association**

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## 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 16, 17 and 24 March 2006, under the chairmanship of Professor Paul van der Heijden.
2. Subsequent to the decision of the Governing Body, at its 291st Session, that the implementation of the recommendations of the Commission of Inquiry established to examine the observance by the Government 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), should be followed up by the Committee on Freedom of Association, the Committee first examined this matter in its 339th Report (November 2005), which was approved by the Governing Body at its 294th Session.
3. On this occasion, the Committee made the following recommendations:
  - (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 Belarusian 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 Belarusian 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.
4. Following an acceptance by the Government of Belarus of an ILO mission to assist in the drafting of the legislative amendments requested by the Commission of Inquiry and to evaluate the measures taken by the Government to implement fully the Commission's recommendations, an ILO delegation visited Minsk from 16 to 19 January 2006. A copy of the report of this mission is attached.
5. The Radio and Electronics Workers' Union (REWU) sent new allegations relating to the recommendations of the Commission of Inquiry in a communication dated 30 December 2005 and submitted further allegations on 19 January 2006. The Congress of Democratic Trade Unions (CDTU) submitted new allegations in a communication dated 18 January 2006.
6. The Government transmitted its observations on the measures taken to implement the Commission of Inquiry recommendations in communications dated 1 November 2005 and 15 February 2006.

7. The Committee has examined the information contained in the Government's communications and the new allegations and additional information provided by the CDTU 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 30 December 2005 and in its additional communication received by the mission during its visit in January 2006, the Radio and Electronics Workers' Union (REWU) indicated that gross violations of trade union rights continued in Belarus. In particular, the REWU referred to several cases of refusal to register its primary trade unions. The REWU referred in particular to its organizational structures at the Minsk Automobile Plant (MAZ), the Mogilev Automobile Plant (MoAZ), "Ritm" enterprise, "Borisov enterprise of musical instruments". In addition, the relevant district executive committee removed the primary trade union organization of the KBTEM-OMO of the "Planar" enterprise from the record.
9. The REWU also indicated that from January to October 2005, upon a request from the Ministry of Justice, the Office of the Prosecutor conducted an inquiry into its status. The Prosecutor addressed numerous representations and letters stating that the REWU could not enjoy the national status as not all of its regional organizational structures were registered. The complainant explained that Decree No. 2 concerning registration required 500 members from the majority of regions of Belarus for registration at national level and did not require registration of all regional trade union structures. The REWU pointed out that it had over 500 members from all the regions and therefore should be considered to be in conformity with the legislation.
10. The REWU further informed of the adoption by the Ministry of Justice of Edict No. 48 of 30 August 2005 providing for an Instruction on the procedure of registration and deregistration of trade unions and conferring broad powers to the registering bodies to cancel registration of a trade union. Moreover, this Instruction did not provide for an appeal procedure of a decision denying registration. The Borisov district court refused to institute proceedings against the decision not to register the REWU organizational structure taken by the executive committee of Borisov (the registering body) referring to the fact that such a possibility was not provided for in the above Instruction.
11. The REWU further alleged that its members were constantly exposed to anti-union pressure on behalf of the authorities and certain employers. It referred to the case of the dismissal of Mr. Savkin, the chairperson of the Grodno Automobile Aggregate Plant trade union, an administrative sanction in a form of a fine imposed on Mr. Roman for disseminating a trade union newspaper, pressure and threats which took place at the Mogilev Plant of Artificial Fiber ("Mogilev ZIV") and at the Minsk Automobile Plant (MAZ) aimed at dissolving the REWU primary trade unions at these enterprises.
12. The REWU further referred to the adoption on 17 July 2005 of Ordinance No. 327 on Additional Measures of Protecting Workers' Labour, Socio-economic Rights and Interests, which created a situation where labour inspection and control of implementation of labour legislation at enterprises could only be carried out by the Federation of Trade Unions of Belarus (FPB) and its affiliates.
13. The REWU further alleged that Presidential Ordinance No. 300 of 1 July 2005 on the provision and use of gratuitous aid (sponsorship) restricted the right of trade unions to

provide material aid to its members. According to the complainant, permission would now be required from the President in this respect.

- 14.** The REWU expressed its concern over the amendment introduced to the Criminal Code in particular as regards provisions that criminalize the “transmittal of wittingly false information to foreign state, foreign or international organizations on political, economic, social, military or international situation of the country which could discredit the Republic of Belarus or its authorities”. According to the complainant, the KGB chairperson who presented the amendments to the Parliament stated that the information given by certain trade union leaders which resulted in a six-month ultimatum given to the authorities by the ILO” was a concrete example of “false information” under the new provision of the Criminal Code.
- 15.** The REWU also informed that on 11 January 2006, the Ministry of Justice registered the new amendments of the REWU by-laws. However, that did not mean the restoration of the REAAMWU, i.e. the merger of the REWU with the Belarus Automobile and Agricultural Machinery Workers’ Union (AAMWU).
- 16.** In its communication of 18 January, the Congress of Democratic Trade Unions (CDTU) referred to the ongoing violation of trade union rights. It also made reference to Presidential Ordinance No. 327 and the corresponding Edict of the Ministry of Labour and Social Protection No, 119 of 23 September 2005 on rules of the state and social control of timely payment of wages, also allegedly conferring exclusive rights to the FPB. The CDTU further referred to Ordinance No. 382 amending Ordinance No. 460 on international technical assistance rendered to the Republic of Belarus.
- 17.** In its communication of 18 January, the Congress of Democratic Trade Unions (CDTU) referred to the ongoing violation of trade union rights. It made reference to the following pieces of legislation, which in its opinion violated trade union rights and was discriminatory:

  - (a) Presidential Ordinance No. 327;
  - (b) Edict of the Ministry of Labour and Social Protection No, 119 of 23 September 2005 on rules of the state and social control of timely payment of wages, which also conferred exclusive rights to the FPB;
  - (c) Presidential Ordinance No. 382 amending Ordinance No. 460 on international technical assistance rendered to the Republic of Belarus;
  - (d) Presidential Ordinance No. 503 of 26 October 2005 amending Presidential Ordinance No. 495 of 30 September 2002 setting the rules of rent and gratuitous transfer of state-owned buildings and premises. By this Ordinance, the FPB and its affiliates were granted the right to use state-owned buildings free of charge;
  - (e) section 369 of the Criminal Code on discrediting the Republic of Belarus. The CDTU also made reference to the speech of the KGB chairperson.
- 18.** The CDTU further provided concrete example of the practical effect of the above Ordinances. The CDTU further informed of the continued refusal by the authorities to register the BFTU primary organizations at the “Naftan” enterprise, Novopolotsk Heat and Power Generation Plant, as well as Belarusian Free Trade Union (BFTU) Novopolotsk-Polotsk regional organization due to the absence of a legal address. Contrary to the Commission of Inquiry’s recommendations, the managers of “MAZ”, “Avtogydrousilitel” Plant in Borisov, Minsk Electro-Technical Plant, Artificial Fibre Plant in Mogilev and Jitkovochi Motor-building Plant continued to ignore the Free Metal Workers’ Union

(FMWU) primary trade unions' requests to provide them with legal addresses. In April 2005, the FMWU chairperson addressed the Prime Minister with a request to oblige the management of the enterprises to provide the FMWU with the legal addresses, but no answer was ever received.

19. As concerned the participation of the CDTU in the National Council for Labour and Social Issues (NCLSI), the complainant organization explained that they had finally participated in the NCLSI meeting on 29 November 2005 (although the invitation had still been addressed to one individual of the CDTU determining who would represent it), but they had to leave following the adoption of the new regulations of the Council, according to which, a minimum membership of 50,000 was required to be a member of the NCLSI. The CDTU, representing about 10,000 workers would no longer hold a seat in the NCLSI.
20. As regards the cases of anti-union discrimination, the CDTU indicated that Mr. Sherbo, faced with the possibility of losing his job, had to accept a demotion and was now employed as a plumber.
21. The CDTU further referred to the participation of the President of the Republic of Belarus at the 5th FPB Convention on 20 September 2005 where in his speech he criticized leaders of those free and independent trade unions, which wrote complaints to the ILO. A Protocol of Instructions of the President of Belarus was then issued whereby Mr. Lukashenko instructed the Council of Ministers together with the FPB to take measures aimed at introducing a practice of: conclusion of one single collective agreement at the enterprise level; hiring to the executive and legislative bodies of the best trade union representatives; establishing trade union organizations in private sector of the economy; and optimisation of the FPB organizational structure and participation of the FPB representatives in the work of collegial bodies of executive power at national and local levels.
22. The CDTU informed of other actions taken by the authorities to restrict the activities of independent trade unions; new requirements were imposed on trade unions wishing to carry out mass-meetings, picketing or demonstrations, making these actions of protest impossible in practice. The trade union newspaper "Solidarnost" had to cease its activities as it could no longer be disseminated. There were regular inquiries and inspections of the FMWU and an ongoing anti-union campaign aimed at liquidating the BITU.

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

23. In its communication dated 1 November 2005, the Government referred to the allegations of the International Confederation of Free Trade Unions (ICFTU) which, according to the Government, covered a range of issues that did not fall within the purview of the Government, but which related to the activities of trade unions belonging to the Federation of Trade Unions of Belarus (FPB). The Government thus sent this information to the FPB for its consideration and transmitted its observations thereon for the Committee's consideration.
24. In its communication dated 24 October 2005, the FPB stated that there were a number of unfounded claims in the allegations made by the ICFTU and in its report on trade union rights in Belarus: implementing the recommendations of the ILO Commission of Inquiry. The FPB insisted upon the fact that the ICFTU held consultations in 2004 and 2005 uniquely with the CDTU, which, in the opinion of the FPB, significantly contributed to the one-sided nature of the ICFTU's information and its report. According to the FPB, such one-sidedness detracted from the value of the ICFTU's report both for the ILO and for the trade union movement.

25. As regards Presidential Ordinance No. 327, the FPB stated that the right of trade unions to monitor the application of labour legislation was afforded by the Law on Trade Unions. The Law also provided that the procedure for exercising this right should be established by the Council of Ministers. Previously, this procedure was set up by Edict of the Council of Minister No. 1630 which applied to all trade unions. Now, this Edict was amended by Edict No. 995 of 7 September 2005 and brought into conformity with Ordinance No. 327. In the FPB's view, these additional pieces of legislation were adopted to protect the labour and socio-economic rights of workers and in no way affected the right of trade unions not affiliated to the FPB to exercise public control.
26. As concerns the Law on Trade Unions, the FPB indicated that it had set up a committee to revise this Law. The committee held its first meeting on 5 October 2005. Along with the FPB representatives, the following trade unions participated in its work: the CDTU, the BFTU and the Belarusian Independent Trade Union of Miners, Chemists, Oil Workers, Energy Workers, Transport Workers, Builders and Other Workers. The revised version of the Law would be submitted to the Parliament in 2006.
27. With regard to the use of fixed-term contracts, the FPB indicated that it was engaged in extensive discussions on legislation concerning the labour and socio-economic right of citizens. On 4 May 2005, the FPB held a meeting to examine amendments to the Labour Code, to which representatives of other trade unions were invited. However, this invitation was ignored. The FPB was not aware of any draft amendments or legislation providing for an increase in the use of fixed-term contracts.
28. Moreover, the claim that Mr. Bukhvostov was ousted from his post as Chairperson of the Automobile and Agricultural Machinery Workers' Union (AAMWU) as a result of pressure from the president of the FPB was false. The decision was taken democratically at the AAMWU Congress in December 2003. According to the FPB, this decision was taken because the members did not agree with positions taken by its then leader, which involved it in political wrangling.
29. As concerns the participation of the CDTU representatives in the NCSLI meetings, the FPB indicated that each of the social partners nominated its own representatives to the Council. The CDTU was represented by its vice-chairperson Mr. Kanakh. Each of the social partners independently invited its members to the NCSLI meetings, therefore, the CDTU's complaint that the invitations to participate in the meetings were sent not by the Government but by the FPB was groundless. Despite the FPB regular invitations to Mr. Kanakh, he did not participate in these meetings. Moreover, the CDTU representatives had also a standing invitation to the FPB meetings to discuss matters relating to the labour and socio-economic interests of workers.
30. The FPB further considered that the use by the ICFTU of the term "under government control" when referring to the FPB or its affiliates was discriminatory, unacceptable and damaging the international image of the FPB. The FPB had a constructive cooperation with the Government and employers, based on the principles of social partnership. On more than one occasion, it had opposed the adoption of legislation worsening conditions of workers.
31. Finally, the FPB referred to the decision by the International Metalworkers' Federation (IMF) to exclude the AAMWU following the decision by its membership not to re-elect Mr. Bukhvostov. The FPB criticized the approach of the IMF and its refusal to enter into dialogue in this regard and referred to solidarity that had been expressed for the AAMWU by other unions from the same sector in the region and by the International Association of Automobile and Agricultural Machinery Workers' Union.

32. In its communication of 15 February 2006, the Government stated that it always cooperated with the ILO in a constructive manner: it regularly sent its reports and comments, conducted consultations with the Office and, in the past years, it accepted three ILO missions and a mission of the Commission of Inquiry. As concerns the last mission conducted in January 2006, the Government indicated that the Conference Committee recommended that the Government accept a mission without however establishing the exact dates. While the Office had requested the Government to accept the mission in September 2005, the Ministry of Labour and Social Protection proposed the month of December. As these dates were not convenient for the Office, the mission was finally confirmed for January. The Government stressed that it had never refused to accept a mission; the question was rather that of the acceptable dates for it to take place.
33. The Government provided statistics on registration of trade unions and their organizations. Forty trade unions and 21,992 of their organizational structures were presently registered. It further stated that, in 2005, the following trade unions were denied registration: the REWU primary trade union at the Mogilev Automobile Plant (MoAZ), the FMWU primary trade union at the Mogilev Plant of Artificial Fibre (“Mogilev ZIV”), the REWU primary trade union at the Grodno Automobile Aggregate Plant and the REWU primary trade union at the “Borisov enterprise of musical instruments”.
34. The Government provided explanations on the numerical requirements provided for by Decree No. 2 on establishing trade unions at the republican, territorial and enterprise levels and recalled the various rights of workers in registered and non-registered primary-level organizations. It considered that denial of registration to the primary trade union could not be considered to be a violation of a worker’s right to join a trade union, as workers wishing to establish a primary trade union were already members of a higher level union. The Government recalled that the procedure of registration was regulated by Decree No. 2 and by the Instruction on the procedure of registration and deregistration of trade unions, promulgated by the Ministry of Justice Edict No. 48 of 30 August 2005. The procedure of registration did not confer discretionary rights on the registering bodies. Moreover, any refusal to register could be appealed in court. The procedure of registration was not complicated and was carried out within 30 days.
35. The main reason for refusal to register an organization was the absence of a legal address. While according to the legislation, the employer shall provide trade unions with premises and other facilities, the question of a legal address was the one to be decided by agreement between an employer and a trade union. As a rule, employers provide premises to one, most representative, trade union organization at the enterprise. If another trade union was subsequently established at the enterprise, employers were rather reluctant to provide it with premises. By providing premises to the second trade union, the employer created conditions for its registration and therefore created another partner, usually representing a small number of workers, with whom negotiations would have to be held, as section 356 of the Labour Code provided that collective bargaining must be conducted with all workers’ representative bodies. Many employers preferred to conduct collective bargaining with one trade union and to sign one collective agreement. Workers who were not represented by a trade union in collective bargaining could request, however, a collective agreement to be made applicable to them. Thus, the question of a legal address was usually related to the question of representativeness of an organization. There were cases, however, where two trade union organizations were both provided with premises, such as “Belaruskalyi” in Soligorsk, where one union represented 14,000 workers and the other – a CDTU affiliate – represented over 3,000 workers. The Government submitted that while in practice the majority of trade unions had their legal address at the enterprise, the legislation did not require this, thereby excluding all possibility of dependence of a trade union from the employer. It was, however, necessary for the legal address to be within the same administrative territory.

36. As for the letter from the Ministry of Labour and Social Protection on the development of social partnership of 24 May 2005, the Government explained that this letter was sent to various state bodies (in total, 47 letters were sent) including the Ministry of Industry, which, in turn, sent its letter to various enterprises and conducted a meeting on this question with the management of largest enterprises. The Government attached to its communication copies of minutes of meetings taken place at 57 enterprises during which the letter of the Ministry was discussed.
37. With regard to the use of fixed-term forms of employment and the alleged cases of anti-union discrimination, the Government reiterated information it had provided to the mission in January, referring to Presidential Decree No. 29 and Presidential Ordinance No. 392 amending Presidential Ordinance No. 180, explaining its provisions and providing information on the number of inspections conducted in 2005 into the use of such contracts and the types of violations found.
38. The Government also provided information on the cases of Messrs. Gaichenko, Dukhomenko, Obukhov, Dolbik, Shaitor, Sherbo, Marinich and Stukov. It reiterated that no violation of the labour law was found by the additional inspections set up to examine these cases and transmitted some relevant court judgements. Messrs. Gaichenko, Dukhomenko, Obukhov and Dolbik were not dismissed, but rather their contracts expired and were not renewed. The Government further provided additional information on the case of Mr. Marinich, who, according to the Government, resigned from his job on 30 June 2004 and, since 18 August 2004, was employed at the Minsk Electro-Technical Plant. Mr. Stukov, dismissed for damaging enterprise property, was re-employed in his previous position on 29 May 2004. On 5 July 2004, a one-year contract was concluded with him and, upon its expiration, his contract was renewed for a term of four years, i.e. until 4 July 2009 (the order of the enterprise management is attached).
39. The Government also provided information on the number of court cases concerning reinstatements or non-payment of salaries considered in 2005 and the role played by trade unions in this respect. However, no cases of violation of trade union rights were found.
40. As regards the changes to the NCLSI, the Government recalled that each of the social partners represented at the Council nominated its own representatives. The insufficient regulation of the question of representation, however, often led to conflictual situations. Therefore, upon the initiative of the FPB, new rules regulating the composition of the Council were adopted. For trade unions, a minimum membership of 50,000 workers was required to become a member of the NCLSI. Thus, the CDTU, representing about 8,000 workers, would no longer hold a seat on the NCLSI. The new regulations did, however, provide for guarantees for those less representative organizations, which could not be members of the Council. The Government therefore considered that it had implemented recommendation No. 11 of the Commission of Inquiry.
41. Finally, the Government reiterated its interest in receiving ILO technical assistance on the question of the recommendations of the Commission of Inquiry and expressed its willingness to start work on the preparation of the seminars on international experience in the sphere of trade union rights. The Government considered that, together with the Office, it could find the best ways to improve its legislation on trade unions.

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

42. *The Committee takes note of the report of the mission sent to Belarus from 16-19 January 2006 and expresses its great concern over the conclusions of this mission in respect of the measures taken to implement the recommendations of the Commission of Inquiry. The Committee notes from this report that, not only has there been no real progress in*

implementing these recommendations, there appears to be no true desire to do so. According to the report, “the Government has not been ready to avail itself of ILO assistance on occasions where this might have helped in addressing its recommendations. Instead, it had given itself interpretation to them, exclusively focusing on the question of representativeness”.

43. *The Committee deeply deplores the apparent blanket refusal on the part of the Government to address the real issues raised in the report of the Commission of Inquiry. It condemns in the strongest terms the intransigence of the Government to focus all its actions on the notion of representativeness against which the Committee had advised in its previous examination of this case precisely because, “in the present context, introducing important changes to the trade union legislation in respect of the determination of trade union representativeness ... can only be understood as an attempt to eliminate any independent voices within the trade union movement in Belarus” [see 339th Report, para. 89]. Indeed, the Committee notes with deep regret from the mission report that the focus on this issue is just one of many means apparently used at present to cement the monopoly-like situation of the Federation of Trade Unions of Belarus (FBP), which also include favouritism by turning over the responsibility for drafting legislation to the FPB and ensuring it sole representation on the national tripartite body.*
44. *In this respect, the Committee deeply deplores the fact that, rather than ensuring the seat on the National Council on Labour and Social Issues (NCLSI) for the representative of the CDTU’s own choosing, it appears from the information provided by the FPB through the Government that it was the FPB that continued to take responsibility for sending invitations for “its” group and that these invitations were always sent only to one individual of the CDTU specified by name. Moreover, rather than taking its responsibility for ensuring the implementation of this relatively simple recommendation of the Commission of Inquiry, it appears from the mission report that the Government took no steps to restrain a FPB initiative to establish a minimum membership requirement for the NCLSI that would surely eliminate the CDTU’s membership in this body, and even voted for it. The Committee calls upon the Government to address this situation and take the necessary measures to ensure that the CDTU has a seat on the NCLSI so that its voice may be truly heard within the social dialogue at the national level.*
45. *The Committee can only see the Government’s attitude in this regard as symptomatic of a total lack of understanding of, or willingness to doing anything about, the heart of the problem, as raised in the conclusions of the Commission of Inquiry, that the trade union movement in Belarus has been and continues to be the subject of significant interference on the part of the Government authorities undermining one of the most essential prerequisites of freedom of association: trade union independence [see Trade union rights in Belarus: Report of the Commission of Inquiry (July 2004), para. 614].*
46. *As regards the recent initiative led by the FPB to amend the Law on Trade Unions that the Government referred to on several occasions to the mission, the Committee expresses its deep concern that, once again, the focus has been placed on areas that were not in themselves the subject of the recommendations of the Commission of Inquiry. The Committee expects that the Government will transmit any new drafts of the Law on Trade Unions to the ILO for advice in terms of their conformity with international labour standards and the recommendations of the Commission of Inquiry before placing them before the Parliament for adoption. The Committee requests the Government to keep it informed of all developments in respect of this Law.*
47. *As regards the recommendation concerning clear instructions to be given to enterprise managers and directors not to participate in trade union decision-making, the Committee had noted in its previous examination of this case the Government’s indication that it had*

*submitted a specific letter explaining provisions of existing national law and international labour standards to the parties concerned and requested the Government to provide a copy of this letter and to indicate the addresses and enterprises to which it had been sent. The Committee now notes from the mission report and the Government's communication of 15 February 2006 that it transmitted a letter on the development of social partnership to the other ministries, which were to inform the enterprises. In this respect, the Government transmits 57 sets of minutes from meetings – most of which had taken place in 2006 – at individual enterprises addressing these matters in a general manner and referring to the corresponding letter of the Ministry of Industry dated 30 December 2005. The Committee expects that the Government will pursue these instructions in a more systematic and accelerated manner so as to ensure that enterprise managers and directors do not interfere in the internal affairs of trade unions and that they will respect the autonomy of trade unions.*

- 48.** *Finally, the Committee deeply regrets to note from the mission report that, as regards the individual cases of anti-union discrimination and non-renewal of contracts of individuals who had spoken to the Commission of Inquiry, several of these individuals were still out of employment, while others were obliged to take up posts representing a significant demotion. It further deplores the fact that, from the court judgements provided, in one case, no motivation was given for the dismissal and, in another, no anti-union discrimination was found on the mere basis that the union no longer existed. In several cases, union leaders who had hitherto exemplary service over many years were dismissed or not renewed. In reply to a statement in one case that the individual was told by management that he should not have spoken to the Commission of Inquiry, the court found no validity for this argument simply because his name was not specified in the report. The Committee urges the Government to redress immediately the situation of those workers that have suffered consequences for cooperating with the Commission of Inquiry and refers specifically in this respect to Messrs. Gaichenko, Dukhomenko, Obukhov, Shaitor, Dolbik and Sherbo. As regards Mr. Stukov, the Committee notes the Government's statement that he was re-employed. It notes, however, that the CDTU informed the mission that, while Mr. Stukov was in fact re-employed, he lost his benefits acquired through his previous years of employment. The Committee therefore requests the Government to ensure that Mr. Stukov's acquired rights are maintained.*
- 49.** *The Committee notes the information provided by the REWU on the recent refusals to register their primary trade union organizations at the following enterprises: Minsk Automobile Plant (MAZ), Mogilev Automobile Plant (MoAZ), "Ritm" enterprise and "Borisov enterprise of musical instruments". Indeed, in its latest communication, the Government confirms that the following trade unions were denied registration: the REWU primary trade union at the MoAZ, the FMWU primary trade union at the Mogilev Plant of Artificial Fiber ("Mogilev ZIV"), the REWU primary trade union at the Grodno Automobile Aggregate Plant and the REWU primary trade union at the "Borisov enterprise of musical instruments". The Committee further notes that the Government considers that the denial of registration of a primary-level organization could not be considered as a denial of the right to join a trade union, as workers wishing to establish a primary trade union are already members of a higher level union. The Committee points out that, under Article 2 of Convention No. 87, workers have the right to establish organizations of their own choosing and considers that this right includes the right to form organizations at the enterprise level in addition to the higher level organization to which they already belong. The Committee therefore urges the Government to take the necessary steps of the immediate registration of the abovementioned primary-level organizations as well as those that were previously the subject of the complaint and to ensure that the workers of those enterprises where the primary-level organization has been wound down are rapidly and duly informed of their right to form and join organizations of their own*

*choosing without interference and that the registration of any such newly created organization is rapidly effectuated.*

- 50.** *The Committee notes that the Government admits that the main reason for refusal to register trade union organizations is the absence of a legal address. It further notes the Government's statement that such a situation is the result of reluctance of employers to provide trade unions with premises as, by doing so, they would create conditions for their registration and thereby create an additional organization with which they would have to bargain collectively. Recalling that it is the Government's responsibility to take all necessary steps to ensure respect of trade union rights, it once again 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.*
- 51.** *In light of all of the above, the Committee considers itself obliged to sound the alarm that, rather than making good faith efforts to implement the recommendations of the Commission of Inquiry, the Government is on a path to eliminating all remnants of an independent trade union in Belarus, apparently hoping that in this way there in effect will be no further sources of complaint. The Committee can only, therefore, reiterate its previous recommendations and urge the Government in the strongest of terms to take appropriate and concrete measures immediately so as to ensure that workers may form and join organizations outside the FPB freely and without pressure or intimidation on the part of enterprise management or the public authorities and that these organizations may exercise their activities without government interference.*
- 52.** *The Committee notes the latest allegations made by the Congress of Democratic Trade Unions (CDTU) and the Radio and Electronic Workers' Union (REWU), which further refer to the continuing interference, harassment and pressure they are experiencing to cease their activities, as well as the pressure on their members to transfer to the organizational structures of the FPB. The Committee urges the Government to reply to these latest allegations as a matter of urgency.*

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

- 53.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee is obliged to express in the strongest terms its deep concern that, rather than making good faith efforts to implement the recommendations of the Commission of Inquiry, the Government is on a path to eliminating all remnants of an independent trade union in Belarus, apparently hoping that in this way there in effect will be no further sources of complaint. The Committee can only, therefore, reiterate its previous recommendations and urge the Government in the strongest of terms to take appropriate and concrete measures immediately so as to ensure that workers may form and join organizations outside the FPB freely and without pressure or intimidation on the part of enterprise management or the public authorities and that these organizations may exercise their activities without Government interference.*
- (b) *The Committee calls upon the Government to take the necessary measures to ensure that the CDTU has a seat on the NCLSI so that its voice may be truly heard within the social dialogue at the national level.*

- (c) *The Committee expects that the Government will transmit any new drafts of the Law on Trade Unions to the ILO for advice in terms of its conformity with international labour standards and the recommendations of the Commission of Inquiry before placing them before the Parliament for adoption. The Committee requests the Government to keep it informed of all developments in respect of this Law.*
- (d) *The Committee expects that the Government will pursue the instructions to be given to enterprises in a more systematic and accelerated manner so as to ensure that enterprise managers and directors do not interfere in the internal affairs of trade unions, and that they will respect the autonomy of trade unions.*
- (e) *The Committee urges the Government to redress immediately the situation of those workers that have suffered consequences for cooperating with the Commission of Inquiry and refers specifically in this respect to Messrs. Gaichenko, Dukhomenko, Obukhov, Shaitor, Dolbik and Sherbo. It further requests the Government to ensure that Mr. Stukov's rights and benefits acquired through previous years of employment are maintained.*
- (f) *The Committee urges the Government to provide detailed information on the steps taken to ensure the immediate registration of the primary-level organizations that were the subject of the complaint and to ensure the workers in those enterprises where the primary-level organization has been wound down are rapidly and duly informed of their right to form and join organizations of their own choosing without interference and that the registration of any such newly created organization is rapidly effectuated.*
- (g) *The Committee urges 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 Belarusian Free Trade Union (BFTU) (organizations in Mogilev, Baranovich 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.*
- (h) *The Committee once again 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.*
- (i) *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 and to ensure a wide distribution to the working men and women of Belarus.*

- (j) *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.*
- (k) *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.*
- (l) *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.*
- (m) *The Committee requests the Government to provide full details on the steps taken to implement the above recommendations.*
- (n) *The Committee urges the Government to reply to the latest allegations from the Congress of Democratic Trade Unions (CDTU) and the Radio and Electronic Workers' Union (REWU) as a matter of urgency.*

Geneva, 24 March 2006.

(Signed) Professor Paul van der Heijden,  
Chairperson.

*Point for decision:* Paragraph 53.

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## Annex

### Mission report

Belarus (16-19 January 2006)

#### I. Background information

1. At its meeting in June 2005, the Conference Committee on the Application of Standards urged the Government of Belarus to accept a mission from the Office to assist in the drafting of the legislative amendments requested by the Commission of Inquiry and to evaluate the measures taken by the Government to implement fully the Commission's recommendations. By a communication of 14 November 2005, the Government of Belarus accepted an ILO mission to Minsk from 16 to 19 January 2006. The ILO delegation included Mr. Kari Tapiola, Executive Director for Fundamental Principles and Rights at Work, Ms. Karen Curtis, Deputy Director of the Standards Department, and Ms. Oksana Wolfson, legal officer of the same Department.
2. Prior to the visit to Minsk, the International Labour Office learned of amendments introduced to the Criminal Code in particular as regards provisions that criminalize the "transmittal of wittingly false information to foreign state, foreign or international organization on political, economical, social, military or international situation of the country which could discredit the Republic of Belarus or its authorities". Concerned that such a legislation could have an intimidating effect on complainants and on persons that the mission wished to have contact with, the International Labour Office prepared a Note Verbale by which it requested the Government of Belarus to ensure that the members of the mission could meet with all persons they wished for carrying out their mandate and that these persons would be fully protected from any negative consequences that might follow from their collaboration with the mission. The Mission of Belarus in Geneva verbally informed the Office that the mission could meet and discuss freely the subjects it wished to discuss with persons it considered necessary for carrying out its mandate. However, no written confirmation of this was ever sent to the Office.

#### II. Officials and other persons met by the mission

3. The mission held meetings with the responsible government officials in the Ministry of Labour and Social Policy, including the Minister Ms. A.P. Morova, the Deputy Minister Ms. E. Kolos, in the Ministry of Foreign Affairs, including the Minister Mr. S.N. Martynov, in the Ministry of Justice, including the Minister Mr. V.G. Golovanov, in the Presidential Administration, including the Deputy Head Ms. N.V. Petkevich, and in the Council of Ministers, including Vice-Prime Minister Mr. A.V. Kobyakov. The mission met with representatives of the Belarusian Congress of Democratic Trade Unions (CDTU), the Radio and Electronics Workers' Union (REWU), the Belarusian Free Trade Union (BFTU) and the Federation of Trade Unions of Belarus (FPB). It further met with the representatives of the Belarusian Confederation of Industrialists and Entrepreneurs (BCIE) and of the Belarusian Union of Employers and Entrepreneurs named after Prof. M.S. Kunyavsky (BUEE). Finally, the mission met with Mr. Ake Peterson, the Head of the OSCE Office in Minsk, Mr. V.P. Voronin, the World Bank Country Manager for Belarus and Mr. S. Hrobot, the Friedrich Ebert Stiftung Fund's Regional Director.

### III. Conduct of the mission

#### ***Meetings with government officials***

##### Ministry of Labour

4. During the first meeting with the Ministry of Labour, Mrs. Morova raised the three following groups of issues with regard to the measures taken by the Government to implement the recommendations of the Commission of Inquiry:

- *Anti-union discrimination and the use of contractual form of employment.* The Minister of Labour referred to the recommendation contained in paragraph 93(h) of the 339th Report of the Committee on Freedom of Association (CFA). By this recommendation, the CFA urged the Government to take the necessary measures to ensure that Messrs. Gaichenko, Dukhomenko, Obukhov, Stukov, Marinich, Dolbik and Sherbo are reinstated in their posts with full compensation for lost wages and maintenance of their acquired rights. In her preliminary statement, Ms. Morova indicated that fixed-term contracts were widely used and accepted in the world. In Belarus, the Labour Code and, more particularly, Presidential Decree No. 29 of July 1999, provided for the right of employers to conclude contracts with employees for at least a one-year term. Adopted on 23 August 2005, Presidential Ordinance No. 392 amended Presidential Ordinance No. 180 of 12 April 2000 “On the order of application of Presidential Decree No. 29” and strengthened protection of certain categories of workers such as pregnant women, women on maternity leave or fathers on paternity leave and workers of pre-retirement age. The Minister further pointed out that anti-union discrimination was prohibited under section 14 of the Labour Code and section 4 of the Law on Trade Unions. The State inspectorate regularly monitored the conclusion of labour contracts. Last year, it carried out inspections in 4,101 state-owned enterprises employing over 2.8 million workers and 2,717 private enterprises employing 272,994 workers. Following these inspections, certain violations were found and 356 employers were fined, 302 officials were imposed administrative penalties and 153 employers received warnings. According to the Minister, the problems arose from the poor knowledge of legislation and its improper application in practice. However, the Minister stressed that no facts of anti-union discrimination in respect of the use of contractual form of employment were revealed. As concerned the eight persons mentioned in the CFA’s latest report, the Minister indicated that no violation of the law had been found. Messrs. Gaichenko, Dukhomenko, Obukhov and Dolbik were not dismissed, but their contracts had simply expired and were not renewed. Mr. Gaichenko was presently employed at the “Interforest” enterprise and Mr. Obukhov worked at “Polotsk Beer” enterprise. Mr. Sherbo was not dismissed but rather transferred to the position of plumber. Mr. Marinich was dismissed in connection with an intention to commit a theft, but was presently employed elsewhere. Mr. Stukov’s dismissal for damaging enterprise property was confirmed in court. However, on 29 April he was reemployed. Mr. Shaitor’s dismissal for failure to carry out his duties was also confirmed in court. The Ministry provided the mission with five court cases concerning the dismissals of Messrs. Gaichenko, Dukhomenko, Obukhov, Dolbik and Shaitor.

- *The recommendation to give clear instructions to all enterprise managers and directors not to interfere in trade union internal affairs.* The Minister referred to the letter dated 24 May 2005 addressed to the various state authorities on development of social partnership and its principles. These state bodies, including the Ministry of Industry, by its letter dated 30 December 2005, sent the relevant instructions to the enterprises and organizations. Practically, all enterprises received such letters. To discuss these instructions, special meetings were held between managers and trade

union bodies. Some minutes of such meetings all dated between 9 and 12 January 2006 were provided to the mission.

- *National Council for Labour and Social Issues (NCLSI)*. The Minister indicated that the Government did not interfere in the composition of the NCLSI. Upon the initiative of the FPB, new rules regulating the composition of the Council were adopted. For trade unions, a minimum 50,000 trade union membership was required to become a member of the NCLSI. The CDTU, representing about 8,000 workers would no longer hold a seat in the NCLSI. However, the new regulations provided for guarantees for those organizations, which were less representative and therefore could not hold a chair in the Council. Such organizations, as other groups of civil society and interested persons could attend the Council's sessions, participate in the discussions and notify their position with respect to the decisions taken. When asked whether the CDTU was consulted when a new regulation was adopted, it was indicated to the mission that the CDTU was invited to the NCLSI meeting and therefore had its chance to debate on it. According to the Ministry, the CDTU welcomed the section of the new regulations providing for certain guarantees for non-member organizations, although the question of the 50,000 minimum requirements was a different matter.
5. The Deputy Minister, Ms. Kolos, spoke about difficulties encountered in the process of changing national legislation. She pointed out that the Government did its best to study relevant international practice. The lack of knowledge of international practice on such matters as representativeness and registration prompted the Government to request the ILO to conduct a seminar on these issues. However, the seminars were not organized and the Government, with its limited resources, had to study these questions itself and therefore could not guarantee that its understanding was correct.
  6. Mr. Starovoitov, the Director of the External Relations and Partnership Policy Department, raised doubt about the approach used towards Belarus. He considered that the question of composition of the NCLSI was outside the scope of Convention No. 87 and was rather covered by other Conventions, on which the Committee of Experts made no comments. He further considered that to include in the NCLSI such a small trade union as the CDTU would not be fair. However, he admitted that different approaches were used in various countries and therefore, holding seminars on the issue of representativeness would be highly important.

#### Ministry of Foreign Affairs

7. In its meeting with the mission, Mr. Martynov, the Minister of Foreign Affairs, expressed his hope that the new version of the Law on Trade Unions would regulate appropriately the issue of trade union rights. He further stressed that the Ministry of Labour would appreciate ILO technical assistance in disseminating information on international standards and practice. Fearing that this assistance was not forthcoming he considered that more cooperation was needed. He agreed that just the fact of holding seminars would not solve the problems, but at least, in his view, it would not aggravate them. He stated that, for now, it seemed like the ILO did not want to cooperate with the Ministry of Labour. Mr. Martynov stated that the Government needed some time to tackle all the issues raised by the Commission of Inquiry and the CFA. He stressed that the legislation allowed pluralism and that in itself was a proof that the Government did not have a hidden agenda to suppress small independent trade unions. As an example that in fact, independent trade unions existed and were very influential he mentioned the "Belarus Kaliy" enterprise in Soligorsk, which was a key enterprise for the Belarusian economy.

## Ministry of Justice

8. During the meeting with the Ministry of Justice, the Minister of Justice, Mr. Golovanov, indicated that the trade unions considered that the present Law on Trade Unions was already too old and that there was a need to redraft it. At this stage, the Ministry of Justice did not intervene with drafting. However, once the draft was ready, ILO's comments would be requested.
9. Mr. Seljevskiy, the Head of the Department of Registration, recalled that the legislation did not require permission to create a trade union and that the 10 per cent requirement at the enterprise level did not apply to organizational structures of a trade union but only to an autonomous trade union. Registration of a national-level trade union was carried out by the Ministry of Justice, trade unions at the territorial and regional levels were registered by the departments of the Ministry of Justice at the corresponding level. District- and enterprise-level trade unions were registered by the district executive committees which were not bodies belonging to the Ministry of Justice. He further provided the following statistics on registration: on the date of 1 January 2006, 41 trade unions were registered (34 national and seven enterprise-level trade unions), 21,992 organizational structures were recorded. Only last year, 662 new organizational structures were recorded. He explained that trade union organizational structures enjoyed the same rights as trade unions and played the same role in social partnership.
10. Mr. Seljevskiy explained that there were two national trade union centres in the country: the FPB, the most numerous and the oldest with its 27 national-level trade unions and about 4 million members and the CDTU, with its four trade unions and not more than 10,000 members. There were others unions, such as the REWU, which were not members of either of the above trade union centres. In his view, the complainants in Case No. 2090 represented 0.2 per cent of trade unionists in the country and therefore no valid conclusion about situation of trade union rights could be drawn. The right to organize was constitutionally guaranteed. Refusal to register could be appealed in courts. However, despite such right, many unions when faced with refusal did not exercise this right and did not take any further measure in order to get registered. As concerned the legal address, according to the Government representative, employers could not provide premises to all trade unions active at their enterprise. In eight cases (out of 32 mentioned in the complaint), the registration was never requested. That was the case for "Aleksandrina", "Uspekhn" and "Pavlinka" hairdressing salons in Mogilev. Furthermore, Mr. Seljevskiy stated that according to Mr. Bykov, the BFTU's chairperson, trade unions at Novopolotsk Heat and Power Generation Plant and at "Naftan" enterprise were registered. He also indicated that since May 2005 there were no requests for registration, therefore the issue of registration could be considered as solved. It was also indicated to the mission that the drafting of a law on a single registering body which would provide for common rules of registration for all legal persons, including trade unions, was envisaged.
11. On the question of registration of the REWU's amended by-laws, it was explained to the mission that at first the amendments were registered but after conducting an in-depth inquiry (on its own initiative) it was found that the amendments were adopted in violation of the union by-laws and therefore, their registration was cancelled. The REWU appealed this decision in court, but the court upheld it. Recently, the Ministry once again received a request to register new amendments to the REWU's by-laws. These new amendments were registered. The Ministry of Justice assured the mission that there were no reasons to doubt the legality of these amendments and there were no apparent reasons to revoke the registration.

## Presidential Administration

12. The mission met with Ms. N.V. Petkevich, the Deputy Head of the Presidential Administration. She stressed the important role trade unions and especially the Federation

of Trade Unions (FPB) played in the country with a socially-orientated economy. In Belarus, trade unions were empowered with a lot of rights. Not one question raised by trade unions could be ignored by the Government. In her opinion, that explained the importance of the issue of representativeness – the matters raised by trade unions should represent concerns and interests of the majority of workers. All legal acts concerning labour legislation should be adopted in consultation with trade unions, which is why they should be really representative.

13. Ms. Petkevich indicated that in light of the above, the Government gave responsibility to draft the Law on Trade Unions to trade unions, more specifically to the FPB, and did not interfere in this process. She promised that if the Law was not drafted with the participation of all workers' representatives, it would not be considered by the authorities. She further indicated that once the Law was adopted, Presidential Decree No. 2 (by definition of a temporary nature) would no longer exist. She explained that today, the reference to trade unions in Decree No. 2 could not be repealed as there was no other legislative act regulating the procedure of trade union registration.
14. In her opinion, trade union pluralism should exist but as long as the role of trade unions confined to protecting the interests of workers and not aimed at pursuing a political agenda. She was aware that the legislation and its application were not perfect but considered that account needed to be taken of the realities and interests of Belarus. She expressed a hope for constructive assistance of the ILO, which would not be oriented at pointing out failures and imperfections. International practice on the issue of representativeness would be of a particular interest to the Government.

#### Council of Ministers

15. Mr. A.V. Kobayakov, the Vice-Prime Minister of the Republic of Belarus, stated that Belarus was a country with a strong socially oriented economy. The main goal of the Government was to increase the standard of living of its citizens. Compared with other CIS countries, Belarus was doing very well with its low unemployment rate and 43 per cent economic growth compared to the year 2000. The Vice-Prime Minister appealed for a better understanding of the present situation of the country with a transitional economy. In his opinion, reforms and changes should follow at an adequate speed, which would give enough time to assess the consequences of any decision-making. In his view, that point had been misunderstood by the Commission of Inquiry.

#### ***Meetings with representatives of employers' organizations***

##### Belarusian Confederation of Industrialists and Entrepreneurs (BCIE)

16. Mr. Streltsov, the Chairperson of the BCIE, considered that social issues could not be solved without addressing economic issues first. As concerned social partnership in Belarus, the representative of this organization noted that while, in a number of enterprises more than one union existed, the management preferred to deal with the most representative organization, i.e. the FPB. However, he was not aware of any problems with regard to the conclusion of collective agreements at the enterprise level where two trade unions existed.
17. As far as the NCLSI was concerned, Mr. Streltsov stated that the new regulations provided for new criteria of a minimum of 50,000 workers employed by the members of employers' organizations. However, according to him, the section granting certain rights to non-members stimulated smaller organizations to either become more active and recruit more members or to affiliate with organizations represented at the NCSLI. Previously, his organization had nine seats out of 11, and the other employers' organization, the BUEE,

had two seats. Now, the BUEE had to negotiate to keep those two seats. As concerned the representation of trade unions, he told the mission that this question the mission should discuss with the unions.

**Belarusian Union of Employers and Entrepreneurs  
named after Prof. M.S. Kunyavsky (BUEE)**

18. The mission met with Ms. Tarasevich, executive director of the organization. On the question of representation at the NCSLI, she agreed that due to the new regulations, the situation would now change, but considered that the 50,000 requirement was a balanced criteria and was not excessively high. The BUEE, having members which employ about 65,000 workers would still keep at least one seat. The new regulations forced the BUEE to change its strategy and to become more “aggressive” in promoting itself. When asked whether the recommendations of the Commission of Inquiry in this regard had been discussed at the last meeting of the NCSLI, Ms. Tarasevich stated that while it was not on the agenda, all employers’ organizations were aware of the Commission’s recommendations. She also stated that its members received instructions from the Ministry of Industry not to interfere in trade union internal affairs. Furthermore, the BUEE was taking measures to educate managers on social partnership and how to work with trade unions. However, more information on international practice was needed.

***Meetings with trade unions***

**FPB**

19. The mission had a meeting at the FPB headquarters. While many trade union leaders were present, the Chairperson of the Federation, Mr. Kozik, conducted the meeting. Mr. Kozik expressed the interest of his organization in implementation by the Government of the Commission of Inquiry recommendations. In his opinion, the process of implementation of the recommendations had now sped up, despite often-present bureaucracy.
20. With regard to the Law on Trade Unions, Mr. Kozik stated that representatives of all trade unions were invited to all meetings of the working group the FPB had created to draft the Law. For example, the CDTU had presented a draft, which was considered during the last meeting of the working group, and the majority of the CDTU’s proposals were accepted. Mr. Kozik assured the mission that once the draft law was finalized, it would be sent to the ILO for its comments. The mission asked Mr. Kozik whether the FPB’s draft version of the Law was provided to the CDTU. He gave an affirmative reply and further promised to provide the mission with a copy of the draft Law. However, no such document was received by the mission.
21. Mr. Kozik stated that the FPB did not interfere in the internal affairs of other trade unions. However, he did not deny the FPB’s interest in expanding its membership. To this aim, it was conducting an active recruitment campaign among non-unionized workers as well as members of other trade unions. While Mr. Kozik accepted trade union pluralism, he indicated that the FPB’s “opponents” would never have the same strength as the Federation.
22. Mr. Kozik admitted that sometimes enterprise managers participated in trade union meetings, but pointed out that such participation was possible only upon a trade union invitation.
23. As for the NCSLI, the FPB considered that it had every right to be the sole trade union member, as it was the most representative trade union organization in the country. While the FPB was ready to give the CDTU an opportunity to participate in the Council, in Mr. Kozik’s opinion, it would be unfair to give to an organization representing not more than 5,000 workers the right to have a decisive vote. He further stated that he would be prepared to work with the CDTU as long as this organization was represented by a person

who knew how to work in a constructive way, without criticizing the FPB on every occasion and behaving as troublemakers.

24. On the question of collective agreements concluded at the enterprise level, Mr. Kozik explained that there were over 30 enterprises where non-FPB trade unions were active. These unions also had their premises and enjoyed similar facilities as the FPB. The relations between these unions and the FPB were cordial. Collective agreements concluded by the FPB were covering non-union members if there was no other union at the enterprise. A collective agreement concluded by the FPB union could also cover members of other trade unions, if the other union so wished. It was also possible to have two collective agreements as provided by the legislation in force.

## CDTU

25. The CDTU's representatives, including the Chairperson, Mr. Yaroshuk, stated that nothing had changed with regard to trade union rights in Belarus. The CDTU itself was under threat of being evicted from its latest premises on the outskirts of Minsk. Its affiliated trade unions continued to experience pressure from the enterprise management. During the meeting, recent developments at the following enterprises were singled out: (1) at "Azot" in Grodno, the enterprise director had stated that he could not imagine how two trade unions could function at one enterprise and gave verbal instruction to eliminate the independent trade union. Following these instructions, heads of production shops conducted one-on-one meetings with trade union members and asked them to withdraw their membership from the independent union. Out of 800 members, at least 240 workers filed written statements to withdraw their membership; (2) at "Belarus Kaliy" in Soligorsk, the manager who was willing to work with two parallel unions had been replaced. The new director considered that there should be only one collective agreement at the enterprise, refused to sign a collective agreement with the independent trade union and had recently put more pressure on trade union members to change their union affiliation; and (3) at "Polimer" in Novopolotsk, trade union members had experienced pressure to leave their union. The mission was provided with further documentation in respect of numerous cases of harassment and discrimination which also were formally transmitted to the CFA.
26. As concerns the draft Law on Trade Unions, the mission was informed that the CDTU had submitted proposals for amendments to the Law to the FPB, but it had not yet seen any proposals on the part of the FPB. They feared that the FPB was only interested in amending the Law in order to establish a system of trade union representativeness, which would effectively eliminate the trade union movement outside the Federation.
27. On the question of composition of the NCSLI, Mr. Yaroshuk explained that the CDTU was invited to participate in the last meeting of the Council. As on previous occasions, the invitation was addressed to Mr. Kanakh personally rather than leaving it to the CDTU to determine their own representative. The CDTU decided to send four persons, including Mr. Kanakh, to attend the meeting. However, when Mr. Kozik proposed to vote on the new regulations of the NCLSI setting up a new minimum representativeness requirement, it was clear that the new rule would oust the CDTU from effective participation in the NCSLI and the CDTU representative decided to leave the meeting.
28. As regards the cases of anti-union discrimination, the CDTU indicated to the mission that Mr. Sherbo had been demoted to the post of plumber in the same enterprise and Mr. Stukov had been reemployed but lost all his benefits.

## REWU

29. The mission met with Mr. Fedynich and Mr. Bukhvostov who stated that the Ministry of Justice had agreed to register the REWU's latest amendments to its by-laws. However, no written confirmation had yet been provided to the REWU in this respect. They also submitted that their unions continued to experience problems with registration. These

problems were due to the refusal of employers to provide legal address. Sometimes, trade unions managed to find premises through the private sector. However, in cases where these premises were not situated in the same district as the enterprise, registration was refused.

30. The REWU representatives also stated that the pressure and prosecution of trade union members continued and was carried out by the “departments of ideology” created at the enterprises. The aim no doubt was the transfer of all REWU’s members to the Industry Workers’ Union of the FPB.
31. The REWU leaders further raised an issue of collective agreements at the enterprise level and referred to the Protocol of Instructions of President of Belarus, Mr. Lukashenko, given at the 5th FPB Convention on 20 September 2005. The President instructed the Council of Ministers together with the FPB to take measures aimed at introducing a practice of conclusion of one single collective agreement at the enterprise level. On 9 January 2006, Mr. Kozik conducted a meeting during which the question of implementing this Presidential Instruction was discussed. It appeared that Mr. Kozik was in favour of one collective agreement per enterprise signed by the union representing the majority of workers.
32. Lastly, Mr. Fedynich and Mr. Bukhvostov expressed concern over the latest amendments to the Criminal Code on discrediting the Republic of Belarus as the mere fact of sending complaints to the ILO could be interpreted as discrediting the country. They further raised their deep concern over the possibility, given the current strategy, that the independent trade union movement might entirely disappear before the issues raised in Case No. 2090 and followed-up by the Commission of Inquiry were resolved.

#### BFTU

33. The mission met with Mr. Bykov, the chairperson of the BFTU, who considered that there was no improvement with regard to the respect of trade union rights in Belarus. The BFTU had to move out of their premises and currently no longer had an office available to it. The organizations listed in the report of the Commission of Inquiry were still unregistered, contrary to the information provided by the Ministry of Justice. He indicated that the letters he had sent to the Ministry mentioning these organizations as within the BFTU structure did not refer to them as having actually been registered by the Ministry.

#### **IV. Concluding discussions with the Minister of Labour**

34. In the concluding discussion with the Minister of Labour, Ms. Morova, the mission thanked her for the information it had received and the several discussions it had been able to have with the authorities. As on earlier occasions, the Government had cooperated with the ILO to ensure that meetings could take place with all those whose views were necessary for fulfilling the mandate of the mission.
35. The mission expressed particular concern at a degree of contradictory information received in particular on the situation of trade union organizations and members who are outside the structures of the FPB. It was also seriously concerned about the, at times, impolite and disparaging language that was used in regard to these organizations and individuals. Given that all with whom the mission had met, including different members of government as well as the chairperson of the FPB, subscribed to the notion of trade union pluralism, such attitudes were not helpful for constructive dialogue and cooperation. Pluralism presupposed an acceptance of different views and respect of persons who held them.
36. In several meetings, the Government had expressed interest in the question of representativeness. Indeed, on the basis of its interpretations of conclusions of ILO supervisory bodies, decisions had been made on the composition of the NCSLI. However, no discussions had taken place with the Office on the relevant jurisprudence. In addition,

the result had been that the composition of the Council had now been modified in a way that could be seen as directly contradicting the recommendations of the Commission of Inquiry. The mission urged the Government to review the matter, in full and constructive cooperation with all trade union bodies. As the chairperson of the FPB had also told the mission that in his view, the CDTU could be represented on the Council, a solution to this question should be actively sought.

37. In light of the repeated requests for international expertise on the matter of representativeness, the mission underlined that for the matters raised by the Commission of Inquiry, this was not the appropriate entry point. Before discussing representativeness, there had to be a clear understanding, and guarantees, that everyone enjoyed the rights to form a trade union and have the minimum facilities needed, such as legal status through registration, for expressing their views and conducting legal and legitimate activities. In countries in transition, where trade union systems are still evolving from the earlier monopoly situation, the guarantee of rights of minorities was particularly important. No serious discussion on representativeness was possible if individuals and their organizations were persecuted for trying to express their views on how the interests of the workers should best be defended.
38. The mission recalled that the Commission of Inquiry had not made any recommendations on the draft trade union law. However, the discussions now had shown that it was essential that the recommendations of the Commission were taken into account in the drafting of legislative amendments or a new law. The mission stated that it would be unfortunate if the process led to a law, which subsequently the ILO supervisory bodies would find to be in contradiction with international labour standards.
39. While the FPB was leading the process of revision of the trade union law in consultation with the other unions, including the CDTU, the mission emphasized that it was important for the Government to ensure that all views were fairly taken into account in this process. The mission did not consider it appropriate for the Government to have a “hands off” position that would effectively leave the drafting to the trade unions themselves. In the current climate, this could lead into the contents of the law being essentially determined by the majority union alone. In discussions with the mission, both the FPB and the CDTU had said that they tried to work together. The mission considered that support should be given to any genuine desire to work out legislative proposals which all the different parts of the trade union movement could consider to be fair.
40. The mission underlined that the Office was ready at any given time to give its views and advice on any drafts of the trade union law, either upon request by the government or the trade unions.
41. Taking into account previous proposals made by the Government for seminars that it had suggested would assist it on matters related to the recommendations of the Commission of Inquiry, and which were reiterated in some discussions this time in Minsk, the mission stated that a seminar or a workshop could well be arranged on the draft trade union law. It should cover all relevant areas, and the focus would be to ensure that any legislative changes would be in line with international labour standards and the recommendations of the Commission of Inquiry. Such a seminar or workshop should, of course, be acceptable to, and attended by, representatives of the Government and all trade union organizations. The mission believed that a joint request to the Office to this end would lead into timely action in its side.
42. The mission also emphasized that a seminar or workshop more broadly on ways to implement the recommendations of the Commission of Inquiry could also be envisaged. The active participation of all representatives of the tripartite constituents in Belarus would naturally need to be ensured.

## V. Conclusions

43. As far as the mandate of the mission is concerned, no real progress can be noted in respect of the implementation of the recommendations of the Commission of Inquiry, nor was the mission able to assist in any manner in the drafting of legislation to address the concerns raised by the Commission. To the contrary, the mission learned of the new requirements for membership on the National Council on Labour and Social Issues (NCLSI) that effectively eliminated the CDTU from membership in the Council. While the Government insisted that the additional provisions enabling various trade unions, NGOs and other groups of civil society to attend and raise their concerns at the NCLSI was sufficient to meet the recommendation made by the Commission of Inquiry, it is difficult to see how this latest development can be seen as having appropriately addressed the recommendation that the CDTU, which then had a seat on the NCLSI, be able to effectively participate with the member of its own choosing.
44. As regards another of the Commission's recommendations, while the Government did finally provide the letter addressing the issue of non-interference in trade union internal affairs at the enterprise, to which it has referred since May 2005, this letter was only addressed to other ministries. These ministries were then in turn to inform the enterprises. The Government presented some texts of minutes of meetings with a few enterprises held the week prior to the mission where these matters were generally discussed with enterprise management.
45. Overall, it was the distinct impression of the mission that it would be very difficult to address the concerns raised by the Commission of Inquiry and to implement its recommendations when there appeared to be no agreement as to the problem. The Government insisted that there was no anti-union discrimination and no problem with trade union pluralism in the country. The proof of this was that unions outside of the FPB structure still existed. The rapid decrease in the number of these unions and affiliated members over recent years was systematically explained as being a result of the workers free choice to join the organization of his or her own choosing.
46. The only matter upon which the Government specifically requested the assistance of the ILO was concerning international experience on questions of representativeness of trade unions. This was repeated at each meeting with different Government representatives. On each occasion, the mission noted that this was not a matter that had been raised for action by the Commission of Inquiry. On the contrary, focusing on it had been specifically recommended against in the current circumstances in Belarus by both the Commission of Inquiry and the Committee on Freedom of Association. The question of trade union rights in Belarus was not one of representativeness but one of the rights of all trade union organizations to exist and be able to freely function for the interests of their members.
47. In addition, the only legislative drafting at present is focused upon the trade union law. No drafts were made available to the mission, and the Government apparently had handed over the drafting process to the FPB. There were no recommendations addressing this Law by the Commission of Inquiry as its provisions had not been implicated in the specific issues raised in the article 26 complaint. Nevertheless, the redrafting of the Law could potentially assist in the implementation of the Commission's recommendations if it were to deal with trade union registration and give rise to a cancellation of Presidential Decree No. 2, but the mission was not asked to assist in such a drafting and is still not aware of the main thrust of the reforms to the Law as proposed by the FPB, which is in charge of proposing the new draft after consultation with other unions.
48. Finally, as regards the individual cases of anti-union discrimination and non-renewal of contracts of individuals who had spoken to the Commission of Inquiry, the mission notes from the information provided by the Government that, while some of these individuals may have since found new employment, in most cases their new jobs appear to represent a clear demotion. It can be seen from the court cases provided by the Government, that these

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individuals were systematically and superficially found not to have suffered from anti-union discrimination on the basis of such arguments that the union no longer exists, or that they could not have been sanctioned for speaking with the Commission of Inquiry since their name was not specifically noted in the Commission's report.

- 49.** In light of all of the above, the mission is obliged to conclude that at present there has been no real progress nor is there any true desire to implement the recommendations of the Commission of Inquiry. The Government has not been ready to avail itself of ILO assistance on occasions where this might have helped in addressing its recommendations. Instead, it had given itself interpretation to them, exclusively focusing on the question of representativeness. As the mission noted, this was a misleading starting point and ignored the basic thrust of a number of key recommendations of the Commission of Inquiry. Instead, the Government has now chosen to use the notion of representativeness to cement the monopoly-like situation of the FPB, reminiscent in many respects of the single union system of the Soviet times. This is done not only by favouring the FPB, for instance by turning over the responsibility for drafting legislation to it and ensuring it a sole representation on the national tripartite body. It is accompanied by interference, harassment and pressure on other unions to cease activities, transfer their members to the unions of the FPB and through measures directed at individual trade union leaders and members.
- 50.** The mission fears that, having over the recent months turned its focus on representativeness, the Government is on a path to eliminating all remnants of an independent trade union in Belarus, hoping that in this way there, in effect, will be no further sources of complaint. All this is deeply concerning as it not only means that no tangible progress is being made to fulfil the recommendations of the Commission of Inquiry. In fact, the Government has chosen to pursue a policy, which to all practical effects, is in clear contradiction with those recommendations. The lights are progressively going out for those trade union organizations, which do not want to conform to the absolute majority line expanded by the FPB, with the massive support of the state system.

*(Signed)* Kari Tapiola  
Karen Curtis  
Oksana Wolfson